

Legal aid lawyers audit summary

Practice themes from the 2017-2018
quality and value audit programme

Provider Services – Legal Aid

July 2019

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Purpose of this report

This report summarises major practice themes across 101 audits of legal aid lawyers conducted for the 2017-2018 financial year. It also analyses auditor comments for each of the audit ratings; excellent, very good, acceptable, poor and very poor.

This report gives an overview of audits from throughout the rating range, as well as where serious compliance concerns have been raised. These examples are provided to help legal aid lawyers understand and comply with their obligations, and deliver consistent, effective, efficient and ethical services for their clients.

How the audit process works

Each year the Provider Services (Legal Aid) team audits a selection of legal aid lawyers in private practice and in the Public Defence Service. These audits are part of the quality assurance framework set out in section 91 of the [Legal Services Act 2011](#).

In 2017-2018, there were 101 audits completed, against a target of 100 audits. This was approximately 5% of the 1,945 approved legal aid lawyers as at 30 June 2018, and comprised six Public Defence Service lawyers and 95 in private practice.

Lawyers are selected for audit

Legal aid lawyers are selected for audit based on a combination of factors, including:

- high legal aid earnings
- high case load
- records of substantiated complaints
- previous unfavourable audit results.

Lawyers are generally not re-audited if they have high earnings but attained favourable results in a recent audit. In 2017-2018, eight audits were re-audits from the 2016-2017 financial year, largely because of unfavourable ratings received at that time.

In addition, 'special' audits are conducted in response to specific concerns or complaints about a provider, or when previous audits recommended more in-depth or targeted assessment. In 2017-2018, there were five special audits, although only four of these have been included in the analysis of this report. The remaining special audit was excluded because it was considered such an unusual case.

Auditors review files, write report and give overall rating

Experienced lawyers conduct audits by reviewing legal aid lawyers' files and records of selected cases. For each lawyer, the Ministry audits five completed across their approvals.

For the first time, some of the 2017-2018 audits were completed onsite and included an interview with the lawyer. Previous years' audits were completed remotely. In 2017-2018, there were 78 offsite and 23 onsite audits.

Before the audit report is finalised, lawyers have an opportunity to comment on the draft report. Their comments, and any additional material provided, are considered by the auditor.

Finally, lawyers are rated on the overall quality and value of their legal aid services. Ratings are from 1 to 5, with 1 being excellent and 5 being very poor. Auditors endeavour to provide detailed feedback on areas of good practice and make recommendations for improvement.

Overall ratings are finalised

Overall ratings are decided by the auditor once the lawyer has had the opportunity to provide feedback on the draft report. The rating reflects the quality of legal work and record-keeping practices. Nationwide consistency is maintained through peer review and auditor training. However, given the discretionary nature of auditing and the complex subject matter, it is difficult to clearly define what is required to achieve each rating. This means quantitative analysis alone cannot provide a full picture of what good practice looks like.

Remedial action is taken if necessary

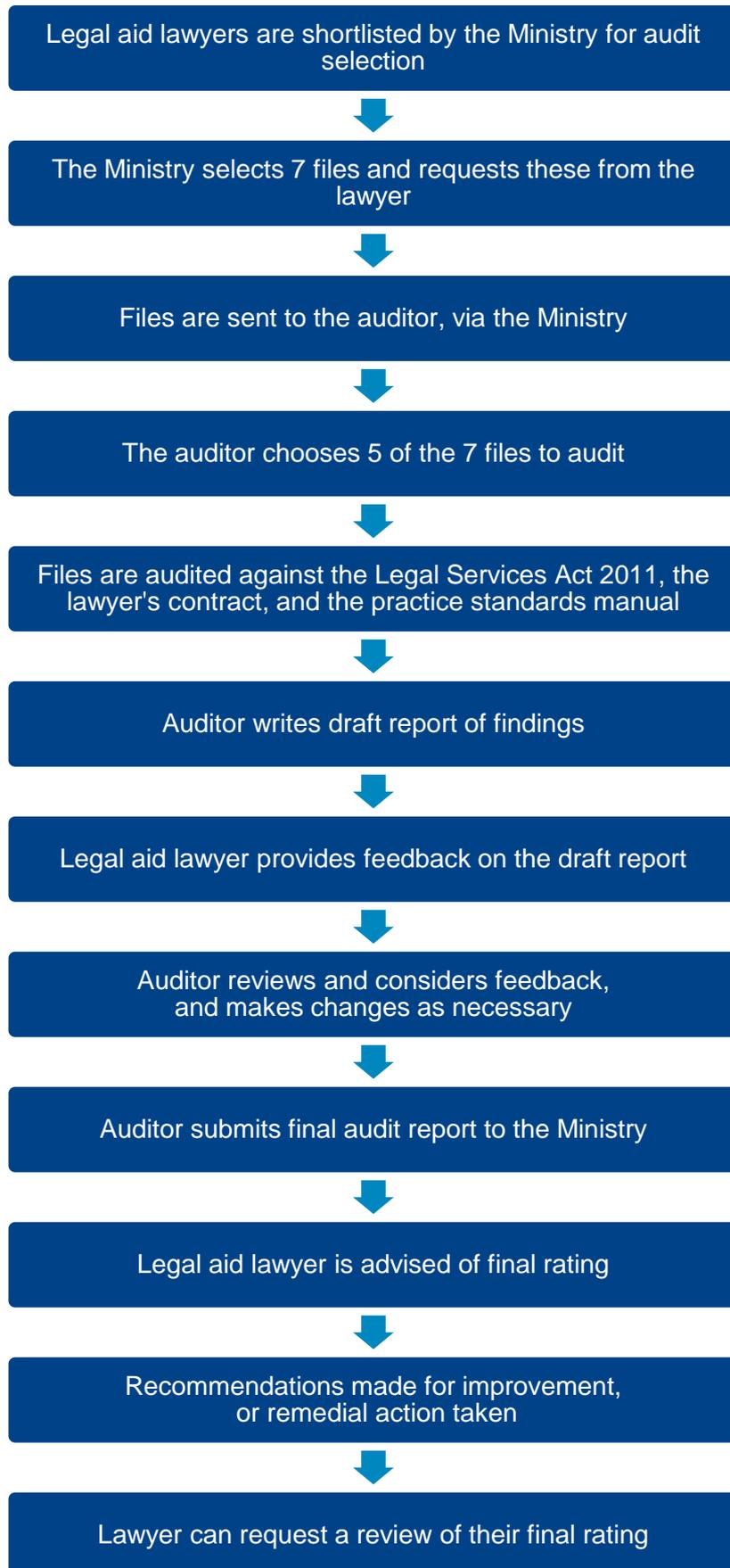
Where an auditor has indicated concerns or given an overall rating of 4 or 5, the Ministry will consult the Legal Services Act 2011, the lawyer's contract for services with the Ministry, and the practice standards manual to determine whether remedial action is necessary.

All legal aid lawyers who receive a poor or very poor rating are given practical recommendations to improve the issues identified. These recommendations are monitored closely through follow-up audits in subsequent years.

Where appropriate, action may be taken under the Ministry's complaints policy. Lawyers may be issued with a reminder of expectations, a first, second or final notice, or referred to the Performance Review Committee (PRC). Lawyers can request a review of any remedial action that is taken.

More details of the audit process can be found in the [audit and monitoring policy](#) and the [audit terms of reference](#).

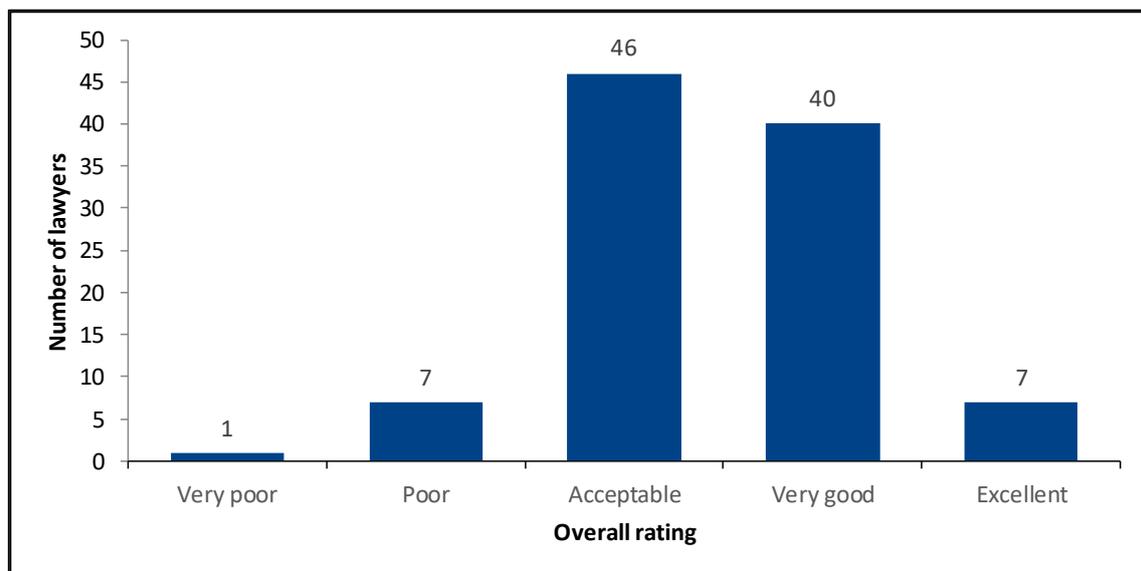
Audit process diagram



Analysis of 2017-2018 audits

In 2017-2018, the Ministry audited 101 legal aid lawyers. Figure 1 shows the overall rating results of these audits.

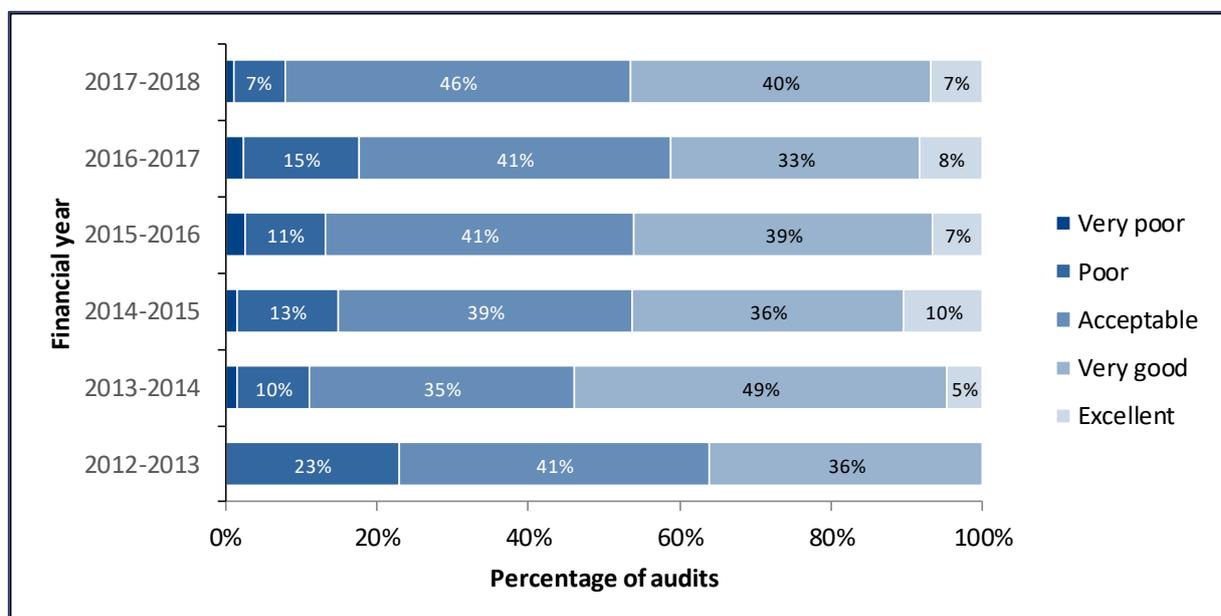
Figure 1: Audit rating results for 2017-2018



Across all audits, 92% of lawyers were rated 'acceptable' or above. This indicates legal aid lawyers are delivering quality services provided their clients.

Figure 2 shows the rating results as a percentage and compares them to those from previous years' audit programmes. During the past six financial years, the raw number of audits increased from 61 in 2012-2013 to 101 in 2017-2018.

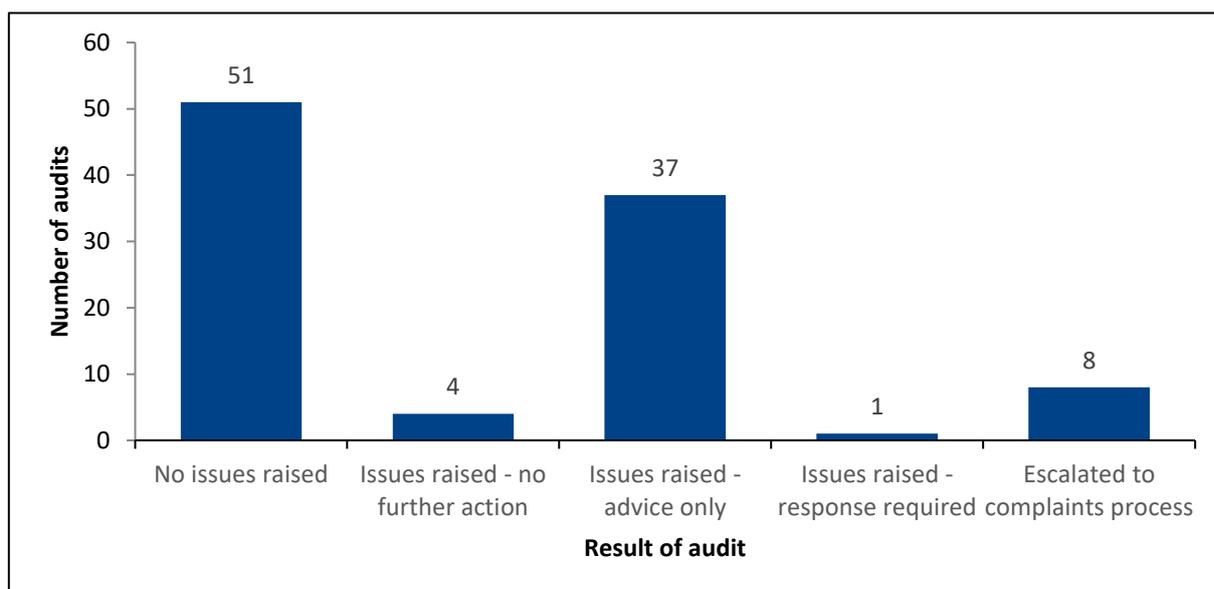
Figure 2: Audit rating results for 2012-2018



The quality of services has been broadly stable over the past six years, with a gradual but noticeable shift towards more positive ratings.¹ In 2012-2013, only 77% of lawyers were rated 'acceptable' or above. This has increased by 15 percentage points to 92% in 2017-2018.

In 2017-2018, there were 50 audits which were identified as raising issues. Figure 3 shows the various actions taken. Where action was required, the majority (74%) of situations could be managed by providing advice to the lawyer.

Figure 3: Audits where issues were identified, and actions taken to address these issues

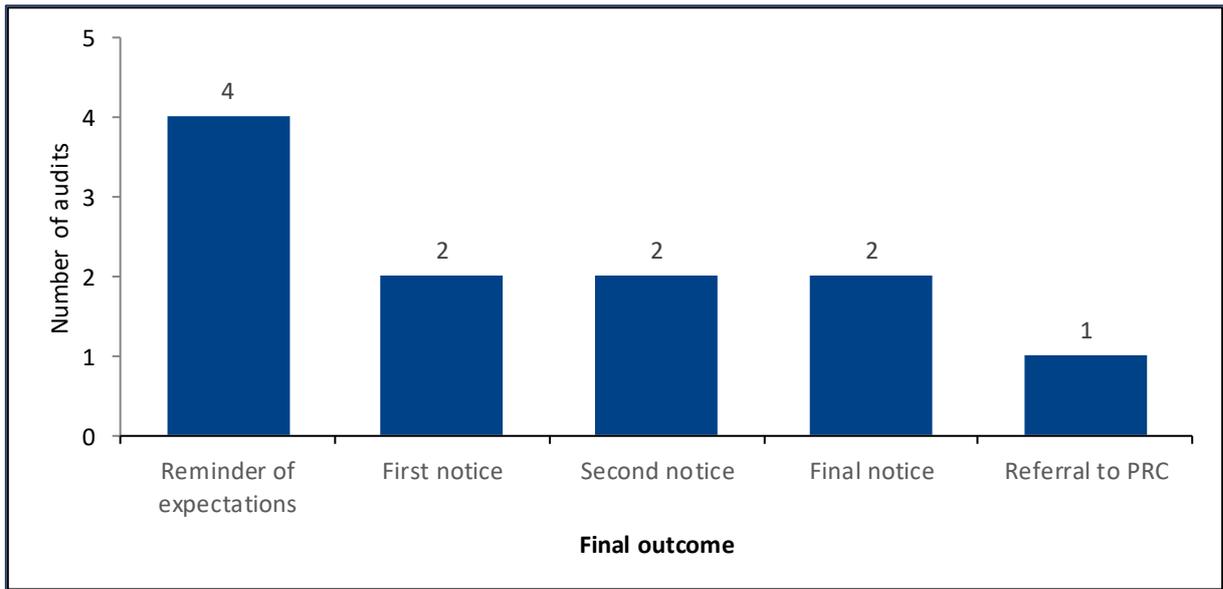


There were 11 lawyers whose audit issues were escalated beyond the informal 'advice only' resolution.² Figure 4 (p 8) provides a breakdown of these audits and their final outcomes. However, due to the small sample size, it is not possible to meaningfully analyse trends in such outcomes.

¹ Year-on-year variations have not been assessed for statistical significance.

² Some lawyers in the Figure 3 'issues raised – advice only' category ended up shifting into the Figure 4 'reminder of expectations' category.

Figure 4: Final outcomes of audits where issues were identified



Issues addressed in final outcomes are discussed in more detail in the subsequent section of this report.

Practice themes identified in audits

Qualitative audit results

In addition to high-level quantitative data, audit reports provide rich qualitative information about the delivery of legal aid services.

To get a more detailed picture of how services are delivered, the Ministry analysed a sample of comments from 25 audits, spread across all rating categories and areas of law.³

Three audits were chosen from the excellent rating category, eight from very good, eight acceptable, five poor, and one from the very poor category.

Qualitative methods were used to identify main practice themes. The Ministry collated auditor comments under main headings and reviewed the dataset for common themes and patterns. Priority was also given to comments deemed particularly useful and those showcasing unusual situations.

This section of the report summarises that analysis. Comments in blue boxes are direct quotes from audit reports to illustrate each rating. As well as the four main practice themes, the report also discusses two minor areas of concern.

The four main practice themes identified are:

1. Quality of services.
2. File clarity.
3. Client reporting and communication.
4. Supported invoicing.

The two minor areas of concern are:

1. Delegation of work.
2. Changes of address and contact details.

³ Information about overall rating categories is laid out in Appendix B of the [audit terms of reference](#).

Theme one: Quality of services

All audit reports explicitly considered the quality of the services delivered by the audited provider. Most auditors said the provider achieved favourable results for their client given the facts of each case. Service quality was assessed using documents on file, including records of advice given, communication with other parties, written submissions and evidence of hearing preparation.

Comments about the quality of work were generally brief, and were often presented as a complementary, rather than primary, factor in the overall rating. Generally, providers did well in this area and only a few negative comments were identified.

Excellent and very good results

Audits with excellent and very good ratings invariably demonstrated high quality service delivery and favourable case outcomes. The quality of providers' written submissions was often noted, as was their commitment to difficult clients.

"Provider bent over backwards to protect and advise non-responsive client."

"[The provider] has very good relationships with her clients. She is consistently professional in respect to her dealing with clients, police prosecution, community probation and court registry staff."

Acceptable results

Audits with acceptable ratings typically said providers achieved good outcomes for their clients. Negative comments were rare. Increasingly, comments regarding the quality of the services provided were brief or absent as the auditors' comments focused on areas requiring improvement. On occasion, poor record keeping prevented full assessment of a provider's performance.

"Practitioner is competent in working for the best outcomes for his clients."

Poor and very poor results

Even where providers received a poor rating, auditors often found their services to be adequate. However, record and file management issues frequently prevented auditors from fully assessing the quality of services, and this influenced the overall rating. In some cases, reports identified genuine deficiencies in providers' practice. Where services were good, but administrative practices were poor, the overall audit outcome was largely determined by file quality.

"Even from the limited information held on the files, the quality of representation appears to have been appropriate."

“In the [previous] audit, a recommendation for [provider] was that he numbers his paragraphs in his written submissions... Numbering paragraphs is a basic requirement of a legal document.”

Theme two: File clarity

Auditors expect transparent and organised files that clearly lay out case events, instructions and advice given at each stage, and all relevant legal aid and invoicing documentation.

Organised files generally attracted higher overall ratings because auditors were better able to understand what had happened. Auditors also preferred files with separate sections for different documentation types.

The benchmark for many auditors was whether a new lawyer could quickly understand a case when handed the file. If this was not the case, the final rating was likely to be acceptable or below. File clarity and maintenance were major drivers of overall ratings.

Auditors generally expected typed file notes and a centralised record showing outcomes of each court appearance. Auditors frequently recommended that providers get clients to sign instructions at key junctures in the case. Separate files for separate grants of legal aid were also expected.

Excellent and very good results

Lawyers with excellent or very good ratings typically had established file management practices. Their files exhibited an unbroken chronology of advice, instructions and recorded outcomes, often utilising standard forms and templates.

Mixed electronic and physical files were accepted where content could be easily reconciled.

Occasional lapses in recording were accepted in the excellent and very good category, but systematic failures lowered audit ratings to acceptable or below.

“On each file it was clear why the path taken was taken. The files were transparent.”

Acceptable results

Audits with an acceptable rating suffered from some clarity issues. Case chronology was more often incomplete or unsupported by documentation. The details of court appearances and client instructions were often not fully recorded. File notes and records of advice were sometimes absent or incomplete.

These issues meant auditors were left to piece together what had occurred and why. Acceptable audits often identified deficiencies in one or two key areas. Providers were then told how to address these problems with basic changes to practice. File clarity was a primary consideration for many reports receiving acceptable ratings.

“While I am fairly confident that my interpretation of the file is correct, the preferable course would have been for matters to be clear from the file itself... Ideally any given file needs to show clearly all steps and actions taken in relation to it. The file should itself ‘present the whole picture’.”

“An applicant should always be required to sign instructions [they] will plead guilty, not guilty, give evidence, not give evidence, elect jury trial etc. Not to do so leaves the provider open to criticism and possibly could result in ‘counsel error’ being argued as an appeal ground.”

Poor and very poor results

Audits attracting poor and very poor ratings usually identified serious shortcomings in file maintenance. In the worst cases, key documents (such as records of instructions, advice and court appearances) were completely absent. Outcomes were frequently unknown.

Auditors were sometimes left to infer the client’s instructions from court documents or other sources. Legal aid documentation was often absent, making it hard for another lawyer to identify the basis of the assignment.

Providers with poor and very poor ratings often had disorganised files, no support staff and poorly-established processes. Auditors said they had to spend time organising the file before they could begin the audit.

These providers often failed to comply with file maintenance obligations contained in the practice standards and contract for services.

“The file is not contained in a folder or bound in any way. It is just a stack of papers.”

“Relevant documents are missing, such as section 38 reports, sentencing submissions and judge’s sentencing notes.”

“No idea what occurred finally for this client – whether there was a trial or not, whether he was found guilty or pleaded guilty and what the end result was.”

Theme three: Client reporting and communication

Client reporting and communication is a major focus of the reports sampled. Auditors expected written reporting letters to be sent to the client and included on each file.

Interim reporting letters were recommended following each court appearance. Auditor’s preferred files which included informative final reporting letters addressing appeal rights (where relevant) and the outcome of the case. Reporting letters should be clear and reflective of the client’s level of understanding.

Auditors expected the details of telephone calls, emails and other client interactions to be recorded in file notes. Auditors noted the provider's obligation to keep the client updated regarding the progression of their case where that was not being done.

Where there was little or no evidence of client reporting on file, the rating was typically no higher than acceptable. Lack of reporting letters and poor file notes also hampered auditors' ability to assess service quality.

Excellent and very good results

With few exceptions, overall ratings of excellent and very good were reserved for providers who regularly communicated with their clients. Final reporting letters were a feature of all the excellent audits sampled. Providers also provided client care information on receiving the grant of legal aid.

Inconsistencies in reporting (such as failing to provide final reporting letters) typically reduced an otherwise-excellent rating to very good. Even at higher ratings, providers were frequently reminded to include information about appeal rights in their final reporting letters.

"What [the provider] does particularly well is routinely report to her clients confirming instructions received, advice given and progress of the case."

"In the final reporting letter, it is good practice for the provider to note the process for appeals in case the client wishes to advance one (and to note the provider's own views on the prospects of success)."

"All appropriate client care documentation and terms of engagement on file."

Acceptable results

Audits with an acceptable rating often had poor communication with clients or a lack of evidence of communication. Auditors often noted the lack of interim and final reporting letters, or their inconsistent use. Auditors said this left providers vulnerable to complaints and allegations of error.

Client care information was provided in some cases, but not all. Lack of client care information was treated seriously, and usually dropped ratings to acceptable or below. Auditors also expected reporting letters and communications to be tailored to the needs of individual clients.

"There are no reporting letters to the client as to the state of the proceedings, strengths and weaknesses of the case, advice as to the discounts for early guilty pleas, court attendance [records], or a final reporting letter addressing the sentence imposed and appeal rights."

"There were very few reporting letters to clients and no client care information on the files."

Poor and very poor results

The poor and very poor audit reports sampled showed little or no evidence of written reporting letters. Some providers relied entirely on unrecorded interactions with their clients. Telephone

and face-to-face discussions were not recorded in file notes. Reporting letters were not consistently sent following each appearance.

Those audits which received poor ratings, were differentiated from acceptable audits featuring a lack of reporting, by additional deficiencies in other key areas.

Failure to provide compliant client care information and letters of engagement was a common reason that providers fell from ratings of acceptable to poor.

“At interview [the provider] accepted that there had been no written contact with [the client] and confirmed that his standard practice is not to write to clients.”

“There were no final reporting letters on any of the files. In addition to sending a copy of decisions and outcomes, a letter or email explaining the outcome to the client in plain language should also be sent.”

“None of the files audited had letters of engagement on them. It is a professional duty to provide every client with a letter of engagement. A copy of this should be kept on every file.”

Theme four: Supported invoicing

The value portion of the audit assessment was generally determined by whether a provider's files supported their fixed fee or hourly claims. Findings of 'does not meet value' in other circumstances were rare.

Several otherwise-promising audits were hampered by incorrect fixed fee claims or a lack of supporting documentation and time recording. Where providers were asked to clarify billing issues but did not respond to this request, the overall rating generally dropped by at least one. Billing lapses were treated less seriously if they were addressed by the provider as requested, or interpretation of the situation was unclear.

Auditors expected providers to keep time records on all files. While some said time recording was not strictly necessary to justify a straightforward fixed fee claim, all auditors agreed that consistent time recording was best practice and an important risk management tool. Time recording is necessary to accurately claim hearing and waiting time, and to support claims for fixed fees and hours.

Where an amendment to grant was sought, auditors paid particular attention to providers' time sheets. Some providers created retrospective time sheets to justify amendments to grant claims. Auditors viewed this practice unfavourably.

Excellent and very good results

Files with complete time records were more likely to receive an overall rating of excellent or very good. Overall ratings were not affected by individual files with minor invoicing errors that did not result in overcharging or duplication. Other invoicing issues were addressed in specific recommendations for improvement.

The complete time records on the highly rated files allowed auditors to easily reconcile the invoices submitted with the attendances recorded. As the quality of file maintenance declined, it was harder to justify the claims on each file and an explanation from the provider was more often required.

“File well conducted. Although the invoice of 26 January was incorrect, it was for the correct amount and was clearly a simple mistake.”

“Even taking into account [the provider’s] response, two of the files do not meet a value assessment...Permeating through her letter is a sense of entitlement to a fee for work completed, irrespective of whether or not such work is covered by a fixed fee. The reality is that it either is or it is not.”

Acceptable results

Time recording was less consistent among the acceptable audits. In fixed fee cases a lack of time recording was sometimes accepted, despite it being recommended in all cases and the need to support claims for hearing and waiting time. Non-fixed fee files were universally expected to include time records.

Invoicing and time recording practices were relevant to some audits but were not a major factor in determining the overall rating of the acceptable audits sampled. File maintenance, client communication and the quality of services played a greater role.

Billing practices in this rating group were generally accurate and supported by the file. Providers’ knowledge of legal aid invoicing policy was generally adequate.

“There were few time records and no cost management systems on the files for audit. These are necessary to ensure that any amendments are justified, fixed fees are claimed appropriately, and also as the basis for hearing time on invoices.”

Poor and very poor results

Poor and very poor audits demonstrated unsatisfactory levels of engagement with the legal aid invoicing policy contained in the [Grants Handbook](#). Fees and hearing time claims were commonly unsupported by time records or documents on the file.

“Not able to correlate work done with fees charged.”

Providers in this rating group commonly used a manual approach to time recording and file maintenance. Providers were often reliant on handwritten time sheets, where these were kept at all, and the resulting records were difficult to follow. Invoices were often completed by hand, which made basic mathematical errors and legibility issues more likely.

“Time recording is informal and sporadic.”

Many of the files included in the poorly-rated audits included no legal aid documentation, which made it impossible for auditors to consider the value of services provided. Advice to the client about repayment obligations was rarely recorded.

“There are no letters from legal aid (so don’t know prescribed repayment amount), no client care/engagement letter, no disclosure request to the police, no correspondence with the applicant, no invoice, no amendment (if applicable), no timesheets, and no final letter to the applicant advising her of the outcome (what was the outcome)?”

Providers with a pattern of incorrect or unsupported invoicing were very likely to receive a rating of poor. Files often revealed that the provider did not know when specific fixed fees could and could not be claimed. Incorrect (as opposed to unsupported) claims were infrequent but were very likely to pull an otherwise-acceptable report into the poor category.

The very poor report sampled included unsupported and incorrect invoicing on all of the audited files. Duplicate claims were also noted where the client received multiple legal aid grants. These unacceptable invoicing practices were a primary driver behind the very poor rating.

“Why was the fee for pre-trial application preparation claimed for when there is no evidence of any pre-trial applications being filed or heard?”

“These deficiencies in themselves may have resulted in a grade of 4 (poor), which is not a failure, but at this stage I have more significant and overarching concerns about the provider’s invoicing... I have questioned the legitimacy of a number of billing steps in respect of the above files and await a response from the provider.”

Other areas of concern

Delegation of work

Several of the reports noted that work on one or more files had been delegated to another provider. The delegation policy is contained in the [Grants Handbook](#) and allows a lead provider to temporarily delegate work to supervised providers, or providers with the same or lower approvals (where relevant).

Where work is delegated to a supervised provider, adequate supervision must be provided. Similarly, direct oversight is required where substantive work is delegated to a provider with a lower approval.

Where delegation occurs, auditors must confirm whether adequate supervision or direct oversight was provided. This means the file must contain details of who worked on the case and the supervision and oversight arrangements in place.

Where work was delegated to a supervised provider, auditors were explicit in their expectation that basic records of supervision be kept. Auditors were sometimes willing to infer proper supervision from the documentation present on the file.

“There does not appear to be any supervision by [the provider] of [the supervised provider] in respect to this assignment on the file forwarded for audit. [The provider] in her response says that there was supervision of [the supervised provider].”

Evidence of supervision was generally provided in the excellent and very good categories, but a lack of evidence didn't have a major impact on providers' overall ratings – especially if the provider later explained that supervision occurred. Direct oversight was addressed in the same way.

Some of the poor and very poor audits had not recorded the reasons for and details of the delegation of work. This lack of information usually appeared alongside other file clarity and recording issues.

“Ensure that whoever works on the file clearly signs for the work that they have undertaken. The basic court recording documents used by [the provider] acknowledges that there are a possible three authors. There is no acknowledgement on the note of who has undertaken the work.”

Changes of address and contact details

Audit reports across all ratings noted that the provider had failed to notify legal aid services in writing of changes to their clients' contact details. The contract for services requires this to be done within 5 working days of the provider being notified.

Failure to do so was not treated by auditors as a serious concern. However, this is a breach of the contract and the frequency of this issue is concerning. Legal aid staff rely on providers to provide updated contact information so that clients can be reliably contacted.

Conclusions

Quality legal aid representation is important for the delivery of an accessible and fair justice system. The Ministry of Justice audits legal aid providers to make sure they are upholding their contractual and professional obligations. Their services should be effective, efficient, ethical and transparent. Audits also ensure public funds are being used as intended.

The 101 audits conducted in 2017-2018 found that most lawyers are delivering good services and operating in line with the practice standards and contract for services. Almost all audited lawyers are achieving appropriate outcomes for their clients. However, other obligations are not always being met, particularly regarding file maintenance, invoicing and communication with clients.

Legal aid lawyers are expected to maintain files showing the instructions they have received, fees charged, and the advice provided to the client. Poor or patchy file maintenance made it difficult for auditors to understand how some cases had progressed, and why certain decisions were made. Auditors appreciated files which were in chronological order, divided documents into relevant sections, and presented a complete record of events.

The level of communication with the client clearly differentiated higher and lower rated providers. Recording of client contact was not consistent at lower ratings. Providers who recorded each event and keep signed copies of instructions on file generally performed well.

Auditors raised concerns where they were forced to guess what, if any, communication had taken place during the case. The auditor's ability to assess the provider's response to client instructions was also prejudiced where records were unavailable. Auditors commented unfavourably when advice had to be inferred from various parts of the file because it was not clearly recorded. Illegible documentation sometimes hampered the auditor.

Incorrect and unsupported invoicing was a key driver of poor audit performance. Not all providers were aware of the circumstances in which specific fixed fees could be claimed. For non-fixed fee cases and cases involving amendments to grant, a lack of time recording was a frequent issue.

With few exceptions, auditors provided specific feedback to the provider explaining what they needed to do to improve their future performance. The Ministry strongly encourages the audit report to be used in this way – as an education and quality improvement tool.

This report is designed to set out the standards expected of legal aid providers in detail. To meet their obligations, legal aid providers must be aware of the specific standards to which they will be held. This transparency should allow providers to implement best practice processes without the intervention of the auditor.

2018-2019 audit programme

The Ministry has completed 113 audits for their 2018-2019 audit programme, against a target of 110. Analysis is underway, and the corresponding report will be published in due course.

Many of the issues identified in the 2018-2019 audit programme mirror those described in this report. Perennial issues such as poor file maintenance continue to arise. Delegated files continue to show poor evidence of supervision or direct oversight.

Emerging themes include the increased use of mixed media (electronic and physical), or wholly electronic files. In some cases, these files are well organised and presented. Others are not. Auditors are increasingly required to spend time reconciling the documents provided. This presents issues not only for the auditors, but also any new provider who is picking up a file for the first time.

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