



AN INSPECTION OF CRIMINAL LEGAL AID PROCESSING

THE EFFECTIVENESS OF THE
LEGAL AID MANAGEMENT
SYSTEM IN SUPPORTING THE
ACHIEVEMENT OF STRATEGIC
BUSINESS OBJECTIVES AND
IMPROVED SERVICE DELIVERY



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OBJECTIVES AND IMPROVED SERVICE DELIVERY

June 2022

Laid before the Northern Ireland Assembly under Section 49(2) of the Justice (Northern Ireland) Act 2002 (as amended by paragraph 7(2) of Schedule 13 to The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010) by the Department of Justice.

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LIST OF ABBREVIATIONS

AJR 1	Access to Justice Review 1
AJR 11	Access to Justice Review 11
ARAU	Appeals and Review Administrative Unit
Assessors	LSANI staff who assess cases for payment
Authorities	LSANI staff who approve specific pieces of work
C&AG	Comptroller and Auditor General (of the NIAO)
CJI	Criminal Justice Inspection Northern Ireland
DoJ	Department of Justice
DfC	Department for Communities
DoF	Department of Finance
DTLAP	Digital Transformation Legal Aid Project
DTS	Digital Transformation Services
EAJD	Enabling Access to Justice Division (of the DoJ)
ICOS	Integrated Courts Operation System (IT system in the NICTS)
KPI	Key Performance Indicator
LAMS	Legal Aid Management System
LSANI/the Agency	Legal Services Agency Northern Ireland
NIAO	Northern Ireland Audit Office
NICS	Northern Ireland Civil Service
NICTS	Northern Ireland Courts and Tribunals Service
NILSC	Northern Ireland Legal Services Commission
PAC	Public Accounts Committee
PMWG	Performance Measurement Working Group (in the LSANI)
PPS	Public Prosecution Service for Northern Ireland
PSNI	Police Service of Northern Ireland
SAU	Standards Assurance Unit (of the DfC)
SRS	Statutory Registration Scheme
UK	United Kingdom

Terminology

The term 'Suppliers' is used throughout this report to describe the legal representatives or practitioners, namely solicitors and barristers, who receive payments from the Legal Aid fund.

CHIEF INSPECTOR'S FOREWORD

The investment in and successful implementation of technology to support service delivery is a key milestone for the Legal Services Agency in their journey of organisational change and effective administration of criminal legal aid processing.

In recent years the Legal Services Agency has changed its governance, leadership and staffing structures while implementing a new business processing system and ensuring the benefits of it are realised.

This inspection report provides assurance that the Legal Aid Management System has reduced running costs and delivered improvements to criminal legal aid payments along with improved data on payments to suppliers and the use of public funds for criminal legal aid. However, there remain opportunities to ensure system functionality is fully utilised and continues to develop to meet business needs including the prevention and detection of fraud.

Adequate and timely funding for legal aid has been a long running issue in Northern Ireland. There is a risk that some of the benefits of investing in better systems, staff training, monitoring performance and achieving targets are hampered by the uncertainty and staggered flow of sufficient funding to pay solicitors and barristers claims that are rightly due.

Understandably, the legal profession are concerned that payments due to them are processed at the pace and quantum funding is made available.

This report makes three strategic and three operational recommendations to maximize the capabilities enabled by the technology investment and support further improvements to service delivery. They underpin the recognition that the Legal Service Agency, Department of Justice and Public Prosecution Service for Northern Ireland need to continuously foster good partnership relationships and policy development takes place in an environment that is well-informed by operational impacts and suppliers needs.

My thanks to the Lead Inspector, Muireann Bohill, and Inspectors Maureen Erne and David MacAnulty for carrying out this inspection.

I am particularly grateful to the leadership team and officials from the Legal Services Agency and Department of Justice Enabling Access to Justice Division for their co-operation and engagement during this inspection and also to the Public Prosecution Service for Northern Ireland and the Northern Ireland Courts and Tribunals Service for their input.

My thanks also to the representatives for and members of the legal profession who shared their experiences and views.



Jacqui Durkin

Chief Inspector of Criminal Justice
in Northern Ireland

June 2022



EXECUTIVE SUMMARY

From 2016-17 to 2020-21 the average total Legal Aid fund paid out each year was £80.6m and Criminal Legal Aid, on average, accounted for 47% of the total Legal Aid expenditure. The Legal Services Agency Northern Ireland (the Agency) was responsible for the cost of administering Criminal Legal Aid.

The Agency introduced a new case management system, the Legal Aid Management System to replace the old case management system, Phoenix. The Legal Aid Management System went live on 1 July 2019 at a cost of £8.5m to the end of the financial year 2019-20, rising to £9.7m by October 2021. The aim of the new system was to reduce administration costs, provide more timely access to Legal Aid case information for the Agency, the Department of Justice and the legal profession and improve reporting capability.

In the main, the objectives of the new system were achieved.

The monetary benefits anticipated from the implementation of the Legal Aid Management System were achieved. The headcount was reduced resulting in savings on staff. Annual operating costs had also reduced.

Significant progress had been made by the Agency to reduce the level of error. The official error rate for 2021 was 4.3%, a reduction of 10.6 percentage points from the previous year.

From January 2021, the Counter Fraud Unit had been working hard to establish effective systems for reporting fraud, identifying potential areas of fraud and investigating fraud.

The Agency had made significant progress in improving the accuracy of the estimate of provisions (money to cover a probable future expense) as a result of closure of inactive cases on the Legal Aid Management System. By 31 December 2021, 174,468 cases had been closed since August 2020, leaving 67,927 for provision purposes.

The effectiveness of any potential improvements in efficiencies with the Legal Aid Management System were impacted by the availability of Legal Aid funds to enable the Agency to discharge its statutory obligations. In the first nine months following the implementation of the Legal Aid Management System, there was an improvement in average Criminal Payment processing times. There was an increase in processing times in 2020-21 and the first six months of 2021-22 due to the introduction of Quality Assurance processes and the impact of insufficient Legal Aid funding.

The Agency had developed a revised suite of Key Performance Indicator targets to reflect the new and transformed business practices. However at the time of writing the report, the Agency had increased its Criminal Legal Aid processing time Key Performance Indicators from eight weeks to 12 weeks due to the lack of sufficient funds.

Contractual issues had impacted the efficiency of the Legal Aid Management System. The Northern Ireland Direct contract required the Legal Aid Management System to be a Minimum Viable Product, which delivered essential features. Changes were required to the Legal Aid Management System post implementation. However, due to the cessation of the NI Direct Strategic Partnership in late 2019, only priority changes could be progressed. These restrictions hampered the development of the Legal Aid Management System and required the Agency to procure a new contract in December 2021.

A number of areas requiring change were identified. Of particular urgency was the need for the Department of Justice and the Agency to review Exceptional Preparation (work substantially in excess of the amount done for similar cases because the case involved a very unusual or novel point of law or factual issue) as the increase in costs each year had a direct impact on Criminal Legal Aid processing.

The Agency recognised the importance of providing up-to-date training and guidance to its staff and had established a Training and Compliance Unit.

However, there was still work to be done around training and guidance to support staff to improve the efficiency of Criminal Legal Aid processing and to get the most benefit from the Legal Aid Management System.

To sustain the progress made regarding fraud, a strategy was required to clearly communicate the Agency's stance on fraud and the processes to deal with it effectively.

There was no source providing an up-to-date list categorising the seriousness of offences that the Agency could refer to when processing payments which impacted payment accuracy. The Public Prosecution Service for Northern Ireland should produce a list categorising offences and make this available to the Agency.

The Public Prosecution Service for Northern Ireland and the Agency had an information sharing agreement in place regarding the use of counsel and fees management of cases. However, these arrangements were not producing the intended results. Their current information sharing practices needed to be reviewed to put in place an effective process to ensure consistency of approach to assist with Criminal Legal Aid processing and forecasting.

The Legal Aid Management System Support Manager had a key role that was not clarified. A job description should be drafted for this key role to set out the priorities and requirements for the post as well as more effectively manage performance to achieve the most benefit from the Legal Aid Management System.

Staff were not utilising the existing processes to request changes to the system as they felt that changes they requested would not be implemented due to the contractual restrictions. The Agency needed to set up a forum at which staff could raise potential changes to the Legal Aid Management System and other issues impacting their ability to process claims effectively.

To assist the Agency with forecasting Court of Appeal expenditure, the Agency and the Northern Ireland Courts and Tribunals Service should add Court of Appeal cases to the Legal Aid Management System/Integrated Courts Operation System interface so that the Agency have a daily record of cases and their progress.

The Agency had benefitted from a significant senior leadership restructure and, in the event of changes, effective arrangements for handover and induction to ensure progress was sustained were needed.

RECOMMENDATIONS

STRATEGIC RECOMMENDATIONS

STRATEGIC RECOMMENDATION 1

The Department of Justice and the Legal Services Agency Northern Ireland should commence a review of Exceptional Preparation as soon as the review of the standard fees under the third statutory review of the 2005 Crown Court Rules is completed.

(paragraph 2.46)

STRATEGIC RECOMMENDATION 2

Within six months of publication of this report the Legal Services Agency Northern Ireland should update all relevant guidance for Criminal Legal Aid processing, the Legal Aid Management System and Legal Aid Management System Support.

(paragraph 3.34)

STRATEGIC RECOMMENDATION 3

Within six months of publication of this report the Legal Services Agency Northern Ireland should develop a training strategy and complete an action plan to improve the delivery of training.

(paragraph 3.34)

OPERATIONAL RECOMMENDATIONS

OPERATIONAL RECOMMENDATION 1

Within six months of publication of this report, the Public Prosecution Service for Northern Ireland and the Department of Justice should produce a list categorising offences and make this available to the Legal Services Agency Northern Ireland. This document should be updated when new offences are introduced.

(paragraph 2.27)

OPERATIONAL RECOMMENDATION 2

Within one month of publication of this report the Legal Services Agency Northern Ireland should develop and implement a job description for the role of Legal Aid Management System Support Manager.

(paragraph 3.23)

OPERATIONAL RECOMMENDATION 3

Within nine months of publication of this report the Legal Services Agency Northern Ireland should provide a Prevention, Detection and Response Fraud Strategy and an operational plan for delivery of the strategy.

(paragraph 3.76)

Areas for improvement identified by Inspectors during this Inspection are included within the report.

CHAPTER 1: INTRODUCTION

LEGAL SERVICES AGENCY NORTHERN IRELAND

- 1.1 The Legal Services Agency Northern Ireland (LSANI/the Agency) was created on 1 April 2015 as an Executive Agency within the Department of Justice (DoJ), upon dissolution of the Northern Ireland Legal Services Commission (NILSC). The Agency's vision was to be a responsive provider of high quality, digitally enabled services which supported individuals seeking justice. The role of the LSANI was 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 and ensuring that those members of society who qualified had fair and equitable access to legal advice, assistance and where appropriate, representation.

GRANTING CRIMINAL LEGAL AID

- 1.2 The LSANI had no control over the granting of Criminal Legal Aid to the legal profession. Under the Legal Aid legislation the Agency was responsible for managing the payments associated with Criminal Legal Aid, including Legal Aid as granted by the judiciary in Magistrates' Court, Youth Court, County Court, Crown and Court of Appeal proceedings. The LSANI also made payments for initial advice or assistance in a criminal matter and advice at the police station when a person was being interviewed by the police about criminal charges.
- 1.3 The Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 ('the 1981 Order') made provision for free Legal Aid in the Magistrates' Court. There were similar provisions dealing with free Legal Aid in the Crown Court (Article 29) and relating to free Legal Aid on appeal to the County Courts (Article 30).
- 1.4 To qualify for Legal Aid, the court had to satisfy itself on two matters:
- (a) **Means test** (are the means of an individual before the court insufficient to enable them to obtain Legal Aid); and
 - (b) **Merits test** (is it in the interest of justice that they should have free Legal Aid).

There were a number of factors known as the 'Widgery criteria'¹ which the courts took into account in applying the interests of justice. These included:

- the gravity of the criminal charge;
- the ability of the applicant to put forward his or her own case; and
- the nature of the defence.

If there were doubts as to whether the accused was entitled to Criminal Legal Aid, the courts had to resolve this in favour of granting it.

CRIMINAL LEGAL AID EXPENDITURE

- 1.5 From 2016-17 to 2020-21 the average total Legal Aid fund paid out each year was £80.6 million (m) and Criminal Legal Aid, on average, accounted for 47% of the total Legal Aid expenditure.² Due to the demand led nature of Legal Aid and the fluctuating volumes of cases shown in Table 1, there was no consistency in Criminal Legal Aid case volumes year on year.

Table 1: Total Number of Criminal cases paid 2020-21 to 2016-17.

	2020-21	2019-20	2018-19	2017-18	2016-17
Magistrates' Court Total	19,443	27,719	27,330	26,157	29,671
Crown Court Total	2,840	4,690	3,955	4,449	5,664
Court of Appeal	93	49	166	326	200
County Court Appeals	1,150	2,314	2,192	1,829	1,934
Extradition	85	158	53	150	163
Criminal Total	23,611	34,930	33,696	32,911	37,632

Source: LSANI

- 1.6 Comparing the volumes of Criminal Legal Aid cases each year with the yearly criminal expenditure (Table 3), the level of expenditure in Criminal cases from 2016-20 was mostly commensurate with case volumes (2020-21 was excluded due the impact of the COVID-19 pandemic). Chart 1 shows that the average case costs fluctuated from year to year with average costs increasing by £65 from 2016-17 to 2017-18 and then decreasing by £66 from 2017-18 to 2018-19.

1 Legal Aid Agency, *Work out who qualifies for criminal legal aid*, June 2014, updated January 2020, available at www.gov.uk/guidance/work-out-who-qualifies-for-criminal-legal-aid.

2 Source: LSANI.

Chart 1: Average case expenditure each year 2019-20 to 2016-17



Source: LSANI

- 1.7 The breakdown of total Criminal Legal Aid expenditure from 2016-17 to 2020-21 is shown in Table 2. From 2011-12 to 2014-15 the average yearly Criminal Legal Aid expenditure was £49m³ and from 2015-16 to 2019-20 the average yearly Criminal Legal Aid expenditure was £39.2m, an average reduction of 20%. In England and Wales the average reduction in Criminal Legal Aid expenditure up until December 2020 was 15.7%⁴ and in Scotland the percentage reduction in average Criminal Legal Aid expenditure from 2013-14, using the same comparative periods, was 12.3%.⁵

Table 2: Total Criminal Legal Aid Expenditure 2020-21 to 2016-17

	Annual Cost				
	2020-21	2019-20	2018-19	2017-18	2016-17
	£	£	£	£	£
Criminal Legal Aid	33,840,568	39,740,362	36,925,988	38,237,402	41,287,774

Source: LSANI

³ Taken from statistics provided by LSANI.

⁴ Statista, *Resource department expenditure limit (RDEL) of criminal and civil legal aid in England and Wales from 2005-06 to 2020-21, February 2022*, available at [Legal aid spending in England and Wales 2020 | Statista](#).

⁵ Statista, *Criminal, civil and children's legal aid expenditure in Scotland from 2013-14 to 2020-21, February 2022* available at [Legal aid spending in Scotland 2019 | Statista](#) and Law Society of Scotland, *Legal aid spending falls £31.8m in first COVID year, December 2021*, available at [Legal aid spending falls £31.8m in first COVID year | Law Society of Scotland \(lawscot.org.uk\)](#).

REFORM

- 1.8 The need for significant reform of the wider United Kingdom (UK) Legal Aid system had been recognised as costs had become unsustainable. Legal Aid spending in the UK was £1.4 billion in 1995-96 and reached around £2.2 billion in 2010.⁶
- 1.9 In Northern Ireland there had been a large increase in Legal Aid costs rising from £38m. in 2000-01 to £93m in 2010-11, with Criminal Legal Aid expenditure almost trebling during this period.⁷ The existing structures were not fit for purpose and in 2015 the NILSC became an Agency of the DoJ to improve accountability, set out roles and responsibilities and improve financial management. This also meant that the Agency staff became Northern Ireland Civil Service (NICS) officials and were managed under the NICS performance management system. This was welcomed as the need for better staff engagement, motivation and support through a properly implemented and maintained appraisal regime had been raised by Criminal Justice Inspection Northern Ireland (CJI) in 2013.⁸ In 2010 there were 160 staff in the NILSC and expenditure for staff and non-staff costs was £7.4m in 2009-10.⁹ In 2016 there were 121 staff¹⁰ in the Agency and expenditure for staff and non-staff costs was £5.2m.¹¹
- 1.10 The LSANI was responsible for the cost of administering Criminal Legal Aid but Criminal Legal Aid expenditure was not within the Agency's control. Legislative reforms were introduced by the DoJ to reduce Criminal Legal Aid expenditure. The 2011 Rules¹² were intended to deliver significant savings by reducing the standard fees payable across the range of cases heard in the Crown Court, and abolishing Very High Cost Cases. It was anticipated that this would reduce Crown Court expenditure to £17m. by 2013-14. Table 3 shows the expenditure of Criminal Legal Aid in each area from 2016-17 to 2020-21 and although it took longer than anticipated, savings had been mostly achieved from 2016-17 to 2019-20 as Crown Court expenditure had decreased with an average yearly expenditure of £17.7m.

6 *The Guardian*, Bowcott O, *Legal aid: how has it changed in 70 years?* December 2018, available at [Legal aid: how has it changed in 70 years? | Legal aid | The Guardian](#).

7 Northern Ireland Audit Office (NIAO), *Managing Criminal Legal Aid*, June 2011 available at [Managing Criminal Legal Aid | Northern Ireland Audit Office \(niauditoffice.gov.uk\)](#).

8 CJI, *A corporate governance inspection of the Northern Ireland Legal Services Commission*, November 2013 available at [CJI - Criminal Justice Inspection Northern Ireland - Northern Ireland Legal Service Commission](#).

9 Northern Ireland Assembly, *Research and Information Service Briefing Paper, Paper 117/11 Structures for the Delivery of Legal Aid and Policy Matters September 2011*, available at [Structures for the Delivery of Legal Aid and Policy Matters \(niassembly.gov.uk\)](#).

10 LSANI Addendum Business Case (internal document provided by the LSANI for the Inspection).

11 LSANI Outline Business Case (internal document provided by the LSANI for the Inspection).

12 *The Legal Aid for Crown Court Proceedings (Costs) (Amendment) Rules (Northern Ireland) 2011* available at [The Legal Aid for Crown Court Proceedings \(Costs\) \(Amendment\) Rules \(Northern Ireland\) 2011 \(legislation.gov.uk\)](#).

Table 3: Criminal Legal Aid Expenditure 2020-21 to 2016-17

	2020-21	2019-20	2018-19	2017-18	2016-17
	£	£	£	£	£
Criminal Appeals	4,184,415	2,310,290	3,682,525	4,926,644	4,762,372
Magistrates' Court (including Exceptionality)	11,504,711	17,467,823	15,881,909	15,944,144	17,123,596
Crown Court (including Exceptionality)	17,624,496	19,028,205	16,572,876	16,546,046	18,538,110
Crown Court (Very High Cost Cases)	0	0	0	0	0
Appeals, Extradition	526,947	934,043	788,678	820,568	863,697
Criminal Legal Aid Total	33,840,568	39,740,362	36,925,988	38,237,402	41,287,774

Source: LSANI. Note: Figures may not sum up to the annual totals due to the effects of rounding.

- 1.11 Further reforms were required to reduce Criminal Legal Aid expenditure and these are described below.

Court of Appeal cases

- 1.12 A phased approach to a remuneration reform project was planned by the Enabling Access to Justice Division (EAJD) of the DoJ, regarding criminal appeals to the Court of Appeal, with the first phase focusing on appeals against sentence. The Public Prosecution Service for Northern Ireland (PPS) and the LSANI provided Inspectors with a breakdown of counsel expenditure for all Court of Appeal cases from 2015-16 to 2020-21 and this is set out in Table 4.

Table 4: Total Court of Appeal Expenditure 2020-21 to 2015-16

Year	2020-21	2019-20	2018-19	2017-18	2016-17	2015-16
	£	£	£	£	£	£
Prosecution Counsel Expenditure	210,500	219,738	259,716	263,049	501,353	380,656
Defence Counsel Expenditure	3,088,060	1,603,722	2,698,747	3,408,048	3,259,224	3,974,912

Sources: LSANI and PPS

- 1.13 The figures highlighted the difference in expenditure on defence counsel and prosecution counsel involving significant amounts of money. The EAJD informed Inspectors that due to vacancies in their Criminal Legal Aid branch they had not been able to progress this project but that when the vacancies were filled this matter would be progressed.

Appointing more than one counsel

- 1.14 In 2015 Access to Justice and the 2017 Northern Ireland Audit Office (NIAO) reports¹³ recommended a radical reform of the rules concerning funding two counsel under the Legal Aid scheme. This issue had also been raised in CJI's 2011 inspection report on the *Use of Legal Services in Northern Ireland*.¹⁴
- 1.15 Prosecution and defence counsel were funded by public money and this needed to be aligned. Defence counsel became involved in a case when instructed by a solicitor and application was made to the judiciary for certification of one or more counsel. The PPS maintained panels from which counsel was assigned and the decision as to whether to instruct counsel was authorised at Assistant Director level. The impact of the different arrangements was that there was significantly greater availability of more than one counsel for the conduct of defence cases compared to the prosecution. Table 5 shows that between 2016 and 2021 two counsel were certified for the defence in more than double the number of Crown Court cases compared with the prosecution.

Table 5: Crown Court cases in which more than one counsel instructed 2016-17 to 2020-21

	Defence	Prosecution
Year	2016-17 to 2020-21	
Total number of cases where more than one counsel certified	1,458	633

Sources: LSANI and PPS

Explanatory note: For defence cases with co-defendants where multiple certificates had been granted under the same case reference this was counted as one case.

- 1.16 The responsibilities of prosecution and defence teams were different and cases had different levels of complexities, however, the concept of equality of arms required that there was procedural equality.

13 2015 Access to Justice II Report (AJR11); and Northern Ireland Assembly Public Accounts Committee (PAC) Report on Managing Criminal Legal Aid, Northern Ireland Audit Office (NIAO) January 2017 available at [Report on Managing Legal Aid \(niassembly.gov.uk\)](http://niassembly.gov.uk).

14 CJI, *An inspection on the Use of Legal Services in Northern Ireland*, June 2011, available at <http://www.cjini.org/getattachment/503670ba-f0a8-4fc8-9842-725c09c0100e/Use-of-Legal-Services-by-the-Criminal-Justice-System.aspx>.

ACCOUNTS QUALIFICATION AND REPORTS ON THE LSANI

- 1.17 Since 2003 the NIAO had been qualifying the accounts of the LSANI because the Agency's response to suspected frauds was not effective. The NIAO found that the counter fraud strategy was not comprehensive or embedded in day-to-day management and although internal controls had been established they were inadequate to prevent and detect fraud. Further, the Agency did not have an effective method to predict future Legal Aid expenditure.
- 1.18 There had been extensive reporting on the operation of the Agency, many of which were critical of several areas of the LSANI's operations and made numerous recommendations for change. The key recommendations from principal reports¹⁵ regarding Criminal Legal Aid processing, the focus of this inspection, were that the DoJ and the Agency:
- introduce efficient business processes, maximising the use of IT, keeping running costs to a minimum and ensuring that business of the courts is not impeded;
 - establish an effective management information system in the LSANI to support the process of reform;
 - establish robust control mechanisms for all of the payments it makes;
 - produce the information necessary to begin to manage spending on Criminal Legal Aid effectively; and
 - establish a method of measuring the level of fraud within the Legal Aid system and develop proactive risk-based counter fraud measures.
- 1.19 These recommendations were the catalyst for the replacement of the old case management system used by the LSANI, Phoenix, and the introduction of the new case management system, the Legal Aid Management System (LAMS).

THE LEGAL AID MANAGEMENT SYSTEM

- 1.20 The administration of Legal Aid in Northern Ireland under the previous case management system (Phoenix) was focused on processing paper-based applications from solicitors on behalf of their clients. The LSANI created a physical Legal Aid case file for each new Legal Aid application. Phoenix was in use for over 18 years and had not kept pace with advances in technology. It stored high-level information about a case and was used to produce documentation and track the location of the physical Legal Aid case file. All documentation, supporting evidence and correspondence relating to that case were stored as hard copy in the physical file.

¹⁵ 2011 Access to Justice Report (AJR1); 2011 Report on Managing Criminal Legal Aid, Northern Ireland Audit Office (NIAO) Public Accounts Committee (PAC); 2015 Access to Justice II Report (AJR11); and Northern Ireland Assembly Public Accounts Committee (PAC) Report on Managing Criminal Legal Aid, Northern Ireland Audit Office (NIAO) January 2017 available at [Report on Managing Legal Aid \(niassembly.gov.uk\)](https://www.niassembly.gov.uk).

- 1.21 The Agency's ability to discharge its duties was adversely affected by the inadequacies of Phoenix. When compared to other UK jurisdictions (Scotland, England and Wales), the Northern Ireland Legal Aid system was unable to provide any of its services to either the practitioner or the assisted person online or electronically. The Phoenix system was not considered to be fit for purpose and could not support the changes required for the Agency to meet its obligations.
- 1.22 Digital Transformation Services (DTS) was responsible for *nidirect*, the official government website for Northern Ireland citizens, and the programme of work on digital transformation. The LSANI was selected to participate in the DTS 16 x 16 programme to design and develop a digital case management system for Legal Aid. The Agency was required to make best use of NICS Shared Services¹⁶ and this obligated the Agency to deliver its new system through the NI Direct contract.
- 1.23 The new LAMS went live on 1 July 2019 at a cost of £9.7m. The aim of the new system was to reduce administration costs, provide more timely access to Legal Aid case information for the Agency, the DoJ and the legal profession and improve reporting capability.

THIS INSPECTION

- 1.24 This inspection aimed to examine Criminal Legal Aid processing with a particular focus on the effectiveness of the LAMS in supporting the achievement of strategic business objectives and improved service delivery. Inspectors aimed to examine and assess the outcomes of the LAMS and delivery mechanisms against project objectives. Inspectors undertook fieldwork within the Criminal Justice Agencies involved with facilitating the administration of Criminal Legal Aid; namely the LSANI, the PPS and the Northern Ireland Courts and Tribunals Service (NICTS). Inspectors also engaged with DoJ officials in the EAJD. The roles of the organisations in Criminal Legal Aid processing are shown in Table 6.

Table 6: Role of the organisations in Criminal Legal Aid processing

Organisation	Role in Criminal Legal Aid Processing
LSANI	Effective and efficient administration of Criminal Legal Aid expenditure.
EAJD	Development of Criminal Legal Aid legislation and policy and working with the LSANI to implement reform.
PPS	Sharing information with the LSANI on the use of counsel and fees management of Crown Court and Court of Appeal cases to promote consistency of approach and value for money.
NICTS	Providing the LSANI with access to Criminal case information for the purpose of verifying and providing accurate Criminal Legal Aid payments.

¹⁶ NICS/DoJ Extension of Shared Services Directive (internal NICS document provided by the LSANI for the inspection).

- 1.25 The majority of inspection fieldwork was completed on site and face-to-face, having regard at all times to public health guidance around COVID-19. Inspectors completed individual or focus group interviews with staff at various levels within the LSANI. Inspectors triangulated evidence provided by interviewees with documentation supplied in order to check and validate findings.
- 1.26 Inspectors also spoke with representatives of the Law Society of Northern Ireland, the Bar Council and members of the judiciary. Inspectors observed LSANI staff processing applications in real time on the LAMS for Advice and Assistance, Magistrates' Court, Crown Court, Extradition and Exceptional Preparation. Further details on the methodology used and organisations and individuals consulted can be found in Appendix 1.

CHAPTER 2: **STRATEGY AND GOVERNANCE**

This chapter sets out the strategy and governance of the LSANI and the objectives and strategic approach in delivering the LAMS. It addresses the impact of the Legal Aid budget in enabling the Agency to deliver its objectives and the working relationship with the DoJ and other Criminal Justice organisations who facilitate the administration of Legal Aid. Finally, it looks at the ongoing Criminal Legal Aid Reforms that impact the efficiency of Criminal Legal Aid processing and support the Agency with budgeting and forecasting.

LSANI STRATEGY AND GOVERNANCE

2.1 As an agency of the DoJ, the LSANI operated under a Framework Document.¹⁷ The Framework Document set out the arrangements for the effective governance, financing and operation of the LSANI. The Agency's strategic objectives are contained in their annual business plan. The Agency set four strategic objectives in their business plan for 2021-2022:¹⁸

- **Deliver High Quality Legal Aid Services**
A modern, digitally-enabled service which can respond to Agency, customer and practitioner needs;
- **Customer, Stakeholder and Partner Engagement**
Responsive and innovative engagement with customers, stakeholders and partners to ensure that the requirements of all groups are understood and met;
- **Strengthen our Governance and Accountability**
Enhanced confidence and transparency in our stewardship of public money; and
- **Support and Empower our People**
A properly resourced and skilled workforce which delivers our core business.

¹⁷ LSANI Framework Document - July 2021 (justice-ni.gov.uk).

¹⁸ Legal Services Agency Northern Ireland - Business Plan 2021-2022 (justice-ni.gov.uk).

- 2.2 The LSANI assessed its outcomes against two of the nine outcomes in the Programme for Government Draft Outcomes Framework 2021:¹⁹
- 'We have an equal and inclusive society where everyone is valued and treated with respect'; and
 - 'Everyone feels safe - we all respect the law and each other'.
- 2.3 The DoJ Corporate Plan 2019-22 listed as a priority the delivery of the LSANI Transformation Programme, which included the implementation of a new digital case management system. The LSANI Business Plans for 2018-19²⁰ and 2019-20²¹ prioritised the development, delivery and embedding of the new case management system.

THE LEGAL AID MANAGEMENT SYSTEM (LAMS)

- 2.4 The vision for the Digital Transformation Legal Aid Project (DTLAP) was to develop a digitally enabled Legal Aid system for all aspects of Legal Aid. The anticipated costs and savings outlined are therefore not specific to Criminal Legal Aid processing but the LSANI as a whole.
- 2.5 The objectives of the DTLAP were to:
- support the NICS digital transformation objectives and leverage the NICS Shared Services;
 - improve data quality;
 - reduce administrative costs associated with the Legal Aid process;
 - ensure that the LSANI had an effective case management system that complied with DoJ IT Security and Information Management policies;
 - future proof the technical solution, so that the LSANI could adapt to changes in policy or legislation without incurring the same level of costs for change controls; and
 - improve the reporting capability within the Agency.
- 2.6 The NI Direct contract required the LAMS to be a Minimum Viable Product which delivered essential features. With the Minimum Viable Product, value for money would be maximised as the solutions developed would benefit from significant re-use of existing components. NI Direct engaged external consultants to develop a Target Operating Model and the external consultants recommended the use of the DTS Agile²² delivery approach for the project. Agile provided a phased delivery.

19 Northern Ireland Executive, Programme for Government (PfG) draft Outcomes Framework consultation document, January 202, available at [PfG draft Outcomes Framework consultation \(northernireland.gov.uk\)](https://www.northernireland.gov.uk).

20 LSANI Business Plan 2018-2019 ([justice-ni.gov.uk](https://www.justice-ni.gov.uk)).

21 LSANI Business Plan 2019-2020 ([justice-ni.gov.uk](https://www.justice-ni.gov.uk)).

22 The Agile methodology is a practice that encourages continuous development and testing throughout the software development lifecycle of a project.

2.7 The monetary benefits to be delivered included reductions in staff posts, storage and paper related charges. In August 2017 there was a headcount of 141 staff at a cost of £5.1m. The implementation of digital transformation aimed to reduce the organisation to a staff headcount of 99 with staff costs of £3.84m. Staff savings were estimated at £1.26m.

2.8 The non-monetary benefits to be delivered included improved management information which would allow the Agency to:

- facilitate better legal aid policy development by the DoJ;
- publish accurate trusted data sets and reports on a regular basis;
- address issues identified by audit and reduce the qualification on the accounts;
- better monitor the impact of reform; and
- comply with a PAC recommendation for improved Management Information.

The assessment of the delivery and outcomes resulting from the introduction of the LAMS is set out in Chapters Three and Four.

THE LEGAL AID BUDGET

2.9 The effectiveness of any potential improvements in efficiencies with the LAMS were impacted by the availability of Legal Aid funds to enable the Agency to discharge its statutory obligations.

2.10 The LSANI's budget was determined by Her Majesty's Treasury as being within budgetary control despite the fact that the Agency provided a demand-led service. A similar approach was used in England and Wales. The EAJD advised Inspectors that the justification for this was that the Agency had control over what money was paid out. If the budget was running low, the Agency slowed down payments. This, however, was a false economy. Pushing payments further out resulted in Suppliers (solicitors and barristers) not having the cash flow necessary to provide Legal Aid services, potentially impacting access to justice for individuals. At the time of writing the report, the Agency had increased its Criminal Legal Aid processing time Key Performance Indicators (KPIs) from eight weeks to 12 weeks due to the lack of sufficient funds. Suppliers could have to wait up to three months from submitting their application to receiving payment in a case. Suppliers advised Inspectors that this was not sustainable, particularly for small businesses in rural areas.

2.11 The Agency's opening budget allocation for the fund for 2021-22 was £75.695m whereas their spend pattern for the four years before 2020-21 was on average £82m (2021-22 expenditure was lower as a result of the COVID-19 pandemic). The forecast for the Legal Aid fund for 2021-22 was in the region of £92m. The LSANI, the Law Society of Northern Ireland and Bar Council made representations to the Minister of Justice regarding the anticipated negative impact of potentially extending payment processing by a number of weeks over the year, in the absence of additional monies being secured. Following Northern Ireland Executive approval, the Agency's budget allocation for 2021-22 (excluding legacy inquests) was £82.865m, including £7.170m COVID pandemic recovery money. An additional £11.041m was secured as part of the June, October and January in-year monitoring rounds totalling £93.906m. This practice of getting additional in-year funding had been evident for a number of years.

2.12 While the additional in-year funding was welcomed, the bidding process carried uncertainty as to whether there would be sufficient funds to meet demand. The Director of the Justice Delivery Directorate (who attended the meeting with the acting Head of EAJD) informed Inspectors that when additional money was received, particularly towards the end of the year, there was a risk that this would lead to an increase in payment error as staff tried to clear the backlog of assessed cases before the end of the financial year. Inspectors were informed that the Agency's working model had to be adapted depending on the funding model, over which the LSANI had no control and this made it almost impossible to have a single approach. Further, due to the constant backlog of assessed claims, a portion of the incoming yearly budget allocation had to be used to pay the backlog of assessed cases from the previous year. The result was that the allocated funding was reduced before the commencement of the financial year. The LSANI and the EAJD advised Inspectors that they had raised the issue with Financial and Corporate Services Division of the Department of Finance (DoF) with a view to representations being made on their behalf to Her Majesty's Treasury but the position remained the same.

ENABLING ACCESS TO JUSTICE DIVISION (EAJD)

2.13 The EAJD were responsible for setting the strategic direction for Legal Aid, maintaining the Legal Aid legislative framework and representing the Agency in appeals before the Taxing Master.²³ The LSANI had a significant role in bringing issues which required legislative amendments to the attention of the EAJD and supporting the implementation of changes to Legal Aid legislation.

23 The Taxing Master assesses the costs claimed by the solicitor or barrister and decides whether they are correct and fair for the work done.

- 2.14 The LSANI informed Inspectors that they had been judicially reviewed because of their interpretation of legislation. Details of policy intent was not always available to the EAJD either because records were not retained or the policy was introduced before the EAJD or the Department was established. However, the EAJD stated it had always provided guidance to the Agency when required on historic policy intent and a full explanation of legislation or guidance EAJD introduces. Inspectors were provided with an example of guidance that the EAJD had provided to the LSANI on the meaning, interpretation and intent of legislation that was to be introduced. This practice should be followed with all legislative and policy changes to ensure that the Agency understands the purpose of legislative change when making operational decisions to reduce challenges to their decisions.
- 2.15 Inspectors were informed that the Agency viewed their relationship with the EAJD as a solicitor/client relationship. The EAJD did not recognise this as being the case and could only point to their representative role in appeals before the Taxing Master as the basis for a perceived solicitor/client relationship. EAJD's view was one of partnership. The Agency advised that they had struggled with this relationship and it had resulted in a misunderstanding regarding roles and responsibilities. The differing views about the relationship had been a barrier to good business and progressing reform.
- 2.16 The working relationship between the LSANI and the EAJD was now more effective as roles were more clearly defined.
- 2.17 To improve the working relationship, in May 2021 the Agency had signed up to guidance which was designed to ensure that the partnership was effective and that there was appropriate collaboration between the EAJD led project teams and the LSANI.
- 2.18 The Agency and the EAJD had recently established a working group to deliver policy changes and support research work. The EAJD Policy Lead in Criminal Legal Aid was working with the appropriate managers in the LSANI across Criminal Legal Aid. The LSANI advised Inspectors that although this group had not been operational for long, they could already see the benefits of early collaboration with the EAJD. At the beginning of January 2022 a new fee was introduced and the working group got together to resolve issues and discuss the way forward. This collaborative approach should be maintained to progress reform.

NORTHERN IRELAND ORGANISATIONS FACILITATING LEGAL AID ADMINISTRATION

Public Prosecution Service for Northern Ireland (PPS)

- 2.19 The PPS was the principal prosecuting authority in Northern Ireland, with responsibility for taking decisions as to prosecution in all cases investigated by the police. The PPS had an Information Sharing Agreement with the EAJD and the Agency. The purpose of the Agreement was to share information regarding the use of counsel and fees management of cases including that contained within the PPS Crown Court Files and Court of Appeal files with the EAJD and the LSANI in order to promote consistency of approach and value for money for the public purse.
- 2.20 The information sharing arrangements in place between the LSANI and the PPS were not producing the intended results.
- 2.21 Both the PPS and the LSANI informed Inspectors that there were inconsistencies in the hours being granted to prosecution counsel and defence counsel for Exceptional Preparation. The PPS and LSANI applied different criteria for granting Exceptional Preparation. Inspectors extracted a random sample of cases for the PPS to provide the Exceptional Preparation hours granted and cost in each case, with the LSANI providing information for the same cases. Of the cases selected only a small number had been granted Exceptional Preparation by the PPS and it was not possible to make a meaningful comparison. For the three cases for which comparative information was provided, there were inconsistencies in the Exceptional Preparation hours granted by the PPS and the LSANI.
- 2.22 At the time of writing, the LSANI had written to the PPS suggesting that both the PPS and the LSANI explore ways of ensuring that the Agency had greater visibility over new high-cost cases. They proposed putting in place arrangements for the PPS to notify the LSANI of potentially large or complex cases which were not yet before the court and to provide advance warning of the likely financial year they would be coming before the court. As an area for improvement **the Legal Services Agency Northern Ireland and the Public Prosecution Service for Northern Ireland should review their current information sharing practices and put in place an effective process to ensure consistency of approach to assist with Criminal Legal Aid processing and forecasting.**
- 2.23 There was no source providing an up-to-date list categorising the seriousness of criminal offences that the LSANI could refer to when processing payments which impacted payment accuracy.

- 2.24 When cases were received through the PPS/NICTS interface the categorisation may have been incorrect or it was unclear. The LSANI staff responsible for processing payments were not legally trained and relied on others such as the PPS for guidance on such matters. The EAJD, the PPS and the NICTS advised that they had looked at developing the Causeway²⁴ system so that it could produce a list of up-to-date categorised criminal offences. Inspectors were advised that the estimate provided to do this piece of work was £180,000-£200,000 and the resource was not available.
- 2.25 Schedule 1, Part 1 (2) of the 2009 Rules²⁵ placed responsibility for establishing and maintaining a list of categorised offences for the Magistrates' Court and County Court Appeals with the PPS. The legislation which refers to the categories of Crown Court offences is Schedule 3 of the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005. However, this legislation does not set out with whom responsibility sits for categorising offences in the Crown Court.
- 2.26 Since 2012 the Crown Prosecution Service in England have adopted the list of offences used by the Legal Aid Agency for processing fees. In Northern Ireland both the PPS and the DoJ have a role in setting the categories of offences for the Crown Court.
- 2.27 To assist the LSANI in improving the accuracy of payments, the PPS and the DoJ should provide the Agency with a list of categorised offences for the Crown Court.

OPERATIONAL RECOMMENDATION 1

Within six months of publication of this report, the Public Prosecution Service for Northern Ireland and the Department of Justice should produce a list categorising offences and make this available to the Legal Services Agency Northern Ireland. This document should be updated when new offences are introduced.

Northern Ireland Courts and Tribunals Service (NICTS)

- 2.28 The NICTS is an Executive Agency within the DoJ and had an Information Sharing Agreement in place with the LSANI to allow the Agency access to cases for the purposes of verifying and providing accurate Legal Aid payments. The NICTS Integrated Courts Operation System (ICOS) shared an interface with the LAMS which was used to provide the Agency with details of and updates to Criminal Legal Aid cases, granted by the court. At the time of the inspection the LSANI were working on the policy for the LAMS/ICOS interface.

24 Causeway is the integrated messaging system which supports electronic information sharing between the five main Northern Ireland criminal justice organisations - the Police Service for Northern Ireland (PSNI), the Public Prosecution Service for Northern Ireland (PPS), Forensic Science Northern Ireland, Northern Ireland Courts and Tribunals Service (NICTS) and Northern Ireland Prison Service and generates the Northern Ireland Criminal History database.

25 Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009.

- 2.29 The LSANI and the NICTS had a constructive working relationship.
- 2.30 The NICTS advised that they had provided training to Agency staff on how to use the ICOS, most recently in July 2021 and they had indicated a willingness to continue to provide training. They advised that they had not provided the Agency with their ICOS manuals as they were large, comprehensive documents, developed for NICTS staff. As part of the face-to-face training in July 2021, the LSANI were provided with an ICOS Enquiries Manual. The LSANI Payments staff highlighted difficulties in navigating the ICOS to extract the information they needed to process Criminal Legal Aid payments. They suggested this could be rectified with training on the use of the ICOS. The Agency should liaise with the NICTS to organise further training for staff and arrange for the LSANI staff to observe the ICOS (see Strategic Recommendation 3).
- 2.31 The Agency informed Inspectors that the ICOS was limited in terms of what information could be extracted to verify the accuracy of Legal Aid payments. There were a number of reasons for this, the main one being that the ICOS was not a case management system. A difficulty for barristers in particular was that they did not have access to the ICOS. The NICTS advised that it was solicitors, not barristers, who had carriage of a case and the NICTS's relationship was with the solicitor, who had access to the ICOS. It was the solicitor who then appointed counsel. Inspectors were advised that the new ICOS system would perhaps be able to address this.
- 2.32 The ICOS/LAMS interface was described by the NICTS as fit for purpose but "clunky" adding that this was no surprise given that it had been added to an old system. As part of its modernisation²⁶ strategy, the NICTS had commenced scoping for a new ICOS and case management system across the NICTS. Given the scale of this project, it was anticipated that it would take six-eight years to implement. In the interim the Agency and the NICTS were working together to enhance the interface by including Court of Appeal cases. Other changes considered necessary would be considered as the NICTS moved forward with modernisation.
- 2.33 It was important that the agencies continued to engage on transformation so that improvements could be made regarding the recording and sharing of information to assist the LSANI in increasing payment accuracy and to reduce the burden on Suppliers.

26 NICTS, *Modernising the Courts and Tribunals in Northern Ireland*, 21 March 2021, available online at <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/nicts-modernisation-portfolio-vision-statement.pdf>.

REFORM PROJECTS

- 2.34 The LAMS was introduced to address administration costs and to establish financial control over payments. Other reforms being progressed that impacted Criminal Legal Aid processing are outlined below.

The Statutory Registration Scheme (SRS)

- 2.35 Enabling legislation for the Statutory Registration Scheme (SRS/the Scheme), was the Access to Justice (Northern Ireland) Order 2003 and the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981. The implementation of the SRS was to be delivered by 2007, however this was not achieved nor was the target date of early 2016 set by the DoJ when they assumed responsibility for the implementation of the SRS in 2013. The Scheme is now scheduled to launch in June 2023, 20 years after enabling legislation was put in place. The primary purpose of the Scheme is to enable assessment of the service quality and value for money provided by Legal Aid Practitioners and to improve transparency and accountability for publicly funded services. The Agency will have responsibility for the Scheme when introduced.

- 2.36 The Agency should continue to engage in discussions with the EAJD regarding required functionality to ensure the LAMS is prepared for the launch of the Scheme in June 2023.

- 2.37 The LAMS had a lot of SRS functionality not currently enabled. When Phase One of the LAMS was built the Scheme functionality was built in to reflect what it was at that time. As of February 2022, discussions had taken place between the Agency and the EAJD regarding required functionality and the Agency had provided a demonstration to the EAJD.

Review of the Crown Court Rules

- 2.38 The Legal Aid Strategy Group approved the scope and commencement of the third statutory review of the 2005 Crown Court Rules in July 2020. This project included a review of the standard fees payable.
- 2.39 Progress on the project had been hindered by the availability and provision of data to support policy development and the project timeline had to be revised. To enable consultation to take place within the Northern Ireland Assembly mandate²⁷, the Legal Aid Strategy Group had taken the decision to remove Exceptional Preparation from the review and take it forward as a separate project. The EAJD advised Inspectors that they recognised that the Exceptional Preparation provisions required review as soon as possible. However, through the review of the standard fees payable as part of the Crown Court Rules Review, the EAJD were seeking to bring as much spend as possible within reasonable and fair standard fees.

²⁷ The previous Northern Ireland Assembly mandate concluded on 25 March 2022 when the Assembly was dissolved prior to the Northern Ireland Assembly election on 5 May 2022.

Even though the Crown Court Rules Review did not encompass a review of the Exceptional Preparation provisions, the outcome could help to address some of the components that fell under the existing Exceptional Preparation umbrella. Inspectors were advised the Crown Court Rules Review were to issue for public consultation from February-May 2022 with implementation targeted for June 2022-January 2023.

Exceptional Preparation

- 2.40 A review of Exceptional Preparation was urgently required.
- 2.41 Exceptional Preparation was Criminal Legal Aid work substantially in excess of the amount done for similar cases because the case involved a very unusual or novel point of law or factual issue. The requirement for Exceptional Preparation was predicated on a legal challenge. There had to be a facility to remunerate Suppliers for work that fell outside standard fees due to the complexities of the case. Provision for Exceptional Preparation was contained in the 2009, 2005 and 2016 Rules.²⁸
- 2.42 The cost of Exceptional Preparation had significantly increased since the introduction of the 2016 Rules. The number of Exceptional Preparation applications was significantly higher than originally forecasted and had increased year on year. Table 7 shows Exceptional Preparation expenditure from 2016-17 to 2020-21.

Table 7: Exceptional Preparation Expenditure 2020-21 to 2016-17

Year	2020-21	2019-2020	2018-19	2017-18	2016-17
	£	£	£	£	£
Exceptional Preparation expenditure	7,231,201	4,629,042	2,845,969	605,024	0

Source: LSANI

- 2.43 The increase in Exceptional Preparation costs each year had a direct impact on Criminal Legal Aid processing as the LSANI Criminal Payments staff were responsible for manually tracking usage for every approval granted under an Exceptional Preparation certificate.
- 2.44 Ministerial guidance was developed for Exceptional Preparation and the Agency developed their own operational guidance. The EAJD informed Inspectors that the provisions were regularly tested and they had dealt with a number of cases arising as a result of Taxing Master appeals. The available guidance had not been sufficient to assist the LSANI with processing Exceptional Preparation cases and some of the challenges had involved procedures the LSANI had introduced outside of Ministerial guidance.

28 The Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) (Amendment) Rules (Northern Ireland) 2016 which should be read in conjunction with rule 10A of The Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009 and the Legal Aid for Crown Court Proceedings (Costs) (Amendment No 2) Rules (Northern Ireland) 2016 which should be read in conjunction with Rule 11A of the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005.

- 2.45 Exceptional Preparation was to be included in the third statutory review of the 2005 Crown Court Rules, however the lack of available data to support Exceptional Preparation policy development resulted in its removal from the review, with it being taken forward as a separate project. At the time of writing a data sharing agreement was being finalised to allow the EAJD direct access to the LAMS to mine the necessary data.
- 2.46 A review of Exceptional Preparation should be commenced in light of the impact on Criminal Legal Aid processing and the fact that the Agency is often challenged on Exceptional Preparation decisions.

STRATEGIC RECOMMENDATION 1

It is recommended that the Department of Justice and the Legal Service Agency Northern Ireland should commence a review of Exceptional Preparation as soon as the review of the standard fees under the third statutory review of the 2005 Crown Court Rules is completed.

CHAPTER 3: **DELIVERY**

In this chapter we consider the delivery of the LAMS and project resource objectives. Contractual issues that impacted the effectiveness of the LAMS are outlined. Inspectors assessed the engagement of legal practitioners during and after LAMS delivery and the engagement with the LSANI staff to achieve the most benefit from the LAMS, with particular focus on training and guidance. We examine Criminal Legal Aid processing across business areas since the implementation of the LAMS and progress against the account qualifications.

THE LAMS PROJECT COSTS AND RESOURCE

- 3.1 There was a £1.1m overspend on the budget to design and introduce the LAMS system.²⁹ This was largely attributed to post LAMS change controls that were not anticipated at the time of preparing the business case and as a result of project delay.
- 3.2 No issues arose in terms of the contracted agreement. However, the LSANI felt that they would have benefitted from knowing the lessons learned from the other DTS projects to explain the extent and pace of requirements. This would have assisted the Agency with understanding the resources required to undertake the work. Overall, good project planning was carried out and the LSANI identified early on that development targets would not be met. A re-planning exercise was undertaken to include further development and Phase 1 successfully launched in January 2019. Phase 2 'go live' was delayed to allow Suppliers further time to prepare for the LAMS (see paragraph 3.7) and this created significant additional work and pressures for the Project Team.
- 3.3 The Project Team who oversaw the LAMS implementation were to be released on conclusion of the project. As of September 2019 this had been achieved. The Project Team posts had been suppressed with some staff being assigned to the LAMS Support Team.

²⁹ Digital Transformation of Legal Aid Project Closure Report - The total capital expenditure anticipated was £8,569,615 and this included £323,795 optimum bias. If the Agency had used the 10% tolerance the total capital allocation would have been £9,426,576. In delivering the project there was an overspend of £1.1m but in applying the tolerance the overspend was £238,424.

CONTRACTUAL ISSUES

- 3.4 Changes could not be made to the LAMS for three months post implementation (July-September 2019) to allow time for staff to become familiar with the system. Then, as a result of a Northern Ireland Audit Office (NIAO) Report and subsequent Northern Ireland Assembly Public Accounts Committee (PAC) scrutiny of the NI Direct Strategic Contract, the DoF took the decision to cease the NI Direct Strategic Partnership. In late 2019 the DoF extended the contractual arrangements until October 2022 and advised that only legislative or mandatory changes could be progressed. Following discussion with the DoF, it was agreed that LSANI could bring forward a number of priority changes. These restrictions hampered the development of the LAMS post implementation and required the LSANI to develop a business case and procure a new contract in December 2021.
- 3.5 The lessons learned by the LSANI from its participation in the NI Direct Contract and the ongoing need to develop the LAMS were taken into account in developing the requirements and specification for the new contract. The Agency formed a working group, whose membership was drawn from staff across the LSANI business areas and the EAJD to collaborate on and quality assure the requirements for the new contract. There was input from a range of stakeholders to ensure that, as far as was practical, the new contract would meet future needs for the LSANI. The new contract was agreed in December 2021.

ENGAGEMENT WITH SUPPLIERS

- 3.6 Suppliers (solicitors and barristers) felt that they had not been sufficiently consulted regarding the development of the LAMS prior to its implementation.
- 3.7 Although efforts were made by the LSANI to engage Suppliers in workshops and through other communication activity, there was no meaningful engagement for approximately one year prior to the 'go live' date. This resulted in the implementation date being delayed by three months to allow time to address issues and build confidence in the new system.
- 3.8 Part of the constraints around engagement were the organisational structures and this should be taken into account for any future projects.
- 3.9 Engagement through forums and groups post implementation of the LAMS had led to improvements in the working relationship between the LSANI and Suppliers.
- 3.10 The Stakeholder Engagement Forum continued post implementation of the LAMS and continued to receive feedback from representatives. The ability to progress requested changes was hampered by contractual issues and both Suppliers and the Agency advised that this frustrated the process and impacted on engagement.

An Operational Forum was established in June 2020, replacing the Stakeholder Engagement Forum. The purpose of this forum was to provide visibility and awareness for Suppliers to help improve the operation and performance of the LSANI.

- 3.11 An Engagement and Communications Strategy Group was set up in June 2021 to ensure effective involvement and engagement strategies were developed and delivered so that Suppliers were involved in the operation and reform of the Agency.
- 3.12 Following acceptance of the new contract a Change Forum was being established with representatives from the legal profession to prioritise future changes to the LAMS that had been requested by Suppliers. The Terms of Reference had been drafted and communication went out to Suppliers in January 2022 requesting their engagement in the Change Forum.
- 3.13 The LSANI and the EAJD advised that they had engaged with Suppliers regarding the SRS. They had discussions with Suppliers around the requirement for Suppliers to pay a registration fee. A gap analysis was also being carried out to avoid the SRS duplicating accreditations and qualification requirements for Suppliers. They had also engaged with Suppliers on the scope of the Crown Court Rules Review. In addition to the Project Board meetings, the LSANI and the EAJD had arranged additional meetings with Suppliers to discuss policy and operational issues.
- 3.14 Suppliers identified very positive aspects to the LAMS.
- 3.15 Suppliers informed Inspectors that digitalisation of Legal Aid was welcomed and the LAMS was good during the COVID-19 pandemic, *"LSA got systems up and running very quickly from home and they did quite well"*. They advised that the LAMS was much better and much more efficient than Phoenix and there was more visibility, control and predictability of Legal Aid spend.

ENGAGEMENT OF THE LSANI STAFF

- 3.16 The LAMS was a much better system than its predecessor. Those who had worked with Phoenix found LAMS straight forward to use, it provided real time information and there was a record of all communications and information. Queries were now dealt with more efficiently and they could message Suppliers directly. Further, Suppliers could see progress on their applications and payments were going out to Suppliers daily instead of weekly. LSANI staff reported that due to the LAMS they had been able to maintain payment processing during the pandemic: *"We don't know how would have managed during COVID-19 without the LAMS."*

- 3.17 Changes needed to be made to the LAMS to include required functions that weren't carried over from Phoenix and other changes to make the system more efficient for processing claims.
- 3.18 When the system was first rolled out, there was a topic board on which staff could put suggested changes. Some of the changes raised by staff included:
- notification when the financial limit in a case had been reached;
 - facility for solicitors to input start and finish times, in particular for travel and mileage; and
 - prevention of duplicate travel claims.
- 3.19 Inspectors were informed by LAMS Support, who were responsible for maintaining and developing the LAMS, that a change request had already been prepared for the changes outlined above which would be delivered under the new contract.
- 3.20 Staff were not utilising the existing provisions to request changes to the system.
- 3.21 LAMS Support were not aware of some of the suggested changes staff raised with Inspectors. They advised that all staff could request changes through their line manager and that they also invited change requests regularly. The LSANI staff indicated that they were aware of the ability to raise changes and the process by which to do this, but there was almost a reluctance to suggest changes as they felt there was an inevitability that they wouldn't happen due to the contractual constraints. As an area for improvement **the Legal Services Agency Northern Ireland should set up a staff forum at which they can raise issues and suggest potential changes to the Legal Aid Management System and general operations directly to both Legal Aid Management System Support and Management.**

LAMS SUPPORT

- 3.22 The Transformation Programme Workforce Planning Exercise was intended to handle the treatment of the Project Team post project, however LAMS Support advised Inspectors that the team evolved from the Project Team to LAMS Support and learned as they went along. They referenced the Customer Handbook, manuals and internal documents to maintain and develop the LAMS. However, LAMS Support did not have clear procedural guidance for their team. This was necessary to ensure that the LSANI got the best performance from the LAMS and the staff using it (see Strategic Recommendation 2).
- 3.23 Some of the LAMS Support roles had been subject to job evaluation and grading. Inspectors were informed that all staff now had job descriptions with the exception of the LAMS Support Manager. A job description should be drafted for this key role to provide clarity on the priorities and requirements for the post as well as more effectively manage performance to achieve the most benefit from the LAMS.

OPERATIONAL RECOMMENDATION 2

Within one month of publication of this report the Legal Services Agency Northern Ireland should develop and implement a job description for the role of Legal Aid Management System Support Manager.

TRAINING AND GUIDANCE

- 3.24 To optimise the efficiency and effectiveness of the LAMS staff should have clear, up-to-date guidance on Criminal Legal Aid processing and the LAMS. This should be supplemented with initial training and ongoing refresher training.
- 3.25 Guidance for staff was in the form of desk top instructions, management directions and circulars, some going back years. The guidance was in some instances a regurgitation of the legislation which was difficult to follow and didn't assist with processing claims. The desk top instructions had not been updated to reflect the changes notified in the management directions and had not been updated since the implementation of the LAMS. This impacted the LSANI staff's ability to work efficiently as they were not always able to find the answers to processing queries and this was a particular issue for new members of staff who did not know where to find the required guidance.
- 3.26 The LSANI were reviewing guidance to bring it up-to-date and to assimilate all sources of guidance into one document. The updated guidance would be bespoke for each area of Criminal Payments. At the time of writing the Magistrates' Court processing guidance had been drafted and circulated to staff. Inspectors were informed that the guidance was a step in the right direction and much more concise. It was planned that updated desk top instructions would be available for all areas of Criminal Payments by March 2022.
- 3.27 The LAMS training was provided by BT. Agency staff said that they had not been trained in the area in which they processed claims, would have benefited from more on the ground assistance in the early days of the LAMS going live and that they needed more training than what was provided. The need for refresher training was evidenced by the fact that some suggested changes that staff raised with Inspectors already had solutions built into the system that staff were not aware of. As with the desk top instructions, staff told Inspectors that it would be more efficient if there was a single document containing all the LAMS guidance and updates.
- 3.28 The Agency's Business Consultancy Services³⁰ Action Plan 2021-22 aimed to provide the LAMS refresher training by March 2022.

³⁰ Business Consultancy Services (BCS) is the principle source of internal consultancy services across the NICS, its executive agencies and non-departmental public bodies (NDPBs).

- 3.29 Staff indicated that they would like the opportunity to observe the LAMS from the Suppliers perspective to see what information they were being prompted to input and the formatting/functionality of their system. The LSANI should organise training for those staff who wish to observe the LAMS from the Suppliers perspective (see Strategic Recommendation 3).
- 3.30 A number of staff Inspectors spoke to had joined the Agency since the introduction of the LAMS. When they had started, they were given the desk top instructions and the LAMS manuals to read. Some staff had been given the opportunity to observe another member of staff processing applications on the LAMS for a short time period but the member of staff that they were observing was not always experienced in the relevant area. Having to figure out the system and the processes was overwhelming, particularly for those who had to work from home during the COVID-19 pandemic. During this time some members of staff organised virtual training for those new members of staff working in Magistrates' Court payments. This was commendable and demonstrated their willingness to assist colleagues and improve the efficiency of Criminal Legal Aid processing, however, it should not have fallen to staff to carry out this function in addition to their own workloads.
- 3.31 The LSANI had a welcome pack for new staff and e-learning training on the role and structure of the LSANI however an induction programme should be developed for new members of staff by the Training and Compliance Unit in conjunction with LAMS Support. This training should include awareness sessions on the Criminal Legal Aid processing guidance and the LAMS and on the job training on LAMS for the specific area in which the member of staff will be working.
- 3.32 When the LAMS was implemented the Agency obtained licences for staff to use Qlik³¹ as a performance management tool. Staff highlighted the need for refresher training on Qlik so that they could access the specific information they needed for their area of work. Staff would also benefit from training around management information, how to understand it and utilise it to inform decision making.
- 3.33 The LSANI recognised the importance of providing up-to-date training and guidance to the LSANI staff and had established a Compliance and Training Unit. The new Compliance and Training Unit was being resourced with the purpose of providing training, updating guidance and encompassing error and quality assurance checking. It was intended that the findings from error and quality assurance checks would inform Criminal Payments staff training and updates to guidance. Two professional trainers were recruited to this team. Error and fraud training had been delivered by the new trainers and Inspectors were informed by staff that the training was clear and sufficient. The Agency advised that once the Compliance and Training Unit was fully resourced, the next step was to have a formal training programme delivered through awareness sessions and e-learning.

31 A data analytics platform.

- 3.34 An e-learning training package for Qlik was being developed and was to be available to staff in mid-February 2022.

STRATEGIC RECOMMENDATION 2

It is recommended that within six months of publication of this report the Legal Services Agency Northern Ireland should update all relevant guidance for Criminal Legal Aid processing, the Legal Aid Management System and Legal Aid Management System Support.

STRATEGIC RECOMMENDATION 3

It is recommended that within six months of publication of this report the Legal Services Agency Northern Ireland should develop a training strategy and complete an action plan to improve the delivery of training.

CRIMINAL LEGAL AID PROCESSING ON THE LAMS

- 3.35 Inspectors had the opportunity to observe the LSANI staff processing applications in real time on the LAMS for Advice and Assistance, Crown Court, Magistrates' Court, Extradition and Exceptional Preparation. The LAMS appeared to be a straightforward system, easy to navigate and for the most part had the necessary functionality to enable staff to process applications efficiently. Inspectors identified issues regarding the lack of functionality to assist with processing Exceptional Preparation.

Exceptional Preparation

- 3.36 When Exceptional Preparation was granted the grant letter and certificate set out the number of hours Suppliers were granted to carry out different areas of work. The LAMS was not designed to keep a tally of the hours used by Suppliers under the grant. The LSANI Staff had come up with a workaround on a separate independent system whereby they input the work suppliers had done to date to calculate what remained. They then manually input this on to the LAMS so that other Assessors and Suppliers could see the running total. Inspectors were advised by staff that because a lot of user input was required this could lead to errors and it was also time consuming. A change request had been submitted regarding Exceptional Preparation to include functionality to calculate running totals which would be advanced under the new contract.
- 3.37 Guidance was required regarding the level of detail and information contained in Grant Letters and certificates so that it was clear to Criminal Payments Assessors what work had been authorised.

- 3.38 Exceptional Preparation and Authorities assessed requests for Exceptional Preparation and issued Grant Letters and certificates. Criminal Payments Assessors then tracked the usage of the approved hours granted under the certificate.
- 3.39 When Exceptional Preparation and Authorities granted Exceptional Preparation, a Grant Letter and certificate were attached to the LAMS and Assessors in Criminal Payments used these documents as their guide to compare what had been approved with what Suppliers had claimed. Staff advised that the information contained in these documents did not provide sufficient clarity as to what had been granted and also Suppliers description of the work did not align with what had been approved in the Grant Letter and certificate. The result was that Assessors had to raise queries for clarification as to whether what was claimed fell under one of the headings of what had been granted. Inspectors observed three e-mails that had been raised by one Assessor in one morning seeking clarification regarding whether work claimed was covered by the certificate and were advised that this was not unusual. Guidance is required regarding the level of detail contained in Grant Letters and certificates (see Strategic Recommendation 2).
- 3.40 Improvements have been made to processing Exceptional Preparation which have assisted with forecasting.
- 3.41 Since the beginning of November 2021 the Exceptional Preparation Assessors have been assessing the work granted under Exceptional Preparation certificates at regular intervals. Suppliers are required to provide reports every three months setting out the work they have completed to date under the certificate. This has reduced the workload for processors when the final Report on Case is submitted by Suppliers thus reducing the likelihood of error and has assisted the LSANI with forecasting.
- Review and Re-determination**
- 3.42 A new streamlined process and additional resource had been allocated to the Appeals and Review Administrative Unit (ARAU) to improve processing times.
- 3.43 Under the 1992 Rules³² a solicitor or counsel could apply to a Panel³³ to re-determine costs or to review the decision and the written application was to be made within 21 days. There was no time limit however in which a decision had to be taken by the Panel. The Key Performance Indicator (KPI) target for Panel cases was 90% in eight weeks. Table 8 shows the requests for review/re-determination by the Panel from July 2019. The statistics prior to LAMS implementation were not available.

32 Legal Aid in Criminal Proceedings (Costs) Rules (Northern Ireland) 1992 Rule 12.

33 A Panel is made up of three people including a solicitor and a barrister and another person appointed by the Secretary of the Law Society of Northern Ireland.

Table 8: Requests for LSANI internal review from July 2019

Years	No. of cases where request granted	Average no. of working days to decision	No. of cases where request refused	Average no. of working days to decision	Total no. of requests	Total average of working days
2021-November 2022	10	210	6	286	16	238
2020-21	19	156	22	127	41	141
July 2019-2020	2	43	3	56	5	51
Total	31	166	31	151	62	159

Source: LSANI

3.44 Based on the average working days taken to grant or refusal by the Panel, the KPI target was not met in any year. The Agency advised that the lessons learned from Management Information was that the flow of work from section to section required refining to set KPIs from:

1. Review/redetermination, being received to internal sectional review;
2. If unsuccessful, case preparation and transfer to the ARAU; and
3. Case prepared and listed by ARAU and decision issuing.

3.45 New KPIs for the three stages of internal review by the Panel were to be implemented from 1 April 2022. The LSANI had recruited two new members of staff to streamline the process and improve the turnaround time. The additional staff were dealing with a number of long outstanding cases which had impacted significantly on turnaround times. The LSANI should continue to monitor and review the effectiveness of the new streamlined process and additional resource and establish a baseline for KPIs once the backlog of older outstanding cases has been cleared.

Extradition

3.46 Extradition is the transfer of a person to a country outside of the UK, or the return of a person to the UK from another jurisdiction when the requested person is accused or convicted of criminal offences to face prosecution or serve a criminal sentence.

3.47 The LSANI staff assessing extradition claims needed support and further guidance around calculating fees outside the maximum standard fees.

3.48 The Lord Chancellor's Direction No. 10 was the guidance followed by the LSANI Assessors. It provided for basic brief fees and the maximum amount that could be claimed and subsidiary payments. Paragraph nine allowed the LSANI, if they thought the standard fees were not proper remuneration for the complexity of a case, to pay what they thought was reasonable remuneration for the work done.

- 3.49 When the Extradition Assessors received an application for an amount higher than the maximum standard brief fee for counsel, they assessed the claim by comparing previous cases by court tier, how long cases ran for and any additional information provided by counsel regarding the complexities of a case. The Assessors then recommended a fee to the Taxing Master for the work done. Staff informed Inspectors that they felt the Extradition guidance lacked detail, particularly around calculating fees outside the maximum standard fees.
- 3.50 Previously, an Extradition claim went to the Panel who assessed whether the suggested fee of the Assessor was appropriate and amended it if they saw fit. The matter was then forwarded to the Taxing Master for approval. The process was subsequently streamlined and the Assessor now forwarded their recommendations directly to the Taxing Master who made the final decision and it then came back to the Assessor to pay the claim. If the practitioner appealed the determination, it went back to Taxing Master who made the original decision. Staff advised Inspectors that they did not feel that Extradition assessments should be carried out by Administrative and Executive Officer grades who were not legally trained.
- 3.51 The LSANI Management advised Inspectors that there was a lack of confidence with staff regarding Extradition assessments. This was evident from the performance against KPIs shown in Table 9. The target was to complete 95% of cases in 12 weeks.

Table 9: Performance against target for Extradition for April - August 2021

	All Cases	Percentage with queried cases excluded	Weeks to achieve 95%
	April - August 2021	April - August 2021	August 2021
Percentage achieved in 12 weeks	32.4%	35.7%	24

Source: LSANI

- 3.52 The LSANI should consider whether there is scope for staff with legal expertise within the Agency or external Counsel to advise staff around Extradition claims. Further, detailed guidance should be provided around the assessment of Extradition fees payable outside the maximum standard fees (see Strategic Recommendation 2).

Late Claims

- 3.53 The LSANI brought their Late Claims Policy into line with statutory requirements in October 2000 however there was significant delay in implementing this change.

3.54 The Agency had issued guidance in 2014 advising Suppliers that the time limit in which to submit a claim for Advice and Assistance and other civil Legal Aid areas was six months. The legislative time limit was three months. Staff told Inspectors that when they became an Agency it was decided that they would follow the legislation and apply the three month time limit. However, because Suppliers hadn't been advised about the change and other ongoing issues, staff were told to continue to apply the six month time limit until the new policy was circulated in October 2020.

3.55 Late Claims staff advised that if some changes were made to the LAMS it would improve processing. Those changes were:

- where Reports on Case had been submitted on time but queries were raised resulting in the time limit being exceeded, those should not be flagged as late claims;
- retention of late claim justification reasons; and
- flagging to alert staff to late claims of additional fees.

3.56 Inspectors were informed by the Agency that the first two suggested changes were already on LAMS and the third would be progressed as part of the Agency's change process.

3.57 The Agency should provide refresher training to Late Claims staff to make them aware of the availability of these functions on the LAMS and how to access and/or use them (see Strategic Recommendation 3).

ERROR

3.58 Significant progress had been made by the LSANI to reduce the level of error.

3.59 To address the issues raised by the Comptroller and Auditor General (C&AG) of the NIAO the LSANI had secured the assistance of the Department for Communities (DfC) Standards Assurance Unit (SAU) as they had expertise in measuring error. The SAU measure the accuracy of payments and are guided by what is set out in legislation.

3.60 Official error occurs where the financial eligibility of an applicant is incorrectly determined as a result of a miscalculation, error in assessing bills or through misapplying remuneration legislation. A methodology was developed by the LSANI to measure official error. The LSANI established and set a percentage reduction target against the 2019 official error estimate baseline which they revised each year. They included the error reduction rate in performance management objective setting, monitored performance against target and took corrective action when required. The Agency worked closely with the SAU to support the error reduction rate and on receiving feedback subsequent to testing, they revised guidance and introduced Quality Assurance (100% checking) at individual level. The LSANI also provided training and guidance to staff.

- 3.61 Since January 2021 the LSANI had been working on applicant fraud and error. Criminal Legal Aid had been excluded from this pilot as the Agency had no control over the granting of Criminal Legal Aid.
- 3.62 The LSANI had a process in place to identify overpayments and underpayments which they reported annually. An overpayment recovery system was in place and internal processes were developed and implemented with the DoJ Financial Services Division and approved by the DoF. The Fees Adjustment and Overpayments Policy was communicated to stakeholders in September 2020. The LSANI and the SAU launched their pilot into future overpayment in January 2022.
- 3.63 The LSANI and the SAU were planning to launch a practitioner fraud and error pilot in 2023 to quantify the level of error and establish baselines. In the interim the LSANI commenced a practitioner fraud and error pilot, to conduct a thorough review of prepayment of sampled cases to determine if the information held by the practitioners was consistent with the information provided to the Agency. The results of the exercise would inform the Agency of the common errors where guidance could be provided to improve accuracy and identify potential fraud indicators. These cases would then be referred to the Counter Fraud Unit. The SAU told Inspectors that the ongoing pilot was a quality check of the sampled cases but some of the documentation as part of pilot had produced an estimate of error.
- 3.64 Staff needed clarity on the role of the SAU and their own role and responsibility in error reduction.
- 3.65 In some instances the SAU had queried whether a practitioner had claimed the full fees that they were entitled to and the onus was then on payments staff to chase the supplier for clarity on this issue. Staff advised that if the overlooked claim was for a nominal amount and the supplier had already been paid, often they would not respond to the query which resulted in the query being marked as official error. Payments staff told Inspectors that they had difficulty understanding the rationale behind this. They also advised that they would like clarity on the role of the SAU. Staff would benefit from awareness sessions to understand the role of SAU and their own role and responsibility in error reduction (see Strategic Recommendation 3).
- 3.66 The SAU informed Inspectors that when they commenced working with the Agency, the LSANI didn't have robust guidance and what they did have didn't match legislation. The SAU advised that guidance was now written to reflect the legislation.
- 3.67 The SAU described the Agency's journey as being "*quite remarkable*" and advised that the LSANI had travelled a huge distance in a relatively short period of time. The SAU told Inspectors that Senior Management had brought about a cultural change but it would take a number of years to drive some of the issues out. There was still a lot of change and new things coming in, including new staff, which brought potential for new errors.

Fraud

- 3.68 Fraud could be misinformation provided by a person in receipt of Legal Aid, a legal professional or an employee of the Agency. The Counter Fraud Unit dealt with fraud referrals from DfC, internal Agency staff, opponent solicitors, the Police Service of Northern Ireland (PSNI) and online communications from individuals.
- 3.69 Since January 2021 the Counter Fraud Unit had been working hard to establish effective systems for reporting fraud, identifying potential areas of fraud and investigating fraud.
- 3.70 The LSANI designed a Counter Fraud and Error Action Plan to address the various report recommendations and the account qualifications. A new manager was brought in to lead the Counter Fraud Unit in January 2021. The Counter Fraud Unit had recently acquired staff and a business analyst was being recruited with interviews carried out in December 2021. All staff joining the team had the appropriate level of security clearance and all would be accredited fraud investigators. Courses had been organised to get the newly acquired staff accredited.
- 3.71 The Counter Fraud Unit brought in a new Fraud Referral System in October 2021. Under the old system, if an assessor suspected fraud, they sent it through to the Counter Fraud Unit. From 2016-17 to October 2021, only 22 Criminal Legal Aid cases had been referred to the Counter Fraud Unit. Of those 22 cases:
- 17 were closed due to insufficient evidence with no further action;
 - two were before the High Court awaiting a decision regarding an allegation of fraudulent behaviour; and
 - three of the cases had recently been received and investigations were on-going.
- 3.72 Regarding the 17 cases that were closed, the Counter Fraud Unit did not have the information to advise if they were referred to the PSNI and the PPS who directed no prosecution or if the Counter Fraud Unit determined there was insufficient evidence. With the new processes being developed, this information would be available going forward.
- 3.73 Under the new system, if an Assessor looked at a case and suspected there was fraud they entered a log on the referral document and it was loaded on to the fraud register. That was then forwarded to their line manager and within 48 hours the line manager had to make a decision about what to do with it. The Counter Fraud Unit advised that this new system required participation at all levels within the Agency. Staff could check the progress of reports on an open database and also be aware of ongoing reports/investigations regarding Suppliers.

- 3.74 All staff had undergone mandatory fraud training and the Counter Fraud Unit had arranged for the PSNI to deliver a fraud awareness session via an online platform in 2022. The Counter Fraud Unit were engaging the Senior Management Team to develop a dashboard so that they could see which Suppliers accounted for the biggest spend and this tied into the ongoing practitioner fraud and error pilot. Linking into the pilot also helped them to look at best practice and poor practice so that they could improve their processes.
- 3.75 The Counter Fraud Unit were developing a new strategy based on Prevention, Detection and Response. They had focused primarily on Response to date. They had drafted a Memorandum of Understanding with the PSNI to assist with investigations and developed relationships with DfC's Group Fraud Investigation Service with a view to carrying out joint investigations. They had also drafted a Disclosure of Personal Data form to assist with the sharing of information between Departments which was being tested in the months following the Inspection. They planned on developing the Prevention and Detection Strands which would inform an operational plan.
- 3.76 LAMS Support advised that it was known during the development of the LAMS that the fraud team was going to grow and develop so the decision was taken to wait and develop what they needed when they knew. The Agency was introducing a fraud and error change under the new contract whereby supplier numbers would be connected to the individual who did the work in any claim. This would enable the LAMS to check against the number of hours claimed by any individual in any given day across all cases to identify potential fraud.

OPERATIONAL RECOMMENDATION 3

Within nine months of publication of this report the Legal Services Agency Northern Ireland should provide a Prevention, Detection and Response Fraud Strategy and an operational plan for delivery of the strategy.

FORECASTING AND PROVISIONS

- 3.77 The LSANI had made significant progress in improving the accuracy of the estimate of provisions as a result of closure of inactive cases on the LAMS.
- 3.78 Case closure prior to data migration could have been better organised. There was insufficient knowledge and understanding of the data held in Phoenix and consequently the level of resource required was under-estimated. As a result more cases had to migrate as they were not closed prior to migration.

- 3.79 A new methodology was introduced for forecasting in 2019-20 and refined for the 2020-21 accounts using the LAMS and Qlik. The LSANI embarked on a case closure project to ensure only live cases were provided for. From 8 August 2020 the LSANI closed cases which did not proceed beyond the application stage. Also, the LAMS began to automatically close cases where all parties attached to the case had been paid. A manual closing process was also available.
- 3.80 From August 2021 the Agency Data Management Project considered cases deemed inactive by the Agency and issued a circular to Suppliers outlining their approach. A change was required to the LAMS to enable the identification of cases that had not been subject to requests on the LAMS over a set timescale. This change should be brought forward as soon as possible.
- 3.81 As of 31 December 2021, 174,468 cases had been closed since August 2020 leaving 67,927 for provision purposes. The Agency should continue to progress the Data Management Project so that all old and inactive cases are closed to improve the accuracy of provisions.
- 3.82 Legal Aid provisions were calculated using the LAMS however more complex cases were valued outside of the LAMS. In his qualification of the Agency's accounts for 2020-21, the C&AG determined that there was an unacceptable level of uncertainty and error regarding more complex cases including £0.6m for Court of Appeal cases.
- Court of Appeal**
- 3.83 Court of Appeal cases were not on the LAMS/ICOS interface. Suppliers entered Court of Appeal cases on to the LAMS manually at the end of the case. Twice a year the LSANI wrote to Suppliers asking them to advise if they had any high value cases in an attempt to data capture if cases were going to exceed a certain amount of money. The LSANI advised that the response rate was not good.
- 3.84 The LSANI received notification directly from the Taxing Master's Office on Court of Appeal cases. A quarterly update was provided detailing the latest list of cases with the decisions and the value of the claim/final certificate. The Agency also used previous Court of Appeal cases as indicators for forecasting provisions.
- 3.85 As an area for improvement **the Legal Services Agency Northern Ireland and the Northern Ireland Courts and Tribunals Service should add Court of Appeal cases to the Legal Aid Management System/Integrated Court Operations System interface so that the Legal Services Agency Northern Ireland have a daily record of cases and their progress as this would assist with forecasting.**

PERFORMANCE MANAGEMENT

- 3.86 The LSANI had developed a revised suite of KPI targets to reflect the new and transformed business practices.
- 3.87 On 16 June 2020, the LSANI Board endorsed recommendations to establish a Performance Measurement Working Group (PMWG). The immediate aims of the PMWG were to:
- agree a finalised operational dashboard to provide accurate and timely management information across key areas of the business to the LSANI staff, Suppliers and the Agency Board on a monthly basis; and
 - develop a suite of meaningful and robust KPIs from a post-LAMS environment.
- 3.88 The monthly dashboard was operational from July 2019. Each month, reformatted versions of the dashboard containing timely management information were generated by the Information Analysis Unit for displaying on the LSANI internal screens, publication on the LSANI website and for sharing with Suppliers.
- 3.89 The previous KPI framework was developed in and reflected the Phoenix landscape. One historical issue from Phoenix was that while KPIs were premised on properly completed requests being received, data did not permit the exclusion of incomplete or inaccurate requests from the calculation of these performance measures. KPIs derived from LAMS were now produced to two standards. The traditional measure remained alongside a second set of outturns excluding those requests that were queried on at least one occasion.
- 3.90 The production of monthly KPI outturns had been a highly manual and labour intensive exercise within the Information Assurance Unit. A prototype application had been developed in Qlik that automated the process to generate headline performance outcomes on a monthly basis. This allowed for a refresh of performance data to facilitate in-month monitoring across individual lines and teams. The benefits of this application could be seen with the Quality Assurance system of 100% checking for error. Criminal Payments staff's performance could be measured so that the percentage of work being checked for each staff member could be decreased or increased depending on their error rate.
- 3.91 The LAMS allowed for effective monitoring of performance however the efficiency of the system was impacted by insufficient funding.
- 3.92 In 2020-21 the KPI for Criminal Payments was 95% within eight weeks. The need to review KPI Criminal Payment targets was driven by a reduction in the annual fund budget for 2021-22. In addition to this, the volume of unassessed payment requests being carried over from the previous financial year was 4% higher than in April 2020 due to a budget reduction in 2020-21. Criminal Payments targets for 2021-22 were changed to 95% to be completed within 12 weeks.

3.93 The LSANI advised Inspectors that new KPIs for Authorities were being developed for implementation on 1 April 2022. There were no targets in place for Authorities prior to this. Authorities work included, among other things, granting approval for reports from experts. Often cases were before the court when such a request is made so it was important that there were targets in place to encourage decisions to be taken as soon as possible so that court proceedings were not delayed unnecessarily.

CHAPTER 4: **OUTCOMES**

OUTCOMES AGAINST THE DIGITAL TRANSFORMATION LEGAL AID PROJECT (DTLAP) OBJECTIVES

Support the NICS digital transformation objective

- 4.1 The digital transformation objectives required that new or redesigned services must be designed with online services as the primary way for citizens to interact with government.
- 4.2 This objective was met as with the LAMS Legal Aid applications were processed fully online by staff and Suppliers and it provided the Supplier with access to real time information about their Legal Aid cases.
- 4.3 Legal Aid case management systems in other UK jurisdictions were still not fully online. The Scottish Legal Aid Board offered interactive digital services to both Suppliers and citizens. Citizens applied for Legal Aid through Suppliers who then submitted the application and accounts online. However a small number of their forms and declarations were available in paper format including accounting processes that had not been replaced by Legal Aid Online. In England and Wales the Legal Aid Agency's Legal Aid Online supported applications outlined in their List of Services that were central to core functions of the business. Forms for other matters not supported by the system could be downloaded and sent electronically or in paper form (where applicable) to the Legal Aid Agency.

Improve data quality

- 4.4 Unlike with the old Phoenix system, only validated applications were accepted by the LAMS to ensure accuracy of the information provided by Suppliers. To make sure the data provided by Suppliers was complete the LAMS had note boxes within specific applications to enable Suppliers to provide additional information to the Agency and its staff could raise queries to obtain missing or additional information.
- 4.5 The DTLAP aimed to reduce the number of applications returned to the Supplier for rework from 40% to 5%. Table 10 shows that since the implementation of LAMS, this had been achieved, demonstrating that the quality of information provided by Suppliers had improved.

Table 10: Criminal Payment Requests Received and Queried¹, by Court Type and Financial Year²

	Crown Court Payment Requests			Magistrates' Court Payment Requests		
	Total	Queried	% Queried	Total	Queried	% Queried
2021-22 Q2	2,923	74	2.5%	16,213	413	2.5%
2020-21	4,313	217	5.0%	22,139	577	2.6%
2019-20 Q-2-4	3,997	88	2.2%	20,670	641	3.1%

Source: LSANI

¹ Queried payment request counts relate to completed payment requests on the LAMS system that have been returned to the Supplier under query at any point during the payment authorisation process. Details on the nature of the query are not readily available for reporting purposes. Equivalent information (prior to July 2019) is not available from the Phoenix case management system.

² Financial year relates to the date for which the payment request was completed, regardless of the year it was submitted.

4.6 The monetary benefits anticipated from the implementation of the LAMS were achieved.

4.7 The Business Case forecast that the Agency's staff headcount would reduce from 141 to 99, realising a headcount saving of 42, with staff being released over the course of one year (2019-20). Savings were estimated at £1.26m. As at 24 October 2019 the headcount saving of 42 had been achieved. The staff savings were £1.412m. This saving was calculated using 2020-21 pay rates and was based on the 42 headcount benefit having been achieved plus one surplus Administrative Assistant being redeployed.

4.8 Annual operating costs for printing ectera reduced from £97,289 in 2016-17 to £28,729 in 2020-21.

4.9 A further benefit the LSANI hoped to achieve with the LAMS was that the onsite storage requirements would be reduced which would allow the Agency to move to smaller accommodation space when the lease was up. Removal of paper based applications and significant case closures since the implementation of the LAMS had allowed the Agency to make arrangements to move to smaller accommodation in June/July 2022. Preparatory work for the re-location had already commenced.

Ensure that the LSANI has an effective case management system that complies with DoJ IT Security and Information Management policies

4.10 The LAMS was built and accredited to 'official' standards.

- 4.11 As a result of the LAMS being a Minimum Viable Product, changes were required to the LAMS to improve the effectiveness of the system. Changes could be prioritised and progressed under the new contract.
- 4.12 The average criminal processing times from 2016-17 until September 2021 are set out in Table 11. In the first nine months following the implementation of LAMS, there was an improvement in average Criminal Payment processing times. There was an increase in 2020-21 and the first two quarters of 2021-22 due to the introduction of Quality Assurance processes and insufficient Legal Aid funding as outlined in the explanatory notes.

Table 11: Average Criminal Payment Processing times (working days) by Court Type and Financial Year

System	Financial Year ¹	Court Type			
		Crown		Magistrates'	
		Volume of Payments	Average Processing Time (Days)	Volume of Payments	Average Processing Time (Days)
LAMS ³	2021-22 Q1-2	2,923	28	16,213	43
	2020-21	4,496	24	22,211	27
	2019-20 Q2-4	4,460	27	22,064	17
Phoenix ²	2019-20 Q1	1,614	28	7,239	22
	2018-19	5,184	34	28,843	25
	2017-18	5,513	22	27,078	29
	2016-17	6,715	20	30,618	17

Source: LSANI

¹ Financial year relates to the date for which the payment request was completed, regardless of the year it was submitted.

² Average payment processing times on the Phoenix system have been derived from the date on which the payment report was received until the date that the payment was authorised. These include interim, full and additional payment reports. It is not possible to determine processing times for rejected payments from the Phoenix system.

³ Average processing times on LAMS have been derived from the date of when the payment request was submitted until the date that it has been considered completed. This will include both determined and rejected payment requests. LAMS payment requests exclude late submissions and payment requests relating to contemporaneous records or migrated cases (both unique to LAMS). While LAMS-based KPIs are now presented excluding queried requests, when the time elapsing between both dates (submitted and completed) is to varying extents outside of the Agency's control, the working days presented above include queried cases to be more comparable with Phoenix averages.

Explanatory notes

Average processing days against criminal payments were adversely affected towards the end of 2020-21 due to the effects of a combination of factors including a limit on monthly expenditure before Christmas as well as the introduction of a 100% payment check exercise designed to improve accuracy of payments to reduce the level of Official Error. Average processing days against criminal payments completed in 2021-22 are not directly comparable with previous years. Due to reduced flat cash settlement (budget) for 2021-22, the Agency had to carry out an exercise to revise its KPI targets. Accordingly, in 2021-22, the target for processing criminal payments increased from eight weeks to 12 weeks and the impact of this is apparent in the above figures.

Source: LSANI

- 4.13 The Business Case had anticipated the processing cost per criminal case to be £47.44. For 2020-21, the only full year post LAMS implementation, the processing cost per criminal case was £88.05. The cost per case increase was driven by;
- a significant decrease in the number of criminal cases as result of COVID-19;
 - a change in the metric used to measure the number of cases. LSANI previously used 'acts of assistance' to indicate the volume of new business being supported by Legal Aid within any given year and this was calculated on a Legal Aid certificate basis. LAMS was designed to hold and manage data at a case level (rather than certificate level). 'Acts of assistance' had now been replaced with the number of 'applications granted' as the new equivalent measure to reflect the post-transformation environment. As multiple certificates could be granted on any case, 'acts of assistance' would automatically be a higher figure than 'applications granted.'
- 4.14 For context if case levels had remained consistent with those stated in the original business case then the criminal cost per case would be £54.05 for 2020-21.
- 4.15 The LAMS required significant user input and its effectiveness was impacted by staff performance. Table 12 shows the percentage of Criminal Payment requests completed within KPI target from 2017-18 until September 2021. The KPI for Criminal Payments was 95% within eight weeks.

Table 12: Percentage of Criminal Payment requests completed within KPI target from 2017-18 until September 2021

% of Criminal payment requests completed within KPI target	LAMS			Phoenix			
	YTD (April to Sept 2021)	2020-21	April to Dec 2020	July 2019 to March 2020	April to June 2019	2018-19	2017-18
Crown Court	98.1%	90.7%	96.0%	94.5%	98.2%	94.2%	95.8%
Magistrates' Court	96.0%	69.5%	96.9%	97.3%	98.6%	97.6%	98.1%

Source: LSANI

- 4.16 Monthly performance was within or close to the eight week turnaround targets for both criminal line KPIs until early 2021. During this time, there were a few months of high volume billing as the courts implemented their COVID-19 Recovery Plan, restrictions on expenditure and a period of 100% checking across all payments services to identify and reduce common errors and improve accuracy. Monthly performance was within target from April-September 2021, bearing in mind that the KPIs had been amended to 12 weeks to allow for the restriction in expenditure.

Future proof the technical solution, so the LSANI can adapt to changes in policy or legislation without incurring the same level of costs for change controls

- 4.17 Simple changes to the LAMS are handled by the Agency and LAMS Support have been able to administer fees and codes from the system since implementation.
- 4.18 When development of the LAMS commenced it was discovered that the security provided for the Agency was not sufficient for the organisation's needs. Work was carried out to enhance the security architecture and ensure that the LSANI had taken all necessary measures to protect the information it held in relation to Legal Aid cases.
- 4.19 The LAMS had a lot of SRS functionality not currently enabled when it was rolled out. The SRS is to be launched in June 2023 and this functionality can be utilised for development.

Improve the reporting capability within the Agency

- 4.20 Some data regarding Criminal Legal Aid processing before the LAMS was not available but all data since the implementation of LAMS was provided to Inspectors.
- 4.21 A new methodology was introduced for forecasting in 2019-20 and refined for the 2020-21 accounts using LAMS and Qlik. As of 31 December 2021, 174,468 cases had been closed since August 2020 leaving 67,927 for provisions purposes.
- 4.22 New processes addressing official error were established. Table 13 shows the figures for 2021. Deemed errors are defined as cases where Assessors required further information to complete their review and where that information was not provided within 28 calendar days. The figures were positive and showed that for 2021 the error rate was 4.3%, a reduction of 10.6 percentage points from the previous year.

Table 13: Official Error

	2020	2021
Sample months covered	Jan-Dec	Jan-Dec
Total completed cases	695	911
Error rate	14.9%	4.3%
Error value	£5,573,318	£1,924,466
Error rate excluding deemed	10.7%	3.7%
Error value excluding deemed	£3,999,730	£1,692,157

Source: LSANI (Percentages may not sum to 100 due to the effects of rounding.)

OUTCOMES AGAINST STRATEGIC OBJECTIVES

- 4.23 The LSANI had four strategic objectives in its 2021-22 Business Plan. In previous years the LSANI reported progress against the strategic objectives to the LSANI Board monthly regarding strategic objective one and bi-monthly on the other three objectives through a documented report.

Delivering high quality legal aid services

- 4.24 Legal Aid applications were processed fully online on the LAMS by staff and Suppliers and it provided the Supplier with access to real time information pertaining to their Legal Aid cases.
- 4.25 The LSANI's measures against this objective were to establish the Compliance and Training Unit by 30 September 2021 and to develop a Counter Fraud Strategy by 30 September 2021. The Agency had established the Compliance and Training Unit within the timescale and had employed two professional trainers but there was still work to be done around training and guidance. The Agency had developed a Counter Fraud and Error Action Plan and a new fraud referral system was implemented in October 2021 however a Counter Fraud Strategy was not yet developed.
- 4.26 The LSANI had changed their internal guidance so that it was compliant with legislation. In October 2020 the LSANI brought their Late Claims Policy into line with statutory requirements. Table 14 presents the overall number of criminal payment requests submitted to the LAMS, since 1 July 2019 and the volume of late claims. Due to limitations of data held on the previous case management system (Phoenix), it was not possible to provide equivalent figures for earlier years. The LSANI notified Suppliers in October 2020 that the legislative time limits for submissions of claims were being enforced and reminded them of the penalties for late submission of claims. The figures show that there has been a reduction in late claims in each financial year from July 2019-20 to December 2021.

Table 14: Overall volume of Criminal Payments and volume of Late Claims from July 2019

Financial Year ¹	Volume of Criminal Payments ²	Volume of Late Claims (Criminal) ³
2021-22 Q1-3	23,201	601
2020-21	32,479	990
2019-20 Q2-4	32,896	1,055

Source: LSANI

1 Financial year relates to the date for which the payment request was submitted.

2 Volume of all criminal payment requests submitted via LAMS.

3 Volume of all criminal payment requests submitted via LAMS with a Late Submission flag.

Customer, Stakeholder and Partner Engagement

- 4.27 Inspectors were informed by Suppliers and the Agency that their working relationship had improved since the implementation of the LAMS. Engagement through the Operations Forum, new guidance and communications had enabled increased understanding over the operation of the LAMS system.
- 4.28 An Engagement and Communications Strategy Group was set up in June 2021 to ensure effective involvement and engagement strategies were developed and delivered so that Suppliers were involved in the operation and reform of the Agency.
- 4.29 A new contract had been signed and a Change Forum will be established with representatives from the legal profession, which will prioritise future changes to the LAMS that have been requested by Suppliers. The Terms of Reference had been drafted and communication went out to Suppliers at the end of January 2022 requesting their engagement in the Change Forum.
- 4.30 At the time of writing the Agency and the EAJD were engaged with Suppliers regarding the SRS and the Crown Court Rules Review to identify issues in an attempt to resolve those issues as early as possible to avoid delay in delivery of the projects.
- 4.31 To improve their working relationship with the EAJD, in May 2021 the Agency signed up to the EAJD guidance which was designed to ensure that the partnership was effective and that there was appropriate collaboration between the EAJD led project teams and the LSANI. A working group had been established and the LSANI had informed Inspectors that they could already see the benefits of their improved working relationship.

Strengthening governance and accountability

- 4.32 The improvement in access to and utilisation of Management Information extracted from the LAMS by Qlik had assisted the Agency in establishing:
- a monthly dashboard displaying performance information against key business areas on the Agency's internal screens, publication via the LSANI website and for sharing with Suppliers;
 - new methodologies for forecasting and official error with which the C&AG was satisfied;
 - a revised suite of LAMS-driven targets to reflect the new and transformed business practices;
 - guidance for staff; and
 - more robust fraud practices and processes for the Counter Fraud Unit.

4.33 In 2021 a user satisfaction survey was carried out to gain an insight into the personal experiences of those who had accessed or received the Agency’s Management Information since the implementation of LAMS. Responses were received from 32 respondents, the vast majority were LSANI staff (24). The outcomes were as follows:

- the top two reasons reported for using the Agency’s Management Information in 2021 were: ‘modelling and forecasting’, and ‘business/financial planning or funding bids’ (56%);
- respondents in 2021 were most satisfied with the timeliness of the LSANI’s Management Information (91%), which represented an increase compared with 2019 (50%);
- only one respondent in 2021 expressed dissatisfaction with any aspect of the LSANI’s Management Information, and that was to do with its presentation;
- almost three-quarters of respondents expressed overall satisfaction in the LSANI’s Management Information (72%), an increase from 36% in 2019; and
- around four-fifths of respondents in 2021 (81%) agreed that the Agency’s Management Information added value to the overall outcome of their work (this compared with 55% in 2019).

Support and Empower our People

4.34 Inspectors were informed that recent training provided by the new Training and Compliance Unit on error and fraud was clear and sufficient. The Training and Compliance Unit had also commenced a review of Criminal Legal Aid processing guidance to bring it up-to-date and to assimilate all the sources of guidance into one document. At the time of writing the Magistrates’ Court processing guidance had been drafted and circulated to staff. The feedback Inspectors received was that it was a step in the right direction and much more concise. There was still work to be done around training and guidance to support staff to improve the efficiency of Criminal Legal Aid processing.

4.35 Staff were not utilising the internal process to request changes and Inspectors have made a recommendation that the LSANI establish a forum for staff to meaningfully contribute to change and other operational issues.

OUTCOMES AGAINST THE PROGRAMME FOR GOVERNMENT DRAFT OUTCOMES FRAMEWORK 2021

'We have an equal and inclusive society where everyone is valued and treated with respect.'

4.36 This Outcome includes ensuring that a person's background or identity is not a barrier to their participation in society. Being able to participate fully and fairly in the criminal justice system is an integral part of their participation.

4.37 The LSANI Payments Team were responsible for managing the Agency's usage of the DoJ's Interpretation Contract. The Interpretation Contract provided interpreting and translation services for an Assisted Person when their first language was not English so that they could communicate effectively with their legal team and understand the legal proceedings in which they were involved. The LSANI were contractually obliged to pay providers within 30 days of the work being completed. The LSANI told Inspectors that there were no backlogs with these types of Authority requests and they were turned around daily, with emergency/urgent requests being prioritised.

'Everyone feels safe – we all respect the law and each other.'

4.38 This outcome includes making the criminal justice system more effective as the effective progression of criminal cases matters to victims, witnesses and their families as well as defendants, criminal justice organisations, Suppliers and the judiciary.

4.39 New KPIs for Authorities were being developed for implementation on 1 April 2022. There had been no targets in place for Authorities whose work included, among other things, granting approval for reports from experts. Often cases were before the court when such a request was made so it was important that there were targets in place to encourage a quick turnaround in decisions so that court proceedings were not delayed unnecessarily.

4.40 The LSANI advised Inspectors that Suppliers could obtain a status report of their requests from the LAMS and this could be provided to the court so that they were kept updated. Inspectors were informed by the Lady Chief Justice's Office that they had a very good relationship with the LSANI and that the Agency were proactive in discussing and addressing issues raised by the judiciary. The NICTS advised Inspectors that they were not aware of any issues regarding delay around the granting of Authorities by the Agency.

LEADERSHIP

- 4.41 LSANI Senior Management had been restructured relatively recently and were instrumental in bringing about and driving forward a cultural change in the Agency through:
- focusing on reducing error and fraud;
 - improved Management Information;
 - improved performance management;
 - recognising the importance of appropriate training and guidance;
 - increased accountability; and
 - increased transparency.
- 4.42 Their progress to date needs to be sustained through effective leadership and management of staff and services. Staff need to be clear about and involved in the future direction of the Agency, LAMS development and their role in further driving down error and improving efficiencies. The risks associated with key staff changes need to be managed well to ensure ground gained is not lost, this includes appropriate succession planning, hand over and induction training.

APPENDIX 1: METHODOLOGY

SCOPING MEETINGS

Inspectors met with the Chief Executive and Director of Operations for LSANI and key stakeholders, the Law Society of Northern Ireland and the Bar Council to determine the scope of the inspection.

DESKTOP RESEARCH AND DOCUMENTARY REVIEW

Research literature and guidance were reviewed in relation to Criminal Legal Aid processing. This was used to inform the development of terms of reference for the inspection and fieldwork planning. A review was also completed of external and internal documentation relating to Criminal Legal Aid processing provided to CJI by inspected agencies. This was used during fieldwork planning and analysis.

Fieldwork

One to one interviews and focus groups with inspected agencies were completed and Inspectors very much appreciated the time and efforts involved in organising these. The bulk took place with the LSANI and to a lesser degree the PPS, NICTS and the Standards Assurance Unit of the Department for Communities (DfC). Inspectors also met with representatives from EAJD and the Judiciary and were grateful for the information provided by each. Representatives from the following areas in each agency were interviewed:

LSANI

- Director of Operations;
- LAMS Support Manager;
- Head of Counter Fraud Unit;
- Authorities Unit Deputy Principal (DP);
- Payments Acting DP;
- Exceptionality and Criminal Payments Acting DP;
- Exceptionality and Criminal Payments Executive Officer (EO)1 x 2;
- Exceptionality and Criminal Payments EO2;
- Exceptionality and Criminal Payments Administrative Officer (AO) x 4;
- Advice and Assistance EO2 x 2;
- Advice and Assistance AO x 4;
- Crown Court and Magistrates' Court EO2 x 2;
- Crown Court and Magistrates' Court AO x 5; and
- Late Claims EO2.

PPS

- Head of Fees.

NICTS

- Acting Chief Operating Officer.

Standards Assurance Unit

- Grade 7.

Inspectors observed LSANI staff processing applications in real time on the LAMS for advice and assistance, Crown Court, Magistrates' Court, Extradition and Exceptional Preparation.

Interviews and focus groups were also undertaken with stakeholder organisations:

- The judiciary;
- The Law Society of Northern Ireland; and
- The Bar Council.

APPENDIX 2: **TERMS OF REFERENCE**

AN INSPECTION OF CRIMINAL LEGAL AID PROCESSING TERMS OF REFERENCE

INTRODUCTION

Criminal Justice Inspection Northern Ireland (CJI) proposes to undertake an inspection of criminal legal aid processing in the Legal Services Agency Northern Ireland (LSANI/the Agency).

The main organisation to be inspected will be the LSANI, however, other parts of the criminal justice system are central to the effective delivery of justice in this area and the inspection will also include the Bar of Northern Ireland, the Law Society of Northern Ireland, the Judiciary, the Department of Justice (DoJ), the Northern Ireland Courts and Tribunals Service (NICTS) and the Public Prosecution Service (PPS) as key stakeholders and service delivery partners.

Context

The LSANI was established on 1 April 2015 under the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014 and administers the provision of publicly funded legal aid for civil, family and criminal cases in Northern Ireland. It is an executive Agency within the DoJ, following the dissolution of the Northern Ireland Legal Services Commission (NILSC).

The Agency's main aim is to support the justice system by administering publicly funded legal services impartially, effectively and efficiently within the governing legislation and policy framework set by the Minister of Justice. The Framework Document³⁴ sets out the agreed arrangements between the DoJ and the LSANI Chief Executive for the governance, accountability, financing, staffing and operation of the Agency.

Schedule 2 paragraph 5 of the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014 amended the Justice (Northern Ireland) Act 2002 to include the LSANI within the inspection remit of CJI.

³⁴ DoJ, *Legal Services Agency Northern Ireland Framework Document, April 2015*, available at [LSANI Framework Document - April 2015 \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk/lsani-framework-document).

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. Over the last 10 years, the average number of criminal legal aid cases fully paid each year by the LSANI was 36,272 and the average criminal legal aid expenditure was £42.67m per annum. The Agency is not responsible for granting criminal legal aid however, it funds and makes payments to the legal profession for criminal legal aid services that are granted by the Judiciary in Magistrates', Youth, County Court, Crown and Court of Appeal proceedings. LSANI also makes payments for initial advice or assistance in a criminal matter under the 'Green Form' scheme and advice at the police station when a person is being interviewed by the police about criminal charges.

In 2011 CJI carried out an inspection of the *use of legal services by the criminal justice system*³⁵. While this report focused mainly on prosecution costs, it highlighted the differential legal aid payments made to defence and prosecution counsel and the fact that Northern Ireland expenditure for prosecution and defence representation was running at approximately 20% higher than England and Wales. In 2013 CJI conducted an inspection of corporate governance in the NILSC³⁶ and concluded that the legal aid arrangements in Northern Ireland were not fit for purpose and were in need of radical reform. This inspection will be the first since the LSANI was established.

The reform of legal aid has been a priority since devolution. In 2011 the Northern Ireland Audit Office (NIAO) and the Public Accounts Committee (PAC) Reports on Managing Criminal Legal Aid were critical of how the NILSC and the LSANI managed the Legal Aid budget over a number of years and made recommendations to introduce significant reform of the legal aid system and to establish effective financial controls over payments. Also in 2011, the Access to Justice Review on criminal legal aid suggested that new, more radical thinking may have to be employed to bring legal aid spending under control, while at the same time, ensuring that those who most need the support of the State in accessing justice, can get it. It recommended that the DoJ and the NILSC pay attention to introducing efficient business processes, maximising the use of Information Technology (IT). On 11 January 2017 the NIAO and PAC published further reports stating that reforms had not been implemented effectively. In particular, the PAC Report described the existing management information systems as being '*archaic and not fit for purpose*' and stated that '*it is an inadequate basis for running the service and had an adverse impact on every aspect of the Agency's work.*'

Since 2003 the NIAO has been qualifying the accounts of the NILSC and LSANI. The Comptroller and Auditor General (C&AG), appointed as auditor of the NILSC under the Access to Justice (Northern Ireland) Order 2003 as amended by the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010, is required to examine, certify and report upon each statement of accounts prepared by NILSC and subsequently LSANI.

35 CJI, *Use of Legal Services by the Criminal Justice System*, June 2011 available at [Use of Legal Services by the Criminal Justice System, \(cjini.org\)](#).

36 CJI, *A corporate governance inspection of the Northern Ireland Legal Services Commission*, November 2013 available at [Corporate Governance in the NILSC, \(cjini.org\)](#).

The C&AG has continued to qualify the accounts of the LSANI due to a lack of effective counter fraud arrangements and weaknesses in the financial estimates of provisions for legal aid liabilities in the annual accounts.

The 2017 PAC report made five recommendations. Recommendation 2 included establishing an effective management information system in the LSANI. This was to be supported by a concise action plan including an explicit timetable and milestones for delivery.

The DoJ Corporate Plan 2019-22 and Business Plan 2019-20 listed as a priority the delivery of the LSANI Transformation Programme, which included the implementation of a new digital case management system. On 1 July 2019 the Legal Aid Management System (LAMS) was introduced. The LAMS is used by both legal practitioners and LSANI staff in the processing of legal aid payments for eligible and certified defendants. This inspection will examine criminal legal aid processing with particular focus on the LAMS.

Aims of the Inspection

This inspection is focussed on criminal legal aid and its broad aims are to:

- examine the effectiveness of the LAMS in supporting the achievement of strategic business objectives and improved service delivery;
- review how operational delivery and staff resourcing of the LAMS was structured to meet business needs, the needs and expectations of stakeholders and service users and assess effectiveness, continuous development and potential areas for improvement;
- examine and assess the outcomes of the LAMS and delivery mechanisms against project objectives, cost/benefit realisation and historic payment rates;
- examine management information, resource utilisation and the performance of the criminal justice organisations in facilitating the function of the LAMS; and
- examine how the above aspects of the LAMS are benchmarked against good practice in other jurisdictions.

Other matters of significance as they arise during inspection will also be considered.

Methodology

The inspection will be based on the CJI Inspection Framework, the three main elements of the inspection framework are:

- strategy and governance;
- delivery; and
- outcomes.

Constants in each of the three framework elements and throughout each inspection are equality and fairness, together with standards and best practice. The inspection methodology can be found at www.cjini.org.

Design and Planning

Preliminary research

Data and initial information has been sought from the LSANI to inform the scope of this inspection.

Stakeholder consultation

Consultations will take place with stakeholders to determine the scope of the inspection to include:

- The Bar of Northern Ireland; and
- The Law Society of Northern Ireland.

Benchmarking, research and data collection

Collection of benchmarking information and data, where available, from other jurisdictions and review of research reports will be undertaken.

Contact with agencies

Terms of reference will be prepared and shared with the LSANI and the other criminal justice organisations prior to the initiation of the inspection. Liaison officers for each body should be nominated for the purposes of the inspection.

Policies and procedures, management information, minutes of meetings and related documentation from the inspected organisations will be requested and reviewed.

Delivery

Self-assessment

The LSANI, as the primary organisation, will be requested to complete a self-assessment of its approach to the LAMS and to provide an outline of current progress and any relevant management information.

Hypothesis development

Management information, data and other relevant documentation held by the LSANI and other criminal justice agencies will be examined.

Development of fieldwork plan

Interviews and focus groups will be conducted with the LSANI and other criminal justice agency staff, and relevant stakeholders to give an insight into the issues affecting the effective provision of criminal legal aid services. Inspectors will also observe the processing of applications on the LAMS in real time.

Fieldwork requiring face-to-face contact will be planned and risk assessed in consultation with the relevant organisation or individual and public health advice will be followed.

Analysis of data

Progress in the development of performance and management information will be examined.

Evidence of planning and decision-making leading to performance improvement and recognition of future development will be assessed.

Initial feedback to agency

On conclusion of the fieldwork the evidence will be collated, triangulated and analysed and any emerging recommendations will be developed. CJI will then present the findings to the LSANI.

Drafting of report

Following completion of the fieldwork, which is planned to take place during September and October 2021, and analysis of data, a draft report will be shared with the inspected bodies for factual accuracy check. The Chief Inspector will invite the inspected bodies to complete an action plan within six weeks to address any recommendations and if the plan has been agreed and is available it will be published as part of the final inspection report. The inspection report will be shared, under embargo, in advance of the publication date with the inspected bodies.

Publication and Closure

A report will be sent to the Minister of Justice for permission to publish. When permission is received the report will be finalised for publication. A press release will be drafted and shared with the LSANI prior to publication and release. A publication date will be agreed and the report will be issued.

Indicative Timetable

Scoping/Research: April - June 2021.

Stakeholder consultation: April - June 2021.

Agency fieldwork: October/November 2021.

Draft Report to agencies: January/February 2022.

Factual accuracy feedback received: March 2022.

The above timetable may be impacted by factors such as the easing of COVID-19 public health restrictions and subsequent impact on the ability to conduct fieldwork where it needs to be undertaken face to face. The inspected organisation will be kept advised of any significant changes to the indicative timetable.



First published in Northern Ireland in June 2022 by

**Criminal Justice Inspection
Northern Ireland**

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Belfast BT4 3SJ

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