

## Powell, Alex

---

**From:** Cain, Sally-Ann  
**Sent:** 02 June 2016 13:00  
**To:** Powell, Alex  
**Cc:** Kelly, Mark (DHA); Watterson, Juan (MHK)  
**Subject:** REVIEW OF DEVELOPMENTS IN LEGAL AID - Department of Home Affairs Response

Dear Alex

### REVIEW OF DEVELOPMENTS IN LEGAL AID

Further to the Department's attendance at the Consultation Seminar on Legal Aid, we have the following comments to make:

In December 2012 Tynwald received the Criminal Justice Strategy and a Criminal Justice Board was convened to provide strategic direction and implement improvements in a system that was described (in 2011) as:-

*"The Criminal Justice System on the Isle of Man is not working well for managers, offenders, or victims. The review to date has found it inefficient and ineffective in its managerial approach, processes and use of Information Systems."*

Legal Aid is an essential part of the legal system and ensures that people faced with criminal (or civil) matters and unable to pay for legal advice can receive it. Bearing in mind the conclusion reached above, it is therefore perhaps unsurprising that as a knock-on effect the costs of legal aid continue to rise, in the face of decreasing crime figures. There may well be an argument made that there are fewer, lower level offences, and more complex matters, however, based on trends one would have expected the legal aid budget to remain at least static if not fall during the same period where there has been a 30% reduction in matters going to court. This requires further explanation.

Not included in the information provided at the Seminar was a full financial analysis of the legal aid budget which might have been expected to inform future service provision. The suggestions for changes such as a Public Defenders Unit and the establishment of Legal Advice Centres can only come from having to hand a full understanding of where the current budget is spent. We would expect to see:-

- Financial breakdowns of the past three years' expenditure on average cost per offence/case type? (This would then provide parameters for legal aid expenditure and could allow exception reporting in the future and alleviate the need for assessments of every invoice submitted, thus reducing the administrative burden.)
- Number of matters and split by location or work area eg Summary Court/General Gaol/Staff of Government Division?
- Cost/budget/projected exceptional or large case funding outside of normal legal aid costs?
- Administrative costs per application identified?
- Number of matters refused for legal aid?
- Number of households eligible for legal aid on the Island?
- Number of matters handled by 'litigants in person'?
- Total number of matters legally aided per offence type?

Without being privy to this information therefore it is difficult to make an informed case for or against these potential changes.

To provide some context to the comments below, you might be interested to know that the Criminal Justice Board in March 2016 approved the start of a Process Review Project, being undertaken by the Cabinet Office, to map all the current procedures and processes, and associated legislation, being used from initial charge to end of

sentence. This information will then be used as the basis for investigation and procurement of a digital system across the criminal justice system.

Following meetings held with criminal justice agencies, a Criminal Justice Digital Strategy has now been agreed with the following key features:

- Each part of the Criminal Justice Service should make best use of technology and digital systems to maximise their own areas, driving efficiency and speedier justice
- Where agencies interact, this should be conducted digitally – removing delay, increasing accuracy and preserving an evidence trail
- Each agency and the service as a whole should maximise the use of digital information to understand process performance, offender and victim outcomes and monitor progress towards overall CJS strategy goals.

The three key objectives are:

- **PAPERLESS:** To remove paper from the whole process by end of 2018
- **COMMON IDENTIFIER:** To have a common identifier through all the services – a golden thread, minimising duplication, supporting accuracy and enabling insights
- **ONE OFFENDER, ONE RECORD:** Using the identifier to link systems and show a true and accurate case view of anyone involved at any point

The implications for legal aid from these process improvements should be significant so we look forward to working closely with the Legal Aid Committee on these matters.

With regard to the Legal Aid Review itself, the Department would advise as follows:

#### LEGAL AID HANDBOOK

The Committee is to be commended on the introduction of the online Legal Aid Handbook. The comprehensive nature of the book provides an excellent explanation of the provision of Legal Aid.

#### **1. PROPOSALS FOR POTENTIAL CHANGES TO THE EXISTING SYSTEM OF LEGAL AID WHICH REQUIRE FURTHER DISCUSSION AND RESEARCH AS TO VIABILITY**

The Department acknowledges the necessity of further research for each of the suggestions, but would comment as follows:

##### 1. Revision of Legal Aid Advice and Assistance – The ‘Green Form’ Scheme

The Department would be broadly supportive of the suggestion to provide a green form type scheme for civil matters. It would express some concern at the suggestion of a fixed annual fee being paid before the anticipated volumes are known, but would leave this to the Committee.

##### 2. Adoption of a Telephone Advice Service for Duty Advocate Police Station work.

The Department notes the existing regulations which specify when attendance is mandatory (The Duty Advocate (Police Custody) Scheme 1998 (10);(11). This would appear to be a sensible suggestion and removes the costs incurred of travel and waiting times, perhaps a pilot for certain specified offences would provide evidence of viability.

##### 3. Introduction of a fixed price or time regime

This would appear to be a sensible suggestion. With reference to the suggestions above, a full financial analysis would be required before this could be considered any further.

##### 4. Examination of the possibility of using non-Advocate, suitably qualified persons, to carry out certain specific items of preparatory work.

The Department is not in a position to comment on this. However, the comment regarding the need for advocates to pay Public Indemnity Insurance would still apply presumably in this instance?

5. Adoption of fixed time and costs per step and standard terms for Legal Aid Certificates.

The Department notes that a pilot scheme is currently under way to provide further information in this matter. This would appear to be a sensible suggestion and looks forward to the outcome of the pilot.

6. Ensure that the Court, Advocates, Prosecutions and Police work collectively to make the best use of limited resources.

The Department is supportive of a consultative forum being convened. The Criminal Justice Board is keen to work with the Committee in identifying opportunities for streamlining and reducing the costs of cases being processed through the courts.

One issue which the Department would raise is the use of legal aid for challenges to Parole Committee decisions. Offenders have a right of appeal against sentence which if successful can alter their release date. Parole is not a right although there is a right to apply. Once a recommendation has been received from the Parole Committee the Minister decides whether or not to release. Parole Committee decisions are based on assessment of the risk posed by the prisoner and analysis of legal aid used in such situations would be welcomed.

7. Review/modify/remove certain financial means tests limits

The Department is aware of anecdotal evidence of inequalities in the provision of legal aid matters, particularly as mentioned in family matters and would be broadly supportive of this proposal. It notes the comment regarding financial savings coming from reductions in procedural time and hence costs.

8. Review procedure for timely submission of bills and interim payments

The Department is supportive of measures to improve efficiency. At the Criminal Justice Board we have received appeals from the Law Society regarding the demand for online submission of claims which is strongly supported and would allow quicker submission and processing of invoices. The Department is strongly supportive of this measure via digital processing.

## **2. AREAS OF POTENTIAL RADICAL LONG TERM CHANGE CURRENTLY UNDER CONSIDERATION BY THE COMMITTEE:**

Q: SHOULD A PUBLIC DEFENDER UNIT BE ESTABLISHED?

The Seminar slides provided demonstrate the research that has been undertaken and provides reasoned considerations for and against. As stated above, the Department does not feel that it is in a position to make a submission without having a full understanding of the current financial breakdown and future potential costs. However, the current political approach of smaller, smarter government does seem contradictory to placing a service currently provided by defence advocates into the hands of a public defenders unit.

Q: THE ESTABLISHMENT OF LEGAL ADVICE CENTRES

The Department is supportive of attempts to allow greater access to legal advice. However, the Committee may be privy to information not made available regarding the demand for such advice centres and where that demand is currently being met, or if not what research has been done on the services that would be required and the workloads and volumes.

The Department is supportive of measures to improve access to alternative dispute resolution but understands recent attempts to introduce schemes have not materialised due to low volumes of cases.

Q: SHOULD ALTERNATIVE DISPUTE RESOLUTION, PARTICULARLY MEDIATION, BE MANDATORY?

The Department acknowledges that this is mostly a civil family matter and would be supportive of attempts to increase access to alternative dispute resolution and reduce the number of matters going through the courts. As mentioned in your presentation slides there appears to be a large number of 'unknowns' about the low take up of existing ADR and the reasons behind that. Perhaps further research would allow deeper consideration of the matter.

The Department is currently considering legislative changes in terms of offender management provision and early intervention through measures such as conditional cautions and expanded provision for sentences (and suspended

sentences) to include a requirement for reparation and restorative justice as alternatives to court proceedings. If legal aid were made available for mediators and other non-legal practitioners there is the opportunity to use legal aid more efficiently outside of the courts.

The Department would express some reservations over the term 'mandatory' as there are instances (domestic abuse, mental health cases, etc) where it would be inappropriate for mediation conferences to take place.

Q: SHOULD THERE BE AN AMALGAMATION OF THE CRIMINAL AND CIVIL LEGAL AID SYSTEM UNDER ONE CENTRAL SYSTEM OF ADMINISTRATION?

This would appear to be an administrative issue which should be effected. In addition, the Department would suggest that this would offer a suitable opportunity to review all administration processes and systems and take advantage of "lean" engineering and digital strategy project knowledge within Government to ensure that the two systems are effectively administered rather than just being co-located in one Department.

The Department thanks the Committee for providing the opportunity to comment on its proposals. It is supportive of all attempts to bring the legal aid system into the digital age and ensuring access to justice for the most vulnerable remains of paramount importance.

We look forward to working with you in the future as necessary. To this end we would invite you to a future Criminal Justice Board meeting to discuss items of mutual interest.

Kind regards

Mrs Sally-Ann Cain  
Criminal Justice Manager  
Isle of Man Criminal Justice Service  
Shirveish Cairys Kimmee Ellan Vannin  
Department of Home Affairs  
Rheynn Cooishyn Sthie  
Headquarters Building, Tromode Road, Douglas, Isle of Man, IM2 5PA

Tel: +44 (0) 1624 694314  
Fax: +44 (0) 1624 621298  
email: sally-ann.cain@gov.im