



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Bar of Northern Ireland and
Law Society of Northern Ireland

7 March 2024

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Joanne Bunting (Chairperson)
Miss Deirdre Hargey (Deputy Chairperson)
Mr Maurice Bradley
Mr Stewart Dickson
Mr Alex Easton
Mrs Ciara Ferguson
Mr Justin McNulty

Witnesses:

Mr David A Lavery CB	Law Society Northern Ireland
Mr Darren Toombs	Law Society Northern Ireland
Mr David Mulholland	The Bar of Northern Ireland
Ms Moira Smyth KC	The Bar of Northern Ireland

The Chairperson (Ms Bunting): We have a briefing by the Bar of Northern Ireland and the Law Society of Northern Ireland — a number of us have met them previously — so that members of the profession can provide the Committee with some background on their roles and talk to us about the issues in the justice system. One witness has been unable to make it, but we have David Mulholland, chief executive, Bar of Northern Ireland; Moira Smyth KC, chair of the Bar of Northern Ireland; David Lavery, chief executive, Law Society of Northern Ireland; and Darren Toombs, president, Law Society of Northern Ireland. We have received apologies from Brian Archer, senior vice president, Law Society of Northern Ireland.

Ladies and gentlemen, you are very welcome. Thank you very much for coming. I appreciate that there are four of you, and I understand that Moira will give the opening presentation. We are keen that we should have as much time as possible to engage in a conversation, so there will be 10 or 15 minutes for your briefing, and we can then move to questions. Is that all right?

Ms Moira Smyth (The Bar of Northern Ireland): That is great.

The Chairperson (Ms Bunting): That is lovely. Thank you very much.

Ms Smyth: Thank you, Chair. I am pleased, along with the chief executive of the Bar of Northern Ireland, David Mulholland, to take the opportunity to brief the new Justice Committee so early in the mandate.

The Bar recognises the important scrutiny, policy development and consultation function of the Committee, and we welcome your efforts at a critical time for the justice sector. The Bar seeks to

advance a positive, proud and strategic vision for justice. Therefore, it is important that we work constructively with the Committee. Today, we will highlight several areas of concern for the Bar around the administration of justice and will suggest that the Committee might apply its focus and scrutiny to those areas.

We provided the Committee with a succinct briefing paper ahead of today. The paper, hopefully, has given you background information on the Bar of Northern Ireland and details on some relevant issues for us. For now, I will provide you with a brief overview.

The Bar of Northern Ireland and the Law Society appeared before the previous Justice Committee in February 2022. Then, we sounded a warning around generational harm to the justice system in the context of a draft Budget that proposed a net budget decrease in funding for justice. Indeed, under the terms of that draft Budget, justice would be the only Department to experience a net budget decrease, according to the Northern Ireland Fiscal Council's analysis. Many of the warnings that we sounded back in 2022 have been realised. Today, we see many of the issues that are apparent in the health system manifesting across the justice system: long delays, a dedicated but stretched and pressured workforce, historical underinvestment in the system; and the need for structural reform.

A particular pressure point has materialised around extended delays in the payment of legal professionals for publicly funded work under the legal aid system. The Bar does not accept that payments to legal professionals should be slowed down as a budget management mechanism on the part of the Legal Services Agency (LSA), particularly when all other suppliers are typically paid by the LSA within 30 days as a prompt payment practice. We say that the Department, in choosing to apply payment delays as a budget management measure, is placing barristers in a wholly unsatisfactory, unprecedented and unsustainable position whereby they, rather than the public purse, are, effectively, funding service delivery. That is creating hardship for many of our practitioners. Unfortunately, that is particularly the case among our younger female barristers, who cannot wait up to the previously projected up to six months for payment. Many, unfortunately, have been forced to leave the Bar altogether or to shift away from publicly funded legal aid work.

That means that the Bar, despite proactively taking action to improve diversity, will be less representative of society and will face a generational crisis to replenish the pool of legal aid barristers. Barristers who might, potentially, retain a viable practice will be under huge financial and workload pressures, and, ultimately, that threatens meaningful access to justice for people across Northern Ireland: for all citizens, including your constituents, members of the Committee. I invite the Committee to look at that issue further.

We may, indeed, agree, as was pointed out by the Fiscal Council, that the Department has been underfunded and its budget is under pressure. However, the Committee may want to ask why the Department's budgetary management decisions have resulted in delays in paying only one category of supplier, namely lawyers, whilst the others continue to be paid promptly. The Committee may also want to examine why, given that the Department has been made aware of the damage that the payment delay policy is having on the viability of the profession and access to justice, the policy continues.

You, rightly, previously recognised the demand-led nature of the services offered by legal professionals. Barristers are not responsible for the legal aid rates that they are in receipt of. Furthermore, they cannot insert themselves into legally aided cases of their own accord. It is worth highlighting that rates of payment for legally aided work have not been reviewed when they should have been and have remained static for decades, falling chronically behind inflation. For example, rates for criminal legally aided work have, when adjusting for inflation, plummeted by between 47% and 58% since 2005.

The system is in clear need of review. Accordingly, the Bar welcomes the fundamental review of criminal legal aid being conducted by Judge Tom Burgess. The review takes place at a time when the budget for legal aid in Northern Ireland has fallen significantly behind public need and the necessary public policy of speeding up justice. The Bar has been informed that the Department is preparing to launch a call for evidence as part of a civil legal aid review. Officials briefed the Committee on that last week.

I stress the need for the Department to engage meaningfully with the legal professions and other stakeholders if it is to deliver its strategic aims.

Thank you for listening. I am happy to follow up on any matters that the Committee might wish me to. I now ask the Law Society president, Darren Toombs, to make his opening remarks on behalf of the solicitors' profession.

Mr Darren Toombs (Law Society Northern Ireland): Thank you, Moira. Good afternoon, everyone. As its president, I welcome this opportunity to brief the Committee on behalf of the Law Society of Northern Ireland. I hope that this is the first of many constructive meetings between the society and the Committee, as I believe that we will have many aims in common. I am president of the Law Society, but I am also a solicitor in practice. I balance those two roles; I am double-jobbing.

The last time that the Law Society gave evidence to the Committee was in February 2022. During that session, David Lavery, our CEO, who is with me, and Brian Archer, who, unfortunately, cannot be, challenged the budget that had been proposed, which would have caused generational harm, as Moira said, to access to justice in Northern Ireland. Thankfully, helped by the work of the Committee, and representations from the legal profession and others, that budget was never implemented. However, we are two years on, and many of the core problems in our justice system remain unaddressed. Access to justice, in particular, remains seriously under threat.

Ahead of this afternoon's meeting, the society shared with the Committee its 'Justice Agenda' document. I have a copy of here; I hope that you all have received a copy. The document sets out our thinking on the key policy priorities for justice. In the interest of time, I will only briefly mention some of the issues that we raise in the document.

Access to justice is, perhaps unsurprisingly, at its very heart, based on the belief that access to justice is a key protection for the rights of our most vulnerable citizens. Essentially, what we are calling for is realistic investment in that area. We welcome Judge Tom Burgess's appointment to lead the fundamental criminal legal aid review. The society will do everything that it can to support the review. We hope to see further independent reviews of civil and family legal aid, too, as the situation facing our members doing legal aid work is extremely difficult. We want to see the legal aid sector put on a sustainable footing. I had hoped that Brian could be here to talk about his experience at the coalface of legal aid work. I originally qualified as a legal aid criminal lawyer some 23 or 24 years ago, and I worked in a firm doing that type of work for the first three or four years of my career. I do not do it any more, but, somewhat shockingly when I look back, I see that the rates for legal aid are almost the same today as they were 22 or 23 years ago when I worked in a small local practice in west Belfast, a high street firm.

Upholding the rule of law is another key theme for the Law Society. Unfortunately, in recent years, we have seen a rise in attacks on legal professionals for simply doing their jobs. We are therefore proposing measures to increase support of the rule of law. That will include the rule of law pledge, which we will shortly be launching. That is a pledge to uphold the rule of law and the independence of the legal profession. We hope that the Justice Minister and the members of the Committee will agree to support the pledge. We also hope that, going forward from that, all Members in this Building will support that pledge.

One final theme is justice reform. We have a situation where cases are taking so long to come to court that victims are giving up hope and withdrawing. Therefore, we know that something is deeply wrong. Our key message here is that we desperately need to break down silos and see greater collaboration. Justice does not sit in isolation; it impacts and is impacted by health, housing and education, to name a few. Consequently, if you get justice right, you improve outcomes in those areas too, and, if you do not get it right, you will see the harm spread too. We are calling for joint working by all relevant stakeholders to come together to improve outcomes for society.

That feels like an appropriate place to conclude these opening remarks, and I look forward to further discussion on these topics or, indeed, on anything else on which the Committee would like our input. At some point in the previous session, reference was made to seven-days-a-week courts, and I might have a few comments on that.

The Chairperson (Ms Bunting): Fair enough. I thought you might.

Mr Bradley: I hope that it pleases you to know that I am against seven-days-a-week courts. Six days a week I am all right with.

Mr Toombs: There already are six-days-a-week courts. There are plenty of Saturday morning courts.

Mr Bradley: I am all right with that. Leave Sundays alone.

I am great believer that, if you have a bill, pay it. I am a wee bit disappointed that the legal profession, according to your figures, has up to £26 million in unpaid bills in 2022-23. That is a disgrace. If the Assembly and the Department of Justice really value justice, we have to pay our bills and pay them on time. That has to be factored into the budget. I agree with you 100% that the Justice budget is nowhere near enough for the Department to work efficiently and for us to carry out our duties efficiently.

Can you expand on your thoughts on the trainee support scheme for legal practices? Can you also give me a bit more background on your proposals for your rule of law pledge?

Mr Toombs: I will take the bit on the trainee support scheme, and maybe David will follow up. As well as being a solicitor in practice and the president, I am chair of our education committee, so I look after the area that looks after young trainee solicitors. What we are seeing is that the larger commercial firms, such as the one that I work in, are financially able to take on apprentices whereas some of the smaller legal aid firms just are not. An apprentice, over the course of two years of training, will cost you somewhere in the guts of £50,000 if you pay them the minimum wage or the living wage for their time in training over the two years. Some firms are prepared to pay their training fees whilst they are at the institute, so that could be as much as £50,000. A small local legal aid firm simply cannot pay that, and the result of that is that that firm does not have a trainee following through. It cannot afford to have a trainee following through. Those are predominantly the firms that do the criminal work out there in the communities, providing the on-the-spot support for people when they are arrested and are taken to the custody suite and appear in the local court, maybe on a Saturday morning. They simply do not have the trainees at the moment. There is a scheme in Scotland that has the aim of supporting criminal legal aid practices to take on trainees. In our Law Society, we have recognised that some young people have difficulty entering the profession. Lack of finances is seen as being a barrier to entry. Just last year, we provided bursaries to pay the fees of two young people who otherwise could not have afforded to pay them. If we as a law society — a members' organisation with fees being paid in — can see the need for something like that, we hope that the Committee can see that need and can think strategically about how something could be brought about, for one, two or three trainee solicitors. There are probably places outside Belfast, particularly in places such as County Fermanagh, where practices have no trainees. There are possibly one or two other counties that do not have any trainee solicitors. I do not think that the constituency of South Down, from where I am originally, has had a trainee train in any of the local practices in quite a few years, particularly in the field of criminal law. The profession is just not enticing young people.

We are also saying that, if, unfortunately, you happen to be arrested for something, the solicitor who turns up in your custody suite will probably be over 40, and probably even over 50. It will not be someone in their 20s or 30s. The people are just not coming through. In the past month or two, we saw one of the leading criminal legal aid firms in Belfast, which has been a very well known name for the past 50 or 60 years, close down.

That was probably far too much information for such a short question.

Mr Bradley: No, it was fine. Thank you.

Mr David A Lavery (Law Society Northern Ireland): I will follow up with Maurice.

Ms Ferguson: May I comment on that? This is coming from what I hear in the neighbourhoods and communities and from knowing a lot of young people, given that my kids are all in their late 20s. A lot of their friends studied law, and all of them, because of their analytical skills, have been attracted into the private sector and the likes of financial services, even my kids. They do not see law as being attractive. There is therefore a piece of work to do there. In Derry, we have a fantastic law degree programme, with young graduates coming out of it. They are being snapped up straight away, however, by the likes of pharmaceutical, research and financial services companies, because they pay a good salary, are local and are offering nine-to-five jobs. I am conscious that there is a bigger piece of work to do on how we can provide the profession with encouragement and support.

Mr Lavery: We have brought with us a report on the solicitor profession, which, if the Clerk agrees, I will leave with the Committee. It will give you a lot of interesting information. There are about 3,000 solicitors in private practice in Northern Ireland at the minute, and more than half of them are female. When I started training, many years ago, 17% of the class were female. This year, 71% are female. It

is therefore becoming a female profession. Those solicitors' expectations are different. They want to work in large commercial firms, because those firms' offer is better. We therefore have this remarkable economy of two extremes: on the one hand, Belfast has more large international law firms than anywhere outside the City of London, which is remarkable, and there are alternative legal service providers that Hoover up graduates by the hundred, but, on the other hand, just over half of our firms are still one- and two-solicitor practices. Those are the high-street firms. The problem is that, if we do not sustain the high-street firms — legal aid is one of the income flows that they need — they will go.

In our introductory remarks, colleagues said that we were last here two years ago, to talk about the departmental budget. Since then, there has been a 7% reduction in the number of firms, and it is the small firms that are going. At that previous meeting, I talked about Fermanagh having 16 firms altogether. That number will shrink. If we do not fix this and reset the whole system, we will not have the high-street firms. We will have deserts where there is no access to legal help.

We have a great opportunity to fix this. Lots of people want to do law. Lots of people are doing law at university. Our two universities produce fabulous people. The head of one of those alternative legal service providers said to me that she would bring all its international legal work to Belfast if she could recruit the number of people that she needed. There are three reasons for that: the people here are well educated; they have a work ethic, in that they know a day's work; and, frankly, the salary is perhaps half of what it would be in London. It is still a £50,000 salary, which, for a new entrant, is remarkable. We have an economy of extremes. The commercial guys will be fine. They will look after themselves, I have no doubt. The high-street solicitors and the local access to justice will probably be the biggest problem.

Ms Smyth: I can build on those points from the perspective of the Bar. We have 20 admissions a year through the institute. Admission is merit-based. We find that the places are filled, and new barristers come to the Bar annually. Fifty per cent of them are male and 50% are female. Unfortunately, however, between year 7 and year 10, there are high rates of attrition. The talented young people who come to the Bar are not able to stay. Disproportionately, it is women who leave. They leave for a whole load of reasons, but, unfortunately, some of those relate to pay, payment delays and the fact that those people cannot sustain a livelihood, either because they are not paid enough or because they have to wait far too long for payment. We are losing our talent. We need to find ways of retaining it.

Mr David Mulholland (The Bar of Northern Ireland): To supplement that briefly, I reassure you that we have tried hard to broaden the intake into the profession. We have always had a tradition of financing people's early years in practice. The Bar Council funds people's library fees for their first seven years at the Bar. We have added to that in recent years by working with Queen's University on its Bright Future Collective programme. We want to see first-generation barristers who believe and can truly experience that the profession is open to them.

Colleagues have covered the difficulty that, without any financial certainty, which is always a challenge in a self-employed profession such as the Bar, it is difficult to retain the talent that we attract. There is also the indirect issue that we all say that the system is in crisis; no one disagrees. Ciara, you mentioned the alternative routes down which people can go and the other professions that seem attractive. We need to be mindful that, if we talk only about a system in crisis — it only ever is — it will not be an aspirational route for them to take, despite what we think. You heard, in Moira's introductory comments, that we want a proud vision for justice. The Committee can help us in that regard.

The Chairperson (Ms Bunting): I am conscious —

Mr Lavery: Forgive me for interrupting. There is something very odd. Half of the people training at the institute at Queen's today will leave private practice within five years. There is something wrong. We are training people to leave after five years, and most of those leaving are women. We are trying to put in, say, a returner programme, to make it easy for women who qualified as a solicitor to come back into practice. That is a remarkable statistic, however: for every 100, 50 will have left private practice within five years of qualifying. That clearly needs to be addressed. Queen's probably needs to help us, and we need to help ourselves, but you can see that that is a strange number.

The Chairperson (Ms Bunting): I am acutely conscious that the original question was Maurice's, so I will afford Maurice the opportunity to come in with any supplementaries.

Mr Bradley: No, although I would like some information on the rule of law pledge. We are constrained by time, so I would be happy to have that sent to me in some way.

Mr Lavery: We have been very concerned about the attacks on lawyers in Northern Ireland. We know only too well what they can lead to. There have been a lot of instances of it in the past number of years. When even the Prime Minister stands up and says things like, 'Lefty lawyers are representing immigrants', and a national newspaper headline can call members of the Supreme Court the "Enemies of the People", there is a problem. It is important to hold everybody to a certain standard, where they do not blame a lawyer for representing an unpopular cause but recognise that everybody needs legal representation, whether the person the lawyer represents is popular or not. That is why we developed the pledge, Maurice. We will ask Naomi Long to sign it, to begin with, and we will then share it with others. It is an undertaking to uphold the rule of law and respect the independence of the legal profession. It may not make a dramatic difference, but it is a standard of behaviour against which you can hold people to account. I will send you a copy.

Miss Hargey: Thanks very much for your presentation. There is no doubt that we will engage with you in more detail on legal aid, because it has come up at the Committee a few times. There was the set discussion last week. We know that there is a JR. The officials did not go into detail on that. We are concerned about the delays, which we have heard about from the profession on the ground.

In your presentation, you talked about how it impacts certain sections of the workforce, particularly those in family law. Within the crisis in the system, there are those who are more disproportionately impacted than others. Again, we want to probe and get into the detail of that, particularly the impact on women in the profession. We know that that is not unique to law; other sectors in our society are impacted by it.

Trying to build a rights-based approach at the heart of it is key. The Brighter Futures programme at Queen's is really good. I agree that, on the one hand, we need to deal with the challenges, but, on the other hand, we need to offer opportunity and hope about what the system could be like at its best in order to try to attract and retain skills. As you say, the universities are producing.

I want to ask about diversity, well-being and inclusion. There is one huge chunk of legal aid. I want to get a sense of how you are engaging with the Tom Burgess review of the current system of legal aid. I think you said that the Department is not engaging sufficiently. How can that engagement be improved?

What more can be done to increase diversity and representation in the legal profession? Obviously, pay — people's income — is a key part of it. What can be done to make the profession more representative in terms of class, gender and ethnic minorities? We hear reports of an increase in the representation of some groupings in the justice system, such as those with disabilities. What more needs to be done? What are the barriers to such groups accessing the justice system workforce?

There is probably not enough time, but we will definitely come back on the legal aid stuff, because it is key. The 'Justice Agenda' very much sits with some of the things that we have been discussing, so I definitely want to come back on those issues.

The Chairperson (Ms Bunting): There is some time. There is 15 minutes.

Mr Mulholland: I am happy to pick up on some of that. I will take it in reverse order. On the question of how we are trying to improve diversity and participation in the profession, without repeating everything we said, certainly in our case, our route into the profession is totally merit based. We do not know the gender, name or background of the people who do the institute exam. It is entirely merit based. We are committed to taking at least 20 people into the profession every year. That shows our commitment. However, as I said, we recognise that we probably need to start to tell people at an earlier stage in the journey how they get to the institute and why they might want to do so. That is where our work with Queen's on the Brighter Futures programme came in.

In addition to that — we somewhat covered this earlier — we are trying to give some representation of existing role models. Up to this point, that has required us to give particular emphasis to female leaders in the profession, including Moira. We have done a range of things like that. We have tried to make a positive report on the recent KC appointment scheme, which had the highest proportion of female KCs that we have ever had from those calls. If you were to visit the court building or the Inn of Court, you would see photographs of all the female KCs. That is about trying to counteract what, up to

that point, had been a traditionally male landscape. It is about trying to promote the fact that you can only be what you see and encourage people in that direction. We have a lot more to do on gender diversity and on some of those other demographic issues that you highlighted.

Sitting around all that, we have done a lot of work to try to change the culture and values of the legal profession. For some time now, we have, as you would expect us to, put an emphasis on calling out, and having proper procedures to deal with, bullying and harassment. In the last 12 months, our Bar went further than that and said that it does not have to be as overt or as defined as bullying and harassment; rather, it can be an off-putting environment or unreasonable behaviour, including unreasonable demands, not taking account of other commitments in somebody's life and so on. We have put together procedures for that to be flagged and anonymously raised with the Bar Council so that we can petition about issues like that. The very quick answer is that we are trying to go right to the source and encourage a wider intake. We are trying to support that intake when it gets there and inspire it by celebrating pathfinder role models. We are trying to change the culture as well.

Ms Smyth: We have really good mentorship programmes in the Bar Library for women and younger people. We have particular networking events for women. I am hosting an International Women's Day breakfast tomorrow morning to which barristers, male and female, can take other friends or family. It is to give women their place at the Bar. Even through the likes of our breastfeeding suite, we are trying to change the culture and make it a family-friendly working environment for women so that we retain those brilliant women at the Bar and in practice. It is a self-employed profession, and it is challenging and arduous, but we want to create as supportive an environment as possible

Mr Lavery: The Law Society did a diversity and equality survey two years ago, and that told us what I think we suspected: most people entering the profession have parents with a university background. That is why we introduced the centenary bursaries. It is a small step, but it pays £10,000 to each recipient to help them to access training.

There are a couple of other things. You mentioned the Burgess review. I am not sure whether I misspoke or you misheard, but we are not criticising anyone about the Burgess review. The Department set it up, and we welcome it. It is led by a senior judge, and it is exactly the right way to go about reviewing criminal legal aid. As Darren said, we would like a similar independent approach to civil and family legal aid. The other thing about legal aid is that it is not just about fees. It is also about who is eligible to get legal aid. For civil and family legal aid, there is an income threshold and a capital threshold. Those thresholds have not been increased in capital terms for 30 years, disenfranchising whole swathes of the community. Basically, you have to be on benefits to get access to legal aid now. People on lowish incomes are simply unable to access it now. You will end up with justice being for people who either have very low incomes or can afford to go to law themselves. The system was not designed to do that, and, by not increasing the eligibility thresholds, we are taking lots of people out of it.

Ms Ferguson: Are there any up-to-date research reports available on those who are just above the threshold and on how unaffordability might put them off accessing justice?

Mr Lavery: We are doing a lot of research at the minute, and we will be able to share that with you. We want to demonstrate the value of legal aid socially as well. As soon as that is available, we will send it on.

Mr Mulholland: I have a brief final remark to make about the Burgess review. As David, rightly, clarified, we really welcome the fact that there is an independent review, but it is important to stress that that review comes after an absence of statutory reviews. There is a heavy burden on that review to address a vacuum that has existed around any review of fees for some time. Moira mentioned what that has meant in terms of real-terms cuts. Of course, we do not know yet whether the recommendations of the Burgess review will be approved and, if they are approved, when they will be implemented. A lot of expectation rests on the review. It is critical for the profession, because it addresses an area in which there has been no activity or decisions for literally decades. If there was any scope for interim recommendations to address some of that historical period, we would warmly support that.

Mr Toombs: I want to go back to the point about entry to the profession and widening access. I was lucky enough all those years ago to pass the 11-plus. I came from a working-class background, and I ended up in school with Justin. He was the year above me, so, luckily, I did not have to play against him on the football field. I feel that sliding doors went the right way for me in my career. I was a tad

lucky. I got my 11-plus, and I went to a grammar school. That school pushed people towards professions and doing your A-levels to become a solicitor or doctor. It pushed you in that direction, and it showed you that those opportunities were open to you. That does not necessarily start with the profession, although we are reaching out; it starts with education. We need to break down the silos and reach out to the Education Department. There are probably schools where law is not shown as an open pathway to the kids. There are probably schools where, when people thought of law enforcement and law and order, they thought about joining the police and never in their wildest dreams would they have thought of becoming a solicitor. We need to speak to the guys in Education. There is a piece of work to do to educate people on where they can get to and to show them that, if they strive and work hard enough, the door is open. There is no bar to entry into the solicitor profession. It is like the Bar: you do your degree, and you do an entry exam to the institute. That is merit-based, and people can move on. It is about getting the young people to a position where they can access it, and that starts so early on.

The Chairperson (Ms Bunting): I remind Members that I have a list. There is a running order that we are moving through.

Mr McNulty: Thanks, folks, for your evidence thus far. Moira, you asserted that the payment delay policy is a budget management measure. That is a serious assertion to make against, presumably, the Department; is it not?

Ms Smyth: It is accurate, Justin. As you will see from our briefing paper, there is a live judicial review case, where the professions have brought before the court the lawfulness or otherwise of the Department's policy of delaying payments to the professions as a measure of budgetary control. We heard in a previous session that the speeding up justice policy has led, in some instances, to our courts having a greater output. Everybody is working harder and more cases are being disposed of. However, the budget for that demand-led service is fixed. Therefore, although the barristers and solicitors are working harder, because there is a fixed budget, the Department, at times, has had to slow down the rates of payment so that they do not run out of money, which means that barristers and solicitors have to wait longer to be paid for work done. That is having a crippling effect on barristers.

Justin, unfortunately, it is disproportionately affecting our young people, people who come from backgrounds without family money, and women. They are the very people we want to retain in our professions, so that we have a group of barristers that is representative of the people they serve and represent in court. It is not a glib headline. We have been living with this experience for years. Unfortunately, taking the judicial review, and, as you will see in the paper, our one-day withdrawal of services on 17 November past are symptomatic of a profession that is being brought to its knees because the impact of payment delays is affecting the sustainability of those groups of people, in particular, being able to remain at the Bar. It is a very serious matter.

Mr McNulty: It is self-defeating in the delivery of justice as well.

Ms Smyth: Totally, yes.

Mr Mulholland: The need remains to be met. All that does is defer it. That is why £26 million is sitting as an unassessed bill. If bills are put on the long finger or the credit card to be paid some later day, it means that, even if an increased budget becomes available, that is the first claim on the budget and it does not take you any further forward.

It is absolutely factual that it is a budget constraint situation. As Moira said, we agree entirely that, traditionally, the justice budget has been underfunded; on that, we are on common ground. However, we disagree that this is a reasonable measure to respond to that budget, because it uniquely affects lawyers. It is important to stress that, of course, we need to get that message strongly across about our members, for all the reasons that Moira, Darren and David have said. However, we are only there to serve other people: your constituents and the cases that are going through court, and to address the delays in the court system. If we cannot do that, those situations will only get worse. It is not only already bad; depending on what the next weeks derive in a budget outcome for the coming year, it is potentially about to get much worse.

Mr Toombs: Some of those fees are fixed fees for work done. When legal aid reviews were carried out, it was agreed several years ago that some fees were reduced a little bit, but they were reduced on the basis that, if a barrister or a solicitor puts a bill in, it is a part of a case that is done and dusted, signed off and in. It is really just to be paid. Therefore, it is not even a matter that some of these fees

need to be assessed or that somebody needs to check whether the hours were put in. It is a fixed piece of work at an agreed rate. In it goes. That should not take 10, 12, 14 or 16 weeks to assess and pay. It should be automatic. Court Service can say "That was done. That barrister turned up on the day; that solicitor turned up; that was a plea; the case was dealt with. Bump, bump, bump: pay it." That should be done in three or four weeks.

Mr Lavery: The system that Darren is describing is called "standard fees". I was in the Department that introduced those, away back in 2005. The deal was as Darren describes it. You would have a standard fee for a particular type of work, and it would be paid promptly. The reason it could be paid promptly is that we went every year to the Treasury and asked for additional money, and we got it. That was the way that the system was funded.

When they transferred responsibility to Stormont in 2010, we lost the ability to go directly to the Treasury to get funding topped up. They were topping up the system in England as well, and we were just a small example of that. Trying to hold a demand-led service, the demand for which is expanding, on the basis of a fixed amount, is just not going to work. The Department recognises that every bit as much as we do. This exercise that we are undertaking is an opportunity to try to reset it. When the Department gave evidence in Committee, it said that legal aid has not been properly funded since 2010. If we do not fix that, we will not be able to fix the downstream consequences of it, unfortunately.

Ms Smyth: I will just also mention this. We know, from liaising with colleagues in other jurisdictions — I speak on behalf of the Bar — that they do not have to wait the length of time that we in Northern Ireland do to be paid for legal aid work done. There are systemic problems here that need to be addressed because of the crippling impact on the profession and the wider impact on access to justice.

Mr McNulty: Can I ask you, Darren, about the 'Justice Agenda: A Plan for Better Justice': upholding the rule of law and the delivery of a bill of rights for Northern Ireland? What are the implications of those, in terms of the ECHR rulings? What about addressing the legacy of the past? How does the Legacy Act, having passed through Westminster, impact on the ability of justice here to address the legacy of the past?

Mr Toombs: I will leave that one to David. *[Laughter.]* I must say that I am not at all a constitutional lawyer. David is much better placed to answer that than I am.

Mr Lavery: That is called a "hospital pass".

Mr Toombs: That is called a "hospital question". *[Laughter.]*

Mr Lavery: Well, we have been very critical of the legacy legislation, as you know. We obviously note the decision of the High Court and the fact that there is now going to be an appeal from that. We particularly regret the removal of the legacy inquests and other forms of access to justice. In a way, we just need to see where this ends up, once the court challenges are over.

On the bill of rights, we have been supportive of the principle that there should be a separate bill of rights for Northern Ireland in addition to the Human Rights Act. That is even more imperative, I guess, when the Government — certainly the current Government — are hostile to aspects of the European Convention and talk about stepping aside or withdrawing from parts of it. In principle, we agree with the desirability of that. We feel that a codified set of rights is something that works for the people of Northern Ireland. We are quite familiar with arguing for rights and responsibilities, so, in principle, we agree with it. I am not sure that is our absolute, number-one priority. Fixing the basic system is the biggest priority at the moment. Whether it is speeding up justice to get justice for victims and survivors quickly or addressing the funding deficit so that we have a sustainable legal service with legal providers available, if we get those right, we can build on that. There is an opportunity now that the Executive and Assembly are back to try to address what has been about 10 years of underfunding since the transfer in 2010.

We have been lucky in one respect: we have had very progressive Justice Ministers. I should acknowledge the work that David Ford, Claire Sugden and Naomi Long have done. They did not make bad decisions such as were made in England. Private family work was taken out of the legal aid system altogether in England; it caused havoc. At least we did not do that. We have retained the scope of the legal aid system in Northern Ireland for those types of cases. That is one of the benefits of devolution; otherwise, the English policy would have been applied here, and we would have gone

down the same road. We have had many advantages of devolution, and that funding has not been put in place to match it is our primary concern at the minute, along with the impact that that will have on the supplier base of lawyers, whether barristers or solicitors.

The Chairperson (Ms Bunting): Members, I am conscious that we are already over time.

Mr Dickson: I will be very brief. This is where the rubber hits the road, because the reality is the impact of a payment-led system hitting the impact of a Budget, and the not-inconsequential impact of two years of nothing happening in Northern Ireland. That is where we are at. We now have a Minister. Those issues are on the table and, hopefully, can now be addressed, but they will be addressed not by the fact of the Minister's understanding them but only when the Minister makes her arguments for the appropriate budget to be delivered. It is not just a justice issue. It is a finance issue and an issue that we, as an Assembly, and the wider community have to address in terms of the Budget.

In a sense, I am sympathetic to your being, at the end of the day, the trade unions for barristers and solicitors in Northern Ireland. You are their representatives and their voice. It is important that people should be paid fairly. Using you as a battering ram in part of that is somewhat unfair, but what is the alternative? It is this: if those payments were not delayed, quite simply, some people would get paid and some people would never get paid. Spreading the load and sharing the pain has been where the Department has taken you. I hope that, when we get a Budget, we will see the way out of this in the next six to 12 weeks.

Mr Toombs: Could I give you a little real-life, microcosm example?

Mr Dickson: Absolutely.

Mr Toombs: Sometimes, real-life examples hit home better than all our chat. David and I were at the Limavady Solicitors Association dinner last Friday night in the Roe Valley. There are about 11 or 12 solicitors in that association; it is a small association. Their court was closed over COVID. It remains closed; they are not sure whether it will open. Their local custody suites are closed. They cannot bring young, trainee solicitors into the town because they cannot afford to bring them into small firms and train them. The last trainee that they had is, I think, seven or eight years qualified, and one of them is a principal in his own firm, which he has taken over from his father. Forget about lawyers' pay; this is not just about that. We have a court that is closed —

Mr Dickson: Resource.

Mr Toombs: — a local court. We have a custody suite that is closed — a local custody suite. We have a simple delay. A solicitor is phoned for. They do not just go to their local custody suite; they have to drive for maybe 45 minutes. Police officers' time is tied up, waiting for the solicitor to come from maybe 45 or 50 minutes away instead of maybe even being able to walk to the local custody suite. You have the local people who are appearing in the petty sessions. Most of the people who appear in petty sessions do not have their own car. They are reliant on public transport or taxis to get there. If you look at Belfast petty sessions, you see that most people who come to them walk in. People have to go to Coleraine or Derry or go further afield, so people do not turn up for court because, maybe, they do not have the money to turn up. What sometimes happens if you do not turn up for court? An arrest warrant is put out for you. Someone has ended up getting arrested simply because they cannot afford to get to court. There is just a wee real-life example.

Mr Dickson: That sets out exactly the whole condition of where we are at. That spreads across not just the Department of Justice but all Departments. It is the consequence of delay and of poor management across years of Budgets here in Northern Ireland. Those are real-life consequences of where we are at.

Ms Smyth: I will respond to your question very briefly, Stewart, because I know the time. We should always remember that legal aid certificates are in the name of the person who is in need of legal representation. In my view, that is part of the welfare state. It needs to be demand-led, because people who get legal aid certificates are, for example, families in need — I am a family lawyer — who find themselves in the care system. If that is not properly funded, there will be long delays and people will leave the profession. Unfortunately, the type of people leaving the profession are those that we want to retain, so that they are representative of the people that they serve.

Mr Mulholland: Although we can all understand the aim of budget predictability from a logical perspective, care has to be taken about what that means in real terms. Why would you bother with new strategies for violence against women and girls? Why would you pass progressive legislation about domestic abuse? Those measures are intended to address an unmet need. By its nature, an unmet need, once it presents —.

Mr Dickson: It going to deliver more.

Mr Mulholland: It is going to give you unpredictability, because you did not have those measures before.

Mr Dickson: Absolutely.

Mr Mulholland: As we suggested, the Committee would be well advised to look further than just the headline about there being no budget. What do people mean when say that they want budget predictability? Do they mean that need will be deferred, need will not be addressed or issues will be suppressed, just to fit within a budget? The ramifications of that, across society, are extreme.

Mr Dickson: No disagreement here.

The Chairperson (Ms Bunting): The lesson for me is that, as Chair, I should probably ask my questions first. *[Laughter.]*

Mr Dickson: Sorry.

The Chairperson (Ms Bunting): No, no: that is fine. I have met each of you before. You are aware that I am highly familiar with the issues that you face. I live those issues day and daily. What I am hearing from you is that there are issues around delays in payment and that those delays in payment can be the difference between a firm having to close or being able to carry on providing a service, or people having to leave the profession entirely. I hear that. I hear that there are issues around the rates of payment and that, for 10 years, either the rates of payment or the thresholds for access to legal aid have not been reviewed. That, again, is causing consternation. We understand that. I further appreciate the fundamentals of attracting people to the profession. It strikes me that, in circumstances whereby a good tradesman can name his price and where people are trying to access justice because they are entitled to a defence, those people will struggle to find service. The services will then decline, because young people, naturally, will want to go to the corporate aspect, where there is money to be made and they will not have to go to a police station at 3.00 am. I understand all that. I take on board the budget predictability issue; I think that that is important, David, and we will bear it in mind.

There are a couple of things that I would like you to come back to me on, if you would, because I am conscious that I do not want to pursue them any further here. One is around the apprenticeship situation. Previously, apprenticeships were paid. Maybe it is more placements that are the issue. At present, there are issues about people securing places to the institute and whether they can get a placement. They cannot get a placement, because solicitors' firms cannot afford to pay them the wage. Previously, people were paid for the time that they were in the solicitors' offices and not for the time when they were training at the institute. Maybe that needs to be looked at again. I appreciate that apprentices are entitled to payment, but maybe there are issues around that that we can look at. The hours are also certainly an issue. I would like your side to come back to me about apprenticeships and payments. That would be helpful.

If I may, I would like the Bar side to come back to me about the Burgess review. There is a thorny issue around brief fees. Solicitors are fairly straightforward in that they have particular rates for particular activities. The Bar has an element of that, but there are brief fees, and brief fees cause problems for everybody. It would be helpful to have some understanding about the extent to which brief fees will be included in the Burgess review. Further to that, could you give us some indication of how brief fees are calculated? I appreciate that you have come here today together, and I appreciate that many factors impact on the profession as a whole. However, you have significant differences. You each have issues that you need the Committee to understand, and you need us to understand the distinctions. That is important, so, at times, we may seek that you come as individual groups.

In the interim, I thank you for your presentations. It is important that we air those issues because access to justice and the delays in the justice system are a massive part of the work that we are trying

to get our heads around. Thank you for contributing to the conversation. We value the work that you do for our constituents. No doubt, we will hear from you again in due course.

Mr Mulholland: Thank you.

The Chairperson (Ms Bunting): If you would leave your documents, all of us would be happy to look at them.

Mr Lavery: They are a really good read.

The Chairperson (Ms Bunting): Yes, that is us all set for tonight. Thank you.