

Director of Legal Aid Casework Annual Report 2021-2022

Director of Legal Aid Casework

Annual Report 2021-2022

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



An Agency within

DoJ

Department
of Justice

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Foreword

I am pleased to present the seventh Annual Report of the Director of Legal Aid Casework (the Director) for 2021-2022.

I have held the roles of the Director and Chief Executive of the Legal Services Agency (the Agency) since 1 April 2015.

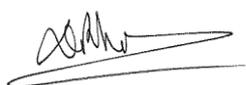
My role as Director was created under the Legal Aid and Coroners' Courts (Northern Ireland) Act 2014 (the Act). It involves decision-making on individual applications for Civil Legal Services and for ensuring that the decision-making process remains independent from Government, budgetary or other external 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 significant increase in business seen in the second half of 2020/2021 continued throughout 2021/2022 with the level of applications for civil legal services running slightly below the months before the impact of the coronavirus was felt in April 2019. Throughout the year, the Agency managed significant levels of staff vacancies while maintaining business processing for all aspects of civil legal services.

To build on the very positive engagement the Agency has with the Law Society and Bar, during 2021/2022, the Agency created a Strategic Communications and Engagement Forum which includes experienced and senior solicitors and barristers. The insight and perspective provided by this Forum will be of assistance to the Agency in discharging its functions in respect of civil legal service and more generally. In addition, the Agency also proposed the establishment of a Change Forum to secure insight from practitioners as to future changes to maintain and update its digital case management system, LAMS.

I acknowledge the hard work and dedication of the Agency to deliver high levels of business as the justice system continues to recover from the impact of covid. I also appreciate the independent advice from Allen McCartney and Tom Burgess, the Agency's Non-Executive Board Members whose terms ended during the year, and Daphne Johnston and Paul Mageean who were appointed as Non-Executive Board Members during the reporting period.



Paul Andrews
Director of Legal Aid Casework

Introduction

1. The Agency, which is an executive agency of the Department of Justice (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 2021/2022 the Department did not issue any directions to the Director. The Department issued guidance to the Director in respect of the Domestic Abuse financial eligibility waiver.

10. As required by the LSA Framework Document, the Director formally met with the Minister on 16 June 2022 to discuss how, as Director, he had carried out his functions during 2021-2022. 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. The Director also confirmed to the Minister that there had been no attempts to influence decisions brought to his attention.

The Decision-Making Structure

11. To ensure decisions are made independently and consistently, a robust organisational structure with several review mechanisms is in place.
12. In accordance with the Delegated Framework Document, decisions on individual cases are made by caseworkers in 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 applications which fall outside Civil Legal Services, typically inquests.
13. Throughout the year, the Agency continued to review and revise its processes, to develop guidance and deliver training for practitioners to enhance the effectiveness and efficiency of these processes.

Overview of Cases Funded

14. Civil Legal Services provides funding for a wide range of issues and court proceedings. The main areas of business are family matters (including Child Welfare), personal injury claims, bail applications, and advice at police stations in criminal matters.
14. During 2021-2022, the LSA received a total of 51,659 applications for civil legal services with 43,536 applications granted. This represented an increase of 204 (or 0.5%) compared to the 43,332 applications granted in 2020-2021. The level of applications received during 2021-2022 represented 88% of the applications received

in the six months (September 2019 – February 2020) before the pandemic began to impact on business.

Appeals and Reviews

16. Where an individual disagrees with the Director's determination on the merits of an application for representation (higher) they can appeal against the refusal.
17. Appeals can be considered by an internal review process which can uphold the original decision or grant funding.
18. 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. The decision of the Appeals Panel is binding on the Director.
19. The Agency engages with the Presiding Members to review the workload and the timeliness of decision-making, as well as gathering any learning points for the Agency.
20. Appeals Panel members are appointed by the Minister through the public appointments process.
21. There are separate internal reviews for refusals of representation (lower) and advice and assistance.
22. Details of the applications received and those granted, together with the number and outcome of appeals are set out in **Annex A**.

Accountability

23. It is important that the way in which the Director's functions are carried out is open to public scrutiny.
24. 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

25. During 2020-2021, 7 questions were tabled to the Minister of Justice which related to the functions of the Director.
26. Throughout the year, 31 requests for information under the Freedom of Information Act 2000 were received relating to the Director's functions. Most of these requests related to total legal aid paid in specific cases, internal processes within the Agency and data requests.
27. A total of 12 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

28. The Agency has an internal complaints procedure with an onward appeal to the Northern Ireland Public Services Ombudsman.
29. 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.
30. 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.
31. The Agency was contacted on 1 occasion by the Ombudsman's Office in 2021-2022.
32. During 2021-2022, 14 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

33. 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. No material challenges by way of judicial review were brought in 2021/2022 in respect of the role of the Director.

Equality and Diversity

34. 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.
35. 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.
36. The Agency's stated values and behaviours reflect these commitments.

Conclusion

37. The Agency made significant strides in improving the timelines for decision making and hearing appeals during the year. This was, achieved through the commitment and resourcefulness of staff within the Agency through a combination of home and office-based working. For significant periods of the year the Agency delivered improvements in service while dealing with significant levels of staff vacancies. Thankfully, towards the end of the year the levels of vacancies reduced considerably. The Agency has moved into 2022/2023 with significant improvements in the timeliness of decisions across all business lines.
38. I acknowledge the close working relationship with the Law Society and Bar throughout the year.
39. 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.

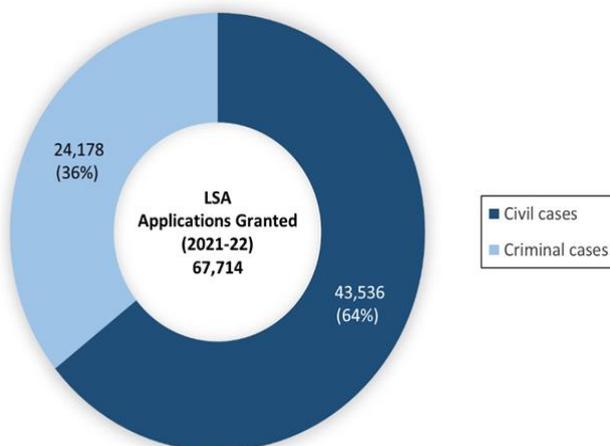
Annex A

Civil Legal Service Applications and Outcomes 2021-2022

The Agency dealt with a total of 67,714 grants in 2021-2022. This figure, which includes criminal certificates granted by the courts, represents an increase of 6.5% compared to the 63,587 applications granted in 2020-2021. The increase was primarily due to an increase in criminal cases. In terms of civil legal services, during 2021-2022 the LSA received a total of 51,659 applications for civil legal services with 43,536 applications granted. This represented an increase of 204 (or 0.5%) compared to the 43,332 applications granted in 2020-2021.

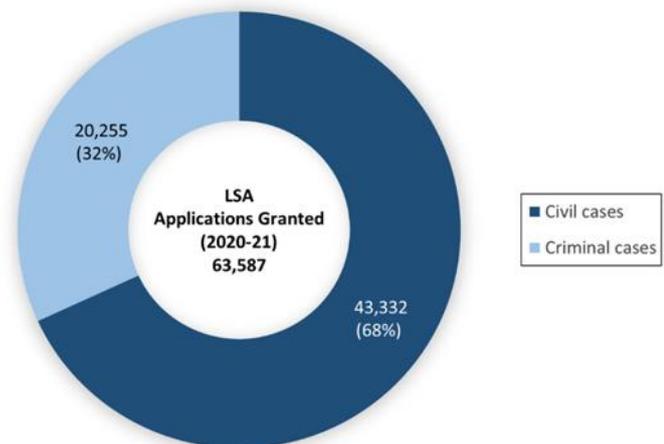
Applications for legal aid are received across five levels of services: Criminal (granted by the courts); and Civil granted by the Agency in respect of Advice and Assistance, Exceptional Funding (in respect of Legacy Inquests), Representation Lower and Representation Higher (the court tier determining the distinction). The level of applications received during 2021/2022 represented 88% of the applications received in the six months (September 2019–February 2020) before the pandemic began to impact on business.

2021-2022 Applications granted
(cases)



Percentages have been rounded for presentational purposes.

2020-2021 Applications granted
(cases)



Percentages have been rounded for presentational purposes.

Distribution of Business across all aspects of Civil Legal Services

	2021-2022		2020-2021	
	Applications Received	Applications Granted	Applications Received	Applications Granted
Advice and Assistance	32,171	28,705	31,450	29,028
Representation Lower	9,139	7,588	8,821	7,610
Representation Higher	10,301	7,213	9,523	6,663
Exceptional Grant Funding	48	30	41	31
Total	51,659	43,536	49,835	43,332

Note:

Figures for 'Applications Granted' reflect the year in which a decision was made to grant legal aid and do not necessarily correspond to the year in which the application was received.

Civil Legal Services (Representation Higher) Appeals and Outcomes 2021-2022

	2021/2022	2020/2021
Appeals lodged	864	887
Appeals withdrawn	222	51
Appeals heard	584	578
Appeals allowed (full or in part)	333	353

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.