Northern Ireland Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Publicly Funded Representation in Civil and Family Courts

27 June 2013

NORTHERN IRELAND ASSEMBLY

Committee for Justice

Publicly Funded Representation in Civil and Family Courts

27 June 2013

Members present for all or part of the proceedings:
Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Tom Elliott
Mr William Humphrey
Mr Seán Lynch
Ms Rosaleen McCorley
Mr Jim Wells

Witnesses:

Mr Robert Crawford	Department of Justice
Ms Kim Elliott	Department of Justice
Mr Mark McGuicken	Department of Justice

The Chairperson: I welcome Robert Crawford, deputy director of the public legal services division of the Department of Justice (DOJ), and Mark McGuicken and Kim Elliott, who are also from the division. This session will be recorded by Hansard and will be published in due course.

Mr Robert Crawford (Department of Justice): Thank you, Chairman. I would like to begin by setting the proposals in their financial context where civil legal aid is concerned. Civil legal aid expenditure rose to £51 million last year, which meant that it overtook expenditure on criminal legal aid. That is clearly a very unusual situation in any jurisdiction, where criminal legal aid normally carries the heavier proportion of the expenditure.

Civil legal aid spend more than tripled in the 10 years before devolution, and it rose by nearly a third in the three years after devolution. The percentage figures were 223·3% in the 10 years up to devolution, compared with inflation of just 23·7% in that period. So, that is a rise of nearly 10 times the rate of inflation. It rose, as I said, by nearly a third after devolution — 31% compared with an inflation rate of 6·7% in that period. The total increase over the 13 years is 325%, compared with an inflation rate of 32%, which is 10 times the rate of inflation. That gives you an idea of how much civil legal aid expenditure has escalated. Part of the reason for that is the lack of introduction of any reform in that period. In fact, this will be the first significant reform to control civil legal aid expenditure since the legal aid scheme was introduced in 1965.

Changes in the law have led to some of that increase, particularly the introduction of the Children (Northern Ireland) Order 1995. That has led to longer cases that emphasise the safety of the child, which is, of course, quite right and proper. That has been partly responsible for the increase in cost.

At the same time, the number of people helped by civil legal aid across those 13 years has fallen. We would have expected to see some balancing of costs.

Our proposals are designed to reduce costs by funding only the level of representation that is actually required in each legal aided civil case. We believe that, at present, the Legal Services Commission grants too much funding for representation. We want to tighten the rules so that the people who receive funding from legal aid are given the representation that they actually need, not excessive funding.

At present, legal aid funding is usually provided for a solicitor and a barrister, if that is requested, for proceedings in the Magistrates' Courts and the family proceedings court at that level. It is also usually provided at the County Court, including the family care centre, which is for family cases at that level, while both junior and senior counsel are commonly funded for proceedings in the High Court. An example of the concerns that the access to justice review team had was that, in public law family cases involving the custody of children, what tended to happen was that every family member who might possibly, conceivably and to the nth degree be a possible future guardian of a child would have their own defence team, solicitor and barrister, and, if in the High Court, a solicitor and two barristers. Clearly, there would be no separate issues between many of those family members; they were simply there as a possible guardian if there was a need to look to them to look after the child. Our proposals would remove that read-across as it happens at the moment, which gives everybody the same level of representation, regardless of the legal issue involved in their role in a case.

We propose to tighten the criteria for the funding of representation so that, in future, funding will normally be granted for a solicitor — just a solicitor — to represent clients in proceedings at the Magistrates' Courts level; junior counsel for proceedings at County Court level; and, depending on the complexity of the case, senior or junior counsel in the High Court. That would be a significant change from present practice.

We received 12 varying responses to our consultation. The Bar Council, the Law Society and the Association of Personal Injury Lawyers were more negative than other respondents, while Barnardo's and the National Farmers' Union Mutual Insurance Society were broadly supportive. The issue that caused most concern to respondents, particularly to the Law Society, the Bar Council and the Children's Law Centre, was our proposed criteria for determining the level of representation. We originally proposed that representation above our proposed norm — for solicitors and Magistrates' Court level etc — should be funded only where very specific criteria were met; for example, where there were related criminal proceedings involving serious abuse.

Having considered all the responses, we have changed our final proposals so that they now include very flexible provision for funding additional representation where cases contain exceptional legal issues for a court to hear. So, instead of there having to be a specific circumstance for the Legal Services Commission to allow additional representation, the commission will exercise discretion, based on its judgement, on whether a case is truly exceptional for that court. That will have to be based on written arguments submitted by the instructing solicitor. New, tighter, criteria have been developed to assist the commission in making those decisions. We have included the new criteria in the response to consultation papers so that you can see how we propose to tighten them.

The Bar Council and the Children's Law Centre also raised concerns about the impact of our proposals on children who are the subject of child protection proceedings. Representation of a child who is the subject of such proceedings is provided by the Northern Ireland Guardian ad Litem Agency and funded under legal aid. The agency told us that it did not expect to engage counsel at all Magistrates' Court hearings; it is its general practice to use a panel of solicitors approved by the Law Society for such work. We also talked to the Directorate of Legal Services, which engaged the representation for the health trusts for public law cases. It told us that it had engaged counsel in just 4% of public law cases at Magistrates' Court level and 1·5% at the family care centre at County Court level. So, those are quite low percentages. Having discussed the issue with those agencies, we believe that our revised proposals would provide flexibility and would not at all disadvantage any child who is subject to protection proceedings.

Equality of arms was another area that respondents raised. It was suggested that our approach to that was too restrictive. Again, we had discussions with the Guardian ad Litem Agency and the Directorate of Legal Services to compare our proposals with their professional practice. Based on the percentages that I just gave and our revision of our proposals to provide more flexibility, we believe that equality of arms should not be an issue. If, on the public law side, the Directorate of Legal

Services and the Guardian ad Litem Agency seldom grant counsel for their side of proceedings, it is absolutely right that the other side, funded by legal aid, should not have greater representation.

We also include a new restriction to limit funding where both parties are represented by legal aid to exactly the same level — the lowest level — for that particular court to hear. In the past, we might have seen two people, both with solicitor and counsel, arguing about a change of half an hour in the contact arrangements for a child. In future, they will get a solicitor only for that issue, because it will not take them into a higher court.

In addition, we want to introduce new, specific restrictions for undefended divorces so that the only representation normally funded for it in future will be a solicitor, regardless of the court in which the proceedings are heard. As you may know, divorce proceedings can be started in either the County Court or the High Court. However, the complexity of the issue remains the same; therefore, we argue that a solicitor should be capable of doing undefended divorce proceedings in any court in which the proceedings are heard. However, if other proceedings require counsel, such as proceedings concerning family or finance, for example, or separate Children Order proceedings, they may have the assistance of counsel as appropriate or as awarded by the Legal Services Commission. However, work in undefended divorces will be done by a solicitor.

I will give you some figures for what the outcomes will be. In the Magistrates' Court tier, in the most serious cases in the family proceedings court, the commission may allow junior counsel. We believe that that will reduce the number of cases with counsel in the family proceedings court to 8% rather than 18%. That is a reasonable reduction, although the figure was not particularly high to start with. The Directorate of Legal Services brief in just 4% of public law cases.

In the County Court tier the reduction would be to 3% rather than 7·5% with junior counsel, and we would not have any senior counsel funded in non-family cases at that level. At High Court level, we believe that we would reduce the appointment of senior counsel from 44% to 25%. Again, that figure is quite high at present, and we believe that it needs a significant reduction.

The total savings will be £3·5 million per annum out of total payments to counsel of £14·1 million. About half a million of that is savings from solicitors.

Finally, I would like to mention briefly our equality screening. In our screening exercise before consultation, we identified two groups that the proposals might affect. The first was children, as many of the proceedings affect children. The second was female barristers, since most barristers doing family work are female.

Our screening suggested that a full equality impact assessment (EQIA) was not necessary because the proposals are not directed at making those changes; they are incidental to the purpose of the changes. However, as has been our practice throughout legal aid, we invited representations on the issue as part of the consultation exercise. The Equality Commission has endorsed that approach in the past.

The Bar Council raised the issue of female barristers with us, and the Children's Law Centre raised the impact on children. My colleagues met with representatives from the Children's Law Centre to see what evidence it had produced that there would be an adverse impact on children. The Children's Law Centre, although expressing strong concern, could not give us any hard facts or evidence that would lead us to carry out an EQIA on that point, neither did we get any additional evidence from the Bar Council about female barristers in its response to consultation.

Therefore, in our second screening after consultation, we concluded that those issues should be screened out, because, in the absence of any additional facts or evidence, there is nothing further that we could do in adapting the proposals. Indeed, since the proposals are not directly the purpose, we do not believe that there should be any undue equality impact in them. They will clearly have an effect, but we do not believe that that will be adverse.

Chairman, that is our presentation, and we are happy to take questions.

The Chairperson: Thank you very much, Robert; that was very helpful. Obviously, the cost of civil legal aid is connected with representation; there is no doubt that that is a factor. I want to segregate the cost of civil legal aid, which has got out of control, and for which there are, quite rightly, proposals to change that, from the issue of representation. There are two distinct issues to consider. One is the right to the best representation and where that is appropriate in whatever cases you are dealing with.

At this stage, my questions will be based more on representation. However, if you can stay with us, once we have dealt with the representation issue, I would not mind touching on the proposals on civil legal aid and the reductions there. I want to say to members that, at this stage, we should deal with representation before moving on to the costs of civil legal aid. We will try to organise the meeting in that way.

The Bar Council has indicated that, historically, barristers have always been involved at all tiers of the various courts, whereas you now are seeking to restrict them solely to the High Court. Why is it now necessary for barristers not to be involved? If they are not involved, do solicitors want to do the work, and do they have the capacity to provide appropriate representation?

Mr Crawford: Technically, you are correct that barristers have been involved since the legal aid scheme was introduced in Northern Ireland in 1965. Part of the reason for that is that, when the scheme was set up, it gave what we refer to as an "inherent right" to counsel at County and High Court level. Later, Children Order proceedings were created in the Magistrates' Courts through the provision of what is called an assistance by way of representation (ABWOR) device under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981. The Legal Services Commission's practice had been to deal with applications for counsel quite generously so that, in effect, quite a lot of counsel were also granted legal aid at Magistrates' Court level.

That is how it has been in Northern Ireland, and we do not quarrel with that as a statement of fact. However, it is not how it has been in other jurisdictions, such as England, Wales and Scotland. Changes in England in, I think, 1999, and in Scotland not long afterwards, did away with that. In family cases at Magistrates' Court level now you will not find the same level of representation at all. In fact, what we are moving toward is broadly similar in principle to what applies in other jurisdictions. It is just that we are moving there much later.

The Bar is right that the practice was created by legal aid legislation in 1965, and this is the first reform of that. We are trying to move to a situation whereby the assisted party under legal aid gets the representation that they need. You asked whether solicitors can adequately provide that. The Law Society has 400 solicitors' firms listed as being entirely capable and experienced in dealing with Children Order cases, which are the most sensitive cases. So, the Law Society essentially endorses those 400 firms. The Northern Ireland Guardian ad Litem Agency picks its children's panel from those firms; it does not use barristers. When representing health trusts, the Directorate of Legal Services rarely involves barristers.

So, the practice of everybody else being involved in Children Order cases means that barristers are rarely involved. The Guardian ad Litem Agency has complete confidence in the capability of its panel of solicitors to do that work. In fact, in its comments to us it said that it "would not expect" its solicitors to engage counsel. I thought that that was quite a strong statement of confidence in solicitors to do such work.

At a meeting with the Law Society some time ago, several solicitors practising in family cases told us that they would never engage barristers and that that would continue to be their practice. We feel that there is a willingness among many solicitors to do that. The response that we got from the Law Society was broadly supportive of solicitors being able to do such cases. The society had some concerns about our criteria, but it did not argue with that proposition.

The Chairperson: Since family law is notoriously slow and complicated, an argument could be made that removing barristers, who are best qualified, who know the system, and who provide a more efficient service, would allow less-experienced people to become involved in very complicated cases and that that could lead to delay. How would you respond to that?

Mr Crawford: Bringing barristers into cases where a solicitor can do the job will not remove any delay, because a second lawyer is involved, and that may slow the case down. The evidence that the Legal Services Commission has is that, where barristers come into cases that look similar, the case will take longer. We cannot go into it on a case-by-case basis without breaching confidentiality, but the evidence that we have from the commission is that, on balance, if we fit the right level of representation to a case, it should move more quickly. If we bring in extra representation, a case is likely to move more slowly. Indeed, through informal conversations that we have had, we have some support for that from the judiciary as well.

The Chairperson: Barristers will be retained in the High Court, but there will have to be a justification for two counsel; that is one of the changes. What cases will be dealt with at a High Court level? Under the Children Order, we have things such as forced adoption, whereby the state forcibly removes children and places them in adoption even though their parents do not want to give them up. One could argue that such a case would require access to proper representation, because that is a very serious decision for the state to ever have to take. Are such cases dealt with at High Court level?

Mr Crawford: Not necessarily. The point about the allocation of proceedings depends on the legal complexity. For example, taking a child into care can happen at the Family Proceedings Court, which is at the lowest possible tier. There may be nothing legally complex about that. It may be a difficult matter to resolve within the family, but it may not be legally complex. What brings the case into the higher court, and may do at the lower court, is that it may require the assistance of counsel where there is some additional legal complexity, where there is a legal point that has never been argued at that level before and where the circumstances are entirely novel. That is what we mean by "exceptional". We must acknowledge that every case involving, say, public law and a child being taken into care will be very serious. However, it is not at all unusual in that family court system. Indeed, at the lowest tier, issues relating to alleged abuse, neglect or drug or alcohol misuse by a parent are entirely common. Particularly where we have two parents fighting over a child, such allegations are run of the mill. They are not legally complex. It takes something a bit more to justify bringing in additional representation to deal with a more complex argument.

The Chairperson: OK. Have any other members any questions around representation? Alban Maginness has apologised. He wanted to be here to talk about this.

Mr McCartney: On the latter point about the process being slowed down, how can we speed it up? I may, in a sense, be putting this unfairly, but if we had no financing issues, would we be seeking ways in which to reform how people are represented?

Mr Crawford: I would argue that we would. What we have got at the moment is not just about the total cost. It is also about value for money and cost-effectiveness. In developing our guidance, to reflect — quite properly — greater flexibility than we had originally suggested, we have tried to mirror or run along with the case-management process developed by the Children Order Advisory Committee, which is judge-led and attempts to speed up and improve the overall process in Children Order cases.

We have met members of that committee and attempted to make sure that our new proposals align with its work. Therefore, we believe that we are making a contribution to speeding up the process, because this will avoid delay. The example that I gave earlier was about four or five family members having separate legal teams and each barrister in those teams cross-examining a child because they feel that they must do so to earn their fee and prove that they represented their client. When the Access to Justice team visited courts and saw that happen, its members were convinced that doing that was definitely not in the child's best interest. You can see that one of the things that we want to do is strip that out so that people who need legal representation get it, perhaps if an allegation is made against them or they are one of the parents from whom the child is to be taken. However, the granny, who may be looking after the child only if three other people say no, does not necessarily need legal representation at that point. That avoids the child being put in a situation of perhaps of having to give more evidence.

The flexibility that we propose allows for representation to come in at a later stage or to be increased, or, indeed, for a barrister to come in for a particular piece of the proceedings and for a limited legal aid certificate to be given for that, perhaps to give specialist advice to a client but then to leave if there is no need to stay on the case. Therefore, we are making things more flexible.

To deal with your wider question, I make the point that Access to Justice recommended a fundamental review of family justice. I think that our Minister's view remains that doing that would be helpful. We have initiated some work with the Department of Health, Social Services and Public Safety on that area to see what can be done to improve the overall family justice system. However, three Departments are involved. The Department of Finance and Personnel (DFP) is involved in substantive family law issues, so any progress made on changing the law would also require DFP involvement. We are making what progress we can on improving the overall system. That is where the bigger improvements will come. We are making our contribution.

Mr McCartney: Sometimes people see doing away with representation as mirroring the drive to cut costs rather than what you say. I think that that is missed in part of the commentary.

Mr Crawford: In support of what I have just said, I should make the point that the Legal Services Commission went out to consultation before devolution on changes to representation, and it proposed tightening the criteria and how things are done. That was before costs had risen to the level that they are at now.

Mr McCartney: What was the outcome of that?

Mr Crawford: Unfortunately, there was some opposition, and the commission did not do it.

Mr McCartney: It handed it over to us.

Mr Crawford: I am afraid so. *[Laughter.]*

The Chairperson: How many cases go through the family courts per annum? I do not know whether you have the figures to hand.

Mr Crawford: The volume of certificates granted for family courts specifically —

The Chairperson: Do you have them for all tiers?

Mr Crawford: I have information on the different types of legal aid here. Perhaps I can find something more detailed, but if not, I can write to you. In 2011-12, some 68,000 cases were assisted. Of those, 43,500 were simple advice cases. However, ABWOR cases, most of which were Children Order cases, came to 4,200. Children Order cases not under ABWOR were 8,000, which is up a tier. Civil legal aid proper — certificates covering Children Order cases and many others, including money damages cases — numbered 12,000. Only a small proportion of those cases were family proceedings. That gives you a figure around the 10,000 mark. In 2011, the number of applications received in private law and public law was down to around 6,000. My figures are little bit in excess of —

The Chairperson: A better question is probably this: what was the percentage of representation by barristers as opposed to solicitors in those cases? Do you have an approximate figure for legal representation in such cases?

Mr Crawford: Although much depends on the application, there is an automatic right to a barrister in the County Court. Unless a solicitor does not apply, the bulk of such cases will have a barrister briefed in them. Some solicitors choose not to apply. At the Family Proceedings Court, the figure is 25%. That is at the lowest level of the Magistrates' Court, but it is a very high figure compared with what the statutory agencies have done.

Mr McCartney: This may not be clear from the papers, but who decides where legal competence is outwith a solicitor's experience? Does the Legal Services Commission decide that?

Mr Crawford: Yes. However, we are imposing a new requirement that an instructing solicitor provide a written argument to the commission setting that out clearly. The Legal Services Commission decides, but a solicitor can set out all the reasons. For example, in a matter of international law, you could assume that the commission would grant, because that could not be dealt with by the average solicitor practising in Northern Ireland. Perhaps a privacy issue under article 8 of the European Convention on Human Rights might be there. Those arguments can be spelt out by a solicitor, and the commission will judge on that basis.

There is also, as at present, an appeals procedure. If an instructing solicitor feels that his arguments have not been properly understood or if he has an additional argument, he can to go appeal. Indeed, he can apply at a later stage. Just because something is not granted at this point does not mean that it might not be appropriate at a later point.

Mr McCartney: Who is on the appeals panel?

Mr Crawford: At present, the appeals panel consists of five members, all of whom are independent solicitors. The commission is moving to having a smaller panel, but it will still have independent —

Mr McCartney: Is the commission the appeals panel?

Mr Crawford: No. The commission is debating whether to move to one or three independent panel members, although there will be commission members on the new appeals panel as well. However, there will always be independent involvement.

Mr Lynch: I have a quick point to make. Robert, you mentioned that there will be flexibility in the proposals for exceptional circumstances. Can you give me an example?

Mr Crawford: Exceptional circumstances are exceptional to the particular court tier. The first point that I would make is that just because an issue of, say, sexual abuse, physical abuse or neglect has come up even at the lowest tier, that will not necessarily make it exceptional. It is the legal issue that must be exceptional. If a case raises some legal issue that has never come up before, that clearly will be exceptional, and a solicitor should be able to spell that out in his application.

I mentioned international law, and that would clearly be another example. Increasingly in Northern Ireland we are seeing arguments between people who have come here from another jurisdiction. Indeed, some of them may be in another jurisdiction when they are having the argument over a child. If there is an issue in international law about where the child should live, that might be an argument, depending on the legal complexity.

Human rights is the most obvious example of where that might be an issue. Indeed, if an argument is made on the basis of the rights of the child under the United Nations Convention on the Rights of the Child, where the issue is fresh and new and has not yet been considered by any court, again, that could be an argument for having additional representation. It could also be an argument for moving up to a higher court, because the Magistrates' Court may feel that the issue should be referred upwards. In family proceedings, we have what is called concurrent jurisdiction, where one court can refer to another. Cases can move up, and they can always come down. The case could go up as high as, for example, the High Court to get the issue dealt with and then be referred back for the Magistrates' Court to sort out the contact arrangements.

The Chairperson: I want to touch briefly on the costs. You indicated that this change will save £3·5 million. My view on representation is more dictated by ensuring access and appropriate representation. I want to try to separate that from costs, but obviously there is a connection if you are going to save £3·5 million.

The other change that you want to put out to consultation is a reduction in civil legal aid, with an anticipated saving to be made of between £9 million and £11 million per annum — those are the figures that I have. If you were to bring in a fee-type structure in the way in which we have done for criminal legal aid, the argument could be made that you may not need to take barristers out of all those different tiers if you just introduce severe reductions in what they get paid. Some of them might not then want to do the work, but some argue that it is a vocation and a calling for them to do that type of work, so a reduction in fees obviously would not impinge on their willingness to do it. If you brought in the reduction in civil legal aid, would you still make the argument that the representation element needs to be addressed?

Mr Crawford: Purely in cost terms, yes, because what we propose to save by moving civil legal aid fees to standard fees — if we were to get all that we are proposing through — is £14 million. We are due to come back to you after the consultation on money damages. If we got that in full, it would save another £1 million. Financial eligibility — again, there may be particular opposition to that — would save £2·9 million if done in full. There is, of course, an overlap, because if you save on fees, you cannot count the full saving against the reduction in barristers. However, taken all together, that probably comes to just a bit short of £20 million. We need to make at least £20 million in savings to get us to budget. That is without taking into account the spending review, and we will find out what that will do to legal aid in a few months. That is why we have gone ahead with the further proposal that is before you today on Crown Court fees, because without that, we will not be able to meet the Minister's objective of bringing legal aid within budget. There is already the potential that it will slip slightly beyond this mandate, and that is certainly not his wish.

The Chairperson: How much is the proposal on the criminal legal aid side anticipated to save? What target do you have in mind?

Mr Crawford: If done in full and right away — although we have two proposals in there for phasing it — it would save £5·6 million. Again, some of that would be offset against criminal financial eligibility, which is £1·2 million, so savings would come down below £5 million.

Again, I am not assuming that, at the end of consultation, we will deliver all the savings. Our highest savings estimate was £4·2 million, and it has come down to £3·5 million. That assumes that the commission will apply the criteria as tightly as we would like it to do. It has done it by runs, and it seems to work out at £3·5 million. However, there is always the possibility that good arguments will be made to the commission and that it will be more flexible than it appears to be at the moment. I think that we are saying that we do need to do it.

The Chairperson: How much has been saved since the changes were brought in for the criminal legal aid system?

Mr Crawford: The standard fee has saved £18·3 million, and we also made some savings by tidying up the arrangements for intervening on appeals. We also saved £1·5 million on representation by reducing from two counsel in Crown Court cases. That brings us up to savings of almost £20 million.

There is not a direct read-across, because, of course, you do not really see counsel in the Magistrates' Court on the criminal side, whereas in the family cases you see that quite significantly. That is paid for under legal aid and not by the other statutory agencies. It is part of our argument that that is unnecessary and can be done by solicitor, as it is on the criminal side.

The Chairperson: Having taken £18 million out of the system for the criminal legal aid barristers, how many barristers have decided that it is more lucrative to work elsewhere? Are they turning down work as a result of the reductions, or are we still getting the same excellence that the barristers provide.

Mr Crawford: That is possibly more a question for the Bar than it is for me. I had a conversation with the chief executive of the Bar Council a couple of weeks ago, and he told me that 705 barristers are now registered in the Bar Library, which, I think, is up a little on last year. It is certainly up from 2006 when the Bain report recorded that there were, from memory, 560 barristers.

The Chairperson: If we take the top 100 barristers earning the big money — the top 10 are certainly doing pretty well from the most recent fees that I read — are they still doing as much work under the fee structure as they were under the old system?

Mr Crawford: I think that my estimate would be —

The Chairperson: You would know from the legal aid certificates that are allocated.

Mr Crawford: If those who were doing criminal legal aid work are still doing that work, they would essentially be doing, or trying to do, as much work but being paid a lot less for it. Looking at some of the names that were high up on previous lists would suggest that what has happened is that the changes that we made have started to bite on their earnings.

Most of the top 10 on that list are barristers who are earning from civil legal aid, and the commission has confirmed that to us. The commission has suggested that, on the list, you need to go below the £400,000 mark to find the barrister who got most of their earnings from criminal legal aid. Looking at the names, I can say that a barrister who was previously doing that work would have been earning up to £900,000.

The Chairperson: Can you assure us that we are not getting yellow-pack justice as a result of that change?

Mr Crawford: I do not see that barristers have stopped doing legal aid work or that the firms of solicitors that previously did a lot of legal aid work have stopped doing it. We are certainly not aware of any problems of that nature.

Ms McCorley: In your paper, you suggest that there will be a review 18 months after the implementation date. I think that that will be important. Will that look at the possible negative impacts of access to justice for vulnerable people?

Mr Crawford: It certainly can do. Normally a post-project evaluation will look at whether the objectives have been achieved. However, given the importance of the impacts, we could certainly include that in it and perhaps talk to some stakeholders to see whether we can gather any evidence of what those impacts have been.

That post-project evaluation is critical. We are relying on criteria that will be applied by the Legal Services Commission. The criteria are not nailed down in statute, and we want to be able to be sure that they are going to work not just as effectively as we want but in the way in which we want. That impact would be a good part of that, and I am happy to say that we will do it.

Ms McCorley: OK. It is just that it does not specify that in detail.

Mr Crawford: No, because it would not be a normal part of a post-project evaluation. However, I am very happy to include that.

Ms McCorley: Thanks.

The Chairperson: OK. No other members have indicated that they want to ask a question. Thank you very much for coming to the Committee. We will obviously give the SL1 some consideration. We are not in a position today to indicate, but hopefully we will be able to get back to you as soon as possible.

We may want to have you back again. I am sure that once the consultation on the restructuring of fees has been completed we will want to see you. Have a good summer.

Mr Crawford: Thank you.

The Chairperson: Thank you for coming.