



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Enabling Access to Justice Programme:
Department of Justice

23 May 2024

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Joanne Bunting (Chairperson)
Mrs Sinéad Ennis (Deputy Chairperson)
Mr Doug Beattie
Mr Stewart Dickson
Mrs Ciara Ferguson
Mr Justin McNulty

Witnesses:

Mr Steven Allison	Department of Justice
Mr Chris Barry	Department of Justice
Mr John Bradley	Department of Justice
Ms Bronagh O'Reilly	Department of Justice

The Chairperson (Ms Bunting): I welcome to the meeting Steven Allison, deputy director of the enabling access to justice division; Bronagh O'Reilly, head of the modernisation programme; John Bradley, head of civil legal aid reform; and Chris Barry, head of taxation review. You are very welcome to the meeting, everybody. I hand over to you to give us your presentation. We received your papers — thank you — and, no doubt, we will have some questions for you at the end.

Mr Steven Allison (Department of Justice): Thank you very much, Chair, and thank you to the Committee for the opportunity to speak to you today. I am hopeful that we will engage with the Committee at various points over the coming months — at various milestones of the reform programme — but we thought that it would be helpful, today, to set out the context of that programme. Chair, you have already taken care of the introductions. I will not take the time to repeat them as I am conscious of the time and that we want to get to questions and discussion as quickly as possible.

As you will know, the division is responsible for ensuring that appropriate options and supports are in place to ensure that citizens, particularly the most vulnerable in our society, have access to justice. That includes setting the strategic framework for legal aid, including who is eligible for legal aid, what is available through legal aid and the appropriate levels, and fair remuneration for solicitors and barristers who deliver that service on behalf of citizens. We also enable the work of other Departments and business areas by supporting them in assessing the impact of legal aid on some of their work streams. Examples include the work that the Executive Office has taken forward on the truth recovery programme and historical institutional abuse, and the adult protection Bill that Department of Health colleagues are taking forward. It is critical for the Department of Justice, with its constrained budget, to understand the impact on the legal aid fund of any expenditure.

We have a broad remit, and the scope of the work and potential reform in this area can be significant, so we have established a five-pillar programme covering a modernisation programme, the civil legal aid framework, the criminal legal aid framework, taxation reform and a statutory registration scheme. The programme has been designed as a mechanism to ensure cohesion, managing linkages and enabling effective prioritisation. You will note from the brief that we have established two separate forums. One is a stakeholder engagement forum with partners in the justice sector and voluntary organisations — people who have real-time, live experience of the justice system and of working in it — to help inform the development of reform options. We want to hear from those individuals and groups for them to tell us what they know and what they have that we could learn from. We have established, separately, an equality forum that is focused on identifying and understanding any hidden barriers or challenges that may prevent access to justice. Those are two very important groups for us to engage with. That engagement does not stop the day-to-day work of my colleagues — those who are here with me today and those back in the division — in engaging day and daily with practitioners and voluntary organisations. We want to listen to anyone involved who has experience and wants to give a view on this.

We also explore opportunities to enhance our policy development through collaboration, availing ourselves of the skills of other partner organisations. One example is that the Commissioner Designate for Victims of Crime is undertaking work to help to identify potential barriers facing victims of domestic abuse, including the legal aid waiver. We want to work alongside Geri Hanna, the commissioner designate, on that, engaging in the research and using it to inform our policy. We want to try to reach out as far as possible to understand what information and evidence is out there to inform the development of policy options that will ultimately be placed before the Minister for her to make a determination.

In the pack, we gave you a comparator of other jurisdictions that have a high level. We want to learn from other jurisdictions. We put in the health warning that those metrics are still subject to statistical verification, but they are pretty stark. We need to understand what our differences are. Why is our level so high compared with other jurisdictions? What can we learn from other jurisdictions? What should we retain in our jurisdiction? We are very much at the early stage, and that is probably the theme today. We recognise that we are at a very early stage in gathering the evidence across most of the work streams. We are a bit further on with Judge Burgess and his criminal legal aid review, which will come to fruition at the end of next month, but we are at a very early stage in gathering the evidence to inform the development of reform options. We are keen to listen to citizens, practitioners and anyone who has experience in that space. It is important to say that we are committed to engaging with your Committee and the access to justice all-party group as we go through each of the milestones, so that we can keep you informed and updated and, also, to hear from you about our proposals and our approach so that we can take that on board in our consideration.

I promised that I would keep things brief, so that is an appropriate point for me to stop and allow the Committee to ask questions.

The Chairperson (Ms Bunting): Does anybody have a question? I usually go at the end, but I will start on this occasion. There is reference in the papers to the taxing master and the proposal that these issues would move to the accounting officer, who, presumably, is the permanent secretary in the Department. Sorry, my papers have just disappeared from the screen.

There is a presumption of knowledge that some of us do not have. Will you step back, explain how the current situation works with the taxing master and what the set-up is? From what I read, the issue is about trying to take account of a Public Accounts Committee (PAC) recommendation that there should be a bit more accountability. However, the Law Society responded, I think, to say that it did not think that that was necessary and it had some concerns around it. I want to enquire about the information PAC had on which it made its decision, because part of this is about making sure that people who understand the legal process and the extent of the work involved are involved in the fees. How will you strike the balance? Did PAC give consideration to this, and what information did it have before making the recommendation? It seems to me that you are moving forward on its recommendations but that practitioners have concerns.

Mr Allison: I will set out the background and context first and then invite Chris Barry, who leads on taxation, to speak specifically about PAC, the origins of its recommendation and where we are at.

At the moment, this is the process: about £20 million per year is expended out of the legal aid fund on the order and certificate of the taxing master. She is a judicial office holder — a judge. It covers a number of areas that go to taxation, most of which are in the civil and family space. The criminal Court

of Appeal is the only area of the criminal space that goes to the taxing master. Typically, the bill of costs from the solicitor, which will include the brief fee — that is the only time that the brief fee appears in legal aid expenditure — is presented to the taxing master. The taxing master will then consider the bill of costs. From what I have seen, it is very detailed line-by-line information on expenditure from the solicitor, and there will be one line that says what the barrister's brief fee is. The taxing master's role is to look at that bill of costs, assess whether it is appropriate, and reach an order. Chris will keep me right if I get the figures wrong, but I think that, in 2017, when PAC looked at this area, it found that, on average, the taxing master reduced the cost of the bills presented by about 13% across the board. That was the average; clearly, there were outliers either side of that.

On the accountancy and transparency side of things, the Department's difficulty, which PAC recognised, is that, at that point, when the Legal Services Agency (LSA) receives the certificate from the taxing master, we simply have to pay; that is our role. We have no skin in the game to ask, "Is that appropriate?". We have no fee structure to look to in order to ask, "What is the basis of that?". When it comes to budget predictability, transparency on how the bill of costs was put together, the basis for doing so and the basis for the assessment by the taxing master, none of that is within the purview of the accounting officer, the officials in the Department or the LSA. That means that £20 million — about one fifth of the annual expenditure — is ordered without any oversight from the Department.

That is not any criticism of the taxing master. I have to make that very clear. The taxing master has an independent role, but it is unlike all other elements of the legal aid fund. We can speak to all other elements of the legal aid fund. Rightly or wrongly, the fees are set and standardised or there is a fee structure, which, in some cases, goes back many years, but at least there is a schedule of fees that allows people to say, "That is what you get for that piece of work". We do not have that in the taxation space.

The Chairperson (Ms Bunting): That is really helpful. I raised the issue of the brief fee with the Bar when its representatives were in front of us. I asked them to give us some understanding of what it was and how it was calculated. I asked them to get back to us in writing on that, but we have not yet received a response. As you say, it is very difficult to probe that when you have no understanding of what is behind it and the level of work involved, in a way that is not the case with solicitors.

Mr Allison: Being entirely candid, Chair, my understanding of what a brief fee is and how it is made up is borne of the past 10 years of receiving a brief fee when I am paying for barristers who are representing the Department in judicial reviews (JRs). That is the limit of my experience. We have asked the same question of the Bar in order to help us to understand the component parts. We are also waiting for details on that. To be fair to the Bar, it is going to engage with us. Chris, do you want to add anything about the current process?

Mr Chris Barry (Department of Justice): You have covered it really well, Steven. As you mentioned, Chair, we have also asked the Bar about the brief fee. We have a basic understanding in that it covers preparatory work and up to the first day of trial. The question is this: how is it calculated? We see it as a line on the solicitor's bill of costs. We are trying to get more information on that. We understand that more information is provided to the taxing master for the purposes of her assessment. We are engaging with the taxing master's office to try to get more information that she might receive. We are trying to get as full an understanding as we can from any source that we can. We have asked the Bar, and we await a response. I understand that you are waiting for a response to the same question.

We are also liaising with cost drawers, who, primarily, will work to solicitors in drawing up the bill of costs. We are asking what information, based on their experience and specialist knowledge, they might have in relation to the brief fee. We are trying to cover all aspects of that and get to the bottom of what it might be, for the purposes of determining what it represents now and, from that, what we might utilise or change if we are going to design something that will come within the accounting officer's purview and give us greater accountability and transparency.

Mr Allison: Building on Chris's point, we have identified two areas, as you have. We just need to understand how the brief fee is made up. If I employ a builder who gives me a bill of costs, I will understand what I am paying for and what I am not paying for. I do not have that same understanding of a brief fee. The other element that we have identified at the current landscaping stage is the uplift that solicitors apply to their hourly rate across the bill of costs. We are getting a bit of consistency in our analysis. I will invite Chris to give you some of the more detailed figures. However, the hourly rate for solicitors, struck by the judiciary in 2014, is £102 an hour. That was the 2014 rate.

What we are seeing in most of our sample is that solicitors will apply an uplift to that hourly rate, depending on the complexity of the case. There is case law supporting the rationale for doing that, so that is fine. It is just about the level of the uplift. There is a certain consistency — I will ask Chris to give you the figures in a moment — but it can be very subjective. At some points, it can be 33% and, sometimes, it goes up to a 200% uplift on top of the £102, so you get a £300 hourly rate. That is not consistent across the board. Hopefully, Chair, you can see that, when we are looking at taxation, it is about bringing consistency and transparency to the process, so that everybody knows what you get for that particular transaction, what we will pay, and what we can predict and make a case for in next year's budget.

The Chairperson (Ms Bunting): Does that include criminal legal aid?

Mr Allison: Criminal legal aid does not come into that space. It is only in the criminal Court of Appeal.

The Chairperson (Ms Bunting): Is this all just family and civil? OK.

Mr Allison: The only part that comes into taxation in the criminal space is criminal Court of Appeal cases. We need to look at that at a future point. We are not taking that on at the moment: it is just a little bit too complex. We want to get our methodology — we want dip our toe into this one, to be fair, Chair. *[Laughter.]* Dealing with taxation was described to me recently as being like something out of Hogwart's castle: it is mystifying at times. We are trying to understand exactly its component parts.

Do you want to talk about the hourly rate, Chris? The hourly rate is £102 an hour, but that is not the standard. There is an uplift that is applied.

Mr Barry: As Steven mentioned, we have been reviewing a small sample of bills across the various proceeding types that you will find in the High Court. There is the £102 an hour, which is your starting point for assessing a solicitor's bill. We are finding that there are consistencies. To break it down, for consultations at court, solicitors will apply a 33.3% uplift to the hourly rate. For court hearings, solicitors will apply a 50% uplift. For preparation work, such as reading and consultations, they will also apply a 50% uplift. We have found that the preparation element is where there will be variations in the requested uplift. Those are the standards. We have not come across a bill that has no uplift.

I do not know where or if the uplifts are written down, but this is consistent across the board. Preparation, which Steven mentioned, is where you will see the higher uplift; for example, for a JR or complex cases relating to the Children's Order. The standard uplift for Children's Order cases is 65%; that is if the solicitor is on the Children's Order panel. It will go above that 65% if the solicitor feels that there are complexities. We have called it an uplift, but it is defined as care and conduct. You will find it in the Rules of the Court of Judicature. The master assesses it as care and conduct of the case. It has a basis in case law, and it is in every bill that we see.

Mr Allison: I will circle back to the taxing master. We do not see much deviation from the 13% average of 2017 in our current small sample size. PAC recognised that the taxing master's role in the 13% reduction on the bills was helpful and contributed to managing public money. However, it is completely outwith the Department — our sole role is to pay the bill. We have no input into establishing the fees or deciding what the citizen will get for that. We are not involved in that space, and that is why the previous permanent secretary agreed in April that the Department should accept the recommendation and, then, over the next number of years, bring all that £20 million within the purview of the DOJ accounting officer so that we can standardise the fee structure as much as possible and get greater transparency in the setting of bills. We need to work through the implications for LSA colleagues in their assessing those bills rather than the taxing master. There will be a resource implication for LSA.

The Chairperson (Ms Bunting): Ultimately, it is a significant amount of public money, so there needs to be probity and transparency.

Mr Allison: That is exactly where the permanent secretary landed. It is one fifth of our spend on legal aid.

The Chairperson (Ms Bunting): Presumably, PAC took all that into account when it made the recommendation.

Mr Allison: Very much so. PAC did an exhaustive exercise on this. The recommendation is based on bringing in transparency. There was no commentary on the taxing master's role other than that it is outside the Department and we had no skins. The short answer is that, yes, PAC considered it.

The Chairperson (Ms Bunting): Thank you. I have one other question.

Can I check with officials what page the table is on because I had to restart my machine?

The Committee Clerk: Page 42.

The Chairperson (Ms Bunting): Thank you. I had the panic of my machine entirely shutting down and having to restart.

I am interested in the disparity between the Northern Ireland figures and the figures in the other places that you have cited. First, I am interested in whether the legal systems in those places are the same as ours and have the same throughput and process. Secondly, I am not clear why our figures are so different when we have heard from the profession and the victims' sector that the fee structure has not been reviewed for decades. The fees are from a long time ago. Furthermore, the thresholds to receive legal aid are out of step with incomes. Many people who should get legal aid do not because the thresholds do not tie in. So, you have fees that have not increased, and people who cannot get it because the thresholds have not changed in accordance with inflation. Furthermore, as I understand it, it is quite an invasive process to qualify for legal aid. Your whole financial circumstances are looked at, even including whether you have an account with a betting office or any kind of gambling account. All those things are looked at so everyone who is getting it qualifies. Many should but do not. The fees have not changed. Why are we so out of kilter? I presume that that is what you are trying to understand, but it would be helpful to have some degree of information on your findings so far.

Mr Allison: You have touched on some of the variables that we do not have to help us understand. We are struggling to understand for the reasons that you have outlined. Taking your first observation, we have to place the caveat that it is a like for like in terms of legal systems and scope. The first variable that we need to understand is what proportion of our population that is eligible for legal aid is actually going through cases. I look at the civil space. In Scotland, 70% of the population is eligible for legal aid in terms of scope and eligibility thresholds; yet, it is significantly lower in cost per head. Is the variable there that fewer people are going through the system in Scotland compared with Northern Ireland? We do not know. It could simply be that. It could be to do with scope. I was talking to a couple of international barristers, in Dublin a couple of weeks ago, who said that our jurisdiction is the envy of the globe with regard to scope. Literally, you can walk off the street into any high street solicitor and get advice and assistance. That is not what happens in other jurisdictions.

We are really struggling, as much as you are, Chair, to understand the stark difference here. I am being really candid. We need to understand whether it is the throughput of numbers or the combination of throughput of numbers with differences in the system. Is it that other jurisdictions are spending more on alternative mechanisms, not legal aid? Are citizens getting access to justice without having to go to a court? That is something that Bronagh and I are very passionate about for the modernisation programme. Not every citizen gets an outcome through a court that will help them as an outcome and for their well-being. There are other ways of getting a form of justice. Access to justice is not always in a courtroom.

I am sorry that I am not able to give you an answer. To be honest, we presented this to you to show you where we are at. This is our starting point. My team and I need to understand why those differences are there. What are we doing really well that we get value for money on? Where can we re-divert money? It is certainly not about reducing the £67 per head. I would like to maximise every pound that is available to the Department of Justice on legal aid to give citizens the best access to justice. It is not about looking at that figure to see how we can bring it down. You would need to take the spend down by about £48 million to get it near to England and Wales, which is not going to happen.

The Chairperson (Ms Bunting): Steven, we do not expect you to have all the answers at this stage. It is a really interesting area. At times, it is sensationalised, which is not helpful either, because people need this, and they need to be able to access justice. The information that you find out about this will be really helpful, and we will be really interested in your journey.

Mr McNulty: Thanks, folks, for your evidence thus far. The early response to the fundamental review of civil legal services, which is running from 22 April until 18 June, has been encouraging, with 15 responses received to date. Is that a standard number of responses? Do you know how many people are eligible to respond to the survey? Can we really make recommendations for reform and use public money to do so based on 15 responses?

Mr Allison: When we gave those figures, it was within the first fortnight of the call for evidence. The responses to the questionnaire have increased. We have made it clear to everyone whom we have contacted in the call for evidence that the questionnaire is just one vehicle for providing us with their views. It is a structured questionnaire online. Complementing that, we have already had individuals in society coming to us and saying, "We will take you up on the offer of meeting you or having a telephone conversation". We have had that. We also have planned meetings with a number of stakeholders. For example, Women's Aid is doing a very substantive submission. It has not come through yet. I am meeting Women's Aid on 13 June to go through that.

You are quite right: if we had only 15 responses, it would be a small evidence base. However, it was early days when we gave the figure of 15, and the number of questionnaire responses has increased. We were surprised that the 15 came in so quickly. Normally, with questionnaires, you get a tsunami of responses near the end, when you remind people about the deadline. I anticipate that that will happen.

You asked about the eligible populations. We encourage anyone to respond to the call for evidence and fill in the questionnaires: the one for civil society or the one for legal practitioners. I encourage members to encourage anyone to fill in a questionnaire. We are trying to encourage the conversation and to give people a chance to give us their views in the questionnaire, in separate submissions, in telephone conversations or in face-to-face or online meetings. We have extended the period: not the period for the questionnaires to be submitted, but we have allowed another four weeks to facilitate face-to-face and online meetings and any further discussions that anybody wants to have with us, so that we are not denying anybody the chance to have a conversation with us or to give us their view. Hopefully, that has covered some of your questions.

Mr McNulty: I have one more question. Are there currently appropriate levels of legal representation and is there any evidence of legal representatives not taking on legal aid work because of the Department's policy in relation to payment delays?

Mr Allison: It is hard to answer that, insofar as we have not had anyone say that to us directly. Anecdotally, we hear that from various sources, but it is not widespread. Some of the responses that we have started to see coming through from the legal profession say that it is becoming increasingly difficult for them to take on the work because they are not seeing the value for their company, for their bottom line. That is really important. We have asked specific questions on that to try to understand what is happening here and whether the remuneration levels have an impact on the viability of the legal profession. It is an area, separately, that Judge Burgess will be reporting on at the end of June. He will give his findings on the viability of the profession and whether the remuneration levels drive people away from providing legal aid. Clearly, we need service providers to provide that support to citizens.

Mr McNulty: This is about more than remuneration levels. It is about the policy of payment delay.

Mr Allison: There is not a policy of payment delay, as such. Paul Andrews of the LSA has spoken about this in the past. There is a cash budget that has to be managed: he cannot pay more than he has in the bank, so to speak. However, I have no evidence, to be clear, that that is driving people away from the profession or from providing legal aid.

Mr John Bradley (Department of Justice): I will build on what Steven said about that. One of the things that we want to understand is whether any aspect of the legal aid system, as it stands, is acting as a barrier to people providing services or coming into the services or is motivating people to move away from the provision of legal aid. One aspect of the internal data analysis part of our work is that we are going to look at the number of firms to which legal aid certificates have been granted over the last number of years and, importantly, the geographical distribution of those firms, so that we can see whether there is a change over time in the number of firms actively involving themselves in that work. The benefit of the call for evidence is that it will let us look at that trend over time and ask the question directly to legal aid suppliers and other solicitors' firms: what are the barriers, obstacles or reasons for the patterns that we start to see in the data? One strand of the call for evidence is intended to give us

the qualitative information to answer some of the hows and whys, in order to explain what we see in the pure numbers of the data.

The Chairperson (Ms Bunting): May I come in on that point?

Mr J Bradley: Yes, of course.

The Chairperson (Ms Bunting): You are going to try to ascertain the number of firms that have certificates. However, that might not be reflective of the position, because the number of firms may remain the same, but a number of them will have had to contract because they cannot afford to employ additional solicitors.

Mr J Bradley: Yes.

The Chairperson (Ms Bunting): Moreover, what we are hearing is that people coming into the professional are not moving into the legal aid space. They are going to corporate firms, because that is where the money is and where the career paths are. For people who are engaged in legal aid, their practice is currently under threat. You may not see anything by looking at the number of firms that have certificates. The key will be the number of solicitors who are practising in legal aid work.

Mr J Bradley: Of course. What we will have visibility on is the number of certificates granted and the firms to which those are granted. We will therefore be able to see the volume of legal aid work done by firms in different places. You are quite right: we will not see the number of solicitors employed. That is why we need to build on the internal legal aid data part of our research agenda by going directly to the firms involved and asking them to tell us about their experience of operating the legal aid system and the barriers that it throws up.

We are hopeful that the volume of certificates and the volume of payments to firms in different locations will tell us something about the extent of coverage and supply, the extent to which firms are doing less legal aid work than they used to or the extent to which they are withdrawing from it entirely. The call for evidence will be crucial in telling us what that data means about the motivations behind the firms' behaviour.

Mr Allison: One of the benefits of our programme is that it brings together the five pillars, rather than having disparate projects.

Judge Tom Burgess is examining the viability of the profession. What you are raising today has been raised with Tom throughout the last seven to eight months. Tom has secured, through the Law Society, agreement to get behind the books of some solicitors' firms to look at — this is exactly your point, Chair — how many people in those firms worked in legal aid five years ago and how many are working in that now and to understand why are they not working in it. Tom's report in the criminal law space — there is nothing to suggest that the reasons and rationale for that in the criminal law space will be any different from those in the civil space — will certainly reflect the reasons and experiences of solicitors' firms that have specifically said that they are downsizing, that they are not recruiting, or cannot recruit, criminal law solicitors or that it is not profitable to recruit criminal law solicitors.

We need to do something similar in the civil space at a later point. I know that the Committee asked why we were not taking the same approach to civil as we were to criminal in terms of having an independent review. I think that a letter issued last night to the Committee Clerk. Just to explain, at this point, the call for evidence is to try to help us understand the current landscape and the general themes so that we can start doing high-level impact assessments and provide the Minister with potential reform opportunities by the end of September. The Minister will then make a decision on the breadth and depth of how far she wants us to go into that. That, in itself, will inform our methodology. Once we understand how big a bite of reform we are taking, it might take us into the independent space. That might afford some solicitors' firms in the civil and family space the confidence to do what the criminal law firms are doing with Tom: opening up their books and having a conversation about the viability of their industry. We would not get that. If I asked firms to show me their books, they would, understandably, say no.

In stark terms, we need people to help us deliver services in court. We need solicitors and barristers. We are lucky in this jurisdiction that we have an excellent-quality service from solicitors and barristers. We just have to find a way of making sure that people are attracted into that space and that we contribute to that attraction. We cannot pull all the levers. I do not think that the Department of Justice

can say that we will end up finding a solution to entice young people into criminal law and keep them there, but we can contribute to that discussion and the solution.

The Chairperson (Ms Bunting): Another issue we have discovered is that of apprenticeships. Smaller firms are being precluded from taking apprentices because they cannot afford to pay them over the two years. That, again, may have an impact. We sought information, which is in today's pack, from the institute to establish whether it is seeing an impact as a result of that. The institute said that it is too early to tell. That is another factor in the ability to get people into the profession and the legal aid part of the profession, and it will have a massive impact on access to justice. That is something that you could look at in accordance with your inquiry.

Mr Allison: Tom spent quite a bit of time with those at the institute in Queen's. Some of the metrics from his findings in the criminal law space are stark. One individual said that, out of 100 students in her year at the institute, three are on criminal law contracts. That is what we have. There is clear evidence on the need to bring people in at an early stage. Queen's told us that the most popular compulsory module in first year is criminal law. It is the most popular and well-attended module — people are attracted to it. However, it also said that, more often than not, you will have commercial firms pitching a tent outside Queen's and saying to students, "Here's a placement. Here are awards. Here are prizes". We are competing in that space. It is therefore difficult to see how we can compete on an equal footing. The metrics are stark in the criminal law space. We recognise that.

The Chairperson (Ms Bunting): Justin, are you finished, or do you have anything to add?

Mr McNulty: I am finished, Chair. It is interesting to note that, in relation to access to justice, we are asking questions today about the denial of access to justice. Thank you, folks.

Mr Dickson: Again, the report highlights the urgent need to address the issue of openness and transparency. This is public money at the end of the day, and how it is used has been obscured for too long. Let us be honest about that.

Who pays the taxing master? Who is his or her employer?

Mr Barry: The master is a High Court judge and is responsible to the Lady Chief Justice.

Mr Dickson: Is that funded by DOJ then?

Mr Barry: That is a good question.

Mr Allison: That is a good question.

Mr J Bradley: The taxing function is funded by a stamp duty that is paid by the people submitting bills for taxation. When a representative submits a bill for taxation for legal aid purposes, they pay a fee to the taxing office that acts as Courts Service revenue. That is then repaid to the representative through their legal aid certificate. It is, essentially, a payment out of the legal aid fund to the representative to pay the fee for the taxing master. As things happen —

Mr Allison: I am still —

Mr Barry: The master is also the head of the Enforcement of Judgments Office, so she has other responsibilities. She is a salaried member of the judiciary. John is absolutely right: the stamp duty element goes towards the costs of the taxation, if you like. It is a percentage of the assessed amount that has to be paid by the solicitor.

Mr Dickson: I suppose that that begs this question: is that the right place for the role to sit? Is it right for that to sit with the independent judiciary? As this is public money, should it not, as proposed here, sit under the purview of the permanent secretary, as an accounting officer for public money?

Mr Allison: One of the key objectives of our taxation reform is to move the assessment process away from the judicial office holder into, more than likely, the Legal Services Agency, which has the same role in assessing any other bill for legal aid that comes in. It will have the same responsibility, so the taxing master will have no role in ordering certificates or ordering payments through the legal aid fund

as we go through this. We are removing that responsibility on the legal aid spend. The taxing master still has a role in the taxation of other non-legal aid cases, and that is fine. That will remain.

Mr Dickson: Sure. That is part of the industry, as it were.

Mr Allison: Exactly.

Mr Dickson: If that is how they want their business dealt with, that is up to them. One might argue that, when or if the move is made, based on the arguments made for that, it might, ultimately, have an impact on other aspects of what they do. That is up to them, presumably.

Mr Allison: There could be potential repercussions there. Our focus, as you have identified, is on bringing that openness, transparency and predictability under the purview of the Department so that we can understand what the bills are and what we are being asked to pay for.

Mr Dickson: As regards what happens in other jurisdictions, is there a similar taxing master role in Scotland and England and Wales? Has that already been moved on, or did it ever exist?

Mr Allison: I will pass that one to Chris.

Mr Barry: We have spoken to colleagues in England and Wales, who have gone through the process already. In England and Wales, there are costs judges and costs officers, who are court staff. At the minute, practitioners can elect to have their bill assessed by a costs judge or officer, or they can seek assessment by the Legal Aid Agency. We met colleagues there. Their latest data on the breakdown of that is that 95% are electing to go for assessment via the Legal Aid Agency, so almost all of it comes under the purview of the accounting officer.

In Scotland, it is a different legal system, and it is known as the Auditor. The Scottish Legal Aid Board assesses bills in the higher courts. The Auditor's role is an appellate role, where there is a breakdown or dispute over what should be paid. We hope to engage with colleagues in the Republic in the near future in that regard. Again, it is a different legal system, but it is broadly comparable, in that judges will order costs for payment, and that bill will then fall to the Department of Justice. It has some standard fees in legislation for that work. As I said, we are in the process of engaging with colleagues in that regard to try to find out more and see where we can pick up lessons learned from their journeys.

Mr Dickson: Will a further outcome of all this be an opportunity to standardise more fees or to look at the whole fee structure?

Mr Allison: We will have to, because, at the moment, we do not have a basis for the fees.

Mr Dickson: Exactly.

Mr Allison: We will need to establish that. We have decided in the past month that we are going to look at High Court bail as the first area under taxation. High Court bail represents about 25% of the volume of cases that the taxing master will look at, but it is only about 3% of the quantum.

Mr Dickson: It is a discrete area.

Mr Allison: It is a discrete area, and we can test our methodology and gain confidence in how we are doing that. We already have a standard fee for High Court bail, but, in 25% of cases, the legal profession says that it will not take that £180 for the High Court bail application and opts for taxation. Both routes are available. We will look at that to see whether £180 is viable as the proper rate. If we need to increase that to reflect value for money and a proper and fair payment for the work that is being done, we can do that, but that will be an underpinned figure; it will be a standard fee.

Mr Dickson: Ultimately, when reviewing fees, in order to provide equity for those who receive the money, will you look at some form of independent assessment of the value of a fee for a particular task?

Mr Allison: I seem to be going back to Judge Burgess quite a bit. One of Tom's terms of reference was to look at the mechanism for reviewing. Currently, in the civil, family and criminal legal aid space, there are statutory obligations on the Department to review the remuneration levels at various intervals. Those are not being met in the time frames that we would like. We run into sand regarding engagement data sets that need to be developed. We are looking for Tom to, in the first instance, say, "Well, what are your recommendations to break that cycle?". We need a model that does not Hoover up resources just to look at fees every two or three years. We look at that all the time. We have to create a new fee when new offences are created.

Mr Dickson: That was my next question: how do you assess a fee for a new offence?

Mr Allison: We go through a legal aid impact assessment. If someone brings in, for example, stalking crime or hate crime legislation and a new offence, my team will go through the legal aid impact assessment and say, "OK, where's that comparable in the fee structure?". We look at like for like at the moment. If we have to create a new line in statute, we put that through the Assembly and have it in statute. We are using the benchmark of the figures that we have at the moment. I would like to get to a point at which we broaden it out and the DOJ does not have to be completely knowledgeable on all this or depend on data sets because we bring in independent subject expertise to help to inform it, on an advisory basis, at the very least. That may flow from the civil legal aid review and the criminal legal aid review. We might get to that point at some time in the future.

Mr Dickson: That has been very helpful. Thank you very much.

The Chairperson (Ms Bunting): Ciara, I think that you are on mute.

Ms Ferguson: Apologies, I was looking at the paper.

Your paper is quite detailed, and a lot of extensive work is happening. In relation to the current delivery plan over the past year or two, you list a number of key areas of ongoing work, such as the private family law early resolution action plan and the pilot of a general authority for legal aid for intra-court mediation. Maybe it is not for now, but it would be useful to see further detail on those and information about the impact that they are having. I am not expecting that today, but maybe we could get a written report.

Mr Allison: We are more than happy to provide an update on those. As I said, Bronagh and I are particularly passionate about the modernisation space because we can do an awful lot there for citizens without necessarily asking them to go through a court process. They will be ably supported by solicitors and barristers and the court processes themselves, but it is not always the right option for everyone. The more that we can do in that space, the more we are enabling access to justice. We will definitely provide an update. I am happy to do that.

Ms Ferguson: That is great. Thank you.

The Chairperson (Ms Bunting): There is just one other issue. In our papers, it is stated that you are supporting the Department of Health's adult protection Bill team:

"to ensure the impact to the legal aid fund is fully included in their business case and funds provided accordingly. This is a complex Bill with 5 new criminal summary or indictable offences and a number of civil orders being created and has therefore significant resource implications for the legal aid fund and the Division."

It is important that that is on our radar. When will the Bill be laid, and how will we be kept informed about the implications of that beyond the Assembly Chamber?

Mr Allison: John has been leading on that, so I will definitely defer to his expertise.

Mr J Bradley: I am not sure of the Department of Health's planned date for the introduction of the Bill, to be frank, but we can come back to you with a response on that.

The Chairperson (Ms Bunting): We can check that with the Department of Health, I think.

Mr J Bradley: It would be nice to have an update. The date has changed a number of times, as is usual in these circumstances.

When it comes to the legal aid implications and the introduction of any changes to the legal aid system that will be required in response to the Department of Health provisions, we will brief the Committee in the usual way. Any legislative changes to legal aid that are required will be subject to public consultation, the usual impact assessment processes and economic appraisals, and we will bring the findings of those to the Committee as they come forward.

The Chairperson (Ms Bunting): That is great.

Mr Allison: If it helps, Chair, it would not be too difficult for us to inform you regularly of the areas on which we are currently doing impact assessments across the piece. We have the Department of Health, but Agriculture will come up with environmental offences and so forth that we do not have at the moment. If it is helpful to the Committee, we can, on a regular basis, give you an update on the current table of impact assessments that we are working on and in which areas.

The Chairperson (Ms Bunting): I do not know whether members will want that. It is additional information, some of which we would not necessarily require. In the case of that Bill, where there could be a significant impact on the legal aid budget, it is important that that is somewhere on our radar.

Mr Allison: Sure.

The Chairperson (Ms Bunting): If we are looking at significant impact, it might be helpful to have that brought to our attention. The next thing is to define "significant", but you know what we are saying.

Mr Allison: Yes.

The Chairperson (Ms Bunting): Thank you.

Is everybody happy that they have had their opportunity to ask anything that they needed? That is great.

Thank you very much. We really appreciate the briefing. It was interesting and helpful.