

LSANI – Guidance on Practitioner Error and Fraud Pilot

Purpose

1. This Guidance Note details the Legal Services Agency's (the Agency) pilot approach to measuring practitioner error and fraud as part of its' strategy to estimate and address the level of loss that fraud and error costs the Agency each year. The overall level of loss in legal aid is not currently known. Errors in the Agency can take three forms – errors made by officials, legal aid applicants or payment recipients. Losses to official error in the Agency were estimated at £4.4m for 2020. Losses resulting from applicant and practitioner error are not yet fully quantifiable.

Background

2. The Agency's accounts for 2020-2021 were certified by the Comptroller and Auditor General (C&AG) on 6 July 2021 with a final Opinion and Report qualified due to:
 - i. *statistics produced by the Agency estimating that £4.4 million of overpayments and £1.2 million of underpayments of legal aid costs were made during the year due to official error; and*
 - ii. *limitations in the scope of my work due to insufficient evidence available to:*
 - *satisfy myself that material fraud and error by legal aid claimants and legal practitioners did not exist within eligibility assessments of legal aid applicants and in expenditure from legal aid funds; and*
 - *support the assumptions and judgements used in the determination of £137.2 million out of a total year-end provision for legal aid liabilities of £157.4 million at 31 March 2021; and the resulting adjustments required to the annual legal aid expenditure.*

3. In respect of the error and fraud qualification in the accounts for 2019-2020, the Comptroller and Auditor General (C&AG) indicated, in relation to the Agency's work on official error that he *"was satisfied that the approach is reasonable"*. However, he went on to state: *"Some progress has been made by the Agency and the Department in developing an effective counter-fraud strategy. However, further work is needed to produce an estimate of fraud and error by legal aid claimants and legal practitioners"*.

Addressing Official Error and Fraud and Improving Accuracy

4. Official error is measured by the Standards Assurance Unit (SAU) of the Department for Communities on behalf of the Agency. The methodology for addressing official error and fraud is well embedded and the range of measures the Agency has introduced, including quality assurance checking, training and guidance resulted in a reduction in the estimated monetary value of official error from £8.2m in 2019 to £5.6m in 2020. There was a supporting reduction in the level of overpayments from £6.2m in 2019 to £4.4m in 2020 and in the level of underpayments from £2m in 2019 to £1.2m in 2020.
5. The Agency is committed to further reduce the estimated value of error and early estimates for this year are once again showing positive improvement.

Measuring and Addressing Applicant Error and Fraud

6. The applicant sampling, and error and fraud detection methodology was agreed in February 2021 having consulted with the profession and sampling began in April 2021. Recipients of legal aid are contacted by SAU after their case has been paid and closed and are asked to verify their financial eligibility as at the date of their legal aid application and throughout the life of the certificate. This is in an effort to identify whether there were changes in an Assisted Person's financial circumstances that would have impacted on their eligibility for assistance which should have been notified to the Agency under the requirements of Regulation 19 of the Civil Legal Services (Financial)

Regulations (NI) 2015 (as it relates to Representation Higher). In advance of this work beginning, the Agency redeveloped their communications with the Applicant/Assisted Person to ensure that they are fully aware of their duty to inform the Agency of any changes to their financial circumstances during the life of their legal aid certificate. Further, the Agency engaged with the profession to ensure that their role in advising their client of this continuing duty was clear.

7. The Agency has embedded a robust Quality Assurance System within the Financial Eligibility Unit (FEU) for all new applications. It also conducts routine checking of continuing financial eligibility in ongoing certificates, with the aim of identifying any changes in eligibility at the earliest possible date to protect the Fund, and to minimise the liability of the Assisted Person on revocation.
8. The Agency is currently planning Future Overpayment Prevention work, which SAU will commence in early 2022 to examine the ongoing financial eligibility of assisted persons in ongoing cases.

Measuring and Addressing Practitioner Error and Fraud

9. The Agency is working to finalise a methodology to audit practitioner files prior to payment as part of its assessment of practitioner error and fraud. The Agency will launch the pilot on 18 October 2021 with a view to conducting a thorough review, prepayment, of sampled cases to determine if the information held by the practitioners is consistent with the information provided to the Agency, identify any omissions and determine whether this information could have impacted upon the Agency's decision-making in granting funding.
10. In developing the pilot methodology, the Agency has ensured that only the required number of files will be sampled to give us statistically valid results so as to minimise the impact on practitioners. It is intended that approximately 88 cases per month will be sampled out of approximately 7500 payment requests which are received and processed by the Agency on a monthly basis. Further,

the processes have been developed so as to minimise the actions which need to be taken by practitioners and crucially, to ensure that payments are not delayed for cases which are sampled. It is the Agency's firm intention that in all sampled matters the payments will be made within our standard KPIs, save in the case of concerns of fraud being detected.

11. The results of the exercise will inform the Agency of the common errors where guidance can be provided to improve accuracy and patterns of concern and/or potential fraud indicators, which will then be referred to Counter Fraud Unit (CFU). The Agency will refine the methodology with the benefit of the pilot and launch the formal audit in the fourth quarter of 2021/2022. SAU will provide independent assurance and an estimate of error and fraud similar to the approach adopted in measuring official and applicant error and fraud. Each of these strands of work - official, applicant and practitioner error and fraud, will become part of the Agency's year on year operating model to safeguard public funds.

Definitions of Error and Fraud

12. In seeking to estimate the level of practitioner error and fraud in the legal aid system the following definitions are adopted:

Error

- The practitioner has provided inaccurate or incomplete information, or failed to report a change in the circumstances of the case promptly, which has caused a loss to the legal aid fund, but LSA assesses the practitioner's intent was not fraudulent as there is no evidence that they are deliberately trying to deceive or mislead the Agency.

Fraud

- The practitioner has made a false representation, failed to disclose information, and abused their position by means of a representation or

conduct in order to gain or cause a loss to another. The following three conditions apply:

- (a) the applicant does not meet basic conditions for receipt of legal aid or the level granted;
- (b) it is reasonable to expect the practitioner to be aware of the effect on their client's entitlement of providing incomplete or wrong information; *and*
- (c) evidence the practitioner deliberately set out to falsely represent, failed to disclose information and/or abused their position to make a gain or cause a loss.

Legal Framework

13. The Agency will seek the practitioners file by virtue of the following legislation:

For civil matters:

[Regulation 12\(1\) the Civil Legal Services \(General\) Regulations \(Northern Ireland\) 2015](#)

For Crown Court matters:

Solicitor: [Rule 7\(6\) the Legal Aid for Crown Court Proceedings \(Costs\) Rules \(Northern Ireland\) 2005](#)

Counsel: [Rule 10\(6\) the Legal Aid for Crown Court Proceedings \(Costs\) Rules \(Northern Ireland\) 2005](#)

For Magistrates Court and County Court Appeal matters:

Solicitor: [Rule 6\(7\) the Magistrates' Courts and County Court Appeals \(Criminal Legal Aid\) \(Costs\) Rules \(Northern Ireland\) 2009](#)

Counsel: [Rule 8\(6\) the Magistrates' Courts and County Court Appeals \(Criminal Legal Aid\) \(Costs\) Rules \(Northern Ireland\) 2009](#)

Sample and Measurement Methodology

14. The submission of a Report on Case will be the trigger for matters to fall to be sampled. A weekly sample of payment requests submitted, up to a maximum of 88 per month, will be randomly selected for testing by NISRA statisticians using a stratified approach. To adhere to our accepted statistical tolerances (95% confidence level and +/- 3 percentage points) we expect to be looking at an annual sample size of around 1,056 cases (88 cases per month) when the agreed measurement methodology is fully implemented.
15. All categories of service – Criminal, Advice and Assistance, Representation Higher, Representation Lower, and Exceptionality will be included within the pool of cases from which samples will be derived. The only matters being excluded are Criminal Court of Appeal and Criminal Supreme Court cases as there is no legislative basis that the Agency can rely on to request files in these case types.
16. We will look at the means, merits and payments as appropriate¹ in each case sampled to confirm the consistency of the information provided to the Agency with that held on the practitioner's file, identify omissions and determine whether the omissions or the withholding of information would have impacted upon the initial funding decision. Although the amount payable in a Taxed Case is determined by the Taxing Master, these cases are still granted by legal aid and therefore remain within the sample to consider means and merits of the case.
17. Random sampling days will be selected in advance by NISRA to ensure independence in the sampling process. No days will be excluded – bills submitted over the weekend or public and bank holidays will remain in scope and eligible for testing.

¹ The Agency will not consider the grant of criminal legal aid nor the determination of the sum to be paid in taxed cases as these are judicial functions.

18. A stratified random sampling technique will be used whereby a pre-determined number of Reports on Case will be randomly selected across each category of service, and further stratified by the claimed amount. This will ensure the overall sample is representative of the total population of bills received.
19. The total monetary value of error identified throughout the reporting period will then be used to extrapolate findings at individual stratum level, to estimate the overall level of error within the full population. If there is evidence or reason to suspect fraud, the case will be removed from the sample and be subject to fraud investigation. Investigations will be completed within one month of the fraud referral unless the issues raised require more detailed examination. If this is the case, then the practitioner will be informed by the CFU, and a revised timeframe confirmed.

Procedure for Requesting Files

20. The process maps at **ANNEX A** set out the key steps and timeline for reviewing and assessing a case. When a Report on Case is selected, the Agency will write to the solicitor or barrister, or both, via LAMS to request that their entire file be submitted to the Agency for review. A message will also issue via LAMS to draw attention to the letter. A copy of the initial letter and LAMS message can be found at **ANNEX B**.
21. The review methodology has been developed to allow the file to be reviewed in parallel with the assessment of the costs payable. The Agency does not envisage that payment will be delayed once the file has been received unless issues suggesting potential fraud are detected.
22. The Agency expects that the full file will be made available to the Agency immediately and in any event within five working days from the date of the first request. The Agency considers a file to mean any papers, records, reports, correspondence or other documentation, whether held in paper or electronic

format, which is held by you in relation to the conduct of an individual case for which there is a legal aid certificate/grant in place.

23. If a matter that has been taxed is selected for review, and one Report on Case has been submitted seeking payment for all legal representatives, we will contact each practitioner seeking sight of each of their original files. If any of the representatives has not retained their original file then they should contact the Agency on LAMSpaymentqueries@lsani.gov.uk, to confirm the position. However, it is expected that all solicitors and barristers will be able to produce records to substantiate any claim for payment and should ensure proper records are retained henceforth for potential review by the Agency.
24. The Agency appreciates that in some cases, notably criminal cases, and in particular, those that have attracted grants of Exceptional Preparation hours, the files may be voluminous due to the service of large bundles of Pages of Prosecution Evidence (PPE). For the purposes of the Pilot, we will not require these documents to be provided with the original file **if** the Public Prosecution Service (PPS) has confirmed to us the page count for such PPE material in advance. It will be made clear in the letter requesting the file if we have such confirmation. In relation to disclosure, which the PPS do not paginate and confirm the volumes, we will require the Disclosure Schedule only to be forwarded with the original file as this gives an indication of the page volumes. If the Disclosure Schedule is provided, we will not require the disclosure contents to be provided. However, we will be conducting randomised checks of such cases where the full Disclosure will be sampled. If the case is selected for such sampling, the practitioner will be further notified.
25. The Agency further understands that practitioners often conduct business via email, particularly during the pandemic. However, where a claim has been submitted for the payment of an email, we will expect to see evidence on the file of the existence of said email or an electronic copy. Further, we will expect those emails, which are pertinent to the initial or ongoing financial eligibility

and/or merits of the case, to be on the file or included in the information that is provided to us for assessment.

26. Practitioners should send their full original paper file to the Agency via post, secure courier or by hand delivery to Waterfront Plaza. The Bar Council have also confirmed the availability of a secure courier service from the Bar Library to Waterfront Plaza. The Agency will not accept a photocopy of the file. If a copy file is sent to the Agency, it will be returned unprocessed and the timeframe set out in the initial request will continue to run delaying the processing of the payment request until all requested information is provided.
27. It should be noted that the Agency will not pay for any of the costs associated with the postage or time spent in the production of the file to us in exercising their power for the request of supporting documentation.
28. The practitioner should complete the "[File Details Form](#)" (which can be downloaded from the Agency's website within the '[Legal aid supporting documents](#)' area or by using the link in the notification letter and message) and send it along with the file to confirm the number of pages being sent and if available a schedule of the file contents. Any dispute about the number of pages in the file will be raised as soon as the file has been received and arrangements made for the practitioner and Agency to jointly review the file to identify what is missing and undertake an investigation. If you require the file to be returned to you urgently, for example because you require it for an appeal or transfer of proceedings from one court tier to another, please indicate this by responding via LAMS message and we will ensure that it is scanned and returned as a matter of priority.
29. If your Report on Case is selected for review and you operate a digital case management system please contact the Agency directly on LAMSpaymentqueries@lsani.gov.uk to discuss the options available to transmit the file to us. The Agency have developed a number of options in relation to the receipt of digital information and are content to receive information in all formats.

When the file is received

30. On receipt of the paper file, the entire contents will be scanned by Agency staff and the paper file will be returned to the solicitors' office or to the barrister via a secure courier or other agreed route. We would anticipate returning the file within three working days of receipt of same. If the file is required to be returned more urgently than that, due to a pending appeal for example, then the practitioner should make this clear to the Agency and we will ensure that the scanning and return is expedited. When the file is despatched from the Agency, a message will issue via LAMS to confirm this. When the Agency is in possession of the paper file it will be stored securely in accordance with the Agency's data security procedures, which have operated since before LAMS was introduced and align with all government information security obligations (see below in relation to the General Data Protection Regulations (UK-GDPR) and Data Protection Act 2018 (GDPR) and retention). On return of the paper file, the practitioner should acknowledge safe receipt of same to the Agency via a case level message on LAMS using the drop down "*Practitioner File Review*".
31. The scanned copy will be considered to be the master copy for the review.
32. Depending on the nature and matter of the case, the file will undergo a review about one or more of the following functional areas:
 - (1) means/financial eligibility; *and/or*
 - (2) merits; *and/or*
 - (3) payment assessment.
33. Where possible these reviews will happen concurrently meaning the review process should not delay the release of any appropriate payment within our standard KPIs.
34. The Agency will not be repeating the original means and/or merits assessment but instead will be seeking to verify, based on the information contained in the files, that all relevant information was given to the Agency at the appropriate time, that there is evidence of all work claimed being done and to ensure

payment accuracy. This will then provide, as appropriate, the measurable element of practitioner error and fraud as part of the wider fraud and error work programme.

Should the file not be received

35. Should the file not be received after the initial request, a second letter and message will issue to the legal representative with carriage of the case via LAMS. A further period of five working days will be given for receipt of the file. A copy of the second letter can be found at **ANNEX C**.
36. If the file is not received following the second request, a final letter and message will issue via LAMS. Further, the payment request will be queried back to the practitioner, which will indicate that unless the file is received within 21 calendar days of the date of the query, the payment request will be withdrawn and the case will be closed without payment. A copy of the final letter can be found at **ANNEX D**.
37. In accordance with Paragraph 23 above where one or more practitioner does not provide their file when requested, we will reject the fee line as it relates to them and providing no fraud is identified, we will process the payment for the other practitioners who have complied with our request. If the practitioner subsequently agrees to provide their file then on receipt of same they will be requested to upload an Additional Fee request to allow us to progress the payment.
38. If a requested file is not received within 21 calendar days of the query being issued then the Agency will consider making a referral to the CFU and the relevant Regulatory Body.
39. If the file is received following the closure of the case, the Agency will consider reopening the case and request for payment. The file will undergo the process

at Paragraphs 30-34 above and payment, if appropriate, will be made within the KPI target date of the date of receipt of the file.

40. The Agency would strongly advise practitioners that they should co-operate as failure to comply will impact on the timely receipt of payment.

Possible Outcomes during the Pilot Phase

Where file is not received

41. As set out in Paragraphs 35-40 above, where a file is not received then the payment request will be withdrawn without payment and the case closed.

Where file is received and reviewed

42. As this pilot is a “test and learn” process, the Agency will not be taking any enforcement action on files sampled and reviewed unless information is uncovered which gives rise to a concern of suspected fraud which would then be subject to a fraud investigation.
43. Where no issues are identified, the payment will be processed in the usual way and all of the standard rights of appeal, review or redetermination will be open to practitioners.
44. Where any issues arise, the Agency will issue a Procedural Comment Note to the practitioner setting out the nature of the detected error and corrective action and the payment will be made in the usual way, with all standard rights of appeal, review or redetermination remaining available.
45. If any minor discrepancies are detected in relation to the fees claimed, either through an under or over claim, these will be clarified with the practitioner in keeping with the Agency’s standard business as usual practices.

46. Where any issue arises, which points to the possibility of fraud, the matter will be passed to the Agency's CFU who will progress the matter within one month of the referral unless further time is required to investigate matters. CFU will commence a fraud investigation and where there is evidence of suspected fraud, will refer the matter to the Police for investigation. After engagement with Police, the relevant Regulatory Body will be informed at the appropriate stage in line with the investigatory process. The Agency and CFU will continue to work closely with Police and the Regulatory Body until the conclusion of the investigation.

Data Retention, Destruction and General Data Protection Regulations Considerations

47. The Agency applies all of the Departments' and Governments' policies and procedures in relation to the General Data Protection Regulations (UK-GDPR) and Data Protection Act 2018 (GDPR) and has completed a Data Protection Impact Assessment (DPIA) in relation to the pilot methodology, which has been approved by the DoJ Chief Information Officer. A full copy of the DPIA is set out at **ANNEX E** below.
48. The Agency has given consideration to the security of data at all stages of this pilot process and is satisfied that the integrity of the data will be maintained throughout the process with the use of secure couriers, information management policies and procedures and the retention and departmental disposal policy, which the guidance is based on. The scanned copies of the file will be held securely by the Agency consistent with our obligations under the GDPR and in accordance with the Agency's [Privacy Notice](#).
49. The scanned copy file will be retained by the Agency until all payments, review, appeal/redetermination, audit or fraud procedure is completed. On completion of these processes, the data will be destroyed. Once the legal aid case has been closed on LAMS, it will be held for a period of 7 years in line with Schedule 11.2 of the DoJ Retention and Disposal Schedule V4.

Legal Professional Privilege Considerations

50. In developing the methodology for this test and learn pilot, the Agency have been cognisant that concerns may arise in relation to legal professional privilege. The Agency relies on Article 15A of the 1981 Order which states:
- “Except as expressly provided by this Part or by regulations made under it—*
- (a) the fact that the services of counsel or a solicitor are given by way of legal aid does not affect the relationship between or rights of counsel, solicitor and client or any privilege arising out of such a relationship; and*
- (b) the rights conferred by or under this Part on a person receiving legal aid are not to affect the rights or liabilities of other parties to the proceedings or the principles on which the discretion of any court or tribunal is normally exercised.”*
51. Further, Article 34(1) of the 2003 Access to Justice Order reflects the previous position:
- “Except as expressly provided by regulations, the fact that civil legal services or criminal defence services provided for an individual are or could be funded by the Department, shall not affect—*
- (a) the relationship between that individual and the person by whom they are provided or any privilege arising out of that relationship, or*
- (b) any right which that individual may have to be indemnified, in respect of expenses incurred by him, by any other person.”*
52. The Agency is satisfied that as the privilege is that of the assisted person, not the legal professional and in civil cases, as the applicant signs a declaration in agreement to the statement *“I consent to the Legal Services Agency Northern Ireland (LSANI) or any individual authorised by LSANI, making enquiries of any person or bodies that it may consider necessary in relation to this application. I authorise these other persons or bodies to provide the information required by LSANI”*, no issue in relation to legal professional privilege arises. However, in any particular case a practitioner may raise a concern for consideration by the Director of Legal Aid Casework presenting grounds for a refusal to provide the requested information.

53. In respect any expert reports secured through legal aid, the Agency considers that it is entitled to review same as part of the vouching process for payments. In respect of any information received by the Agency it is required to process the information in keeping with all statutory requirements and the specific disclosure provisions set out in The Civil Legal Services (Disclosure of Information) Regulations (Northern Ireland) 2015 and The Criminal Legal Aid (Disclosure of Information) Rules (Northern Ireland) 2015. In addition, the Agency has an overriding power to undertake any inquiry or investigation which it may consider appropriate in relation to the discharge of any relevant functions. The protection of public funds and delivery of value for money are relevant functions which give rise to access to all papers.

Outcome of Pilot

54. At the conclusion of the pilot, the Agency will evaluate the operation of the pilot and identify any changes to the approach, which is required to mainstream the measurement methodology.
55. The Agency will consult with the professional bodies and other relevant stakeholders about the final processes and will communicate with the profession to advise of refinements to the processes.
56. At the end of the pilot, results will be validated by NISRA statisticians, and used to amend the methodology, where necessary. The scale of the sample, which will form the basis of the substantive launch of the embedded process, will be notified to practitioners.

Summary

57. The key objective of this work is to confirm the consistency of the information provided to LSA with that held in the practitioner's files, identify omissions (deliberate or otherwise) and determine whether the omissions or the

withholding of information would have impacted upon the original finding decision.

58. A record of all findings will be kept and retained centrally by the newly established Compliance and Training Unit, within the Agency's Operations Directorate. This Unit is responsible for all error and fraud estimation work across the three distinct samples (official, applicant, and practitioner) and payment accuracy through Quality Assurance checking.
59. The results of this work will be:
- identification of common errors where guidance can be provided to practitioners to improve submissions;
 - identification of intelligence around patterns of concern and potential indicators which will be reflected in guidance to LSA staff on when to refer cases to the CFU; and
 - enhancement of the proactive interventions to enhance prevention and detection of errors and to shape the Agency's Error and Fraud Strategy.

Conclusion

60. It is imperative that we can estimate error and fraud from all potential sources to address the account qualifications. It is in the interests of all those providing publicly funded legal aid services to ensure that error and fraud, from whatever source, is detected and prevented, and to ensure the protection of the legal aid fund, particularly as we face potential budget cuts in future years.
61. The unified processes of official, applicant and practitioner error and fraud work is intended to provide public confidence that the significant sums of public money allocated to legal aid are well managed by the Agency. This is supported by clear evidence that all applicants and practitioners are conscientious in fulfilling their statutory obligations and that there is no abuse of legal aid.

62. The Agency, therefore, anticipates the full co-operation of practitioners in this pilot and thereafter. The Law Society and Bar Council have been fully engaged throughout the development and implementation of our strategy for addressing error and fraud and the Agency very much appreciates the support of the Regulatory Bodies.

PAUL ANDREWS
Director of Legal Aid casework
Legal Services Agency
15 October 2021

Annex A – Process Maps

The '[LSANI Practitioner Error & Fraud Pilot Process Maps](#)' are located within the '[Legislation and guidance](#)' area of the LSANI website.

Annex B- Initial Letter

Dear xxxx

RE: XXXXXX

The above case has been randomly selected for review as part of the Agency's Practitioner Error and Fraud Pilot.

If a Criminal Case: The Public Prosecution Service has/has not (*delete as applicable*) confirmed the volume of Pages of Prosecution Evidence. We therefore do/do not require this to be contained in the file that is sent to us. In relation to papers served as Disclosure, please provide the Disclosure Schedule only at this stage. We will be conducting randomised sampling of Disclosure and if this case is selected we will contact you further.

On receipt of your file, the Agency will conduct pre-payment verification checks and will aim to make payment to you within our standard Key Performance Indicators. This request is made in line with Regulation 12 of the Civil Legal Services (General) Regulations (Northern Ireland) 2015 / Rule 7(6) -10(6) of the Legal Aid for Crown Court Proceedings (Costs) Rules (NI) 2005 / Rule 6(7) – 8(6) of the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (NI) 2009 [delete as appropriate].

Guidance has been issued which sets out the background and operational processes involved in the pilot and is available on the Agency's website.

The Agency require you to submit the following within **5 working days** of the date of this letter:

1. Your full and complete original file of papers
2. A fully completed and signed File Details Form – a template of which is available on the website.

A message has also issued to you via LAMS to draw your attention to this letter.

Please forward your file to the Agency, FAO Compliance and Training Unit.

The Agency will endeavour to return the file to you as quickly as possible, however, if you require the file to be returned urgently as it is needed for an appeal or transfer of proceedings from one court tier to another please respond to the LAMS message to confirm this and we will expedite the return of the file to you.

You are reminded that should you fail to produce your file as requested, the Agency may withdraw your Report on Case and close this matter without payment.

Should you wish to discuss any aspect of this letter please do not hesitate to send a message via LAMS using the subject drop down '*Practitioner File Sample*'

Yours sincerely,

LAMS Message:

Title: Practitioner File Review

This case has been randomly selected for review under the Practitioner Error and Fraud Pilot. A letter has issued to you with further details. Please give this your urgent attention.

Annex C – Second Letter

Dear xxxx

Re: xxxxxxx

On *[insert date]* you were advised that this case had been randomly selected for review as part of the Practitioner Error and Fraud Pilot.

You were requested to provide the Agency with your full file along with a completed File Details Form within 5 working days. We note that the file has not yet been received

As you are aware the Agency has the statutory authority to make this request in accordance with Regulation 12 of the Civil Legal Services (General) Regulations (Northern Ireland) 2015 / Rule 7(6) -10(6) of the Legal Aid for Crown Court Proceedings (Costs) Rules (NI) 2005 / Rule 6(7) – 8(6) of the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (NI) 2009 [delete as appropriate].

You must now submit your file **within 5 working days of the date of this letter** or your Report on Case may not be processed and instead may be withdrawn and the file closed without payment.

Please also note that if we do not receive your file, this matter may be referred to our Counter Fraud Unit and your relevant Professional Body for further investigation.

Yours sincerely,

Annex D – Final Letter

Dear xxxx

Re: xxxxxxxx

You were advised on xx/xx/xxxx and xx/xx/xxxx that this case had been randomly selected for review under the Practitioner Error and Fraud Pilot.

You were requested to provide your full paper file and a completed File Details Form to the Agency within 5 working days of the dates of those letters.

We are disappointed to note that your file has not been received.

This request was made in line with Regulation 12 of the Civil Legal Services (General) Regulations (Northern Ireland) 2015 / Rule 7(6) -10(6) of the Legal Aid for Crown Court Proceedings (Costs) Rules (NI) 2005 / Rule 6(7) – 8(6) of the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (NI) 2009 [delete as appropriate] and you are now in breach of your obligations under same.

As a result of your non-compliance, the payment request has been queried back to you. In order to progress your payment request you must supply your full file and completed File Details Form within 21 calendar days. If this is not supplied within 21 calendar days, your payment request will be withdrawn by the Agency and the case closed without payment.

Once the case is closed, the Agency will consider referring the matter to both the Agency's Counter Fraud Unit and the relevant Professional Body. It may also require submission of the file on every occasion that you submit a payment request.

Yours sincerely,

Sample DPIA template



This template is an example of how you can record your DPIA process and outcome. It follows the process set out in our DPIA guidance, and should be read alongside that guidance and the [Criteria for an acceptable DPIA](#) set out in European guidelines on DPIAs.

You should start to fill out the template at the start of any major project involving the use of personal data, or if you are making a significant change to an existing process. The final outcomes should be integrated back into your project plan.

Step 1: Identify the need for a DPIA

Explain broadly what project aims to achieve and what type of processing it involves. You may find it helpful to refer or link to other documents, such as a project proposal. Summarise why you identified the need for a DPIA.

LSA Fraud and Error - The LSA's accounts are qualified in respect of a limitation in scope on the regularity of transactions. The Northern Ireland Audit Office (NIAO) considers the LSA is unable to provide sufficient assurance that a material amount of legal aid expenditure has not been claimed fraudulently or in error.

The Legal Services Agency Northern Ireland (LSANI) is an Executive Agency of the Department of Justice (DOJ) and is responsible for the grant and payment of cases under civil legal services and the payment of criminal legal aid. As part of a statutory framework LSANI conduct a range of functions including determining the means and merits of applications for civil legal services and assessing and paying bills submitted by the legal profession on behalf of assisted persons for civil legal services and criminal legal aid.

LSANI are seeking to develop and embed an effective, evidence based approach to measuring fraud and error within all aspects of the legal aid system and to develop proactive interventions to detect & prevent and thereby reduce potential fraud within legal aid. The LSA has engaged the Department for Communities (DfC) to work with us in partnership, specifically as DfC has considerable experience in this area due to the arrangements they have in place to measure Error.

See Process MAP

Step 2: Describe the processing

Describe the nature of the processing: *how will you collect, use, store and delete data? What is the source of the data? Will you be sharing data with anyone? You might find it useful to refer to a flow diagram or other way of describing data flows. What types of processing identified as likely high risk are involved?*

To develop and carry out the measurement of practitioner fraud and error and to implement methodology to measure future overpayment prevention (FOP) and prevent fraud and error in the legal aid system, LSANI will be making contact with the Legal Aid practitioners via LAMS when a Report on Case (ROC) request for payment has been made. The practitioner will be asked to provide the full case file that they hold to enable LSANI to determine that the correct entitlement to Legal Aid has been made.

The LSA will receive practitioner files and return them via secure post. BOX is also being reviewed as a contingency for practitioners who have electronic file management systems and for any data that may be considered and agreed by both practitioners and the Agency as needing additional secure delivery. We expect SAU to be sampling and testing cases held electronically and securely on the LAMs System.

Describe the scope of the processing: *what is the nature of the data, and does it include special category or criminal offence data? How much data will you be collecting and using? How often? How long will you keep it? How many individuals are affected? What geographical area does it cover?*

Practitioner Case Files – Hard & Electronic file. Records will be requested from practitioners and sent to LSA when a request for payment is made. Hard copy files will be received and returned by secure post. Manifests of records transferred will be maintained and checked by both parties including page count. Hard copy files will be scanned onto LAMS and returned by secure post within 5 working days. A page count will be included with the manifest. LAMS data retention controls are in place and once the process has been exhausted i.e. Review of File, payment of fee, potential Review of payment and potential Appeal of payment decision. The scanned case papers will be destroyed on LAMS.

Legal aid records to/from SAU Omagh & Portadown – The majority of the files will be reviewed electronically on LAMS however on occasions a Hard copy of the records may be sent to/from the Standards Assurance Unit (SAU) in either Omagh or Portadown to allow monthly error testing. Records are file-tracked on LAMS to ensure their location can be identified at all times. Manifests of records transferred are maintained and checked by both parties and the records themselves are sent in pouches via the NICS courier service (currently provided via DX). There is the additional safeguard that pouches are tracked via supplier arrangements. General correspondence is via the NICS secure e-mail network.

On completion of testing, the records will be returned to LSA by SAU by the same means. The SAU comment and query sheets will be included with the legal aid records in hard copy and e-mailed via secure e-mail as necessary, to allow the error testing process to proceed to a conclusion and in line with the SAU protocols. DfC colleagues also have current access to the LSA case management system, LAMS and the NICTS ICOS system. System access controls in terms of passwords and permissions etc. are and will be the same as applied to LSA (and NICTS) staff This will be covered by an MOU with SAU/DFC. (attached)

Describe the context of the processing: *what is the nature of your relationship with the individuals? How much control will they have? Would they expect you to use their data in this way? Do they include children or other vulnerable groups? Are there prior concerns over this type of processing or security flaws? Is it novel in any way? What is the current state of technology in this area? Are there any current issues of public concern that you should factor in? Are you signed up to any approved code of conduct or certification scheme (once any have been approved)?*

The processing will involve the full legal file held by a solicitor or barrister in relation to a civil or criminal case, the case file will be required to check for error and or fraud before payment can be made to a practitioner. This will include minors and vulnerable groups due to the nature of legal aid. All data supplied should already be available on the Legal aid Management System (LAMS) the review of the file is to ensure transparency in the assessment of requests for legal aid payment. This process was conducted by the Agency in past and is a use of the Agency's powers under legislation.

Describe the purposes of the processing: *what do you want to achieve? What is the intended effect on individuals? What are the benefits of the processing – for you, and more broadly?*

The process aims to achieve the protection of public funds that are administered by the Agency, through the prevention and detection of error and/or fraud.

All data supplied should already be available on the Legal aid Management System (LAMS) the review of the file is to ensure transparency in the assessment of requests for legal aid payment.

Step 3: Consultation process

Consider how to consult with relevant stakeholders: *describe when and how you will seek individuals' views – or justify why it's not appropriate to do so. Who else do you need to involve within your organisation? Do you need to ask your processors to assist? Do you plan to consult information security experts, or any other experts?*

In the development of the process Internal consultation has focused on engaging relevant staff, business partners and key Departmental representatives (i.e. LSA/DfC/DoJ).

Workshops are to be held with Stakeholders representing the Law Society NI and the Bar Council NI.

Step 4: Assess necessity and proportionality

Describe compliance and proportionality measures, in particular: *what is your lawful basis for processing? Does the processing actually achieve your purpose? Is there another way to achieve the same outcome? How will you prevent function creep? How will you ensure data quality and data minimisation? What information will you give individuals? How will you help to support their rights? What measures do you take to ensure processors comply? How do you safeguard any international transfers?*

Legal Framework

The Agency will seek the practitioners file by virtue of the following:

- For civil matters: Regulation 12(1) of the Civil Legal Services (General) Regulations (NI) 2015

- For Crown Court matters:

Solicitor: Rule 7(6) of the Legal Aid for Crown Court Proceedings (Costs) Rules (NI) 2005

Counsel: Rule 10(6) of the Legal Aid for Crown Court Proceedings (Costs) Rules (NI) 2005

- For Magistrates Court and County Court Appeals:

Solicitor: Rule 6(7) of the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (NI) 2009

Counsel: Rule 8(6) of the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (NI) 2009

The lawful basis is the protection of public funds and the prevention of fraud and error in the payment of Legal Aid. There is no other means of ensuring transparency in the presentation of information for the purposes of claiming legal aid payment. The review of the files will be contained within the Compliance and Training Unit as part of LSANI Payment Services. The process as set out in the process map shows the allocation and processing of data and the expected processing times. There is no additional impact to an individual's rights as the information supplied to their legal representatives has been used to assess the means, merit and payment of legal aid.

Step 5: Identify and assess risks

Describe source of risk and nature of potential impact on individuals. <i>Include associated compliance and corporate risks as necessary.</i>	Likelihood of harm	Severity of harm	Overall risk
Transfer or sharing of significant volumes of sensitive personal information between government organisations-	possible	significant	medium
Reliance on external contractors for storage of personal information or carrying out certain physical transfers (DX, Oasis).-	possible	significant	Medium
Possible failure by government organisations to consider options to minimise the amounts of information being collected, processed, shared or transferred. penalties if information is lost or compromised.	possible	significant	medium
Possible failure by government organisations to consider security arrangements or options to protect and secure information assets at all times.	possible	significant	medium
Unauthorised or inappropriate access to sensitive personal information either by government staff or external contractors.	possible	significant	medium
Possible failure by government organisations to consider either the accidental or unintentional disposal of personal information, or the retention of such information for longer than is necessary.	possible	significant	medium
Reliance on secure GSi e-mail or other government IT systems when transferring or corresponding in relation to sensitive personal information.	possible	significant	medium
Possible medical, personal and third party information contained in a practitioners file that would not usually be shared with LSA/SAU.	possible	significant	medium

Step 6: Identify measures to reduce risk

Identify additional measures you could take to reduce or eliminate risks identified as medium or high risk in step 5				
Risk	Options to reduce or eliminate risk	Effect on risk	Residual risk	Measure approved
Loss or compromise of sensitive personal information, particularly when transferring between government organisations.	<ul style="list-style-type: none"> a. Experienced personnel involved in the process b. Consultation with key stakeholders c. Completion of Screening and PIA d. Completion of Data Sharing Agreement e. Compliance with DPA/GDPR principles f. Compliance with NICS/DoJ/DfC policies and procedures g. Use of appropriate and security accredited IT systems (IT Assist – GSi e-mail) h. Use of NICS external contractors with relevant skills, security clearances and appropriate document tracking i. System access controls for staff users, including passwords etc. j. Ensuring office and off-site storage arrangements are appropriate to protect the information in our care. 	<p><i>Eliminated/reduced/accepted</i></p> <p>The risk is reduced</p>	<p><i>Low/medium/high</i></p> <p>low</p>	<p>Yes/No</p>
Failure to manage the retention and disposal of sensitive personal information might result in the unintentional disposal of	<ul style="list-style-type: none"> a. Compliance with relevant Retention & Disposal Schedules b. Experienced personnel involved in the process c. Compliance with NICS/DoJ/DfC policies and procedures d. LSA BSU Records Management team Project is specifically focussed on good practice in this area 	<p>The risk is reduced</p>	<p>Low</p>	

Identify additional measures you could take to reduce or eliminate risks identified as medium or high risk in step 5

Risk	Options to reduce or eliminate risk	Effect on risk	Residual risk	Measure approved
<p>personal information, or the retention of such information for longer than is necessary.</p> <p>Failure to minimise the amounts of information being collected, processed, shared or transferred could result in excessive amounts of information being shared or transferred.</p>	<p>a. SAU will be able to view the case on LAMS in order to provide a full picture of the case b. Where there is an option to extract/minimise information being shared, a balance must also be struck as there is the corresponding potential to corrupt or destroy the integrity of that information e. Compliance with DPA/GDPR principles f. Consultation with key stakeholders g. Completion of Screening and PIA h. Completion of Data Sharing Agreement</p>	<p>Risk is reduced</p>	<p>Low</p>	
<p>Failure to minimise the amounts of information being handled Failure to manage Retention & Disposal of information Loss or compromise of sensitive personal information</p>	<p>We must rely on all the solutions listed above to provide a suitable control framework to reduce and manage the risk. The key control is the Retention & Disposal Schedules, however, we must also rely on applying the combined solutions listed above, to provide a suitable control framework to reduce and manage the risk. The key control is the careful design of the data transfer process to transfer the minimum information required at each stage. However, we must also rely on applying the combined solutions listed above, to provide a suitable control framework to reduce and manage the risk.</p>	<p>Risk is reduced</p>	<p>Low</p>	

Step 7: Sign off and record outcomes

Item	Name/date	Notes
<i>Measures approved by:</i>	12 August 2021 Paul.Andrews@lsani.gov.uk	Integrate actions back into project plan, with date and responsibility for completion
<i>Residual risks approved by:</i>		If accepting any residual high risk, consult the ICO before going ahead
<i>DPO advice provided:</i>	9 September 2021 David.Moore@justice-ni.gov.uk	DPO should advise on compliance, step 6 measures and whether processing can proceed
<p>Summary of DPO advice:</p> <p>The DPIA provides a comprehensive overview of the proposals to tackle fraud & error within LSANI. This will clearly involve the processing of personal data, much of it special category however, the potential risks involved have been correctly identified and appropriate mitigation measure put in place to reduce those risks.</p> <p>In data protection terms, LSANI have a clear lawful basis for this work (Article 6(1)(e) and Article 9(2)(g) UKGDPR for the special category data) and underpinned by the various pieces of legislation. More widely, the MoU and ISA with DfC will provide the necessary governance required by law for the personal data to be transferred to DfC who are the recognised experts in the field.</p> <p>LSANI should include this process explicitly in the Privacy Notice provided to legal aid applicants/solicitors/barristers in order to be transparent.</p>		
<i>DPO advice accepted or overruled by:</i>	Neil.Wilson@lsani.gov.uk	<i>DPO Advice accepted:</i> Yes
<i>Comments:</i>		
<i>Consultation responses reviewed by:</i>		<i>If your decision departs from individuals' views, you must explain your reasons</i>
<i>Comments:</i>		
<i>This DPIA will kept under review by:</i>	Neil.Wilson@lsani.gov.uk	<i>The DPO should also review ongoing compliance with DPIA</i>

DPIA Screening Template

<i>Project Name:</i>	Practitioner Error & Fraud Pilot
<i>Business Area:</i>	LSANI
<i>Information Asset Owner:</i>	CEO Paul Andrews
<i>Date Completed:</i>	21/06/2021

Summary:

LSA Fraud and Error - **The LSA's accounts are qualified in respect of a limitation in scope on the regularity of transactions.** The Northern Ireland Audit Office (NIAO) considers the LSA is unable to provide sufficient assurance that a material amount of legal aid expenditure has not been claimed fraudulently or in error.

The Legal Services Agency Northern Ireland (LSANI) is an Executive Agency of the Department of Justice (DOJ) and is responsible for the grant and payment of cases under civil legal services and the payment of criminal legal aid. As part of a statutory framework LSANI conduct a range of functions including determining the means and merits of applications for civil legal services and assessing and paying bills submitted by the legal profession on behalf of assisted persons for civil legal services and criminal legal aid. LSANI are seeking to develop and embed an effective, evidence based approach to measuring fraud and error within all aspects of the legal aid system and to develop proactive interventions to detect & prevent and thereby reduce potential fraud within legal aid. The LSA has engaged the Department for Communities (DfC) to work with us in partnership, specifically as DfC has considerable experience in this area due to the arrangements they have in place to measure Error.

Stakeholders:

Internal consultation has focussed on engaging relevant staff, business partners and key Departmental representatives (i.e. LSA/DfC/DoJ).

Stakeholders, Bar Council NI and the Law Society NI

Description of Personal Data involved:

To develop and carry out the measurement of practitioner fraud and error and to implement methodology to measure future overpayment prevention (FOP) and prevent fraud and error in the legal aid system, LSANI will be making contact with the Legal Aid practitioners via LAMS when a Report on Case (ROC) request for payment has been made. The practitioner will be asked to provide the full case file that they hold to enable LSANI to determine that the correct entitlement to Legal Aid has been made.

The LSA will receive practitioner files and return them via secure post. BOX is also being reviewed as a contingency for practitioners who have electronic file management systems and for any data that may be considered and agreed by both practitioners and the Agency as needing additional secure delivery. We expect SAU to be sampling and testing cases held electronically and securely on the LAMs System.

There will be a change to the collection of personal data for the current purposes of the administration of legal aid as full practitioner case files are being requested in order ensure that data has not been deliberately or mistakenly withheld from the Agency that may have had an impact on the payment of legal aid. The corresponding retention and disposal arrangements governed by the current DoJ Retention & Disposal Schedule and the corresponding DfC (SAU) Document & Data Retention Policy will remain in place. There will only be a very small change to existing processes to allow DfC to undertake the error sampling and testing process for practitioner cases. These arrangements are already encompassed by General Data Protection Regulation (GDPR) Article 6(1)(e) – **“processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller”**.

a. Practitioner Case Files – Hard & Electronic file. Records will be requested from practitioners and sent to LSA. Hard copy files will be received and returned by secure post. Manifests of records transferred will be maintained and checked by both parties including page count. Hard copy files will be scanned onto LAMS and returned by secure post within 5 working days. A page count will be included with the manifest. LAMS data retention controls are in place and once the process has been exhausted i.e. Review of File, payment of fee, potential Review of payment and potential Appeal of payment decision. The scanned case papers will be destroyed on LAMS.

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Number of individuals likely to be affected by the project:

Strand 1 (Error) – 100-150 individuals per month (based on likely sampling frame of 100-150 samples per month)

Strand 2 (Fraud) – 50-100 individuals per month (based on current counter-fraud investigation figures)

Privacy Assessment	Yes	No	Notes (please complete)
Information Management			
Change to existing policy, process or system that involves personal information (e.g. new legislation or policy that makes it compulsory to collect or disclose information)	Yes		Implementation of a methodology to measure practitioner Fraud & Error. A new process has been put in place to review practitioners (solicitors & barristers) files prior to payment of Legal Aid. This will involve the use of powers granted to the Agency through legislation.
Change in location of business area or branch (e.g. move to centralised service, or office move)		No	No change to business area
Identified as a risk on organisation's Risk Register	Yes		Risk relates to Lost data
Information Collection			
Collecting new information about individuals	Yes		Through reviewing a file supplied by a practitioner it is possible that new information about individuals may be identified. This will be used for the purposes of managing fraud & error in the Legai Aid system.
Personal information collected in new way (e.g. move to online forms)	Yes		There may be occasion to use the BOX online cloud storage system which is being reviewed by IT Assist.
Storage, security & retention			
Change in how personal information is stored or secured (e.g. move to Cloud storage, offsite storage of paper records)	Yes		There may be occasion to use the BOX online cloud storage system which is being reviewed by IT Assist. Hard paper files will be stored in line with the Agencies current practice and will be scanned and uploaded to an internal section of the Agency's LAMS system. This allows for an auditable digital trail.
Change on how sensitive information in managed (e.g. information migrated to new database)	Yes		Files will be scanned and uploaded to an internal section of the Agency's LAMS system. This allows for an auditable digital trail.

Personal information transferred offshore (e.g. Cloud storage)	Yes		BOX provided by IT Assist may be used on occasion when necessary. This allows for an auditable digital trail
Keeping personal data for longer than before (i.e. change to Retention & Disposal policy)		No	The same retention and disposal policy will be in place. Uploaded files will be deleted from the LAMS system.
Use & disclosure			
Personal information processed includes Sensitive data (e.g. health)	Yes		Due to the nature of the 'merits' for granting legal aid sensitive data may be processed.
Using previously collected personal data for new purpose		No	All data collected will be used to assess payment, reduce error and prevent fraud in the Legal Aid System
Disclosing information to a third party	Yes		SAU in DFC, acting on LSANI authority as LSANI, will review the uploaded file case review for audit and assurance purposes.
Sharing or matching personal data held by different organisations or in different datasets (e.g. to provide services jointly)	Yes		Due to the nature of the 'means' for granting legal aid matching personal data with different Government Organisations may be conducted to provide an assurance that the information provided is correct. Sharing or matching data may be conducted for the prevention and detection of fraud against public funds.
Individuals' access			
Change that results in people having less access to their personal data (e.g. earlier archiving)		No	There will be no change to this
Identifying individuals			
Introducing a new way of identifying individuals (e.g. biometrics, or online authentication)		No	There will be no additional or new way of identifying an individual
New intrusions			
Introducing new way to search people's property/ persons/ premises (e.g. new policy of searching laptops returned for servicing)		No	Not applicable
Surveillance/ monitoring of movements, behaviours or communications (e.g. new CCTV, monitoring email contents)		No	Not Applicable
Change to premises that could impact on privacy (e.g. moving sensitive process into open plan office)		No	Not Applicable

New regulatory requirement resulting in action against individuals (e.g. adding new medical condition to requirements for a licence)		No	Not Applicable
Other privacy intrusions (e.g. DNA swabs, body searches)		No	Not Applicable

Initial Risk Assessment		
Aspect	Level	Score
Volumes	Minimal personal data processed = 1	3
	Moderate volumes of personal data = 2	
	Significant volumes of personal data = 3	
Sensitivity	Not sensitive = 1	2
	Sensitive = 2	
	Highly sensitive = 3	
Change	Minor change to existing processing = 1	1
	Substantial change, or new processing = 2	
	Fundamental change, or radical new initiative = 3	
Third Parties	No interaction with other bodies = 1	2
	One or two other bodies = 2	
	Extensive interaction (multiple government bodies, or non-government bodies) = 3	
Impact	Minimal impact on business/ individuals = 1	2
	Possible concern to individuals, press or elected representatives = 2	
	Major impact on individuals/ likely high degree of press/ political interest = 3	
Total		10

Total score of 5 or less	DPIA not required
Total score of 6 – 11	DPIA required
Total score of 12 – 15	Extensive DPIA required

Information Asset Owner	
<i>Print name:</i> Paul Andrews	Date: 12/08/21
<i>Signature:</i>	
Chief Information Officer	
<i>Print name:</i> Tom Clyde	Date: 09/09/21
<i>Signature:</i>	