

Litigation Experience Level Guidelines

General

This document describes and documents the guidelines that determine listed Providers' (Provider) Litigation Experience Levels.

The purpose of the guidelines is to ensure that Provider litigation experience is assessed by the Agency on a consistent and transparent basis.

Litigation Experience Levels

Litigation Experience Levels are applicable only to lawyer Providers who have Lead Provider listing approvals and a current Contract with the Agency.

Litigation Experience Levels do not apply to Secondary Providers and Non-lawyer Providers, including employment advocates, qualified legal executives, non-qualified legal executives and law clerks.

There are three Litigation Experience Levels applicable to Lead Providers. Each level is determined by the number of year's *litigation experience* a Provider has.

The levels are as follows:

- **Level One**
The Provider has up to four complete year's litigation experience.
- **Level Two**
The Provider has at least four and up to nine complete year's litigation experience.
- **Level Three**
The Provider has at least nine complete years litigation experience.
For the purposes of determining a Litigation Experience Level, one complete year is equivalent to 40 weeks of demonstrable full time work experience. Where an applicant has been employed on a part time basis, one complete year of litigation experience will be calculated on a pro rata basis.

Litigation Experience

Assessment guidelines

An assessment of an individual Provider's Litigation Experience Level is made in accordance with these guidelines.

Litigation Experience Levels is determined either when a Provider makes an application for their first Lead listing approval or applies to have an increase to their Litigation Experience Level. The Agency also assesses and records the due date of the next increase in Litigation Experience Level.

Generally, applications for an increase in Litigation Experience Level should be made one month prior to when a change is due.

The Agency may, through its day-to-day administration, become aware that a Provider may be eligible for a change to their Litigation Experience Level. In this case, the Agency notifies the Provider and supplies them with the appropriate application form.

What does the Agency consider as litigation experience?

For the purpose of these guidelines, litigation experience is, for the most part, *legal work undertaken by an individual in the capacity of a Barrister and/or Solicitor while holding a practising certificate issued by a New Zealand District Law Society.*

- **Representing clients**

The type of work must involve representing clients in the conduct of legal proceedings before a court, administrative tribunal, judicial authority or any other body that has the legal authority to make decisions that affect the client's legal rights or responsibilities.

This work may include representing clients at negotiation, arbitration and mediation as outlined above.

- **Prosecutor for the Police Prosecution Service (PPS)**

Work experience as a prosecutor may count towards a Provider's litigation experience, however, only a maximum of three years will be included. The Agency exercises its discretion with regard to the recency of the prosecution experience.

- **Legal practice in overseas jurisdictions**

Litigation experience in common law countries¹ is automatically counted. With regard to litigation experience in non common-law countries, the Agency exercises its discretion as to whether the jurisdiction worked in is similar² to New Zealand's jurisdiction. Regardless of the country from which the litigation experience was gained a practising certificate or its equivalent must have been held.

- **Overseas Police Prosecution experience**

Overseas police prosecution experience may be counted for a maximum of three years. The Agency exercises its discretion in regard to whether the experience was in a common-law country or where the jurisdiction worked in is similar to New Zealand's jurisdiction.

- **Agency discretion**

The Agency will consider other examples of litigation experience on a case by case basis.

What the Agency does not consider as litigation experience?

The following types of post admission employment do not count towards litigation experience:

- **General legal practice work**

Work that is predominately related to the drafting of trusts, wills, other types of agreements, conveyancing work and acting only as an instructing solicitor are not considered as litigation experience.

- **Legal work where litigation is not undertaken**

Legal work such as an in house legal adviser, law clerking, Judge's research counsel or clerk and lecturing for example are not considered litigation experience.

- **Non legal work**

¹ Common law countries are essentially all countries that have been colonised at some time by Britain, with some exceptions, where the law originally developed under the inquisitorial; system in England from judicial decisions that were based in tradition, custom and precedent.

² Similarity in this respect refers to similarity in their legal systems.

Some work which has a legal element but for Agency's purposes is not litigation experience, for example policy advice work.

Where the Provider's experience is not counted as litigation experience, the Agency provides an explanation of the Agency's reasons for not counting the work towards their litigation experience.

Gaps in experience

A gap in experience is any extended period away from legal practice; outside of a break entitlement of 3 months.³

If a Provider is away from legal work for three continuous months or more (gap), then that period of time is not counted towards the calculation of the length of the Provider's litigation experience.

Where a Provider considers the gap should count, he/she must supply the Agency with relevant additional information. The Agency exercises its discretion and takes the following factors into consideration:

- The length of time the Provider was away from legal practice
- The amount of litigation experience the Provider had prior to the gap
- The cumulative impact of gaps on the Provider's litigation experience
- If applicable, the nature of any other work undertaken during the gap
- The reason for the Provider's gap which may include, but is not restricted to:
 - Study leave
 - Extended overseas holidays
 - Overseas working holidays
 - Parental leave
 - Redundancy
 - Extended sick leave
 - Other employment outside of legal practice
 - Sabbaticals

Providers are required to provide the Agency with details of any gaps in their litigation experience when applying for a listing approval or a change to their litigation experience level. Where this information is not supplied in an application and the Agency becomes aware of a gap, it may adjust the Provider's Litigation Experience Level to reflect their actual litigation experience.

Effective date of an increase

An increase to a Provider's litigation experience level is effective from the date on which the Agency approves their application. The effective date is specified on a new Schedule A to their Contract.

The new Litigation Experience Level will apply to all the Lead Provider's existing and new legal aid grants, from the date specified on the Schedule A to their Contract.

Information the Provider needs to supply to the Agency

All applications must be made using the Agency's "Litigation Experience Level" form which can be found on the Agency's website (www.lsa.govt.nz).

³ The three month break entitlement includes annual leave and breaks due to other reasons.

All sections of the form must be completed and details of the nature of the work undertaken during each period of employment needs to be provided. Providers may also wish to attach a current version of their curriculum vitae.

Providers with experience from overseas may be required to demonstrate at the Agency's request that he/she undertook the work and supply the Agency with evidence of their practising certificate or its equivalent from either the relevant law society or the organisation in which they worked.

Where insufficient information has been supplied to allow the Agency to make a decision, further information will be requested from the Provider.

Notification of the Agency decision

Providers applying for an increase to their litigation experience level will generally be notified of the Agency's decision within 5 working days of receipt of their application.

Where an application is approved, an approval letter along with an updated Schedule A to their Contract is sent to the Provider. The Agency's database is updated with their new Litigation Experience Level.

The relevant Agency Grants Office is notified on a weekly basis of all changes to the Provider List, including changes to a Provider's Litigation Experience Level.

Where an application is not approved, the Provider is provided with reasons for the Agency's decision, and given an indication of when they may be eligible for a change.

Where a Provider disagrees with the Agency's decision, he/she can provide subsequent additional information to their application. This will be considered by the Agency in accordance with these guidelines.

