



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Access to Justice Directorate: Department of
Justice

9 June 2016

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Frew (Chairperson)
Mrs Pam Cameron (Deputy Chairperson)
Mr Alex Attwood
Ms Clare Bailey
Mr Doug Beattie
Mr Roy Beggs
Ms Michaela Boyle
Mr Declan Kearney
Mr Trevor Lunn
Mr Pat Sheehan

Witnesses:

Ms Jane Holmes	Department of Justice
Mr David Lavery	Department of Justice
Ms Laurene McAlpine	Department of Justice

The Chairperson (Mr Frew): I welcome to the meeting David Lavery, director of access to justice; Laurene McAlpine, deputy director of civil justice policy division; and Jane Holmes, head of the justice secretariat in the Department of Justice. Thank you all very much for coming. I advise you that the session will hopefully be recorded by Hansard and a transcript published on the Committee web page in due course. David, I am sure that you have a presentation for us.

Mr David Lavery (Department of Justice): I just have a few opening remarks, Chair. As my predecessor did earlier this afternoon, I welcome the opportunity to brief the Committee on the work of one of the directorates in the Department. This is the access to justice directorate. I am accompanied this afternoon, on my right, by my colleague Laurene McAlpine, who is the deputy director responsible for civil justice policy, and, on my left, Jane Holmes, who is head of our justice secretariat. Brian Grzymek, who heads criminal justice policy, intended to join us, but unfortunately is unavailable due to a bereavement.

My colleague, Mark McGuckin, head of public legal services, who has responsibility for legal aid, is also unavailable this afternoon, but I am quite sure that it will not be too long before you come across Mark, as legal aid remains one of the Department's reform priorities.

From the briefings that it has received the Committee will have begun to get some sense of the shape of the Department of Justice organisationally. Access to justice is one of four directorates into which the Department is organised, and we are principally responsible for the Department's programme of

policy and legislation. In time the Committee will become familiar with a number of our colleagues who will be engaging with you on proposals for legislation and new policy developments.

In addition to this core role, the access to justice directorate also has responsibility for a number of the arm's-length bodies associated with the Department. These include the Northern Ireland Courts and Tribunals Service, from which you will receive a briefing at a future meeting, the Legal Services Agency Northern Ireland, which operates the legal aid scheme, Criminal Justice Inspection Northern Ireland, and the Northern Ireland Law Commission, although it is not currently active due to funding constraints.

As the Committee will appreciate, at the beginning of a new Assembly mandate and following the appointment of an independent MLA as Minister for Justice, it is not possible for me to present you this afternoon with a definitive programme of the work on which we will be engaged over the next five years. Nevertheless, it seems reasonably clear that the Executive's Programme for Government will play a major part in shaping the policy agenda for the justice system. In the current draft, the outcome of a safe community, where we respect the law and each other, is underpinned by three justice indicators: reducing crime; reducing reoffending; and increasing the effectiveness of the justice system. These three indicators will be further developed into what will become a programme for justice, which will shape much of the work of the Department over the next five years.

The Minister will give broad direction to this work through a new criminal justice board that she chairs. The board brings together the senior leaders of the justice system, the Lord Chief Justice, the Chief Constable and the Director of Public Prosecutions, who meet with the Minister throughout the year to discuss aspects of the performance of the justice system. The criminal justice board is supported by a programme delivery group, which I chair, comprising the chief executives and other senior representatives of the various organisations that together comprise the criminal justice system.

I believe that it is already reasonably clear that one of the priorities for the justice system over the next few years will be the development of a range of initiatives on what is sometimes referred to as "problem-solving justice". Indeed, problem-solving justice has been selected as one of the pathfinder projects for the new Programme for Government, and the pathfinder projects are intended to explore the scope for new and more collaborative ways of working. Problem-solving justice, as I am sure the members of the Committee will be aware, involves a more proactive approach to criminal justice, placing particular emphasis on early intervention to address the underlying causes of offending behaviour, whether that is drugs, alcohol, addiction, mental ill health or more social challenges such as domestic violence.

Last year, the Department of Justice commissioned a case study by the OECD into the potential for problem-solving justice in Northern Ireland. The study looked in particular at the domestic violence court that has been operating successfully in Londonderry Magistrates' Courts for some time. The OECD's conclusion was that problem-solving justice has a particular relevance to Northern Ireland and has encouraged us to roll out problem-solving approaches on a pilot basis.

Further impetus for this was provided by the 'Report on Justice in the 21st Century' published by this Committee at the end of the last Assembly mandate. That report also encourages the development of a more problem-solving approach to justice. Acting on that, the Department is developing plans to pilot an addiction court, which would be able to deploy therapeutic interventions when dealing with offenders who habitually present with drug or alcohol problems associated with their offending behaviour. That is just one example, but I believe that it is a positive example, of the scope for adopting new and more radical approaches in our pursuit of a justice system that delivers results for the community that it serves.

That concludes my opening remarks. My colleagues and I will be pleased to discuss that topic or any other aspect of the work of the access to justice directorate. Thank you.

The Chairperson (Mr Frew): OK. Thank you. You will know the work — you were involved in it — that the previous Committee did on innovation, problem-solving and drug courts. One aspect of that, of course, was online dispute resolution for civil and family cases. How quickly can that be progressed? We obviously all get very disillusioned with the cogs of government turning very slowly. Here we have opportunities. We have seen, throughout the world, how those things can be used to benefit everyone involved. How quickly can things be introduced?

Mr Lavery: On online dispute resolution specifically, I had the opportunity during the previous mandate to accompany the Chair and Deputy Chair of the Committee to The Hague to look at some of

the best examples of that. They have what is called the Rechtwijzer online dispute resolution system, which has been replicated in a number of other areas. It was certainly interesting to attend the seminar that the Committee organised in Stormont, which was addressed by one of the leaders from the Hague programme.

The Department is interested in the potential for online dispute resolution. We think that it would have particular relevance to the work that is currently undertaken in the small claims court, for example, which, I am sure the Committee will know, is part of the County Court system that deals with relatively low value, but, nevertheless, significant claims and disputes, many of them consumer and related disputes. We think that that might very well be a good place to pilot an online dispute approach. However, we have chosen to wait to see the emerging recommendations of a major review of the civil justice and family justice system that one of the senior Northern Ireland judges, Lord Justice Gillen, is leading at the moment. My colleague Laurene McAlpine is a member of the steering group that works with Lord Justice Gillen on that. We expect a draft report on civil justice to be published for consultation purposes probably later in the summer. From a recent discussion that I had with the Lord Justice, I understand that he intends to address the potential for online dispute resolution. Rather than jumping the gun, as it were, it was our decision to wait and see exactly how the learning that we gained, for example, from the seminar that I referred to, which Lord Justice Gillen also attended, can be applied in the local context.

Ms Laurene McAlpine (Department of Justice): Can I come in?

Mr Lavery: Sorry, yes you can. We want to see how quickly it could be put in place. If it requires an investment it will obviously require a business case and so forth, but it is an area that we are interested in testing. Laurene might want to say a little bit more about it.

Ms McAlpine: I want to pick up on the point of investment. I expect that there would be savings from online dispute resolution in the longer term, but an initial capital investment would be required. In discussions that Lord Justice Gillen had and that I was present at with officials who were developing the model in British Columbia, we learned that they had an initial investment of, I think, 10 million Canadian Dollars, which would be just over £5 million. I think that the Hague model was somewhat cheaper, but there is obviously an element of invest to save involved if we were to go down that road.

It is also perhaps worth noting that the model in British Columbia has taken a little longer to get off the ground than they had hoped. It is not an entirely simple and straightforward process. It is useful for us to take the opportunity to learn from other jurisdictions.

The Chairperson (Mr Frew): OK. I can understand the logic behind wanting to wait, given that a major review will be coming out in the summer. You could argue that it is wise to wait to see the lay of the land. Are there any other barriers or concerns you have about online?

Mr Lavery: I suppose, Chair, that is partly why we want to see what the Lord Chief Justice's review group says about it. When we heard from those at the Dutch institution that had developed the Rechtwijzer system, a number of people attending the seminar were struck by the fact that they chose to apply it to divorce, as that is quite a challenging area. I think that there might be a view that a small consumer dispute, such as a small claim, might be a safer place to start. Most of the online systems have three component parts: the first is a self-information platform that helps the user to understand the issues and how the dispute might fit into a legal resolution; the second involves being navigated through a self-help process; and the third stage in most of these systems is where some form of judicial input is available, if necessary. I think that the concern of local practitioners is that, if you apply that to something of such fundamental importance as, say, property distribution following a marriage break-up, people might self-navigate to a very bad outcome that would be disadvantageous to them, and therefore some sort of legal support might be preferable. That is why we are candidly a little bit shy about looking at that area as opposed to, say, small claims, which are relatively straightforward: somebody paid for something that they were not pleased with, or somebody did not pay for something that they arguably received.

Ms McAlpine: I think also that we need to bear in mind that not everyone is IT-literate or has convenient access to the internet, especially older folk. Another question is whether if online dispute resolution was available even at the small claims level would we want to make it mandatory? That would mainstream and normalise it, but how would it work for people who do not have access? Moreover, there may be people who would simply prefer to come to court. On the other hand, if it

were voluntary, would it get a foothold in the justice system? We are waiting to see what Lord Justice Gillen recommends on those issues, and we will take it from there.

The Chairperson (Mr Frew): OK. What progress has been made to address the backlog of criminal cases in the High Court, given all the problems over legal aid fees?

Mr Lavery: The strike pretty well brought everything to a halt, as you know, for a number of months, and that was resolved following a process of mediation. The Chief Justice asked the Recorder of Belfast, who is the judge who manages the Crown Court, to put in place a deployment of resources to address that. My understanding is that good progress is being made, but it will take the better part of a year to get back to normal levels of business. We will not ever run out of cases, but there is a normal caseload that we want to get back to. There is intensive work going on, beginning with trying to get cases that resolve themselves by way of a guilty verdict; we will get those dealt with most quickly. I suggest, Chair, that my colleagues from the Courts and Tribunals Service, who will be briefing the Committee, will come armed with up-to-date statistics on that.

The Chairperson (Mr Frew): OK. Given all the changes, the backlog and everything else that comes out of that — there have been a number of changes over the years to the payment and cost of legal aid — are we sure that those changes will now bring the legal aid budget line into line with the Department's budget, or will we always have a constant pressure there?

Mr Lavery: Legal aid, from my experience, has always been an area like, I suppose, welfare where there is a significant demand and a finite budget available, and the two are inevitably in tension. The reforms that the Department had completed by the end of the last Assembly mandate were calculated to reduce criminal legal aid expenditure by in excess of £20 million per annum and were based on introducing a standard fee system, for the greater part so that people would know that they would be paid a particular amount for the work that they were doing, with allowances made for cases of exceptional complexity. The standard fee approach has many advantages, provided that you get the fee at the right level. It gives us budgetary predictability and it provides quick cash flow for practitioners who do that sort of work. We intend to progress a similar model in relation to family and civil cases where possible, and the Committee will hear more about that in the course of this year. Negotiations are continuing with both branches of the profession about standard fees for family cases in the first instance, because, after criminal cases, we would say that that was the next area of most significant budgetary growth.

I do not think that reducing lawyers' fees would ever be a sufficient answer. There must be a point beyond which it is not appropriate to reduce further, given the structure of the legal profession here. We do not have the big legal aid factories that there are across the water. We have many small solicitors' practices that could not achieve economies of scale. Therefore, we invited an independent expert to look at the legal aid system, which resulted in what is called the access to justice review. We did that in two stages; a first part was published quite early after the devolution of justice, which looked more explicitly at legal aid. Many of the recommendations of that first stage have been pursued over the last few years.

The second access to justice review, which reported last year, was perhaps more ambitious and looked at what the scope of the legal aid system should be and also at how legal services should be delivered. There may be other ways than simply going to a lawyer in private practice to get help with legal problems. We intend to progress the work on the access to justice review, but we also expect that Lord Justice Gillen's review of civil and family justice will have some relevant observations to make. For example, I know that the review is looking at what types of cases in civil disputes go to the High Court, which is a more expensive court, and what sort of cases go to the County Court. It may be an emerging view, I would anticipate, that the High Court should be a centre of excellence for more complex cases and that the generality of civil disputes might be more appropriately dealt with in the County Court. That sort of architectural change or redistribution of business in itself would bring down the cost of going to law and, therefore, it would bring down the cost of legal aid for those cases, to some degree.

It is a long answer, but the list of problems is an enduring one. Our trajectory is to align the expenditure on legal aid with the current forecast expenditure by the middle of the current Assembly mandate.

The Chairperson (Mr Frew): Will part 2 of the review be completed then?

Mr Lavery: It may not all be completed, but our existing savings trajectory on standard fees should achieve a lot of it. Part 2 might involve primary legislation, but by 2018-19 we should be holding our own in terms of the projected level of expenditure and the budget. From the beginning of the last mandate, we were routinely spending over £100 million to £110 million a year, while anticipated expenditure had always been closer to £80 million or less. We are on trajectory to get to about £80 million or slightly lower by 2018-19, but you never know what is around the corner with this type of work.

The Chairperson (Mr Frew): Of course, now that we are getting through the backlog —

Mr Lavery: Yes, there will be more money going out quickly now. It was less last year but more this year, but that is just moving the money from financial year to financial year. Once we get out of that and back into a steady state, 2018-19 is the target for aligning expenditure with forecast expenditure, but I have yet to see it happen.

Mr Attwood: I apologise to the Committee and to you because I have to go to a meeting down town now. Therefore, I am going to ask some of the questions that I intended to ask, and then I will get the opportunity to come back to them. Access to justice requires access to inquests and access to funds to enable criminal prosecutions. Going back to what I asked earlier, can you update the Committee, although you may not be able to, on where we are on the paper tabled by the former Justice Minister at the Executive? Is that paper being tabled again, or is the item being rescheduled to enable the High Court, the Lord Chief Justice and his colleagues to move on with it?

Secondly, I do not want to get ahead of myself here because I know that there are announcements pending, but the Chief Constable has indicated that the Stakeknife investigation will deal with his activities, the activities of state organisations, and the activities of a paramilitary group, and that that could cost up to £30 million. Without trying to get ahead of what might or might not happen tomorrow, where are we with the funding stream for that?

Mr Lavery: My colleague who was with the Committee immediately before my directorate would probably be better sighted on that, but it is an acknowledged significant funding pressure. My understanding is that the funding for that type of investigation would be a requirement from the current policing budget. Put it like this: if the investigation is conducted by the PSNI or under the direction of the Chief Constable, the funding would be from current PSNI funding as opposed to the £150 million that was provided in Fresh Start funding. As far as I am aware, there is no intention that any of the £150 million would be spent on the investigation to which you referred. Forgive me, but that is my understanding. The £150 million was set aside, as colleagues will know, for the work associated with the past, including legacy inquests.

We worked in the last mandate to try to persuade the Secretary of State that funding for legacy inquests ought to be released pending the resolution of any political disagreement on other aspects of the package, such as the HIU. As colleagues will know, the legislation had been drafted to be introduced at Westminster to establish the HIU, and then political agreement on progressing agreement was not forthcoming. We argued that the Secretary of State should agree to our accessing funding for the Chief Justice's plan to set up a legacy inquest unit; hence the paper that we tabled at the end of the last mandate. I should explain that that was not for the full funding required for a legacy inquest unit but was for funding for an initial period of 18 or 19 months to get things up and running. We were going to use it as a proof of concept so that we would know better how much we needed to spend and where we needed to spend it. We were then going to put in a supplementary bid, but that failed to launch for reasons that are generally in the public domain.

The Minister is very anxious to readdress this and to progress it. Indeed, we had a meeting of the criminal justice board, which the Minister chairs, this week. It was discussed by the Minister, the Chief Constable, and the Chief Justice, and the Minister reaffirmed her commitment to early engagement with her colleagues in the Executive and the Secretary of State to make progress on this. We are refreshing our modelling on the funding required. We are ready to deploy it, and we are waiting for a political opportunity to deploy it. I am refreshing the paper that was submitted at the end of the last mandate and expanding that for up to the full five-year term that the Chief Justice forecast will be necessary to complete the inquests. I have that ready to deploy.

Mr Attwood: What you are doing is encouraging even if what others are doing is not encouraging. We are at risk now of running into the summer with fewer meetings at Executive level on the one hand and, presumably, at Treasury level on the other. You could end up with a situation where this is left in

abeyance until the autumn, and for victims and survivors who see inquests as one of their best hopes for accountability, that is not a very good place to be in. I have a number of other questions, but I am pressed for time and will have to leave it there, although I am sure that David would have been able to answer all of them.

Mr Lavery: I understand the frustration. We too are intensely frustrated on behalf of the victims who are affected by the delay. The point that Mr Attwood makes is not lost on us. We are making some headway on legacy inquests with the limited resources available to the Courts Service, but we are doing a lot of that work at risk. We are using money that is meant to be used for other things. I am sure that the Committee will want to acknowledge the work that the Lord Chief Justice and Mr Justice Colton have done in trying to get a grip on that and to identify cases that could progress, and we have a model in place to resource a legacy inquest unit as soon as additional funding is available.

Mr Attwood: If this matter has not been moved on between now and next week's meeting, I will make a proposal in respect of it.

Mr Sheehan: The legacy branch has responsibility for the new voluntary and community sector (VCS) funding model. I wonder if you could give me some more information on that.

Mr Lavery: That project was undertaken by my colleague, who, unfortunately, cannot be with us this afternoon. It is being done on behalf of a steering group in the Department. Ironically, my directorate in the Department probably provides least funding now to the voluntary and community sector. The project is being overseen by Anthony Harbinson, whom you met earlier this afternoon, and my colleague, Sue McAllister, from the reducing offending directorate. We could, if it would be of assistance, write to give an update on the work on the review of voluntary and community sector funding. It is being done by someone in my directorate but not on behalf of my directorate, and although we have an interest in the work being done, we do not actually handle the funding programme. I am not really well placed to answer your question this afternoon, and I must apologise for that. Had my colleague been able to attend, I have no doubt that he would have. I might write to the Committee to give you at least the background and then you could request a briefing.

Mr Sheehan: Fair enough. Thank you.

Ms Bailey: I am interested to hear about any efforts or work ongoing to address the lack of justice for victims of sexual abuse and rape through the courts. The Assembly produced research in 2014 showing figures for the past five years. The most recent year was 2013-14, when over 2,000 rapes were reported to the PSNI. Yet in the same year only 68 made it to court. That is not convictions. Historically, it has been very hard to get those crimes into court and get convictions. I know that the PPS was looking at setting up a special team, and I just wonder whether anything else is being done or considered.

Mr Lavery: Operationally, it falls, as you correctly said, to the police and the Public Prosecution Service, and I am sure that they would be pleased to brief the Committee on the work that they are doing. The only part of it for which I have a direct responsibility is what I mentioned in my introduction: problem-solving justice on the domestic violence side, which is a very important issue, although perhaps not the more extreme forms of criminal behaviour to which you are referring. In domestic violence, as I mentioned earlier, the intention is to support the victim so that they are willing to report and feel supported when they do.

That is why we asked the OECD, as I said, to do a study of how that system is working at the minute in the court where we are piloting the project. It asked us to develop a programme addressing offending behaviour. It said that we were doing quite a lot to support the victim but not as much as we could do to address offenders and their behaviours. So, with the involvement of the Criminal Justice Board, we have asked for an offender programme to be added to that initiative. We are also interested in, and, indeed, it was discussed at the criminal justice board this week, the possibility of finding interventions that, in the domestic violence context, might encourage more men and women to come forward to report instances of domestic violence because, if the case is dealt with in a particular way, it might not lead to a conviction and a criminal record. There is evidence to suggest that, in the domestic violence context, sometimes, the victim does not want to formalise or pursue a complaint against the perpetrator because it would criminalise the perpetrator. Not everybody wants that to happen. It has been suggested that they just want the abuse to stop.

As for the more serious cases — you mentioned rape and other serious sexual offences — from a policy perspective, I confess that I have relatively little to say to the Committee this afternoon. It is more of an operational response, I think, and it might be better for you to ask the same question of the police and the PPS at the next opportunity because I know that they are doing a huge amount on that issue at an operational level. You will understand that I am dealing more with what the law is rather than how it operates.

Ms Bailey: OK. Thanks.

The Chairperson (Mr Frew): There are no further questions from members. Thank you very much for your time today.

Mr Lavery: Thank you, Chair, for inviting us. We will write to Mr Sheehan about the VCS and the other issues. The courts will be able to deal with your question on the backlog of cases.

The Chairperson (Mr Frew): OK. Thank you very much.