



Northern Ireland  
Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

Impact of DOJ Legal Aid Reform:  
Criminal Justice Inspection Northern Ireland

8 October 2014

# NORTHERN IRELAND ASSEMBLY

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Impact of DOJ Legal Aid Reform: Criminal Justice Inspection Northern Ireland

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**Members present for all or part of the proceedings:**

Mr Paul Givan (Chairperson)  
Mr Raymond McCartney (Deputy Chairperson)  
Mr Stewart Dickson  
Mr Sammy Douglas  
Mr Tom Elliott  
Mr Paul Frew  
Mr Chris Hazzard  
Mr Seán Lynch  
Mr Alban Maginness  
Mr Edwin Poots

**Witnesses:**

Mr Stephen Dolan	Criminal Justice Inspection Northern Ireland
Mr Brendan McGuigan	Criminal Justice Inspection Northern Ireland
Mr Bill Priestley	Criminal Justice Inspection Northern Ireland

**The Chairperson (Mr Givan):** I formally welcome to the meeting Brendan McGuigan, chief inspector, Bill Priestley, lead inspector, and Stephen Dolan, an inspector — all from Criminal Justice Inspection Northern Ireland (CJINI). As usual, the meeting will be recorded by Hansard and will be published in due course. Thank you for the work you have done at the Committee's request. It is very much appreciated. It will help us in our deliberations on the very important issues that we need to handle. Brendan, I will hand over to you at this stage, and then, I am sure, members will have some questions.

**Mr Brendan McGuigan (Criminal Justice Inspection Northern Ireland):** Thank you very much indeed, Chair. This is the first briefing paper. It is designed to provide findings for the Committee about the impact of changes already implemented to legal aid in England and Wales and the initial impact of similar changes in Northern Ireland. It is quite a slim document. As inspectors, we look for lots of material on which to base our findings. The reality is that there is very little out there. There are certainly a lot of perceptions, and a lot of comments have been made, but when you look for hard facts, you find that they are relatively thin on the ground. However, I thought it useful to bring along my two colleagues. Not only have they been looking at this issue, but there is a kind of continuity in the work that they are doing because both were involved in the review of corporate governance of the Legal Services Commission (LSC). So, in many ways, they have looked at legal aid generally and at the performance of the commission, and now we are taking a look at the possible impact of the changes as they are being rolled out in Northern Ireland.

As I said, we have tried to capture as far as possible the effects of the changes that have been implemented in England and Wales and we have tried to forecast and assess, from speaking to

interested parties in Northern Ireland, what the reaction is likely to be in Northern Ireland as these changes are implemented. On the basis of that, the three of us will answer questions from the Committee as fully as we can. Back to you, Chair.

**The Chairperson (Mr Givan):** OK, Brendan. Thank you very much. It is not usual to have such brevity on these occasions. On page 7 you indicate that the number of lawyers in Northern Ireland stands at around 2,500 solicitors representing 570 practices. Those figures are higher than the ones provided by the Law Society, when it gave evidence to the Committee for Finance and Personnel in January this year. In its written submission, the society suggested that there were 2,195 solicitors in private practice or holding practice certificates and 531 firms. Will you please bottom out where you got the information from for those figures? There is quite a discrepancy.

**Mr Bill Priestley (Criminal Justice Inspection Northern Ireland):** That information came from the Law Society itself. We expect discrepancies in that information because the picture changes almost monthly. I was aware that some of the numbers are lower and others higher. However, those are the numbers that I got from the Law Society at the time we did the fieldwork. We were expecting discrepancies, to be perfectly honest with you.

**The Chairperson (Mr Givan):** One of the questions we put to the legal professions when they came before the Committee was this: are there too many solicitors and barristers in Northern Ireland per head of population? Is that in itself creating this pressure? The professions may be trying to sustain a private market through public funds. Obviously, on both counts their view was that this is not the case. However, I am interested in your view.

**Mr McGuigan:** You have to look at how the criminal justice system has developed over the last 40 years. In many ways, it reacted to our troubled past. There was an increase in the size of the police service, the Prison Service and the probation service. Every criminal justice organisation expanded to deal with the needs and issues that arose from our troubled past. Since early 2000, as you can see, organisations have been contracting, so that there are now many fewer police officers, prison officers and probation staff. You can see the pressures that are coming on other small organisations in the justice sector. In many ways, that is an impact of normalisation.

I am aware of many people who decided to pursue a career in the legal professions although that had not been their first choice. They may have come from other sectors, but, because of demands and requirements, this is where they switched their attention to. In many ways, normalisation has brought us to the situation where fewer cases are going through the courts. There is no doubt about that. Thankfully, there are fewer of the really serious cases, as a result of our normalisation process, and that impacts on every aspect of the criminal justice system.

**Mr McCartney:** Thank you very much for the presentation. I note your initial observation about the lack of statistics. Let me pick up on two points. The Lord Chief Justice said publicly that there is concern over the increase in self-representation. You have not found that. Would that be there for someone to research, or does it just happen?

**Mr McGuigan:** We can find no evidence of that. If there is evidence out there, the interested parties should bring that information to the Committee. We could not find it.

**Mr McCartney:** The second aspect of it is that, last week, the Chair and I met the Criminal Cases Review Commission. I know that it is holding a round of meetings, I am not sure if it is meeting you —

**Mr McGuigan:** I have not seen it in the diary.

**Mr McCartney:** One of the observations that it made, and it said that it had already taken this to a Select Committee in Westminster that is dealing with legal aid cuts, was that it has seen an increase in the number of cases that it was referring to the Court of Appeal. However, because of the time lines, the commission was not in a position to be definitive, but it believes that it could be in 12 months' time. I wonder whether you would consider meeting the commission and asking its statistical basis for making that statement.

**Mr McGuigan:** Absolutely. In many ways, this is uncharted territory. Even in England and Wales, you can see that there is a dearth of quantitative evidence in support of what you will hear different

individuals, judges etc saying. There is no hard evidence to support that, so I will be very willing to meet the group. Absolutely.

**Mr McCartney:** It might be done through writing or other correspondence, because the commission makes the observation, and I think that most people will accept it, that, if there is an appeal system and a referral, and everything that comes along with that, then it becomes more costly the longer the litigation goes on, as opposed to ensuring that good justice is done at base 1. That would mean that there would be no Court of Appeal and no referrals to the commission. That is where we have to drill down to. If there are cuts as proposed, will that lead to a lower standard of justice that then has to be mopped up at a later stage?

**Mr McGuigan:** Absolutely.

**Mr Lynch:** Thanks for the presentation. Brendan, practitioners in England said that there was an increase in the number of people who could not afford access to justice and that there was a reduction in the number of firms, which lead to delays in costs. Did you find any evidence of lack of access to justice?

**Mr McGuigan:** No, we could not. In England and Wales, it was quite clear that the graduated fees scheme was designed to reduce the number of firms engaging in criminal defence work. We have seen some things here in Northern Ireland that show that some of the larger firms could manage this situation much better than smaller firms, which is exactly what happened in England and Wales. They could apportion the work and plan much better, whereas a small firm operating on its own would struggle with this. I suppose that that is kind of a market force as opposed to anything else.

We see that reflected in other aspects of public service; for instance, with GPs. It is rare now that you will get a GP surgery with one doctor operating on his or her own; they will be operating in a group practice. That may well be the future in Northern Ireland. Certainly, some of the bigger law firms do not seem to have any problem with this and are extending their role into more rural areas. We have seen evidence of them setting up day surgeries etc to be on hand to advise clients. That does not impact on or restrict access to justice, it just means that instead of perhaps the local firm of solicitors operating in a small town, it may well be representatives of a larger firm of solicitors, maybe based in Belfast or Derry, who could be providing the service.

**Mr A Maginness:** Thank you, Mr McGuigan and your colleagues for coming. This is a very helpful report.

In relation to the experience in England, you are not saying that there has not been an increase in personal litigants there, are you?

**Mr McGuigan:** There are suggestions that that is what has happened, but we could not find firm evidence of it.

**Mr A Maginness:** Are you aware that the High Court in England has set aside a division to deal with personal litigants?

**Mr Priestley:** Yes, I am aware of that.

**Mr A Maginness:** Does that not indicate that there is a problem?

**Mr Priestley:** It certainly indicates a problem. Our remit was to find out whether it was due to the reforms in legal aid. We are looking for evidence to say that this cause had this effect. That evidence was lacking.

**Mr A Maginness:** If this occurred during a period in which legal aid reform was taking place, it is a fairly reasonable conclusion to say that it is a result of legal aid reform. Is that not reasonable?

**Mr Priestley:** I would certainly be looking for very strong evidence, and an evaluation, to link the cause with the effect. I think that we have mentioned personal litigants in England and Wales and the comments of the judiciary in England and Wales. But, as for linking back to the reforms, we could not find evidence tracing right the way back.

**Mr A Maginness:** There is widespread disquiet in relation to the standards of representation amongst professionals. Do you accept that that is a view expressed by the judiciary in England?

**Mr Priestley:** We mention that in the report, yes.

**Mr A Maginness:** The other aspect of the English experience is that reforms favoured larger firms rather than smaller firms. There was evidence of that. Is that what you are saying?

**Mr Priestley:** Yes.

**Mr A Maginness:** There was a decrease in the number of criminal and civil providers. Was that quite self-evident?

**Mr Priestley:** Absolutely, yes.

**Mr A Maginness:** Do you know what percentage that might have been as regards the decrease in providers? If you do not, do not worry about it.

**Mr Priestley:** It decreased by about 5% in criminal law providers. That is the figure that we have.

**Mr A Maginness:** Your comment on page 33 about the increasing time spent in the Crown Court is interesting. What do you say is the reason for that? That suggests to me some avoidable delay in the system. I am sorry if I have referred you to the wrong page.

**Mr McGuigan:** It is the way cases are transferred to the Crown Court. Of course, they do not have the preliminary hearings in England and Wales; they transfer directly to the Crown Court. That is why you are not really comparing apples to apples. There is a slight difference in the Northern Ireland context in that we still have committal proceedings here.

**Mr A Maginness:** I do not want to get into committal proceedings, but does that not suggest that it is better to have committal proceedings so that you do not have extra time added on in Crown Court proceedings? Committal proceedings filter out the issues. That is the problem as I see it.

**Mr Stephen Dolan (Criminal Justice Inspection Northern Ireland):** Sometimes they do, but there were 8,000 committal proceedings in the year and only eight or nine were not referred. It certainly could take up Crown Court time looking at issues of evidence.

I will go back to your point about the impact of legal aid reform in England and Wales. Our remit was about the effect of the proposals here and evidence of those that have already been cast. We found little evidence of the impact of the proposals so far. In England and Wales, the proposals have gone further than they have here, and their cuts were larger also. So, it may well be that personal litigation has happened there because they have limited scope to legal aid, especially, very significantly, in the civil court. The proposals here fall short of that. So, it may well be that that impact will not occur here.

**Mr A Maginness:** I will move on to our position here. There was a spike in legal aid and in the number of cases being processed in the past year or so, and part of the reason for that was that an extra judge had been appointed and so forth. So, there is a lot of work being put through, and you would expect a reduction in the amount of cases going through in the near future. That in itself, together with the reduction in fees arising out of the 2011 reforms, would mean a reduction in the legal aid pressure. Do you accept that?

**Mr McGuigan:** Certainly in respect of the criminal courts.

**Mr A Maginness:** That is what I mean.

**Mr McGuigan:** Yes, you certainly tend to see that. Fewer cases are being referred to the Crown Court now, and fewer cases are going through to the Magistrates' Court. The difficulty is that the current forecast is that the legal aid budget will still be overspent by almost £20 million by the end of the financial year. If that money is not available, that has to —

**Mr A Maginness:** Is that in the current year?

**Mr McGuigan:** Yes.

**Mr A Maginness:** I am projecting forward and saying that, given the work that has been done and the reduction in cases, there would be less pressure in terms of criminal legal aid.

**Mr Dolan:** One of the issues for us was that the total volume of cases has increased and, ergo, the total spend has increased. So, the correlation is that, if volume goes down, cost goes down, but the unit cost has gone up very dramatically. We never got to the bottom of that. The 2012-13 gross costs were £12 million for 4,000 cases and the average was £2,900. But, in 2014-15, there were 6,000-odd cases, which is a 50% increase, and a gross cost of £28 million, which is a 250% increase. That is due to the average cost going up to nearly £4,600. You could argue that that is because disposals of old cases are under the 2005 rules, but the percentage of 2005 cases coming through in the current year made up only 10%. We do not have evidence as to why that unit cost increases. Normally, economies of scale increases volume and unit cost drops. It would not apply in the legal case because of the complexity of cases, but there is a bit of a black hole there. Add that to the Legal Services Commission's track record in forecasting costs. That has never been on the mark since 2002. So, we have issues and we cannot simply apply the mathematics and then say, "Next year you will see a fall". That may not transpire, and it could leave you in a very difficult position if you are budgeting on current fee rates and current unit cost rates and expecting the volume to drop and drag down total cost. We have no evidence to say that that will definitely happen.

**Mr A Maginness:** You say in your summary that:

*"the number of new cases coming to the Crown Court are falling and may deliver savings in their own right;"*

**Mr Dolan:** Yes, and they should fall. In fact, cases going to Magistrates' Courts should fall, too.

**Mr A Maginness:** The next bullet point says the same in relation to Magistrates' Courts.

**Mr Dolan:** The unit costs in Magistrates' Courts have stayed the same. Therefore, you will see a fall in the costs at the Magistrates' Court. However, in Crown Court cases, the unit costs have almost doubled. So, the fall in cases is offset by the increase of cost per case, which has actually increased the total cost by more than you would expect. That is an issue for us.

**Mr A Maginness:** I have one last point in relation to the reduction in legal practices involved in criminal legal aid as opposed to civil legal aid. Do you think that practices will cease to involve themselves in criminal legal aid? Do you see that happening?

**Mr Dolan:** We have two pieces of anecdotal evidence. I will let Bill come in on this as well. The first is that larger firms providing those services have said anecdotally, having talked to people who have used the services of criminal lawyers, that the expertise in the really large firms is perhaps better than it is in the small firms. Secondly, some small firms that we spoke to said, "We have been looking at the writing on the wall for a while and our buzzword is diversification". So, it may well be that there is a change in the market and they respond to it. It is anecdotal.

**Mr A Maginness:** What firms in particular will be affected in your opinion?

**Mr Priestley:** The very small rural-based or market-town firms will be affected, and one or two partners firms. They were certainly vociferous in saying that they had seen the writing on the wall. They had seen this coming for some time and had seen the need to move into some sort of cooperative with other local firms. As I said in the report, a stark and bleak picture was being painted by the local rural firms. Having said that, with our remit of access to justice, we could see the big firms moving in to provide that service.

**Mr Poots:** I note at the outset that the professional bodies seem to think that there are 604 lawyers in Northern Ireland, while your figures raise that up to 3,300. That is a massive discrepancy and does not fill anybody with confidence in what is being brought forward by the professional bodies in that case, given that it is so inaccurate. I also note that, in comparison with fees in England and Wales, the cuts and fees proposed — 27% for solicitors and 22% for barristers — are below that indicated by the Department's research. In spite of the cuts that are being made, we are still falling short in bringing legal aid under some control. It is very clear that we could go further and the proposed cuts

could be much deeper than is the case today. Perhaps the barristers should be appreciative of that fact.

There is a point that you make that you might, perhaps, like to clarify. Your point could indicate that the pain involved here will not actually fall on people who require legal support. You state:

*"there is a lack of empirical evidence at present to support assertions that access to justice has been or will be adversely affected by reforms;"*.

You go on to say:

*"reforms are likely to reduce the number of legal practices involved in delivering criminal and civil legal aid services;"*.

Perhaps you would like to give some justification for those statements because, essentially, what is being said is that, although there will not be a denial of justice to individuals, the reforms will impact on legal practices.

**Mr McGuigan:** Once again, it is the small firms that will probably struggle, and that is simply because there are maybe only one or two solicitors in those firms. The very fact that they may have to attend courts in other towns can affect their availability, as can where the police decide to establish large custody suites. All the services being delivered in the one town is an increasing problem. Solicitors probably have to travel to central facilities, just as the actual courts do not operate in every regional town in the way that they once would have done. It is very clear to us, when looking at the court lists, that a number of the larger Belfast firms are representing clients in smaller towns. There was evidence that they were conducting day surgeries when they were in those towns; seeking further clients and making themselves available. Smaller firms just could not make that commitment. I suppose it is a bit like the grocery trade. How did they start to compete with the supermarket giants? They amalgamated to become Nisa, Today's or Centra stores and found a mechanism that showed that pooling resources allowed them to compete with the larger firms.

As I said, we could not say that that would in any way impede access to justice. It may well be that, although the service would not be provided by the family firm that has existed in a town for 100 years, it is more likely that it would come from some of the larger firms that are able to spread their services further and deeper.

**Mr Poots:** I reassert that I note that the most powerful statement in the report is:

*"there is a lack of empirical evidence at present to support assertions that access to justice has been or will be adversely affected by reforms;"*.

I also note that nobody has challenged that today, and I would welcome that.

**Mr Dolan:** On a point of information, the 604 probably refers to barristers whereas the 3,300 includes lawyers, solicitors and barristers. If you get the figures from the Bar Council they will be for counsel, and from the Law Society they will be for solicitors.

**Mr Douglas:** Thank you for your presentation. In your report, you state:

*"Judges have noted that the time taken for Crown Court cases (avoidable delay) had started to increase which can be in part attributed to solicitors and barristers being less well prepared and the prosecution being underprepared as a result of reducing criminal legal aid rates."*

I have two questions. First, where were these quotes made by judges? Secondly, how many judges are we talking about?

**Mr Priestley:** We spoke to a number of people in England and Wales — one recorder and a number of other practitioners. Also, this is reported information that is already in the public domain in England and Wales through various reports that are available. We got the information from existing information, and this was the observation of a number of judges in England and Wales. It was the observation of the recorder who we spoke to in England and Wales, and it was also the observation of many people in the legal profession who we spoke to there.

**Mr Douglas:** Have you any idea of how many we are talking about?

**Mr Priestley:** It would be wrong of me to guess off the top of my head.

**Mr Douglas:** Are we talking about dozens?

**Mr Priestley:** Yes, it would be dozens. The reports are quite widespread in England and Wales on these matters.

**Mr Hazzard:** Thanks for your presentation. I would like your analysis on a couple of recent developments. First, the Children's Commissioner in Britain came out and said that human rights that are supposed to be enshrined by the UN are being breached because of these cuts in Britain. Secondly, one of the most senior judges in Britain, Sir James Munby, ruled that the Courts and Tribunals Service should pay for legal aid when it is denied. I am looking for analysis of those two developments.

**Mr McGuigan:** Obviously, legal aid has to be subject to affordability within the overall budget, and it is then about prioritising who gets access to it. The whole idea of access to justice is that the most vulnerable always get access to justice and that the state should fund that in as far as it possibly can. We have to be realistic. There are finite budgets, and, over the years, legal aid has been increasing. Certainly, as we reported last year, civil legal aid has really grown exceptionally, particularly in family proceedings. The current work under way, commissioned by the Department, is the review under Jim Daniels, and you are hoping to hear from him shortly. That will be about looking at the scope of legal aid.

In England and Wales, they took family matters out of civil legal aid, and you can see the automatic reduction there. You have to ask what the impact of that was and what decisions and judgements were made by the Ministry of Justice in England and Wales to support that decision. I think that, in Northern Ireland, we will have to seriously look at that because there are certainly growth areas. We have seen that. We see growth in the use of judicial review, and we see growth in the appointment of legal advisers for parole hearings, turning what had previously been oral hearings almost into trials. That is fine if it is for serious cases, such as people on life sentences or extended sentences, but for run-of-the-mill cases it just does not seem quite right, and it is starting to slow up the process. So you have to ask some questions about whether that is the most appropriate use of the taxpayer's money that is available for legal aid. I think that some tough decisions probably do need to be taken, and certainly in this current review undertaken by the Department, I have no doubt that scope will be the primary issue for it. What do we need to do to reduce the overall legal aid bill?

**Mr Dolan:** On the point that you raise, the scope reductions in family support and civil support in England were much wider than proposed here. As your colleague has said, the percentage cut in fee rates was also higher. So, the impact is exacerbated. We have only the proposals here, so we have not measured it. In the human rights cases around support in family law for children's cases, some of those cases were fairly complex immigration cases, which may or may not be copied here or may or may not happen here. That remains to be seen. So, their comments are valid, but whether they are directly applicable here is another thing.

On Brendan's point about parole hearings, looking at the parole rules for determinate custodial sentences, which are the most common, with maybe 700 parole hearings in a year, essentially what is happening there is a review of the decision to recall. The decision to recall is based on a risk assessment, a numerical score, an ACE score or, perhaps, committal of another offence. I have seen in parole hearings counsel instructed by solicitors interviewing the probation officer as to why they made the decision, when it is reasonably self-evident. The role of the parole board is to look at what was the test and was it reasonably applied, and you ask the question, "Do you need legal representation for that?"

We have seen very large increases in other things such as applications in court, should it be character or whatever, abuse of process, and increases in more mundane things such as letters to the prison sentence manager on a regular basis from firms of solicitors to say, "We note that our client is due in court next Tuesday at 11.30 am. Can you ensure that he will be there?", which begs the question: "Why would the Prison Service not produce them? Have they ever not? No." So, there are expansions into areas of legal aid that were not there before. That is where some of the control has been lost.



**Mr McGuigan:** You come to the situation in which charges are being made for each page produced. One of the solutions was to reduce the type set, and you will reduce the cost. We are starting to see that here — that some of the costs of the Crown Court cases are based on the pages of evidence that have to be reviewed. Significant changes.

**Mr Elliott:** Thanks for the presentation and report. I want to point to one aspect on page 16 of your report, where it states that the legal aid budget is currently £3 million under budget, but it is forecast to be about £18 million over budget by the end of the financial year. Can you explain where that discrepancy comes in? How do you go from £3 million under budget to £18 million over budget in six months?

**Mr Dolan:** It is just delays in the payments process. Firms and counsel submit their certificates, but, to be blunt, they do not submit them on time necessarily. You will often see that, where they quote fees that have been paid to counsel, they will say that it could refer to a number of years. What happens is that they bill at certain points in the proceedings, and they do not necessarily just neatly fall within the financial year. The LSC is saying is that we will see a big amount of bills and certificates arriving in the next couple of months. They know what is out there. They just have not received them, is the simple answer.

**Mr Elliott:** So they are basically forecasting what is likely to come in. That is interesting. I suppose that there is no better way of managing that, is there?

**Mr Dolan:** One of the issues for them in forecasting before the 2011 rules was the way in which costs were applied to cases. They were almost like time and materials contracts. Therefore, they would have little idea at all what the costs were going to be. That led to some of the early difficulties in forecasting of legal aid. That improved when they brought in a lot of fixed fees, especially in the Magistrates' Court, and they are bringing in fixed fees in the Crown Court. So that has improved a bit, but really you will not get actual forecasting until you get to the stage where you had a much greater element of fixed fees and you had some really good evidence that average unit costs per case were replicated. At least then you could look at volumes of cases times unit cost to make a good estimate. We have seen that the unit costs here have varied very dramatically in three years. So the LSC is faced with —

**Mr Elliott:** The unit costs of what?

**Mr Dolan:** The unit costs of cases in the Crown Court have varied. So the LSC is a double whammy in a way. It does not know exactly what the bills are going to be until it gets them, and it cannot even use average forecasting because of the variance there. I think I said earlier that their forecasts are sometimes taken with a pinch of salt, and you are seeing it there. It is a very moveable feast.

**Mr Elliott:** In actual fact, instead of being £18 million over budget, it could end be £25 million or it could be —

**Mr Dolan:** I could not possibly say.

**Mr Elliott:** I am only saying it is such a —

**Mr McGuigan:** That was the history of the Legal Services Commission. In the last number of years, the forecasts were significantly below what the final bill actually was.

**Mr Elliott:** Your research in England and Wales was referred to earlier, but I will just go over it again. The recorder stated that there had been an increase in unrepresented defendants there. The effects of that were added delay and associated increase in costs. Do you see any of that at all in Northern Ireland?

**Mr Dolan:** We asked the Legal Services Commission to provide us with evidence where there were personal litigants, and we were told that the numbers were so low that they had not recorded them. So we are not seeing it here, but in England and Wales it seems to be an issue. As I said before, the scope of civil is being restricted very dramatically there compared to here. The fees that are being paid have been reduced dramatically, so counsel are not willing to represent.

**Mr Priestley:** In addition to that, we heard from the Bar Council that personal litigants were almost an everyday occurrence, especially in civil family cases. We asked for information on that from the Bar Council, but we did not receive it. The only empirical information that we got was, as Stephen said, from the Legal Services Commission.

**Mr Elliott:** You are the criminal justice inspectorate. Obviously you look at all aspects of criminal justice. I have been a long-time advocate of believing that legal aid needs reduced and needs reform, but other aspects of criminal justice need reform as well. Do you see an opportunity for a bigger picture, instead of looking at just legal aid or other singular aspects in isolation and doing a piecemeal approach? Do you see benefit in an overall review that may bring more efficiencies to the system and save more money overall?

**Mr McGuigan:** As a child of the criminal justice review, I would like to think that we have been at the forefront of trying to drive through the reforms in the criminal justice system in Northern Ireland. Twelve years on from the criminal justice review, it is a different landscape. There is no doubt about that. I alluded to it at the very beginning. We are talking about a much smaller Police Service, a much smaller Prison Service, fewer cases going through the criminal courts and a different approach to dealing with young offenders. In many ways, when I look at the aspirations of the criminal justice review, which was about developing a justice system to meet the needs of our society as we moved out of that very troubled period, I hope that what you are witnessing is a greater openness and transparency around the functioning of the justice system. I like to think that we are at the centre of demystifying and trying to show the linkages that can be made and supporting the partnership approach across the justice system.

If you are saying to me, "Do we need to take another look at it as a result of the austerity that we are currently going through?", that may well be the case, and it may well be something that the Assembly might feel is entirely appropriate. Our personal observations have been of a justice system that, in some areas, is leading other jurisdictions — for instance, in our public protection arrangements in Northern Ireland and in our support for rehabilitation within a shrinking prison staff establishment. Those are really fine ideals, along with the level of partnership working that we are encouraging with the Police Service and other statutory agencies.

We have a real opportunity in Northern Ireland. I am very hopeful about it. We are small; we are not dealing with massive conurbations. Northern Ireland is a village, and organisations can work cooperatively to deliver a better service for the citizens. Ultimately, a complete review of the justice system is probably a decision for the Executive. Having been in the inspectorate for 10 years, I have seen significant improvements over the past 10 years.

**Mr Elliott:** Have you seen reduced delays in the Public Prosecution Service or the Courts and Tribunals Service?

**Mr McGuigan:** Delays are a multifaceted and intractable problem. We have always alluded to a series of nuclear options that need to be imposed. We look at other jurisdictions, and we see how much more effective they are in getting cases through criminal justice processes. I appreciate that it is slightly different, but Scotland actually works towards statutory time limits in statutory case management. There have been some very significant cases in England and Wales where serious offences have been investigated and prosecuted, and the individuals brought before the court and maybe put into prison, within four to five months of the incident. That is unheard of in a Northern Ireland context. So it has been achieved in other jurisdictions. I do not think it is beyond Northern Ireland to achieve that, but it may well be that you have to confront some of the custom and practice that has gone on here for a long time.

**Mr Dolan:** I was just rehearsing in my mind our approach in the reports that we have been involved in. From our formation, we have had quite a lot of single-agency and single-theme reports. That was a good way to start looking at prisons, probation and so on. Increasingly, we have gone to thematic reviews, which look at interfaces. Targets that are applied to individual agencies can be dysfunctional. You can apply a target to the police to present a file to the PPS within 40 days. The file may arrive but not be complete, so it goes back, but they have met the target. Increasingly, we are looking at multi-agency interaction. Some of the things we are involved with at the moment are the interrelationships between healthcare, education, prison and probation within the theory of reducing reoffending. I am looking at one at the moment. Police and community partnerships is an example of where organisations are working together to common purposes, which are criminal justice objectives. An

overall review of criminal justice is probably not on our plate or within our gift, but, for our part, we have been looking across the piece at inter-agency interaction.

**Mr Elliott:** OK. Effectively, there are other issues that may fit into the system. I have a final question, Chair. I notice that this is what you call a staged assessment aspect of the legal aid reform. When is the next stage due? When can we expect the next assessment?

**Mr McGuigan:** This was our first report. I am looking at the Committee to see if it met your expectations. Did you find it valuable?

**The Chairperson (Mr Givan):** You will find out in about 10 minutes.

**Mr McGuigan:** We were very keen to support the Committee in some of the very difficult deliberations that you were going through. We were trying to provide you with as much evidence as we could. I go back to my original comments. There is a dearth of hard evidence out there.

**Mr Elliott:** You have not got it.

**Mr McGuigan:** It is not there.

**Mr Dickson:** We have probably heard the most refreshing, open and honest assessment of the subjects we have been grappling with for quite some time. Your last comment was about the lack of evidence. The Committee has heard lots of anecdotal evidence, but when we have come to press for numerical and other evidence it perhaps has not been there. You are now confirming that for the Committee.

You also make reference to how the nature of delivering small-town legal practices has changed. My experience in my constituency, for example, as long ago as the 1970s when Carrickfergus Magistrates' Court closed, was that you saw an amalgamation and a change in solicitors' practices. It is commonplace, and has been since the 1970s in towns like Carrickfergus, for the Belfast companies to come out and take a room one day a week, because the number of clients is not out there. We have a decreasing number of cases, and I think that that is to be welcomed. That change is not driven solely by what is happening at the moment; it has been in place for a very long time.

I would also like you to comment on another area. While these particular changes are driven by a need to ensure effectiveness, efficiency and cost savings, they are not driven by the budget constraints that we are in now. This was thought of some time back, and it would be unfair and unreasonable for it to be cast in any shape in relation to the current circumstances.

The standard of representation is an area that concerns me, and I suppose that it is an area that we should have taken up when the various representative bodies were here. They not only represent but regulate the standard. If there are concerns about standards, they reflect back on the bodies that set those standards for the work of their members. Again, it is easy to be told that standards have slipped; in fact, we had the Harry Potter 'Daily Mail' story presented to us. I think that that actually points at the profession rather than at any slipping in standards of the people who are making representations in the court.

Can you address some of those issues? This has been a refreshing, open session. You have drawn together for us much of what we have been told, but that, when challenged, has not been backed up.

**Mr McGuigan:** I go back to some of my earlier comments. Colleagues were talking about this. If we look at accountancy services and how they are provided now, we see that, once again, the much larger firms are taking over small firms in rural towns. Operating under a larger corporate banner does not mean that your accounts are any less well completed. It means that there is an economy of scale and companies do not need to employ and keep offices in one small location. They can centralise and deliver those services in a different way.

There is no doubt that these plans for the reform of legal aid predate our current economic situation. That was largely as a result of looking at the costs of delivering a criminal justice system in Northern Ireland. Of course, justice includes civil justice. You can clearly see that as criminal justice has stabilised and will, hopefully, be reduced, the other side of the business — the civil side — has, unfortunately, increased. Our report last year was a very critical report of the corporate governance of

the Legal Services Commission. We have some abiding concerns. It may well be that you will have to consider some radical thinking around how you get all of this under control and into the perspective that you need.

**The Chairperson (Mr Givan):** Thank you, gentlemen, for coming to the Committee; it is much appreciated.