



Legal Aid
Agency

Director of Legal Aid Casework Annual Report 2013-14



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Report presented to Parliament pursuant to section 7 (4) of the Legal Aid,
Sentencing and Punishment of Offenders Act 2012.

Ordered by the House of Commons to be printed 24 June 2014.

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This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at: Legal Aid Agency, 102 Petty France, London, SW1H 9AJ.

Print 9781474105958

Web 9781474105965

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

ID 04061406 06/14

Printed on paper containing 75% recycled fibre content minimum

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Foreword

I am pleased to present the Annual Report of the Director of Legal Aid Casework for 2013-14.

This report is the first of its kind following the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO Act). It documents the work carried out by the Legal Aid Agency (LAA) when exercising my functions as Director under the LASPO Act to make determinations on the provision of legal aid in individual cases.

This has been a significant year in the context of legal aid, and I have been pleased with the way that staff in the LAA have responded to the changes brought about by the LASPO Act. Their hard work and dedication has ensured that standards of service and decision-making have been maintained through a potentially difficult transitional period.

In the first few months following the LASPO Act, the LAA was inundated with applications for services under the previous legal framework. Over Easter 2013, 10,000 legal aid applications were received in a matter of days. The Agency responded well to this challenge, temporarily reorganising its workforce to deal with the surge without compromising standards.

The organisation has continued to adapt well to the changes made under the LASPO Act. There have, of course, been a few isolated issues that have arisen under the new framework. These are covered in more detail later in this report. By and large, however, the Agency has worked to build on the improvements to its case management functions that were started prior to the implementation of the LASPO Act.

Looking to the future, it is important to maintain the strong start made under the new scheme. As the LAA continues to implement the Government's proposals for reform to civil and criminal legal aid, and as further initiatives to expand digital working are rolled out, the Agency is committed to ensuring that it continues to make high quality and timely decisions on individual cases.



Matthew Coats
Director of Legal Aid Casework
24 June 2014

Introduction

1. The Director of Legal Aid Casework (the Director) is appointed by the Lord Chancellor under section 4 of the LASPO Act. The role of the Director is to make determinations on legal aid in individual cases.
2. The Director acts independently from the Lord Chancellor and clear internal processes and structures have been put into place in the LAA to ensure this independence is maintained. These are set out in more detail in this report.
3. In practice, many of the functions exercised by the Director are delegated to the LAA. The LAA is an executive agency of the Ministry of Justice (MoJ) which came into existence on 1 April 2013. This followed the abolition of the Legal Services Commission, a Non-Departmental Public Body sponsored by the MoJ, which had previously made determinations on legal aid in individual cases.
4. The role of the Director and the Chief Executive of the LAA may be held by the same person. Currently both roles are held by Matthew Coats. However different accountability and reporting arrangements exist for the two roles.
5. This report explains how the Director has carried out the functions specifically entrusted to him under the LASPO Act over the last financial year. The LAA is separately publishing its Annual Report and Accounts which covers the wider remit of the organisation.

Interaction with the Lord Chancellor

6. Under the LASPO Act, the Lord Chancellor is able to issue directions and guidance to the Director about how to carry out his functions, but he must not issue such guidance in relation to individual legal aid applications. The Director must comply with any directions given and have regard to any guidance issued.
7. The Lord Chancellor has not issued any directions under these powers over the last year. He has, however, published three guidance documents.¹ These are as follows:
 - a. The Lord Chancellor's Guidance on Civil Legal Aid
 - b. The Lord Chancellor's Guidance on Exceptional Funding (Non-Inquests)
 - c. The Lord Chancellor's Guidance on Exceptional Funding (Inquests)
8. It is, of course, essential that the legal aid legislation and guidance laid down by the Lord Chancellor are applied in a consistent manner. In preparation for the LASPO Act coming into force a significant amount of training was provided to all LAA caseworkers, tailored according to the particular role of each casework team.
9. As required by the LAA Framework Document, the Director has also formally met with the Lord Chancellor to discuss how he has carried out his functions over 2013-14.² In this meeting, which took place on 3 April 2014, the Director updated the Lord Chancellor on his first year as Director and highlighted some of the trends that have emerged over the first year of the new legal aid scheme. This covered matters relating to the Exceptional Case Funding (ECF) scheme and ongoing litigation.

¹ These documents can be found at the following page on the LAA's website: <http://www.justice.gov.uk/legal-aid/funding/funding-guidance>.

² See paragraph 3.25 (<http://www.justice.gov.uk/downloads/publications/corporate-reports/legal-aid-agency/laa-framework.pdf>).

Casework issues

10. Given the magnitude of the changes that were made to civil legal aid it was inevitable that there would be some challenges in implementation. To date two noteworthy casework issues have arisen.
11. The first was where legal aid was granted in a number of cases despite providers appearing to indicate that the case in question was suitable for a conditional fee agreement (CFA)³. The LAA has now reviewed all of the cases affected. In nearly all of them, the solicitor has confirmed that they had actually intended to state that a CFA was not suitable for that matter. The cause of the confusion was a change in the wording on one of the LAA's forms which had apparently gone unnoticed by some providers. Once the LAA was made aware of the issue, it sent out communications alerting all providers to the new wording on the form and procedures were put in place to ensure any conflict on the form was checked before making a determination.
12. The second casework issue concerned the provision of legal aid for committal hearings arising within civil proceedings. A decision of the High Court in November 2013 confirmed that the changes resulting from the LASPO Act meant that these hearings would now largely fall under criminal legal aid rather than civil. This creates the potential for mixed civil and criminal legal aid for an individual within the same proceedings, and also raises the question of whether it is the responsibility of the courts or the LAA to issue criminal legal aid representation orders for the committal proceedings. The LAA is currently investigating whether any operational changes need to be made, or further communications issued, to clarify this point.
13. LAA decisions are dependent on the information provided in application forms. Over the last year, there has been a theme of insufficient information being provided at the first stage which can lead to additional cost and delay for the Agency, legal aid providers and the client making the application. The LAA has taken steps to improve application forms to make the information required clearer for providers and will continue to engage with providers through its team of contract managers to improve the quality of applications submitted.

³ Under the *Civil Legal Aid (Merits Criteria) Regulations 2013* many applications for Legal Representation can only be granted where the case is "not suitable for a conditional fee agreement".

The decision-making structure

14. To ensure decisions are made independently and consistently, the LAA has put in place a robust organisational structure with a number of review mechanisms. Decisions on individual cases are made by caseworkers in the LAA's Case Management directorate. This directorate is managed by Shaun McNally CBE, the Director of Case Management.
15. The Case Management directorate is divided into three groups, each managed by a Deputy Director:
 - a. Civil Case Management
 - b. Crime Case Management
 - c. High Cost Cases
16. Within Civil Case Management there are separate merits, means and billing teams, as well as two dedicated customer services teams. Within Crime Case Management, there is an operations team which determines fees, authorises payments, and deals with associated correspondence, as well as a National Courts Team, which handles means testing in criminal proceedings.
17. The High Cost Cases group deals with the most expensive and complex cases that are funded by the LAA. These teams are staffed with a higher proportion of lawyers to support effective merits decision-making. The three teams which make up High Cost Cases are: the High Cost Civil Team, the High Cost Crime Team and the ECF Team.
18. The ECF Team was set up by the LAA to process applications for ECF made under section 10 of the LASPO Act. This scheme covers funding for civil legal services that are not ordinarily within the scope of the legal aid scheme, but where the failure to provide legal aid 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.
19. ECF is a new scheme for the LAA to administer, and given the complexities of the legal issues that were likely to be involved (e.g. ECHR and EU law), the ECF Team includes experienced public lawyers.
20. Processes have been put in place to provide a robust quality assurance and quality control mechanism for these applications. In particular, the Principal Legal Advisor and the Director of High Cost Cases must approve all grants of ECF. Determinations can be challenged through a request for an internal review, and, to date, just over 25% of all decisions have been reviewed. The vast majority of these reviews upheld the original decision.

Overview of cases funded

21. Despite the changes to the scope of legal aid, the LAA still deals with a large number of applications for legal aid across different categories of law. Data on the number of applications for 2013-14 is contained in the LAA Statistical Report 2013-14.

Private law family – Evidence requirements

22. One of the most significant aspects of the reforms introduced by the LASPO Act was the change to the scope of civil legal aid and in particular the removal of legal aid for most private law family cases. Funding for these cases is now only available where the matter involves domestic violence or child abuse, and specific evidence needs to be provided before funding can be granted.
23. The most common forms of evidence that were used to meet the domestic violence evidential requirements for both Controlled and Certificated work were a protective injunction, evidence that a client had been admitted to a refuge or a letter from a GP or health professional. The most common forms of evidence that were used to meet the child protection evidential requirements for both Controlled and Certificated work were a letter from Social Services confirming a child protection plan was in place, a letter from Social Services confirming the child who was the subject of the proceedings had been assessed as at risk or a relevant unspent conviction or police caution for a child protection offence.

Exceptional Case Funding

24. As of 31 March 2014, the LAA had received 1,520 applications under the new ECF scheme.
25. Family is the largest category of law applied for under the ECF scheme. This is followed by immigration and inquests. Together the three categories make up the vast majority of ECF applications.
26. At the start of the year, as providers were getting used to the provisions of the LASPO Act, there were a substantial number of applications for categories of law that remained in scope. Although these ECF applications were rejected, the applications were passed to the in scope civil teams in the LAA to determine. Many of these applications were therefore ultimately granted. Providers' familiarity with the reforms has improved over the year and the number of applications rejected for being in scope reduced in the later months of 2013-14.

Appeals

27. Where an individual disagrees with the Director's determination that they do not qualify for legal representation or family help (higher), they can apply to an Independent Funding Adjudicator (IFA) for reconsideration of that decision (except where the application is for ECF).
28. The decision of the IFA on certain issues is binding on the Director. These are: any assessment of the prospects of success of a case, whether a matter has overwhelming importance to the client, the cost-benefit ratio of the proceedings, and discharge or revocation on the basis of the client's behaviour. Other recommendations will be referred back to the Director for reconsideration.

The Panel

29. A new Funding and Costs Appeals Review Panel was established on 1 April 2013 to deal with these appeals. Members are not employees of the LAA and act independently. There is also a Special Controls Review Panel (SCRP), which considers appeals relating to certain high cost cases and other more complex cases. The SCRP sits as a panel of three, whereas IFAs act separately and individually on written applications.
30. The Funding Review Panel comprises 162 solicitors and barristers who were selected according to their legal knowledge and expertise to decide appeals. The efficiency and quality of their decision-making is monitored regularly and a manager from the LAA meets with the Chair and Vice Chairs on a quarterly basis to review the workload, timeliness and quality of decision-making by the panel members, as well as gathering any learning points for the Agency.

Outcomes of appeals

31. The table below shows the number of appeals lodged by applicants in 2013-14 along with the outcomes of the appeals:

Number of appeals submitted to an IFA	2704
Number of appeals upheld by an IFA	480
Number of appeals submitted to SCRCP	68
Number of appeals upheld by SCRCP	17

Accountability

32. It is important that the way the Director's functions are carried out is open to public scrutiny. There are a number of mechanisms in place allowing interested parties to hold the Director to account. In particular, the LAA has an internal complaints procedure with an onward appeal to the Parliamentary and Health Service Ombudsman.
33. As a public body the LAA can also be scrutinised through all the standard constitutional mechanisms. For example, Members of Parliament and Peers can table parliamentary 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.

Parliamentary questions and Freedom of Information Act requests

34. In 2013-14 the LAA received 26 requests for information under the Freedom of Information Act 2000 relating to the Director's functions. In the main, the questions related to the operation of the ECF scheme. In general, requestors were interested in the number of applications received and granted, but they also asked for a variety of background information (e.g. guidance documents).
35. In 2013-14, six parliamentary questions were tabled to the Secretary of State for Justice relating to the Director's functions. Again, all of these were about the ECF scheme and the focus was on the number of applications received and granted, as well as the length of time it takes for the LAA to make a determination. This level of scrutiny was expected given the importance of the ECF scheme within the LASPO Act reforms.

Complaints

36. The LAA investigates thoroughly every complaint it receives, using a two tier complaints procedure. The initial complaint gives the LAA the chance to review the way the matter was handled at a local level and put the situation right if possible. If an individual or provider is not content with the initial response, they can escalate their complaint to the Agency's Central Customer Services Team and then finally to the Parliamentary and Health Service Ombudsman via their local MP. The LAA has no record of any matters relating to the Director's functions under LASPO being referred to the Ombudsman last year.
37. The LAA does not separately record complaints which relate specifically to the remit of the Director; however a significant proportion of all complaints the LAA receives relate to individual cases and casework decisions.

Litigation

38. Another avenue of redress that can be used to hold the Director to account is litigation in the courts. In particular, as part of a public body the Director's decision-making can be challenged by way of judicial review.
39. Given the extensive changes introduced to the legal aid scheme, litigation was expected to clarify some of the boundaries, and generally speaking, the level of litigation is lower than anticipated. That said, there have been a number of hearings in 2013-14 with more listed for 2014-15.

40. Immigration challenges have featured strongly, both in relation to in scope funding under the LASPO Act and, as anticipated, the ECF scheme. Where lessons could be learned the LAA has ensured that appropriate steps have been taken to improve its approach in the future.
44. In April 2013 the LAA started to collect a revised set of equality information from legal aid applicants with a view to improving the relevance of its management information in order to better anticipate needs.

Equality and Diversity

41. The LAA is subject to the public sector equality duty (PSED) under section 149(1) of the Equality Act 2010. The LAA has been keenly aware of the need to have due regard to equality over the last year, especially given the changes to legal aid introduced by the LASPO Act.
42. In April 2013 the LAA adopted a set of diversity priorities, one of which – “to improve our capability to apply the equality duty to our work of delivering legal aid” – is most relevant to the role of the Director.⁴
43. During 2013-14 the LAA took steps to improve the knowledge and awareness of staff about equality and diversity issues. For example, the LAA required staff to complete equality and diversity training, which included training on the PSED, and issued guidance for the Funding and Costs Review Panel members on the duty. The Agency also encourages those who are responsible for reviewing decisions to play an active role in reviewing whether decisions are compliant with the PSED as well as being mindful of the need to have regard to equality in their own decisions.
45. The Director has reviewed the equal opportunity information that applicants for legal aid have provided during 2013-14 and there are no new or unexpected trends or matters of concern. Preliminary indications suggest that the LAA is continuing to serve people with a disability, diverse ethnic groups and male and female clients. LAA form changes have provided more information about the number of clients who may be blind, visually impaired, deaf, hard of hearing, have a learning disability or a mental health condition. The LAA is publishing statistical data relating to the diversity of legal aid clients as part of the LAA Statistical Report 2013-14, and the Director will keep this information under review over the coming year.

4 The LAA Annual Report and Business Plan separately report on wider work against the equality and diversity priorities.

Conclusion

46. It has been a busy and challenging first year as the Director of Legal Aid Casework. The careful planning and contingency work that was put in place prior to the LASPO Act paid off in terms of the LAA's ability to deal with the surge of cases prior to the Act coming into force and the daily challenges faced by casework teams in making effective decisions under a very different legal aid scheme.
47. Over the course of next year, the LAA will be using the lessons learned from the first year of the LASPO Act to ensure that the decision-making of the Director of Legal Aid Casework remains consistent, transparent and above all independent during another set of reforms within the Legal Aid Transformation programme.
48. A copy of this report has been sent to the Lord Chancellor in accordance with section 7(3) of the LASPO Act. The Lord Chancellor will lay a copy of the report before Parliament.

ISBN 978-1-4741-0595-8



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