Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT
(Hansard)

Evidence Session with Representatives of the Bar Council on Legal Aid Reform

17 June 2010

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Jonathan Bell
Mr Tom Elliott
Mr Conall McDevitt
Mr Alban Maginness
Mr Alastair Ross

Witnesses:

Ms Gerarda Campbell	)	
Mr Adrian Colton	)	Bar Council
Mr Brendan Garland	)	
Mr Mark Mulholland	)	

The Chairperson (Lord Morrow):

We will now receive a presentation from the Bar Council. We have with us Mr Adrian Colton QC, chairman of the Bar Council; Mark Mulholland BL, the vice chairman; Brendan Garland, the chief executive; and Gerarda Campbell, who is a junior counsel. You are welcome to the Committee. We are sorry that you have had to wait so long, but there was precious little that we could do about it. Even when we do try to curtail some people, they still think that we are being

unfair.

Mr A Maginness:

Solicitors are to blame. *[Laughter.]*

Mr Adrian Colton (Bar Council):

It is a tribute to the interest that the Committee shows in those important matters.

Gerarda Campbell is the Young Bar's representative on the Bar Council, which I why I asked her to attend.

I thank the Committee for giving us the opportunity to speak. Now that justice powers have been devolved, it is important that we interact with public representatives so that we can explain what we are about and get an understanding of what matters to public representatives. Since me and Mark were elected chairperson and vice chairperson of the Bar Council respectively, we have engaged in a series of discussions with non-governmental organisations (NGOs). We met with the Criminal Assets Bureau (CAB), the Law Centre, the Committee on the Administration of Justice (CAJ), the Labour Relations Agency, the Public Interest Litigation Support Project (PILS), Relatives for Justice, and other such organisations. We feel it important that all those involved in the administration of justice interact and have an understanding of where we stand and what contribution we can make to the legal system.

We prepared a paper for the Committee; however, I do not propose to seek leave to read it out given the hour and the discussions that have taken place. I would appreciate if the paper could be read into the record so the Library could show that, if possible. We wanted to raise wider issues.

The Chairperson:

We can put it on the website.

Mr Colton:

Yes; I do not propose to read it out. I would like to focus on the matters that have been of concern to the Committee, give our perspective and answer any questions. First, the key issue today has been the question of two counsel to represent people in the Crown Court. However, it must be remembered that two counsel regularly appeared in civil and family cases across the

spectrum. It would be wrong if there were a disparity between two counsel and criminal cases and two counsel and other cases. That should be borne in mind. We would not like to see a system whereby two counsel regularly appear, for example, in the High Court and do not appear in the Crown Court. There has to be unanimity and consistency across the legal spectrum.

Two matters may assist the Committee. First, I understand from the contribution of the Courts and Tribunals Service that the Attorney General was consulted about the issue. Members should be aware of his views. Secondly, I believe that there was some discussion about what took place at the Crown Court Rules Committee yesterday. I do not know whether minutes of that meeting are available, but I think that they should be made available to this Committee for the record.

I want to deal with some of the statistics that were quoted. When comparing this jurisdiction with England and Wales, it is important to compare like with like. First, in Northern Ireland, there are typically about 2,000 cases in the Crown Court a year. The figure in England and Wales is 37,500. There is a difference in scale.

The second important point, and Mr MacDermott touched on this point effectively, is that there is a completely different level of cases in the Crown Court in England and Wales than in Northern Ireland. In England and Wales, relatively trivial criminal offences are tried there. Those cases would be dealt with here in the district judge's court. Mr MacDermott gave an example of the sort of thing that can be dealt with by our district judges because of their legal experience, such as minor assaults and some burglaries. The level of senior counsel in England and Wales will always be lower for that reason.

The figure of 5% was quoted. That relates to standard fees only; it does not include very high cost cases (VHCCs) in England and Wales. However, cases in Northern Ireland are given different categories between A and H under 2005 rules. Of category A cases in England and Wales, 63% have two counsel representation. That might be a more relevant comparator than the 5% relating to standard cases only and including minor offences.

The figure of 58%, which I understand has been revised down to between 44% and 52%, was gained from a sample of 220 cases. We do not know whether that includes cases with multiple defendants. If, for example, there were six defendants in a case, there would be six certificates, even though it is only the one case. We have not seen the methodology as to how those figures

are worked out, even though we have asked for it. My point is that the Committee should be wary of statistics and ensure that it is comparing like with like.

We strongly believe that the district judge should retain the opportunity to certify for two counsel. Why? First, the district judge is fully aware of the details of the case and is in charge of it as it goes through the courts. Secondly, a lack of certification at that stage will lead to delay. One of the main issues for the Minister — we agree with him — is that we need to deal with cases more quickly. However, if certification is left to the Crown Court judge, there is bound to be delay because, if he certifies at that stage, senior counsel will be brought into the case and he or she may say that the case is not ready for trial because of the need for this, that and the other. There will inevitably be delay. There has been a suggestion that, in the initial phase of certification, junior counsel should write an opinion and submit it to the judge to seek authorisation for two counsel. All that will do is create more administration. It will burden very busy Crown Court judges and lead to delay. Why build in another unnecessary layer of administration? Those are my initial observations on the certification process.

I want to make a number of points about criteria. Everybody seems to agree that the criteria should be the interests of justice and the right to a fair trial. We agree with that. What could be simpler than putting that in the legislation? Let that be the test. The difficulty is that people say that that test is too wide. However, in trying to set out criteria, we will merely grant discretion with one hand and take it away with the other. Judges know what is in the interests of justice and what a fair trial requires, and we strongly urge the Committee to adopt that as the proper approach. The Committee could give some assistance, refer to the serious nature of the charge or refer to the potential sentence in a case. However, a very simple case sometimes requires a senior counsel, because it might set a precedent for thousands of other cases. We suggest that the reforms should not provide discretion and also take it away.

The Courts and Tribunals Service seemed to place particular emphasis on the question of why there had been no judicial reviews in England and Wales. The reason is very simple: it is not possible to conduct a judicial review of a Crown Court judge's decision. It cannot be done. If a person is unhappy about a decision, they would have to go through the trial, and, if convicted, go to the Court of Appeal, if they have leave to do so. When that person goes to the Court of Appeal, they would have to use the fact that they did not have senior counsel as one of their grounds of appeal. That is only way to challenge that. Nobody would advocate that as a sensible

method of administration. Therefore, the issue of judicial review is irrelevant and should be dismissed as a factor in the Committee's deliberations.

Ultimately, the issue comes down to the quality of representation. It is not about the interests of the Bar; it is about the interests of the defendant. Defendants who appear in rape, murder or manslaughter cases should, in my view, have two counsel. Equally, the prosecution should have two counsel. It is in the interests of justice that victims of serious crime are represented by two counsel. That is why the specialist status of Queen's Counsel (QC) is in place to deal with important and difficult cases.

The point about the Public Accounts Committee (PAC) is very important. It was concerned because England and Wales did exactly what has been put before the Committee. The first thing that they did was get rid of senior counsel in cases, then replace junior counsel, then provide the carrot of fees for solicitor advocates. As Mr MacDermott of the Law Society freely admitted earlier, it is increasingly frequent that, for financial reasons, people are represented in the Crown Court by solicitor advocates. Sadly, they are frequently inexperienced. People who previously had the benefit of junior counsel and senior counsel no longer have that. The PAC is concerned about the level of advocacy and representation in the Crown Court in England and Wales. I respectfully suggest that the Committee takes that into account to ensure that we do not end up in a similar position.

That may not be easy, but Mark and I have attended many conferences where senior judges have spoken on the record about the issue. Has anybody asked the judges' opinion on the quality of representation in England and Wales? Has anyone asked the judges here about their fears and concerns about the proposals? I presume that the judges at the Crown Court Rules Committee gave their views on that. Ultimately, they are the best people to judge. I know that they are not keen on appearing before Committees such as this, but we should, if possible, find out their views on the matter. The Attorney General may be able to provide some insight into those matters.

If we are trying to cut costs and save money, we must reduce rates of pay and not the quality of representation. That principle underpins the use of Queen's Counsel and recognises that certain cases require a certain level of expertise. Too much emphasis is placed on cost-cutting as opposed to quality of representation, which must be a major concern for the Committee.

The suggestion that two junior counsel should be on a case is misconstrued and ill-advised. If two counsel are needed, one must be a senior counsel and the other must be a junior counsel. That is why there are senior counsel. What is the point in having two junior counsel on a case? There must be either one junior counsel, if they can deal with the case fairly and in the interests of justice, or, if two counsel are necessary, there must be one senior counsel and one junior counsel. To do otherwise is to make a nonsense of the rank of senior counsel.

Those points relate to counsel, and I appreciate that the Committee may have questions on that. However, I will turn quickly to the issue of fees and legal aid funding. The Committee is aware that, since January 2010, the Bar has been negotiating with the Courts and Tribunals Service on a system of fees that will meet the budget that is available to the service and the requirements of fair remuneration and access to justice. Mark, our vice-chairperson, has led those discussions, and he is happy to answer any questions about that. However, there is no doubt that VHCCs are the reason why the budget has gone so off-key. There is no disputing that. VHCCs are clearly a problem, and one that was not anticipated in 2005. At the outset, the Bar made it clear that it recognises that there is a problem. Indeed, its proposals deal with the issue — in the same way as the Law Society did last week — by suggesting that, instead of VHCCs, there should be a standard scale. Such a scale would start from the bottom and move up to the point at which a case lasts more than 72 days. In those circumstances, the case might need to be deemed exceptional.

There have been questions about hourly rates versus standard fees. For a number of reasons, our view is that standard fees are best for the public. Standard fees ensure predictability, because everybody knows what the fees are and, therefore, there is no need for serious levels of assessment and administration. A box is ticked for each case, and that sets the category and the fee. People know what they are going to get. From the Bar's point of view, it will be swings and roundabouts. There will be some cases in which counsel are well paid and others in which they are not so well paid. However, there would be predictability and certainty. It is hourly rates that have led to the problem. Taxing masters have had to assess those rates, and those are the cases that have led to very high costs. Our view, which may not be one that commends itself to the Committee, is that we should try to devise a system of standard fees across the board so that everybody will know what they are going to get paid and the Government and the Courts and Tribunals Service will know what the costs are.

We believe that our proposals would make significant savings. The Law Society was asked for a ballpark figure for its proposed savings. We believe that our recommendations would save £16 million in barristers' fees alone, which is a very significant sum. Do not forget that the Bar receives only a third of criminal fees. The Courts and Tribunals Service is, quite rightly and properly, costing those figures, because they are difficult. It may disagree with the figure of £16 million, but that is what we believe could be saved. I am conscious that that question was asked of the Law Society, and, therefore, we wanted to give you our answer. However, that figure has to be tested.

The issue of solicitor advocates was raised. From our perspective, it is very significant that, although solicitor advocates have been in existence and have had rights of audience in the Crown Court since 1978, it is only since 2005 that those rights have been exercised. The reason for that is that, in 2005, a fee was provided. Let me outline our concern. If a defendant in a criminal case has a certificate for one counsel and a certificate for a solicitor, we believe that that defendant is entitled to counsel. However, what is happening is that solicitors, for economic reasons and because of the difficulties that they face, are frequently taking the solicitor's fee and instructing someone from their firm to act as an advocate. Therefore, they are taking both fees. It is for the Committee to decide whether it thinks that that is in the public interest. However, we do not believe that it is. If you were in the defendant's position, which would you prefer? The defendant has an entitlement and is not a private fee-paying client who, in different circumstances, may decide that they do not want to pay for a barrister and that a solicitor can represent them. That is a different matter, and it is a matter for clients. However, if a defendant has a legal entitlement to counsel, that right should be exercised. That is our difficulty with solicitor advocates.

We understand the economic pressures that solicitors work under. I have a very high regard for the profession. We work hard with the Law Society. We have our differences, of course, but I have great regard and respect for the contribution that solicitors make to the legal system in Northern Ireland.

If solicitor advocates' rights are to be extended, the Committee should ensure two things. First, it must ensure that there is equality of standards between solicitor advocates and barristers; in other words, solicitor advocates should go through the same rigorous training regime as barristers. Secondly, there should be a proper regulatory scheme to ensure that solicitors are

subject to the same code of conduct as barristers. When barristers are in court, they are subject to a strict code of conduct. There would be something wrong if a solicitor exercising a right of audience was not subject to the same regulatory scheme. That scheme should also compel solicitors to inform clients of their entitlement to employ a barrister of their choice.

I have cherry-picked some of the issues that were raised, but a more substantial paper is available to the Committee. With me today are two very able advocates for the Bar Council who are happy to answer any questions from members.

The Chairperson:

Thank you for your presentation, Mr Colton. I am not sure if you were here earlier when we asked the Law Society representatives what they felt would be a reasonable and fair fee. What is your view on that?

Mr Colton:

I hesitate to answer, because I believe that people should get paid differently for different levels of work. For example, a young barrister who enters a simple plea in the Magistrate's Court on behalf of a client should attract an entirely different fee from someone who works on a murder trial for three weeks. That is why the question is not easy to answer. The fee must reflect the level of work.

We have proposed to the Courts and Tribunals Service that a scale should be devised with fees listed from top to bottom, depending on the amount and level of work required and on whether the case involves a plea, and so on. All those factors must be taken into account when setting the fee. We do that with civil cases. I could work on a civil claim that is worth £5,000 and a case that is worth £5 million. Obviously, there would be a different fee for the two cases. Chairperson, it is not possible to answer the question in the way that you want me to. I wish that I could answer it in that way, but that is the only answer that I can give. That is the way that civil courts work, and they work perfectly well. The fees are a matter of public record; they are published. If someone wants to know how much it will cost to be represented by a barrister in a certain case, they simply look up the scale. That is the best approach, because everyone will know what that fee will be before the case begins. That applies to legal aid costs, payments from insurance companies, and so on. That is the way the Bar should be remunerated.

The Chairperson:

You feel that there should be a categorisation of fees for different types of work and cases. What is the danger of those lines being crossed and of a case moving up the scale from one fee to another? Was that not part of the problem with high cost cases in the past? Barristers are intelligent people, and one barrister could perceive a case as being serious but not very serious. Is there not a danger that we could slip back to a position whereby costs start to spiral all over again because there is no definitive, clear line on what the fee should be?

Mr Colton:

There should be a clear line. The problem with VHCCs was that the only criterion was that the case should last more than 25 days. If a case had the potential to last that long, it became a VHCC. The problem you have identified needs to be dealt with, and the way to do that is to draw the lines tightly. There is no difficulty whatsoever with the standard fees in this jurisdiction, and barristers are paid within weeks of submitting a standard fee. Standard fees are not the problem. If fees were standard for all cases, we would not have this problem, and there would be no requirement to reduce the budget for legal aid. Chairperson, I agree with you; that is the test. If we come to an agreement with the Courts and Tribunals Service, no matter what is put before you and no matter what you have to approve at the end of the process, there should be one test: are the fees clear and are they tied down? That is how we will avoid this problem in the future.

Mr Bell:

Attempt to justify to me how a barrister can take £1·5 million of public money in one year.

Mr Colton:

First, that figure does not necessarily represent one year's work. It may include work that was done over a number of years, as there have been significant delays in payment. Secondly, as has been said already, it is not barristers who set the rate. Barristers have earned that money. They have done the work, which inevitably involves difficult and complex cases, and they have submitted their fees to a judicial officer — a taxing master — who has paid those fees. That is how it happens. If it is the view of the public that that is unsustainable and wrong, let us change the system. The Bar Council has not and will not oppose a change to the system. Mr Bell asked me to justify a fee, and that is what has happened. Those people have done the work and received the remuneration to which they are entitled under statute. We did not set the fees.

Mr Bell:

You have explained how it came about. Does the Bar Council feel that it is justifiable to take £1·5 million in a one-year period?

Mr Colton:

It is not that you take it; you do the work, and you submit —

Mr Bell:

It was taken. It is a fact that one barrister took £1·5 million and another took £1·2 million.

Mr Colton:

The inference is that the word "taken" is pejorative. He or she earned the money and was paid it.

Mr Bell:

Did he or she earn £1·5 million?

Mr Colton:

Yes, over a number of years, obviously.

Mr Bell:

It may or may not be the case that that happened over a number of years. Let us look at the facts. Some of our barristers are being paid £5,000 a day. Is that justifiable?

Mr Colton:

I do not know where you got that figure from.

Mr Bell:

The figure was taken from the figures that were released.

Mr Colton:

I do not know how that figure was arrived at. Is that a simple question? Has that £1·5 million been divided by 365? Is that how it came about?

Mr Bell:

I can only go by the figures that we are given, and they show that some of our barristers are being paid £5,000 a day. I am asking you whether that is justifiable.

Mr Colton:

I do not understand the basis for that figure. I may be wrong, but it may simply be that someone has taken £1·5 million and divided it by 365. I do not know. We must ensure that a system is in place that will provide for fair remuneration for work done. That is the way to resolve the issue.

Mr Bell:

Today, we heard about Sir Blom-Cooper and his £500,000 fee for the Bloody Sunday Inquiry, and another barrister said that he lifted £4·4 million for the same inquiry. To be fair to those barristers, they have put their names to the fees that they have taken. Is it justifiable that someone from the Bar Council in Northern Ireland can take £1·5 million of public money over the past 12 months and remain unidentified?

Mr Colton:

First, it is absolutely right and proper that the figure is published and that whatever an individual barrister was paid is known, and we fully support that. However, confidential and sensitive matters have arisen in relation to the identification of individual barristers. I cannot say any more than that. If and when those matters are resolved, the names will be published. The need for anonymity arises from confidential and sensitive matters of which the Law Commission is aware and on which I cannot expand.

Mr Bell:

The difficulty for us is that the public in Northern Ireland believe that justice has now been devolved and that people should be held to account on those matters. However, I cannot give them an explanation this evening as to how a barrister in the Bloody Sunday Inquiry can say that he has taken £4·4 million but I cannot reveal the identity of the he or she who took £1·5 million of public money in a 12-month period because the matter is confidential and sensitive.

Mr Colton:

The fees for the Bloody Sunday Inquiry were published a number of years ago. That information was not published today; it has been available for a number of years, as have the payments for

barristers in previous years. A particular issue has arisen in the current climate that is being looked at by the Law Commission. You will have to accept from me that those matters are confidential and sensitive. If and when they are resolved, the barristers will be named. Of course, it is the money that is the important issue. That is where the public interest lies. The identity of the individuals is, I respectfully submit, less important. If the names are permitted to be published, that will happen in due course. There are genuine matters to consider. We have not made this up; the Legal Services Commission will look at the situation. I cannot go further than to say that those matters are confidential and sensitive.

Mr Bell:

I will accept your answer. Equally, I regard it as unacceptable that an individual can receive £1·5 million of public money and remain anonymous.

You said that there were different figures. Let us take the high figure for what is, in your terms, the most difficult work. What is the right figure per hour for that work?

Mr Colton:

I am not ducking the question. I will ask Mr Mulholland to answer it because he led the negotiations on our behalf.

Mr Mark Mulholland (Bar Council):

The issue of what the right figure should be cannot be viewed in isolation from the context of the type of case that is involved. We have tried to move away from hourly rates to ensure that budgetary predictability, which is what the Courts and Tribunals Service, understandably, tells us it wants, is immediately available. With all due respect, to go back to an hourly rate, which we can do if needs be, is to go backward instead of forward.

Our discussions with the Courts and Tribunals Service are confidential, but the Bar recognises that cuts have to be made. It is recognised that the best way to bring predictability and accountability to any fee is to have a capped fee. No matter about the complexity of a case, rather than be subject to an hourly rate, there should be a uniform figure to be paid, which is the figure that will be paid. That means, therefore, that we are confident, based on the budget being set and the figures that we have presented, that we come within the aspirations of the budget that has to be met for the next several years.

I can say frankly that it is in the Bar's interest to remain on hourly rates with no cap and with no predictability. The most complex cases make up 3% of the cases that go through the Crown Court in a year. Be that as it may, in many instances it would be easier for the Bar to retain hourly rates. However, if predictability and accountability are being sought, our proposal is the simplest way to achieve that. That is the proposal that we have put forward.

Mr Bell:

The public have a right to know what their money is being spent on and what the Bar Council is asking for. I am asking for a rough figure, not a precise one, of what you believe a barrister at the top end of the market should be receiving hourly. Are you refusing to give that information to the public?

Mr Colton:

We are not asking for hourly rates; that is the point.

Mr Bell:

What should the public reasonably believe to be the rate of pay at the top of your profession? We do not want any further obfuscation. What hourly rate, roughly, is the top of your profession asking for?

Mr Colton:

We are not asking for hourly rates. We are asking for fees to be set for individual cases. That is the point.

Mr Bell:

What would it be an hour?

Mr Colton:

We have not asked for an hourly rate. We have not looked at it in that way. That is the point that I am trying to make. I might not be making it very well; we have not asked for an hourly rate.

Mr Bell:

The public are going to shine a light on this issue, and they are going to find out what the figure

is. You know what the rough figure per hour is.

Mr Colton:

I am sorry —

Mr Bell:

I venture to suggest that you know what the rough figure per hour is.

Mr Colton:

When this is over, if there is agreement, the agreement will show what it is.

Mr Bell:

So you are not going to tell the public?

Mr Colton:

Hold on. I repeat that we have not asked for any hourly rate.

Mr Bell:

What would it be for a day's work?

Mr Colton:

It depends on the case.

Mr Bell:

What would it be for a year's work? This is public money.

Mr Colton:

The question cannot be answered as simply as that. I may do four cases next year that attract public money, or I may do 40. I cannot say what I am going to earn from year to year. I am a self-employed person, and I do the work that comes my way. We are not negotiating for a salary or an annual wage. We are asking that, for publicly funded work, for individual cases, there is a fee for each case. By the way, those fees are published; they are not secret. The fees are a matter of public record.

Mr Bell:

How much public money is paid to a barrister, often in the form of legal aid, for a year's work? What should the public understand that figure to be?

Mr Colton:

That depends on how many cases a barrister does.

Mr Bell:

What is the average?

Mr Colton:

By the way, I agree with Norville Connolly that it is a pity that all the figures are not published, rather than just the top 100. You asked for an average, so let me put it this way: the bottom 30% earn less than £5,000 a year, and the bottom 56% earn less than £20,000 a year. Those are the only figures I have.

Mr Bell:

And the top 30%?

Mr Colton:

You know the earnings of the top 30%. You know what the top 100 earn because those figures have been published.

Mr Bell:

Will you extrapolate figures roughly based on the top 100 earners? I am trying to work that out for the public, who are watching their teachers being made redundant while barristers lift £1·5 million a year. The public ask us to ascertain the facts for them, but I have as yet been unable to do so. A solicitor must say that he or she spent so many hours on a case, so why can you not?

Mr Colton:

Because we are paid by scale fees; we are paid differently from solicitors. I should add that 20 barristers leave the Bar every year. You may find it interesting to hear Gerarda Campbell describe what it is like being a barrister at the coalface. A small number have made huge amounts of money because of a particular scheme that was introduced in 2005. That is the reason

for those earnings. The Bar accepts that that scheme will go; it is history, those rates will not continue.

We are looking to the future. We are trying to find a way forward that ensures that we stay within budget and receive reasonable remuneration while affording equal access to the justice system. We are self-employed. It is like asking a shopkeeper what they will earn in a year; you cannot do it. There is a huge range of work at the Bar and a huge range of earnings. The only figures that are available relate to what is paid for public work. No barrister earns a set figure every year; their earnings can go up and down depending on how busy they are in a particular year. I am not trying to evade the question; it is just not possible to answer it in the way that you asked it.

Mr Bell:

The public expect to know what they pay for. They know what they pay for a nurse, a doctor, a consultant or an occupational therapist, but they do not know how much of their money is being spent on barristers. That is why I am trying to give them a rough figure of how much a top barrister earns an hour.

Mr Colton:

We do not charge by the hour. If you want the answer to that question, get out the 2005 rules and go to the back of the document where the rates are set out.

Mr Bell:

What do you charge by if you do not charge by the hour?

Mr Colton:

By the scaled fee, and that depends on the nature of the case. We go down our scale, the case comes in at a certain level, and that is the fee. The same applies in civil work. If I do a case —

Mr Bell:

So what is the top scale fee?

The Chairperson:

Mr Bell, we are going to have to move on.

Mr Bell:

I was beginning to enjoy myself, Chairperson.

The Chairperson:

We have to be conscious that other members have questions and that it is 6.15 pm.

Mr McDevitt:

I just want to clarify the issue of anonymity with regard to the past two lists. I understand that we are probably looking at a repeat of the scenario that delayed the initial publication of the lists, which involved individuals' specific concerns about specific circumstances. Therefore, we can stay out of that. However, I want to ask Mr Colton about the Bar Council's formal policy. Is it that there should be named lists, or is the council content with the way in which they have been published on this occasion?

Mr Colton:

Until certain matters are resolved, the council wants the lists to remain anonymous. When those matters are resolved, the names can be published. I cannot say more than that. There is a collective concern and there are individual concerns. It is not for the Bar Council to make the decision; it is, ultimately, up to the Legal Services Commission.

Mr McDevitt:

I should declare a partial interest, Chairperson, because I am aware of the previous situation, although I have no current pecuniary interest whatsoever. Previously, individuals expressed specific concerns. Is it now a corporate concern?

Mr Colton:

Yes, it is a corporate concern.

Mr McDevitt:

That is a change in the game.

Mr Colton:

Yes, but, unfortunately, circumstances change too.

Mr McDevitt:

There is the issue of public interest, which we can measure in two ways. One aspect is the monetary interest, and I agree with you that that is probably the principal public interest, but there is also a legitimate public right to know who those individuals are. If the concern is corporate, what point of policy can you cite as leading you to that change in position?

Mr Colton:

The difficulty is that, if I tell you what the policy is, I would, in effect, be disclosing the issue involved. If I could separate the two, I would. That is my difficulty.

I am conscious that this is a public forum and that if I declare the policy, that will, in effect —

Mr McDevitt:

It is fair for me to say directly to you that that is a regrettable step, because our moving to full openness was positive.

Mr Colton:

I take that on board.

Mr McDevitt:

It is my view, and, I suspect, that of my colleagues, that we should return to full openness. If there are policy issues, we should understand them, and they, too, should be out there.

Mr Colton:

It may be the case that they will be resolved in the near future. That is all that I can say.

Mr McDevitt:

Are those issues integral to your negotiations on the final settlement?

Mr Colton:

No.

Mr McDevitt:

The bigger picture is the cost of publicly funded legal services in this region. However, comparatively speaking, no one disputes that we are an expensive place. People here pay per capita four times more for publicly funded legal services than people south of the border. You made the point that the debate should be not about representation but about the fee. You spoke about —

Mr Colton:

All the arrangements.

Mr McDevitt:

No. You said that it should not be a question of whether there is one counsel or two and that it should be about those counsel. You said that the discussion should be not about representation but about fees. Is that the attitude that you are bringing to the negotiations?

Mr Colton:

Yes, I hope so. My own view is that if the logic behind reducing the granting of two counsel is to save money, that is mistaken. If the objective of the negotiations is to save money, the way to do that is to look at the rates rather than at the level of representation.

Mr McDevitt:

Therefore, you cited the £16 million that you hope to have validated by the court service as a potential saving on the VHCC fee regime.

Mr Colton:

No. That is on all performance.

Mr McDevitt:

Therefore, is that your total saving?

Mr Colton:

Yes.

Mr McDevitt:

Is that the full extent of the savings that you have been able to identify in the system?

Mr Colton:

It relates to payments to the Bar and the Crown Court only.

Mr McDevitt:

Have you identified potential savings in payments to solicitors?

Mr Colton:

No.

Mr McDevitt:

That is curious, because the Crown Court identified potential savings in payments to the Bar Council.

Mr Colton:

Our view on that is good luck to them.

Mr McDevitt:

What specific steps should we take on non-court alternatives and mediation to find better value for money in the system and to improve access to justice?

Mr Colton:

This will seem like a mantra, but I suggest that you look carefully at what has happened in England and Wales over the past number of years. The system in question has been tried there. There have been significant reforms to civil justice through the Woolf reforms. There is also greater emphasis on alternative dispute resolution (ADR) and mediation. The experience has been that, rather than improving access to justice, another layer of bureaucracy has been created that people have to go through before they can validate a right or resolve a dispute. Ironically, that has resulted in increasing costs and in front-loading costs, and it has simply not worked.

Dame Hazel Genn is speaking to the Bar Council next Wednesday, and you are very welcome to attend to hear what she has to say about the matter. She has studied that subject, and she will

give us a talk on it. You may find that to be of interest. If you cannot attend, I will make sure that you get a copy of her address. The Minister is keen on that type of approach, but I would sound a word of caution and say that it has not worked. Therefore, we may learn from the mistakes that were made in England and Wales.

In reality, members of the Bar do a huge amount of mediation. For example, the vast majority of civil disputes are settled or resolved speedily through the referral Bar, and that is a good thing. Although I have less experience in this area, I believe that that process also works well in the family courts, where people get to a solicitor, and, if necessary, they get direct and speedy access to a barrister. The vast majority of those disputes are resolved in that way. Therefore, in effect, the Bar provides a lot of mediation. Although well-meaning initiatives can seem attractive, they often end up being counterproductive and do not achieve the ends that they were intended to achieve. You have to be open-minded about such initiatives, but I would be very cautious about saying whether they will work and improve access to justice, which I understand is their aim.

Mr Elliott:

Thank you for your presentation. I will try to be as brief as possible. A headline in the press some time ago suggested that barristers would decline to take on work at £152·50 an hour. Will you comment on that?

Mr Colton:

The headline was wrong. It is as simple as that. I assure members that, if members of the Bar were paid £150 an hour, there would be absolutely no difficulty. However, that is not what that was about. The situation is that, in 2009, a new scheme was introduced to try to solve the VHCC problem. The top rate of payment under that scheme would have been £150 an hour for senior counsel. However, the criteria were such that no such case would arise, because no cases would meet the criteria. Therefore, the question about the payment of £150 an hour simply was not going to arise. I hope that that answers the question.

Mr Elliott:

You said that the issue is about cost cutting versus the retention of the quality of services. Is that not almost duplication? A reduction in fees or costs can often reduce the quality of service. Is that not a reasonable point?

Mr Colton:

Yes. We have to try to get the balance right, and our concern is that the court service's initial proposals went too far. If they were adopted, we could end up in a situation that is similar to that in England whereby the quality of service is so poor as to affect what happens in the courts. You are right: most cuts will reduce the level of service to some extent. However, a balance must be struck. It must be possible to maintain high standards while coming within budget. We think that that can be done.

Mr Elliott:

Can any solicitor become a solicitor advocate?

Mr Mulholland:

Yes, any solicitor at all can do that. Under the 2005 rules, there is a fee structure for certified solicitor advocates and uncertified solicitor advocates, whatever they may be. If we were to look at the outworking of a similar scheme in England and Wales, we would tend to find that a phenomenal number of solicitor advocates now operate in the Crown Court in England and Wales. The structures that were put in place there and that gave rise to the financial incentives for solicitor advocacy are several years ahead of ours.

In a different context, the question was asked previously about an impact assessment of the reduction of fees and, similarly, on the things that have happened in England and Wales. The impact assessment in England and Wales is spelled out very clearly in the Westminster PAC report, which says that the increase of solicitor advocates in the Crown Court has a direct bearing on the reduction of the quality of representation for the accused. That is part of the difficulty. Any qualified solicitor who takes a week out from the office can undertake a solicitor advocacy course to qualify as a solicitor advocate. That is not the situation in the Bar, where it would be inconceivable to find —

Mr Elliott:

Can a person automatically practise as a solicitor advocate after taking that course?

Mr Mulholland:

Yes, they undertake a course that goes beyond their professional qualification as a solicitor.

Mr Colton:

It is a weekend course, not a six-month pupillage.

Mr Mulholland:

I have been in the Crown Court for the past 15 years, and I am a junior counsel. I can look across in any case, and find that I am being replaced by a solicitor advocate who has perhaps two, three four or five years' experience in a solicitor's office but has undertaken that course.

Mr Elliott:

Can we get clarification of that from the court service?

The Chairperson:

I suspect that we can. I think, Mr Mulholland, that the member is a wee bit surprised at your reply. Therefore, I want to clarify the issue. If I were to qualify as a solicitor tomorrow, there is nothing to stop me taking the weekend course that Mr Colton referred to and subsequently having an audience in the Crown Court. Is that right?

Mr Colton:

That is absolutely fine.

Mr Mulholland:

I can tell you that we have already raised the issue specifically with the court service. It is aware, and, with full credit to it, it seems to acknowledge this, that the outworkings of that practice could, in due course, give rise to a dilution in the quality of representation in Northern Ireland. I want to make one thing clear: the people in question are very able solicitors and lawyers. In certain cases, solicitor advocates can perform the role of counsel in the Crown Court.

I do not take away from that one iota. However, under the Freedom of Information Act 2000, we requested the data on solicitor advocates who, with the financial assistance that exists, have appeared in Crown Court cases. Those data show that, since 2005 and until several months ago, in all but a few cases, solicitors have appeared where a guilty of plea was entered. That happened regardless of whether they appeared on their own or with another solicitor in lieu of a senior counsel. However, we will never know whether that plea of guilty would always have been entered.

The outworking of the impact assessment can be most effectively demonstrated by this example. Our most recent symposium was held in London last week, and we attended that along with a chief justice, the head of the Public Prosecution Service and the chair of the Bar, among others. At that meeting, and as Mr Colton pointed out, the practice was classified as having a "catastrophic effect" on the publicly funded Bar and on the criminal Bar in England and Wales in particular. Those are not my words; they are the words that were used. That is borne out in the report that the Westminster PAC published in February this year. That report states that that practice has long-term implications for the future of the junior criminal Bar in England and Wales. By extension, that could come to pass here, but only if we are to go down the same road and adopt the same system that applies in England and Wales.

Mr Elliott:

Is there a huge difference between the fees of a solicitor advocate and those of a junior counsel?

Mr Mulholland:

Would you believe that a solicitor advocate is actually paid more than a junior counsel? That is in the 2005 rules, and it demonstrates another anomaly in those rules. They state that, under standard fee cases, a certified solicitor advocate is paid more than I am for a case.

Mr McCartney:

Notwithstanding the issues of confidentiality and that you are now in discussion with the commission on the matter, if, at the end of the negotiations, there is a successful outcome in your favour, will it be possible that people will have some sense of what a senior barrister and a junior barrister working a pretty full year would earn at the end of that year?

Mr Mulholland:

The only reason that you do not have our proposal today is because we and the court service have been engaged in negotiations for six months. I am sure that you appreciate the sensitivities of that, simply because the discussions are ongoing. However, I feel that I can say this without breaching any confidence, but we have tried to address the issue of saving costs in several different ways to see what would be the most effective and most accountable way forward. We started almost two years ago by suggesting a tightening of the criteria for VHCCs. We recognise there is a difficulty in such cases, so those criteria should be tightened. For whatever reason, that

was not adopted. The reply that came back was that we should go with the system that is used in England and Wales.

I personally met with the chairman of the Criminal Bar Association of England and Wales and the former chairman of the Bar Council of England and Wales to discuss VHCCs and the system that has been introduced there and that has been partly introduced here. They told me that the system did not work, and that, in one particular year, they could get only two Queen's Counsel to sign up to take on the most complex and serious cases in England and Wales. Therefore, that meant that the Lord Chancellor had to provide an ex gratia payment scheme in some of the most high-profile cases to retain the barristers and lawyers that they needed in the most difficult cases. That was conveyed in the most unequivocal terms, but it did not seem to matter.

To this very day, the people concerned are still trying to find an alternative solution to the VHCC problem in England and Wales. We are now ahead of them on that. Our organisation and the court service are trying to find a different way of dealing with the problem — again, at the Bar's suggestion — and it is no secret that we suggested a uniformity of fees across the board.

Returning to the question about what a barrister can earn in a year, regardless of whether the barrister is a Queen's Counsel or a junior counsel, the earnings will be in black and white, as it is already for the 97% of cases on standard fees. That will bring certainty to the issue. The figure of £1·5 million was mentioned today, and although we cannot give a figure for an hourly rate, I can say that it is more than likely that the type of figures that we are referring to will represent a reduction of something between 50% and 75% of that sum for any given year for a Queen's Counsel. Those are the types of figures that we are looking at, if they are put in the context of that headline figure. Our brief was to provide predictability and accountability, and, as we say, we are very confident that the scheme will deliver those.

Mr McCartney:

If headline figures say that a legal professional earns £1·5 million, everyone thinks that all barristers earn that amount. However, you can reasonably say that, under the new proposal, the cap for a good, sought-after QC for 100 trial days will be x amount. That will give people a sense of what barristers will earn.

We heard many figures today. Adrian Colton spoke about the difference between the level of

trial that takes place here in a Magistrate's Court and one that is heard in the Crown Court. You said that, comparatively speaking, 63% of category-A trials had two counsel. Would that be about 2,000 cases?

Mr Colton:

Mark will know that better than I would.

Mr Mulholland:

I have so many pieces of paper to look at —

Mr McCartney:

We can come back to that. Five per cent seemed very low, but you explained it by telling us that of the 37,500 trials, some would be in the Magistrate's Court and would not therefore necessarily have two counsel.

Mr Mulholland:

I will return to the issue of a trial having two junior counsel. In England and Wales one can have a junior, a junior-led lead junior, a junior-led QC, a lead junior, a QC junior and a QC alone. I am not sure how we start to make sense of that. I suspect that the ballpark figure for such trials is slightly more than 2,000.

Mr McCartney:

Therefore, 63% is the comparator to the 58%. That is fine.

The first presentation suggested that the lack of appeals showed that the system was working. However, you say that the Crown Court cannot judicially review; therefore, the appeals process would be very unwieldy, to say the least.

Mr Colton:

It is pretty hopeless for people, really, once they have been convicted.

Mr McCartney:

Therefore, the lack of appeals does not necessarily mean that the system is working. You said that the quality of the two counsel had to be right, which is understandable. You also mentioned

a code of conduct; however, there is no code of conduct. A solicitor does not have to inform a client that they have been awarded a certificate to be a junior counsel or a solicitor.

Mr Colton:

The Law Society would respond that that is part of its overall professional duty in any event and that it is under obligation to do the best for its client. It would say, therefore, that that has been covered. The society may not have a code, but it has guidelines that may cover that contingency. The Law Society, like the Bar Council, should have a code of conduct that would oblige solicitors to inform their clients about the certificate. However, if the Law Society were asked that question, it would answer that, as part of its obligation to act in the interests of its clients, it is obliged to inform them.

Mr McCartney:

I say this without prejudice to anyone's professional standards, but a client who was awarded a single counsel might feel more comfortable with their solicitor because that solicitor had been with them through an appeal, for example. A client may choose to keep their solicitor, because their solicitor might have 30 years' experience, which someone in a junior role would not have. The client might feel that that would give them better representation and a fair trial, and it is their right to do so. Do you have an opinion on how a balance could be struck?

Mr Colton:

That is well put. The issue is in ensuring that people are properly informed and that there is no conflict. Anyone giving advice on financial investments is obliged, under the financial services regulations, to send the client somewhere else to get independent financial advice. Therefore, you are right to say that some individuals may prefer to have their solicitor because they know them or because they know the case.

Perhaps the way to deal with the issue is to ensure that there is a proper statutory regulatory scheme to prevent any conflict of interest and to ensure that the client is properly informed.

Mr McCartney:

Would that happen if there were a code of conduct with a legal imperative for a solicitor to advise a client that they were entitled to either a junior counsel or a solicitor advocate?

Mr Colton:

A mandatory regulatory scheme would be the correct terminology, but the principle would be the same.

Mr McCartney:

Without trying to predict the future, when do you think that you will have closure with the commission on the matter?

Mr Colton:

I think that we are in the endgame.

Mr A Maginness:

I agree with the submission on the two counsel that the DUP gave to the court service. It was suggested that there should be a more bespoke and appropriate proposal that takes account of the peculiarities of practice in Northern Ireland. Do you agree that that suggestion should be adopted, rather than transfer the current regulations and criteria that exist in England and Wales?

Mr Mulholland:

Yes, I would agree. In many ways, we have a unique set of circumstances here that we are all painfully aware of and that do not necessarily apply in England and Wales. Furthermore, the unique circumstances that have arisen between Northern Ireland and the Republic of Ireland have led to a number of complex and serious cases here during the past number of years that have been viewed as involving fraud.

I respectfully think that it is misguided to take a cut-and-paste approach to a piece of legislation that operates in England and Wales, which has seemed to work there because no one has challenged it, and to adopt it here and wait for a challenge to see whether there is anything wrong with it. Such an approach is indicative of the court service's consultation paper, which, at the outset, advocated that it should not be mandatory for a senior counsel to be present in murder cases when that happens in England and Wales. Indeed, the current draft rules may allow that to happen in Northern Ireland, and they still allow for discretion in murder trials here.

The other element, which is totally ignored in the proposals yet which is peculiar to Northern Ireland, is that a number of very serious cases are tried in our juvenile court system. There is a

similar juvenile court system in England and Wales, but we have a particular number of very serious cases to deal with. Indeed, that was recognised in the discussions and negotiations that I participated in that successfully culminated in the Magistrates' Courts (Amendment No. 2) Rules (Northern Ireland) 2009. Those rules recognised the need to have Queen's Counsel in the most serious cases that arise in the youth court. Those cases are tried there simply because of the defendant's age. Those individuals are very vulnerable, and I am sure that you appreciate that the difficulties that they may have experienced psychologically and in their backgrounds mean that they require the expertise of a Queen's Counsel. However, the draft rules are silent on those issues. I am gravely concerned that, although the necessity for and requirement to have such expertise in juvenile cases in the Northern Ireland Magistrate's Court system in the most serious cases was acknowledged over a year ago, it has now been totally overlooked. I am subject to correction on that, but my first glance at the draft rules suggests that that is the case.

I am also gravely concerned at the move to rush the draft rules at such a rate of knots as to have them in by September 2010. I return to an earlier point that was made about the consultation process and about how members of the judiciary in England and Wales were approached and asked for their views. Depending on how you view these figures for England and Wales, the question must be asked about how effective was the level of representation or, in particular, the lack of level of representation in many instances, as it may or may not have been, in the most serious cases.

Mr A Maginness:

Are you aware of any discussions that have taken place with the judiciary either inside or outside the rules committee? Are you aware of their views on the matter?

Mr Mulholland:

I am not aware of the court service having any discussions with the judiciary; that is outside the rules committee. We had our own Bar representative at the Crown Court rules committee this week.

I have second-hand information on that. I am aware that the deputy resident magistrate, or district judge, as they are now called, who was there voiced his very grave concerns at the removal of the discretion to award two counsel from the Magistrate's Court, bearing in mind that that is something that has been done for umpteen years. More importantly, perhaps, even though

something may have happened in the past, that is not a reason to continue it in the future. We must bear in mind that it is the magistrates who have to read the papers before an accused person is returned to the Crown Court for trial. Therefore, they have the first hands-on grasp of the complexities and issues in any particular case and are best versed to ascertain whether Queen's Counsel is needed.

I have to respectfully endorse Mr McCartney's observation about the extended delay. We are all mindful of an accused person's right to have a trial within a reasonable period. The return of an accused to the Crown Court, before they come before a Crown Court judge, is reasonably expeditious. The grant of a Queen's Counsel will not occur until that judge sits at arraignment. It was asked earlier whether compassionate bail applications can be made. Only 0·1% of cases will ever come before a Crown Court judge in any circumstance before arraignment. There is an immediate delay; the case comes before the Crown Court judge, who, it seems, may now invite written submissions. Such submissions take time to prepare, and they are then read by the judge. However, the case cannot be listed in all that time.

Mr A Maginness:

May I stop you there? Does the prosecution say to the district judge or to the Crown Court judge that a case may be awarded two counsel? What happens in such a case? How is that predicted?

Mr Mulholland:

In some instances, cases start at an early stage with senior counsel for the prosecution. However, those cases tend to be very high-profile cases in which it is immediately acknowledged that they are of a serious nature. However, in the greater number of cases, that does not happen. In fact, to use the parity argument for Queen's Counsel whenever they are retained by the Public Prosecution Service — as and when it does now happen — that circumstance will not arise in many instances until very shortly before trial. Therefore, if we follow that by extension and say that that test can then be applied to the defence, it can happen that a Queen's Counsel comes in for the PPS at the latter stages, prior to the commencement of a trial, as the case progresses through the Crown Court. An application by the defence to say that parity dictates that it also should be given a Queen's Counsel will cause even further delay in the case. One may think that, in theory, that may help to expedite matters, but, in fact, it will add greatly to the administrative burden on the judiciary and, more significantly in this instance, to the delay that could arise.

Mr A Maginness:

Not so long ago, Dominic Grieve MP, who is now the Attorney General in the Conservative Government at Westminster, was in Belfast. He spoke very critically about the legal aid system as it is presently constituted in Britain. He made quite a number of detailed observations about the matter that were not that far removed from Mr McCartney's reference to the Westminster PAC report on legal aid. During his address, Mr Grieve suggested to the audience that we should not follow the example of the legal aid system in Britain. Do you agree with that? I take it that you would.

Mr Mulholland:

I concur fully with that view. In his address, Mr Grieve expounded the view of the PAC and cautioned against the move away from what he recognised to be the high level of representation that is and has been provided by both branches of the legal profession in Northern Ireland for a number of years. He also made two other observations, one of which may inform the Committee to some extent. Mr Molloy from the Assembly Research and Library Service was asked earlier about the disparity between Northern Ireland and England and Wales in the cost of legal aid vis-à-vis New Zealand and Canada. In fact, it so happens that I brought a copy of Mr Grieve's paper with me, just as I have, indeed, brought half a rain forest.

That is the type of figures that we are looking at. Our brief was to provide predictability and accountability, and we are, as we say, very confident that the scheme will deliver that.

Mr McCartney:

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Without trying to predict the future, when do you feel that you will have closure with the commission?

Mr Colton:

The quicker the better; we are currently in the endgame.

Mr A Maginness:

I agree with the DUP's submission to the Court Service on the two-counsel model. In that submission, the party said there should be a more bespoke and appropriate model that takes account of the peculiarities of practice in Northern Ireland. Do you agree that that should be done, rather than transferring the current regulations and criteria that exist in England and Wales?

Mr Mulholland:

Yes; I would agree. In many ways we have a unique set of circumstances here that we are all painfully aware of and that do not necessarily apply in England and Wales. Furthermore, as a result of the unique circumstances between Northern Ireland and the Republic of Ireland, there have been a number of complex and serious fraud cases here during the last number of years.

Cutting and pasting a piece of legislation from England and Wales, which has seemed to work there because no one has challenged it, to here and awaiting a challenge to it is misguided. Such an approach is indicative of the consultation paper from the Court Service, which advocated that it should not be a mandatory requirement for a senior counsel to be present in murder cases when that is the case in England and Wales. Indeed, the current draft rules allow for discretion in murder trials here and that still may be allowed to happen.

The other aspect totally ignored in the proposals, yet which is peculiar to Northern Ireland, is that a number of very serious cases are tried in our juvenile court system. There is a similar juvenile court system in England and Wales, but we have a particular number of very serious cases. Indeed, that was recognised in the discussions and negotiations I participated in, which successfully culminated in the Magistrates' Courts (Amendment No. 2) Rules (Northern Ireland) 2009. Those rules recognised the need to have Queen's Counsel in the most serious cases that arise in the youth court, which are tried there simply because of the age of the defendant. Those individuals are the most vulnerable, and their background difficulties mean they require the expertise of a Queen's Counsel. However, the draft rules are silent on those issues, and I am greatly concerned that having acknowledged that necessity and requirement a year ago it has now been totally overlooked. I am subject to correction on that, but my first glance at the draft rules suggest that to be the case.

I am also gravely concerned at the move to rush the draft rules in by September 2010. I return to an earlier point about the consultation process and what members of the judiciary in England and Wales were approached and asked for their views. How effective was the level of representation and the lack of level of representation in many instances as it may or may not be depending on how you view these figures from England and Wales in the most serious of cases?

Mr A Maginness:

Are you aware of any discussions with the judiciary inside or outside of the rules committee? Were their views sought on the matter?

Mr Mulholland:

I am not aware of any discussions taking place with the judiciary on the part of the Court Service, which sits outside of the rules committee. We had our own bar representative at the Crown Court rules committee this week. I am aware that the deputy resident magistrate, or district judge, as they are now called, who was there, voiced his very grave concerns at the removal of the discretion to award to counsel from the Magistrate's Court, bearing in mind that that is something that has been done for umpteen years. More importantly than that, perhaps, is that whatever may have gone on in the past is not a reason to continue in the future. Magistrates have to read the papers before an accused person is returned to the Crown Court for trial. They, therefore, have the first hands-on grasp of the complexities and the issues in any particular case and are best versed to ascertain whether Queen's Counsel is needed.

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Mr Mulholland:

I concur fully with that view. In his address, Mr Grieve expounded the view of the PAC and cautioned against the move away from the high level of representation that is and has been provided by both branches of the legal profession in Northern Ireland for a number of years. He also made two other observations, one of which may inform the Committee to some extent. Mr Molloy from the Assembly Research and Library Service was asked earlier about the disparity between Northern Ireland and England and Wales in the cost of legal aid vis-à-vis New Zealand and Canada. I brought a copy of Mr Grieve's paper with me.

When that question was asked earlier, I dug it out. Dominic Grieve, now Attorney General for England and Wales, points to two key factors to explain the disparity between the United Kingdom and Canada and New Zealand. He said that it is not simply down to the adversarial nature of our justice system — look at Canada and New Zealand — but that a key factor must be the level of crime. Research by the Ministry of Justice suggests that, in the United Kingdom, the criminal legal aid budget suffers from the double pressure of high crime and a high proportion of cases being granted legal aid. I am not sure whether that information would assist the Committee in dealing with some of the questions that were asked earlier. However, I can certainly make that information available.

The second matter he touched on is a pilot scheme, which, again, will resonate in due course, because, in recent days, it has been suggested to the Bar during yet another consultation aspect of "reform". The pilot scheme would introduce in-house advocacy in the Public Prosecution Service for the Crown Court. Dominic Grieve was most vociferous in his concerns around that scheme, which was initially introduced under the former Director of Public Prosecutions for England and Wales, Ken MacDonald QC, and which has been continued by the current director, Keir Starmer QC. On first blush, the scheme may appear to be a cost-saving exercise, by virtue of the fact that, if salaried employees were put on an annual wage, they could deal with the greater bulk of Crown Court cases in the certain instances that would arise in England and Wales, hence saving on barristers' fees, solicitors' fees, and so on. Several years on, the outworking of the scheme has been that it has cost a great deal more than the use of the independent referral Bar. That is because other issues, such as pension rights, maternity leave, sick leave, and so on were not factored into the equation to any great extent.

That was one of the key elements that Dominic Grieve touched on in his discussion with the Bar. He warned the Bar of Northern Ireland and the legal profession in general that that is something that people should be aware of. On the face of it, the scheme may seem cost-effective. However, the outworking in England and Wales has shown something completely different.

Mr A Maginness:

I have one final question for Ms Campbell. How high is the dropout rate from the Bar among younger members?

Ms Gerarda Campbell (Bar Council):

Around 20 people drop out each year, but that does not happen at the very early stages. Younger members are told to give it a while and see how they go. However, after perhaps five years or more, members do then make the decision to leave. Although such decisions are taken not just for financial reasons — perhaps it is to take up another position — money is a large part of it.

Mr A Maginness:

In recent years, were there any particular pressures on young members of the Bar, particularly females, around legal aid payment in family cases?

Ms Gerarda Campbell:

I cannot speak to that as I have not had experience of it. I do some family work, but my main role is in the criminal Bar.

Mr A Maginness:

Is any other member aware of that happening?

Mr Garland:

A number of female barristers approached the Bar Council when we were having difficulties with payments in family cases. We were able, in fairness, to approach the Legal Services Commission about a number of cases, and it was able to make adjustments or bring forward payments. However, a number of female barristers did leave the Bar as a result of difficulties around payments in family cases.

Mr A Maginness:

Is it correct to say that those were extended periods of non-payment of legal aid for family cases?

Mr Garland:

I cannot tell you for exactly how many years that went on. However, it did happen over a number of years.

Mr A Maginness:

Was any explanation given by the Legal Services Commission about that issue?

Mr Garland:

During that period, attempts were made to set fees. Interim agreements were put in place to try to resolve the difficulties. I understand that problems arose because of the difficulty in getting fees and administrative difficulties in paying those fees.

Ms Gerarda Campbell:

If I may, I will return to Mr Maginness's question about the drop out rate at the Bar. I want to give the Committee an idea of what it is like during the first few years at the Bar. I specified five years because those are the years are deemed the most difficult. I represent young members of the Bar Council, namely, those who have served seven years or less.

The focus has been on the public perception of the Bar and the fees that have been published. It is important that the public know of the difficulties faced by the bottom 100 or more members of the Bar. It is indisputable that all students who finish university carry debts. However, it is part of the code of conduct for those who, like me, go to the Institute of Professional Legal Studies that we are not allowed to engage in any work beyond our legal studies. That means we are entirely unsubsidised.

Our 12 months at the institute is followed by a six-month unpaid pupillage at the Bar, during which, again, we are not allowed to engage in any external work. We are not entitled to any form of top-up benefits such as working tax credits. We work for no fee for a long time. Members are aware that we at the Bar are self-employed. I have been working there for 15 months. When I arrived on 6 March 2009, I had to set myself up as a sole trader in a small business, which is a massive task to undertake. It is huge for anyone to set themselves up in self-employment.

The Bar works on the basis of referrals. When we arrive, we do not know where our work will come from or when. More importantly, we do not know when money will arrive. In the meantime, our overheads are huge, and I believe that the Chairman referred to overheads. We have to pay fees and insurance. We have administration fees, for example, we must pay for every page we print and every pen we use, and that is in the absence of any financial help. We also have car and insurance payments to meet. We shoulder the burden alone of everything involved in running a business.

Although barristers at the very top end of the pyramid, which is good analogy, take in quite substantial fees, the public should be aware that a large majority of the Young Bar do not cut a profit. I still have more money going out than coming in and envisage that I will do so for quite a long time. It is important for the public to know that barristers struggle for a lot of years.

I respectfully submit that the most important message from this meeting is that the Bar is a vocation — we give up everything to be there and it takes a long, long time for money to start trickling back and for life to become more comfortable. That should attract public confidence, because it shows that those who remain at the Bar long enough to do the highest cases involving the greatest amount of work really want to be there, otherwise they would have dropped out because of financial and other difficulties.

Mr Bell:

How many new barristers are there every year?

Ms Gerarda Campbell:

There were 24 called in my year. I believe that figure went up slightly to 30 or thereabouts in the following year.

Mr Bell:

How many attend the year-long institute course?

Ms Gerarda Campbell:

The course is direct; those who attend are carried across directly to the Bar.

Mr McCartney:

I believe that Adrian said 30% of the Bar earned less than £5,000 a year.

Mr Colton:

From public legal aid funds, yes — those who do legal aid work.

Mr McCartney:

What responsibility does the council have to arrest that trend and ensure that it is moved in different direction so you do not lose talent?

Mr Colton:

It is a major responsibility. It is very humbling to listen to Gerarda. We subsidise fees for members of the Bar for their first seven years to keep the fees as low as possible. Also, every person who applies to the Bar is allocated a master; nobody is ever turned away, which can happen in England and Wales or to some people who opt to become solicitors — people cannot do a job that they cannot get. I have had a dozen pupils and know that Mark has had about the same number, so we provide that support as well. There are other issues around equality, gender and diversity, as well as about how people are instructed and perceived in the Bar. That is a big issue to be considered.

The difficulty is that, ultimately, we depend on solicitors to give us work. We cannot allocate work, redistribute it or pay people. That is a problem that we need to be more proactive about.

The chief executive tells me that the first seven-year subsidy is £560,000 per annum. At the senior end of the Bar, we contribute around £500,000 to try to give people such as Gerarda an opportunity to become a member of the Bar.

That is why the issue that Mr McCartney mentioned is such a threat. It is only by learning to become a barrister and working behind senior counsel that junior barristers learn the skills to move on and gain the experience to enable them work on serious cases. If that is taken away from junior barristers, it will have a serious effect on their ability to get and perform work. If that work is done by other people, it will affect the long-term future of the Bar. It will deny people such as Gerarda the opportunity to become the barristers they want to become.

The Chairperson:

Right, I think we have virtually exhausted that topic.

Mr McCartney:

We admire your stamina.

Mr A Maginness:

I am exhausted, anyway.

The Chairperson:

I thank the delegation from the Bar Council for coming and for being so frank.