

Enabling greater use of on-site audits for legal aid providers

Consultation response report

Table of Contents

Introduction.....	1
Consultation proposals – audit policy	2
Using on-site audits for a wider range of providers.....	2
Introducing the new ‘on-site’ audit process	3
Inserting the audit site as a new point of information given to providers	3
Clarifying the auditor appointment process	3
Sector feedback – audit policy	3
Objectives of the proposed changes	3
Location and duration of on-site audit.....	3
Scope of the audit and the possibility of an on-site interview.....	4
Ensuring sufficient notice of audit is given to enable provider to prepare audit files.....	4
The definition of a file for the purposes of audit	5
Ensuring protection for providers with a home office	5
Providing training to auditors.....	5
Additional comment – assessing value through plea changes	6
Additional comment – benefit of on-site audit.....	6
Conclusion	6

Introduction

1. On 28 June 2017, we sought feedback on proposed changes to our legal aid provider Audit and Monitoring Operational Policy (audit policy), and the Terms of Reference – Quality and Value Audits (terms of reference). The proposed changes were designed to enable a greater use of on-site audits as part of the legal aid quality and value audit programme.
2. We proposed that increasing the Ministry’s ability to audit providers at their premises would add value and improve the efficiency of the annual quality and value audit programme by giving the auditor a holistic insight into a provider’s practice. An on-site audit would also

present the auditor with a first-hand view of a provider's real-time performance and enable discussion and interview of the provider.

3. The consultation documents were circulated to the New Zealand Law Society (NZLS), the New Zealand Bar Association (NZBA), the Criminal Bar Association (CBA), and the Auckland District Law Society Inc (ADLS). The NZLS published the consultation documents in their weekly e-newsletter Law Points. The consultation period was 5 weeks.
4. Responses were received from the NZLS, NZBA and the CBA.
5. Our consultation proposals, and the feedback received from the sector, are outlined below.

Consultation proposals – audit policy

6. The current audit policy that restricts on-site visits to special audits has proven relatively inflexible. Currently, the audit site does not vary according to scale or complexity of the provider's business.
7. On-site audits present the auditor with a first-hand view of a provider's performance and give the opportunity for an on-site interview. The auditor is able to ask the provider questions about their case files and discuss their legal practice. Auditors can also gain a holistic insight into the provider's service delivery systems. They can gain a deep understanding of the provider's unique context which naturally varies according the size and type of provider, and the nature of their work. On-site audits entail the same close scrutiny of case files that is characteristic of off-site audits.
8. On-site audits can also save time and effort during the substantive review process. A quick follow-up question from the auditor allows the provider to readily supply missing information. In an off-site audit additional evidence can only be sent via the Ministry through the provider response process.

Using on-site audits for a wider range of providers

9. We consulted on whether on-site audits should be used for a wider range of providers. We proposed to enable this by changing the policy to set out the criteria the Ministry will use to determine whether an audit will be conducted on-site or off-site. The proposed criteria for an on-site audit were:
 - a high number of legal aid cases assigned in the previous year
 - high legal aid earnings in the previous financial year
 - an overall high-risk profile
 - 2 or more providers at the same law firm or chambers, notwithstanding that the auditor must conduct a separate audit for each provider
 - insufficient closed files due to the nature of the files e.g. in the Waitangi Tribunal area of law
 - large case files due to nature of the files or area of law.

Introducing the new 'on-site' audit process

10. We proposed introducing a new sub-section called On-site audit process on page 13 of the audit policy. We wanted to introduce the term 'on-site audit' and wording specifically enabling an interview as part of an on-site audit. We also proposed renaming the section about the standard audit process on page 12 as 'Off-site audit process' in order to clearly differentiate between the 2 types of audit. These changes would mean both on-site and off-site audits would be standard elements of the quality and value audit programme.

Inserting the audit site as a new point of information given to providers

11. We proposed inserting the audit site as a new point of information in the information list the Ministry would notify to the provider. This change would reflect the use of on-site audits as a standard audit method where appropriate.

Clarifying the auditor appointment process

12. We proposed inserting 2 new sentences about the auditor appointment process that differentiate between on-site and off-site audits. The proposed change would highlight the difference between on-site and off-site audits with regard to revealing the identity of the auditor. Auditors are currently named in a special audit but not identified in an off-site audit.

Sector feedback – audit policy

13. The feedback from respondents did not recommend deleting or amending any of the proposed changes. The feedback largely focused on the need to give additional information to providers to make the on-site process more transparent and to ensure procedural fairness.
14. The following outlines the sector feedback on elements of the consultation document and our response.

Objectives of the proposed changes

15. The NZLS and the CBA supported the objectives of the proposed changes, namely improving efficiency and adding value to the legal aid system. The CBA noted that the on-site audit process had greater scope to consider the in-depth work done by their members.

Our response

16. We are pleased that the sector saw value in the proposed changes.

Location and duration of on-site audit

17. The NZLS and the NZBA recommended that more information should be supplied to the provider regarding the location and anticipated duration of the on-site audit. The NZLS and NZBA considered this would ensure that the provider was not unduly inconvenienced. The NZBA queried whether an on-site audit could be carried out in the provider's absence.
18. The CBA indicated their support for the proposed changes only if the Ministry agreed to obtain provider consent before conducting an on-site audit.

Our response

19. We consider the feedback on this point useful.
20. The audit policy and terms of reference have been amended to note that before an on-site audit takes place, the Ministry will liaise with the provider regarding the location of the audit and will advise the provider how long it is expected to take. An on-site audit will not be carried out in the absence of the provider.
21. As is current practice, the Ministry will consult with the provider regarding a mutually convenient date for the audit visit.

Scope of the audit and the possibility of an on-site interview

22. The NZLS recommended that the policy and terms of reference documents provide more clarity regarding the scope and parameters of the on-site audit. The NZLS also suggested greater clarity is provided around the on-site audit interview, such as the purpose of the interview, the timing and duration of the interview and whether there are limits on the right of reply/correction.

Our response

23. We consider the NZLS feedback provided a useful recommendation.
24. The audit policy and terms of reference have been amended to reflect the fact that before an on-site audit takes place, the Ministry will advise the provider of the scope of the audit.
25. The terms of reference have also been amended to provide greater clarity as to the purpose and parameters of the on-site interview. The terms of reference specify that, with on-site audits, an on-site audit interview will focus on the files selected for audit. The terms of reference also note that before an on-site interview takes place, the Ministry will ensure the provider is advised of the scope and parameters of the interview.

Ensuring sufficient notice of audit is given to enable provider to prepare audit files

26. The NZBA queried whether the provider would be given advance notice of the files selected for audit. The NZBA also asked what the minimum period of notice is. The NZBA noted that sufficient notice needs to be given to ensure a fair process was being followed.

Our response

27. The on-site audit notice period will be the same as for the off-site audits. The audit files for the on-site audit will be selected before the audit takes place and the provider will be given a minimum of 10 days notice of the files to be audited. This will give the provider sufficient time to collate all of the relevant material needed. In practice, the standard notification letter gives the provider 15 working days to supply the requested files.
28. To clarify this point, we have amended the terms of reference to state the provider will be given a minimum of 10 working days to supply the requested audit files for a quality and value audit. The minimum notice period does not apply to a special audit conducted where there are serious concerns that require immediate investigation.

The definition of a file for the purposes of audit

29. The NZBA noted there is no definition of what constitutes a file for the purposes of audit. The NZBA also said hard copy files seldom exist any longer, and that in some cases documents belonging to individual files may be stored in various locations, across different storage media. The NZBA queried whether the auditor will have access to the provider's computer, in order to access the audit documentation.

Our response

30. We consider the NZBA's feedback useful. It should be noted that section 2.6 of the terms of reference sets out the documentation the Ministry expects to be on a client file. To address the above feedback, we have amended the terms of reference to reference that file documentation may be stored in either electronic or hardcopy format. We have amended the terms of reference to specify that the provider is expected to collate all of the relevant audit information, and make it available to the auditor during an on-site audit visit.
31. We do not expect the provider to give the auditor access to their computer.

Ensuring protection for providers with a home office

32. The NZBA queried what protections will exist for practitioners with more than one office, or for those who work from a home office. The NZBA also queried whether there are any limitations on where the on-site audit may be held, for example a home office.

Our response

33. An on-site audit may take place at a location determined following liaison with the provider. The location may include a home office.
34. Should an on-site audit take place at a home office, the auditor will follow best practice related to auditing at home offices. The auditor will also follow current Ministry health and safety procedures, as used for audits across other areas of the Ministry's work.
35. In determining best practice for auditing at home offices, the Ministry has consulted with the NZLS and has reviewed the NZLS' *Inspectorate Health and Safety Guidelines*. This document guides the practice of NZLS inspectors when conducting work outside of the office, such as conducting trust account audits at lawyers' offices.
36. Information relating to the Ministry's health and safety procedures will be supplied to the auditor as part of the initial information that is provided at the beginning of the audit process.
37. We have amended the audit policy and terms of reference to state the provider will be informed of the health and safety procedures to be followed for an on-site audit.

Providing training to auditors

38. The NZLS recommended that auditors receive appropriate training on conducting on-site audits, including interview techniques.

Our response

39. We consider the NZLS feedback useful and agree with the recommendation. We are currently investigating appropriate training opportunities for auditors and will begin auditor training as soon as practicable.

Additional comment – assessing value through plea changes

40. The NZBA commented that one of the criteria to determine a provider's rating for value is whether there was a change of plea. The NZBA noted that no criteria or explanation was provided for determining whether there was a justification for the change in plea and the appropriateness and value of the provider's advice.

Our response

41. In assessing the value of a provider's work, an auditor will follow natural justice processes. Before finalising the audit, the provider will be given an opportunity to provide an explanation or justification for the client's change of plea, or any comment on the appropriateness and value of the provider's advice. The auditor will take the response into account before finalising the audit.

Additional comment – benefit of on-site audit

42. The NZBA stated there was a general concern among members of the NZBA's Criminal Committee about increasing prescription for legal aid providers. The NZBA queried how the Ministry has balanced the benefits of the greater use of on-site audits against the detriment that may arise through decreasing member participation in the legal aid scheme.

Our response

43. We would like to allay the NZBA's concern that the on-site audit process will entail greater prescription. The changes to the audit policy and terms of reference only clarify the existing ability to conduct an on-site audit, and do not introduce a significant change in audit methodology.
44. The changes will work in providers' favour, in that they will save them administrative time and costs in sending the client files to the Ministry. The on-site audit process will also give the auditors a holistic insight into the quality of the work done by providers.

Conclusion

45. The feedback received has helped clarify and improve the proposed changes to the audit policy and terms of reference. We believe that the changes will make the policy and terms of reference more effective, transparent, and robust. We are grateful for the feedback received. The revised audit policy and terms of reference are now available on the Ministry's website.