

Director of Legal Aid Casework

Annual Report 2016-2017

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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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Foreword

I am pleased to present the Annual Report of the Director of Legal Aid Casework for 2016-2017.

This is my second 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.

The report provides details of the processes in place to hold me, as Director, to account in the delivery of Civil Legal Services. This includes details of the statutory appeals process in place to allow applicants to challenge decisions made in the determination of their application for Civil Legal Services.

During this second year of operation as an Agency of the Department of Justice (the Department), the Agency has continued to consolidate its position within the justice sector. We have used the lessons learnt from the first year of operation of the Act and subordinate legislation to enhance the decision-making of the Director and to maintain the independence of decision making as further reforms are introduced.

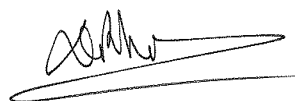
Taking forward our commitment to providing modern quality public services,

the Agency has been working with the Digital Transformation Service of the Department of Finance to deliver a digitally enhanced transformation programme. This programme will include a new digital case management system which will be supported by an on-line registration facility and statutory Registration Scheme for legal aid providers.

The Agency has also entered into a partnership arrangement with the Department for Communities, relying on their experience of the benefits system, to estimate the level of fraud and error within the legal aid system and to identify appropriate remedial action to reduce these levels.

I welcome the extensive programme of work being taken forward to transform the way the Agency delivers its services.

I would like to personally thank all staff within the Agency for their hard work and look forward to continuing to working positively as we face the many challenges that lie ahead.



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. This followed the dissolution of the Northern Ireland Legal Services Commission, a Non-Departmental Public Body sponsored by the Department, which had previously made determinations on applications for civil legal aid in individual cases.
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 Agency'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 2016-2017 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 2016-2017 no such directions or guidance were issued by the Department.
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.
11. With the dissolution of the NI Assembly in January 2017, the Director could not comply with this requirement for 2016-2017. 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.

12. 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 2019-2020 to provide a copy of this 2016-2017 report to be laid in the NI Assembly. At this meeting, the Director confirmed that in respect of 2016/2017, all decisions were made without interference or influence.

Strategic Context

13. The Agency is committed to transforming the way in which it delivers its services through the new digital platform which is under development and has made significant progress in developing an on-line registration facility. In addition, the Agency has:

(a) continued to implement the new suite of Civil Legal Services Regulations and has made significant progress in dealing with appeals under the new arrangements;

(b) recruited a Head of Compliance and Registration Unit and has commenced development of a review plan and documentation in preparation for the introduction of a statutory Registration Scheme;

(c) established a partnership arrangement with the Department for Communities to estimate the level of fraud and error within the legal aid system and to identify appropriate

remedial action to reduce the estimated error rates;

(d) Actively engaged in supporting the work of Lord Justice Gillen's review of Civil and Family Justice; *and*

(e) Supporting the Department in the development of various reforms and the implementation of reform initiatives.

14. In June 2016, the NI Public Accounts Committee (PAC) held an evidence session on foot of the NIAO's value for money report on Managing Legal Aid. The PAC report was published in February 2017 and the Agency, in collaboration with the Department, developed an action plan to address the PAC recommendations.

The Decision-Making Structure

15. To ensure decisions are made independently and consistently, a robust organisational structure with a number of review mechanisms is in place.
16. The organisational structure is based on three Directorates: Civil Legal Services; Payment Services; and Corporate Services.
17. In accordance with the Agency's internal Delegated Framework Document, decisions on individual cases are made by caseworkers in the Civil Legal Services Directorate. 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.
18. In addition, a separate team facilitates the completion of the financial means tests which are carried out independently by an arm of the Department for Communities.
 19. Payments Services, which is also led by a Director (Grade 6), is responsible for determining and authorising civil and criminal fees. This involves liaison with the Taxing Master’s Office on fees that have been subject to taxation or appeals to the Master.
 20. 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.
 21. 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 a 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.
 22. 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.
 23. 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**
24. 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.
 25. During 2016-2017, the Agency received a total of 55,734 applications for civil legal services with 51,956 certificates granted. This represented a decrease of 12,075 compared to the 64,031 certificates granted in 2015-2016. Details of the applications received and those granted are set out in **Annex A**.

Casework Issues - Quality of Applications

26. 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.
 27. 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.
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 2016-2017 are provided at **Annex A**.

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 an 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 Agency.
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 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.

Accountability

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

38. Prior to the dissolution of the NI Assembly in 2017, a total of 36 questions were tabled which related to the functions of the Director.
39. Throughout the year, 29 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. Other requests related to: legal costs paid in particular cases, names of the legal aid appeal panel, number of appeal hearings and information to determine if an individual received legal aid.

40. A total of 11 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 Agency but cannot be used to complain 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 2016-2017, the Agency received 10 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 2016-2017.

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 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.

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. During 2016-2017, a cross section of staff from across the Agency attended Diversity Now training.

Conclusion

51. 2016-2017 has been a busy year as the Agency successfully delivered on its core functions and commenced its transformation programme to radically modernise the way in which it delivers its publicly funded legal services.
52. In 2017-2018, the Agency will set up a new Directorate to take forward the transformation programme and an appropriate investment programme will be put in place to support the programme delivery.
53. The Agency continues to strengthen its relationships with external bodies and providers of legal services. These relationships are important to the Agency's provision and development of publicly funded legal services during a period of continuous change and the introduction of new digital ways of working.
54. 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 2016-2017

	2016/2017		2015/2016	
	Applications Registered	Certificates Granted	Applications Registered	Certificates Granted
Advice and Assistance	37,436	37,480	48,010	48,661
Representation Lower	10,006	8,476	9,772	8,537
Representation Higher	8,259	5,981	9,016	6,808
Exceptional Grant Funding	33	19	34	25
Total	55,734	51,956	66,832	64,031

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 2016-2017

	2016/2017	2015/2016
Appeals Lodged	1,113	1,106
Appeals withdrawn	39	13
Appeals heard	1,357	426
Appeals Upheld (full or in part)	660	186

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.

