

Director of Legal Aid Casework

Annual Report 2022-2023

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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 Annual Report 2022-2023

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Foreword

I am pleased to present the eighth Annual Report of the Director of Legal Aid Casework (the Director) for 2022-2023.

I have held the roles of Director and Chief Executive of the Legal Services Agency (the Agency) since 1 April 2015 when my role as Director was created under the Legal Aid and Coroners' Courts (Northern Ireland) Act 2014 (the Act). The role 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.

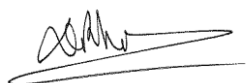
This report summarises the work carried out on behalf of the Director. It details the decisions made, the processes followed and the mechanisms that exist for holding the Director to account.

The volume of applications received in 2022/23 was 6% lower than that experienced in the previous year. This was primarily attributable to a 14% reduction in applications for advice and assistance. This reduction would appear to be driven by the Agency reminding practitioners that applicants must satisfy the full financial eligibility test including capital threshold. The level of applications for representation lower courts was also 9% lower than 2021/22 but this was unrelated to financial eligibility considerations.

Throughout the year the Agency delivered its services consistently and within its published targets, while training new staff as significant levels of staff vacancies were filled and a major accommodation move.

The Agency continued to work effectively with the Law Society and Bar to manage what was a challenging financial environment. The year saw the creation of a Change Forum to provide practitioners insights into future changes to Agency's online platform and the delivery of a suite of upgrades to LAMS. The Agency also put in place programmes to review inactive cases, reassess the ongoing financial eligibility of individuals in receipt of representation in the higher courts and launched a review of practitioner files as part of its error and fraud programme.

I acknowledge the hard work and dedication of the Agency to deliver high levels of business in a challenging environment. I also appreciate the independent advice from Daphne Johnston and Paul Mageean, the Agency's Non-Executive Board Members.



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 mission statement is "to facilitate access to justice by delivering timely and high-quality decisions and payments which secure value for money."

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. The suite of delegations was revised during 2022/23. 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 2022-2023. The Agency separately published its Annual Report and Accounts 2022-2023 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 2022/2023 the Department did not issue any directions or guidance to the Director.
10. As the Minister ceased to hold office on 28 October 2022, it was not possible for the Director to hold a formal meeting with the Minister as envisaged by the LSA's Framework Document. However, the Director can confirm that there were no attempts to influence decisions brought to his attention throughout the year.

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, revised during 2022/2023, 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 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 proceedings relating to children, personal injury claims, bail applications, and advice at police stations in criminal matters).
15. During 2022-2023, the LSA received a total of 46,495 applications for civil legal services with 39,051 applications granted. This represented a decrease of 5,262 (or 12%) compared to the 44,313 applications granted in 2021-2022. The level of applications received during 2022-2023 (excluding Advice and Assistance for the reason outlined in the Foreword) represented 93.5% 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. The Agency held an in-year seminar with the Presiding Members in March 2023 to consider a range of practical issues. The Agency intends to hold bi-annual seminars with the Panel. The Appeals Panel sat on 67 occasions during 2022/2023.
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 2022-2023, 14 questions were tabled to the Minister of Justice which related to the functions of the Director.
26. Throughout the year, 38 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 16 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 not contacted by the Ombudsman's Office in 2022-2023.
32. During 2021-2022, 2 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 2022/2023 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. The Agency has moved into

2023/2024 with significant improvements in the timeliness of decisions across all business lines.

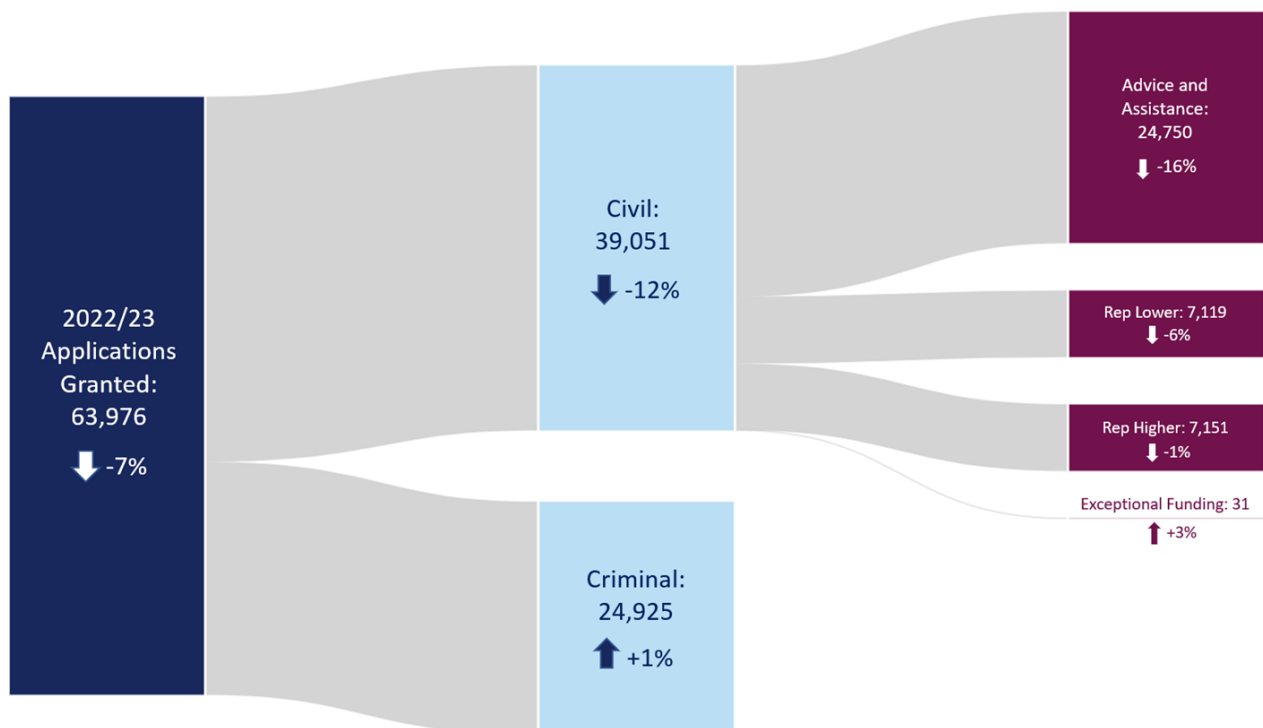
38. I acknowledge the close working relationship with the Law Society and Bar throughout the year.
39. A copy of this report has been sent to the Department in accordance with section 5(3) of the Act. The Department has laid a copy of the report before the Northern Ireland Assembly in accordance with section 5(4) of the Act.

Civil Legal Service Applications and Outcomes 2022-23

The Agency dealt with a total of 63,976 grants in 2022-23. This figure, which includes criminal certificates granted by the courts, represents a decrease of 7% compared to the 68,962 applications granted in 2021-22. The decrease was primarily due to a reduction in applications for Advice and Assistance. In terms of civil legal services, during 2022-23 the LSA received a total of 46,495 applications for civil legal services with 39,051 applications granted. This represented a decrease of 5,262 (or 12%) compared to the 44,313 applications granted in 2021-22.

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 2022/23 (excluding Advice and Assistance for the reason outlined in the Foreword) represented 93.5% of the applications received in the six months (September 2019 – February 2020) before the pandemic began to impact on business.

2022/23 Applications granted, with civil breakdown



Notes:

1. Arrow and percentage denote difference to 2021/22, with direction and +/- symbol illustrating an increase or decrease.

Distribution of Business Across all aspects of Civil Legal Services

	2022-23		2021-22	
	Applications Received	Applications Granted	Applications Received	Applications Granted
Advice and Assistance	27,793	24,750	32,162	29,482
Representation Lower	8,356	7,119	9,139	7,588
Representation Higher	10,294	7,151	10,296	7,213
Exceptional Grant Funding	52	31	48	30
Total	46,495	39,051	51,645	44,313

Notes:

1. 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.
2. Some figures for 2021-22 have been revised to reflect a more accurate picture of received and granted applications within the LAMS environment, following an internal review of underpinning metrics.

Civil Legal Services (Representation Higher) Appeals and Outcomes 2021-22

	2022/23	2021/22
Appeals lodged	610	864
Appeals withdrawn	193	222
Appeals heard	390	584
Appeals allowed (full or in part)	206	333

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.