

Director of Legal Aid Casework

Annual Report 2020-2021

Director of Legal Aid Casework

Annual Report 2020-2021

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



© Crown copyright 2021

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence visit

www.nationalarchives.gov.uk/doc/open-government-licence/version/3/

Where we have identified any third party copyright information, you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this document should be sent to us at

enquiries@lsani.gov.uk or Telephone: 028 9040 8989.

You can download this publication from our website at <https://www.justice-ni.gov.uk/publications/director-legal-aid-casework-annual-reports>

Director of Legal Aid Casework Annual Report 2020-2021

Contents

	Page
Foreword	1
Introduction	2
• The Director of Legal Aid Casework	2
• Interaction with the Department	2
The Decision-making Structure	3
• Overview of cases funded	3
• Review and Appeals	4
Accountability	4
• Assembly Question's and Freedom of Information Requests	5
• Complaints	5
• Litigation	5
• Equality and Diversity	5
Conclusion	6
Annex A	7
• Civil Legal Service Applications and Outcomes 2020-21	7
• Civil Legal Services (Representation Higher) Appeals and Outcomes	9

Foreword

I am pleased to present the Annual Report of the Director of Legal Aid Casework for 2020-2021.

This is my sixth Annual Report as Director of Legal Aid Casework (Director). I have held the roles of Director and Chief Executive of the Legal Services Agency (the Agency) since 1 April 2015.

My role as Director was created under the Legal Aid and Coroners' Courts (Northern Ireland) Act 2014 (the Act). It involves decision-making on individual applications for Civil Legal Services and for ensuring that the decision making process remains independent from Government, budgetary or other external considerations.

This report summaries the work carried on behalf of the Director under the Act. It details the decisions made, the processes followed and the mechanisms that exist for holding the Director to account.

The impact of the coronavirus throughout the course of the year had a significant impact on all aspects of Civil Legal Services including the suppliers of services and decision makers within the Agency. The Agency's digital case management system, LAMS, which was launched in 2019, enabled the Agency to deliver its core services throughout the pandemic with a mix of office based and home working. It also enabled practitioners to continue to interact with the Agency by submitting on-line applications and payments. The Agency had to make a number of adjustments to the supporting documentation which practitioners had to submit on LAMS given the changes in how the courts and practitioners had to work. Some of these measures are temporary while others will form part of a new way of working.

During the early phase of the pandemic, which saw significant reduction in business, the Agency deployed resources to address a range of queries and issues. This required significant engagement with practitioners and their representative bodies which resulted in a constant flow of guidance and advice to practitioners. The Agency also sought to support practitioners by ensuring good cashflow throughout the early months of the pandemic.

I acknowledge the hard work and dedication of the Agency to deliver high levels of business during this most challenging of years. I also appreciate the independent advice from Allen McCartney and Tom Burgess, the Agency's Non-Executive Board Members, to help the Director maintain the independent decision making function.



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. Criminal 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 the 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 Agency's Framework Document.
6. From the establishment of the Agency in April 2015 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 during 2020-2021. The Agency separately published its [Annual Report and Accounts 2020-2021](#) 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 the year the Department issued one direction which authorised the creation of a Covid Interim Payment Scheme. In addition the Department issued two pieces of guidance, both of which related to criminal matters. The direction and guidance issued did not specifically impact on the Director's responsibilities. The direction and guidance issues were published by the Agency.

10. Following the United Kingdom's formal withdrawal from the European Union the changes introduced by the Civil Legal Aid (Amendment) (EU Exit) Regulations 2019 have come fully into effect. This means that any application for civil legal services from an applicant domiciled or habitually resident in Member State of the European Union which was received 28 days following exit day no longer benefits from the waiver of eligibility limits and contributions in cross-border disputes.
11. As required by the LSA Framework Document, the Director formally met with the Minister on 28 June 2021 to discuss how, as Director, he had carried out his functions during 2020-2021. At the meeting the Director updated the Minister on the key issues that emerged this year and covered the matters referred to in this report. At the meeting with the Minister the Director confirmed that no attempt to influence decisions had been brought to his attention.

The Decision-Making Structure

12. To ensure decisions are made independently and consistently, a robust organisational structure with a number of review mechanisms is in place.
13. In accordance with the Delegated Framework Document decisions on individual cases are made by caseworkers in the Operations Directorate:
 - Civil Determinations - this includes the determination of the financial eligibility of applicants as well as assessing the legal merits of applications for Civil Legal Services against the statutory criteria;
 - Appeals and Reviews - carrying out internal reviews on decisions to refuse Civil Legal Services for Representation (Higher Courts) and organising the listing of appeals to the Independent Appeals Panels and conveying their decisions to the applicant; and
 - Exceptional Funding – including consideration of applications for funding for Legacy Inquest cases which engage Article 2 issues.
14. In the course of the year the Agency has sought to refine and streamline the processes in each area and to issue guidance and advice to practitioners to enhance the effectiveness and efficiency of these processes.

Overview of Cases Funded

15. Civil Legal Services provides funding for a wide range of issues and court proceedings. While the distribution of applications reflected the impact of the pandemic, the main areas of business are family matters (including Child Welfare), personal injury claims, bail applications, and advice at police stations in criminal matters.

16. During 2020-2021 the LSA received a total of 49,835 applications for civil legal services with 43,332 applications granted. This represented a decrease of 5,966 (or 12%) compared to the 49,298 applications granted in 2019-2020. The level of applications received dipped in the first six months of the pandemic before returned to levels which were comparable to pre Covid levels later in the year.

Appeals and Reviews

17. Where an individual disagrees with the Director's determination on the merits of an application for representation (higher) they can appeal against the refusal.

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

19. 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.

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

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

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

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

24. Details of the applications received and those granted, together with the number and outcome of appeals are set out in **Annex A**.

Accountability

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

26. As a public body the Agency 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 Agency under the Freedom of Information Act 2000 or the Data Protection Act 1998.

Assembly question and freedom of information requests

27. During 2020-2021, 23 questions were tabled to the Minister of Justice which related to the functions of the Director.
28. Throughout the year 33 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.
29. A total of 8 subject access requests for personal data were made under the Data Protection Act 2018. These requests were made by legal aid applicants and related to information on the determinations on the grant of Civil Legal Services made by the LSA.

Complaints

30. The Agency has an internal complaints procedure with an onward appeal to the Northern Ireland Public Services Ombudsman.
31. Every complaint is investigated under the NICS two 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.
32. Should the individual or legal aid provider be dissatisfied with this engagement they can escalate their complaint to Stage 2 where it will be routinely reviewed by a Director, or if appropriate the Chief Executive. If the complainant is still dissatisfied they can refer the matter to the Northern Ireland Public Services Ombudsman under the Public Services Ombudsman Act (Northern Ireland) 2016.
33. The Agency was contacted on one occasion by the Ombudsman's Office in 2020-2021.
34. During 2020-2021, 16 complaints were received. The Agency does not separately record complaints which relate specifically to the remit of the Director; however a significant proportion of all complaints received by the Agency relate to individual cases and casework decisions.

Litigation

35. 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 can be challenged by way of judicial review. There were no judicial reviews in 2020-2021 which were material to the role of the Director.

Equality and Diversity

36. The Agency 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.

37. 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.
38. The Agency's stated values and behaviours reflect these commitments.

Conclusion

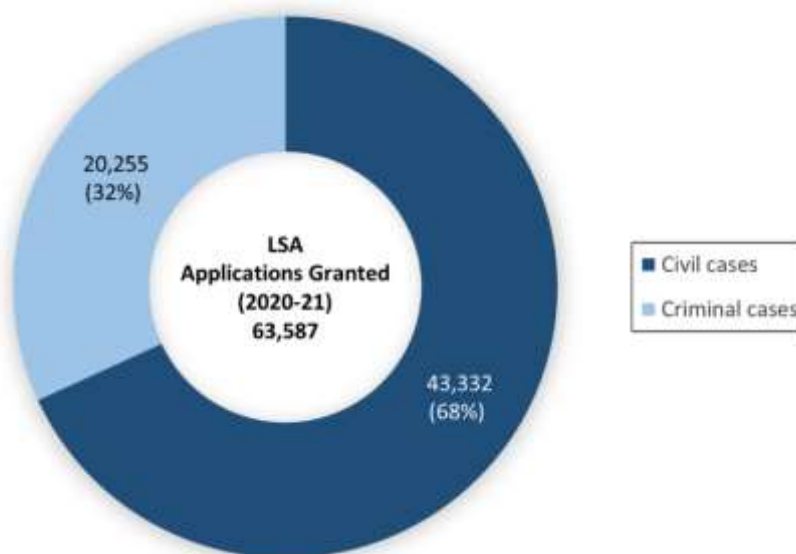
39. The Agency responded with speed and flexibility to cope with the demands placed upon it as a result of the pandemic. The Agency worked closely with legal aid practitioners to ensure continuity of business processing. This was achieved through the commitment and resourcefulness of staff within the Agency.
40. I acknowledge the close working relationship with the Law Society and Bar to ensure that necessary changes were made to enable individuals to secure access to justice throughout the crisis.
41. The Agency maintained high levels of productivity throughout the year while ensuring a safe working environment for those who came into the office and embedding new working arrangements for those who worked at home. This was achieved despite significant staffing shortages. The Agency looks forward to securing a more stable and sustainable level of staff resources and to continue to invest in our staff.
42. 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.

Civil Legal Service Applications and Outcomes 2020-2021

The Agency dealt with a total of 63,587 applications in 2020-2021. This figure, which includes criminal certificates granted by the courts, represents a decrease of 17.3% compared to the 76,884 applications granted in 2019-2020. This downturn was due to Covid-19 restrictions. However, in terms of civil legal services, during 2020-21 the LSA received a total of 49,835 applications for civil legal services with 43,332 applications granted. This represented a decrease of 5,966 (or 12%) compared to the 49,298 applications granted in 2019-2020.

Applications for legal aid are received across five levels of services: Criminal (granted by the courts); and Civil granted by the Agency in respect of Advice and Assistance, Exceptional Funding (in respect of Legacy Inquests), Representation Lower and Representation Higher (the court tier determining the distinction). By year end the Agency was receiving applications in respect of the majority of case types at around 95% of pre-pandemic level. Applications in respect of Representation Lower cases, which would include the majority of family and domestic cases, were being received at a rate of approximately 110%.

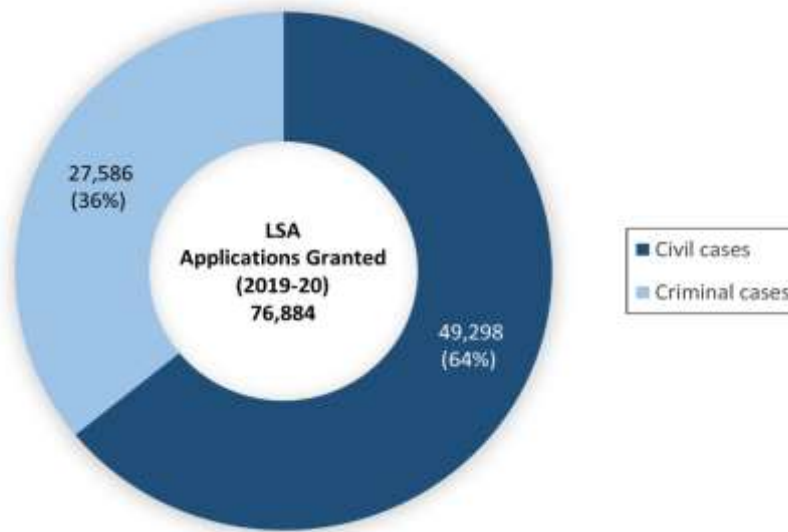
2020-2021 Applications granted (cases)



Notes:

1. 2020-2021 Applications granted were greatly reduced due to the Covid-19 pandemic.
2. Percentages have been rounded for presentational purposes

2019-2020 Applications granted (cases)



Notes:

1. Figures covering 2019-2020 represent a transitional year and have been compiled by merging data from two separate case management systems. Accordingly, previous 2019-2020 figures (Acts of Assistance) have been replaced with Applications Granted, to be reflective of the new (LAMS) business environment and comparable with 2020-2021 figures.
2. 2019-2020 figures for civil legal aid incorporate Exceptional Funding since July 2019. While this information is held in LAMS, it was not previously available in Phoenix.
3. Percentages have been rounded for presentational purposes.

Distribution of Business Across all aspects of Civil Legal Services

	2020-2021		2019-2020	
	Applications Received	Applications Granted	Applications Received	Applications Granted
Advice and Assistance	31,450	29,028	37,354	36,564
Representation Lower	8,821	7,610	7,792	6,101
Representation Higher	9,523	6,663	9,930	6,618
Exceptional Grant Funding	41	31	32	15
Total	49,835	43,332	55,108	49,298

Notes:

1. Figures covering 2019-2020 represent a transitional year and have been compiled by merging data from two separate case management systems. Accordingly, previous 2019-2020 figures (Acts of Assistance) have been replaced with Applications Granted, to be reflective of the new (LAMS) business environment and comparable with 2020-2021 figures.
2. 2019-2020 figures for civil legal aid incorporate Exceptional Funding since July 2019. While this information is held in LAMS, it was not previously available in Phoenix.

Civil Legal Services (Representation Higher) Appeals and Outcomes 2020-2021

	2020-2021	2019-2020
Appeals lodged	887	1,296
Appeals withdrawn	51	13
Appeals heard	578	729
Appeals allowed (full or in part)	353	432

Note:

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.