

Director of Legal Aid Casework

Annual Report 2017-2018

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Report presented to the Northern Ireland Assembly pursuant to section 5(4) of the
Legal Aid and Coroners' Courts (Northern Ireland) Act 2014



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Director of Legal Aid Casework Report 2017-2018

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Foreword

I am pleased to present the Annual Report of the Director of Legal Aid Casework for 2017-2018.

This is my third annual report as Director of Legal Aid Casework (Director). I have held the roles of Director and Chief Executive of the Legal Services Agency (Agency) since the Agency came into existence on 1 April 2015.

My role as Director is set out in the Legal Aid and Coroners' Courts (Northern Ireland) Act 2014 (the Act). I am responsible for the decision-making on individual applications for Civil Legal Services, and for ensuring the decision making process remains independent from Government, budgetary or other external considerations.

This report summaries the work carried under the Act, and details the decisions made and the processes followed.

During this third year of operation, the Agency has continued to consolidate its position and encouraged our people to work with legal service providers and the wider justice system in facilitating access to justice. As part of this commitment we have been working with colleagues at: the Department of Justice (Department) to support problem solving pilots; Digital Transformation Services (DTS) of the Department of Finance (DoF) to deliver a digital transformation project to modernise service delivery; and the

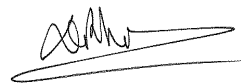
Department for Communities (DfC) in developing a fraud and error methodology which can be implemented within the LSA.

We have continued to strengthen our relationships with external bodies and providers of legal services including preparatory work on the development of a compliance and registration function.

I welcome the extensive programme of work which is being taken forward to deliver transformation of the way the Agency delivers its services, including the progress made in developing a new digital platform for legal aid.

The Agency has continued to support the Department in the development of various reforms and the implementation of those reform initiatives. We has also been actively engaged in supporting the work of Lord Justice Gillen's review of Civil and Family Justice and are represented on the Shadow Family Justice Board and the Shadow Civil Justice Council.

I would like to personally thank staff within the Agency for their hard work throughout the year and look forward to progressing the challenging work programme for 2018-2019.



Paul Andrews
Director of Legal Aid Casework

Introduction

1. The Agency, which is an executive agency of the Department, came into existence on 1 April 2015.
2. The Agency's organisational aim is 'to support the justice system by administering publicly funded legal services impartially, effectively and efficiently within the legislative and policy framework set by the Minister of Justice'.

Director of Legal Aid Casework

3. The Director is designated by the Department under section 2 of the Act. The role of the Director is to make determinations on applications for Civil Legal Services in individual cases. Under the criminal legal aid scheme, legal aid is granted by the courts.
4. The Director acts independently from the Minister and the Department and clear processes and structures are in place within the Agency to ensure this independence is maintained. In practice, many of the functions exercised by the Director are delegated to the staff within Agency. These arrangements are set out in more detail in this report.
5. The role of the Director and the Chief Executive of the Agency may be held by the same person. Different accountability and reporting arrangements have been established for the two roles and are detailed in the LSA's Framework Document.

6. From the establishment of the Agency both roles have been held by Paul Andrews.
7. This report explains how the Director has carried out the functions specifically conferred on him under the Act over the last financial year. The Agency separately published its Annual Report and Accounts 2017-2018 which covers its wider remit.

Interaction with the Department

8. Under the Act, the Department is able to issue directions and guidance to the Director about how to carry out his functions, but the Department must not issue such directions or guidance in relation to individual applications for Civil Legal Services. The Director must comply with any directions given and have regard to any guidance issued.
9. During 2017-2018 the following directions and guidance were issued by the Department:
 - 14 September 2017 – Interim payments in cases funded under Article 10A (1) given under Legal Aid, Advice and Assistance (NI) Order 1981.
 - 14 September 2017 – Interim payments in cases funded Article 12(A) of the Access to Justice (NI) Order 2003, given under section 3(1) of the Legal Aid and Coroners' Court Act (NI) 2014.
 - 14 September 2017 – Interim payments in criminal cases in

the Crown Court given under Rule 14(1) The Legal Aid for Crown Court Proceedings (Costs) Rules (NI) 2005.

- 14 September 2017- Interim payments In criminal cases in the Magistrates Courts and the County Court given under Rule 5(1) of The Magistrates' Courts and County Court Proceedings (Costs) Rules (NI) 2009.
 - 12 March 2018 – Remuneration arrangements for the pilot Domestic Violence Perpetrators Programme (DVPP) given under Rule 5(1) of The Magistrates' Courts and County Court Proceedings (Costs) Rules (NI) 2009.
 - 20 March 2018 – Remuneration arrangements for the pilot Substance Misuse Courts Programme (SMCP) given under Rule 5(1) of The Magistrates' Courts and County Court Proceedings (Costs) Rules (NI) 2009.
10. In addition to the publication of this annual report the Director is required by the Agency's Framework Document to meet annually with the Minister. The purpose of the meeting is to discuss how, as Director, he had delivered his functions under the Act and also to highlight to the Minister any emerging trends or strategic issues arising in the administration of Civil Legal Services. With the dissolution of

the NI Assembly in January 2017 the Director could not comply with this requirement for 2017-18. During this time the Director advised the Department of any emerging trends or strategic issues arising through other fora such as the Legal Aid Strategy Group which is chaired by the Permanent Secretary.

11. However, the Director used the opportunity of the meeting with the Justice Minister on 12 April 2021 which was to discuss the discharge of his functions during 2019-20 to provide a copy of this report. At this meeting the Director confirmed that in respect of 2017/18 all decisions were made without interference or influence.

Strategic Context

12. During 2017-2018, the LSA continued to progress its Transformation Programme to improve and develop the way in which it delivers its services. Specifically:
- (a) a new Directorate was established to take forward the transformation programme with an appropriate investment programme to support the programme delivery;
 - (b) significant progress was made in the digitisation project which will introduce a new legal aid case management system (LAMS), including delivering some early demonstrations of the systems capability to a small group of legal aid suppliers. The on-line registration facility was developed

and tested with a number of legal aid suppliers;

- (c) a programme of compliance reviews for Civil Legal Services and Criminal Legal was developed in anticipation of legislative authority to launch a statutory registration scheme;
- (d) consolidation of an effective partnership working approach with the DfC to estimate the fraud and error rate within the legal aid system and to identify appropriate remedial action to reduce the estimated rate;
- (e) engagement in the work of Lord Justice Gillen's review of Civil and Family Justice, with membership on the Shadow Family Justice Board and the Shadow Civil Justice Council; *and*
- (f) supporting the Department in the development of various reforms and the implementation of reform initiatives.

The Decision-Making Structure

- 13. To ensure decisions are made independently and consistently, a robust organisational structure with a number of review mechanisms is in place.
- 14. The organisational structure is based on three Directorates: Civil Legal Services; Payment Services; and Corporate Services.
- 15. In accordance with the Agency's internal Delegated Framework

Document decisions on individual cases are made by caseworkers in the Civil Legal Services Directorate which is led by a Director (Grade 6). The Directorate is divided into three decision groups:

- (a) Civil Adjudication Group- making determinations on applications for Civil Legal Services against the legal merits criteria;
 - (b) Reviews Group – carrying out internal reviews on initial decisions to refuse Civil Legal Services for Representation (Higher Courts); *and*
 - (c) Appeals Group – organising the listing of appeals to the Independent Appeals Panels and conveying their decisions to the applicant.
- 16. In addition, a separate team facilitates the completion of the financial means tests which is carried out independently by an arm of the DfC.
 - 17. Payments Services, which is also led by a Director (Grade 6), is responsible for determining and authorising civil and criminal fees. The teams will also liaise with the Taxing Master's Office on fees that have been subject to taxation or appeals to the Master.
 - 18. Within Payment Services there is a dedicated team considering applications for exceptional funding which is available for Inquests and other civil proceedings which are not

ordinarily within the scope of Civil Legal Services.

19. Exceptional grant applications are made under Article 12(A) of the Access to Justice (Northern Ireland) Order 2003. The Exceptional Grant Funding scheme provides for funding in cases where failure to do so would be a breach, or where there is a substantial risk of breach of:
 - (a) The individual's Convention rights (within the meaning of the Human Rights Act 1998);
or
 - (b) Any rights of the individual to the provision of legal services that are enforceable EU rights.
20. The scheme is being used to fund Legacy Inquest cases where it is considered that Article 2 issues are engaged. Most notably, this scheme is being used to manage the legal aid of the body of 52 legacy inquests
21. The financial expenditure associated with exceptional grants can be substantial. A robust quality assurance and control mechanism is in place to consider these applications. Grants of Exceptional Funding are authorised by a Director (Grade 6). Requests for a review of the Director's decision are considered by an independent internal panel chaired by the Director of Legal Aid Casework.

Overview of Cases Funded

22. Civil Legal Services provides funding for a wide range of issues and court proceedings. The greatest volume of business comes from Family matters (including Child Welfare), personal injury claims, bail applications, and advice at police stations in criminal matters.
23. During 2017-2018 the LSA received a total of 50,990 applications for civil legal services with 45,694 certificates granted. This represented a decrease of 6,262 compared to the 51,956 certificates granted in 2016-2017. Details of the applications received and those granted are set out in **Annex A**.

Casework Issues - Quality of Applications

24. A recurring theme of the paper based system is the high number of applications that must be returned as incomplete or held in abeyance pending the submission of key supporting documentation. This leads to unnecessary delay
25. The new digital Legal Aid Management System (LAMS) will address this problem as practitioners will not be able to submit incomplete applications and messaging and querying functions are intended to allow quick resolution of queries.

26. Towards the end of 2016-2017 capacity issues in processing applications for Civil Legal Services were experienced. During 2017-2018, the volume of applications awaiting determination was addressed.

Legislation and Authorisations

27. As noted in paragraph 9 above the Agency implemented a number of authorisations throughout the year which included the introduction of new interim payment arrangements for exceptional grant funding cases.

Review and Appeals

28. Where an individual disagrees with the Director's determination on the merits of an application for representation (higher) they can seek a review of the decision and an appeal against the refusal.

29. Appeals can be considered by an internal review process which can uphold the original decision or grant funding.

30. Subject to any internal review the appeal will be considered by an independent Appeals Panel; comprising of a legally qualified Presiding Member and two other members at least one of whom will also be legally qualified. The Panel considers appeals on the papers, but may in exceptional circumstances, permit oral representations.

31. The decision of the Appeals Panel is binding on the Director.

32. The Agency engages with the Presiding Members to review the workload, timeliness of decision-making, as well as gathering any learning points for the LSA.

33. There are separate internal review and appeal arrangements for refusals of representation (lower) and advice and assistance.

34. Appeals Panel members are appointed by the Minister through the public appointments process.

35. Details of the number and outcomes of the appeals lodged in 2017-2018 are provided at **Annex A**.

Accountability

36. It is important that the way in which the Director's functions are carried out is open to public scrutiny.

37. As a public body the LSA is subject to scrutiny through all the standard constitutional mechanisms. For example, members of the NI Assembly can table Assembly Questions asking about the work carried out by the Director. Similarly, the public are able to submit requests about information held by the LSA under the Freedom of Information Act 2000 or the Data Protection Act 1998.

Assembly Questions, Freedom of Information Act 2000, and Subject Access Requests under the Data Protection Act 1998

38. As the NI Assembly did not sit during this financial year 2017-2018 no Assembly Questions were tabled.
39. Throughout the year 32 requests for information under the Freedom of Information Act 2000 were received relating to the Director's functions. The majority of these requests related to the number of applications for Civil Legal Services received and granted.
40. A total of 12 subject access requests for personal data were made under the Data Protection Act 1998. These requests were made by legal aid applicants and related to information on the determinations on the grant of Civil Legal Services made by staff under the delegated authority framework and information relied upon when making a determination.

Complaints

41. The Agency has an internal complaints procedure with an onward appeal to the Northern Ireland Public Services Ombudsman. This complaints procedure is for the administration of applications and the conduct of the LSA but cannot be used to complaint against refusals of Civil Legal Services.

42. Every complaint received is investigated using a three tier complaints procedure. The initial complaint gives the Agency the opportunity to review the way the matter was handled at a local level and put the situation right if possible.
43. Should the individual or legal aid provider be dissatisfied with the review outcome they can escalate their complaint to the Chief Executive's Office and a Director will investigate the complaint. If the complainant remains dissatisfied they can request the Chief Executive to investigate the complaint and the way in which it has been handled.
44. If, having exhausted the Agency's 3 stage complaint process, the complainant remains dissatisfied they can refer the matter to the Northern Ireland Public Services Ombudsman under the Public Services Ombudsman Act (Northern Ireland) 2016.

45. During 2017-2018, the Agency received 21 complaints regarding the determinations made with respect to applications for Civil Legal Services- most of these were mainly concerned with process or delay.

46. No complaints were referred to the Public Ombudsman's office in 2017-2018.

Litigation

47. Another avenue of redress which can be used to hold the Director to

account is litigation in the courts, where, the Director's decision-making or that of the Independent Appeals panel can be challenged by way of judicial review.

Equality and Diversity

48. The LSA complies with NICS and Departmental policy to ensure that all eligible persons will have equal opportunity for employment and advancement. The Agency is committed to ensuring that the workplace is free from all forms of bullying, harassment, discrimination and victimisation.
49. The Agency aims to provide opportunities for all sections of the community and continues to strive to create an inclusive working

environment in which difference is recognised and valued.

50. The Agency's stated values and behaviours reflect these commitments.

Conclusion

51. 2017-2018 has been another busy year as the Agency focused on delivery its core business and preparing for digitalisation.
53. A copy of this report has been sent to the Department in accordance with section 5(3) of the Act. The Department has laid a copy of the report before the Northern Ireland Assembly in accordance with section 5(4) of the Act.

Annex A

Civil Legal Service Applications and Outcomes 2017-2018

	2017/2018		2016/2017	
	Applications Registered	Certificates Granted	Applications Registered	Certificates Granted
Advice and Assistance	33,305	31,281	37,436	37,480
Representation Lower	9,121	7,562	10,006	8,476
Representation Higher	8,525	6,826	8,259	5,981
Exceptional Grant Funding	39	25	33	19
Total	50,990	45,694	55,734	51,956

Notes

1. In respect of Advice and Assistance “Certificates Granted” reflects the applications which were processed and paid.
2. The difference between applications registered and certificates granted does not reflect the refusal rate – as there will be timing issues between the date an application is received and finally determined, including receipt of responses to requests for further information and scheduling of appeals.

Civil Legal Services (Representation Higher) Appeals and Outcomes 2017-2018

	2017/2018	2016/2017
Appeals Lodged	1,176	1,113
Appeals withdrawn	29	39
Appeals heard	949	1,357
Appeals Upheld (full or in part)	482	660

Note

1. The difference between the number of appeals lodged and the number of appeals upheld either in full or in part does not reflect the number of appeals refused as there will be timing issues involved in the listing of the appeals for hearing and the appeal being heard which will result in appeals being lodged in one year not being listed or considered until the following year.

