



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Department of Justice Budget

6 February 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Ms Linda Dillon (Deputy Chairperson)
Mr Doug Beattie
Mr Gordon Dunne
Mr Paul Frew
Mr Pat Sheehan
Miss Rachel Woods

Witnesses:

Ms Louise Blair	Department of Justice
Ms Deborah Brown	Department of Justice
Ms Lisa Rocks	Department of Justice

The Chairperson (Mr Givan): I know that this session will lend itself to very direct questions and answers because it is on financial matters. I appreciate that the previous session was broader in nature. Some members have told me that the clock is against them. I am keen to try to transact all of the business, but I am in the hands of members. Deborah, I welcome you to the Committee. Lisa and Louise, you are also very welcome.

Ms Deborah Brown (Department of Justice): Thank you very much for the opportunity to come along this afternoon. I am the director of justice delivery, and with me this afternoon are Lisa Rocks, the Department's finance director, and Louise Blair, the head of financial planning.

This afternoon is an opportunity for us to give you an introduction to the Department's finances, how the budget is allocated and the types of issues that we currently face. We thought that it would be useful at this stage to give you that high-level overview, but, of course, we will come back to the Committee to provide further briefings as we work through the 2020-21 budget process. Of course, we very much value the Committee's input to this, and we will engage with you throughout the process and take your views on board.

You all, hopefully, have a slide pack, which we would like to talk our way through. Before we do, I want to highlight a couple of other points. On the current budget, the in-year budget, I can give the Committee an assurance that we are, at this stage of the year, on target to remain within our budget, and we do not see foresee any issues between now and the end of the financial year. Looking ahead into 2020-21, we face a number of pressures, and we continue to input into the wider Budget process to seek sufficient funding to ensure that we are able to deliver on the Programme for Government, the New Decade, New Approach commitments, and the maintenance of our front-line services.

We understand that the Finance Minister briefed the Finance Committee and committed to making a statement to the Assembly setting out the 2020-21 Budget on 9 March or 10 March. Bilateral discussions are being set up between the Finance Minister and the Minister in each of the Departments, and it will be for the Executive as a whole to consider, in the context of whatever funding is available, the budgetary pressures and the issues set out in New Decade, New Approach. Of course, until that Budget is set, it is very difficult for us to articulate the impact on particular areas of absorbing any pressures that we may find, but we will continue to engage with the Committee on this throughout the process.

We now turn our attention to the slide pack. The second slide, a colourful organisation chart, is an overview of the Department. As you will be aware, the Department has four core directorates. Of course, you just had a briefing from one and have previously had briefings from the others. The other point to highlight here is our range of agencies and non-departmental public bodies. The pink boxes are the five Executive agencies. Our Department has the largest number of agencies. We have five of a total of nine across the whole NICS. The green boxes are our eight non-departmental bodies. Of course, they have quite a large share of our budget, with the PSNI having the largest.

The third slide gives you a high-level view of how the budget is allocated. You will see that a vast majority of the budget — 72%, which is about £747 million — sits with our non-departmental public bodies. Within that, of course, is the PSNI. It gets 68% of the budget, which is about £700 million. The Executive agencies account for 23%, which is about £240 million. Within that are the prisons, the Youth Justice Agency, Legal Services and the Courts Service. The slide highlights that only a small part of the Department's budget — 5% — is allocated to the core Department and smaller bodies such as compensation services.

I will move on, then, to the fourth slide. Over the year, we will engage with the Committee on the monitoring process. Normally, there are three monitoring round processes each year. Those are the times at which we will come to the Committee to engage with it on particular proposals. Of course, we are happy to come back to the Committee on any specific issues that it wants to discuss. As I said earlier, we will, of course, come back again to talk about our 2021 budget. I will now pass to Lisa, who will take you through the remainder of our slides.

Ms Lisa Rocks (Department of Justice): Slide 5 shows how the departmental budget is broken down. We have a departmental expenditure limit, which you will sometimes hear us refer to as DEL. That is broken down into resource DEL and capital DEL. The resource side is further split into non-ring-fenced resource DEL and ring-fenced resource DEL. Non-ring-fenced resource DEL is for things such as staff costs and normal running costs, and you will sometimes hear it referred to as cash. We have a budget there of £1,077 million, or just over £1 billion.

Ring-fenced resource DEL is sometimes referred to as non-cash. This technical type of budget is used for things such as depreciation. As the title suggests, it is ring-fenced and cannot, therefore, be spent on other areas: for example, regular, ongoing costs such as staff costs. The budget there is £84 million.

Finally, the capital DEL budget is what we use for investment in things such as IT, buildings and vehicles, and our budget there is £76 million for 2019-2020.

Slide 6 outlines the key features of this year's non-ring-fenced resource DEL budget. The key features are that the Department received £11.3 million towards 2019-2020 pressures. No cuts were applied, and the additional funding was used to minimise the front-line impact of spending areas absorbing their pressures. It also provided sufficient funding to allow the Department to take forward legacy inquest proposals in line with the Lord Chief Justice's plan. In addition, the Department received £32 million towards employer pension contribution pressures. This was a pressure faced across the public sector following a pension revaluation. In addition, the PSNI received £31.1 million of Fresh Start security funding. That is in line with the Fresh Start Agreement, which set out £160 million across five years. Each year, the PSNI will switch elements of that between resource DEL and capital DEL, but it is initially drawn down as resource. The Department received £10.7 million for EU exit costs, of which the lion's share went to the PSNI, which received £9.8 million. It used that to recruit an additional 300 police officers. The balance was used across the core agencies for preparation. It is fair to say that the Department also had access to further Fresh Start funding for, first, tackling paramilitarism, for which the Department has drawn down £7.5 million this year, and, secondly, shared future funding, for which £870,000 has been drawn down.

Slide 7 shows how the departmental budget is allocated. As Deborah highlighted, the Department has a range of agencies and non-departmental bodies, so the budget is split across quite a range of areas. The lion's share goes to the PSNI, which, as you see, receives £703 million. Significant shares of the budget sit with the Prison Service, the Legal Services Agency and the Courts and Tribunals Service. It is worth saying that "core department" includes compensation services, which used to be an agency. That £55 million includes £19 million for compensation services. It should also be noted that the courts and forensic budgets are shown net. Although the Committee will see, for example, £500,000 for forensic science on the chart, it has a gross spend of £10 million. Also, although the courts receive about £30 million of income, they have a gross spend of about £70 million. Slide 8 gives a couple of very brief statistics. One shows that 68% of our budget sits with the PSNI. Coincidentally, 68% of our total budget is spent on staff costs, so our costs are very much people-based.

Slide 9 shows key features of our 2019-2020 capital budget. We received £76 million of funding, including funding for the PSNI for EU exit. Funding was then allocated across prisons, the police and the courts. The funding for prisons was mainly for the new accommodation block at Maghaberry and for energy supply and other estates. For police, it included vehicles and IT.

Slide 10 shows how our capital is allocated. You will see that our main capital spenders are police, prisons and courts; they make up most of the Justice estate. Other areas receive capital each year based on the prioritisation of the bids. You will see, for example, that the Probation Board received some additional money this year relating to IT and some estate refurbishment.

That is an overview of the 2019-2020 budget. As Deborah said, we will come back to the Committee to talk further about 2020-21 as the process develops. However, we thought that it would be useful to give the Committee a flavour of the issues facing the Department looking ahead to 2020-21. You will have seen from the first-day brief that the Department faces £56 million of financial pressures. Slide 11 gives a breakdown of what that relates to. As I said, given that a significant amount of the budget is based on staff costs, £16 million of the total £56 million pressure relates to pay. The other significant element of the pressures relates to PSNI operational pressures, including things like estate maintenance, injury on duty and IT. The remaining "other" category is spread across 14 different areas, so it covers quite a range of things. The total £55.7 million of pressures is 5% of our departmental budget, so absorbing that level of pressures would have a significant impact. That is what we are feeding into the Budget process.

We submitted a range of detailed bids for capital DEL across all areas to the Department of Finance. It is very much a zero-based approach each year, but, again, the most significant elements of that are the prison estate, the police estate and courts transformation. We are in the process of refreshing those bids, and we will come back to the Committee on them.

I now turn to slide 12. It is important to say that, in addition to the £56 million of known pressures, there is a range of potential significant high-cost pressures. I say "potential" because there is much uncertainty about what could crystallise, when and at what amount. If they were to crystallise at significant levels, it is fair to say that they would have to be centrally funded because they would be too significant for the Department to absorb. It is very difficult to put numbers against them, as I say, either because they are subject to legal proceedings or are very uncertain at this stage. We will keep those under review and update the Committee as and when we have further information.

I will run through this very quickly. The first issue relates to holiday pay, of which the Committee may be aware. It follows the BEAR Scotland legal case, where there was a ruling that regular overtime creates additional holiday pay entitlements. There will be implications across the board but most notably for the PSNI, which is appealing the judgement. Potentially, there are significant pressures from EU exit. Given the uncertainties around EU exit, this is subject to review. We are continuing to refine that but, again, the most significant impact will be on policing.

There are a couple of elements to legacy: legacy inquests, which were taken forward in 2019-2020 but, as we refresh the costs each year, we will go back to the Department of Finance seeking further funding; and potential litigation in the absence of a mechanism to deal with the past. Work is ongoing in the Department to scope those costs, but, again, that is very difficult to quantify. There are a number of elements to compensation services: potential revision of the statutory discount rate, and also the "same household" rule. Finally, on legal aid, this does not relate to the previous historical issues on legal aid. This is a very specific issue in relation to high-value, multi-defendant cases.

I turn now to the commitments in the 'New Decade, New Approach' document, and this slide sets out the areas that relate to Justice. In many cases, they are very difficult to cost because they are at a

very early stage. I will run quickly down through the Justice areas. The document sets out a commitment to increase the number of police officers to 7,500. The Chief Constable has said that this will cost £40 million per annum when it is fully implemented. On legacy, the document states that legislation will be in place within 100 days to implement the Stormont House Agreement to deal with legacy issues. The Stormont House Agreement set out £150 million of funding. We have said consistently that that is not enough and that it will cost significantly more, but the final costs will very much depend on what the legislation looks like.

On tackling paramilitarism, the Fresh Start Agreement set out funding until the end of 2020-21, and New Decade, New Approach reaffirms that commitment. That was a cross-departmental programme for which, historically, there was £10 million per annum. The next four items on the slide are very much at the early stages, and officials are working through the detail. We do not anticipate significant costs in 2020-21. However, there could be significant costs in later years, and we will keep the Committee updated as work progresses. Finally, on transformation, this overlaps with some of the areas above — things like policing and committal reform — but there will also be areas such as the prison estate and court modernisation.

That is a very quick overview of the departmental finances. We are happy to take questions.

The Chairperson (Mr Givan): Great; thank you. I know that the Finance Minister had asked for work to be done on the costings of what is contained in New Decade, New Approach as part of his discussions with Treasury. I appreciate that, as you said, some of that is at an early stage. However, is there a specific time frame within which that has to be provided to facilitate the Finance Minister's discussions with Treasury?

Ms Rocks: There is still a lot of uncertainty around it. We have provided what we have — things like the £40 million per annum on police officers. However, a lot of it is work in progress, and there are other elements that overlap with our capital bids for 2020-21 — for example, the prison estate. We very much fed in what we do know. Again, as we have highlighted, there are areas that we do not know about, which are under development.

The Chairperson (Mr Givan): On the opening position for the current financial year, I noted that approximately £3 million was handed back in the last monitoring round. Was that the total figure throughout the year, or was money handed back at the various monitoring rounds?

Ms Louise Blair (Department of Justice): That was really the only money handed back. In the September monitoring round, we bid for some pressures in legal aid of £2.8 million, which we received. However, in the last few months of the year, things moved on, and we were able to identify easements and reduced requirements. So, there was the reduced requirement, primarily from compensation services and the easement at the end of the year.

The Chairperson (Mr Givan): Were there any reallocations in the Department throughout the year?

Ms Blair: Yes, there were. We met internal pressures. The PSNI, for example, was allocated an additional £4 million for injury in duty during the year from other easements that were recycled. There were other smaller ones, but that was probably the largest.

The Chairperson (Mr Givan): What about the PSNI's opening position? Did it hand any money back or seek additional funding throughout the year?

Ms Blair: I will quickly run through the PSNI budget. It started with £703 million and was allocated additional funding during the year. We allocated the pension funding that we received during the year, so it got an additional £30 million for that. It also got an additional £5 million from the tackling paramilitarism programme in-year, and on top of the opening allocation for Brexit, it got an additional £3 million. As I said, it got £4 million for injury in duty and £2 million to take forward legacy inquests. Overall, it had an increase of about £42 million, the largest part of that being for pension funding.

The Chairperson (Mr Givan): OK. Thank you.

Ms Dillon: I know that the Historical Investigations Unit (HIU) is dependent on legislation. Last week, I asked, I think, Anthony Harbinson about preparatory work. We know that the £150 million will not touch it, but are there any ideas of what kind of costs might be involved in it or what kind of money the

Finance Minister needs to bid for for the HIU? One part of it is money, but the other part is training people and all that, and the time that it will take to do that. Is that part of the problem? Is it that we do not know what the costs will be and how many people will need to be involved? What are the issues with being able to cost that?

Ms Rocks: I suppose that Anthony and access to justice colleagues would be more able to answer that question. It goes back to the point about not knowing what period will be covered in the legislation and what will be put in place. It is almost impossible to cost.

Mr Beattie: I already asked this question of somebody else, but it was the wrong person. The Northern Ireland Legal Services Agency has had its accounts qualified, and part of that qualification was because of fraud — there are other reasons — and some of that may be in the system itself. What are we doing to rectify that?

Ms Brown: The reason for the qualification is that we are unable to estimate, in any way, the level of fraud and error in the accounts. We are working with specialists from the Department for Communities (DFC) and drawing on their expertise. They have gone through this process before.

There are three areas of error that can be found. There can be official error, which is whatever happens within the organisation; applicant error; and professional error. We are working our way through, and cases have been tested to try to find out whether there are any levels of error. If there are things that we do not know, you can end up with what is called a "deemed error". That means that we have to look for more information and look back into the records to try to prove that the payment was legitimate, and there was no overpayment or underpayment etc. We are working our way through that process and working with the Audit Office. The accounts are qualified because we are unable to give an estimate of fraud and error.

Mr Beattie: One of the recommendations was that the taxing agent for the High Court should not be a High Court judge but a civil servant. Bearing in mind that he writes the certificates for legal aid for the High Court, is that being looked at?

Ms Brown: I am not sure about that. The whole issue of the taxing master is quite complex, and any changes will need primary legislation. We are looking at some cases that maybe would not need to go to the taxing master. We are looking at criminal appeals to the Court of Appeal and standardising the two main types of family law. We are looking at some areas, and I can get you more detail on that.

Mr Beattie: That is interesting. Are you talking about family civil cases and legal aid?

Ms Brown: Yes.

Mr Beattie: OK. Thank you. You drew down £7.5 million for tackling paramilitarism this year. What is that out of? What was the budget for that for this year? Is it £10 million or £15 million?

Ms Blair: On average, it was expected to be £10 million per year. However, at the start of the programme, it took a while for things to ramp up. I am not sure of the exact figure. We can come back to you because it is cross-departmental. It does not sit within the Department of Justice.

Mr Beattie: Absolutely. I am trying to find out whether we are using what we are entitled to use. You are absolutely right. I remember when it started because we did not use it, and we had to go through a fight to get it all carried on to the following year because it was a year-on-year budget. It would be useful to find out whether we are using what we are entitled to.

Ms Rocks: We are certainly using what we have drawn down and bid for but, as Louise says, we do not manage the overall programme.

Mr Beattie: Right, but what you need, we are getting.

Ms Blair: Absolutely. As far as I know, to the end of the 2019-2020 financial year, the tackling paramilitarism programme has been allocated about £31 million, so we would need £18 million to £19 million for next year.

Mr Dunne: Thanks very much for your presentation. I have the 2016 Northern Ireland Audit Office report, 'Managing Legal Aid'. It is a while ago, but some of us were not here for a time, so I appreciate it is maybe a bit dated. What was the total legal aid bill for 2018-19?

Ms Brown: This year, it is £88 million. Before we did some of our reform, the legal aid bill was sitting at about £105 million.

Mr Dunne: Not a bad answer. In 2014-15, the legal aid bill was £106.4 million, so you are going in the right direction. The year before that, it was £105.6 million. I appreciate that this report is somewhat dated. It has a number of recommendations, and I am sure that you are familiar with them. One recommendation is a need for reform in the use of expert witnesses. The report states:

"There is no set fee structure for this work. Fees payable under this General Authority have not been revised since 1992 and have an upper limit of £120 hour [sic]. The Agency must pay any amount claimed up to this limit ... We examined a number of legal aid case files and found that different experts charged different rates for reading and reporting on, for example, the same medical records."

What has been done to address that issue?

Ms Brown: I do have where we are on each recommendation, but I have to admit that I did not bring them with me. I am more than happy to come back to you on the issue.

Mr Dunne: Right. The other thing that Dougie and others touched on are internal controls on the prevention and detection of fraud. I am sure that you are fully aware of that. The report states:

"Where there are flaws in an organisation's counter fraud strategy, it is to be expected that these will impair its ability to detect the frauds perpetrated against it. Internal controls in the Agency have been relatively weak in detecting frauds. The primary control remains the vigilance of staff who process claims identifying anything suspicious, plus a small number of sample-based checks which are largely undocumented."

I find that rather alarming. It states that:

"reliance upon staff vigilance is undermined by the quality of the Agency's case management system".

Finally, it states:

"A one per cent sample check is applied to all payments."

One per cent, mind you:

"In 2013 the Agency determined that this testing 'should cease, it has not proven to be effective'. Despite this, it continues to perform these checks."

There are a number of major issues and non-compliances there that need to be addressed. Will you give us an assurance that there has been significant progress on addressing those issues?

Ms Brown: Yes, there has been a lot of progress on fraud and error, and learning lessons from our colleagues in DFC, who are working alongside us, which is around compliance, testing and checking, and then following up on those. As I said, I will come back to you with more detail on each of those recommendations.

Mr Dunne: I suppose it would take a significant culture change to address these issues. Are you aware of that within the system?

Ms Brown: Yes, absolutely. We brought in the legal aid management system in July last year.

Mr Dunne: The IT system?

Ms Brown: Yes, the IT system. That is a huge part of the Legal Services Agency's transformation programme. We have also done staff restructuring and have looked at how things are being done. Again, that is helping to change the culture and behaviours on some of those issues and improve some of the checking.

Mr Dunne: What about fraud awareness training? Are all staff who deal directly with these issues subject to fraud awareness training?

Ms Brown: Yes.

Mr Dunne: They are? Is it mandatory?

Ms Brown: I am not sure we would use the word "mandatory", but it is encouraged. Anyone who is working in that field will have had the training.

Mr Dunne: They should have had it?

Ms Brown: Yes.

Mr Dunne: OK. Is it fair to say that there has been a significant reduction in the budget?

Ms Brown: That is fair, yes.

The Chairperson (Mr Givan): No other members have questions. Just to clarify: the Minister plans to make a statement on 9 March or 10 March, I think it was.

Ms Brown: I think that that is the date, yes.

The Chairperson (Mr Givan): I assume that that is before the Treasury's Budget at Westminster.

Ms Brown: Yes, that is right.

The Chairperson (Mr Givan): I take it that it is in two stages. If there is any Barnett consequential uplift to Northern Ireland, we will have introduced a Budget, which, within a matter of weeks, may need significant changes to be made to it. Is that your understanding?

Ms Brown: Yes, that is our understanding. Of course, we outlined the monitoring round, so the next point at which we would have that money allocated is possibly the June monitoring round. We will wait and see what the process is around that and how, if we do get additional money, we will have the ability to spend that and then, also, having gone through the June monitoring round.

The Chairperson (Mr Givan): Are you expecting a one-year or two-year Budget?

Ms Brown: At this stage, I imagine that it will be a one-year Budget, but your guess is as good as mine.

Ms Rocks: The 'New Decade, New Approach' document talks about a multi-year Programme for Government aligned to a Budget. Therefore, timing-wise, you would expect, with the lead-in to that, a one-year Budget followed by a multi-year Budget.

The Chairperson (Mr Givan): Assuming that is Westminster-led, they would need to allocate that.

OK. Thank you very much.