

# Director of Legal Aid Casework

**Annual Report 2018-2019**



# **Director of Legal Aid Casework**

**Annual Report 2018-2019**

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/](http://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](mailto: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 Report 2018-2019

## Contents

	<b>Page</b>
<b>Foreword</b>	1
<b>Introduction</b>	2
• Director of Legal Aid Casework	2
• Interaction with the Department	2
• Strategic Context	3
<b>Decision-Making Structure</b>	3
• Overview of cases funded	5
• Casework Issues – Quality of Applications	5
• Review and Appeals	5
<b>Accountability</b>	6
• AQ's, FOI/DPA Enquiries	6
• Complaints	6
• Litigation	7
• Equality and Diversity	7
<b>Conclusion</b>	7
<b>Annex A</b>	9
• Civil Legal Service Applications and Outcomes	9
• 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 2018-2019.

This is my fourth annual report as Director of Legal Aid Casework (Director). I have held the roles of Director of Legal Aid Casework 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 including details of the statutory appeals process to allow applicants to challenge the refusal of applications for Civil Legal Services.

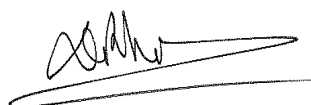
2018-2019 has seen significant progress being made in delivering cultural and structural change as we progress our Transformation

Programme. Reforms are well advanced to bring the current directorate structures into a more business-focused model in 2019-2020 which will see the payments and assessment functions brought together into one Operational Directorate.

The payments teams continued to process legal aid payments in a timely manner and within the resources available. This included processing £3m additional funds provided to support the cut-over to the Legal Aid Management System (LAMS), which will be launched in the summer of 2019.

I welcome the extensive programme of work which is being taken forward to transform the way in which the Agency delivers its services in this digital age.

The additional work involved in preparing the Agency to undergo transformation of this magnitude, while maintaining the quality of core services, has meant this has been one of the most demanding years since the establishment of the Agency in 2015. I want to record my personal thanks to all the staff for their very hard work and commitment.



**Paul Andrews**  
**Director 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 2018-2019 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 2018-2019 no such directions or guidance were issued.
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 2018-2019. 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 report. At this meeting, the Director confirmed that in respect 2018/2019 all decisions were made without interference or influence.

### **Strategic Context**

13. In 2018-2019, the Agency made significant progress in the development of its new Digital platform and new on-line registration facility. During 2018-2019 the key milestones achieved were:
  - (a) The on-line registration process opened to legal aid suppliers in January 2019 with 1,214 suppliers registered before the on-line portal closed in March 2019;
  - (b) User Acceptance -Testing with suppliers was undertaken;
  - (c) Roadshows were delivered to suppliers across Northern Ireland; and
  - (d) In-depth training sessions were delivered to suppliers and the Agency's staff.

14. In addition, the Agency has continued to:

- (a) Develop the programme of compliance reviews for Civil Legal Services and Criminal Legal Aid in anticipation of legislative authority to launch a statutory Registration Scheme;
- (b) Work with the Department for Communities (DfC), through the partnership working agreement, to estimate the level of fraud and error within the legal aid system and identify appropriate remedial action to reduce the estimated rates. This included delivering the programme of extensive training and sample testing that commenced in 2017-2018;
- (c) Address the volume of Civil Legal Services applications awaiting determination; *and*
- (d) Support the Department in the development of various reforms initiatives and be represented at the Shadow Family Justice Board and the Shadow Civil Justice Council.

### **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 which is 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 has been carried out independently by an arm of the DfC. In March 2019 this function was brought within the Agency from DfC. The benefit of bringing this function in house is to amalgamate all Civil Legal Services within one organisation and thereby supporting the development of a more integrated approach to the delivery of Civil Legal Services while simultaneously maximising administrative efficiencies.
19. Payments Services, which is also led by a Director (Grade 6), is responsible for determining and authorising civil and criminal fees. The teams will also liaise 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 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.
24. During 2018-2019 a new team was created dedicated to support the work programme commenced to improve the levels of fraud and error in the legal aid system.

#### **Overview of Cases Funded**

25. 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.
26. During 2018-2019 the Agency received a total of 51,981 applications for civil legal services with 46,231 certificates granted. This represented an increase of 537 compared to the 45,694 certificates granted in 2017-2018. Details of the applications received and those granted are set out in **Annex A**.

#### **Casework Issues - Quality of Applications**

27. 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.
28. 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.

#### **Review and Appeals**

29. Where an individual disagrees with the Director's determination on the merits of an application for representation (higher) they can appeal against the refusal.
30. Appeals can be considered by an internal review process which can uphold the original decision or grant funding.
31. 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.
32. The decision of the Appeals Panel is binding on the Director.

33. 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.
34. There are separate internal review arrangements for refusals of representation (lower) and advice and assistance.
35. Appeals Panel members are appointed by the Minister through the public appointments process.
36. Details of the number and outcomes of the appeals lodged in 2018-2019 are provided at **Annex A**.

### **Accountability**

37. It is important that the way in which the Director's functions are carried out is open to public scrutiny.
38. 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 Questions, Freedom of Information Act 2000, and GDPR 2018**

39. As the Assembly did not sit in 2018/2019 no questions were tabled.
40. Throughout the year 37 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.
41. A total of 17 subject access requests for personal data were made under DPA/GDPR 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 staff under the delegated authority framework and information relied upon when making a determination.

### **Complaints**

42. 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.
43. Every complaint is investigated using a three tier complaints procedure. (This changed to a two-tier procedure in February 2019).

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.

44. 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.
45. If, having completed 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.
46. During 2018-2019, the Agency received 20 complaints regarding the determinations made with respect to applications for Civil Legal Services- most of these were mainly concerned with process or delay.
47. No complaints were referred to the Public Ombudsman's office in 2018-2019.

### **Litigation**

48. 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**

49. 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.
50. 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.
51. The Agency's stated values and behaviours reflect these commitments.

### **Conclusion**

52. Overall, 2018-2019 has been a challenging year. Organisational change of the magnitude being delivered by the Transformation Programme is complex and demanding. The resilience of the staff as they support transformation while continuing to deliver core services must be commended.
53. Looking forward, 2019-2020 will be an equally challenging year as the Agency launches its new digital case management system which will transform how provides of publicly funded legal services interact with the Agency.

54. Other key work streams of the Transformation Programme that will be progressed in 2019-2020 are:

- The development of a management information strategy; and
- The establishment (in shadow year format) a preliminary assessment of fraud and errors rates within the legal aid system and appropriate remedial action to reduce the estimated levels.

55. The Agency looks forward to delivering this challenging and exciting work programme.

56. 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 2018-2019**

	2018/2019		2017/2018	
	Applications Registered	Certificates Granted	Applications Registered	Certificates Granted
Advice and Assistance	35,348	32,786	33,305	31,281
Representation Lower	7,990	6,671	9,121	7,562
Representation Higher	8,622	6,747	8,525	6,826
Exceptional Grant Funding	21	27	39	25
Total	51,981	46,231	50,990	45,694

**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 2018-2019**

	2018/2019	2017/2018
Appeals Lodged	1,396	1,176
Appeals withdrawn	26	29
Appeals heard	1,188	949
Appeals Upheld (full or in part)	619	482

**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.

