

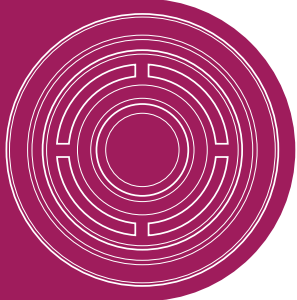


A CORPORATE GOVERNANCE INSPECTION OF THE NORTHERN IRELAND LEGAL SERVICES COMMISSION

November 2013

Criminal Justice Inspection
Northern Ireland
a better justice system for all





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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

ABWOR	Assistance By Way Of Representation
CEO	Chief Executive Officer
CJI	Criminal Justice Inspection Northern Ireland
DoJ	Department of Justice
LAA	Legal Advice and Assistance
NDPB	Non-Departmental Public Body
NIAO	Northern Ireland Audit Office
NICtS	Northern Ireland Court Service (former name of NICTS)
NICTS	Northern Ireland Courts and Tribunals Service
NILSC	Northern Ireland Legal Services Commission
PAC	Public Accounts Committee
VHCC	Very High Cost Cases



Chief Inspector's Foreword

The Northern Ireland Legal Services Commission (NILSC) has struggled since its creation with the management of the legal aid budget. It has no control over the granting of criminal legal aid and only limited control over the eventual granting of civil legal aid, both of which have seen significant increases in recent years.

In the current economic situation legal aid has become a facility we are struggling to afford as the overall cost continues to rise. In granting legal aid, consideration needs to be given not only to the existing means and merit principles, but also the affordability of the service.

Crime levels in Northern Ireland continue to fall and, but for the recent issues of public disorder, we live in one of the safest countries in the world. Yet our legal aid bill continues to rise and the Department of Justice (DoJ) is reducing funding to mainstream criminal justice organisations, to pay for the increase in legal aid spending. The impact of these measures on future service delivery has yet to be assessed.

The NILSC inherited many of the problems which beset the arrangements it replaced, and these have been exacerbated since the devolution of justice. In addition, its systems and processes were in need of modernisation and there was significant scope for the use of IT solutions to improve business performance.

Inspectors acknowledge the efforts that have been made in recent years. However, a great deal remains to be done to develop more efficient and effective legal aid delivery arrangements. This includes resolving long running issues around staff pay and conditions and bringing performance management

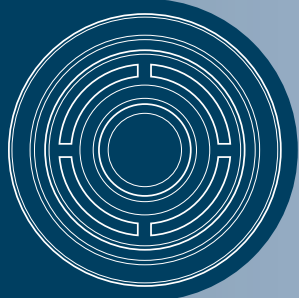
into line with best practice in the Northern Ireland Civil Service.

The reform of legal aid has been a priority since devolution, and the *Access to Justice* report in 2011 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. The DoJ has sought to bring the legal aid budget under control and we are broadly supportive of the current departmental plans. However our overall conclusion is that the legal aid arrangements in Northern Ireland are not fit for purpose and are in need of radical reform.

This inspection was conducted by William Priestley and Stephen Dolan. My sincere thanks to all who contributed to their work.

Brendan McGuigan
Chief Inspector of Criminal Justice
in Northern Ireland

November 2013



Executive Summary

Over the past few years the legal aid budget has been rising out of control, and imposing severe pressure on the rest of the DoJ's budget. There are signs that recent reforms are beginning to have an effect, but expenditure is still very high compared to most jurisdictions.

When the NILSC was first established in 2003 as an executive Non-Departmental Public Body (NDPB) its emphasis was on administering access to effective civil legal aid, promoting the availability of those services, and providing access to criminal defence in the interests of justice.

Part of the problem has been the shortcomings in the effectiveness and efficiency of the NILSC. There has been a succession of reports in recent years critical of its management, and the DoJ now plans to legislate to change it to an executive agency. Inspectors support that move and confirm that there is more to be done to improve legal aid administration and regain control of the budget.

Systems are over-complicated and are managed inefficiently, with little use of modern technology. Half of all applications from solicitors have to be returned to them because the forms are not completed properly, and there are frequent challenges to the decisions made about funding because the criteria are not clearly set out.

Staff morale is poor and performance management has not been properly implemented. The IT systems do not allow targets to be set and monitored in a meaningful way. The business of the NILSC needs to be properly analysed and modelled so that new structures and performance targets can be put in place supported by state of the art IT. If this were done, there could be significant savings in administration costs (with corresponding benefits to the legal profession) and improvements in the timeliness of decisions and payments.

The NILSC operating in its present format, with current legislative restrictions, an increasing focus on the cost of legal aid and little real control over the granting of legal aid, was unable to meet the expectations of oversight bodies, including elected representatives.

The implementation of the *Access to Justice* report recommendations would address some of the causes of the pressures facing the Commission. Although these reforms would lead to a firmer platform for the



delivery of the legal aid business in the short to medium term, they would not provide the additional budget savings deemed necessary in the current fiscal climate. That can only be achieved when the responsibility for granting legal aid lies with the body that carries fiduciary responsibility for the legal aid budget. Thus the long-term aim should be for the new legal aid body to have overall responsibility for the granting of all legal aid. The *Access to Justice* report recommended the introduction of radical changes to the legal aid landscape if the initial reforms did not achieve a reduction in the budget deficit. Following on from this, further changes to the legal aid budget should be considered including restricting the scope of civil legal aid.

The task is to bring expenditure on legal aid under control without prejudicing the citizen's reasonable access to justice, and at the same time, to reform the management of civil and criminal legal aid to bring it up to the best modern standards. The *Access to Justice* review provides a blueprint for this, and the forthcoming change to agency status will provide the opportunity.

In view of the findings of this report Inspectors make only one strategic recommendation in the interests of building and sustaining good governance.

Careful consideration must be given to the effects of contextual changes and the benefit of recent experience in England and Wales on the recommendations of the *Access to Justice* report. Having done so the sponsor department should, as soon as practicable, implement those recommendations of the *Access to Justice* review

which would improve governance in line with the principles set out by the Cabinet Office of:

- accountability;
- roles and responsibilities;
- effective financial management; and
- communications

along with fundamental reform of the substantive law and associated processes proposed. All other areas for improvement raised by Inspectors are caveated and dependent upon this over-riding recommendation.



Recommendation and Areas for Improvement

Strategic recommendation

1

The sponsor department should, as soon as practicable, implement those recommendations of the *Access to Justice* review which would improve governance in line with the principles set out by the Cabinet Office of:

- accountability;
- roles and responsibilities;
- effective financial management; and
- communications

along with fundamental reform of the substantive law and associated processes proposed (paragraph 2.7).

Areas for improvement

1

Work already started on standardising legal aid arrangements with regard to the cost of expert witnesses should be completed and implemented as soon as possible (paragraph 2.30).

2

A compulsory registration scheme for lawyers should be developed, agreed and implemented as soon as possible in tandem with any proposed restructuring undertaken by the DoJ (paragraph 2.43).

3

A complete review and mapping of business processes operating within the NILSC should take place as soon as possible to inform the development of a comprehensive electronic-based system of applying for legal aid and for data handling within the NILSC (paragraph 2.44).

4

As part of the reform of the administration of legal aid business processes should be revised to enhance clarity. Performance measures should be designed as an integral part of the reform programme reflecting the revised business processes and should be directly linked to the organisation's vision and corporate strategic objectives (paragraph 3.13).

5

Analysis and measurement of those cases sitting within adjudication should be introduced as soon as possible and that the information obtained should be used to improve the overall forecasting regime (paragraph 3.20).



Inspection Report



Introduction and context

- 1.1 This report concerns the corporate governance of the NILSC. It is a report that takes account of the evolution of the organisation in the context of providing proper access to justice, but is rooted in the present situation and future developments. The past of the organisation is examined, but only where there is potential learning for the future and in order to understand the present situation. Criminal Justice Inspection Northern Ireland (CJI) is empowered to inspect the NILSC under Section 46 of the Justice (Northern Ireland) Act 2002 (as amended).
- 1.2 Corporate governance in the public sector was defined by the Cabinet Office as:¹
- 'The way in which organisations are directed, controlled and led. It defines relationships and the distribution of rights and responsibilities among those who work with and in the organisation, determines the rules and procedures through which the organisation's objectives are set, and provides the means of achieving those objectives and monitoring performance. Importantly it defines where accountability lies throughout the organisation.'*
- 1.3 The principles of good corporate governance are set out in the same publication and for the purposes of this inspection the following principles will be examined:
- accountability;
 - roles and responsibilities;
 - effective financial management; and
 - communications.
- 1.4 This inspection examined each aspect of corporate governance of the NILSC within the Cabinet Office definition and good principles outlined above using the CJI inspection framework to focus on issues of strategy and governance, delivery and outcomes. The report identifies the governance arrangements that are in place and the barriers to effective governance. Inspectors make suggestions aimed at overcoming the blockages to deliver more effective and efficient governance arrangements in the delivery of legal aid services.
- 1.5 The full terms of reference for this inspection are set out in Appendix 1. However, the main aims of the inspection are to examine a broad set of issues around the governance, performance and accountability of the NILSC, including:

¹ Guidance on Reviews of Non-Departmental Public Bodies; Cabinet Office 2011.

- a clear sense of corporate leadership and direction to develop the organisation and its people, improve performance and manage risk taking into account the needs of stakeholders/service users;
- a clearly defined role with desired outcomes identified within a suitable corporate and business plan, with evidence of consistent communication of corporate standards throughout the NILSC;
- the promotion of values for the whole organisation demonstrating good governance through behaviour;
- management of resources to provide value for money outcomes, reflect changes in the operational environment and improve the efficiency and effectiveness of the NILSC; and
- a management structure with clear lines of accountability, providing transparency of decision making and contributing to improvement in personal and corporate performance.

- 1.6 The NILSC may fund the provision of services in civil, legal or criminal defence services. Whilst the remit of CJI's inspection activity is limited to examining those elements of the NILSC that extend to criminal legal services, the inspection report necessarily refers to the corporate governance of the organisation in the round. Where Inspectors believe learning may be transferrable from civil to criminal or vice versa in the interests of enhanced governance, then that has been detailed and commented upon.
- 1.7 The decision to grant criminal legal aid rests with the court and considers both means and merit. If an individual has insufficient means to pay for legal representation and it is in the interests of justice that there should be representation, then the court will grant legal aid. Whilst legislation had been passed² to enable the application of a fixed means test this had not yet been implemented. Civil legal aid is based upon an application made by a person's legal representative to the NILSC. It is adjudicated by the NILSC according to existing rules and legislation and there are three possible outcomes: full grant of legal aid; limited grant; or refusal of grant. An appeals process is in operation in the event of partial or complete refusal to grant legal aid at adjudication and a special committee sits when an application is made for funding of a judicial review into the refusal of legal aid on appeal.

History and context

- 1.8 The NILSC was established in 2003 as an executive NDPB replacing an earlier arrangement for the adjudication of legal services that had been administered by the Law Society Legal Aid Department. This development was part of the reform of legal aid which had followed a consultation process begun in 1999.³ The NILSC had been established to provide access to effective legal services to those entitled to receive them; and to promote the availability of civil and criminal legal services in the interests of justice.
- 1.9 The Access to Justice (Northern Ireland) Order 2003 is the founding legislation for the NILSC and had enabled the appointment of up to 10 Commissioners, plus a chair. The Commissioners began functioning in November 2003 and the NILSC operated as an executive NDPB sponsored by the then Northern Ireland Court Service (NICtS) as a Department of the Lord Chancellor. Governance of the NILSC budget had been exercised through the sponsor body and ultimately was the responsibility of the Lord Chancellor as justice and policing had not at that time been devolved to the Northern Ireland Assembly. The Lord Chancellor's Office had been the approval body for the corporate objectives and funding of the NILSC.
- 1.10 This inspection report follows extensive reporting on the operation of the NILSC since its inception (audit reports and accounts) and later commissioned reports from 2007 onwards. In addition, a comprehensive report, *Access to Justice*, had been published in 2011 which made recommendations for reform, several of

² Justice (Northern Ireland) Act 2011.

³ Consultation paper *Public Benefit and the Public Purse*.

which have been consulted upon by the DoJ and some of which had been implemented. These had begun to impact on the costs associated with the delivery of criminal legal aid in particular.

- 1.11 The *Access to Justice* report envisaged that in the event of significant further savings in the legal aid budget being deemed necessary, a more radical approach to its scope, remuneration and financial eligibility might be required along with fundamental reform of the substantive law and associated processes. Inspectors fully support the recommendations of the *Access to Justice* report and the steps taken by the DoJ in implementing reforms to date. Inspectors believe that in the context of the existing and projected future fiscal climate, the time has come to pursue the more radical reforms identified in the *Access to Justice* report as likely to deliver the significant savings required.
- 1.12 A timeline of some of the main reports concerning the operation of the NILSC is set out in Table 1.

Table 1: Timeline of main reports on the operation of the NILSC

Date/year	Report title
2007	<i>Landscape review of NILSC</i> – commissioned by NICtS
2009	<i>Action plan from 2007 Landscape review</i> – produced by NILSC
2011	<i>Managing Criminal Legal Aid</i> , report by Comptroller and Auditor General for Northern Ireland
2011	<i>Report on Managing Criminal Legal Aid</i> , Northern Ireland Audit Office (NIAO) Public Accounts Committee (PAC)

- 1.13 These reports and others unlisted such as annual accounts, a due diligence report and a financial management review had been critical of several areas of operation of the NILSC and had made many recommendations for change. CJI does not propose to go over old ground in this inspection report. The issues raised by each of the reports detailed in Table 1 and those raised at the Committee for Justice following devolution, are well known. However, in understanding the present position of the NILSC as regards governance, it is useful to summarise the main issues raised in the various reports into its operations. It is also relevant to understand the change in governance arrangements brought about by the devolution of justice and policing, and the attendant shifting of budgetary accountability from a very large budget overseen by the Lord Chancellor to a local forum operating within a much smaller overall justice budget. Visibility of the costs of legal aid and interest in how the NILSC had functioned increased greatly following the devolution of policing and justice.
- 1.14 During the first three years of operation of the NILSC, difficult relationships with the sponsoring body (the NICtS) with regard to governance and structural arrangements, financial reporting and forecasting had been raised. Reference to these difficulties had been made in reports including a due diligence report and a financial management review.

- 1.15 Summarising the main issues raised by these various reports produces a list, which unsurprisingly had led to serious misgivings surfacing about the operation and governance of the NILSC. These were:
- difficulties with accounts and forecasting;
 - concerns with the capacity of the NILSC to deliver legal aid reforms;
 - ineffective management and governance;
 - ineffective implementation of recommendations for change; and
 - ineffective fraud and other controls in legal aid expenditure.
- 1.16 Difficulties had been manifest in year-on-year qualification of the NILSC annual accounts, mounting criticism from the PAC and critical questions being tabled at sessions of the Committee for Justice.
- 1.17 In the face of such criticism and a year-on-year shortfall in funding, Inspectors had been told that the Commissioners, whilst trying to take a robust and constructive approach, had found themselves operating at tactical and operational levels rather than at strategic levels. A clearly focused strategic approach to delivering prioritised change was therefore absent. The focus on putting right myriad audit recommendations and reacting to other criticism from various reports, detracted from the early development of an agreed strategic approach to delivering legal aid reform in Northern Ireland.
- 1.18 The various reports into the operation of the NILSC had identified that significant barriers to delivery had been carried over from the earlier arrangements (pre-2003) for the administration of legal aid and had impacted upon the performance of the NILSC during its first few years of operation. These had included:
- a lack of accountability and service culture;
 - focus of NILSC staff on protection of fund;
 - poor management of staff and inequalities within staffing arising from grading/assimilation issues and Northern Ireland Civil Service secondments;
 - pre-devolution of justice governance through the Lord Chancellor's Office meant that budgetary pressures had not been as critical (small budget in relation to overall budget for England and Wales);
 - strategies lacked focus which drew the NILSC Commissioners into operational issues;
 - control in granting criminal legal aid lay with the Judiciary and not the NILSC;
 - there was only limited control in administering civil legal aid (Children Order); and
 - an appeals panel had been derived from previous Law Society structures and comprised lawyers only.
- 1.19 When the difficulties detailed in these various reports are added to the rapidly increasing costs of legal aid since the organisation's inception, the picture is profoundly a negative one. Cost of legal aid is not the only criterion by which the NILSC is judged, but it has become a focus of questions on its accountability.
- 1.20 Prior to the formation of the NILSC in 2003, the cost of legal aid (excluding grant-in-aid costs) in financial year 2001-02 had been £41.5m. Table 2 illustrates the costs of overall criminal and civil legal aid since inception of the NILSC to 2012-13.
- 1.21 Unadjusted costs of legal aid had increased since the financial year 2002-03 by just under £50m. In 2002-03 the proportion of the budget taken up by criminal legal aid was 59.7%. This had increased to 61.9% in 2009-10 but as criminal legal aid reform in the shape of the ending of Very High Cost Cases (VHCC), standard fee arrangements, and new Crown Court legal aid rules began to impact on the cost of criminal legal aid, the proportion had decreased to just over 50% in 2012-13.

Table 2: Costs of legal aid 2003-12 (£m)

Year	2002 - 03	2003 - 04	2004 - 05	2005 - 06	2006 - 07	2007 - 08	2008 - 09	2009 - 10	2010 - 11	2011 - 12	2012 - 13
Criminal	26.8	29.4	32.6	30.6	41.7	44.5	50.6	60.0	50.8	48.3	47.3
Civil	18.1	21.4	26.4	27.4	27.7	27.5	32.5	36.9	42.5	53.1	47.2
Total	44.9	50.8	59.0	58.0	69.4	72.0	83.1	96.9	93.3	101.4	94.5

- 1.22 Although there had been serious attempts to reform legal aid in 2005, the number of cases assessed as VHCC by way of exception, had not been forecast. A change to the rules of exception introduced in 2009 had reduced the number of cases assessed as VHCC and these have now been phased out, although some cases still linger in the system awaiting final disposal before the courts. As the effects of VHCC diminish due to their passage through the court system, the proportion of NILSC budget taken up by criminal legal aid is expected to fall further. The costs of legal aid funding for VHCC during 2010-11 was £12.84m. This had decreased to £6.256m in 2011-12. The effects of VHCC on the legal aid budget are expected to continue into 2014-15, with the taxing master thereafter operating solely in civil cases. Issues of future performance and the effect of civil legal aid on the overall budget are detailed further in Chapter 3.
- 1.23 At the time of inspection fieldwork Inspectors found a desire on the part of the DoJ for a new approach to delivering legal aid services, supported by the several crucial reports including the *Access to Justice* report.
- 1.24 However, the lack of effective governance exercised by the sponsoring bodies since inception had been criticised, particularly in the landscape and financial management reviews.
- 1.25 Since devolution of justice and policing in April 2010, the pace of reform and the engagement of the DoJ with governance matters in the NILSC had increased. In 2011 the lead responsibility for civil legal aid reform had passed to the DoJ from the NILSC in line with a recommendation made in the *Access to Justice* report, and in November 2012 a consultation process began on proposed changes to civil legal aid representation. This work will follow on from the work done in moving criminal legal aid in Crown and Magistrates' Courts to standard fee arrangements. Whilst this work in the criminal legal aid arena had been late in starting, the outworking of it had just begun to show in the recent reductions in criminal legal aid spend, albeit from previously high expenditure. It is important to the continued reform of legal aid that the pace of this programme is maintained and that its scope is widened to include the more radical changes proposed by the *Access to Justice* report.
- 1.26 The current NILSC structure and governance arrangements had been under review. Prior to the inspection taking place, throughout the inspection fieldwork and during the time of report drafting, other considerations for the reform of criminal and civil legal aid and proposed changes to the administration of it through the NILSC had been presented to the Committee for Justice. It was decided that the status of the NILSC will change to that of an agency of the DoJ and it is expected that this will happen in July 2014. The composition of the Board is planned to change, with the number of Commissioners set at a maximum of four, including the Chair, and a minimum of two. This will require

legislative change which it is anticipated will be brought forward during 2013.

1.27 The move to agency status would reflect a similar approach in England and Wales but in the context of Northern Ireland there are differences between the jurisdictions with regard to legal aid that had required careful consideration before following suit. For example, in England and Wales there is a more mature system of fixed costs in operation across the legal aid system which is not the case in Northern Ireland. In addition, the scope of legal aid in England and Wales had been reduced by the removal of private family law. This move had recently attracted criticism from the Judiciary in England and Wales raising issues of reduced access to justice brought about by the reduction of scope.⁴ The specificity of these matters sit outside the terms of reference of this inspection but do impact on issues of governance as proper consideration of them will shape the future structure of the NILSC. These matters are examined in the report of the *Access to Justice Review 2011* and recommendations within it had been framed to deliver a system that balanced the requirement for citizens to receive financial support appropriately in both criminal and civil cases.

1.28 With specific regard to issues of civil legal aid which are directly linked to governance of the NILSC the projected overspend for the financial year 2012-13 warrants mention. An Assembly Question by Lord Morrow asked:

*'(i) Whether the Legal Services Commission has issued a communication to legal representatives or professional bodies indicating that legal aid funds are becoming depleted and that further funding has been sought to cover the period up to the end of the financial year; (ii) whether legal aid payments will be restricted or delayed; (iii) whether sufficient additional funding has been secured; and (iv) whether he plans to launch, and publish the outcome of, an investigation into how this situation has arisen.'*⁵

1.29 The Minister of Justice responded:

'(i) The Northern Ireland Legal Services Commission wrote to the Law Society of Northern Ireland and the Bar Council of Northern Ireland on 18 December advising them that it did not have sufficient funds to meet its projection of the sum required to pay the bills likely to fall due for payment during the current financial year and that the Commission had sought additional funding from my Department to meet the anticipated in-year pressure; (ii) In response to this pressure, the Commission has decided that while it will continue to assess claims in the normal way it will only issue payments up to a monthly financial ceiling. This means that payments will be delayed; (iii) My Department is currently considering the Commission's request for additional funding as part of the January in-year monitoring round. An additional £10m has already been committed and the scope for providing further funding is under consideration. A decision on additional funding is expected during January; (iv) This situation arose primarily due to an unforeseen increase in civil legal aid expenditure during the current financial year. My officials are working with the staff of the Commission to establish the reasons for this. I published my first proposals to reform civil legal aid in November 2012 and will be publishing further proposals to address the remaining problems, including those which gave rise to the current situation, later this year.'

1.30 This inspection had taken place during a time of flux within the NILSC and at a time of uncertainty about its future. Inspection fieldwork had taken account of developments up to the end of the financial year 2012-13 and more changes were expected as the DoJ reform programme continues.

⁴ Mr Justice Ward in the case of *Wright v Michael Wright Supplies Ltd* [2013] EWCA Civ 234.

⁵ Written Answers to Questions Official Report (Hansard) Friday 11 January 2013 Volume 80, No WA4.



Strategy and governance

Introduction

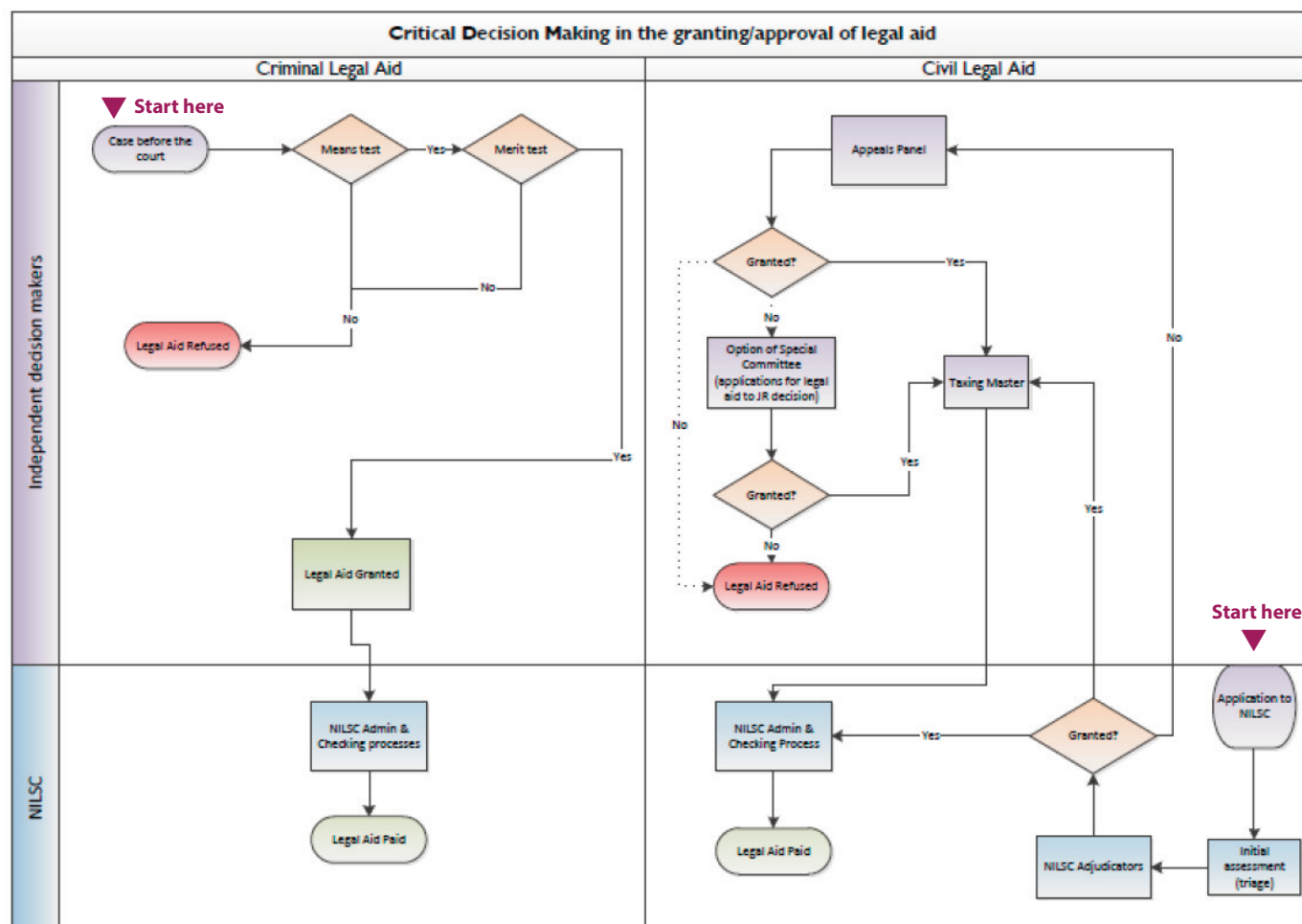
- 2.1 In examining strategy and governance Inspectors took the view that whilst the historical context was important in understanding the current position, it was more relevant to make an assessment of the present situation and make proposals for future arrangements.
- 2.2 The overall structure of the NILSC is that of an executive NDPB sponsored by the DoJ. Appendix 2 illustrates the overall structure and strategic reporting lines operating at the time of inspection fieldwork.
- 2.3 A commission is an organisation that has been empowered to exercise administrative, judicial or legislative authority. The House of Commons PAC had defined intelligent commissioning as:

*'...based on a knowledge of potential providers and desired outcomes, based on user needs. Intelligent Commissioners should be able to make judgements such as whether contracts or grants are the right way to fund a service, how important price should be in determining who wins a contract, and whether there is scope for innovative methods of delivery.'*⁶

- 2.4 The NILSC was not empowered to exercise control over the administration of legal aid across the whole process from start to finish. It does not have the power to decide on the granting of criminal legal aid and much of the decision making left to the NILSC has to do with whether invoices were calculated correctly and not the strategic decision making affecting the granting of legal aid itself. Except in the application of a fixed fees regime for criminal legal aid, it did not have the decision making powers to decide on the pricing structure with regard to legal aid services. Figure 1 illustrates the decision making trail for both criminal and civil legal aid. The administrative processes within the NILSC have been simplified in the diagram, but it illustrates those decisions that are under the control of the NILSC (bottom half) and those that are not. The critical decisions with regard to the granting of criminal legal aid rest with the courts. Whilst on the civil legal aid side a triage system and the adjudicator's teams make decisions on behalf of the NILSC, it can be seen that the appeals panel and special committee decisions are entirely independent. The NILSC has no control over the decisions of the appeals panel, the special committee and the taxing master.

6 Public Services and the Third Sector: Rhetoric and Reality 2008.

Figure 1: Critical decision making in the grant/approval of legal aid



- 2.5 Legal aid policy was transferred out of the NILSC to the DoJ in 2010 and decision making with regard to legal aid reform had moved with it. Critical decisions with regard to the awarding of criminal legal aid sat within the remit of the judiciary. Other critical decisions within the civil legal aid processes rested with an independent appeals panel, a special committee and with the taxing master.
- 2.6 There had been unrealistic expectations of the level of control possible in this context. In the normal sense of things the NILSC was not fully empowered as a commissioning body as defined by the House of Commons PAC. Unless matters of remit of the administration body and scope of legal aid are considered in tandem with the proposed structural reforms, it is unlikely that the degree of control expected by many stakeholders will be achieved.
- 2.7 Changing structures should provide some impetus for reform of the systems of legal aid administration. However, to bring about the step change necessary will require fundamental decisions to be taken as to whether the administration body is to be empowered to have control over processes from start to finish, including over the granting of criminal legal aid and the application of fixed fees with regard to civil legal aid. This will require substantial legislative change. In view of the findings of this report Inspectors make only one strategic recommendation in the interests of building and sustaining good governance.

Careful consideration must be given to the effects of contextual changes and the benefit of recent experience in England and Wales on the recommendations of the *Access to Justice* report recommendations. Having done so **the sponsor department should, as soon as practicable, implement those recommendations of the Access to Justice review which would improve governance in line with the principles set out by the Cabinet Office of:**

- **accountability;**
- **roles and responsibilities;**
- **effective financial management; and**
- **communications**

along with fundamental reform of the substantive law and associated processes proposed. All other areas for improvement raised by Inspectors are caveated and dependent upon this overriding recommendation.

- 2.8 Current strategy had been overtaken by the departmental desire for a new structure in response to several critical reports on the performance of the NILSC and the recommendations made in the *Access to Justice* report. However, governance structures during the first years of operation of the NILSC had not delivered the desired outcomes of establishing more effective control over the administration of legal aid whilst maintaining appropriate levels of access to justice. There had been some improvement in control, particularly with regard to criminal legal aid in the most recent two years, following the reform of criminal legal aid and the implementation of a fixed fees regime to that element of the business.

Accountability

- 2.9 Inspectors found that the structures for statutory accountability, for probity in the spending of public money, and Ministerial accountability were in place. However, in the period before devolution of justice and policing, the robustness of accountability had attracted criticism in several reviews and reports and it was apparent that the framework of accountability had not been operating effectively at that time.
- 2.10 The move to accountability as a NDPB of the DoJ rather than as a NICTS sponsored body, along with the removal of policy responsibility changed the governance landscape. The NICTS remained the sponsor body for the NILSC until November 2011. Direct sponsorship of the NILSC was then taken over by the DoJ. This meant that the proportion of the NILSC spend within a much smaller overall justice budget was much greater than had previously been the case under the Lord Chancellor's remit. Enhanced local oversight which had as its focus delivering value for money and efficiency had begun to impact on the delivery of legal aid services. Challenge of the operational effectiveness and efficiency of the NILSC through the Committee for Justice of the local legislative Assembly became a regular feature of public scrutiny and accountability.⁷
- 2.11 Legislatively the NILSC was constrained by a complex set of rules and statutes which had shaped its governance arrangements. The relevant rules and legislation acting upon the operation of the NILSC were extensively reviewed in the *Access to Justice* report and several recommendations were made with regard to these. The implementation of many of the recommendations made in the *Access to Justice* report would benefit the overall operation of the NILSC and these are explored more in depth later in this chapter. As legal aid policy now sits with the DoJ these recommendations were in the process of being

⁷ 85 Assembly questions on legal aid between June 2010 and December 2012.

taken forward by the sponsor body on behalf of the NILSC. However, in the short run it will be very difficult to assess any outcomes arising as a result of implementation of the recommendations due to several factors, including the time taken for VHCC to progress through the justice system and the long lead-in time for any changes to legislation amending the scope and operation of legal aid.

- 2.12 Commissioners were re-appointed by the Minister of Justice in July 2012 and the then Interim Chair had been appointed as Chair of the Commission. Legislation enabled the appointment of a maximum of 11 Commissioners, including a Chair, and on both initiation of the organisation and on renewal, a full complement of Commissioners had been appointed.
- 2.13 A fully staffed senior management team was not in place in the NILSC until after the appointment of the current Chief Executive Officer (CEO). Whilst determined to examine the current situation rather than looking back, Inspectors were told by senior staff that the lack of a settled and complete cadre of senior managers had inhibited the delivery of strategy and that the legacy of organisational inertia had further affected management and staff interactions. Trying to deliver change in this atmosphere proved very difficult.
- 2.14 Staff and managers spoken to by Inspectors said that during the year prior to the inspection fieldwork an improvement in relationships had occurred. However, Inspectors still encountered evidence of difficult relationships between staff and management with many indicating that a fire fighting ethos persisted with regard to day-to-day activity.
- 2.15 Many staff recognised their accountability to management and their responsibility to ensure proper use of public monies in delivering legal aid services. However, they told Inspectors that they were equally frustrated that the NILSC could not exercise full control over strategic decisions because they believed much of the decision making did not reside in-house. Many staff at all levels told Inspectors that the scope of legal aid, the complexity of legislation and the judgements of the appeals panel and of the taxing master, resulted in a situation where accountability for the delivery of legal aid could not fairly be considered the responsibility of the NILSC alone. Earlier reports into the NILSC indicated that there was more power available to make changes than was acknowledged by staff.⁸
- 2.16 There were recent attempts to move the organisation onto a more performance and outcome based footing. A performance manager was appointed to focus on organisational as well as individual performance. However, strategic direction had not surmounted the staff legacy issues and individual appraisals were, in some cases, two years out of date with little in the way of encouragement or sanction to change this situation. Where appraisals had been completed the figures indicated that they had normalised at the higher box markings, 1 or 2, with little in the way of supporting evidence to justify these very high gradings.
- 2.17 Senior managers recognised the problems of poor implementation of the performance management regime but told Inspectors that *"there were many issues to change before launching into a revision of the staff appraisal system."* Whilst Inspectors understand these sentiments expressed regarding performance management, and it is true to say that there are many other issues to change, a clear priority list of changes had not been developed or communicated across the organisation. Inspectors were told that this, in part, had been attributed to the uncertainty facing the NILSC in the wake of proposals for changing it to agency status. However, issues with performance management had featured on the NILSC agenda for some time, as evidenced by the appointment of a performance manager and recorded in

⁸ Table 1; PAC and NIAO reports 2011.

minutes of meetings. In going forward, no matter what status is accorded to the NILSC, or what changes are made to the scope of legal aid, more focus will be required on how better to engage staff and how to provide motivation and support through a properly implemented and maintained appraisal regime.

- 2.18 Organisational performance management suffered from a lack of verifiable data on which to base future forecasts and resource allocation; for example, the system in place did not deliver data on equality obligations. A previous system of data management had collapsed but the next iteration of the data system (Phoenix) was based on the previously flawed one. This resulted in issues with the breadth, integrity and quality of data produced by Phoenix. For example, a separate, stand-alone system was used to record data on civil legal aid applications returned to applicants because of errors or omissions. Key performance indicators were, nevertheless, set and measured on a weekly basis. These focused on authorisations, expenditure and service delivery providing information to allow targets with regard to finance and legal aid payments to be met.
- 2.19 A weekly forum on performance was established and this included relevant and appropriate managers within the organisation, as well as one of the Commissioners. However, whilst performance was addressed as part of these forums much of the focus was on whatever happened to be the most pressing business of that particular week, usually linked to lifting the ongoing qualification of accounts or addressing other criticisms in the various oversight reports. This reflected a desire to address the plethora of criticisms emanating from audit and other reports rather than focusing on strategic priorities.
- 2.20 Complex legislation determined the scope and application of legal aid. Inspectors found that the NILSC did not have control over the administration of legal aid across the whole process from start to finish. Critical decisions at the beginning of the process with regard to the awarding of legal aid sat within the remit of the Judiciary. Other critical decisions within the process rested with an appeals panel, a special committee and with the taxing master. It was Inspectors' consideration that there was an unrealistic expectation of the level of control that is possible in this context. Unless all of these matters are considered in tandem with the proposed structural reforms, it is unlikely that the degree of control and accountability expected to be delivered by agentisation will be achieved.
- 2.21 The options paper on restructuring the NILSC presented by the Department was aimed at addressing the many problems by changing the accounting structures to that of an agency within the Department. In isolation, this represented a structural response to what is in the main a process problem, similar to the response which resulted in the NILSC being formed in 2003. This approach may well help drive further reform to the administration of legal aid. However, there is a risk of failing to deliver the desired outcomes of maintaining access to justice within fiscal boundaries unless a broader approach is taken to introduce reforms to the administration of the legal aid budget along the scale of those implemented in England and Wales. The DoJ had moved to apply some of the recommendations of the *Access to Justice* report and a number of consultations on proposed changes had been started during the drafting of this report.
- 2.22 Moving to an agency structure has advantages and disadvantages which were recognised by the Department. Consultations were undertaken concerning the safeguards to be introduced to protect individual decisions on granting of legal aid, proposals for a new appeals process, and the reform of financial eligibility for criminal and civil legal aid. Inspectors' assessment is that agency status in itself will not secure the desired outcomes unless the administration of civil legal aid is subject to reform similar in scale to that being delivered in England and Wales.

Roles and responsibilities

- 2.23 The NILSC was structured in such a way as to differentiate between the delivery of criminal legal aid services and civil legal aid. The diagram reproduced in Appendix 2 illustrates the complex overall internal structures and reporting lines. It is apparent from the diagram that civil legal aid in general operated in isolation from criminal legal aid. This situation was enabled by the founding legislation based upon which the Lord Chancellor set up two separate funding channels. Whilst this inspection is primarily concerned with the criminal side, the operation of the civil side is relevant in looking at the wider issues of corporate governance.
- 2.24 Appendix 2 illustrates the reporting lines and it also indicates the roles and responsibilities within the NILSC, as well as those operating externally. The Commissioners were appointed to ensure the delivery of legal aid services in conformance with legislative obligations and in tandem with the appropriate use of public funds.
- 2.25 Commissioners told Inspectors that they regarded themselves as representing the public voice in the administration of legal aid, an important consideration of governance of any public sector organisation. Commissioners also expected to be operating strategically, setting the overall direction of travel and ensuring the environment supported the effective delivery of legal aid services. However, the strategic role of the Commissioners was moderated by their involvement in operational issues following on from critical reports, especially the year-on-year qualification of the NILSC accounts. During the period of inspection fieldwork it became apparent that the role of Commissioners in setting strategic aims rather than becoming involved in the day-to-day operational activities of the NILSC had been, for the most part, restored. This had happened following the formation of a complete senior management team during 2010.
- 2.26 The implementation and relevance of many organisational strategies suffered when senior management and Commissioners became focused on dealing with the criticism and recommendations arising from various oversight reports. For example, the NILSC IT strategy did not address weak data capture issues and poor management information, which in turn led to continued poor forecasting and lack of effective control of the financial environment. The HR strategy lacked a clear link to organisational development and had in the past resulted in some staff being supported in taking law degrees when there were no obvious direct links to a longer-term organisational or personal development strategy. Whilst legal qualifications were an obvious benefit to adjudication staff, these were not directly linked to an overall strategy aimed at delivery of more robust decisions on civil legal aid. The proportion of decisions overturned by the appeals committee indicates not that adjudicators may or may not have made a wrong decision, rather that there was no overarching strategy to provide a more robust decision making system encompassing all the elements involved such as the appeals panel or special committee.
- 2.27 Due to the status of staff as employees of a NDPB, many of the benefits of the Northern Ireland Civil Service had not extended to the NILSC as regards staffing/equality issues, or the provision of secure email services. These issues had consequences in how the organisation developed and on its reliance on paper-based systems of communication.
- 2.28 The criminal legal aid side of the organisation was charged with administering legal aid to those eligible (as determined by the Judiciary) through a system of applications made by legal representatives. This was a paper-based system which required legal representatives to complete hard copy forms and submit

them to the NILSC for authorisation and payment. Queries with legal representatives were by telephone or more usually by letter.

- 2.29 Critical decision making on the criminal legal aid side took place outside the remit of the NILSC. Legal aid decisions taken by Judges were predicated on the application of a means test and a merit test. There was no fixed financial limit with regard to the means test, which is a determination by the Judge of whether the accused has the means to mount a legal defence in the event that it is necessary. The merit test involves a judgement as to whether it would be in the interest of justice that the accused should be legally represented. If both tests are satisfied, it is for the Judge to grant criminal legal aid. However, the administration of the system of criminal legal aid involving the relatively straightforward processes left within the remit of the NILSC, were not adequately supported by the effective use of technology.
- 2.30 Structurally and administratively, since the reform of criminal legal aid services, Inspectors found that the criminal side was in effect a checking, authorising and remuneration body. The only challenges that could legitimately be made by the criminal legal aid side of the NILSC were with regard to the accuracy of bills received prior to authorisation for payment and on the cost of expert witnesses. However, at the time of inspection fieldwork a basis for working out the unit costs involved for categories of expert witnesses had not been delivered although work had commenced on such a system. To do so would provide significant strengthening of the forecasting system for criminal legal aid. A similar situation had existed on the civil legal aid side as regards the funding of expert witnesses and a project being led by the DoJ was under way at the time of inspection fieldwork. ***Work already started on standardising legal aid arrangements with regard to the cost of expert witnesses should be completed and implemented as soon as possible.***
- 2.31 Criminal legal advice provided at police stations was subject to comment in the *Access to Justice* report. It stated that the administrative burden on both lawyers and NILSC staff was disproportionate to the levels of payment. Whilst progress had been made on the regime of fixed fees recommended in the *Access to Justice* report, Inspectors believe that unless the current paper-based systems are completely overhauled in favour of a technology supported system, the financial and time costs of administration will continue to be disproportionate.
- 2.32 Since the reform of criminal legal aid there had been some development of forecasting. Inspectors found that a weekly system of updating spend forecasts was in operation. The projected additional spend required for the financial year 2012-13 was estimated at £9m. However, during the drafting of this report that forecast proved to be inaccurate as the additional sum provided for the period 2012-13 amounted to £16m.
- 2.33 In criminal cases appropriate draw down of monies was made based on the decisions handed down by the taxing master with regard to VHCC. The NILSC had no control as to when taxing decisions on VHCC entered the system which caused difficulties in managing finances in the short run. For example, an assistant taxing master was appointed to clear a backlog of cases which resulted in an increase of cases being processed for remuneration. However, VHCC are expected to continue into 2014-15, with the taxing master thereafter operating solely in civil cases.
- 2.34 The civil legal aid side of the organisation is more complex than the criminal side. In terms of governance and management civil legal aid, in general operates in isolation from criminal legal aid. This situation arose from the founding legislation which enabled the Lord Chancellor to set up two separate funding

streams for all payments from the legal aid fund. Structurally, Inspectors believe that the administration of civil and criminal legal aid could be shared providing there were effective supporting IT services in place and a regime of fixed fees for civil cases, similar to that in place for criminal cases had been implemented. For example, payments for either criminal or civil legal aid could be handled by one team operating across the business.

Effective financial management

- 2.35 This section refers to the strategic issues impacting on effective financial management of the grant-in-aid provided for the administration of the NILSC and the effective management of the legal aid fund.
- 2.36 The regimes of financial management in the NILSC had attracted much negative comment in a number of reports that have already been referred to. Inspectors do not propose to go over old ground in this report but in summary the financial criticisms mainly were with regard to:
- difficulties with accounts and forecasting; and
 - ineffective fraud and other controls in legal aid expenditure.
- 2.37 Legal aid is purely demand led within the framework established by legislation. The limitations imposed on an organisation operating in such an environment are comprehensively set out in the *Access to Justice* report. Inspectors have already stated that they believe there were unrealistic expectations of what is reasonably achievable by an organisation so constrained. However, Inspectors also recognised that the introduction of a regime of fixed fees in the criminal legal aid side, as well as better forecasting, had led to some improved financial controls operating within the NILSC.
- 2.38 Decision making with regard to granting criminal legal aid sits outside the remit of the NILSC and much of the critical decision making impacting on effective financial management of the civil legal aid fund also rests elsewhere. Comparisons of the costs of legal aid across jurisdictions are difficult and not the focus of this examination of corporate governance. However, effective financial management and providing value for money are important measures of the effectiveness of governance of any organisation operating in the public sector. In 2011 the Ministry of Justice in England and Wales published comparative costs of legal aid for similar type jurisdictions; these are set out in Table 3. The figures illustrate that in 2008 Northern Ireland comfortably had the highest cost of legal aid per head of population in these closely related common law jurisdictions.

Table 3: Cost (£) of legal aid per head of population⁹

	2004	2006	2008
Northern Ireland	38	37	48
England and Wales	38	37	39
Republic of Ireland	8	10	20
Canada	7	8	10
New Zealand	8	8	9

⁹ *International Comparisons of Public Expenditure on Legally Aided Services Ad hoc Statistics Note*, Ministry of Justice 2011.

2.39 Table 4 illustrates the latest known costs of legal aid per head of population in 2012-13 for England and Wales; Scotland, and Northern Ireland. Comparing the figures with those illustrated in Table 3 it demonstrates that whilst costs per head of population have decreased in England and Wales since 2008, they have increased in Northern Ireland by over £8 per head over the same period. Northern Ireland remains comfortably the most expensive region for legal aid costs.

Table 4: Cost (£) of legal aid per head of population 2012-13¹⁰

	2012-13
Northern Ireland	56.44
England and Wales	35.90
Scotland	31.99

2.40 The costs per head of population for 2012 can be broken down into those pertaining to criminal legal aid, civil legal aid and administrative costs.

2.41 Table 5 shows the comparative costs per head of population of civil legal aid, criminal legal aid and the costs of administration for England and Wales, Scotland and Northern Ireland. Costs in Northern Ireland are around 30% higher for criminal legal aid; 36% higher for civil; and 50% higher for costs of administration. Compared to Scotland the respective costs are higher by around; 30% (criminal); 58% (civil); and, 39% (admin).

Table 5: Disaggregated costs (£) of legal aid per head of population 2012-13¹¹

	Criminal	Civil	Admin
Northern Ireland	26.28	26.33	3.83
England and Wales	17.23	16.77	1.90
Scotland	18.49	11.15	2.35

2.42 Table 6 illustrates the costs of legal aid as a proportion of GDP in differing jurisdictions across Europe. Whilst the Ministry of Justice, in publishing these figures, recognised the differences in jurisdictions, cultures and religions impacting on the approach to legal aid, and that of differing data collection regimes, they nevertheless provide an indication of the scale of legal aid funding in Northern Ireland compared to our European neighbours. Wider comparisons world-wide further indicate that Northern Ireland spends more on legal aid per head of population than most other jurisdictions.

Table 6: Legal aid expenditure as a % of GDP 2008¹²

Northern Ireland	0.29	Republic of Ireland	0.05	France	0.02
England and Wales	0.18	Canada	0.04	Luxembourg	0.01
Scotland	0.16	Finland	0.03	Italy	0.01
Netherlands	0.07	Denmark	0.03	Belgium	0.01
New Zealand	0.06	Switzerland	0.02	Austria	0.01
Sweden	0.05	Portugal	0.02		
Norway	0.05	Spain	0.02		

¹⁰ Figures supplied by the DoJ 2013.

¹¹ Ibid.

¹² Ibid p 23.

- 2.43 The only reforms since 2008 that produced significant savings are the changes to Crown Court fees and representation introduced in 2011 and 2012 respectively, which now beginning to take effect as cases work through the system. Other initiatives potentially affecting the development of better financial management had been proposed but had not come to fruition. The NILSC had worked extensively on a registration scheme for participating lawyers, including testing it in some solicitors firms, but this had not yet been delivered, and an IT system to support online live applications did not yet exist. The absence of an IT system that would enable electronic data handling between lawyers and the NILSC was recognised as a weakness internally and an IT Project Board had been formed. However, there was no implementation of a strategic intent to take forward the enabling instruments which would build a base for an IT supported system of administering criminal legal aid. These enabling instruments include capacity building in the legal profession, identification and registration of participating lawyers, and development of business processes. An IT strategy focused on the development of an effective case management system was developed and presented to senior management, but at the time of inspection fieldwork implementation had not been carried through to completion. ***A compulsory registration scheme for lawyers should be developed, agreed and implemented as soon as possible in tandem with any proposed restructuring undertaken by the DoJ.***
- 2.44 The Scottish Legal Aid Board had in operation an electronic system that with minor adjustments seemed capable of application in the Northern Ireland context. However, a systematic review and mapping of all business processes in the NILSC had not taken place which would be essential if an effective IT supported system were to be developed. ***A complete review and mapping of business processes operating within the NILSC should take place as soon as possible to inform the development of a comprehensive electronic-based system of applying for legal aid and for data handling within the NILSC.***
- 2.45 On the civil side a funding code was developed to a point where it only required to be finalised and implemented. However, this had stalled. A funding code would have provided adjudicators with recognised and agreed standards upon which to base their decisions. However, the use of a code has since been abandoned in England and Wales in favour of increased standardisation of fees. Linked to an overall strategy for adjudication, standardising fees would potentially reduce the present churn of communication, mostly in hard copy, that occurs between lawyers and the NILSC when funding applications are refused. This, along with other reforms, has the potential to reduce the number of cases referred to the appeals panel, which at present overturns between 40% and 50% of those cases refused funding by the adjudicators on initial application. Within the present paper-based manual system, a reduction in the number of exchanges between the NILSC and lawyers may provide significant financial and time savings.
- 2.46 Whilst this inspection focused on the governance arrangements in place for the administration of criminal legal aid, it became apparent to Inspectors that the recent reforms implemented within that sphere had the potential to significantly impact on organisational governance and effective financial management should they be extended, even in part, to civil legal aid. If the proportion of funding going towards civil legal aid continues to increase, the argument for implementing a wider fixed fees regime would be greatly strengthened. Gaining some degree of financial control over all legal aid spending will, in the future, depend upon reforming the system of civil legal aid.
- 2.47 The scope of legal aid in England and Wales was significantly reduced by the removal of money damages along with private family law, except in circumstances which involved domestic violence or child abuse. At the time of drafting this report, a consultation into how to deal with money damages outwith the

scope of legal aid had been launched by the DoJ.¹³ This set out the projected savings to the legal aid fund expected to be delivered by the removal of money damages from scope. Inspectors support the recommendation to remove money damages from the scope of civil legal aid set out in the *Access to Justice* report.

- 2.48 The *Access to Justice* report also recommended that private family law remain within scope so long as improved procedures and remuneration arrangements were implemented. Recent reform of civil legal aid in England and Wales had attracted criticism and concerns about reducing access to justice.¹⁴ The *Access to Justice* report made many recommendations with respect to the reform of civil legal aid to maintain appropriate access to justice in a sustainable way.
- 2.49 In addition, Inspectors also agree with the recommendation of the *Access to Justice* report with regard to reforming the system of appeals that operates when adjudicators refuse funding. The appeals panel in operation at the time of inspection fieldwork was composed entirely of lawyers, and the process included sometimes lengthy oral hearings. Bringing the appeals system in-house and discarding the need for oral hearings would have significant impact on establishing a more effective system of financial management and accountability, both identified as principles of good governance by the Cabinet Office. At the time of drafting this report, a consultation had been launched by the DoJ on these matters.¹⁵
- 2.50 Qualification of the NILSC accounts continued despite the reforms of criminal legal aid that had been implemented. Reports of the Comptroller and Auditor General had, since inception of the NILSC, identified a lack of evidence on the level of fraud. Whilst there was progress in some areas, such as the implementation of a fixed fees regime on the criminal side, this was not the case on the civil side. Proposed developments such as enabling access to participating lawyers' records in order to provide assurances on potential fraud were not delivered because a compulsory registration scheme had not been implemented. There were plans to bring forward legislation to enable a compulsory registration scheme with attendant powers of inspection. However, at the time of inspection fieldwork these plans had not been implemented.
- 2.51 Since inception the NILSC had required additional grant to the legal aid fund which was driven by the demand-led nature of the market, poor forecasting, poor control, constraints of legislation and the wide scope of legal aid. Delivery year-on-year required additional funding to ensure that payments for legal aid services, criminal and civil, were maintained. In the last three financial years this additional funding had been substantial but variable as illustrated in Table 7.

Table 7: Additional funding provided

Year	2010-11	2011-12	2012-13
Additional grant (£m)	19.2	23.7	18.3 ¹⁶

- 2.52 The annual request for additional funding goes to the heart of good governance in respect of sound financial management and ensuring public monies are spent appropriately.

¹³ DoJ Consultation Document: *Alternative Methods of Funding Money Damages Claims*, March 2013; now concluded.

¹⁴ Mr Justice Ward in the case of *Wright v Michael Wright Supplies Ltd* [2013] EWCA Civ 234.

¹⁵ DoJ Consultation Document: *Safeguards to protect the individual decisions on the granting of civil legal aid*, February 2013.

¹⁶ An additional £5.63m in payments were deferred to 2013-14.

Communications

- 2.53 The NILSC developed a strategic level communications plan which included external engagement with the legal profession, as well as dealing with the necessary governance communications framework involving the sponsor department. There was in place a comprehensive suite of regular meetings, including a reform committee, general purposes committee, audit and risk committee, as well as meetings of the senior management team and the Board. These meetings were adequately attended by decision makers at the appropriate level and minutes were made widely available.
- 2.54 Recent meetings were more focused on dealing with higher priority strategic issues affecting the delivery of legal aid than had previously been the case. However, outcomes in the form of improved overall service delivery, accounts that were not subject to qualification and better control of all aspects of the legal aid bill, had not yet transpired.
- 2.55 Communication externally with the legal profession was described as difficult, especially during the time of reform of the criminal legal aid regime. Inspectors were told that the difficulties in communication with the legal profession were partly due to their poor historical experiences of the NILSC and partly due to resistance to change by the profession. Whatever proportion of difficulties with communication could be attributed to either party, the effect was that the pace of reform of legal aid had been slow. However, Inspectors were also told that better administration systems in the NILSC, including a move to electronic processing of applications, would be welcomed by many lawyers.
- 2.56 The NILSC encountered varying standards of applications from lawyers. As previously stated application systems are based on mostly hard-copy transactions. The return rate of initial civil legal aid applications to lawyers because of errors, omissions or other issues such as the use of obsolete forms had been around 50%. A form of triage system was introduced by the NILSC and the return rate had been reduced to around 35%-40%. Whilst this indicated good progress a more effective method of completing legal aid applications needs to be found otherwise future options for dealing with poor quality forms may be penalties, other sanctions or charges for corrections.
- 2.57 The NILSC worked in partnership with the Law Society to carry out road shows to attempt to improve the standard of applications. However, one of the issues of maintaining a paper-based system was that lawyers had retained stockpiles of obsolete forms resulting in applications being returned. Provision of an online system with interactive application forms that block submission of errors, if properly communicated and administered, would significantly reduce the time spent by NILSC staff and staff within the legal profession correcting mistakes in legal aid applications. Inspectors previously recommended that business process should be mapped prior to the development of a comprehensive electronic based system of applying for legal aid and believe that this recommendation has potential to address poor quality applications.
- 2.58 Internal communications were developed through a framework of meetings and briefings at various levels. Staff commented that the Chief Executive Officer (CEO) had taken a hands-on approach to communication by 'walking the floor' and speaking to individual staff members. However, the overall message from staff about how information was communicated internally was that it could be improved.

- 2.59 Inspectors were told that communication of policy development to operational levels had worsened since the move of responsibility for policy to the sponsor department. Policy was communicated at strategic meetings and there was a mechanism for disseminating information throughout the organisation. However, staff experienced difficulty with policy information getting through to operational levels. Good staff management relationships and communication were adversely affected by the legacy issues of poor management of staff and inequalities within staffing arising from grading/assimilation issues, pay remit difficulties and Northern Ireland Civil Service secondments. These issues continued during inspection fieldwork and the drafting of this report.



Delivery and outcomes

Introduction

- 3.1 Delivery mechanisms for criminal legal aid operated entirely separately from the administration of civil legal aid. The emphasis of this inspection is on the criminal legal aid side of the organisation, but with the bulk of resources pointed at civil legal aid, examining governance of the NILSC requires an assessment of delivery structures in the round.
- 3.2 Inspectors found that despite the differences in the two systems of administration and the continuing complexity of civil legal aid in comparison to criminal legal aid, there was some commonality of issues.
- 3.3 Taking into account the complexity of legal aid, many processes across the whole organisation were found to be convoluted, unnecessarily complex, manually administered and therefore expensive in terms of staff time and effort. For example, hard copy application forms, postal charges, manual dip sampling of correspondence and archaic payments processes (postal orders) were all in operation. These processes had a knock-on effect. Lawyers' interactions with the NILSC were mostly in hard copy or by telephone and initial applications were often submitted with errors and omissions. The outcomes of such methods of communication were delay in processing applications and frustration on the part of lawyers and the NILSC.
- 3.4 As previously stated, external monitoring of the performance of the NILSC was centred upon costs, particularly given the year-on-year additional grant required to fulfil obligations with regard to securing access to justice. However, a wider assessment of the delivery of legal aid services includes looking at whether:
 - performance measurement had influenced delivery;
 - standards had been developed and implemented;
 - relationships had been managed and improved; and
 - resources had been managed to improve delivery.

Performance measurement

- 3.5 Categories of operational targets included criminal authorisations, civil decisions, civil authorisations, and payments. Payment targets were set at 75% within a specified time period for civil and criminal as well as all Children Order cases. Monthly performance across all operational targets on the criminal side between April 2012 and October 2012 indicated that targets were achieved in 73% of instances. There were some monthly targets that had predominantly not been achieved. Namely, a 90% target for the

determination of civil emergency applications within three days of receipt, and a 75% target with regard to the authorisation of criminal Crown Court (2005) Rules within four weeks of receipt. However, quarterly reports for the same period indicated that out of the 19 operational performance targets, only two were not achieved in the first quarter, and five were not achieved in the second. The failure to achieve the civil emergency targets illustrates the inconsistency of input in the form of legal aid applications and the variable quality of those applications. The NILSC Annual Report of 2010-11 also reported difficulties in achieving targets in the context of checking and querying of applications, including taxing certificates.¹⁷

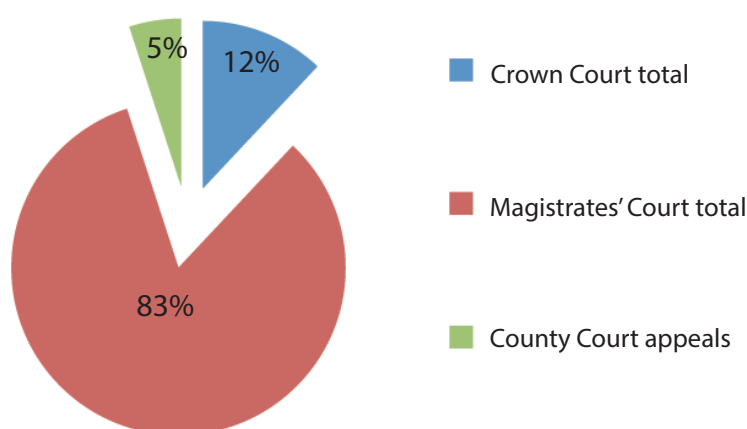
- 3.6 Service performance indicators across the organisation focused on timeliness of decision making processes and payments. As an example, in the period April to October 2012, the monthly figures indicated that the three decision category targets were achieved only once in 18 incidences (three targets multiplied by six monthly periods). The overall quarterly figures for the three decision categories did not reach target in either quarter one or quarter two. The performance in this area reflects inadequacies in the Commission's case management system as effectively the 'clock' starts running and does not stop until a decision has been made. The current system does not take account of forms which have to be returned or requests for additional information, which delay the decision making process.
- 3.7 Payment targets fared better. Of the 18 incidences (three targets multiplied by six monthly periods), targets were achieved in 12. Only one of the three targets was not achieved on a quarterly basis during the first and second quarter.
- 3.8 In the main the monitoring of targets was assessed by Inspectors as not having a significant influence on overall service delivery. Inspectors were told that once a target was reached there was little impetus on maintaining performance, as to do so would impact on the short-term management of the legal aid fund as over-achievement was regarded as adding to the in-year financial burdens. Monitoring of targets was reported to senior management and to the Commissioners. The strategic focus was limited to those targets deemed to impact most on criticisms contained in audit reports and upon continued qualification of accounts.
- 3.9 As identified in the section above on strategy and governance, performance reporting was often overshadowed by whatever the pressing business of the week happened to be. Most staff told Inspectors that they did not recognise any direct link between business processes and the existing suite of organisational and individual performance targets, except in the payment category.
- 3.10 Individual performance management within the NILSC was based on the Northern Ireland Civil Service framework. The application of this became discredited amongst staff and management due to the continuing difficult relationships that were generated almost exclusively by discontent over pay and grading issues. Within the context of strained staff/management relations, a long standing pay situation and increased focus by managers on performance monitoring, the individual performance regime for staff was described to Inspectors as:

"...no appraisals – no performance – no motivation – no framework in place except the Civil Service framework – no performance culture in LSC."

¹⁷ NILSC Annual Report and Financial Statements for the year ended 31 March 2011 p 21-22.

- 3.11 Difficulties in implementing a performance management regime based on the Northern Ireland Civil Service framework is not unique in the criminal justice system in Northern Ireland. Similar difficulties were encountered by other organisations and reported on in other CJI inspection reports.¹⁸ Inspectors encountered many staff during inspection fieldwork who were obviously dedicated to providing an effective administration body for the provision of legal services. However, many staff expressed frustration at constraints, such as lack of investment in IT systems, to provide good data to support performance management, an absence of online application systems and ineffective and inefficient systems of administration.
- 3.12 Individual performance appraisals were often late and Inspectors were told that many staff regarded them as meaningless. In consequence Inspectors' assessment was that there needs to be much more emphasis placed on performance management within the NILSC to align individual and organisational goals with strategy and vision. However, to achieve this the NILSC needs to review its business processes with regard to the administration of both criminal and civil legal aid. To do so in the present climate of changing structures and reform of civil legal aid would be very difficult unless the review took place within the wider reform agenda.
- 3.13 Inspectors previously recommended that business processes should be mapped prior to developing electronic systems of applying for legal aid. In addition, ***as part of the reform of the administration of legal aid business processes should be revised to enhance clarity. Performance measures should be designed as an integral part of the reform programme reflecting the revised business processes and should be directly linked to the organisation's vision and corporate strategic objectives.***
- 3.14 There was detailed monitoring of the specifics of the costs of legal aid. With regard to criminal legal aid, the figures for 2011-12 indicate that the majority of payments were for cases in the Magistrates' Courts. Figure 2 illustrates the distribution of payments in 2011-12.

Figure 2: Distribution of payments (criminal) 2011-12

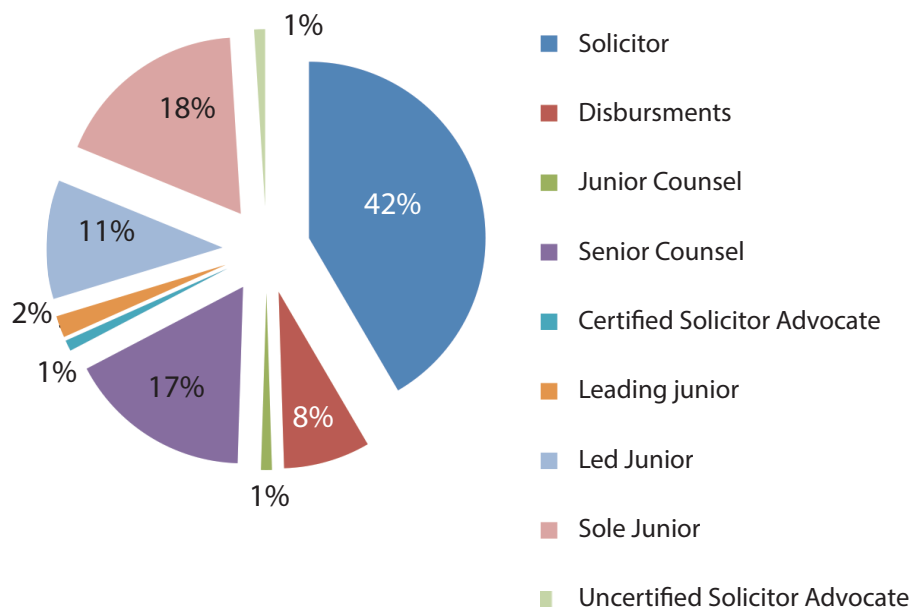


¹⁸ Northern Ireland Prison Service corporate governance arrangements, CJI, December 2010; A corporate governance inspection of the Public Prosecution Service for Northern Ireland, CJI, April 2013.

3.15 These figures included VHCC in the Crown Court, of which there were 111 in a total of 5,377. The figures for Magistrates' Courts included VHCC under the Magistrates' Court 2009 Rules, of which there were 14 in a total of 37,222.

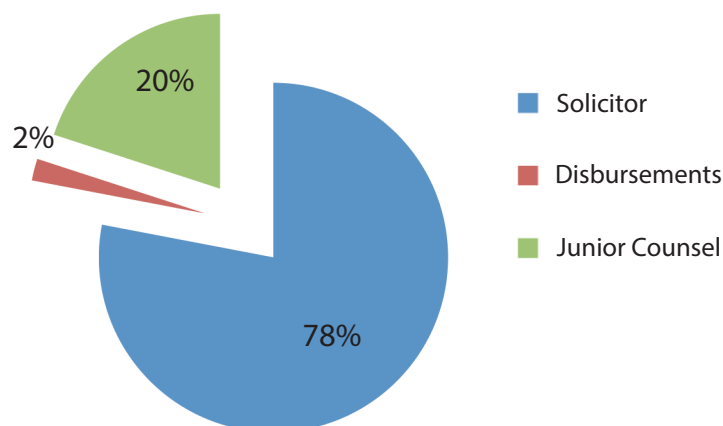
3.16 Distribution of expenditure by category for 2011-12 in the Crown Court and Magistrates' Court are illustrated in Figures 3 and 4.

Figure 3: Expenditure by category – Crown Court 2011-12



3.17 The expenditure indicates that on the criminal side of legal aid, 11% of the cases at Crown Court required two counsel (led junior). The majority of expenditure, (£8,162,194) was allocated to solicitors with sole junior counsel (£3,569,213) and senior counsel (£3,363,257) being the next two leading items of expenditure.

Figure 4: Expenditure by category Magistrates' Court 2011-12¹⁹



¹⁹ Disbursements refer to monies reimbursed by the NILSC with regard to payments made by legal representatives on behalf of their clients in a case being funded by legal aid.

- 3.18 In the Magistrates' Court expenditure on solicitors was £16,925,275 with junior counsel being the next leading item at £4,319,179.
- 3.19 The overall cost of legal aid for a three-year period from 2010 is illustrated in Table 8. Whilst the trend in costs of criminal legal aid since 2010-11 was decreasing, civil legal aid costs had increased by £10.9m between 2010-11 and 2011-12 before falling back to £47.2m in 2012-13. Across the period criminal legal aid costs had decreased by £3.5m compared with an increase of £6m in civil legal aid across the same period. A detailed breakdown of the costs per category is published in Appendix 3.²⁰

Table 8: Overall costs of legal aid by category (£m to the nearest 0.1 m)

	2010-11	2011-12	2012-13
Total Criminal	50.8	48.3	47.3
Total Civil	41.2	52.1	47.2

- 3.20 Whilst there was performance measurement within the NILSC, the links between performance and delivery had not brought about the scale of change necessary to address the criticisms contained in the numerous oversight reports. Performance information that may enable better forecasting on the civil legal aid side was not systematically harvested. For example, adjudicators were not required to provide estimates of cases that were progressing through the system following passage through the triage system. Inspectors found no direct link between the work in progress within adjudication and financial forecasting. ***Analysis and measurement of those cases sitting within adjudication should be introduced as soon as possible and that the information obtained should be used to improve the overall forecasting regime.***
- 3.21 Analysis of performance figures helped to identify areas for improvement and some projects, such as better use of electronic systems and the need for a funding code. The need for an electronic form for use by expert witnesses in cases was identified and this was then developed to the point of implementation. However, at the time of inspection fieldwork the electronic form had not been introduced.
- 3.22 The overall assessment of Inspectors was that performance monitoring influences much of the internal activity of the NILSC, for example, projects, but in many cases was not carried through to full implementation and therefore had not significantly influenced delivery.

Standards

- 3.23 Inspectors found that on the criminal legal aid side, the application of standards was largely out of the hands of the NILSC. For example, the application of the appropriate means and merit tests rests with the Judiciary. As explained in Chapter 2 the strategic decision making with regard to policy and reform of criminal legal aid was moved into the DoJ from the Northern Ireland Courts and Tribunals Service (NICTS) (the NILSC sponsor body) in November 2011. On the civil legal aid side the assessment of applications remained with the NILSC adjudicators team. In England and Wales this decision making was predicated upon a funding code which has now been abandoned. In Northern Ireland decision making by the adjudicators was based on the application of the statutory tests contained in the complex legislation that governs civil legal aid applications.

²⁰ Figures provided and verified by the NILSC.

- 3.24 A funding code for Northern Ireland was developed as part of a number of reforms for the introduction of Civil Legal Services but at the time of inspection fieldwork it had not been agreed upon or implemented. The strategic implications of the lack of a funding code and the present operation of adjudicators at the time of fieldwork was examined in Chapter 2. However, the situation also impacted on delivery of legal aid by the NILSC in its day-to-day business. One of the many factors affecting the high rate of overturn (40%-50%) of adjudicator's decisions by the appeals panel, was the interpretation and application of the existing statutory tests.
- 3.25 Additionally, adjudicators received applications, even after they had been through the triage system, that were not sufficiently detailed to make judgements on. This raised issues of standardisation of both the application and triage processes. One of the outcomes of the variation in standards of applications received by the NILSC was that the level of interaction between adjudicators and applicant's lawyers was very high. This did not make best use of adjudicators' time, qualifications or experience.
- 3.26 The introduction of better electronic systems coupled with a registration scheme and capacity building in the legal profession would go some way to overcoming these difficulties. Efforts were made by the NILSC, in partnership with the Law Society to improve the standard of applications and when coupled with the triage scheme, there had been limited improvements.

Relationships

- 3.27 On the criminal legal aid side the main point of contact with the NILSC for lawyers was through the authorisation team. There was regular contact between lawyers and the authorisation team regarding authorisation for payments. These interactions were described to Inspectors as professional but challenging.
- 3.28 The relationship between the NILSC and applicants was based upon transactions between both parties and on the application by the NILSC of the appropriate legislation and guidance. On the criminal legal aid side recent reforms delivered a more straightforward process, albeit that decision making as to the application of legal aid, rested outside of the remit of the NILSC as explained in Chapter 2.
- 3.29 Criminal legal aid is granted by the court, under Part III of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, and subject to a means test and a merits test. The means test requires the Judge to determine whether the defendant has sufficient means to mount his own defence in circumstances where legal representation was necessary. There is no fixed financial limit applied to the means test. The merit test requires Judges to determine whether the interests of justice required that the defendant be legally represented. If both these tests are satisfied, the court may grant criminal legal aid.
- 3.30 As regards civil legal aid this is granted by the NILSC under criteria set out in the Legal Aid Advice and Assistance (Northern Ireland) Order 1981, the Legal Advice and Assistance Regulations (Northern Ireland) 1981 and the Legal Aid (Assessment of Resources) Regulations (Northern Ireland) 1981.
- 3.31 The limit set to the granting of civil legal aid for Legal Advice and Assistance (LAA) was disposable capital of £1,000. This meant that those applicants with disposable capital of over £1,000 were ineligible for funding with regard to LAA. The limit for Assistance By Way of Representation (ABWOR) was set at £3,000 but exceptions for people on allowances such as job seekers applied. Limits for civil legal aid were

set at a lower limit of £3,000, up to a maximum of £8,560 with regard to personal injury claims. Applicants with disposable capital within the range were granted funding subject to a scale of contributions towards the legal aid bill.

- 3.32 The application of these complex rules by the NILSC resulted in tension between decision makers, (including adjudicators, civil legal aid team and the appeals panel), and the applicants' legal representatives. Lawyers told Inspectors that the focus of the NILSC was on protection of the fund rather than on ensuring proper access to justice. This accorded in part with the understanding of decision makers within the NILSC. They were clear that they applied the legislation and rules in a way that ensured protection of the fund whilst maintaining appropriate access to justice.
- 3.33 This would appear to be at odds with the actual situation of an increasing legal aid bill and the need for year-on-year additional funding as previously outlined. If the perception of lawyers is that the fund was being protected at the expense of access to justice, whilst the perception of the NILSC decision makers is that protection of the fund was legitimately their focus, then there is an obvious tension of purpose between the two. Furthermore, if both sets of opinion regard the approach to be one of protecting the fund then an increasing legal aid bill appears not to bear this out, even in the context of a demand led environment.
- 3.34 One of the rubbing points in the relationship between the NILSC and applicants' representatives was the reliance of the NILSC on records made available to them through the Northern Ireland Courts and Tribunals Service (NICTS) data recording system, ICOS. Lawyers told Inspectors that the records were not always accurate due to the sometimes frenetic court business and stretched NICTS resources. This resulted in challenges being raised by the NILSC to applications made by lawyers on behalf of their clients on the basis of what lawyers considered to be inaccurate information.
- 3.35 There were some further inaccuracies in recording of court orders and sentencing. The issues appeared to be with the recording of material by operatives on ICOS rather than with the system itself. CJI published an inspection into the accuracy of court orders in September 2013.²¹ The inspection report indicated that the NILSC were aware of the problems and were taking steps to address them, including requesting an annual statement of assurance from the NICTS and better access to non-criminal matters on ICOS. There was recognition within the NILSC that inaccuracies resulted in increased, otherwise unnecessary, transactions with lawyers adding to an already cluttered, bureaucratic landscape.

Resources

- 3.36 At the time of inspection fieldwork the NILSC had the equivalent of 156 full-time staff excluding Commissioners and Committee members. The organisational chart at Appendix 2 indicates the allocation of resources by section. Most resources sat within the civil legal aid side of the business reflecting its complexity and the wider involvement of the NILSC in deciding upon the award of civil legal aid. The criminal side of the business was composed of criminal authorisations and criminal payments teams supported by administrative staff and managed through to the Director of Criminal Defence Services. There were a total of 21 staff engaged solely in administering criminal legal aid at the time of inspection fieldwork.
- 3.37 Figures for the year 2011-12 indicated that the number of criminal legal aid certificates registered was 38,831. Table 9 illustrates the certificates registered by category for 2011-12.

21 The accuracy of court orders, CJI, September 2013.

Table 9: Criminal legal aid certificates registered 2011-12

Court type	Certificates registered
Crown Court	2,608
Magistrates' Court	34,484
County Court Appeals	1,666
Extradition	73
TOTAL	38,831

- 3.38 Appendix 2 illustrates that the bulk of resources involved in the administration of legal aid was within the civil side. At the time of inspection fieldwork, there were 73 staff engaged in the civil side of the NILSC business. This reflected not just the number of certificates issued, which amounted to around 9,000 per year in 2010-11, but the additional decision making processes required. These included an adjudicators team to apply the appropriate rules and legislation, as well as two other teams to process civil claims and LAA. LAA was available to applicants to enable them to obtain legal opinion on any point of law and had been subject to means testing. Whilst LAA (the "green form") combined elements of civil and criminal legal aid, it was administered by the civil legal aid side of the NILSC.
- 3.39 The initial assessment/triage system outlined in Chapter 2 was applied to applications on the civil legal aid side. A total of 23 people worked on triage operating a hard-copy system with little use of supporting technology. If applications were found to be incomplete they were returned to applicants by post with instructions on completion. The most recent rates of return were assessed as being between 35% and 40% reflecting a poor standard of application despite the joint work undertaken by the NILSC and the Law Society as described in Chapter 2. Although returned corrected applications were entered onto a database this was free-standing and separate from the Phoenix system, which caused difficulties when producing integrated management information.
- 3.40 Cases were passed from triage to adjudicators only after the application of the proper means test and a determination that the application was within scope. Legislation set out the statutory tests to be applied to applications which, once satisfied, meant that there was no limit on the number of occasions a particular applicant could be awarded legal aid. Whilst means testing was applicable to most civil legal aid applications this was not the case with those involving contact arrangements with children in matrimonial proceedings.
- 3.41 Inspectors were told that even with the operation of the triage system adjudicators received applications that did not have enough information included to make a determination as to the grant of legal aid. In these cases, adjudicators often had to communicate directly with the applicant lawyers.
- 3.42 Inspectors were told that the triage system delivered some improvements in the standards of applications for civil legal aid. However, on its own a triage system without the support of a compulsory registration scheme for lawyers and supporting electronic systems, failed to deliver substantial improvements in standards of applications. Inspectors previously recommended the implementation of a registration scheme and the reasons for doing so in Chapter 2.
- 3.43 Work within the adjudicators team was allocated dependent on complexity. More complex applications were dealt with by adjudicators with a current practising solicitor's certificate whilst less complex issues, such as applications for legal aid in matrimonial cases, were dealt with by staff holding no formal legal

qualification. Decisions were guided by adjudicators' experience and knowledge, and by manuals, prepared for each particular area of adjudicators' work. For example, guidance on the rules and legislation with regard to personal injury claims, trips and slips. These money damage cases accounted for around 25% of applications for civil legal aid.

- 3.44 Funding was often available to both sides in cases of personal injury, for example, to claimants and to landlords where rented property had been involved. Following adjudication, civil legal aid applications passed to the civil claims team for scrutiny, including of the sums of money involved. When applications for legal aid were refused, the appeals panel process and appeals committee operated as described in Chapter 2 and in Figure 1.
- 3.45 The fact that processes were not adequately supported by the use of technology and remained paper-based, impacted on the work load of the various teams sitting within the civil legal aid side of the NILSC. Many transactions resulted from incomplete and poor standard applications and the appliance of mostly manual procedures to deal with these issues.
- 3.46 The application of legislation and rules to the grant of civil legal aid by adjudicators meant that over the past two years refusals on initial application had been running between 15% and 20%. Between 40% and 50% of these refusals were later granted legal aid on appeal through the appeals panel process. This meant that overall rates of award of civil legal aid was running at around 79%. The appeals panel consisted of 19 lawyers appointed independently by the Law Society and the Bar Association.
- 3.47 As set out in Chapter 2, DoJ proposals for revised appeal arrangements had gone out to consultation in February 2013, and Inspectors viewed the Law Society's response which was broadly supportive. However, the Law Society raised concerns about panel members acting independently; the discontinuation of a right to an oral hearing; time limits on appeals; disallowance of new evidence; and the operation of the special committee, amongst other issues. Any new arrangements for the revision of the appeals process will have resource implications for the NILSC and Inspectors await the outcome of the consultation exercise and the implementation of new appeal arrangements.
- 3.48 Inspectors' overall assessment as to whether resources were managed to improve delivery was that during the last two years of operation, improvements had been implemented. This was particularly with regard to the operation of the triage system on the civil legal aid side and the operation of the criminal authorisations and payments teams. However, success was seriously limited by continued reliance on manual systems and outdated business processes.
- 3.49 The NILSC did not operate with the aim of reducing legal aid payments. However, the increasing legal aid bill year-on-year had come under increased scrutiny from public representatives and had become, de facto, the only performance indicator that really mattered for the activities of the NILSC.
- 3.50 Family and children cases accounted for 70% of the civil legal aid spend during 2011-12. Maintaining adequate protection in family law issues involving vulnerable people, children and where there are concerns for personal safety is important. Inspectors have previously made recommendations regarding the implementation of initiatives set out in the *Access to Justice* report. They believe that to enable effective financial governance, consideration should be given to the recommendation of the *Access to justice* report to limit the scope of private family law to attract legal aid, notwithstanding arguments in favour of maintaining access to justice and preventing delay, due to people conducting their own proceedings through court.



Appendices



Appendix 1: Terms of reference

Introduction

Criminal Justice Inspection Northern Ireland (CJI) proposes to undertake an inspection of corporate governance in the Northern Ireland Legal Services Commission (NILSC).

The NILSC was established under Article 7 of the Access to Justice (Northern Ireland) Order 2003 and from 1 November 2003 took responsibility for the provision of publicly funded legal services in Northern Ireland. The Commission was established as an executive Non-Departmental Public Body (NDPD) sponsored by the Northern Ireland Courts and Tribunals Service (NICTS).

Section 45 of the Justice and Security (Northern Ireland) Act 2007 amended the Justice (Northern Ireland) Act 2002 to include within the inspection remit of CJI, the NILSC. This inspection will be the first to have been conducted on the NILSC since its inception.

Context

The stated mission of the NILSC is to ‘...promote fair and equal access to justice in Northern Ireland in its provision of publicly funded legal services.’ Its stated aim is to ‘...provide high quality, customer focused services that target those in greatest need and demonstrate value for money.’

Since devolution of policing and justice the powers of the Lord Chancellor with regard to the Access to Justice (Northern Ireland) Order 2003 had been transferred to the Minister of Justice.²² The Chair and the other members of the NILSC are appointed by the Minister of Justice.

Legislation states that membership of the Commission shall consist of:

- (a) a member who is to chair it; and
- (b) not fewer than six, nor more than 10 other members

but the Minister of Justice, may by order, substitute for either or both of the numbers for the time being specified in sub-paragraph (b) such other number or numbers as he thinks appropriate.

The Commission may fund the provision of services in civil legal or criminal defence services. However, the remit of CJI’s inspection activity is limited to examining those elements of the NILSC that extend to criminal legal services only.

²² Except for paragraph 17 of Schedule 1.



Aims of the inspection

Corporate governance

The aims of this inspection are to examine a broad set of issues around the governance, performance and accountability of the NILSC, including:

- a clear sense of corporate leadership and direction to develop the organisation and its people, improve performance and manage risk taking into account the needs of stakeholders/service users;
- a clearly defined role with desired outcomes has been identified within a suitable corporate and business plan, with evidence of consistent communication of corporate standards throughout the NILSC;
- the promotion of values for the whole organisation and demonstrating good governance through behaviour;
- management of resources to provide value for money outcomes, reflect changes in the operational environment and improve the efficiency and effectiveness of the NILSC; and
- a management structure with clear lines of accountability, providing transparency of decision making and contributing to improvement in personal and corporate performance.

Methodology

The inspection will be based on the CJI inspection framework, as outlined below, for each inspection that it conducts. 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. Inspectors will look for evidence in strategy, service delivery and in outcomes that equality and fairness are integral to the work of the NILSC.

CJI inspection framework



Research and review

Collection and review of relevant documentation such as corporate and business plans, external reports, internal strategies, policies, minutes of meetings, performance management, financial management and monitoring information, business statistics, risk registers, stewardship statements, and other relevant risk-related material, communications strategies, internal and external surveys and any other relevant internal reviews, papers and correspondence.

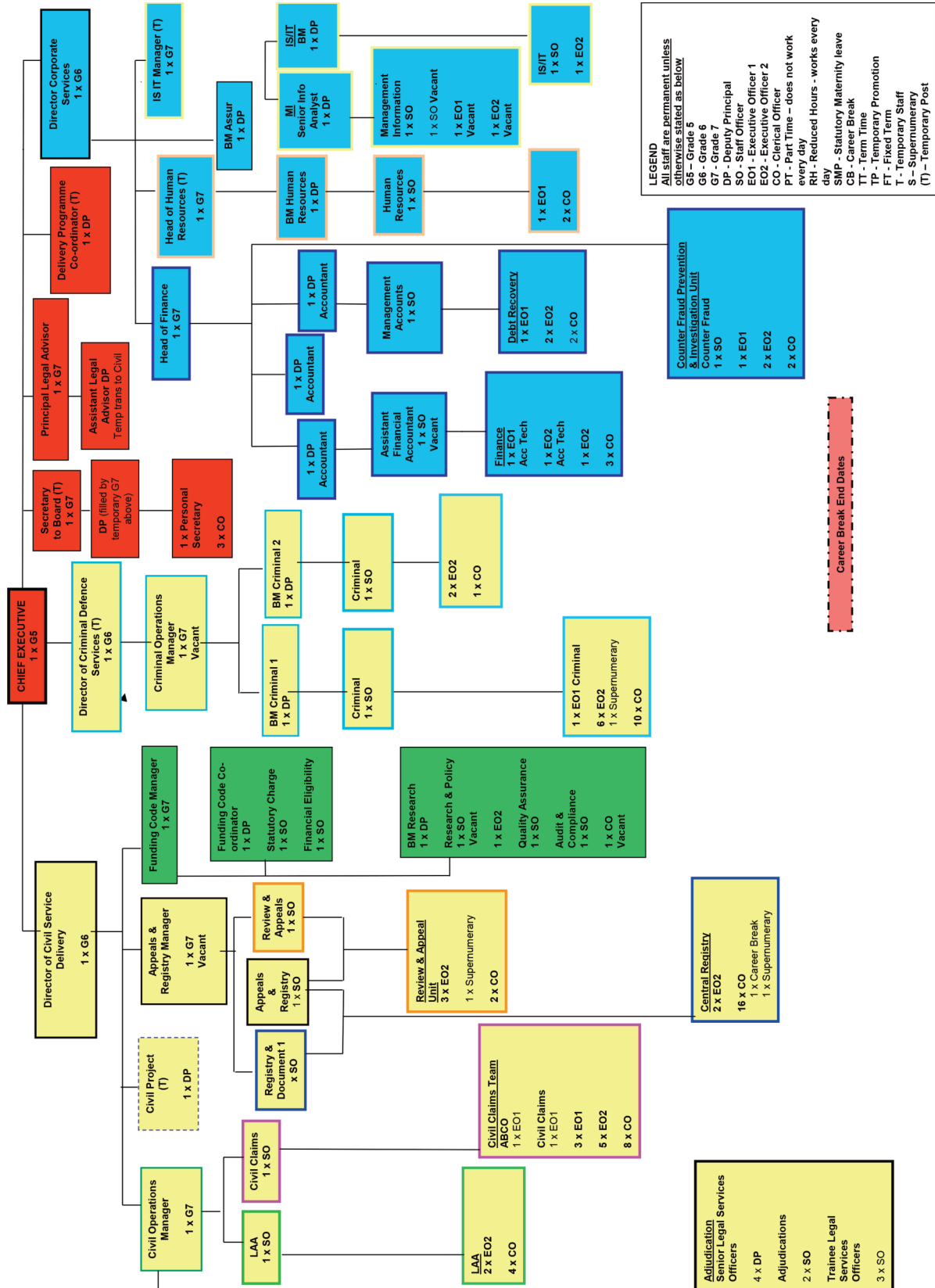
Fieldwork

- Terms of reference will be prepared and shared with the NILSC prior to the initiation of the inspection. A liaison person from NILSC should be nominated for the purposes of this inspection.
- The NILSC will be given the opportunity to complete a self-assessment of the organisation.
- Interviews will be conducted with NILSC senior management, Commission members, staff, and other criminal justice organisations and relevant stakeholders to give an insight into the organisation.
- Interviews will be held with staff to discuss issues around strategy and governance, delivery and outcomes.
- Progress in the development of policies, performance management data, and HR issues will be examined.
- Evidence of planning and decision making leading to performance improvement and recognition of future changes in demand and operating environment will be gathered.
- Identification of good practice in corporate governance within and outside Northern Ireland which may involve meetings with relevant comparable organisations in other jurisdictions will provide some basis for benchmarking.

Feedback and writing

Following completion of the fieldwork and analysis of data, a draft report will be shared with the NILSC for factual accuracy check. The Chief Inspector will invite the NILSC to complete an action plan within six weeks to address the 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 NILSC.

Appendix 2: NILSC organisational structure




LEGEND
All staff are permanent unless otherwise stated as below

G5 – Grade 5
G6 – Grade 6
G7 – Grade 7
DP – Deputy Principal
SO – Staff Officer
EO1 – Executive Officer 1
EO2 – Executive Officer 2
CO – Clerical Officer
PT – Part Time – does not work every day
RH – Reduced Hours – works every day
SMP – Statutory Maternity leave
CB – Career Break
TT – Term Time
TP – Temporary Promotion
FT – Fixed Term
T – Temporary Staff
S – Supernumerary
(T) – Temporary Post

Career Break End Dates

Appendix 3: Detailed breakdown of legal aid costs 2010-11 to 2012-13

Resource Non-ringfenced DEL	2010-11	2011-12	2012-13
	Actual £'000	Actual £'000	Actual £'000
CIVIL			
Green Form (LAA)	5,213	4,568	3,709
ABWOR	1,916	2,109	1,737
Children Order - Assistance Before Court Order (ABCO)	7,983	9,464	7,660
Civil Other - Civil Other Children's Order	10,873	13,588	14,753
Civil Divorce	4,679	6,784	6,512
Civil - Other	11,141	12,137	12,890
Civil - Other - Omagh	-	-	0
Total before Exceptionals	41,805	48,650	47,261
Exceptional Grants	426	4,535	1,021
Recoveries of Assisted Person's (APs) Contributions - net	(1,050)	(1,134)	(1,110)
<i>Civil Sub Total</i>	41,181	52,051	47,172
CRIMINAL			
1992 Rules	4,032	726	640
Magistrates Court 2009 Rules	16,428	20,954	17,229
Magistrates Court VHCCs 2009 Rules	109	263	299
Crown Court Criminal	16,700	19,241	17,329
Crown Court VHCCs	14,347		
2005 Rules		1,881	1,362
2009 Rules		4,378	9,698
VHCC Recoupments	(1,507)	-	(107)
Appeals	725	848	893
<i>Criminal Sub Total</i>	50,834	48,291	47,343
Asylum & Immigration Contract	99	99	99
Housing Rights Association	0	0	60
Grant in Aid - Exc notionals and actuarial adjs	7,790	6,720	6,886
	99,904	107,161	101,560



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