

## NORTHERN IRELAND

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The provision and administration of Legal Aid in Northern Ireland is the subject of significant reform at this time. This report traces the historical development of Legal Aid in Northern Ireland, reporting on the current arrangements and then outlines the reform of Legal Aid, which is being implemented.

Legal Aid was formally established in Northern Ireland by the Legal Aid and Advice Act (Northern Ireland) 1965. The 1965 Act followed and was closely based on the equivalent legislation in England and Wales, the Legal Aid and Advice Act 1949 which built on earlier forms of assistance for people unable to finance their own cases.

Just as in England and Wales where the 1949 Act had been informed by the deliberations of the Committee chaired by Lord Rushcliffe, which published a report in May 1945 the legislation in Northern Ireland was brought forward following the publication in October 1960 of a report of a Committee chaired by General Sir James Steele.

The terms of reference of the Steele Committee were “consider and report whether it is desirable to enact legislation providing for a scheme of Legal Aid and Advice in Northern Ireland”. The Committee was directed to consider the provisions of the English legislation and also the Scottish legislation that had been passed in 1949.

The Legal Aid and Advice Act (Northern Ireland) 1965 vested in the Law Society of Northern Ireland statutory responsibility for administering legal aid. These arrangements were consistent with those developed in England and Wales. In Northern Ireland the Law Society was given specific responsibility “*to make arrangements in accordance with the Scheme made by them with the approval of the Ministry of Home Affairs, and with the concurrence of the Ministry of Finance, for ensuring legal aid and legal advice are available*”.

The Scheme approved at the creation of legal aid is still (as slightly amended) the basis for the operation of the legal aid system in Northern Ireland.

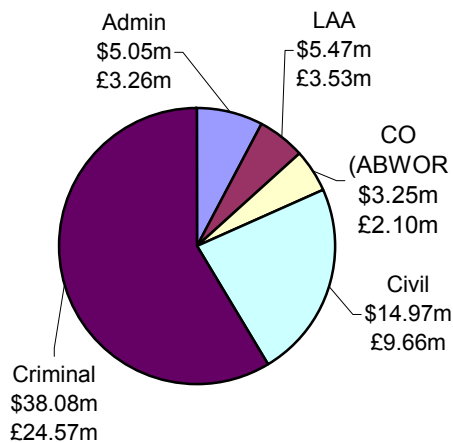
The 1965 Act was repealed by the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981. The 1981 Order was a consolidating Order reflecting the changes made to the 1965 Act. Under the 1981 Order the Law Society of Northern Ireland still retains statutory responsibility for administering Civil Legal Aid in Northern Ireland and continues to administer Criminal Legal Aid on behalf of the Northern Ireland Court Service.

The Law Society discharges its responsibility to administer Civil Legal Aid through its Legal Aid Department, which is based in Belfast. The Legal Aid Department grants Civil Legal Aid in Northern Ireland while the Judiciary is responsible for granting Criminal Legal Aid. Once a criminal legal aid certificate is issued, the Legal Aid Department is responsible on behalf of the Northern Ireland Court Service to deal with relevant claims for payment.

It has no control over the level of fees paid, these are matters dealt with by the Northern Ireland Court Service and the Taxing Master.

The Legal Aid Department presently has a staff of 130 and an annual budget of approximately £45m (\$69.75m). In the financial year just completed (2002/2003), £44.79m (\$69.42m) was the total net expenditure of the Department on legal aid and this was broken down between:

**Net Expenditure by Business Area  
2001-2002**



Civil Legal Aid is widely available in proceedings in the High Court and county court, together with specific proceedings in courts of summary jurisdiction. It is not available for proceedings in the Small Claims Court, which presently has a civil jurisdiction of up to £2000 (\$3100), nor in a Coroner's Court or in Industrial Tribunals. An Extra-Statutory Scheme has been established to provide funding for representation at exceptional inquests. The Northern Ireland Court Service administers this scheme. A new statutory provision will commence shortly which will establish

a more extensive exceptional grant power, which will not be limited to representation at coroners' inquests.

The Law Society of Northern Ireland presents to the Lord Chancellor an Annual Report on the operation and finance of legal aid in Northern Ireland. This Annual Report is referred to the Lord Chancellor's Legal Aid Advisory Committee, which provides advice and comment on the Annual Report of the Law Society. The report of the Advisory Committee together with the Annual Report of the Law Society are then published and laid before Parliament.

The Legal Aid Advisory Committee is comprised of eleven people with experience of the work of the courts in Northern Ireland and of social conditions. The Committee, which is chaired by His Honour Judge Smyth QC, brings to bear a wealth of practical knowledge and experience in commenting on the performance of the Legal Aid Department.

As outlined at the start of this report the provision and administration of legal aid is the subject of significant reform. In February 1998 the Lord Chancellor, Lord Irvine, the UK Minister who is responsible for Legal Aid announced a fundamental review into the provision and administration of legal in Northern Ireland.

The review resulted in the publication in June 1999 of a Consultation Paper "Public Benefit and the Public Purse" which set out the Governments proposals for reform. These proposals were the subject of detailed consultation with a wide range of interested parties in Northern Ireland. Following consultation a Decisions Paper "The Way Ahead" was published in September 2000. This

Paper set out the Government's design for the future of publicly funded legal services in Northern Ireland.

A Proposal for a Draft Order in Council was published for consultation in May 2002 and after extensive consultation and Parliamentary scrutiny the Order, the Access to Justice (Northern Ireland) Order 2003 was approved in February 2003.

This Order contains wide-ranging provisions, which will:

(a) establish a new executive Non-Departmental Public Body to be known as the Northern Ireland Legal Services Commission. The Order also provides for the transfer of responsibility for administration of legal aid from the Law Society of Northern Ireland to the Commission;

(b) establish two types of publicly funded services, namely: Civil Legal Services and Criminal Defence Services. Both services, which will be administered by the Commission, will include provision for legal advice and assistance and representation;

(c) establish a Registration Scheme and Code of Practice. All legal service providers conducting legal services at public expense will be required to register with the Legal Services Commission and undertake to comply with standards set out in the Code of Practice;

(d) introduce new means to fund some categories of litigation. The new mechanisms will open up access to justice to individuals who would not otherwise be eligible for public funds to support their case. The Order will enable Conditional Fee Agreements to be introduced in Northern Ireland. The Order also contains powers to enable a

privately funded Litigation Funding Agreements to be established; and

(e) introduce new arrangements for the payment of fees to lawyers for publicly funded legal services. The new remuneration arrangements will provide for a range of mechanisms including providing all-inclusive fees. The new fees will seek to balance appropriate remuneration with affordability.

Work is proceeding to commence the provisions of the Order and in particular to establish the new body which will administer legal aid, the Northern Ireland Legal Services Commission. It is anticipated that the Commission will be established this autumn.

The Northern Ireland Court Service as the sponsoring body, has established a Project Board to oversee the smooth transition from Law Society administration to the Commission. Representatives of the Law Society and the Legal Aid Committee of the Legal Aid Department are represented on this Project Board.

The Project Board has been engaged in a wide range of important issues, including discussions to ensure that the Commission has the necessary powers to administer applications inherited from the Legal Aid Department and to effect a transfer of staff from the Legal Aid Department to the Commission and, to secure new accommodation for the Commission.

The establishment of the Commission will be the first of the reforms under the Access to Justice Order, which will be introduced. To this end advertisements for the positions of Chair and up to ten other Members of the Commission have been placed.

Interviews for these positions will begin during the last week of June. It is envisaged that Members of the Commission will be drawn from a range of backgrounds including the finance, business and legal sectors.

The Commission will operate at arms length from Government. However, the Lord Chancellor will retain overall responsibility for policy. Accordingly the role of the Commission will be to inform and implement the Lord Chancellor's policy. The Lord Chancellor and the Commission will work together to deliver the Government's policy objectives.

The second of the reforms to be introduced will be the introduction of new remuneration provisions for criminal cases. The new remuneration provisions will be implemented after the Commission has been established. A Working Group comprising representatives of the Northern Ireland Court Service, the Law Society, Bar Council and the Taxing Master has been established to bring forward proposals for new fees.

A draft Implementation Plan has been prepared which outlines how the Order's remaining provisions will be commenced. Once the Commission has been established the Draft Implementation Plan will be discussed with the Commission and an agreed Implementation Plan will be published.

In the first instance it is proposed that the Commission will administer the existing legal aid scheme without change, thereby allowing it a period of time to consolidate its systems and procedures before commencing the process of implementing more wide ranging reform to the provision of publicly funded legal services.

The Access to Justice (Northern Ireland) Order 2003 was drafted in light of the practical experience in England and Wales. In that jurisdiction there had been significant reforms of legal aid in 1988 and 1999. Accordingly the drafting of the Order took cognisance of the experience gained through those reforms and sought to ensure that the range of powers exercised in England were included in the Order. That is not to say that the Order simply mirrors the provisions in England and Wales. In several important respects specific provisions including the standard fees and Code of Practice models were developed in response to representations made in the context of the Northern Ireland legal services culture.

In addition to these significant differences, the Government would expect that the powers available in Northern Ireland, which are reflective of those in England and Wales would be exercised in a manner which was consistent with the need of publicly funded legal services in Northern Ireland and the legal services culture presently existing there.

It is hoped that the reforms will modernise publicly funded legal services in Northern Ireland by delivering local solutions to local problems.

Figure 1

	1990/91 m	2001/02 m	Increase %
Criminal Legal Aid	£5.80 \$9.11	£24.57 \$38.57	324%
Civil Legal Aid	£6.39 \$10.03	£16.96 \$26.63	165%

Figure 1 sets out the change in expenditure on legal aid from 1990/91 to 2001/02.

Figure 2

YEAR	TOTAL FUND EXPENDITURE	TOTAL ADMINISTRATION EXPENDITURE
92 / 93	£ 19.91m (\$ 30.86m)	£ 1.71m (\$ 2.65m)
93 / 94	£ 16.98m (\$ 26.31m)	£ 1.9m (\$ 2.94m)
94 / 95	£ 19.93m (\$ 30.89m)	£ 1.92m (\$ 2.97m)
95 / 96	£ 25.78m (\$ 39.95m)	£ 1.99m (\$ 3.08m)
96 / 97	£ 26.07m (\$ 40.4m)	£ 2.06m (\$ 3.19m)
97 / 98	£ 28.85m (\$ 44.71m)	£ 2.23m (\$ 3.45m)
98 / 99	£ 30.09m (\$ 46.63m)	£ 2.58m (\$ 3.99m)
99 / 00	£ 34.65m (\$ 53.7m)	£ 2.69m (\$ 4.16m)
00 / 01	£ 37.7m (\$ 58.43m)	£ 2.87m (\$ 4.44m)
01 / 02	£ 41.53m (\$ 64.37m)	£ 3.26m (\$ 5.05m)

Figure 2 sets out the net expenditure 1992/93 – 2001/02 broken down into total fund expenditure and total administration expenditure.

Figure 3

	1990/91	2001/02	Increase %
Criminal Legal Aid	£266 \$418	£906 \$1422	240%
Civil Legal Aid	£484 \$760	£1919 \$3013	297%

Figure 3 sets out the average cost per case from 1990/91 – 2001/02.

Figure 4

**Criminal Legal Aid**  
**Average Full Bills Paid to Solicitor and Counsel by Court (fees only)**

		2001-02	% change 2000-01 to 2001-02	2000-01	1999-00
<b>Magistrates</b>	Solicitor	<b>383.14 (\$593.86)</b>	<b>15.53</b>	331.64 (\$514.04)	277.63 (\$430.32)
	Counsel	<b>516.22 (\$800.14)</b>	<b>7.26</b>	481.28 (\$745.98)	468.42 (\$726.05)
<b>*Crown Court</b>	Solicitor	<b>3,731.02 (\$5783.08)</b>	<b>32.67</b>	2,812.31 (\$4359.08)	2,694.58 (\$4176.59)
	Counsel	<b>4,387.86 (\$6801.18)</b>	<b>23.66</b>	3,548.29 (\$5499.84)	3,663.13 (\$5677.85)
<b>Bails</b>	Solicitor	<b>207.53 (\$321.67)</b>	<b>-4.13</b>	216.46 (\$335.51)	185.41 (\$287.38)
	Counsel	<b>72.80 (\$112.84)</b>	<b>2.45</b>	71.06 (\$110.14)	68.61 (\$106.34)
<b>Appeals</b>	Solicitor	<b>239.00 (\$370.45)</b>	<b>5.39</b>	226.78 (\$351.50)	192.77 (\$298.79)
	Counsel	<b>238.21 (\$369.22)</b>	<b>5.61</b>	225.56 (\$349.61)	212.08 (\$328.72)
<b>TOTAL</b>	Solicitor	<b>604.15 (\$936.43)</b>	<b>23.96</b>	487.36 (\$755.40)	414.00 (\$641.70)
	Counsel	<b>1,944.85 (\$3014.51)</b>	<b>22.87</b>	1,582.80 (\$2453.34)	1,557.35 (\$2413.89)

\*Note: These figures contain 2 high value cases as follows:

- 1) 11 Reports on Case @ £739,458.14 (\$1,146,160.11), average cost per Report on Case = £67,223.47 (\$104,196.37)
- 2) 6 Reports on Case @ £278,528.85, average cost per Report on Case = £46,421.48

Figure 4 sets out the average full bills paid to solicitor and counsel by Court (fees only) for Criminal Legal Aid.