



Part 4 - Listed Provider Audit Policy

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Overview

This document covers the policies and procedures in place for auditing the services provided by Providers to the Agency. It includes:

- The application of the random audit procedure;
- The application of the special audit procedure;
- The appointment of auditors;
- Scheduling audits; and
- Reporting and resolving issues substantiated by the audit process.

Legislation and Policy

Providers will be audited according to section 78 of the Legal Services Act 2000 (the Act).¹

The Agency will conduct a Random Audit Programme taking into consideration the nature of the activities being undertaken by the Providers. The audit scope, frequency and methodologies will be defined in the Terms of Reference² and the audits carried out by auditors who are independent of those with direct responsibility for the activity being examined.

The Agency may initiate a special audit of a Provider where it is clear that the interests of its schemes, the interests of the public or the accountability of the Agency are not being upheld.

The Agency will, as soon as practicable, address any deficiencies found during an audit.

The Agency will verify the implementation of all actions for improvement, followed by the reporting and recording of their completion.

Purpose

The purpose of the audit procedure is to enable the Agency to assess the quality and value of the services provided by the Provider that have been, or may be, paid for by the Agency. (Section 78(3) of the Act).

Achievement of Policy

Audit Services will plan, resource and carry out its Random Audit Programme in accordance with the policy.

Audit Services will also resource and carry out special audits in accordance with the policy. While a special audit falls outside of the Random Audit Programme, the activities will be undertaken in the same manner as a random audit and will be carried out by an independent auditor.

Finalised audit reports will:

- Describe areas of practice where deficiencies are found;

¹ The Legal Services Amendment Act 2006 amends some provisions of the Legal Services Act 2000, as of 1 March 2007.

² Appendix One outlines the scope, methodology, reporting requirements and timeline from the Terms of Reference.

- Recommend actions that need to be undertaken in order to meet the required standards of service;
- Establish timeframes for the completion of actions; and
- Specify responsibility for completion of actions.
- The Agency shall formally manage the timely progress of the recommended actions.

Related Procedures

This process interacts with the following related Agency procedures:

- Complaints or Concerns about Lawyers Acting Outside Agency Policy and Complaints Handling Procedure;
- Suspension Consideration and Review;
- Examination of Claims; and
- Risk Management.

Responsibilities

Risk Management Committee

- Agrees to the annual Random Audit Programme and the standard Terms of Reference for conducting such an audit.
- Monitors the progress of audits against the Random Audit Programme.
- Monitors the progress of recommended actions generated by random audits.

Chief Executive

- Approves the policy and procedures for random audit and follow-up activities.
- Authorises special audits that require variation to the standard Terms of Reference.
- Ensures that agreed recommended actions are monitored to confirm that the Provider is performing as expected:
 - in accordance with Agency policy, and
 - at an acceptable level of compliance with their Contracts for Services.

Manager Audit Services

- Develops and maintains auditing procedures relating to Providers;
- Schedules both random and special audits;
- Provides and maintains an appropriate audit resource;
- Provides trend analysis, as required, for common or recurrent issues, which can be resolved by promoting generic solutions;
- Escalates any non co-operation;
- Provides feedback on draft reports to auditors; and

- Accepts final audit reports on behalf of the Agency.

Manager Service Contracts

- Liaises with the Provider as appropriate;
- Advises changes to the acceptable service standards; (to be developed)
- Develops and maintains audit resolution procedures relating to Providers; (to be developed)
- Develops coordination, escalation, monitoring and reporting functions to ensure the timely progress of recommended actions; (to be developed)
- Requests special audits when required;
- Requests follow-up audits when required; and
- Reports progress on the resolution of actions and recommendations from each audit to the Manager Audit Services.

Manager Grants

- Requests special audits when required; and
- Manages actions resulting from an audit when they relate to Grants activities.

Auditors

All auditors must comply with the following Code of Auditing Conduct.

Audit Conduct

The Code of Auditing Conduct is designed to ensure impartiality and integrity in auditing. A basic principle of all auditing is that it must be - and must be publicly seen to be - beyond reproach. To this end, auditors must perform their duties and conduct themselves in a manner that ensures that they maintain a reputation for fair, unbiased dealing with all Providers.

The Code of Auditing Conduct requires the following rules of conduct to be observed by auditors.

Declaration of Interest

Auditors must declare any personal interest, which may affect, or could be perceived to affect, their impartiality in carrying out any aspect of their auditing responsibilities.

Legal Professional Privilege

Auditors must respect legal professional privilege and only use information received during the course of their work for the purpose of the audit.

Disclosure of Information

Auditors shall only use information collected during audits for the purpose it was given.

Auditors are not entitled to disclose privileged information to any third party, except where it is necessary for the auditor to refer to the information in the audit report to the Agency. The Agency then is similarly constrained as to the use of the privileged information.

Use of Contract Auditors

Where a contract auditor is engaged, the Code of Auditing Conduct will apply and a statement to this effect will be included in the contractual agreement. The contractual agreement will also stipulate that information gained during the audit may not be disclosed at any time after the audit.

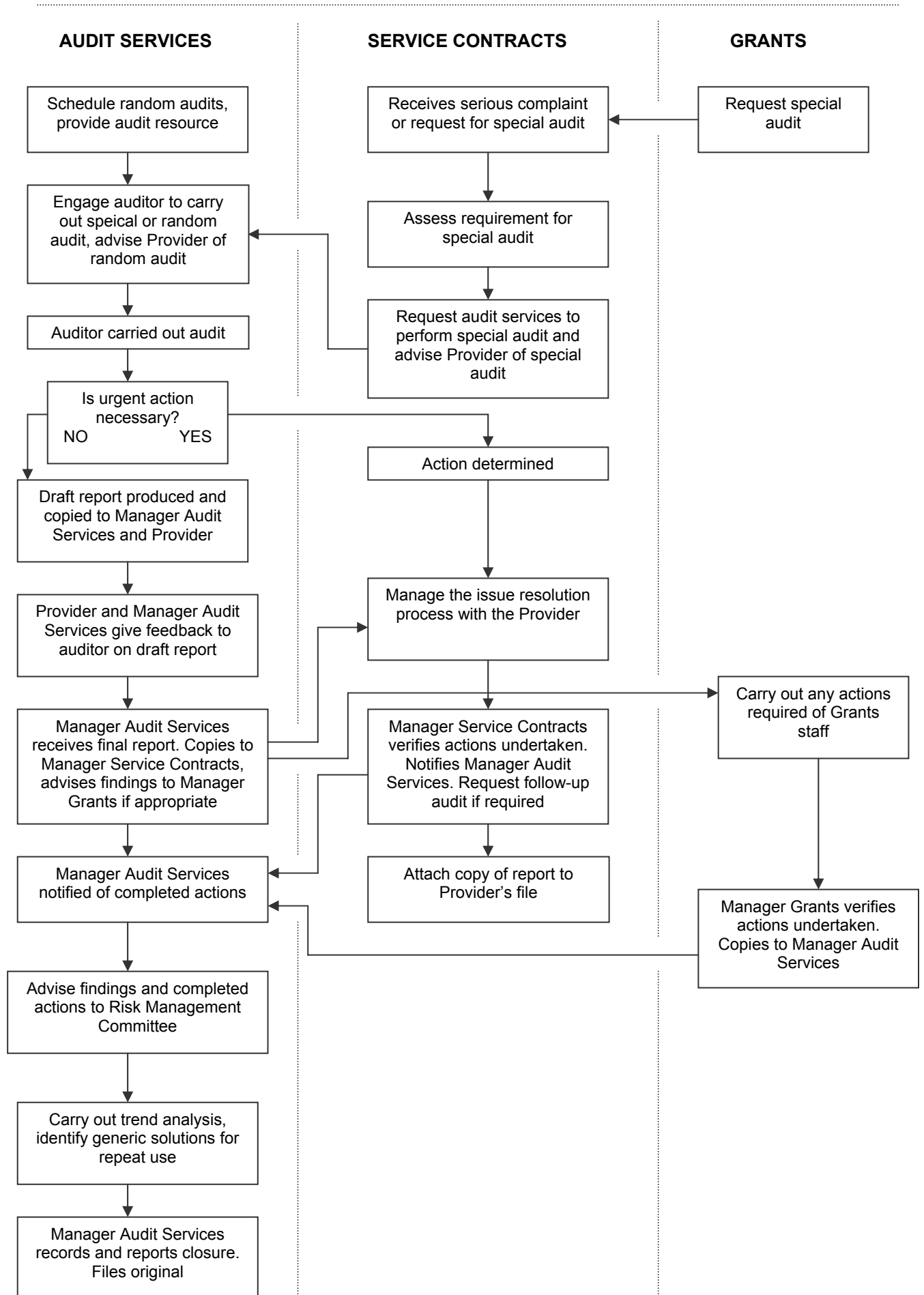
Definitions

Auditor	A person employed or appointed by the Agency for the purpose of conducting examinations, or audits, or both. (Section 4 of the Legal Services Act 2000)
Audit	“A thoroughgoing examination or check” (Collins Concise Dictionary), or “A methodical examination and review” (Merriman Webster Dictionary).
Audit Purpose	To enable the Agency to assess the quality and value of the services provided by the Provider that have been, or may be, paid for by the Agency. (Section 78(3) of the Legal Services Act 2000)
Special Audit	An audit arranged specifically to investigate a concern or complaint. Not part of the random audit programme.

Audit Process

Generic Process

Below is a flow diagram, which gives an overview of the audit process. Three Agency responsibility areas are shown; Audit Services, Service Contracts and Grants.



Specific Procedures

Audits of Providers

The following paragraphs cover the scheduling and resourcing of Provider audits.

Scheduling Provider Random Audits

Each year the proposed Random Audit Programme will be submitted to the Risk Management Committee for agreement.

The number, type and budget for audits will be determined annually, and approved by the Chief Executive.

Note that if the Provider selected for a random audit is not available at the time, another Provider will be selected.

Resourcing Provider Audits

Auditors will be appointed in appropriate specialisations to provide audit coverage of the Agency's Providers. Auditors will be experienced legal practitioners, with knowledge of the Agency's schemes, best professional practice, and conducting audits.

Special Audits of Providers

The following paragraph provides a context for carrying out a special audit.

Special Audits

Special audits may be targeted at individual Providers and will be conducted outside the Random Audit Programme agreed by the Risk Management Committee. Special audits will be carried out where it is clear that the interests of the schemes, the public, or the accountability of the Agency are not being upheld.

The Manager Service Contracts will request the Manager Audit Services to initiate special audits.

Requests by other Managers for special audits must first be made to the Manager Service Contracts. All requests for special audits must be accompanied by a (written) specification covering the particular area of interest/concern.

Note that where an examination is made of a claim, or part of a claim, that activity will be covered separately by the examination process. (Refer to Section 9 of the Service Practice Manual.)

Engagement of Auditors

Selection Process

The following auditor selection criteria will apply:

- Experience in the required area of law;
- Experience in auditing;

- Availability; and
- Geographic location in relation to the Provider.

Commencement of Audit

Once the timetable for the random or special audit is negotiated with the selected auditor, the Manager Audit Services will assign an audit identification number, and advise the Manager Service Contracts that the audit is confirmed.

The Manager Audit Services will advise the Provider by letter of the Agency's intention to perform a random audit.

The Manager Service Contracts will advise the Provider by letter of the Agency's decision to perform a special audit.

Appointment of Auditor

Appointment of Auditor

The Manager Audit Services will send a letter of appointment to the auditor. This letter will have the following attachments:

- A copy of the letter from Audit Services informing the Provider of the forthcoming audit;
- The Terms of Reference for the audit (where the auditor has not previously performed an audit); and
- A list of all legal aid files managed by the Provider in the previous 18 months if appropriate.

For special audits the auditor will also receive a copy of any correspondence that is relevant to the audit.

Execution of Audit

Audit Process

The audit will be carried out according to the standard Terms of Reference. The auditor will meet the timetable indicated in the Terms of Reference unless changes are agreed in advance with the Manager Audit Services.

The auditor will discuss findings and recommendations with the Provider at the end of the audit.

Non Co-operation

Section 79 of the Act refers to Providers co-operation with the auditor.

Section 79(3) refers to non co-operation with the auditor and is reflected in paragraph 10 of the Terms of Reference for the Audit of Providers as follows:

The auditor will first deal with non co-operation by informing the Provider in writing of the level of co-operation required. If the Provider continues to be unco-operative then the auditor will take the following steps:

- Suspend the audit;

- Advise the Manager Audit Services;
- Inform the Provider that the Agency has been advised of the Provider's lack of co-operation; and
- Provide written confirmation of the above to the Agency.

The Manager Audit Services will discuss the impasse with both the auditor and Provider. Section 79(5) of the Act states -

“Continuing failure to co-operate may be an offence under section 112”

If no solution is found which would allow the audit to recommence, the Agency may consider its options under section 112.

The audit will be closed by the Manager Audit Services who will advise the Manager Service Contracts (who may invoke sanctions) and the Risk Management Committee of this action.

Audit Suspension

Should the auditor find evidence that the Provider is seriously breaching the terms and conditions of the Contract s/he has with the Agency, the auditor will notify the Manager Audit Services immediately, who will then notify the Manager Service Contracts.

The Agency will determine whether the involvement of a party external to the Agency is required because of the nature and seriousness of the concern.

Should an external party initiate an investigation, the Manager Audit Services will be notified and will suspend the Agency audit whilst the external investigation proceeds.

The Manager Audit Services will write to the auditor and the Provider to advise them of the suspension of the audit.

Review of Draft Audit Report

The draft audit report is given to the Provider for comment and returned to the auditor.

Once Provider feedback is incorporated into the report, it is sent to the Manager Audit Services for comment. This feedback is intended to ensure that the audit is fair and robust and will generally be confined to:

- The adequacy of the investigation;
- The justification of findings based on the presented facts; and
- The sense of any recommendations.

Where bias or inaccuracy is evident, the Manager Audit Services will review this with the auditor. If not satisfied with the validity of the audit, the Manager Audit Services will advise the auditor, the Provider, the Manager Service Contracts and the Chief Executive that the audit has not been accepted by the Agency. A replacement auditor will then be engaged to carry out the audit again under the same Terms of Reference.

Any contractual issues that may arise with the original auditor will be progressed under sections 13 and 14 of the auditor's contract.

Release of Final Audit Report

Release of Final Audit Report

Once feedback on the draft report has been given and incorporated, the auditor will release the final audit report to the Manager Audit Services.

Unless there is evidence of a clear bias or inaccuracy, the Manager Audit Services will accept the final report on behalf of the Agency.

Distribution of Final Audit Report

The Manager Audit Services will release a copy of the full and final audit report to the Manager Service Contracts. The Manager Service Contracts will write to the Provider informing him/her of the post audit procedures required or final closure of the audit.

Audit findings will be provided to the Agency's Risk Management Committee and Manager Grants by the Manager Audit Services.

The full final report may be made available to the Agency's Risk Management Committee, and Agency staff, on a need-to-know basis.

Managing Resolution of Issues Post Audit

Planning Issue Resolution

Most issues arising from audits will require remedial action(s) on the part of the Provider. Typically the issues will have been agreed and the action implemented prior to release of the final audit report. In this case two courses of action may be followed:

- If the deficiency has been rectified appropriately, this will be recorded as complete and closed immediately by the Manager Audit Services;
- If the deficiency has not been rectified, it will be recorded by the Manager Audit Services and will remain open until its completion is verified.

When the issue involves corrective action by the Provider that has not already been rectified, the auditor will agree the timing of the implementation of an appropriate resolution with the Provider and notify the Manager Audit Services who will notify the Manager Service Contracts. The action will remain open until the Manager Service Contracts verifies the completion of the action to the Manager Audit Services.

There will be times when the Agency is required to complete a recommended action. In such cases the Manager Audit Services will notify the Manager Grants of the audit finding and agree the timeframe for its resolution. The action will remain open until the Manager Grants verifies the completion of the action to the Manager Audit Services.

Monitoring Remedial Action

The Manager Audit Services will monitor the progress of all improvement actions through the Manager Service Contracts and the Manager Grants.

Reporting Improvement Action

The Manager Audit Services will report the status of the improvement actions to the Risk Management Committee each quarter.

Verifying Action is Complete

Remedial actions, not deemed complete at the time the final audit report is accepted, will be closed only when their completion is verified. Those responsible for the process requiring action will usually carry out this verification. For example if pleadings were not advised to the Agency grants staff, the grants staff will be asked to confirm that there is new evidence of process improvement.

Trend Analysis

The Manager Audit Services will identify and analyse any trends that may appear after the completion of audits. The Manager Audit Services may propose generic solutions where trends indicate this would be helpful to Providers, e.g. providing an example of a timesheet for Providers to use.

Closing Actions and Audits

When all actions required by the Provider as the result of an audit are verified as complete, the Manager Audit Services will close that audit and advise the Manager Service Contracts.

The Manager Audit Services will report closure to the Risk Management Committee.

The Manager Service Contracts will write to the Provider to report closure.

Filing Records

The Manager Audit Services will file the original copy of the auditor's report in the audit file series. Where the Provider is subject to an audit, the Manager Service Contracts will file a copy of the auditor's report and related information on that provider's file.

The following sections – Scope, Methodology, Reporting Requirements and Timeline are from the - Terms of Reference for the Audit of Providers.

Scope

1. While the scope of these services to be audited is limited to those that relate to grants of aid made by the Agency, it can encompass:
 - assisting the person to understand their entitlements and any obligations in accessing legal aid;
 - the provision of legal advice and representation (including the conduct of hearings and/or trials) to the aided person (the quality and value may include the content and the nature of that provision);
 - the management of cases (including the adequacy of documentation, compliance with the conditions of the grant and any amendments to it, and the justification of expenditure);
 - communication with the aided person (including the quality of communication with persons having regard to such matters as literacy levels, disabilities, language, gender and cultural background).

Methodology

2. At a minimum of 14 days notice (except for special audits which may in some circumstances be carried out without notice) the Agency will:
 - appoint the auditor;
 - inform the Provider that:
 - an auditor has been appointed
 - the nature of the audit (i.e. whether it is routine or arisen from particular circumstances)
 - the extent of the audit (i.e. whether there are a number of legally aided cases/files that will be the subject of the audit)
 - the timetable, and
 - what the Provider can expect in terms of the way in which the audit will be undertaken.
3. On appointment, the auditor will:
 - contact the nominated Provider and make arrangements for:
 - accessing the nominated or selected legal aid files, papers and documentation
 - interviewing the Provider (if necessary) at their office or any other place
 - contact the appropriate Legal Aid Office and make arrangements for accessing the corresponding Agency legal aid files to those nominated or selected for audit.
4. In the conduct of the audit, the auditor will, as necessary:
 - review files, papers, and any relevant documentation;

- interview the Provider and conduct any follow-up discussions;
- clarify information as the audit progresses;
- inform the Provider beforehand if the auditor intends interviewing other parties as deemed appropriate for the conduct of the audit (this may include seeking to discuss with the judiciary). It is acknowledged that it may not always be possible to achieve this in time;
- discuss the initial findings with the Provider as early as practicable and allow the Provider an opportunity to comment on the matter;
- provide a copy of the draft report to the Provider and forward those comments to the Agency with the draft audit report.

Reporting Requirements

5. The auditor will submit a draft and a final report as set out in the timetable below.
6. Reports will be presented in a standardised format that includes:
 - a title (i.e. name of Provider);
 - scope of audit (a short statement outlining the nature of the audit including whether it was routine or arose out of particular circumstances);
 - key findings (see below);
 - other findings (see below);
 - options and/or recommendations for the Agency (see below);
 - methodology;
 - any comments or observations;
 - comments from Provider.
7. Findings in the main are the key conclusions. They may from time to time include key facts, but they are not a recitation of all the facts that arise out of an audit. They must, however, be backed up by the auditor's working papers.
8. A distinction is to be made between types of findings:
 - Key findings are those that relate directly to the quality and value of the services provided by the Provider.
 - Other findings may arise during the course of the audit, which while not directly related to the purpose of the audit, are nevertheless worthy of bringing to the attention of the Agency e.g. deficiencies relating to or Agency shortcomings relating to processes/procedures of the grants function.
9. Options and/or recommendations so that it is clear those that relate to:
 - key findings;
 - other findings;
 - the Provider;

- the Agency;
 - any other party.
10. It is not expected that the auditor will necessarily present options and/or recommendations.
11. The auditor will not present a recommendation on whether a Provider should be suspended from the legal services list. There may be occasions, however, where in the auditor's professional opinion a review of a listing should be conducted by the Agency in light of the lack of quality or value.

Timeline

12. Audits are expected to be completed within 6 weeks, and final reports completed within 8 weeks from the initial appointment of the auditor and notification to the Provider.
13. As necessary the Manager, Audit Services (or his/her delegate) may agree to an extension. It is expected that an extension would be sought within 7 days of the finalisation date, and that such extensions will be rare.
14. The auditor will be appointed and the Provider informed at least 14 days prior to the commencement of the audit unless there are particular circumstances to the contrary.
15. The indicative timelines is as follows:

Day	Week	Step
1		<ul style="list-style-type: none"> • auditor appointed • Provider informed
2 – 13	weeks 1 – 2	<ul style="list-style-type: none"> • arrangements made between auditor and Provider
14 – 28	weeks 3 – 4	<ul style="list-style-type: none"> • audit undertaken (including any debrief discussion between the auditor and Provider)
35	week 5	<ul style="list-style-type: none"> • draft report completed and given to Provider (to comment only on facts, findings, or opinions)
45	week 7	<ul style="list-style-type: none"> • Provider submits any comments to auditor
48	week 7	<ul style="list-style-type: none"> • further draft completed and referred to Agency for review
52	week 8	<ul style="list-style-type: none"> • Agency responds with any comment (see below)
56	week 8	<ul style="list-style-type: none"> • audit completed and referred to Agency