

Director of Legal Aid Casework

Annual Report 2019-2020

Director of Legal Aid Casework

Annual Report 2019-2020

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/legal-services-agency-northern-ireland-annual-reports-and-accounts>.

Director of Legal Aid Casework Annual Report 2019-2020

Contents

	Page
Foreword	1
Introduction	2
• The Director of Legal Aid Casework	2
• Interaction with the Department	2
• Strategic Context	3
The Decision-making Structure	3
• Overview of cases funded	4
• Casework issues – Quality of Applications	4
• Review and Appeals	5
Accountability	5
• AQ's, FOI/DPA enquiries	5
• Complaints	6
• Litigation	6
• Equality and Diversity	6
Conclusion	6
Annex A	8
• Civil Legal Service Applications and Outcomes 2019-2020	8
• Civil Legal Services (Representation Higher) Appeals and Outcomes	8

Foreword

I am pleased to present the Annual Report of the Director of Legal Aid Casework for 2019-2020.

This is my fifth 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 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 including details of the statutory appeals process to allow applicants to challenge the refusal of applications for Civil Legal Services.

July 2019 saw the launch of the Agency's digital case management system, LAMS. This was a significant milestone in transforming the administration of civil legal services. The first quarter of the year saw extensive preparation for the launch of LAMS, including a cut over period in which only emergency business could

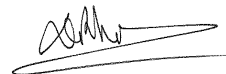
be transacted pending the migration of cases to the new system.

The preparatory work involved extensive training within the Agency and engagement with legal practitioners through a Stakeholder Forum to make final changes to LAMS; roll out of in-person and video based training on the use of LAMS and deployment of an extensive user manual to support processing. It also required significant work on delivering payments to minimise the impact of a short cutover period when payments could not be processed.

LAMS was successfully launched with minor teething problems being quickly addressed. Practitioners were able to adapt to the new way of working and performance within the Agency was high. The real value of LAMS was widely acknowledged by the end of the year when it provided a lifeline for continuity of business when the pandemic prevented office working for practitioners. LAMS on-line services saw the Agency continue to process business during the pandemic.

I wish to acknowledge the hard work and dedication of the Agency during the year in which they had to adopt new ways of working. I also recognise the impact that LAMS has had on practitioners and acknowledge their support during this period of transition.

2019/2020 provides a platform for further progress in the delivery of services.



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 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 over the last financial year. The Agency separately published its Annual Report and Accounts 2019-2020 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 two directions were issued. The first direction, issued on 16 September 2019, dealt with remuneration arrangements for the pilot to fast track serious sexual offence cases involving children under 13 years in Belfast Crown Court. The second direction, which issued on 7 January 2020, dealt with remuneration arrangements for Asylum and Immigration proceedings before the First-Tier and Upper Tribunal. Both directions have been published by the Agency.
10. As required by the LSA Framework Document, the Director formally met with the Minister to discuss how, as Director, he had carried out his functions during 2019-

2020. This meeting took place on 12 April 2021, at which the Director updated the Minister on the key issues that emerged this year with discussion focusing on:

- Stakeholder engagement in post LAMS environment;
- The importance of LAMS at the outset of the pandemic;
- Work to support decision making.

11. This meeting also 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.

Strategic Context

12. 2019-2020 was a milestone year in the administration of legal aid. At the launch of LAMS on 1 July 2019 some 602 barristers, 446 solicitor practices and 1,077 individual solicitors had registered as users of the system. Significant volumes of business were transacted through LAMS during the year with minor teething problems being resolved as they arose. By the end of the year LAMS was well established and provided a platform for continued delivery of business at the outset of the pandemic.

13. Significant progress was made in a range of other areas including:

- Establishment of the Stakeholder Engagement Forum to facilitate interaction with practitioners throughout the design and implementation of LAMS. This continued to

operate for nine months post go-live until 31 March 2020;

- A major organisational restructuring which saw the Agency move from a three to a two directorate structure with supporting changes to strengthen operational management to support business transformation and improve the delivery of front line services; *and*
- Extending partnership working with the Standards Assurance Unit (SAU) within the Department for Communities (DfC) to establish an estimate the official fraud and error rate within the legal aid system for the calendar year 2019, and to identify appropriate remedial action to reduce the estimated rates; *and*
- Supporting the Department in the development of various reforms initiatives and being represented at the Shadow Family Justice Board and the Shadow Civil Justice Council.

The Decision-Making Structure

14. To ensure decisions are made independently and consistently, a robust organisational structure with a number of review mechanisms is in place.

15. In October 2019 the organisational structure was revised and moved to a more business focused model by the amalgamation of the former Payments Directorate and Civil Legal Services Directorate into

one Operational Directorate, led by a Director (Grade 6).

16. The Corporate Services Directorate, also lead by a Director (Grade 6) remained as before but assumed responsibility for progressing the LSA's Transformation Programme which had previously been led by a dedicated Transformation Director (Grade 5).

17. To support the re-structuring, the management team was strengthened with 4 new heads of branches (Grade 7 level), additional capacity was introduced to the adjudication teams for Civil Legal Services, Exceptional Funding (available for Inquests and other cases not routinely funded by Civil Legal Services), and Criminal Exceptional Preparation Hours.

18. The new Operations Division is divided into four decision groups:

- 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;
- Exceptional Funding – including consideration of applications for

funding for Legacy Inquest cases which engage Article 2 issues; *and*

- Payments – determining and authorising civil and criminal fees. Liaison with the Taxing Master' office on fees that have been subject to taxation or appeals to the Master.

19. In accordance with the LSA's internal Delegated Framework Document decisions on individual cases are made by caseworkers in the Operations Directorate.

Overview of Cases Funded

20. 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.

21. During 2019-2020 the LSA received a total of 50,105 applications for civil legal services with 49,602 certificates granted. This represented an increase of 3,371 compared to the 46,231 certificates granted in 2018-2019. Details of the applications received and those granted are set out in **Annex A**.

Casework Issues - Quality of Applications

22. The LAMS system brought improvements to the quality of some aspects of applications but gave rise to a range of issues which have been addressed to advice and guidance to practitioners. It also has created a

query function which enables issues to be resolved to allow cases to progress. As practitioners become more familiar with LAMS there should be a basic improvement in the quality of applications. However, there is still a need for improvement as the substance of the applications submitted.

Review and Appeals

23. Where an individual disagrees with the Director's determination on the merits of an application for representation (higher) they can appeal against the refusal.
24. Appeals can be considered by an internal review process which can uphold the original decision or grant funding.
25. 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.
26. The decision of the Appeals Panel is binding on the Director.
27. 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.
28. Appeals Panel members are appointed by the Minister through the public appointments process.
29. During 2019-2020 the pool of panel members was augmented

with the appointment of 4 new Presiding Members and 8 new Ordinary Members.

30. There are separate internal review for refusals of representation (lower) and advice and assistance.
31. Details of the number and outcomes of the appeals lodged in 2019-2020 are provided at **Annex A**.

Accountability

32. It is important that the way in which the Director's functions are carried out is open to public scrutiny.
33. 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, Freedom of Information Act 2000, and General Data Protection Regulations 2018

34. During 2019-2020, 15 questions were tabled to the Minister of Justice which related to the functions of the Director.
35. Throughout the year, 43 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.

36. A total of 11 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

37. The Agency has an internal complaints procedure with an onward appeal to the Northern Ireland Public Services Ombudsman.
38. Every complaint is investigated by using 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.
39. Should the an 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.
40. The Agency was contacted on one occasion by the Ombudsman's Office in 2019-2020.
41. During 2019-2020, 34 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

42. 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.

Equality and Diversity

43. 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.
44. 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.
45. The Agency's stated values and behaviours reflect these commitments.

Conclusion

46. It has been a busy, challenging but rewarding year for the Agency. The implementation of LAMS provides significant opportunities and to improve service and enhance governance and accountability.
47. The LAMS system will provide the Agency with much richer management information. The

Agency shared monthly updates with the practitioners to demonstrate the level of business deliver through LMAS.

48. The end of the financial year saw the emergence of new working patterns as a result of the pandemic. LAMS has played a critical role in allowing homework and continuation of services in very trying circumstances.
49. 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 2019-2020

	2019/2020		2018/2019	
	Applications Registered	Certificates Granted	Applications Registered	Certificates Granted
Advice and Assistance	37,354	36,556	35,348	32,786
Representation Lower	6,101	6,273	7,990	6,671
Representation Higher	6,618	6,746	8,622	6,747
Exceptional Grant Funding	32	27	21	27
Total	50,105	49,602	51,981	46,231

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 2019-2020

	2019/2020	2018/2019
Appeals Lodged	1,296	1,396
Appeals withdrawn	13	26
Appeals heard	729	1,188
Appeals Upheld (full or in part)	432	619

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.

