



Legal Aid
Agency

Director of Legal Aid Casework Annual Report 2014-15



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Presented to the House of Commons 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 10 June 2015.

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

Print ISBN 9781474120579

Web ISBN 9781474120586

ID 01061522 06/15

Printed on paper containing 75% recycled fibre content minimum

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

Contents

Foreword	1
Introduction	2
Interaction with the Lord Chancellor	2
Casework issues	3
The decision-making structure	4
Overview of cases funded	5
Appeals	6
Accountability	7
Conclusion	9

Foreword

I am pleased to present the Annual Report of the Director of Legal Aid Casework for 2014-15.

This report is the second of its kind following the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO Act).

The Director of Legal Aid Casework is a role created by the LASPO Act that is focused on decision-making on individual legal aid applications. The Director has sole responsibility for individual cases which ensures that decision-making in this area is independent from Government.

This report provides a summary of the work carried out by the Director, decisions made and the processes followed to maintain the independence of the decision-making process for granting legal aid.

I have undertaken this role since implementation of the LASPO Act on 1 April 2013 and I report to Parliament annually on how I have executed this duty.

As the role of Director remains relatively new, there have been a few adjustments to the regulatory framework it operates within over the

past year. Looking forwards, it is likely that there will continue to be refinements.

Exceptional Cases Funding (ECF) continues to be an area for comment, most recently in the report of the Justice Select Committee of March 2015¹. The Committee considered the changes to civil legal aid made under the LASPO Act and made a number of recommendations for both the Ministry of Justice (MoJ) and the Legal Aid Agency (LAA). Some of these related to casework and are currently under consideration.

I am committed to building on the first two years of the LASPO Act to ensure that the Director's decision-making remains high quality, consistent, transparent and independent.



Matthew Coats
Director of Legal Aid Casework
8 June 2015

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 the provision of 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 that 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 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 the provision of legal aid in individual cases.
4. The Director is supported by the LAA Board in ensuring that robust practices are in place to maintain the independence of the decision-making process for granting legal aid.
5. The role of the Director and the Chief Executive of the LAA may be held by the same person. However, different accountability and reporting arrangements exist for the two roles. Currently, both roles are held by Matthew Coats.
6. 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

7. 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.
8. The Lord Chancellor has not issued any directions under these powers over the last year. However, in 2014-15 the Lord Chancellor published two new guidance documents² as follows:
 - 'The Lord Chancellor's Guidance – determining eligibility (means)'. This sets out the key elements that must be considered by the Director in determining an individual's financial eligibility for civil legal aid.
 - 'Notice to the Director of Legal Aid Casework: Lord Chancellor's guidance on exceptional funding (non-inquests)'. This added to the existing 'Lord Chancellor's Guidance on Exceptional Funding (Non-Inquests)' to reflect new relevant case law which is referred to later on in this report.
9. The Lord Chancellor has also issued updates to his guidance (under section 4 of the LASPO Act) as follows:
 - June 2014 – to take account of the new Single Family Court
 - January 2015 – to include additional paragraphs on Terrorism Prevention and Investigation Measures.

² These documents can be found on-line at <https://www.gov.uk/funding-and-costs-assessment-for-civil-and-crime-matters#lord-chancellors-guidance>

Casework issues

10. To ensure that the legal aid legislation and guidance laid down by the Lord Chancellor are applied in a consistent manner, training has continued to be provided to all LAA caseworkers, tailored according to the particular role of each casework team.
11. 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 2014-15. In this meeting, which took place on 1 June 2015, the Director updated the Lord Chancellor on his second year as Director and highlighted some of the themes that have emerged over the second year of the new legal aid scheme and lessons learned. This meeting covered the matters referred to in this report.
12. The changes to the civil legal aid scheme that were introduced by the LASPO Act in 2013 were significant. As was the case last year, there have continued to be further challenges to the legal aid funding scheme.
13. Of particular importance is the case of *Teresa Gudaviciene v Director of Legal Aid Casework and the Lord Chancellor* [2014] EWHC 1840 (Admin) and [2014] EWCA Civ 1622 (hereafter *Gudaviciene*). This was a challenge to the ECF scheme and is covered in more detail in the 'Litigation' section below. At first instance the Administrative Court in *Gudaviciene* concluded that 'refugee family reunion' cases (which were on the face of it taken out of scope of funding under the LASPO Act) were 'in scope'. Whilst the operational and administrative impact of this turn of events was negligible, for a brief period these cases were in scope for civil legal aid and so were not subject to the ECF scheme. The Court of Appeal subsequently reversed that ruling so that the only basis for the continued provision of civil legal aid services in such cases is by way of the ECF scheme.
14. The LAA has been working with Her Majesty's Courts and Tribunals Service (HMCTS – another executive agency of the MoJ) to streamline and centralise criminal legal aid processes. Previously, criminal legal aid applications were processed on behalf of the Director by HMCTS staff in more than 120 locations. This work has now been transferred and centralised into three locations within the LAA to enhance the quality of decision-making and bring about efficiency savings. This transfer (referred to as 'transfer of grant') will be complete by the end of June 2015.

The decision-making structure

15. As a result of the transfer of criminal legal aid applications to the LAA, existing civil caseworkers have been re-deployed and trained to deal with these applications. This re-deployment and training has been introduced on a phased basis, reflecting the manner in which the transition is taking place.
16. Significantly, the LAA has also initiated a number of IT enhancements to support the transfer. This includes creating the ability for defence practitioners to apply for criminal legal aid online and instigating an electronic link between the magistrates' court IT system and the LAA to share information, so facilitating better decision-making.
17. To ensure decisions are made independently and consistently, the LAA has a robust organisational structure with a number of review mechanisms. Legal advice for the Director is provided by the Central Legal team with lawyers co-located from the Government Legal Department, who act solely for the LAA.
18. Decisions on individual cases are made in line with the scheme of delegation by caseworkers in the LAA's Case Management directorate, which is managed by Shaun McNally CBE, the Director of Case Management.
19. The Case Management directorate is divided into three groups, each managed by a Deputy Director:
 - Civil Case Management
 - Crime Case Management
 - High Cost Cases.
20. Within Civil Case Management there are separate merits, means and billing teams, as well as two dedicated customer services teams.
21. Crime Case Management now includes the granting of criminal legal aid (the 'transfer of grant' work referred to above) and represents the majority of the decision-making in relation to the means test and 'Interests of Justice' test for applications for legal aid in the magistrates' and Crown Courts. In addition, a National Courts Team handles complex means assessments and hardship reviews. There are also separate teams handling claims for work done in

Overview of cases funded

the magistrates' courts and Crown Courts, as well as a range of requests for prior authority or prior approval. Both the High Cost Crime team and the National Taxing Team transferred into Crime Case Management in January 2015.

22. The High Cost Cases group deals with the most expensive and complex cases that are funded by the LAA. This team is staffed with a higher proportion of lawyers to support effective merits decision-making. The two teams which make up High Cost Cases are the High Cost Civil team and the ECF team.
23. The ECF team was set up by the LAA to process applications for ECF made under section 10 of the LASPO Act. The ECF 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.
24. Processes are in place to provide robust quality assurance and quality control mechanisms for these and other high profile applications. In particular, the Principal Legal Advisor and the Head of High Cost Cases must approve all grants.
25. Although the LASPO Act reduced the scope of the civil legal aid funding scheme over two years ago, the LAA still deals with a significant number of applications for legal aid across different categories of law. The LAA publishes statistics on numbers of applications within the Legal Aid Statistics bulletin. This is published every quarter, and statistics covering the period to the end of March 2015 will be published online in late June 2015³.
26. Funding for most private law family cases is only available where the matter involves domestic violence or child abuse, and specific evidence needs to be provided before funding can be granted. In April 2014, following consultation with stakeholders, revised evidence requirements were introduced in the Regulations to make it easier to acquire the necessary evidence. Statistics on the number of grants made in relation to the evidence requirements are included within the Legal Aid Statistics bulletin.
27. The official statistics for ECF applications and determinations are also included in the Legal Aid Statistics bulletin. The volume of applications has remained at roughly the same level since April 2014. Most of the applications are made by solicitors but a small percentage are made directly by applicants.
28. The ECF Team consider cases on an individual basis, in light of the facts, the

Private law family – evidence requirements

Exceptional Cases Funding

³ See <https://www.gov.uk/government/collections/legal-aid-statistics>

Appeals

statutory requirements for funding and having regard to the guidance on ECF and case law. As referred to elsewhere in this report, ECF cases and the ECF scheme have been the subject of challenge over the course of the year. The data shows that there has been an increase in the number of applications granted after these judgments.

29. The majority of ECF applications are in the immigration and family areas of law and funding for inquests. The funding of advocacy at inquests also forms a high proportion of the granted cases.
30. 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. Where the application is for ECF or if the determination on behalf of the Director is that the case is not in scope for funding, there is only a right of internal review. Statistics on numbers and outcomes of appeals are included in each annual edition of the Legal Aid Statistics bulletin.
31. The decision of the IFA on certain issues are 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

32. IFAs are members of a Funding and Costs Appeals Review Panel. Panel members are not employees of the LAA and act independently. There is also a Special Controls Review Panel which is formed of three members who consider appeals relating to certain high cost cases and other more complex cases.
33. The Funding and Costs Appeals Review Panel comprises 152 solicitors and barristers selected according to their legal knowledge and expertise to decide appeals. The efficiency and quality of their decision-making is monitored regularly and the

Accountability

LAA meets with the Chair and Vice-Chairs quarterly to review workload, timeliness and quality of decision-making by the panel members and to gather learning points for LAA staff to act upon.

34. During this year's annual training workshop the group worked together to improve the consistency of decision-making, make more efficient and effective allocation of appeals and plan future specialist workshops targeted at specific areas of law. The first of these workshops, for crime practitioners, has subsequently been held and both this and the annual event were very well received.
35. There has been no change to the manner in which the Director's functions continue to be open to public scrutiny. It is important that the same level of accountability is maintained. The mechanisms in place allowing the LAA's work to be scrutinised and interested parties to hold the Director to account are explained below.

Parliamentary questions and Freedom of Information Act requests

36. Members of Parliament and Peers can table parliamentary questions asking about the work carried out by the Director in respect of cases or individuals. Similarly, the public are able to submit requests about information held by the LAA under the Freedom of Information Act 2000.
37. In 2014-15 the LAA did not receive any requests for information relating to the Director of Legal Aid Casework specifically. There were 26 requests for information under the Freedom of Information Act and five parliamentary questions relating to ECF, which is comparable to 2013-14.
38. As mentioned previously, the LAA now publishes statistics on ECF routinely, so many requesters have been directed towards those figures. Where the LAA receives a request for information about an individual legal aid client we will not disclose other than in limited circumstances. Information about an individual legal aid client is likely to be personal data and can only be released where the case meets the criteria set out within the Data Protection Act 1998.

Complaints

39. The LAA thoroughly investigates 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 LAA's Central Customer Services Team and then finally to the Parliamentary and Health Service Ombudsman via their local MP.
40. The LAA had one complaint referred to the Ombudsman last year which concerned a decision to refuse ECF for an inquest case. A decision is still pending.
41. 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

42. 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.
43. As referenced earlier in this report, the main challenges have been to the ECF scheme and ECF cases. On 13 June 2014, judgment was handed down by the Administrative Court in the case of Gudanaviciene. The claimants who were each seeking to challenge various immigration decisions,

successfully argued that they should have been granted legal aid under ECF. The Court found that the Lord Chancellor's Guidance on eligibility for ECF set too high a threshold. On 15 December 2014 the Court of Appeal handed down its judgment on appeal in the same case. Whilst some aspects of the judgment were overturned (in particular, the question of whether family reunion cases were in scope as mentioned previously) the Court of Appeal upheld the first instance decision on the Lord Chancellor's Guidance, which was found to be incompatible with Article 8 of the European Convention on Human Rights in immigration cases.

44. Another challenge of note in this period was R (Sunita Sisangia) v Director of Legal Aid Casework [2014] EWHC 3706 (Admin). This was a judicial review concerning what constituted abuse of position or powers by a public authority for the purposes of assessing the availability of civil legal aid funding under Paragraph 21 of Part 1 of Schedule 1 of LASPO 2012. The claim against the Director succeeded at first instance and the Court of Appeal has granted permission to appeal the judgment.

Equality and diversity

45. The LAA is subject to the public sector equality duty 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.
46. In April 2013 the LAA adopted a set of diversity priorities, one of which – "to

Conclusion

- improve our capability to apply the equality duty to our work of delivering legal aid” – is most relevant to the role of the Director.
- 47 During 2014-15 the LAA took steps to improve the knowledge and awareness of LAA staff about equality and diversity issues. For example, we mandated staff to complete Civil Service eLearning courses on Equality and Diversity Essentials and all line managers are expected to complete two additional courses on Unconscious Bias and Disability Awareness.
- 48 The LAA invite applicants for legal aid to provide us with some personal equality information. We have continued to collect a revised set of equality information that is clearer and of more use when anticipating the needs of potential legal aid applicants. In particular, the forms provide information about the number of clients who may be blind, visually impaired, deaf and hard of hearing, have a learning disability or have a mental health condition.
- 49 The Director has reviewed the equal opportunity information that recipients of legal aid provided during the first three quarters of 2014-15 to monitor the extent to which the LAA continues to cater for the diverse population of England and Wales. The LAA will publish statistics relating to the diversity of legal aid clients in 2014-15 as part of the Legal Aid Statistics bulletin, and the Director will continue to review this information over the coming year.
- 50 The second year of the LASPO Act has provided some clarity in relation to the new scheme, although ECF remains a focus for challenge and debate. I am committed to ensuring that decision-making is of good quality and customer-focused. The LAA’s continuous improvement programme will provide the mechanism for adaptation of our processes as appropriate. 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 978-1-4741-2057-9



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