

# ILAG 2001

P a p

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**International Legal Aid Group**

**G Andrew Carnson and  
Alan Hunter**  
Legal Aid in Northern Ireland

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## **Mr G Andrew Carnson**

### **Chairman of the Legal Aid Committee in Northern Ireland**

The forerunner to Legal Aid in Northern Ireland was the Legal Aid and Advice Act 1949. This Act was only applicable to England and Wales. Despite the Act having been passed 1949, the Scheme that was established under these provisions was extended piecemeal from September 1949, when the administrative provisions of the Act were introduced, through March 1958 which saw the establishment of the Legal Advice provision to June 1970 when Legal Aid was made available for appearances in the Lands Tribunal.

In Northern Ireland it was only in 1958 that the then Minister for Home Affairs appointed a committee to “*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. Subsequently, following the publication of the Committee’s report in 1960, the Legal Aid and Advice Act (Northern Ireland) 1965 was passed which, despite the recommendations of the Committee, were substantially the same as the English equivalent legislation passed in 1949.

As with the similar divisions in England, the Incorporated Law Society of Northern Ireland (now the Law Society of Northern Ireland) was given 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 that was then approved is still (as slightly amended) the basis for the running of the legal aid system in Northern Ireland and the Law Society of Northern Ireland is still charged with the running of Civil Legal Aid in Northern Ireland and with administering Criminal Legal Aid on behalf of the Northern Ireland Court Service.

The 1965 Act was repealed by the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, which is the present enabling legislation in force today. The 1981 Order duplicates almost word for word enabling part of the 1965 Act making the Law Society of Northern Ireland responsible “*for securing that legal aid, advice and assistance are available as required by this Part and generally to administer this Part and generally to administer this Part*”. The Law Society, through its Legal Aid Department, based in Belfast, is responsible under the legislation for the granting of Civil Legal Aid in Northern Ireland. The question of whether Criminal Legal Aid is granted is solely within the remit of the Judiciary. The Department, as already indicated, is only responsible on behalf of the Northern Ireland Court Service to deal with relevant claims for payment after a criminal certificate has been issued. 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 has a staff of 105 and an annual budget of approximately £40m. In the financial year just completed, £39.2m was the total expenditure of the Department on legal aid and this was broken down between:

Civil	£17.3m
Criminal	£21.9m

The Department's Administration expenditure amounted to £2.87m.

Legal Aid is not available in the Small Claims Court which presently has a civil jurisdiction of up to £2000, nor in a Coroner's Court or in Industrial Tribunals. At the recent Coroner's hearing into the deaths arising from the Omagh bomb, of which I am sure most of you will have heard, special arrangements were put in hand by the Lord Chancellor's Department, through the Northern Ireland Court Service, to make funding available to assist relatives of the victims in being able to obtain legal assistance during the course of the Coroner's hearing. Whilst this was not dealt with by the Northern Ireland Legal Aid Department, the basis of eligibility was the same as that used in normal legal aid applications in Northern Ireland.

There are proposals to amend the Legal Aid system in Northern Ireland and a Green Paper has been issued, followed by a White Paper and legislation is expected shortly. This legislation will see the removal of the responsibility of the administration of legal aid from the Law Society to a new Legal Services Commission. My colleague, Mr Alan Hunter, from the Northern Ireland Court Service will explain the position.

**Mr Alan Hunter**  
**Director of Legal Aid in Northern Ireland**

**THE NORTHERN IRELAND LEGAL AID SCHEME AND HOW IT WORKS**

**Synopsis**

The legal aid scheme in Northern Ireland is currently administered by the Law Society of Northern Ireland. Funding is provided through a grant-in-aid arrangement from central Government. This is delivered by the Northern Ireland Court Service. Radical changes to the scheme were announced in September 2000. From the autumn of 2002 Control of the public money spent on legal services will pass from the Law Society, to a new, independent, Northern Ireland Legal Services Commission. The plan follows a major review of legal aid and detailed consultation. It will bring to an end the present system where the Law Society controls public money paid to lawyers for legal services.

The Lord Chancellor, Lord Irvine, who is the UK Government Minister responsible for legal aid, will approve new standards to be set by the Legal Services Commission for the quality of legal work and the levels of lawyers' fees under a new standard fee

scheme. Lord Irvine will also approve a new code to replace the present merits test for legal aid.

The Government's intention is that a new Northern Ireland Legal Services Commission will ensure both good quality legal services for the public, especially the most vulnerable, and value for money for the tax-payer. Only lawyers who meet quality standards set out in a new code of practice will be eligible to do legal aid work and be paid public money for their work. The Legal Services Commission will maintain and audit a new register of authorised law firms and individuals who will be registered to comply with the code of practice.

The Legal Services Commission will comprise up to 11 members from a range of backgrounds including the finance, business and legal sectors. It will control all legal aid funding in Northern Ireland, administering both criminal and civil legal aid, including 'family' cases.

In consultation with barristers, solicitors and non-lawyers working in the voluntary sector, the Lord Chancellor will set new, standard lawyers' fees for all legal services to safeguard both quality of service and value for money. A new, more flexible civil legal aid merits test will be contained in the Funding Code. The code will be developed for assessing which cases qualify for public support. This will focus public funds on the most important cases. The code will replace the present legal aid merits test.

The criminal courts will continue to have the power to grant criminal legal aid, applying the current "interests of justice" test. At the end of a criminal case, the Crown Court will have the power to recover a portion of the legal costs from those defendants who can afford to contribute.

The aim of the reforms is to modernise publicly funded legal services in Northern Ireland by delivering local solutions to local problems. The reforms reflect detailed consultation. They will allow us to take effective control of public money and make sure that it is targeted on meeting the real needs of the most vulnerable. They will

result in a quality - assured, independently monitored legal aid system tailored to the distinctive legal services landscape in Northern Ireland.

The new Legal Services Commission would have two clear benefits: Firstly, the Law Society will be freed from the apparent conflict of interest between administering legal aid on the one hand and representing their members' interests on the other. Secondly, the Commission will be completely independent from Government in dealing with individual cases.

The new Legal Services Commission will also have powers to employ salaried lawyers and to contract with legal services providers for services in the future.

There is no significant support at present among Northern Ireland lawyers for Conditional Fee Agreements - insurance-backed no win - no fee deals between lawyers and clients as available in England and Wales. The Government believes they work well and intends to set up a working group to look into other options for public money being spent on "money claims" cases. The aim would be to free legal aid funds to be targeted on the most needy.

The Government's next step will be to publish an Order in Council to provide the primary legislation necessary for the reforms. The Northern Ireland Assembly – and other interested parties – will be able to comment on the Government plans before the Order in Council is laid before the Westminster Parliament.

Figure 1 sets out the change in expenditure on legal aid from 1990/91 to 1999/00.

Figure 2 sets out the average cost per case over the same period.

	1990/91 £m	1999/00 £m	Increase %
Criminal Legal Aid	5.80	23.25	300.8
Civil Legal Aid	6.39	11.40	78.4

Figure 1

	1990/91 £	1999/00 £	Increase %
Criminal Legal Aid	266	797	199.6
Civil Legal Aid	484	1478	205

Figure 2