



Northern Ireland  
Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

Legal Aid for Crown Court Proceedings  
(Costs) (Amendment) Rules (Northern  
Ireland) 2015: Department of Justice

23 April 2015



**The Chairperson (Mr Ross):** Thank you. Another issue that was brought to the attention of the Department was that the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014 has unintentionally removed the Court of Appeal's power to grant legal aid. My understanding is that the Department has accepted that this is the case. Why have you not used this statutory rule to address that, and how and when do you intend to close that gap?

**Mr McGuckin:** We have not addressed that gap using this statutory rule because it relates specifically to the Crown Court rules, and the error that we made in the commencement order has only just come to light. We are working on a solution to that. We believe that we have the solution, and our aim would be to put advice to the Minister with the potential of correcting it as early as the start of next week. It would not be appropriate to put it through in this statutory instrument anyway.

**The Chairperson (Mr Ross):** Finally, we were given a copy of the Crown Court Rules Committee's minutes, which highlight the range of concerns that were raised with the Department in relation to the statutory rule. What has the Department done to address these concerns? Have you changed the rule in any way? Can you tell us what level of engagement you have had with that committee in the lead up to it?

**Mr McGuckin:** We have had two meetings with the Crown Court Rules Committee. The first meeting was very much about them setting out their stall. You will be familiar with the make-up of the Crown Court Rules Committee, with a number of the senior judiciary and representatives from the Bar and the Law Society. The key elements that the Bar and the Law Society expressed at that meeting were the concerns that they had previously expressed to this Committee.

Only the first set of minutes has been published, as I understand it, but there was a subsequent meeting where we provided clarifications. The Law Society provided some very helpful observations on the draft rules as they stood at that time. We made some adjustments to the draft rules to reflect those issues. They did not in any way change the policy that had been before this Committee and agreed with this Committee. They did, however, relate to the technical contents of the draft rules, and we made those adjustments. We also sought to address the other concerns that had been raised previously. As a consequence of that, we have a letter from the secretariat of the Justice Committee, effectively closing down that interaction and saying that you are now aware of the Crown Court Rules Committee's views regarding the draft rules named above and thanking us for our participation in the Committee.

**The Chairperson (Mr Ross):** You mentioned earlier about consideration being given for the issue of exceptionality. Why would you go ahead with the statutory rule if that is your intention?

**Mr McGuckin:** The statutory rule takes the existing provisions and makes adjustments to the level of fees in response to all of the research that we conducted previously. That sets out the framework and the standard fees that are being paid. If we need to make an adjustment in terms of exceptionality, that would sit above those fees, so all of those changes would be appropriate and need to come into play as quickly as possible to deliver the necessary savings against the legal aid budget.

We will need to bring forward a further amendment to address the Burns case. If, as part of that, we deal with the wider exceptionality issue, then we will want to go through the process of consulting on that to make sure that we take on board the relevant views as we are doing that.

**Mr McCartney:** In relation to legal aid and the Court of Appeal, how did that come to light?

**Mr McGuckin:** There is a gentleman in the Bar called —

**Mr Pdraig Cullen (Department of Justice):** Mr Valentine, a practising barrister.

**Mr McGuckin:** He is a practising barrister who, as I understand it, reviews and provides a critique on the law. He identified the issue and drew it to our attention.

**Mr McCartney:** Is it something that should have been seen previously?

**Mr McGuckin:** It is an error. It was a mistake that went through, and, yes, we would have preferred that it had been identified and addressed before it happened. However, it relates to the complexity of some of the things that are included in that and to the fact that we are commencing the civil legal

services provision in the 2003 Order but not yet commencing the criminal defence provisions in the 2003 Order. That is an issue that we will be returning to later in the year. It was a genuine mistake related to looking at every single aspect and provision in that legislation in the timescale —

**Mr McCartney:** What is the mechanism now to —?

**Mr McGuckin:** We are looking at options, but one of them is to commence the specific provisions in the 2003 Order which deal with the appeals at that level.

**Mr McCartney:** Can that be made retrospective? The Bar Council said that there was a case today —

**Mr McGuckin:** The case today was adjourned —

**Mr McCartney:** There is one pending on Monday.

**Mr McGuckin:** That is one of the issues that we will be looking at over the next 24 hours to see how we deal with cases that are in flight. It is fair to say that legal aid for criminal appeals is granted after the appeal has been heard. That should apply the appeals to process up to that point, and then they can be adjourned until this is resolved. As I say, if we can do this in the way that we have been exploring over the last 24 hours, we should be able to resolve it at the start of next week.

**Mr McGlone:** Thanks, gentlemen, for your presentation. Can we go into a bit more detail? Mr McGuckin, you mentioned earlier that the Law Society had provided helpful observations and that, on the back of those, you made some helpful adjustments. You sought to address some of their concerns. Can you give us a bit of a résumé as to what all that was — the concerns that they raised, the responses that you made to that and the likes — please?

**Mr McGuckin:** I believe that I have before me some of the correspondence that was involved. There were some technical issues about the drafting of the order. They had identified some typographical errors and things like that, which we corrected. We had not included in the draft order a change in the classification of three offences. We had agreed that we would change the classification, so that those particular offences would attract a higher fee. We corrected that in the revised version. That was part of the policy that was agreed. I cannot remember, off the top of my head, any other issues. There were not any significant issues; it was largely down to the drafting.

**Mr McGlone:** So it was technical stuff, and it was not down to the substance of change?

**Mr McGuckin:** No, absolutely not.

**Mr McGlone:** I am sorry; I thought that maybe it was something meaningful. I am just reading through some of the briefing documentation here. Disability Action flagged up a number of issues around the equality impact assessment (EQIA) and concerns that they had on issues, including:

*"legal support for the victims, witnesses and offenders who have a disability through the victims charter and the Registered Intermediary scheme, but expressed the view that more could be done."*

Have you engaged further with Disability Action on those concerns?

**Mr McGuckin:** Personally, no. What we have done —

**Mr McGlone:** Has the Department engaged?

**Mr McGuckin:** I am not sure. In some of those specific areas about victims and so on, work is ongoing. I could not say, hand on heart, what has happened in relation to those areas.

**Mr McGlone:** That is fair enough.

**Mr McGuckin:** However, I can say that the material which Disability Action provided for us in response to this consultation has been shared with the other people in my work area who are looking at the reform of legal aid, to ensure that those views are factored in as we work through the processes.

These rules are really about the fees being paid to lawyers, and Disability Action's views were wider than that in scope.

**Mr McGlone:** I appreciate that. This is wider, but it is going to affect Disability Action. I have tremendous respect for it when it flags up an issue.

Chair, it would be helpful to us if we were to get a wee bit more detail around how the Department — other people within the Department — have responded to that, addressed or tackled it.

**The Chairperson (Mr Ross):** That is fine. Other members, who are unable to be here, have asked for written clarification on some of those issues that we raised. We intend to meet on Tuesday to address those. So can you give us some written confirmation on some of the questions that we have raised? You say that some of the other stuff may be resolved early next week. Hopefully, by the time we meet, that will be the case, and we can deal with it in the meeting.

**Mr McGlone:** Sorry, Chair, I have just one point. I have noticed something in our tabled papers. The Bar Council has commissioned a survey by Ipsos MORI. The council urges us, as a Committee, to allow time for key data to be provided to us. Are you aware of that ongoing study on behalf of the Bar Council?

**Mr McGuckin:** I understand that the Bar Council has commissioned that survey. I have not seen any outworkings of it yet. Clearly, it will affect the totality of the Bar and the work that it does and will not, necessarily, be focused on the issues which are affected by these rules.

**Mr McGlone:** Well, I do not know. I do not know what is in it, and nobody knows yet, presumably. Anyway, thank you.

**The Chairperson (Mr Ross):** I appreciate that you have come back to us very quickly. There is some urgency in this. It would be good to have this in place; I appreciate the extent of the savings that are planned in this. If you can get back to us, in writing, with clarification on some of those issues, we could get them resolved. As I have said, the Committee has agreed to meet on Tuesday.

**Mr McGuckin:** I am happy to do that, Chairman.

**The Chairperson (Mr Ross):** Thank you.