



Northern Ireland  
Assembly

Public Accounts Committee

## Report on Managing Legal Aid

Together with the Minutes of Proceedings of the Committee relating  
to the Report and the Minutes of Evidence

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## PUBLIC ACCOUNTS COMMITTEE MEMBERSHIP AND POWERS

The Public Accounts Committee is a Standing Committee established in accordance with Standing Orders under Section 60(3) of the Northern Ireland Act 1998. It is the statutory function of the Public Accounts Committee to consider the accounts, and reports on accounts laid before the Assembly.

The Public Accounts Committee is appointed under Assembly Standing Order No. 56 of the Standing Orders for the Northern Ireland Assembly. It has the power to send for persons, papers and records and to report from time to time. Neither the Chairperson nor Deputy Chairperson of the Committee shall be a member of the same political party as the Minister of Finance and Personnel or of any junior minister appointed to the Department of Finance and Personnel.

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The membership of the Committee since 31 May 2016 has been as follows:

Mr Robin Swann (Chairperson)

Mr Daniel McCrossan (Deputy Chairperson)

Mr Robbie Butler

Mr Trevor Clarke

Mr Gordon Dunne

Mr Alex Easton

Ms Michelle Gildernew

Mr Declan Kearney

Ms Carla Lockhart

Mr Trevor Lunn

Mr Oliver McMullan

## List of Abbreviations Used in the Report

The Committee	Public Accounts Committee (PAC)
C&AG	Comptroller and Auditor General
The Department	Department of Justice
The Agency	Legal Services Agency

## Executive Summary

1. The Public Accounts Committee (PAC) supports reforms directed at improving the legal aid systems that ensure access to justice for all, regardless of social background. In 2011 the PAC report on Managing Criminal Legal Aid made recommendations to introduce significant reform of the legal aid system and to establish effective financial controls over payments. Reforms have not been implemented effectively and at an average annual cost of £102 million since 2011, the costs of legal aid remain unacceptably high.
2. The Committee considers that the lack of progress in implementing many of the recommendations contained in its 2011 report clearly demonstrates the Department and the Agency's continued failure to deliver an economic, efficient and effective legal aid system in Northern Ireland. In particular, the failure to implement a statutory registration scheme for legal services providers is entirely unacceptable and impacts significantly on the reform programme. The absence of a scheme means that the legal aid system lacks a basic mechanism to ensure quality of service and to deliver accountability and transparency in the use of public money.
3. Non-criminal legal aid has not been reformed to date resulting in excessive costs being incurred year after year due to a complex mix of statutory and non-statutory fees with few paid at a standard rate.
4. The Committee does not believe the Department has conducted a serious examination of the potential benefits that could be derived from contracting with providers for publicly funded legal aid in Northern Ireland. In the Committee's view, in considering the necessary reforms to improve the legal aid systems, the Department must test fully the scope for generating savings from contracting while taking account of access to justice considerations.
5. For full civil legal aid cases heard in the High Court, the remuneration to be paid to legal representatives is determined by the Taxing Master who adjudicates on around £20 million of fees annually. The Taxing Master is an independent judicial figure and so sits outside the usual public sector accountability structures. These arrangements lack transparency and there is no line of accountability from the

Taxing Master through the Accounting Officer to this Committee. The Committee is alarmed at the extent to which legal representatives have had their claims reduced as a result of the Taxing Master's deliberations, a reduction of £9 million (13 per cent) in claims with a total value of £69 million since 2013-14. In the Committee's view, this represents an unacceptable level of claims submitted by the legal profession that are disproportionate or not reasonably incurred.

6. The Agency's management information systems are archaic and not fit for purpose. This is an inadequate basis for running the service and has an adverse impact on every aspect of the Agency's work. In particular there is an inability to prepare robust provisions for future legal aid costs. Despite assurances of progress given to the Committee in 2011, the first phase of a new digitised management information system will not be in place until 2018 at the earliest.
7. The need for pro-active counter fraud arrangements was a key recommendation in the Committee's 2011 report. The Committee is of the view that no effective counter-fraud arrangements exist within the Agency and there is not a strong culture of fraud awareness. The Agency's fraud unit is under-resourced and while internal controls have been established, they are not risk based and are not adequate to prevent and detect fraud.
8. The Departmental Accounting Officer is responsible for ensuring the effective and efficient delivery of legal aid services in Northern Ireland. The Committee is of the view that the long-standing issues it has identified stem from a failure of leadership to drive forward much needed reform. The Committee considers that there is a clear need for the Accounting Officer to instigate a capability review of the Agency's leadership team, including the Department's sponsorship arrangements, to ensure that it is adequately resourced and has the necessary skills, experience and culture to deliver a major change programme.

## Summary of Recommendations

### Recommendation 1

The Committee recommends that the Department fully tests the scope for generating savings from contracting legal aid services in Northern Ireland.

### Recommendation 2

The Committee recommends that the Department advance the reform of legal aid, focusing on:

- reforming non-criminal legal aid remuneration rates and introducing standard fees as a priority. This should include the introduction of effective controls over the cost of expert witnesses;
- establishing a statutory registration scheme for all providers of publicly funded legal services; and
- establishing an effective management information system in the Legal Services Agency to support the process of reform.

The reform programme must address all the above issues and be supported with a concise action plan including an explicit timetable and milestones for delivery. Further delay must be avoided and the Committee will seek an update on progress in 2017.

### Recommendation 3

The Committee recommends the Department conducts a review of how expenditure currently adjudicated by the Taxing Master can properly be brought under the purview of the Accounting Officer. In the meantime, the Legal Services Agency must have a complete and detailed analysis of adjustments to claims to establish possible patterns of over claiming.

### Recommendation 4

The Committee recommends that the Agency establishes a method of measuring the level of fraud within the legal aid system and develops proactive risk-based counter fraud measures. These measures should address specific issues raised continually by the C&AG and build a strong

**culture of fraud awareness within the Agency. The Department must demonstrate an active role in overseeing this work, and drive the establishment of effective counter-fraud arrangements within the Agency.**

#### **Recommendation 5**

**The Committee recommends that the Departmental Accounting Officer instigates a capability review of the Agency's leadership team, including the Department's sponsorship arrangements to ensure that it is adequately resourced and has the necessary skills, experience and culture to deliver a major change programme.**



## Introduction

1. The Public Accounts Committee (the Committee) met on 29 June 2016 to consider the C&AG's report "Managing Legal Aid". The witnesses were:
  - Mr Nick Perry, Accounting Officer, Department of Justice
  - Mr David Lavery, Head of Access to Justice Directorate, Department of Justice
  - Mr Paul Andrews, Chief Executive, Legal Services Agency NI
  - Mr Mark McGuckin, Head of Legal Services Division, Department of Justice
  - Mr Kieran Donnelly, Comptroller and Auditor General; and
  - Ms Alison Caldwell, Treasury Officer of Accounts.
  
2. The legal aid system provides funds to enable individuals to secure legal representation for both criminal and non-criminal legal matters. It is imperative that the legal aid system provides value for money and ensures that there is fair and equal access to justice in Northern Ireland.
  
3. In 2011 the Public Accounts Committee produced a report identifying areas for improvement in the management of the criminal legal aid system. This report was produced in a context where the cost of legal aid had spiralled out of control between 2000 and 2010, increasing from under £40 million to close to £100 million annually. In the years since 2011 the average annual cost of legal aid has been £102 million.
  
4. Many of the recommendations made by the Committee in its 2011 report have not been completed or are only partially complete. Key recommendations to improve governance of the legal aid system have not been implemented. Furthermore, there has not been any significant reduction in costs. In its evidence session, the Committee examined:
  - the progress made by the Department of Justice (the Department) and the Legal Services Agency (the Agency) in delivering reforms to the legal aid system;
  - the effectiveness of the management information system within the Agency;

- the accountability arrangements concerning legal aid payments made under direction from the Taxing Master; and
- the counter-fraud arrangements within the legal aid system.

## Reforms directed at improving the governance of the legal aid system have not been effective

### *Reforms to legal aid have not been effective in reducing costs*

5. Despite the reforms introduced to date, the annual costs of legal aid in Northern Ireland have not reduced since the Committee's 2011 report and remain significantly higher than in England and Wales for similar types of legal work. Revised rules for remuneration did bring fees in Northern Ireland to a level closer to those in England and Wales. However, subsequent cuts in remuneration rates in England and Wales mean that the gap has re-opened.
6. There are now standard fees for criminal legal aid. This is welcome. The Committee is, however, concerned at the agreement for increases in the standard fees negotiated with the legal profession between 2015 and 2016. These resulted in the reduction in planned savings from £7 million to £5 million. The Committee does not accept the Department's assertion that this reduction of 35 per cent in planned savings was a "*small compromise*" necessary to defend the more important principle of standard fees.
7. Non-criminal legal aid has not been subject to any significant reform. Remuneration rates remain a complex mix of statutory and non-statutory fees, with only a few standard fees in use. The Committee acknowledges assurances from the Accounting Officer that work is ongoing towards rectifying this, but is frustrated by the slow progress being made by the Department and the Agency to increase the use of standard fees for civil legal aid cases. The Department's and the Agency's assertions that "*some research*" is commencing in the area does not show the required urgency to reform the fees process and drive down legal aid costs.
8. In 2011 PAC asked the Department to keep the potential for contracting with providers for publicly funded legal aid under review. The Committee does not believe the Department has conducted a serious examination of the potential benefits that could be derived from contracting in Northern Ireland. While the

Department claimed that contracting would damage the structure of the network of small solicitors in Northern Ireland, this has never been tested. In the Committee's view, the Department must test fully the scope for generating savings from contracting while taking account of access to justice considerations and the impact on the network of small solicitors.

### **Recommendation 1**

**The Committee recommends that the Department fully tests the scope for generating savings from contracting legal aid services in Northern Ireland.**

9. The Committee is deeply disappointed by the failure of the Department to effectively manage other components of the total legal aid cost. In particular, the lack of a standard fee structure for expert witnesses in Northern Ireland means that control over those costs has been weak. The Committee is alarmed that there can be significant variances in the rates charged by different experts for similar types of work. The Agency stated that it had an "Unusually Large Expenditure Panel" to investigate cases where the cost of expert witnesses exceeds a reasonable level. However, it was unable to identify the impact this Panel has had on fees paid. The Committee remains to be convinced that the Panel has had any worthwhile impact in managing expert witness fees.

***The absence of a statutory registration scheme means that the legal aid system lacks accountability and transparency***

10. A statutory registration scheme for providers of publicly funded legal services is an essential component of the legal aid system. The continuing failure to design and operate an effective registration scheme is a significant barrier to reforming the legal aid system in Northern Ireland, which is already behind England and Wales.
11. Such a scheme was originally provided for in the 2003 Access to Justice Order. In 2011 the Committee's report noted that the scheme had not yet been implemented, and it recommended that prompt action be taken to introduce a compulsory registration and quality assurance scheme for publicly funded legal service providers. It is deeply concerning that the Department and Agency have failed to implement this recommendation. A scheme is not

expected to be operational until 2018 at the earliest, some 12 years after the original planned completion date.

12. It is unacceptable that such a fundamental control over legal aid expenditure and quality of service has not been treated as a priority by the Department and the Agency. The absence of a statutory registration scheme means that there is no effective challenge to claims from legal representatives or formal assessment of the quality of service provided.
13. The Committee was told of a pilot exercise conducted by the Agency in 2013, using 12 voluntary participants from the legal profession. This identified significant compliance issues with five of the providers of legal services, key being a lack of effective procedures for verifying clients' financial eligibility and a failure to comply with legal aid legislation.
14. The cornerstone of a legal aid system should be that it supports those who need financial assistance to access justice and must include adequate due diligence procedures for assessing financial eligibility. The need for a formal statutory registration scheme is evidenced further by the Agency's review of the financial eligibility of individuals for cases that were still open. It found that 15 per cent of cases, represented by 40 firms of solicitors, were financially ineligible even though certificates were discharged. It also revoked 5 per cent of the cases as the individuals did not co-operate with the review. The results from these reviews clearly support the Committee's view that a fully operational scheme must be implemented without delay.

### **The Agency's management information systems underpinning budgeting and forecasting have been inadequate**

15. The Agency's accounts have been qualified by the C&AG since 2003 due to the inability to include robust provisions for future legal aid costs and because of material weaknesses in controls over fraud prevention and detection. It is indefensible that these issues have not been addressed over such a long period.
16. The lack of adequate management information has impaired the Agency's performance in a number of areas, including estimating the total value of outstanding legal aid claims. The Agency is unable to analyse effectively key

components of the cost of legal aid, including the cost of expert witnesses. The lack of readily available data undermines attempts to develop effective evidence based reform programmes. Despite assurances of progress given to the Committee in 2011, the first phase of a new digitised management information system will not be in place until 2018 at the earliest.

17. The Committee is dismayed that the Agency has allowed this situation to persist. The Chief Executive of the Agency told the Committee that the current system is 16 years old, and that the Agency is constrained by the original design of the system, which is not user-friendly to the extraction of the information the Agency require. However, this failure has been apparent for many years, and has been highlighted by both the Agency's internal auditors and the Northern Ireland Audit Office. It has been a relevant factor in the repeated qualification of the Agency's accounts since 2003. The failure to develop such a system is a direct consequence of a lack of leadership and focus on this issue over the last decade. The Committee also notes with concern that this issue is of such significance that the C&AG has qualified the Department's 2015-16 accounts for these failures.

## **Recommendation 2**

The Committee recommends that the Department advance the reform of legal aid, focusing on:

- **reforming non-criminal legal aid remuneration rates and introducing standard fees as a priority. This should include the introduction of effective controls over the cost of expert witnesses;**
- **establishing a statutory registration scheme for all providers of publicly funded legal services; and**
- **establishing an effective management information system in the Legal Services Agency to support the process of reform.**

The reform programme must address all the above issues and be supported with a concise action plan including an explicit timetable and milestones for delivery. Further delay must be avoided and the Committee will seek an update on progress in 2017.

## **There is a need for improved transparency and accountability for legal aid payments made under direction from the Taxing Master**

18. For full civil legal aid cases heard in the High Court, the remuneration of legal representatives is determined by the Taxing Master who adjudicates on around £19 million of fees annually. The Taxing Master is an independent judicial figure and so sits outside the usual public sector accountability structures. The Committee considers that these arrangements lack transparency and accountability. In particular, there is no line of accountability from the Taxing Master through the Accounting Officer to this Committee. The Committee invited the Taxing Master to give oral evidence but she responded that it would not be appropriate. The Taxing Master did subsequently provide a written response to the Committee's questions.
19. The Committee was alarmed in the extent to which legal representatives have had their claims reduced as a result of the Taxing Master's deliberations. Figures provided by the Department for the years 2013-14 to date show that nearly 90 per cent of bills were reduced after taxation. In terms of value, this represents a reduction of £9 million (13 per cent) in claims with a total value of £69 million.
20. The Committee considers that this represents an unacceptable level of claims submitted by the legal profession that are disproportionate or not reasonably incurred and further supports the need for urgent reform.

### **Recommendation 3**

**The Committee recommends that the Department conducts a review of how expenditure currently adjudicated by the Taxing Master can properly be brought under the purview of the Accounting Officer. In the meantime, the Legal Services Agency must have a complete and detailed analysis of adjustments to claims to establish possible patterns of over claiming.**

## **The Legal Services Agency's counter fraud arrangements are weak**

21. Managing the risk of fraud should be a key priority for any public body. Managing the risk of fraud depends upon the creation of a robust counter-fraud culture, and adequate controls within an organisation's operations. Within the

legal aid system there is a need to consider frauds committed against the legal aid fund by both assisted persons and by legal representatives. The Committee is concerned at the lack of controls to identify potential fraud and that the Agency's focus for its anti-fraud activity is more heavily weighted towards assisted persons than legal representatives.

22. The need for pro-active counter fraud arrangements was a key recommendation in the Committee's 2011 report. Despite this, there has been little substantive improvement. This has resulted in the C&AG qualifying the Agency's accounts consistently over the years.
23. The Committee is not convinced by the Agency's assertions that it is developing a strong counter fraud culture. The Agency's counter fraud strategy is not comprehensive or embedded in day to day management. Internal controls are inadequate to prevent and detect fraud. The Agency has reduced the number of staff in its fraud unit, leaving it under-resourced and there is little evidence to suggest that counter fraud work is effective. Furthermore the Agency has not been pro-active in harvesting and using management data to underpin its counter-fraud arrangements. The Committee is of the view that no effective counter-fraud arrangements exist within the Agency.
24. The Departmental Accounting Officer is responsible for ensuring the effective and efficient delivery of legal aid services in Northern Ireland. The Committee is of the view that the long-standing issues it has identified stem from a failure of leadership to drive forward much needed reform. The Committee considers that there is a clear need for the Accounting Officer to instigate a capability review of the Agency's leadership team, including the Department's sponsorship arrangements, to ensure that it is adequately resourced and has the necessary skills, experience and culture to deliver a major change programme.

#### **Recommendation 4**

**The Committee recommends that the Agency establishes a method of measuring the level of fraud within the legal aid system, and to develop proactive risk-based counter fraud measures. These measures should address specific issues raised continually by the C&AG and build a strong culture of fraud awareness within the Agency. The Department must**

**demonstrate an active role in overseeing this work, and drive the establishment effective counter-fraud arrangements within the Agency.**

#### **Recommendation 5**

**The Committee recommends that the Departmental Accounting Officer instigates a capability review of the Agency's leadership team, including the Department's sponsorship arrangements to ensure that it is adequately resourced and has the necessary skills, experience and culture to deliver a major change programme.**



## Links to Appendices

Minutes of Proceedings can be viewed [here](#)

Minutes of Evidence can be viewed [here](#)

Correspondence can be viewed [here](#)

Other Documents relating to the report can be viewed [here](#)

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