



Northern Ireland  
Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

Consultation on Proposed COVID-19 Interim  
Payment Scheme for Legal Aid Suppliers:  
Department of Justice and  
Legal Services Agency

23 April 2020

# NORTHERN IRELAND ASSEMBLY

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Consultation on Proposed COVID-19 Interim Payment Scheme for Legal Aid  
Suppliers: Department of Justice and Legal Services Agency

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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  
Miss Rachel Woods

**Witnesses:**

Mr Eamon O'Connor                      Department of Justice  
Mr Paul Andrews                        Legal Services Agency

**The Chairperson (Mr Givan):** I welcome Eamon O'Connor and Paul Andrews to the meeting. You are both welcome. The meeting will be recorded by Hansard and published in due course. I will hand over to you, and I am sure that Committee members will then have some questions.

**Mr Paul Andrews (Legal Services Agency):** Thank you, Chair, for your welcome. I am Paul Andrews, the chief executive of the Legal Services Agency (LSA). My distant colleague is Eamon O'Connor, who is the acting deputy director for enabling access to justice. We welcome the opportunity to brief the Committee on the proposal for a COVID-19 interim payment scheme for legal aid suppliers.

The Committee will be aware from the briefing note that, given the challenging circumstances, a targeted consultation issued to the Law Society and the Bar on 10 April. In normal circumstances, we would, of course, have brought the proposal to the Committee's attention before issuing the paper. I assure the Committee that no discourtesy was intended by our approach in these unusual circumstances. In fact, the importance of the proposal is evident from the agreement of all parties to an abridged consultation period of five working days, which closed on Tuesday 21 April. The Minister will, of course, wish to consider the responses and, in particular, will want to have the benefit of the views of the Committee before reaching a final decision on the proposal to introduce a scheme.

I propose, Chair, to focus my introductory remarks on four issues, if I may: first, the need for an interim payment scheme; secondly, the universal scope of the proposal; thirdly, the design principles behind the scheme; and, fourthly and very briefly, some preliminary views on the consultation responses. With your agreement, Chair, I then propose to invite Eamon to make some remarks on the drafting of the ministerial direction that would enable the scheme. Hearing both sets of comments might give the Committee some broader context.

I will first deal with the need for an interim payment scheme. Legal aid in Northern Ireland supports access to justice through a network of over 400 solicitor firms that operate across 74 geographical locations. The network is supported by over 600 barristers who undertake legal aid work. The Department has a strategic interest in ensuring that there is not only a sustainable network of suppliers to provide advice, assistance and representation to individuals during the current crisis but one that can emerge from the crisis to continue to facilitate access to justice. The proposal for an interim payment scheme is intended to support the strategic interest of maintaining a sustainable network of suppliers to deliver access to justice.

Representative bodies have confirmed a significant change in the legal services landscape, with very few cases being disposed of by the courts and a downturn in privately paying work. Many suppliers undertake legal aid work. Some 200 firms of solicitors reported that they received over 80% of their income from legal aid. In the current climate, the dependence on existing legal aid cases as a guaranteed source of income will, no doubt, increase. Without a scheme, a sustained downturn in the legal services market could jeopardise the longer-term sustainability of an appropriate supplier base and, ultimately, access to justice. As the Committee will note, the proposal seeks to reflect the spirit of the procurement guidance note 01/20, which has been adopted by the Executive for supplier relief as a result of COVID-19 issues.

I turn now to the universal scope of the scheme. The consultation proposes a universal scheme for all suppliers holding an existing legal aid certificate for three months from the commencement of the scheme and on a rolling basis thereafter. That recognises the legal entitlement to payment that a certificate establishes and the dependence on legal aid as a source of income across the supplier network, irrespective of the size and scale of suppliers. The Department recognises that some suppliers have significant portfolios of legal aid cases and large overheads, while others — perhaps sole practitioners — have a small number of cases and corresponding lower overheads. However, the dependence on legal aid income can be as real for suppliers at either end of the spectrum.

The scheme also recognises that, in significant areas of legal aid work, suppliers cannot receive remuneration until a case is completed. In the vast majority of criminal cases and all family cases in the lower courts, suppliers absorb the costs of work undertaken across months and, on occasion, years before seeking remuneration. The universal nature of the proposed scheme is intended to provide some cash flow for firms with existing cases that cannot be brought to a natural conclusion at this time. That approach also future-proofs the support for the supplier base while restrictions remain in place and the current situation evolves. In addition, the proposal seeks to ensure that suppliers who have a modest number of cases are not disadvantaged from availing themselves of any scheme owing to the scale of their operations.

I turn now to the design principles behind the scheme. The proposed scheme has been designed around three broad principles. The first is to minimise risk to the public purse. That is sought to be achieved by establishing a qualifying period of three months so that there is already a legal entitlement to future payment and so that work has already been undertaken. We have proposed making one payment a case and have proposed a fee structure that minimises the risk of overpayment. That goes alongside the recoupment procedures that are already in place.

The second principle is simplicity not only to apply but to administer. I will give a practical example, Chair. In Magistrates' Court criminal cases, there are broadly five categories of case and nine disposal types, all of which have separate fees. Other areas, I can assure you, are more complicated than that. The proposal is to establish a single fee for a solicitor and a single fee for a barrister, and that will aid considerably in the efficiency of administering any such scheme.

We have a third principle built on the existing fee structures, and we propose interim fees based on those structures. Sometimes, it is a percentage of the fee; on other occasions, it is the full fee, where that is of a de minimis value.

The proposed scheme has been designed to operate alongside the determination of substantive claims, as we will continue to do business as usual, insofar as claims are available to us to assess. Thus, the scheme will result in some cases receiving only a small amount of what will be payable when the case is concluded, but our view is that that is an inevitable feature of having a low-risk, quick-turnaround scheme. The proposed scheme does not seek to change what will be paid for a case when it is determined; it simply creates an early payment of a small portion of the fee that will be netted off when the final bill is received.

I will make a comment about preliminary views from consultees. We have recently received consultation responses from the Law Society, the Bar and a small number of individuals. We will provide a post-consultation report to the Committee. Our initial review of the responses suggests that, while there is clearly strong endorsement of the need for a scheme and for a universal scheme, there is support for a simple scheme to apply and administer. The general response is that the level of fee proposed is too low. Many of the submissions are technical and detailed, and we will consider them. We will provide advice to the Minister in the coming days.

I am more than happy to take questions now, but, with your permission, Chair, it might be more helpful to allow Eamon to say something about the legal structure that will enable the scheme, if it is introduced, to be brought forward.

**The Chairperson (Mr Givan):** That makes sense.

**Mr Eamon O'Connor (Department of Justice):** As Paul said, I will deal with the draft ministerial direction, which can be found at page 13 of the consultation documents. The Department may give directions to the director of legal aid casework, pursuant to the powers arising from section 3(1) of the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014. The director must comply with such directions given on how the functions of the Legal Services Agency are to be exercised. The proposed direction is consistent with the existing statutory schemes for payment for civil legal aid services and criminal legal aid services, and it is general and strategic. The particular terms and conditions have been developed and set down in the interim payment scheme, which is detailed from page 16 onwards. The Department may issue directions relevant to the determination of remuneration for legal services, and I am satisfied that the proposed direction, which seeks to modify the modalities of payment to legal aid suppliers, is *intra vires*; that is, it is permissible within powers available under existing legislation.

The purpose of the direction is to authorise the director to introduce a scheme permitting interim payments of professional fees only to "suppliers", meaning solicitors or barristers. The proposed direction contains certain constraints on and limitations in any such scheme. Paragraph 1(a) states that payments can be permitted only where a full legal aid certificate is in place. Paragraph 2 states that the scheme shall extend only to professional fees, not to such things as travel, expenses and any other outlays that may be incurred. Paragraph 4 states that no application for an interim payment shall be accepted in respect of exceptional preparation claims in criminal proceedings or civil cases; for example, inquests, which receive exceptional funding.

Paragraph 5 states that no application for an interim payment shall be accepted if there has been a previous interim payment of professional fees for a particular case under the Legal Services Agency special payments policy, which is there to provide temporary financial assistance to suppliers deemed to be in severe financial hardship; if there have been other statutory interim payment provisions or other departmental directions issued in 2017 that allow for interim payments for exceptional preparation in criminal cases or civil cases that have received exceptional funding; or if there has been a previous application under the proposed interim payment scheme.

Paragraph 7 states that the scheme shall make provision for the recoupment of fees paid out at the earliest available opportunity. Schemes shall also allow for readjustments to claims that have been submitted for payment at the conclusion of a case to take account of any interim payment made. The scheme may also allow for the reimbursement of an interim payment from a supplier where they cease to trade or become insolvent.

The above provisions are intended to ensure the protection of public funds. The scheme is not intended to be the subject of the statutory appeals provisions set out in the remuneration legislation.

Finally, there is a sunset clause to ensure that the scheme has a certain end date. The direction states that the scheme shall expire three months after its commencement date but may be extended with the agreement of the Department of Justice and the Department of Finance for such periods as the director considers necessary for a maximum of a further three months, bringing the total to six months. During any extended period, the director shall keep the operation of the scheme under review and may, subject to providing the prescribed notice, terminate the scheme during that extended period.

Chair, we are both happy to take any questions that members may have.

**The Chairperson (Mr Givan):** OK. Thank you for outlining the scheme and the rationale behind it. Obviously, it is difficult time for those who are involved in providing legal services. I have a couple of broad questions before I get into the specifics of the scheme.

Legal practitioners face the same challenges as everybody faces. What access do those involved in the profession have to the existing schemes that have been announced, such as furloughing staff, and the support packages that have been put together? There are solicitor firms that should have been able to access the £10,000 grant. Most of them are in premises that are within the threshold to meet the criteria. My first question is this: are the schemes that are universally available being accessed by the legal profession, or are there those in the legal profession who, like others, are falling through the cracks?

**Mr Andrews:** I will take that question, Chair. We have deliberately not made the scheme dependent on an individual having fully accessed those matters. In practical terms, it is difficult for someone to show that they have done that at any point. They will have a number of cases that they can apply for.

From speaking to the Law Society, my understanding is that it has received representations from firms that are having difficulty accessing the support through the measures that have been announced. I do not have the detail of that, but that is the submission that I have received from the Law Society. I should say that the Law Society notifies its members two or three times a week of the schemes that are available.

The Bar is slightly different, because all its members are self-employed. The self-employment scheme will kick in in June, and the Bar has raised the point that a number of its members will not be able to avail themselves of that scheme. Some of them may be junior members of the Bar who do not have the required number of tax returns over the required number of years, some may have been on career breaks and some may, for other reasons, technically fall outside the threshold.

The spirit of the answer to your question is that people will seek to avail themselves of the schemes, but the message that we have received is that there have been difficulties with some solicitor's firms. I am afraid that I cannot give you more detail on that at this point, Chair.

**The Chairperson (Mr Givan):** I appreciate the issue with barristers being self-employed. That is something that I have heard from people who are self-employed and those, for example, who would have drawn down income through dividends, which is also not covered by the HMRC scheme. What I am trying to get at is this: why is there a particular need here, when others will say, "I have the same problems and dilemmas as people in the legal profession are face"? We need to do what we can to support everybody, but it is important to consider that, when new schemes are introduced, they will create a consequence and a knock-on effect for others, who will say, "There is a precedent. What about me?". I want to make sure that the Department of Justice is not acting in isolation from the broader ramifications of those schemes, but I recognise that there are particular circumstances and particular aspects of Departments that need to be addressed. On the self-employed aspect, are barristers not able to access the self-employed support scheme that HMRC has made provision for?

**Mr Andrews:** To the best of my knowledge, they will be able to access the scheme for the self-employed in June, subject to meeting the criteria.

The approach that we have taken in developing the scheme is to look at the procurement guidance note, which talks about "suppliers" and people who are "supplying services". We tend to refer to the Law Society and the Bar as "suppliers" of publicly funded legal services, so, while there is not a contract in place for the solicitor to do that — it is done under a legal aid certificate — in our view, it creates a legal entitlement to payment. We are trying to follow the same principle as the Executive established for suppliers of goods and services. We are saying that this is a legal service that is being provided, and that is the approach that we have taken to the development of the scheme.

**Mr O'Connor:** Chair, I will add that, in contrast to other schemes, we are not paying out any new money; this is simply an advance payment scheme for funds that practitioners would be entitled to in due course. It simply draws the money forward earlier than has been the case previously. We are not granting any money, and there is no new money. It is simply an advance payment scheme.

**The Chairperson (Mr Givan):** The documents indicate, though, that there is a resource requirement of nearly £1 million. If it is coming out of existing funding, why has a need been identified?

**Mr Andrews:** That figure relates to the situation where, as Eamon suggested, if some practitioners are unable to continue to practice, the certificate will transfer to another supplier to continue to deliver the service. If a supplier becomes bankrupt, there will continue to be a legal entitlement to payment for the work that was done, but a second firm will come in to pick up the case. The ring-fencing is simply to look at the scenario of someone who finds themselves bankrupt. We did some modelling that suggested that, in the greater scheme of things, if 10% of suppliers failed, you would have a maximum exposure of perhaps £750,000. That is just a bald estimate, because, in our view, the vast majority of suppliers, if they were to fail, would still be entitled to the fees that we had paid out. They may be entitled to an additional fee because they did more work up to the point of going bankrupt than the interim fee covered. That is an important factor in how we set the fees. That is a contingent fee that has been identified should there be a significant volume of suppliers who fail during the current economic crisis.

**The Chairperson (Mr Givan):** How has the fee been reached in terms of its appropriateness?

**Mr Andrews:** I go back to the example that I gave of the Magistrates' Court fees, where you have an array of scenarios. I refer to page 21 of the consultation document, for your ease of reference. There are nine categories of Magistrates' Court fees, and, for a solicitor, the lowest category is £265 or something like that. We took the lowest possible fee and suggested approximately half of that: £137.50. In reality, there will be cases that have a higher standard fee, but we adopted an approach of going to that lowest fee because that is the minimum that anyone will get. We reduced that by 50% because, if somebody passes it on as a case, that is what they would get in those circumstances. As you will appreciate, practitioners will argue that those fees are too low. We will listen to and consider the representations that we have received.

I go back to my other point, Chair: we usually get in the region of 20,000 criminal legal aid certificates in the Magistrates' Court in a year. To be honest, I do not have the capacity to resource a scheme to pay out with multiple levels of fees. It would increase the risk of an overpayment and a recoupment having to be made at a difficult time in the future for practitioners. One fee is easy to administer. We can do it with accuracy and speed, and we can get the money to the practitioners. The same approach, basically, has been adopted. I will give an additional example: we suggest one fee for a barrister, no matter what the type of barrister. In theory, in criminal matters, you could have four types of barrister. We want to make it simple and crisp. We may have received some representations about that, but we will consider those in the next day or so.

**The Chairperson (Mr Givan):** If you proceed with the level of fee that is currently suggested — I am not disagreeing with the rationale that you have argued, by the way — will there be a retrospective look at that when we emerge on the other side?

**Mr Andrews:** Yes, absolutely.

**The Chairperson (Mr Givan):** Will you say, "This was the emergency fee, but, having proceeded through that, we can now look back"? If there is a necessity to top that up, is that possible?

**Mr Andrews:** That is exactly what will happen. Take the example of someone who was paid £137.50. If that case is then disposed at a proper fee of £272 or whatever, we will pay the £272 and recoup the £137. Effectively, they will get the top-up fee at the close of the case.

One other point is that we have retained, with a slight modification, the special payments policy. That is a measure of last resort when a practitioner faces extreme financial hardship. Sometimes, that is to do with the fact that practitioners have a small number of cases that have run on for a long time and their income and cash flow have reduced. It means that, if someone is in particular hardship, having utilised the scheme, they can still make an application under the special payments policy. We can then look at it. If we see that all their cases were of a higher band than the one that we paid, we could safely pay additional funds to them to help them in their financial hardship. It gives us a way of dealing with things that continues to protect public money should there be further hardship.

**The Chairperson (Mr Givan):** OK. That was helpful. It has helped to clarify issues for me.

**Ms Dillon:** The Chair has covered most of the issues. Will those who fall without this scheme be speaking to the Economy Minister, for example, about circumstances? As a constituency MLA, I lobby the Economy Minister on behalf of those whom we want to see caught by the hardship scheme. Has

the information from the Bar gone to the Economy Minister? Can we establish that somehow to make sure that, if they will not be paid from the scheme in a way that allows them to continue to practise, that, at least, is looked at as part of the hardship scheme that the Economy Minister said she would bring forward? We are highlighting a number of cases, and this is potentially another one that should be highlighted, if the need is not to be met by the Justice Department.

Your last comment was that, if practitioners utilise the interim scheme, they can still utilise the existing hardship scheme.

**Mr Andrews:** Yes.

**Ms Dillon:** What are the criteria for getting funds from that scheme? How difficult is it?

**Mr Andrews:** It is difficult, which is why we propose a simple and easy-to-administer applications scheme to allow cash flow to go through firms. In the hardship scheme, I think, we would have to be satisfied that there was sufficient work to cover the costs that they sought to take from us. In our interim payment scheme, we assume that three months' worth of work is there and that we can safely pay funds that will probably be slightly less than what they would have got to date. On the other side of things, if they get money from the hardship fund, they will have to identify cases and say, "This is the work that I have done, and it is significantly more than that" As a scheme, it is more intrusive because it is a scheme of last resort.

In answer to the first part of your question, to the best of my knowledge and subject to correction from Eamon, we have not shared this with the Minister for the Economy. We can do so. We are saying that there is an internal mechanism for legal aid practitioners to deal with that. My practical observation is that, in rural constituencies, there is a mix of legal aid and privately paid work. An economic downturn might mean that people's financial circumstances change dramatically, and they might not be taking forward the privately paid work that they did previously. That seems to be the feedback that is coming through the system at present.

**Ms Dillon:** That will be important. We want one of the Ministers — somebody, somewhere — to make sure that all of these people are still in business after the crisis. Some, of course, will not make it through, and we understand that. However, at the end of the day, it is the responsibility of the Justice Minister to make sure that people have access to justice and, on the other side of this, do not struggle to get a barrister. We already have issues with the time that the court process takes. If we start to have issues with people being unable to get access to a barrister or solicitor to represent them, that will not be good. We already have enough difficulties and do not need to create further difficulties. The Minister has a responsibility to at least speak to the Economy Minister to see whether she can ensure that as many of these people as possible are still in business on the other side of this.

**Mr Andrews:** I am happy to take that point forward. As I tried to make clear in my opening remarks, a platform of sustainable access to justice is vital for the Department. The fact that we have a good geographical spread of access points throughout the jurisdiction is important, and, as far as possible, we want to maintain that.

**Mr Dunne:** Thanks very much for your presentation. Is it fair to say that many in the legal profession are working from home?

**Mr Andrews:** As far as I know, Law Society House and the Bar Library are closed. I suspect that an awful lot of firms are pretty much mothballed at present.

**Mr Dunne:** Yes. I have been working with some of those firms and am aware of their problems with premises and getting access to existing schemes. They do not meet the criteria, especially for the £25,000 scheme, so we are lobbying for them. I am on the Economy Committee, and we regularly liaise with the Minister and her staff to raise those issues with them. It is a difficult one.

To get a payment, must a firm have a case on its system or show evidence that it has been active on that case? Is it just a matter of having a case registered on its IT system?

**Mr Andrews:** If it would be of assistance, I can take you to the scheme documentation. We are in the tremendously fortunate position of having a digital online application process. People do not need to

be in their office; they can apply through their IT at home. We are also in the fortunate position, as more laptops become available, that we have more people processing payments at home.

For your information, last month, we processed £7.64 million of payments. This month, we are on target to do something very similar. At the close of play yesterday, we had processed £6.9 million. I make that point to pay testament to the staff, who, in very difficult circumstances, are providing an extremely high level of service.

**Mr Dunne:** Sorry, is that per month?

**Mr Andrews:** Yes, per month. Under the scheme, if someone has a legal aid certificate, it is on the legal aid management system (LAMS), and they can, therefore, apply in the normal way. We are not looking for anything other than two things. If it is a criminal case, we are looking only for the fact that the case is there — nothing else. The court will have granted criminal legal aid, so we will know that the case is progressing, and the condition will have been met. For civil cases, because many do not end up in court but are settled, in terms, outside of court, we cannot look to the court system as a mechanism. However, if there are court orders, we are simply looking for an uplift of a court order to prove that work is being done, or a simple letter that shows an exchange between parties and that work has been done.

We are not trying to make it difficult. We are just trying to ensure that we are satisfied that not only is there a certificate but that that certificate has produced some level of activity. We are looking for a de minimis amount of evidence because the certificate guarantees payment at some point anyway.

**Mr Dunne:** They will have gone through an approvals system.

**Mr Andrews:** Yes.

**Mr Dunne:** Also, it has been authorised, so they do not need to show any real evidence of having done work.

**Mr Andrews:** It is just evidence that the case is a live case, effectively.

**Mr Dunne:** What would happen if the case were to be cancelled? Would the payment be recovered?

**Mr Andrews:** I will not make you an offender for the sake of a word, but that covers a range of scenarios. For example, as you will appreciate, what can happen in normal business is that a client can decide to move to another firm of solicitors. The system already deals with that daily, and the interim payment scheme will deal with that on the normal business side of things. The firm will produce a report that states, "We no longer act for this person", we will process it and recognise that an interim payment has been made. The level of that interim payment will probably mean that no further action is required.

There can, however, be a slightly different scenario, and I mention this for a reason. Someone can have their legal aid certificate suspended and, perhaps, revoked, if they do not continue to make contributions. We are saying to solicitors that, whatever they do, they should not let their clients get into that position. If a client cannot make their contributions because their financial circumstances have changed, solicitors should come to us immediately, and we will reassess it. It is likely that their contributions will go down or, if they enter the benefits system, they might not have to contribute. We are getting messages out to solicitors and telling them that we need to be proactive and to protect people's rights. It is easy to stop making a contribution because you think that there will be no consequence to it, but there can be. That could lead to the certificate being revoked, and we would have to deal with the aftermath of that. In principle, with the level at which the fees are currently pitched, we do not think that there is significant exposure to the public purse, because the amount paid is likely to correspond to what they would be due, and we suspect that additional payments might be due. Eamon, do you want to add anything?

**Mr O'Connor:** I have nothing to add. No. The payments are pitched at a level that means that, realistically, there will be a further payment at the end of the case.

**Mr Dunne:** Right. It is significant that this affects about 43% of solicitors out there.

**Mr Andrews:** To be honest, I suspect that it will affect a percentage of well into the 80s of solicitors who undertake legal aid work. The 43% are those who say that they are dependent on legal aid for over 80% of their income. I suspect that the income flow from privately paying clients will significantly reduce, and, in the current climate, the dependence on legal aid will be exaggerated because it is a state benefit, in that sense, which guarantees payment if you have such a certificate.

**Mr Dunne:** Right, OK. Thanks very much.

**Mr Beattie:** Thank you. Paul, I have to say that it is fascinating. When you delve into the issue, it can be extremely complicated. I am no expert on the subject, but access to justice is incredibly important, and we need ensure that it is there. As we go through these extraordinary times, whatever we can do to help to ease the hardship of individuals, be they solicitors, barristers or anybody else, we need to step in and try to do that. In broad principle, I absolutely support this.

I want to return to something that the Chair said. He was absolutely right, and it is worth putting on record. He said that this hardship is spread right across Northern Ireland, the wider United Kingdom and, in many ways, the wider world. I reflect on, for example, taxi drivers, who can no longer drive and have to wait for the self-employed income support scheme, which will not kick in until June. They have to make do, and, in many ways, nobody is stepping up for them. Others are missing out in the same way, but you have been very proactive and are putting something in place.

I want to look at one of the underpinning principles of the scheme. Paragraph 2.5(a) states that the scheme:

*"sits alongside ... other forms of relief".*

Does that mean that, in essence, solicitors and barristers can avail themselves of the scheme that you are putting in place and also apply for the self-employed income support scheme?

**Mr Andrews:** Yes.

**Mr Beattie:** Can their firms also apply for the £10k grant or, in some cases, the £25k grant scheme? We do not know where that money will go. Those solicitors or barristers could have streams of income coming from three or four different directions.

**Mr Andrews:** That is the point that I was trying to make to the Chair, Mr Beattie. In essence, the answer to all those questions is yes. I made the point to Mr Dunne that there is some evidence of firms not being able to avail themselves of those schemes. I cannot produce that evidence; it is anecdotal to me at present. Mr Dunne may have practical illustrations.

I will say two things in response to your point. First, I can deal only with firms that have legal aid cases, because those are the only firms that I have relationships with, and I can deal only with those firms' legal aid cases. Other aspects of the work are being done by firms outwith legal aid, and we cannot make one scheme dependent on the other. At the point of time A, a firm may not, for whatever reason, have received any of that assistance, and we could be paying out to them. If we had to keep asking firms where they were with their other applications every time they made an application, the whole thing would grind to an inglorious halt and might undo the very thing that we are trying to do.

I fully appreciate your point. We thought about whether we could link the schemes. However, we thought that, practically, it would be so difficult to do that.

**Mr Beattie:** Yes, but you can see the point that I am making, Paul.

**Mr Andrews:** Absolutely.

**Mr Beattie:** It is not your fault; it is not their fault. You have been proactive in putting something in place. If you look at this in the wider scheme, there will be people, not necessarily linked to the Justice Committee or anybody else, saying, "Hold on. Why are there no schemes in place that cover us in exactly the same way?". You are right: a self-employed income support scheme that kicks off in June does not help you or your members in March, April or May. I am raising the issue so that I can be absolutely clear. I could never oppose it, because you have to help people in difficulty, so I do not

oppose it. I just want clarity. Will you clarify that — I might have missed what Gordon said, so this is just for me — even now, within your sector, legal aid certificates are still being issued online?

**Mr Andrews:** Yes.

**Mr Beattie:** So, a new legal aid certificate could be issued today.

**Mr Andrews:** Yes.

**Mr Beattie:** The individual would be entitled to this interim payment three months from today.

**Mr Andrews:** Two months from today.

**Mr Beattie:** Is that right?

**Mr Andrews:** Absolutely right. I was going to make a point of candour, if I may, about what we have seen.

**Mr Beattie:** That is a big word.

**Mr Andrews:** You asked the question. I suspect that there is a point to that question. If I deal with that point, it may be of more assistance to you. We have seen a significant fall in the granting of legal aid. As there are no public holidays in November, we took those four weeks and treated that as a normal month. We then took 16 March to 10 April as being the most recent point up to the Easter holidays. During that period, we saw a 48% reduction in applications for legal aid. That included the granting of criminal legal aid by the courts and by us. There is a variety of reasons for that: perhaps not having the same contact with clients; or maybe clients are not seeking advice in the way they did previously. However, we continue to operate. We had the advantage of moving on to our digital system over the summer, so, effectively, we had a methodology of dealing with things offline, which we have continued.

There was a question in the Committee's letter to the Minister about whether judicial reviews are being processed. Yes, if there are applications for them and they are emergencies, they are being processed. There is still a good flow of applications relating to domestic violence, and they are being dealt with on a same day basis. As we have more people, we will move to going into the normal work in progress, and we are progressing those. There will be new cases that, in three months' time, will qualify under the scheme, but the point that I am trying to make is that the number of those is going down. In future weeks, we might see a bit of a change to that, but it is one of the reasons for introducing the scheme at this point. We know that we have probably 23,000 to 24,000 certificates that can qualify at the minute. There will be a run-down in future months. I hope that that was of assistance.

**Mr Beattie:** It answers my query, Paul. Thank you very much.

**Mr Frew:** I tried to follow that as best as I could, but I ask for a fool's pardon if I ask a question that has already been answered or was explained in the opening remarks. This is an interim payment. It is not new money or a new payment. It is just an advance on what the solicitor or barrister would get under normal circumstances. Is that correct?

**Mr O'Connor:** That is correct.

**Mr Andrews:** Absolutely, Mr Frew. From your experience on the Justice Committee, you will know that, if we were changing the remuneration rates, no one would have agreed to a five-day consultation period. It is, effectively, simply a way to give interim relief and cash flow. No doubt, you caught the Chair's point about the contingency aspect. That was simply to recognise that some firms may become bankrupt, which would mean an additional cost. However, as you appreciate, one of the things we are trying to avoid is the unnecessary bankruptcy of any legal service providers.

**Mr Frew:** Yes. It is also the case that there is always a lag when it comes to applying for these payments. If I am right in my understanding, solicitors can hold off from applying for that money for months and then hand in their chips, if you like, and get money at any time. Let me paint this picture:

there is a curve of hardship because of a lack of work and money coming in for some solicitors and barristers, whether they are self-employed or firms. They could flatten that curve of hardship because they could apply for all of that outstanding money now, and then, when the crisis is over, work will surely ramp up again and everyone in society, hopefully, will be very busy. That wave of work may make up for the lean period now, whether it be a month, three months or whatever. Is it not the case that solicitors and barristers may have the ability to protect themselves from the worst excesses of hardship in the coming weeks?

**Mr Andrews:** I thought that you were going in to the seven fat years and seven lean years there, Mr Frew.

**Mr Frew:** Yes.

**Mr Andrews:** I think that we are describing the same thing but in a slightly different way. What happens in practice is that legal firms that do legal aid work predominantly live today on work that they did two or three years ago. There is a time lag; you are quite right in that respect. The fundamental difficulty is that so few cases are being disposed of that there has been a breach in the business cycle that they are used to. You will recall the time of the Crown Court strike from a previous mandate. You then had a surge of cases that came through at a later time. There will be an element of that, but I suspect that the critical thing is this: when will we get to the point where something approaching normal business is resumed, and how quickly can cases then be disposed of? My suspicion is that firms that can bill any work now are sending those bills in to us. I said to Mr Beattie that the applications had gone down by 48%. The bills that we received over the same period have gone down by 32%, but I suspect that that percentage will increase further because so few additional cases are being disposed of. Effectively, you are right: it is a timing issue. We need to get people to the point at which they are able to bill normally again and get a cycle of cash flow re-established.

**Mr Frew:** Let us look at the wider panoramic view at a higher level; we in the Committee still have concerns about the legal aid bill to society and the ratepayer. The interim or advance payment should have no effect on the legal aid bill and burden. If it does, either negatively or positively, will you explain why?

**Mr Andrews:** The money that I get as my budget allocation for 2020-21 will be the money that is used, in the first instance, to pay those interim payment bills and other bills that come in. The only point of difference that it makes is that it skews the time at which a part payment is made. The second point, just to be absolutely clear, is that I cannot say that there is no possibility that there will not be an additional cost. If a significant number of firms do not survive the crisis, a transfer cost to another firm would be incurred. I think that that was the £1 million that the Chair referred to at the outset. My point in response to that, Mr Frew, is that, in reality, those firms would still be entitled to a payment anyway. We will have to establish, on a case-by-case basis, whether they are entitled to an enhanced payment or whether they owe us some money. If they owe us some money, we are into a debt-recovery scenario.

**Mr Frew:** Thank you very much for your answers. You have explained it very well for me. I am on the same page as the Chair and Doug on this. Access to justice is fundamental in any democracy and must be protected, yet we do not have a taxi firm interim payment, a brickies' interim payment or a sparks' interim payment. We are treating barristers and solicitors differently from others. They still can still avail themselves of all the schemes, as well as a possible mop-up scheme, a further hardship scheme or even a recovery scheme in the weeks ahead. There should be no reason why barristers and solicitors cannot avail themselves of any of those. We need to be careful here and monitor this.

There is an additional burden on the taxpayer, and, although one aspect of business and society is shielded and protected, we actually want to shield and protect everyone in society and business. We do not want to let down people in other aspects and sectors of society, business and the economy. That is a moral question, going forward. Thank you for your answers today.

**The Chairperson (Mr Givan):** Rachel, do you want to come in?

**Miss Woods:** Yes, thank you. My phone cut out halfway through that, so apologies if my questions have already been asked. I apologise.

**The Chairperson (Mr Givan):** You are OK.

**Miss Woods:** I have just a few questions. Is there a current interim payment scheme or is the special payments hardship scheme that you mentioned earlier the other scheme that people can avail themselves off? If there is an interim payment scheme, how do these figures stack up in comparison?

**Mr Andrews:** OK. I am not sure whether you caught my opening remarks where I made the point that, in the vast majority of criminal cases and family cases in the lower courts, there is no interim payment scheme for day-to-day profit costs. If the case, however, is before the High Court or the County Court, in a civil scheme, there is a statutory provision for interim payment. What we have done is incorporated that existing statutory scheme within the remit of our interim payment scheme so that there is consistency of approach, and we have adopted the historical rates for that higher court civil interim payment scheme within this scheme and used it as a benchmark. What we are trying to do, if I can put it in simple terms, is make sure that every practitioner who does every sort of case is in a similar position to those few who do High Court and County Court actions.

**Miss Woods:** OK. Thank you. You commented earlier on the consultation that has been done with the Bar and others on the matter. Do you think that that is sufficient? I would like to hear a wee bit more from the providers before making a decision on this. How do you intend to direct the concerns raised already with you by those respondents?

**Mr Andrews:** We received the responses on Tuesday evening. Eamon and I have had a quick read through them. Some of them are very detailed and technical, and we will have to go through them more slowly. If I may make a point, if everyone wants an interim payment scheme, the sooner there is an interim payment scheme to enable people to survive, the better. If the Law Society and the Bar wish to make representations, they are, of course, at liberty to do so. I am bringing the matter to the Minister, with the benefit of any views that the Committee wishes to offer, but I suspect that we would like to move at pace on this because the longer we delay, the more likely it is that some firms or individual barristers could find themselves in particular difficulties. I am open to the views of the Committee on how it wishes to proceed.

**Miss Woods:** OK. Finally, has the difference between the payments for junior counsel and senior counsel been factored in, in that a large number of junior council could, in comparison with senior counsel, be adversely affected by the fees outlined in the scheme? Has that been looked at?

**Mr Andrews:** If I may say so, I think that the Bar's comments are exactly the opposite: that senior counsel are disadvantaged.

**Miss Woods:** OK, but, in general, would there not be more junior counsel dealing with legal aid?

**Mr Andrews:** Yes, but our proposal is that everyone would get exactly the same fee.

**Miss Woods:** OK. Thank you.

**The Chairperson (Mr Givan):** OK. Are there any other questions that members want to raise? Paul and Eamon, thank you very much for your presentation. The consultation finishes when?

**Mr Andrews:** It finished on Tuesday.

**The Chairperson (Mr Givan):** Is the final level of fee still under consideration?

**Mr Andrews:** That is exactly what we are going to after this meeting, Chair.

**The Chairperson (Mr Givan):** Members have all raised their points. I have set the context and flagged up some of the broader issues that we need to be cognisant of. I take the point that this is about the supply chain and government finding a mechanism to make payments for that supply chain. I distinguish that, I suppose, from the broader support packages that are available, so it is on that basis that I am content with where you are going on this. Obviously, you will need to take your final view on the proposals on the fee that needs to be paid and caveat that with, "There is a mechanism to get that topped up".

**Mr Andrews:** Exactly.

**The Chairperson (Mr Givan):** This is about the most effective means of getting something out to allow people to continue, and therefore there is a justification for the approach that the Department is taking. Obviously, it is a matter for the Department to proceed on.

That is my view and that of my party; it is not necessarily an official Committee view. I am happy to open it up to members, if they want to elaborate or feel that that is necessary.

**Ms Dillon:** I do not, other than to say that, to be fair, if some of the other schemes had been simplified, people would have appreciated it — the taxi drivers and those who have to wait until June to get any kind of payment, as Doug and others mentioned. I understand the rationale for simplifying the issue. There is no such thing as a perfect scheme, particularly not in these circumstances. We have debated schemes for months and years, and they still have not been perfect. When you bring something in in this kind of timescale, it will be anything but perfect, but trying to get some money to some people to keep things ticking over is probably the only way in which we can move forward at this stage.

I concur with what the Chairperson said about how we need to put the best possible scheme in place. You have said that you will read over the responses that you have got. If something comes up in those that highlights a real risk, I would certainly like you to be cognisant of that, but we have to get something out to people.

**Mr Andrews:** We will, of course, share the response to the consultees document in the normal way, so that you get full visibility of that.

**The Chairperson (Mr Givan):** OK. Doug, are you content?

**Mr Beattie:** I am content, yes.

**The Chairperson (Mr Givan):** Are members happy with that general narrative that Linda and I have articulated? There is no perfect scheme. It is not without its issues, and, no doubt, there will be representation mad. However, given the circumstances, it is a caveated understanding of what the Department proposes and is certainly not an objection to proceeding.

**Mr Andrews:** Thank you very much, Chairperson. I thank the members for their questions.

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