

Email to committee.justice@niassembly.gov.uk

For the attention of Christine Darrah

Dear **Christine**

Thank you for your letter dated 4 April 2014 seeking comments on the Legal Aid and Coroners' Courts Bill. I have set out the Law Centre's comments below:-

Legal Aid Part 1

The provision to designate a director of legal aid casework is identical to provisions contained in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 introduced in England and Wales. The Westminster joint committee on human rights reported that it was not satisfied that the legislation in Britain provided sufficient institutional guarantees that the independence of the proposed director of legal aid casework would not be compromised. In particular, the committee was concerned about preventing any conflict of interest arising when making decisions about the availability of legal aid to challenge decisions of the government. These concerns were subsequently rejected by the government.

We share two concerns about the independence of the director of legal aid casework. The first is around challenges to government and the second is around cases which may have significant financial consequences to the legal aid fund (for example, a lead public interest case where many other cases may follow). The provisions as drafted provide that the Director is legally obliged to comply with directions given by the Department, while the Department must not provide a direction or guidance in relation to an individual case. This does not appear to preclude any direction on a class of cases. At the same time, the Department must ensure that the Director acts independently when applying a direction or guidance in relation to an individual case.

On our reading of the legislation there appears to be no impediment to the Department instructing the Director of Legal Aid Casework in a way which restricts decision-making across a class of cases which will impact indirectly on a particular case without addressing the specific case itself.

We would therefore suggest the following amendments.

To clause 3 line 27 by adding after functions the words
'save where this compromises the director's independence'
to clause 3 line 32 after the word case add the words
'or to a class of cases where it unreasonably impinges on the Director's ability to act independently in an individual case'.

These amendments should provide further safeguards to the independence of the Director of casework.

We welcome the Department's commitment to publish any directions or guidance. Nonetheless, we would suggest that the committee obtain an unambiguous assurance as to where the directions and guidance will be published so that it is clear that such directions and guidance are made widely available and accessible to interested parties.

The annual reports of the Legal Services Commission have regularly been published more than 12 months after the end of the relevant financial year covered by the report. As a result, we would suggest an amendment to clause 5 line one after the word practicable add

“and in any event within nine months’.

This will copper fasten the commitment to provide a timely report.

Coroners' Courts

We welcome the clause to make the Lord Chief Justice the President of the coroners' court.

We would also support the proposal of the Attorney General to provide an additional power to access documents. Deaths in hospital or after treatment are cases that regularly proceed to inquests. The recent experience of public enquiries has been that it is not always easy to access all relevant material in a timely and straightforward manner. In the interests of openness, administrative and financial efficiency we would support a clause enabling the Attorney General as an independent law officer to obtain all papers. We would not circumscribe this power to cover only deaths that occur in hospital in recognition of the fact that the principles enunciated above apply in other deaths that may fall within the ambit of the Attorney General's powers to direct an inquest.

I hope this submission is of some assistance to the committee in their deliberations.

Yours sincerely

Les Allamby

Director
Law Centre(NI)