

**Northern Ireland Legal Services Commission  
Report of the Comptroller and Auditor General  
Year ended 31 March 2011**

**Introduction**

1. The Northern Ireland Legal Services Commission (NILSC) was established on 1 November 2003 under the Access to Justice (Northern Ireland) 2003 to provide Legal Aid in Northern Ireland. It assumed responsibility for civil legal aid from the Legal Aid Department of the Law Society of Northern Ireland, and criminal legal aid administered by the Legal Aid Department on behalf of Northern Ireland Court Service<sup>1</sup>.
2. Following devolution of policing and justice functions on 12 April 2010 the NILSC became a Non Departmental Public Body of the Department of Justice. Until November 2011 however the Northern Ireland Courts and Tribunals Service<sup>2</sup> continued to provide the sponsorship oversight of the NILSC on the Department's behalf.
3. The NILSC prepares accounts for both its use of Legal Aid funds (the Grant Account) and for its administrative operations (the Grant-in-Aid Account). My report relates solely to the Grant Account.

**Purpose of the Report**

4. Audit responsibilities for devolved policing and justice functions have also transferred and I was appointed as auditor of the NILSC under the Access to Justice Order as amended by the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 for the 2010-11 financial statements onwards. I am required to examine, certify and report upon each statement of accounts prepared by the NILSC.
5. The purpose of this report is to explain the background to my qualifications of the Legal Aid Grant Account for the year ended 31 March 2011.

**Qualification of my audit opinions on the Legal Aid Grant Account**

6. I have qualified my opinion on the Grant Account in the 2010-11 financial statements because of the following limitations in scope arising from:
  - insufficient evidence to support legal aid grant expenditure; and
  - insufficient evidence to support certain assumptions used and judgements made when calculating Legal Aid provisions.

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<sup>1</sup> Following the devolution of policing and justice functions in Northern Ireland on 12 April 2010 the Northern Ireland Court Service became the Northern Ireland Courts and Tribunals Service, an Agency of the Department of Justice.

<sup>2</sup> In November 2011 sponsorship of the NILSC transferred to the Public Legal Services Division of the Department of Justice.

## Limitation in scope arising from insufficient evidence to prove that material fraud did not exist within legal aid grant expenditure

7. The nature of the Legal Aid scheme, in making payments to legal advisors for services which are directly provided to Legal Aid claimants, creates difficulties for the NILSC in determining whether the services were appropriately provided, or if overpayments have been made. In addition, means tested legal aid carries a risk that Legal Aid is granted to individuals who are not eligible if income details may be misstated on initial application, or that changes in financial circumstances during the case are not reported by the claimant.
8. Payments which may have been made by the NILSC as a result of fraudulent legal aid applications or inappropriate legal bills would not have been applied for the purposes intended by the Assembly, and would therefore be irregular. The NILSC does not currently produce an estimate of the likely scale of fraud.
9. A small Counter Fraud Unit operates at the NILSC but it is more reactive than proactive. NILSC does not currently undertake inspection visits to the offices of legal professionals to audit records supporting bills issued for legal services. The work undertaken by the Counter Fraud Unit does not therefore provide the same level of assurance as fully fledged inspection regimes undertaken in Legal Aid bodies in other parts of the UK. In the absence of this key control or compensating controls in the NILSC I cannot obtain sufficient audit evidence to gain assurance that material fraud does not exist.
10. For the last seven years since the establishment of the NILSC in 2003 the regularity audit opinion on the Grant account has been qualified due to a lack of audit evidence on the level of fraud. I also addressed this issue in my report on Managing Criminal Legal Aid<sup>3</sup>. In considering this matter, the Public Accounts Committee (PAC)<sup>4</sup> stated that the absence of a cohesive counter-fraud strategy, based on established best practice, meant that the Commission is not well placed to manage the risk of fraud and it recommended that the NILSC take urgent action to identify the risks of fraud and establish proactive counter-fraud measures to manage them.
11. The NILSC has not introduced an inspection regime as it considers that it does not have a statutory basis to do so<sup>5</sup>. The October 2011 PAC report however made it clear that “it is not an acceptable excuse that there is no specific statutory basis for introducing such a scheme”.

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<sup>3</sup> NIAO Report “Managing Criminal Legal Aid” published 29 June 2011.

<sup>4</sup> Report NIA 20/11-15 Public Accounts Committee – Managing Criminal Legal Aid, Session 2011/2012, dated 26 October 2011.

<sup>5</sup> Either under the Access to Justice (Northern Ireland) Order 2003 or the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.

12. In its response to PAC's recommendation<sup>6</sup> the Department of Justice (DOJ) said that the NILSC:

- is working on improving its counter-fraud arrangements and has fraud as a key risk in its corporate risk register;
- has established a counter fraud working group and is developing a rolling programme of work to identify and manage the risk of fraud;
- will also include in its voluntary registration scheme a requirement that legal practitioners permit access to their records, so that NILSC can inspect the records of anyone registered under the scheme;
- is seeking access to the Department for Social Development's database to directly confirm that applicants are in receipt of the welfare benefits declared in their applicant forms for legal aid;
- is seeking to develop a database to analyse the bills from providers of legal aid services to examine charging patterns by firms and business areas, not just on individual reports; and
- proposes to increase the size of its fraud unit as it takes on these additional responsibilities.

13. I will monitor the NILSC's progress in implementing these improvements during my future audits. Given the weaknesses I have identified in the counter fraud arrangements in place during 2010-11 I have limited the scope of my audit opinion on regularity because I have been unable to obtain sufficient audit evidence to enable me to conclude that payments to legal professionals are regular.

#### **Limitation in scope arising from insufficient evidence to support the rationale used and judgements made when calculating provisions**

14. Since the inception of the NILSC in 2003, there have been significant issues with the accounting policy, estimation technique and disclosures used by the NILSC in estimating liabilities for services provided by legal advisors to Legal Aid claimants at each financial year end. These liabilities are referred to as Legal Aid provisions. Over time the NILSC has resolved some of the issues identified with the estimation of Legal Aid provisions, however other issues remain outstanding. The significance of the issues identified during previous audits resulted in qualified audit opinions.

15. Legal Aid provisions, valued at £108.6 million at 31 March 2011 (31 March 2010: £107.4 million), are estimated by the NILSC in two ways. For Very High Cost Cases (VHCCs)<sup>7</sup> it estimates the provision required on a case by case basis using professional judgement. Provisions for all other Legal Aid certificates granted are valued using a number of assumptions including

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<sup>6</sup>Department of Finance and Personnel Memorandum dated 26 January 2012 on the 1<sup>st</sup> Report from the Public Accounts Committee Mandate 2011-2015.

<sup>7</sup> As defined by The Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005 and The Magistrates' Courts and County Court Appeal (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009, as also as the 2005 and 2009 Rules.

assumptions on the lifecycles<sup>8</sup> for cases, the number of cases where NILSC will not incur costs and the average cost for each type of case.

16. The key weakness identified in previous audit qualifications on Legal Aid provisions related to the lifecycle assumptions being used and whether they were based upon worst-case scenarios which were not reflective of the normal trend of case lifecycles. In the 2009-10 financial statements the NILSC revised the case lifecycles it used to estimate provisions following a review of the high level classifications for the five main case types but it did not further refine its lifecycle assumptions to reflect the differing timeframes for completion of the individual case types.
17. NILSC subsequently undertook an exercise to support the appropriateness of the lifecycles used and I have considered this exercise during my audit of the 2010-11 Legal Aid Grant Account. However, in my opinion further work and clarification is required by the NILSC to provide sufficient audit evidence that the lifecycle assumptions used did not result in material misstatement of Legal Aid provisions at 31 March 2011.
18. I also identified weaknesses in information available to support the calculations for the other assumptions noted in paragraph 15 above, and to substantiate management's judgements in estimating provisions for VHCCs.
19. The NILSC told me that in order to progress these issues in the 2011-12 financial statements it would:
  - re-examine the effect of the lifecycle assumptions on the balances recognised;
  - undertake a comparative exercise to review actual payments against provisions held in previous financial years;
  - provide additional documentation on the calculation of the average costs and nil bills percentages used in the provisions calculations;
  - build upon the work it undertook in producing what it considers to be a reasonable estimate of provisions for VHCCs within the 2010-11 accounts. This includes providing further documentation on how it makes an initial assessment of the potential value of each VHCC based upon comparable cases, which is then refined as further information is received over the course of each case and is reviewed on a monthly basis thereafter.
20. In my report on Managing Criminal Legal Aid I noted the close correlation between the estimation technique and assumptions used to calculate legal aid provisions at each year end and the method the NILSC uses to forecast what its legal aid expenditure will be in future years. I also noted that in 2009-10 the total spend for legal aid was more than double that of NILSC's

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<sup>8</sup> Lifecycle refers to the estimated time it takes to complete each type of case, from when the legal aid certificates are granted to when the legal professionals' bills are paid. Lifecycle assumptions are particularly important because they affect the number Legal Aid certificates which will be included within the calculation of Legal Aid provisions.

initial bid for the funding that it would need for that year. In its response<sup>9</sup> to the PAC Report on Managing Criminal Legal Aid the Department of Justice (DOJ) said that:

- it accepts the need to ensure that a robust financial management system is developed for legal aid, and that legal aid expenditure is managed to ensure that the budget is not exceeded;
- improvements to the NILSC's management information system will be taken forward as part of the strategic implementation plan arising from the Access to Justice review; and that
- it is confident that the programme of reforms and improvements now being developed will improve forecasting and bring spend back within budget.

21. The NILSC told me that in response to the PAC Report and in line with work already commenced within the NILSC, it has refined its financial forecasting processes and procedures, and that this work has been endorsed by external consultants. Regular meetings have also been held with the DOJ at which the assumptions used in forecasts are scrutinised. As a result of the improvements in forecasting made to date the forecasted legal aid expenditure of £104.3m for 2010-11 was within 3.1% of the cash outturn of £101.1m. NILSC told me that this improvement was also due to the budget baseline for legal aid expenditure being increased by £20m in the financial settlement upon the devolution of policing and justice functions in Northern Ireland.

22. Although I appreciate that Legal Aid provisions can be challenging to estimate, ensuring that the assumptions used to estimate provisions are reasonable and can be adequately supported therefore also plays a key role in ensuring robust budgeting systems going forward. NILSC told me that it recognised the continuing need for further development of its financial forecasting and its calculation of lifecycles and average costs used in estimating legal aid provisions and projecting future expenditure to ensure that improved forecasting can be maintained in the medium to long term.

23. I would encourage the NILSC to continue to enhance the robustness of the methodology and assumptions it uses to calculate Legal Aid provisions and, in particular, to improve the evidence available that the lifecycle assumptions used fairly reflect the typical lifespan for each type of case. In its early years issues with provisions played a major role in delaying the production of the NILSC's Annual Report and Accounts, however the NILSC has made significant strides in recent years in reporting its results in a more timely manner. I am pleased to note the steady progress that has been made and that the 2010-11 audited accounts have been finalised eight months earlier than the prior year's accounts. Nonetheless, I would urge the NILSC to continue to improve the timeliness of its reporting.

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<sup>9</sup> Department of Finance and Personnel Memorandum dated 26 January 2012 on the 1<sup>st</sup> Report from the Public Accounts Committee Mandate 2011-2015.

24. I have limited the scope of my audit opinion on the 2010-11 Legal Aid Grant Account because I have been unable to obtain sufficient audit evidence to enable me to conclude that Legal Aid provisions in the Grant financial statements have not been materially misstated.

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30 March 2012