

## LSA Circular 03/24

17 April 2024

Dear Practitioner,

### Practitioner File Review and Recoupment Update

This Circular will be of interest to all practitioners as it provides important lessons to be learnt from the Practitioner File Review initiative and seeks to advise that **from 1 July 2024 the Legal Services Agency will recoup any payment where there is not sufficient evidence on file to substantiate the claim.**

1. The Practitioner Error and Fraud Review initiative commenced on 31 January 2023 and is part of the Agency's approach to identifying, measuring, and reducing practitioner error and fraud, as part of its overall programme of work, which also includes legal aid officials and applicants for legal aid, to address the fraud and error audit qualification on the Agency's statutory Annual Report and Accounts.
2. Full details are outlined within [LSANI Guidance on practitioner file reviews](#) on our website.
3. As you know the Agency provided an update on the Practitioner File Review for the period January to September 2023 in the [October 2023 key messages](#).
4. Now that we are close to the 2023-2024 financial year-end, we have compiled further statistics to provide a fuller picture of the 2023 calendar year sample including recommendations for submitting files. These are included at Annex A. *The figures are not final and are subject to validation by Northern Ireland Statistics and Research Agency staff.*

5. The information provided in October 2023 was high level and we are now able to provide practitioners with a more detailed analysis of where errors have occurred during the first year of the review.
6. Compliance with the Practitioner File Review throughout its first year has been very positive. Around 99% of cases sampled have subsequently been submitted to the Agency for testing.
7. Provisional indicators from this inaugural year suggest that the observed level of error and fraud among practitioners is low. The latest early indicators show that, of the total value of all cases sampled (£848k), raw error and fraud stands at less than 5% (£40k).
8. This reduces to under 2% (£14k) when non-compliance is excluded. It should be noted that these figures are provisional in-year indicators and do not reflect completion of the full sample. In addition, they have not been subject to weighting or extrapolation. Therefore, they are subject to change during end-of-year processing.
9. Although the position is therefore an overall positive one, recurring triggers for an error being raised have been identified. These are as follows:

### **Practitioner Overpayment**

- a. no file provided – please see previous [key message for July 2023](#) on the Practitioner Retention of Files.
- b. insufficient evidence to support the payment claimed on the Legal Aid Management System (LAMS). Our sampling to date has shown that the main types of work being billed which are not supported by adequate evidence in the supporting papers include consultations; telephone calls; reading time; court preparation; preparation; advocacy and waiting time – please see previous guidance on [Evidence for Claims](#).

## Practitioner underpayment

- c. Evidence found within the practitioner file or on ICOS that was not claimed for but is properly payable e.g. court attendance; letters/emails; telephone calls.
10. This circular is to advise that for any files selected for sample from July 2024 onwards, the Agency will seek to recoup any payment where there is not sufficient evidence on file to substantiate the claim.
11. From **1 July 2024** there **MUST** be supporting evidence to substantiate the payment claimed within the practitioner file when it is submitted for review. Where a practitioner error is flagged to the Agency following review of the file by Standards Assurance Unit (SAU), the Agency will, in the first instance, alert the practitioner providing an opportunity to submit evidence. If this is not received by the Agency, the Agency will seek to recover the funds. To be clear, only evidence to substantiate payments is required. Papers and records which are not necessary to substantiate payment do not need to be provided.
12. Examples of the type of evidence that must be included in practitioner files, with the exception of standard fees, include:
  - Start and end times of telephone calls;
  - Length of time recorded for consultations; reading time; court preparation; advocacy; waiting time; *and*
  - Evidence of letters or emails held in file, to match against the dates that are recorded on bill for when such items were issued.

The Agency cannot accept evidence that may have been produced after the error has been identified by SAU. i.e. handwritten notes, Microsoft calendar entries. However, these are acceptable when first submitting a file as it is at the pre-check stage.

The Agency acknowledges that queries can arise when attendance is not recorded on ICOS. It also acknowledges that the responsibility for maintaining ICOS records does not rest with the practitioner. The LSA will not immediately

deem any such inconsistencies to be an error. Evidence will however have to be supplied. This may result in the ICOS record being amended by the court clerk. Practitioners should be able to support their attendance from their own records and this should be recorded in their attendance log.

13. The Agency previously suggested in [LSA 19-23](#) in December 2023 that practitioners maintain a [proforma work log](#) to retain a record of billable actions, outlining dates, times and a brief description of activities along with supporting documentation where possible, including notes of consultations and telephone calls. Practitioners are also encouraged to claim for all items that are properly payable. These measures will improve the accuracy of the bills submitted on LAMS and reduce practitioner error levels/under or over payments.

### Commencement

14. All payment claims relating to work undertaken **from 1 July 2024 must be clearly evidenced within the practitioner file. Failure to provide sufficient evidence will result in the Agency seeking to recoup payment.**

Yours faithfully,



**Paul Andrews**  
**Chief Executive**

Practitioner File Review Dashboard

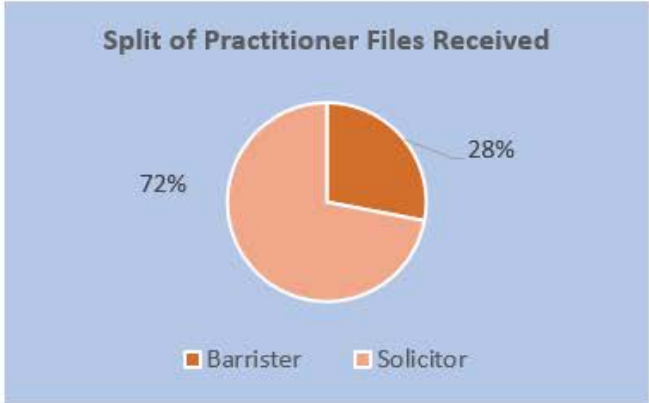
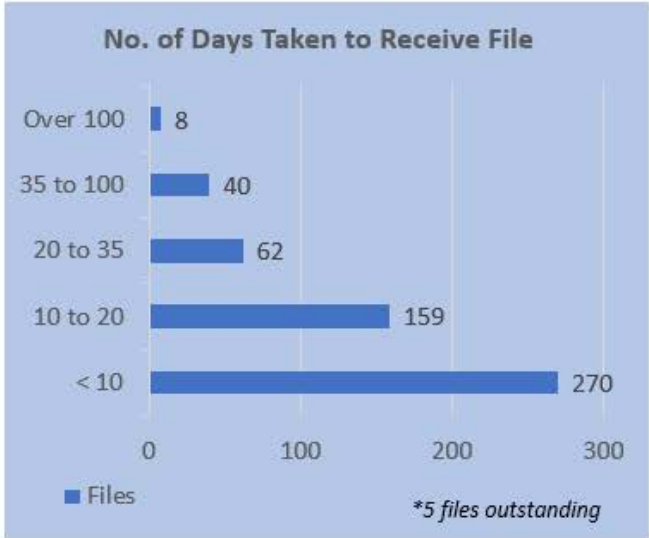
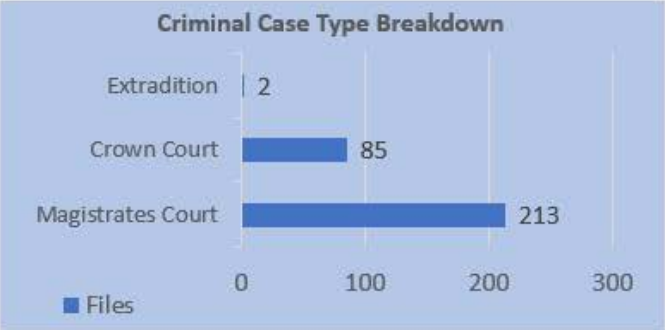
Practitioner Co-operation 99%

Cases Requested	544	
Cases Concluded	531	98%
Cases In Review	8	1%
Cases Outstanding	5	1%



Reporting Period: Jan 23 - Dec 23

- The Practitioner File Review has received 99% co-operation from the profession with 539 files received at 13 March 2024 for the 2023 sample year.
- Out of the 539 files received, 531 have been checked and concluded, with 8 currently in the review process.
- Of the 539 files received, 72% are from solicitors with barrister files making up the remaining 28%.
- LSA has had an excellent response rate with regards to receiving the files, with 80% of the requested files received in under 20 days and payment made.
- There is currently a 99% payment rate, with the 1% non-payment making up the 5 files not yet received.



## Practitioner File Review Dashboard

Sample months covered	Jan - Dec 2023
Total completed cases	<b>526</b> (97% of annual sample)
Raw error and fraud rate	<b>4.73%</b>
Raw error and fraud value	<b>£40,055</b>
Raw error and fraud rate excluding non-compliance <sup>1</sup>	<b>1.66%</b>
Raw error and fraud value excluding non-compliance <sup>1</sup>	<b>£14,051</b>
<b>Total value of payments checked</b>	<b>£847,542</b>

### Early Indicators as at end-February 2024

Please note that these figures are in-year, provisional indicators and have not been subject to weighting or extrapolation. Therefore, the estimates are subject to change during end-of-year processing.

#### Note:

1. Where requested files are not received within the required timeframe and therefore payment accuracy cannot be verified, the total value is deemed as practitioner error/fraud due to non-compliance.

### Notes for Practitioners

Maintain an activity log to support claims e.g., record all travel mileage and times, record calls and letters received and issued. Currently many payment claims do not match details in files on these points.

Practitioners should retain their files / evidence of work undertaken until after the related payment is received. Submit files electronically where possible, this will enable faster payment.

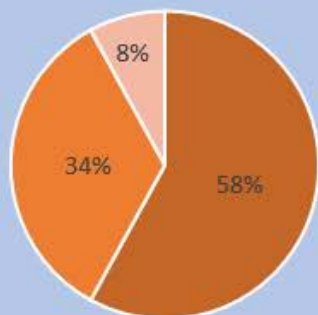
If possible, please complete a check to ICOS to ensure your records match court log.

Documents only directly related to support payment of the claim need to be provided to LSA. Where files are voluminous, include a Disclosure Schedule to confirm the volume and type of material to substantiate payment requested.



## Practitioner File Review Dashboard

### Main Categories of Practitioner Error



■ No evidence ■ Unverified time ■ Unclaimed documents

Sub-categories of Over Payment Error	No Evidence on file	Unable to verify time spent
a. Advice	17%	34%
b. Consultation	20%	27%
c. Preparation	13%	16%
d. Tapes	27%	14%
e. Calls	8%	4%
f. Other	15%	5%

### Breakdown of Practitioner Error

#### PRACTITIONER ERROR 2023 ANALYSIS

Errors identified in the year to date, excluding non-compliance amount to approx. £14k. These can be broken down into the following three main categories:

- Documents on practitioner file e.g., emails, letters which have not been claimed for on LAMS.
- Lack of evidence on practitioner file to validate claimed amount on LAMS e.g., phone calls, consultations, preparation etc..
- Unable to verify time spent on fee lines e.g., dates/times not held on file for consultations, advice, tapes etc.

#### POINTS TO NOTE

- LSA will now implement a recovery and repayment process for practitioner over and under payments respectively. From 1 July 2024, the Agency **will seek to recover funds if there is insufficient evidence on files to support claims, including time spent.**