Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT
(Hansard)

Law Society of Northern Ireland: Proposals 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 Alban Maginness
Mr Conall McDevitt
Mr David McNarry
Mr Alastair Ross

Witnesses:
Mr Norville Connolly) Law Society of Northern Ireland
Mr Alan Hunter)
Mr Pearse MacDermott)

The Chairperson (Lord Morrow):

I welcome Mr Norville Connolly, the president of the Law Society of Northern Ireland, Mr Alan Hunter, the society's chief executive, and Mr Pearse MacDermott. I am sorry that the previous session took a bit longer than anticipated. We have removed an item from the agenda in order to speed things up.

Mr Norville Connolly (Law Society of Northern Ireland):

Thank you for your invitation; we are delighted to attend the meeting. Mr Hunter will make the opening statement. Mr MacDermott is a well-known practising criminal lawyer and a member of

the executive committee of the Criminal Bar Association.

Mr Alan Hunter (Law Society of Northern Ireland):

First, I thank you for the invitation to speak to the Committee today about the society's perspective on the current legal aid reform proposals. I hope that this will be the first of many engagements with you, covering not just legal aid but the full range of issues that face the justice system.

The Law Society is the regulatory and professional body for solicitors in Northern Ireland, and it is invested with statutory functions relating to solicitors. The society is governed by an elected council of 30 solicitors who give of their time voluntarily, and it is led by the presidential team, comprising the president, the senior vice-president, who is the immediate past president, the junior vice-president, who is the next incoming president, and the chief executive. The society is entirely privately funded and is financed through practising certificate fees, which practising solicitors are required to pay. The society has functions relating to the regulation of the solicitor profession, and it represents the views of the profession and clients in matters relating to the administration of justice.

There are more than 2,400 practising solicitors in Northern Ireland engaged in some 550 firms. The network of solicitors' firms is spread widely across the jurisdiction, with at least one practice in most small towns and more in the larger towns and cities. Solicitors' firms are predominantly general practice firms that provide a full suite of legal services to the communities that they serve. There are also a growing number of solicitors who practise in-house in the private and public sectors. Solicitors' firms provide the community with access to a highly qualified legal service, and they also provide a choice of legal aid adviser and representative.

Solicitors' firms are significant contributors to the local economies in towns and associated rural areas. They provide direct employment in their offices and indirect employment through the services that they purchase from other businesses. Solicitors are active in their local community, bringing their legal skills to assist local community groups, social enterprises and schools. The profession has a strong tradition of voluntary contribution to the community.

The society and the Assembly have the shared agenda of ensuring that there is an accessible justice system in which members of the public can have confidence. The society welcomes

proposals to include in the forthcoming justice Bill provisions to extend rights of audience to solicitor advocates to enable them to appear in the higher courts as of right. That is a choice that is open to clients in the South, in England and Wales and in Scotland, and it is long overdue in this jurisdiction.

I will now turn to legal aid, which is the topic for today's discussion. I want to highlight the society's commitment to access to justice. One of the society's principal aims is to ensure that access to justice is promoted, protected and available to all citizens, irrespective of income or means. The society considers that the duty to guarantee access to justice is a core function of government. The society assesses any proposals for the reform of our legal aid system to ensure that the system guarantees, on an equal basis, access to legal advice and representation through legal aid that is sufficient to fund a quality legal service in which members of the public can have confidence.

Any proposals must not unduly restrict the ability of members of the public to access legal help through legal aid to such an extent that they would be unable to defend or exercise their rights under the law. Proposals must guarantee access to justice on an equal basis. They must also ensure access to a quality service that is able to defend and promote the rights of individuals in a forthright manner. In support of the Government's wider policy objective, proposals must also support and encourage confidence in the justice system.

The society considers that guaranteeing access to justice brings real benefits to society, the economy and the community. It ensures that individuals can have confidence in the justice system, which contributes to community harmony. Furthermore, an accessible legal system in which differences between individuals can be resolved contributes to social cohesion. Direct access to a solicitor who espouses the core values of the profession — integrity and confidentiality for the client — means direct and ready accessibility to a source of advice and support in which the socially excluded and others can have confidence. That is a critical feature of a just society and is of unquantifiable benefit to the community.

In considering the current reform package, the society has been, and remains, conscious of the budget within which the Department and the legal aid fund must exist. We accept that we are in challenging economic times, and, like other small businesses, solicitors' firms have had to make adjustments, and will continue to make adjustments, to cope with reduced incomes. Government

must also make cost savings, which will have implications for solicitors' firms.

The society notes that government must at once meet their financial constraints and obligations under the Human Rights Act 1998 and ensure an accessible justice system in which the public have confidence. The society has raised concerns with government that proposals for the reform of the legal aid system have not always been fully thought out. The absence of detailed impact assessments that clearly identify the potential implications of particular policy proposals has been a cause for concern, as has the absence of a cumulative impact assessment, which must assess the full cumulative impact of all proposals currently being put forward by government. That is a significant oversight that results in a lack of appreciation of the pressures that service providers are under.

As a result of our concerns, and by way of example, it is understood that the Courts and Tribunals Service will now carry out a small firms impact test to determine the potential consequences for firms of implementing the graduated fees scheme (GFS). Furthermore, the society is concerned about the reliability of projected budgetary requirements. Historically, the Courts and Tribunals Service and the Legal Services Commission have experienced difficulties in projecting the required allocation to the legal aid fund. That has led to the Legal Services Commission routinely spending its allocation prior to the end of the financial year and being required to obtain additional funds. The society, therefore, has little confidence in the budgetary projections prepared by the Courts and Tribunals Service and in the assumptions made about the impact of the proposals.

The Government have recently publicised rises in legal aid costs in Northern Ireland. What has been absent from those discussions is a detailed analysis of why the cost of legal aid has increased over the past decade. I will outline the factors that have led to those increases. First, there has been an increase in the volume of cases in both the Magistrate's Court and the Crown Court. The society has reviewed the judicial statistics for 2001-08 and for the most recent year for which statistics are available. In broad terms, it seems that there has been a 17% increase in the number of defendants dealt with in the Magistrate's Court and a 51% increase in the number of defendants dealt with in the Crown Court.

Secondly, there have been changes to criminal justice legislation and procedures; for example, in the law relating to the admissibility of evidence. Cases are inevitably and increasingly more

complicated. Furthermore, there has been a lack of joined-up thinking in government on the cost implications for the legal aid fund of legislative initiatives. Over the past 10 years, in excess of 4,000 new criminal offences, half of which attract a prison sentence, have been enacted. We understand that government, as a matter of practice, have not carried out a specific legal aid impact assessment of those proposals or of the cost to the legal aid fund. A recent example was the introduction of hearings before parole commissioners. No analysis has been made of the additional funding required for the legal aid budget for representation at those hearings. The society considers that the absence of detailed government analysis of cost drivers has not assisted the discussions on cost-saving initiatives.

I want to turn now to the proposals for reform of criminal legal aid. First, I will discuss proposals that relate to the Crown Court, and then I will talk about civil legal aid, the funding code and some other discussions that are currently under way.

The GFS relates, of course, to criminal legal aid. The Courts and Tribunals Service proposes to amend the two fees regime that governs payment for legal representatives providing publicly funded defence services in the Crown Court. The Courts and Tribunals Service has proposed that standard cases be remunerated according to a graduated fees scheme and that the very high cost cases (VHCC) regime for more complicated cases be maintained, but with amendments to the rules that govern how cases are classified.

The society opposes the proposal that the graduated fees scheme be introduced to Northern Ireland. That proposal fails to acknowledge the significant characteristics of this jurisdiction that distinguish it from England and Wales. For example, the Crown Court in Northern Ireland deals with more serious offences. In the Crown Court here, defence solicitors are routinely required to make a higher proportion of disclosure applications than would be expected of their counterparts in England and Wales. Due to the significant period between arrest and commencement of trial in this jurisdiction, defence solicitors are also required to invest greater resources to visit their clients, to keep them informed of developments and to follow case details.

The proposal does not take account of the fact that legal aid policy in this jurisdiction has traditionally been developed with reference to the particular circumstances in Northern Ireland. It has a bespoke fees regime for both the Magistrate's Court and the Crown Court and for advising suspects at police stations. The graduated fees scheme has been developed with reference to the

legal aid system that exists in England and Wales, not that of Northern Ireland.

The society recognises that the principal objective of the proposal for a graduated fees scheme is to address the need to make savings. As I mentioned, we have accepted that there is a need to make savings. Therefore, we have made a proposal to the Courts and Tribunals Service that we anticipate will inevitably make significant savings. The society has proposed that the current VHCC regime be abolished and that Crown Court cases be remunerated according to the standard rates that are contained in the 2005 rules, with some limited provision for exceptional payments.

The society has considered in detail the current proposals from the Courts and Tribunals Service and finds them unnecessarily complicated. Furthermore, they will not provide adequate remuneration for standard cases before the Crown Court, and they pose a substantial and significant risk to the viability of the network of solicitors' firms, which will have a consequential impact on access to justice generally. Our proposal will both sustain the network of solicitors' firms, which guarantees access to justice throughout the jurisdiction, and result in significant savings for the legal aid fund. We currently await the Courts and Tribunals Service's views on our proposals.

I turn now to the two-counsel proposal and the means test. The Courts and Tribunals Service has proposed restricting the criteria that govern the circumstances in which a defence team can have more than one counsel assigned to it. The high proportion of cases in which the defence team consists of two counsel or advocates has recently been identified as a significant cost driver. The society's view is that there must be absolute regard to the defendant's right to a fair trial, the equality of arms principle and to his or her rights under the Human Rights Act 1998. Subject to those precautions, we did not raise any objection to that proposal, which will also, inevitably, lead to savings. However, we await the detail of what will emerge from the Courts and Tribunals Service — the detail of the rules and how the proposal would operate in practice.

Consultation is also taking place on the introduction of a criminal legal aid means test. Again, the society emphasised that such a test must pay adequate regard to the defendant's right to a fair trial and to the equality of arms principle. We also highlighted a number of practical concerns. The society considers each proposal on its own merits and fully understands that achieving value for money is an important government objective. However, we must avoid a two-tier justice system. We must ensure access to justice for all in the community.

Proposals have been made for reform of civil legal aid. Civil legal aid provides people with access to justice so that they can protect and exercise their civil rights. An individual may require legal aid assistance to pursue a right to compensation following an accident, for example, or may wish to pursue a judicial review to challenge a government policy that breaches his or her human rights. Civil legal aid also provides access to justice for families and for individual family members who require the assistance of a solicitor or the court in family law matters.

In June 2009, the Legal Services Commission consulted on a proposed funding code for Northern Ireland. The code sets out the criteria according to which any decision is to be taken on whether to fund civil legal services for an individual and on the extent of the legal services that should be funded. In our response, we raised the significant concern that the proposal to restrict access to legal aid for those pursuing personal injury cases would significantly restrict the ability of victims who are suffering through the negligent actions of others to access justice. That concern has been acknowledged by the commission, and we are now in discussions with the commission regarding the establishment of an alternative fund so that those who are negligently injured will be able to pursue their legitimate claims.

The means test, a unified civil legal aid financial eligibility test that would replace the various tests currently applied, is also proposed. That will set the financial thresholds according to which an individual's eligibility will be judged. It is vital that that is appropriately drafted to ensure that those in real legal need who are without the means to fund their own case are able to access the help, advice and representation they need through legal aid. The society welcomes the commission's indication that, in particular, it will make provision for a waiver for the victims of domestic violence. It is understood that the commission's initial proposal that housing equity be included as a criterion will not now be brought forward, and the society welcomes that. If introduced, that would have resulted in many homeowners being unable to access justice.

The statutory charge is also subject to reform. The society is currently considering proposals for reform of the statutory charge that would empower the commission to recoup costs paid on behalf of an individual who, following the conclusion of their case, would be able to pay their own legal fees. The society has no objection to that proposal. However, there are a number of practical matters on which we shall seek clarification.

The Minister recently set out his vision for public legal services in Northern Ireland. We shall engage with the Minister and the Committee when his plans are sufficiently developed and he is ready to discuss them. The Minister stated that he would like public legal services to help more people to solve their legal problems. The society shares that vision, but we may have different views on how it is to be achieved.

The Minister also said that he would like greater emphasis to be placed on finding solutions outside of court. Again, the society and the profession support the resolution of disputes by the most suitable mechanism, which does not always involve going to court. For example, the society has its own mediation programme and associated training.

The Minister said that he would like to broaden the sources of legal help. The society awaits details of what he has in mind. As I have mentioned, there is already a network of locally accessible experienced solicitors' firms in which clients have confidence. That network of solicitors' firms makes up a community legal service. The society is opposed to any policy or proposal that might undermine that network. The society considers that, in developing those proposals, the Government and the Assembly should fully understand and be conscious of the consequences that may arise if that network of local solicitors' firms is undermined or disrupted. Government should also be conscious that, if that network is eradicated or disrupted, it is unlikely that it could ever be re-established.

The Chairperson:
Thank you, Mr Hunter.

Mr Connolly:
We are happy to take any questions that you might have.

Mr McDevitt:
I have a couple of quick questions. I am curious about the solicitor advocate role. How long have solicitors been able to appear in court?

Mr Pearse MacDermott (The Law Society of Northern Ireland):
Solicitors have always had rights of audience in the Crown Court and the Magistrate's Court. The 2005 Crown Court rules deal with remuneration for solicitors in the Crown Court, but they

have always had a right of audience. At present, there is no right of audience for solicitors in the higher courts, which are the High Court and the Court of Appeal. That has been the subject of some discussion following the Bain review of legal services. We are hopeful that, in due course, efficiency in the system will be addressed and that solicitors will have full rights of audience in all the courts.

Mr McDevitt:

How many solicitors have appeared in the Crown Court since they have had the right to do so?

Mr MacDermott:

We do not have any facts and figures on that. However, increasing numbers of solicitor advocates are appearing in Crown Court cases on a day-to-day basis. It is important for the Committee to understand that the society sees that as being a very useful and suitable exercise of our rights in the Crown Court. It provides a high-standard service for our clients and one which we see progressing further in the future.

Mr McDevitt:

Historically, would a large number of solicitors have appeared in Crown Court cases, or is this a new thing?

Mr MacDermott:

It is fair to say that, in recent years, since the 2005 Crown Court rules came in, there has been an increase in the uptake of solicitor advocacy in the Crown Court.

Mr McDevitt:

Why?

Mr MacDermott:

The simple answer is remuneration. Before 2005, a solicitor had the right to appear in the Crown Court but would not get any remuneration for doing so. Therefore, it did not make a lot of sense for solicitors to appear. However, since 2005, remuneration has been available and, therefore, there has been a greater uptake by solicitors.

Mr McDevitt:

Solicitors would have been paid to represent clients but not paid to do the court work.

Mr MacDermott:

That is correct.

Mr McDevitt:

It is useful to know the background.

The other aspect that I want to explore is your proposals for VHCCs. Your recommendation is that the VHCC system should be done away with and that standard fees should apply. Will you talk me through, in slightly more detail, why you think that would make sense? Can you also explain the savings that you think could be accrued?

Mr MacDermott:

The VHCC system came about as a result of the 2005 rules and was a straight copy of the system in England and Wales. As you may appreciate from Mr Hunter's opening remarks, we do not think it appropriate for this jurisdiction to automatically look at that system. The VHCC system has led to a situation whereby there are concerns about the costs being paid in those cases. The cases involved are very complex and difficult and would be scheduled to last for a long time. The Legal Services Commission grants VHCC certificates. Cases are scrutinised, and a certificate is granted only on the basis of a case being very complex and lasting for a long time.

We appreciate the need for savings to be made in the criminal sector, and, in particular, the Crown Court sector. We also recognise that the VHCC system has driven up costs and been open to criticism, some of that fair. On that basis, we feel that the removal of the VHCC system would provide for substantial savings in the Crown Court with no detriment to the service provided to clients or the interests of justice. The 2005 system for standard fees, with provision for some form of exceptionality, would provide an adequate level of remuneration that would allow clients to be fully represented in the Crown Court.

It is very difficult to put an actual figure on the savings that could be accrued. As you probably know from the Courts and Tribunals Service's presentation, although the VHCC scheme was introduced in 2005, there is a substantial backlog, and a large number of payments have been

made in recent years. Based on what Mr Crawford told the Committee previously, we can see that, in 2009-2010, VHCC costs were £28·4 million. The standard fee for that same period was £16·3 million, so VHCC costs are more than one and a half times the standard fee. That is the approximate cost that would be saved if the VHCC scheme were to be abolished.

Mr McDevitt:

If we look at the more successful solicitors' firms that are drawing down legal aid, we can see that, over the past couple of years, three firms have earned consistently more than £1 million, and one has earned consistently more than £2 million. What proportion of those fees do you think are from VHCCs?

Mr MacDermott:

Again, without dealing with individual firms, it would be very hard to answer that question.

Mr McDevitt:

Do you think that the bulk of those figures are from VHCCs?

Mr MacDermott:

No. The bulk of the VHCC scheme is payable to counsel, which is standard, and that is accepted by the Courts and Tribunals Service, the Bar and solicitors. The bulk of the money goes to barristers. I presume that you are quoting from the Legal Services Commission's recently published figures. However, those are gross figures that include not only the professional fees of the solicitor's firm —

Mr McDevitt:

I am quoting the solicitor fee, not the disbursement or counsel fees.

Mr MacDermott:

I am surprised that the figures are so high.

Mr McDevitt:

The figures are for 2008-09, and I can go through them if you want: Kevin Winters & Co, £3,138,540 in solicitor fees; Madden & Finucane, £1,137,573 in solicitor fees; and Trevor Smyth & Co, £1,163,072 in solicitor fees.

Mr MacDermott:

I should point out that very high-cost cases will be encompassed in those fees. A certain element may, therefore, be taken out of any future spending on payment for Crown Court matters.

The other important point is that —

Mr McDevitt:

Are you basically advocating something that will have no detrimental effect on the profession of solicitors?

Mr MacDermott:

No.

Mr McDevitt:

With the greatest respect, are you advocating something for which the Bar will have to pay?

Mr MacDermott:

No. We are advocating a system that will provide fair trials and access to the justice system for all. If you will permit me, I was going to make a point about the fees that you mentioned. It must be remembered, and it is important that you understand, that the firms that are quoted in the report are large employers. They employ a large number of people in the system and provide an adequate and good service for a great many people. In another walk of life, people who provide that kind of employment would be getting a grant instead of criticism.

Mr McDevitt:

I am sure that we all agree that solicitors, as do their businesses, play an important role in society as legal advisers.

I have one last question. I am interested to know your opinion on the council rule that we discussed earlier. You said that you considered the rule in the context of article 6 of the Human Rights Act 1998, which is important legislation. However, you made no reference to section 75 of the Northern Ireland Act 1998. Is that because you do not consider that to be a relevant consideration or because you just did not think of it?

Mr Hunter:

As the Committee heard, that is a matter for judicial discretion. Given the framework that the Courts and Tribunals Service has proposed for the court service, it is, frankly, quite difficult to determine how it will actually operate in practice. The director of the Courts and Tribunals Service indicated that when he said that, although certain savings were projected, he was unconvinced that they would materialise, partly because that is difficult to predict.

As regards section 75 and the requirement to promote good relations and to not disadvantage any part of the community, we take the view that the Courts and Tribunals Service's assessment had been rather more detailed than what has perhaps emerged this afternoon.

Mr McDevitt:

I am sorry, Mr Hunter, I missed what you said.

Mr Hunter:

We take the view that the equality screening exercise was rather more thought through, but that was an issue that we did not raise. However, as I say, we pointed out that the material point to consider is how the framework will operate in practice.

The Chairperson:

How many members of your profession take part in solicitor advocacy? Is there unanimity in the profession that that should happen and that it should be the way forward?

Mr MacDermott:

Solicitor advocacy is a misnomer in a lot of ways, because all solicitors are advocates. We are advocates every day and at all times in the Magistrate's Court and in our offices. However, solicitors can obtain a formal qualification as a solicitor advocate after taking a solicitor advocacy course. At present, there are more than 200 solicitor advocates in this jurisdiction. As of September this year, 400 more places are available for solicitor advocates coming out. It is probably fair to say that all members of the society see solicitor advocacy as a very important strand of the service that we are able to provide to our clients. We would certainly encourage all solicitors to become formally qualified in solicitor advocacy and to use that skill wherever possible.

Mr Connolly:

You asked whether there is unanimity in the profession. The debate on that has not yet taken place in council, but it will in the next month or two. From the soundings that we have heard, we expect there to be an agreed, unanimous position. However, given that it has not yet come in front of the council and we have not debated it ourselves yet, I cannot say whether there is an agreed position.

The Chairperson:

Would you see that as tramping into someone else's domain?

Mr Connolly:

I will answer that. I think that everyone in the room knows that, years ago, solicitors always appeared in the Magistrate's Court. Over the past 10 years, solicitors declined to do that work by reason of the fees regime. In a sense, the payment structure was constructed in that way accidentally.

We see advocacy as an integral part of what we do as a profession. We believe that we should exercise our rights in the Magistrate's Court. We have always exercised those rights, but, in the past number of years, we have declined to exercise them substantially. Solicitors have always done civil and matrimonial work. As Mr MacDermott said, we have been exercising those rights in the Crown Court since 2005.

In England, Wales, Scotland and Southern Ireland, solicitors have the right to appear in the higher courts. For example, if a solicitor is assized of a case, knows it quite well and presents it in the Crown Court, under the existing rules, they cannot take it to the Appeal Court. After representing a client in the Crown Court, a solicitor is denied the right to take the case further by reason of the rules in this jurisdiction only. We find that restriction unfair.

The Chairperson:

Some might interpret it as unfair. In general, the solicitor is like a gatekeeper, in that every court case originates in a solicitor's practice. Therefore, the solicitor has the discretion to pass a case to a barrister who specialises in a particular field and is therefore considered an expert. Are you saying that the solicitor has or could have that expertise by doing the additional training? If I were a lawyer, I might feel that you were intruding into something that I specialise in. Do

solicitors have the capacity to be specialists, given that they conduct general practices and make a valuable contribution to society by doing so?

Mr Hunter:

To repeat and emphasise what the president said, the council of the society has not had an opportunity to fully debate and discuss either the mechanics of how solicitor advocacy will operate or the accompanying regulatory machinery. We will begin the discussion on those at our meeting in mid-June, and I suspect that that will carry on over the summer until we reach a finalised position. I want to be clear: the society has no position on the issue as yet, because the council has not had an opportunity to debate it in its fullest terms.

We are very happy to come back and deal with this as an individual issue and to discuss with you the outworkings of our various deliberations, as well as the society council's opinions and decision.

We could make a couple of general observations. In Northern Ireland, we increasingly have a degree of specialism in some areas of law. One such area is criminal law. We have very experienced practitioners who have been in the criminal courts for a very long time, sometimes standing in and sometimes advocating as and when required. Perhaps, therefore, solicitor advocacy is not as novel an idea as it might appear. We are talking about extending existing rights of audience to the higher courts, that is, the High Court and the Court of Appeal. That may lead to a change in practice for a number of practitioners, but we will have to see how it develops.

However, the society is concerned with ensuring that there is an accreditation method that is appropriate and sustainable and that secures the society's objectives of guaranteeing access to justice and access to a quality legal service. Those are some of the issues that the society will consider and debate. However, it has not yet had the opportunity to do that.

Mr Bell:

Some people will be surprised that the multimillion pound solicitors' companies that my colleague Mr McDevitt mentioned put their names to the x number of millions that they claimed from the legal aid budget. Does the society take the view that a Mr and Miss in Northern Ireland are walking about today having been granted anonymity after claiming £1·2 million and £1·5 million respectively in legal aid?

Mr Connolly:

For the past two years, we have not made a point of either disclosing or not disclosing the names of solicitors' firms. We took soundings last week, and our members were happy for names to be disclosed; indeed, you have those names. If I can speak for the solicitors whom we represent, I should say that I think that it is slightly unfair that, in the names that are released, the concentration is on the biggest firms, which is perhaps the top three, 10 or 20. That is not representative of the profession, because another 400 firms are not on the list. We have written to the commission to ask why it does not release all information and why it is selective with the information that it releases. We do not have any objection to names being published, but we want to know why the commission does not publish all names and earnings. At numbers 95, 96 or 97 on the list, you will see that those firms are of a reasonable size. Many here will know those firms and will know that they do not earn large fees. They earn mostly under £100,000: £73,000; £94,000; £88,000; and £111,000. Those firms sustain staff, qualified solicitors, rent, rates and all the things that normal businesses have to keep. However, behind those figures are another 400 names. Why are they not disclosed?

We wrote about two weeks ago to ask for that information, but we were not given it. We asked why the names are not disclosed, given that such disclosure would give the necessary balance to show that the network of solicitors that provides services in the community exists and is not expensive. The document tries to suggest that every solicitor makes an awful lot of money. However, the top firms that are listed are the big firms. They have a huge number of staff and qualified solicitors, as well as large amounts to pay in rent and overheads pay. There are smaller firms behind those figures, but that information is not in the document and is not in this room. However, it is a vital cog in understanding how the solicitors' network operates in the community.

Mr Bell:

I accept all that, but the counterpoint is that, if people take £3·8 million of public money, it should be possible to hold them to account. What is the Law Society's view on the fact that two individuals have earned £1·2 million and £1·5 million respectively? Those individuals are anonymous to the Northern Ireland public, but, between them, they took £2·7 million of public money in 12 months.

Mr MacDermott:

As a practising legal aid practitioner, I am glad to say that I am neither anonymous nor a millionaire. Therefore, I do not fall into your category. That is a matter for the Bar Council and the way in which it approaches the Legal Services Commission. Our view is that our membership is open to public scrutiny. We provide both a very good service for a large number of people and employment. We are quite happy for our figures, which are earned through hard work, to be published. We have no difficulty with solicitors' firms being named. You have to look at the numbers behind the headline figures and at the actual numbers.

Mr Bell:

You said in your presentation that you anticipate "significant savings" being made. Nurses will potentially be made redundant, and I understand that teachers are being made redundant in the current financial climate. What are the "significant savings" that you talk about making in your profession?

Mr Hunter:

As Mr MacDermott said, for a whole host of reasons, it is difficult to quantify that. We do not own the data, and, to be perfectly frank, we find it difficult to analyse the data that we get.

Mr Bell:

What does the term "significant savings" mean? Give me a ballpark figure for what is meant by the word "significant".

Mr Hunter:

The figures that I have show that when the high-cost case regime was introduced, it was estimated that there would be between 50 and 70 cases a year. I think that I am right in saying that there have, in fact, been around 260 cases. We understand that, in 2009-2010, for example, £28·4 million was spent on very high-cost cases, which is a small number compared with £16·3 million for the average case. Therefore, the differential between £16·3 million and £28·4 million is significant, and that is where the savings will be made. It is quite difficult to make an estimate beyond that with the figures that we have. We understand that the court service is conducting its own analysis and that it will come back to us with the savings that will come out of that proposal.

Mr Bell:

You came to the Committee and said that you accept the need for savings and that you will make "significant savings". Give me a ballpark figure in monetary terms for what is meant by "significant savings".

Mr MacDermott:

We acknowledge that there is a need for savings, but it is very important that the Committee understands that that does not mean that we are prepared to take any dilution of the quality of the service that is provided.

Mr Bell:

That is a different question. You said that you are prepared to make "significant savings". When my constituents ask what that means in monetary terms, what do I tell them?

Mr MacDermott:

You can answer by stating that, in 2009-2010, the court service spent £28·4 million on very high-cost cases. The Law Society thinks that those cases should be abolished. Therefore, there is a saving to be made in those areas.

Mr Bell:

Can a saving of £28 million be made?

Mr MacDermott:

In that year.

Mr Bell:

Can any other significant savings be made?

Mr MacDermott:

The proposal that we made with the Crown Court, coupled with what we have negotiated already with the Magistrate's Court rates that were brought in last year and what we see as movement on the civil side, will mean that, by 2012, the Legal Services Commission will be within budget.

Mr Bell:

Which is?

Mr MacDermott:

By that time, it will be £79 million.

Mr Bell:

Does that mean that you are on target to achieve that?

Mr MacDermott:

We believe so.

Mr Hunter:

One point has been lost slightly in the debate: it is not the profession that fixes the system for payments or the rates of payments. We simply submit the end invoice, which is assessed by others according to a system that the Government introduced and that the previous Parliament approved. There is an assessment process, which includes the judicial officer and the taxing master, where appropriate, meeting the Legal Services Commission and those acting under its auspices. Our members and solicitors submit the file for assessment, which is made by others. In that context, it is quite important to note that the society has come forward with a proposal to suggest a different system that we accept will make savings. However, the exact quantity will be the subject of further discussion with the court service.

Mr Bell:

I have one final point to make. I have spoken to a number of solicitors, mostly from Newtownards, and they said that they bill roughly in the region of £40 an hour for work that they undertake. I think that many people will regard that as reasonable. Should it not be the case that all legal work be billed by the hour and that the hours are defined? If I have worked for 20 hours on a case, from 10.00 am to 4.00 pm on 17 June, for example, I cannot double bill for those hours on something else. I am not suggesting that there is any double billing, but should all legal services not be done like that for the sake of openness and transparency? It appears that solicitors are ahead of the game and do that already.

Mr MacDermott:

We have always taken the view that we are accountable. We have always provided full bills for taxation purposes for the Legal Services Commission for whatever is required. An hourly rate is the fairest way of paying remuneration to solicitors, because it is a reflection of the work that is undertaken. It is the court service and the Legal Services Commission that have come back with standard fees, but, as a principle, we are not in favour of those. We believe that an hourly rate is the fairest way of meeting needs and accountability and of providing fair remuneration.

I would take issue with the fact that people are paid just over £40 an hour for going to police stations. If we advise somebody on a murder investigation, we get £43·25 an hour. After tax, VAT and everything else, not an awful lot is left. If we go out in the middle of the night to police stations, we are paid slightly above that rate because it is out of hours. We then have to go about our ordinary business to maintain our offices.

We are certainly in favour of hourly rates. I do not think that £43·25 an hour is a reasonable rate of remuneration for advising somebody on a murder investigation or on any other form of criminal activity that may lead to someone's incarceration. However, we are certainly quite happy that the hourly rate be used as payment. The court service, not lawyers, raised the issue of standard fees.

Mr Bell:

For the record, over these past 21 years, in my profession I have seen solicitors getting £40 an hour to represent shoplifters.

Mr MacDermott:

Shoplifters can go to jail too, but they are also entitled to their rights under the law.

Mr Bell:

Yes. My point was just about creating a balance.

Mr McCartney:

I have a couple of questions to ask. Is there a particular reason why did you not raise any objections to the proposals to have two counsel?

Mr Connolly:

We took a neutral view on the basis that the defendant's right to a fair trial will overrule any type of discretion. That is enshrined in the human rights legislation. We see that as sacrosanct, and if a judge either overreaches or under-reaches his discretion, he is subject to questioning in another court. We are happy to rely on that legislation to oversee that. In principle, we do not have a difficulty beyond that about changing the rule on the assignment of two counsel.

Mr McCartney:

We have not been informed what the percentage of the assignment of two counsel was prior to its being introduced in England and Wales, but 5% seems to be very low.

Mr MacDermott:

According to the presentation to the Committee that came before ours, the current state of play seems to be 52%. The figure of 5% may be higher in England. However, two things have to be understood. The first, which your colleague mentioned, is the standard and quality of representation that is available in England and the standard and quality of representation that is available here.

The second point is that we have substantially different jurisdictions. Our Magistrate's Court gives a maximum sentence of two years, but the English Magistrate's Court gives a maximum of 12 months. Our Magistrate's Court deals regularly with very serious matters, such as assaults occasioning actual bodily harm, serious criminal damage, serious domestic burglaries and serious commercial burglaries. Such cases would be dealt with in a different court in England.

We deal in our Crown Court with cases that are much more serious and that would therefore merit the granting of two counsel. In the English system, if the maximum sentence is 12 months, for instance, the offence automatically goes to Crown Court. A high-level Magistrate's Court here may be a low-level Crown Court case there that would merit representation from only one counsel. Our Crown Court hears more serious cases that merit two counsel.

Mr McCartney:

Do the current proposals provide a mechanism to create an appropriate measurement, or is it open to judges, under public pressure, to keep costs down?

Mr MacDermott:

Without playing to my audience, you dealt with that issue in your question to the Courts and Tribunals Service. The test has to be the interests of the justice system and the right to a fair trial. We are quite happy for the courts to look at and deal with that issue. However, that is the test that has to be applied. I was pleased to hear at this meeting that the Courts and Tribunals Service has slightly changed, or is prepared to change, the criteria to leave that discretion with the judges, who are best able to deal with that. The overriding issue, however, has to be the right to a fair trial.

Mr McCartney:

Your presentation states that 2,400 solicitors practise at 400-odd firms. How many people are employed as a result?

Mr Connolly:

It is very difficult to get a feel for that. Working through just our own practice, we had that discussion. If you take one-and-a-half to two support staff for each solicitor, which would go up or down depending on the size of the practice, you are probably talking about 4,000 to 5,000 people who are directly employed. Obviously, you are then employing accountants and support staff who may be self-employed.

Mr McCartney:

What will be the impact on staff reduction if the proposals are implemented?

Mr Connolly:

We are really exercised about that, because the commission appears to be driven only by cost and not by impact, if you understand me. If you look at the impact assessment, you will see that it is very superficial. It does not seem to look at all the outworkings of the proposals if they were implemented.

In England, for example, GFS, despite what the commission says, in our opinion definitely does not work. It has led to the location of high-volume solicitors in population centres. That leads to what we call legal wastelands to which people have to travel substantial distances to get legal representation. That is entirely inappropriate for this society, which is coming out of conflict and needs solicitors who are not well paid. The list that you have shows that they are not

well paid. The call-out rate is £45 an hour and £58 at the weekend. A very good system of representation and advice exists throughout the community here, and no impact assessment has been done on what would happen if that were to disappear. It will definitely disappear if the proposals are put into operation.

Mr McCartney:

Has the Law Society undertaken its own impact assessment?

Mr Connolly:

We have not done that, but that is what we see happening in England, and, in fact, we can learn from what happens there. The National Audit Office, which is the public spending watchdog, published a report on the matter in November 2009. A report on that stated that:

> "one in six firms made no profit from publicly funded criminal defence work, and 14% made only 1-5 % profit."

It continued:

> "a survey of 369 firms, published in the report, revealed that only half expected to be doing criminal legal aid work in the next five years, with 28% saying they were unlikely to be doing so, due to its unprofitability".

I could go on.

A case that occurred this week was a challenge to the Lord Chancellor over defence legal costs being recovered. I can send you the information on that judgement, which has just been given. Paragraph 49 of the judgement states:

> "It is not disputed that at present it is not possible for lawyers to be hired privately at legal aid rates".

That effectively means that there will be a two-tier justice system if the GFS is adopted. It means that if I am well off, I can go to certain solicitors and barristers. However, if I am not well off, I will be told by government where to go. Poor representation will lead to miscarriages of justice and to appeals and it will clog the system. No assessment of that has been done. That is what is upsetting about it: leave the Law Society out of it. The politicians need to look at the situation and decide where it goes.

Mr McCartney:

Has there been any discussion about that between the Law Society and the Bar Council, or is the Law Society looking at it separately?

Mr Connolly:

We meet all the time. In fact, we are meeting on Monday morning.

Mr MacDermott:

We will meet on Tuesday morning, although we meet in work all the time. We have had discussions with our colleagues at the Bar Council, and we have a common interest in the circumstances that we present to them.

If the impact assessment is looked at in basic terms, the Courts and Tribunals Service's paper states that the GFS will lead to a 57% reduction in remuneration for solicitors. There is no doubt that a 57% reduction in any small firm's income will have an effect on employment. You do not need an assessment to tell you that: common sense tells you that.

Mr A Maginness:

I do not want to go over the ground that you have covered. In essence, are you saying that the transfer of the English system, as it currently operates and as it has been operating for quite a number of years, has been detrimental to legal services in Britain?

Mr Connolly:

We take that strong view, yes.

Mr A Maginness:

Are you saying that it has been a cost-driven exercise rather than one in trying to enhance legal services to people at large?

Mr Connolly:

Yes, we feel that people in need get second-class representation in England. Representation is not readily available in the areas where it is needed.

Mr A Maginness:

Would it be fair to say that you have experienced no resistance to trying to work out a new system of criminal legal aid here that could serve the interests of the community at large with a reasonable and fair remuneration for solicitors and barristers and that would preserve the high standards of professional representation that are extant in Northern Ireland?

Mr Connolly:

Yes. In fairness to the commission, our proposal to do away with the high-cost cases regime was developed only last week. The commission has told us that it needs to work out the figures, which I think will be substantial. The total cost of the high-cost cases since 2005 is £60 million. It is not hard to see that substantial savings will be made. That is before we get on to the savings in the civil legal aid, whatever way that works out.

Mr A Maginness:

Obviously, the negotiations are confidential between yourselves and the Department of Justice. Are those negotiations at a stage where you are reasonably confident that there could be a resolution to the present budgetary problems?

Mr Connolly:

We are optimistic about that. The discussions are intensive at the moment, and we expect them to come to a head in three to four weeks, when a conclusion will be reached either way.

Mr A Maginness:

Nevertheless, those negotiations will reach only an interim settlement, given the budgetary constraints and pressures that exist at the moment. It will not mean that you will have a new criminal legal aid system that everyone could buy in to. Is that the position? Does more work need to be done on that?

Mr Connolly:

The criminal legal aid system works very well at the moment. It is a question of whether savings can be made in that system. We think that we can reach the desired budgetary figure of £79 million and, within three or four weeks, when the outworkings of our proposal, together with other proposals, are built into the workings, we will know whether that is possible. The proposals were made only last week and, in a sense, we are in the middle of negotiations. The commission

has not yet worked out the figures to determine what our proposals will mean in real savings. We will know that very soon.

Mr A Maginness:

The chief executive said that the Law Society and the Department of Justice are discussing ideas on civil legal aid. Is it possible to re-establish a civil legal aid system that will serve the interests of a substantial number of people in the community and ensure that people who are entitled to compensation can receive it and can have reasonable access to justice? I think that it has been eroded over a number of years.

Mr Connolly:

The commission recently sent out funding code proposals and highlighted them at a roadshow. There was substantial opposition to the lack of a safety net. In other words, if a person who is disadvantaged has a smallish accident, there is no way for them to seek redress because legal aid has, effectively, been removed for all claims up to £5,000. Therefore, people who have a minor road traffic accident or a factory accident are basically left on their own. As a result of our representations, they appear to have had a rethink, and we have set up a working group to work with the commission to try to work out a suitable alternative. We are hopeful that some type of system can be created that will provide representation to those people who need it and, at the same time, satisfy the commission's objectives. That is a work in progress, and a lot of work is ongoing on that.

The Chairperson:

Mr Connolly, you said that the figure of £43·25 an hour is inadequate. What is an adequate sum?

Mr Connolly:

According to the rate set by the taxing master, a solicitors firm needs £97 an hour to break-even. That is required to pay rent, rates, staff and a secretary. Every solicitor needs a secretary or a secretary and a half. Frankly, solicitors could not run a legal practice on £45 an hour, which is the current call-out rate. However, most solicitors take the view that it is swings and roundabouts.

The call-out rate in England is, I think, £258. In other words, if a solicitor is called out during the day, they receive a fee of £258. However, solicitors here receive £43·25. At weekends and

night, the fee is £58. I am not sure how many people would go out in the middle of the night for £58 an hour. However, if a case might result from the call-out, solicitors take a view on that. The taxing master assesses the rate, which is set every so often in accordance with inflation etc. It is £97 an hour at present. That is set by the High Court and the taxing master, and that figure represents what it costs to run a legal firm on the basis of a solicitor being paid approximately £35,000 a year.

The Chairperson:
Are you saying that the current figure needs to at least double?

Mr Connolly:
We have not made any strong representations on the call-out rate because, in a sense, we take a view that it is swings and roundabouts. However, at those figures, solicitors are working well below cost. No one would argue about that. It is not possible to run a legal firm on the basis of that figure.

Mr MacDermott:
The solicitors realise that they must provide a service. We do not set the rates and, as Mr Hunter said, £43·25 is inadequate. It does not cover costs. However, we realise that we must provide a service to clients, particularly vulnerable clients, who require us to attend with them.

I would like any member of the Committee to see what chance they have of getting the likes of a plumber or car mechanic out at 2.00 am for £57 an hour. They would have some difficulty doing that. We do not believe that such rates are anywhere near fair remuneration for important work that is reasonably undertaken. However, we appreciate that we must supply that service to our perhaps vulnerable clients, who, otherwise, would be left on their own in a police station, and that is why we do such work. We do not recognise that rate of remuneration as proper.

The Chairperson:
I suspect that the Law Society might reason that the steep increase in the legal aid bill is mainly due to high cost cases.

Mr Connolly:
There is no argument that it is the high cost cases. Look at when the steep increases started: high

cost cases began in 2005 and there would have been a lag until payments came through. The graph shows that the cost of legal aid increases quite dramatically from then on. We have been given the figure of £60 million as the total cost of high cost cases. If that is taken away, it would have to be replaced with a standard fee system that provides for a certain degree of exceptionality. However, it is inarguable that taking those cases away will lead to substantial savings.

Mr MacDermott:

I do not believe that high costs cases are the only cost driver. The Labour Administration brought in more legislation in one mandate than any previous Government. They also changed the criminal law process quite dramatically and introduced legislation with applications for bad character, hearsay and special measures for witnesses. Defence statements must now be provided by the defence. More than 4,000 offences have been introduced since 1997. All those factors have also played a major part in driving up costs.

The Chairperson:

I am not commenting on whether Mr Connolly's objective of £97 an hour is good, bad or indifferent. However, even were we to get rid of high cost cases, would accepting that position not soon return us to the high costs that we are trying to drive downwards?

Mr Connolly:

The 2005 rules do not cater for hourly rates but for standard fees. In other words, apart from some exceptions, if we take on a case, no matter what work we do on it, we know that we will be paid a certain fee. The fees on that scale are not overly high.

The commission — if I can speak it — is nervous about returning to hourly rates because doing so would create uncertainty and make it hard to budget. It cannot be known how long any solicitor or barrister will spend preparing a case — one solicitor could spend twice as many hours as another. Therefore, it becomes very difficult to budget for and predict how much each case will cost, so there is a lot more predictability with standard fees. Last week, we proposed to do away with the high cost cases and to rely on the 2005 standard fees, which are set and categorise cases against payments. By taking it away, that avoids entering into the argument of £97 an hour or £45 an hour.

Mr Elliott:

Thanks for the presentation. I come from the farming community, so please do not tell my contractors or veterinary surgeon that lawyers earn £43·50 an hour during the day and £59 an hour at night, or, I am sorry, but most farmers will be out of business.

I have a couple of quick questions. Surely not all the 2005 figure of £28 million for the very high cost cases could be saved?

Mr MacDermott:

No. That is a fair point. There would be a cost involved in a VHCC becoming a standard case. However, moving such cases, even lengthy ones, to the standard fees scheme would lead to dramatic and substantial savings. I cannot quantify the amount because I do not have the data with me.

Mr Elliott:

Does the society have any idea how much that would be? Would it be 60% or 80% for example?

Mr MacDermott:

I would not care to guess, but I think that it would be well above 60%.

Mr Elliott:

The Committee was previously told that the Law Society was to meet the Justice Minister in early June. Did that meeting take place?

Mr Connolly:

Yes.

Mr Elliott:

How close are you in your discussions about the proposed Bill and specifically on the legal aid issue?

Mr Connolly:

Our proposal, which must be costed, was made last week. The Bar Council has also made its proposals, which must also be costed. Therefore, there are three costings at present, and it was

only yesterday that we became aware of that.

Those negotiations, if they can be called that, are expected to finish in the next three to four weeks. Therefore, we will know fairly soon whether an agreement will be reached. That will happen very fast.

Mr Elliott:

Are you confident that agreement can be reached?

Mr Connolly:

We are cautiously optimistic.

Mr Elliott:

Are you cautiously optimistic that there will be agreement between the Law Society and the Department and the Minister, or between the Law Society, the Bar Council and the Department?

Mr MacDermott:

There is no real issue between the Law Society and the Bar Council. The issue is whether we can come to an agreement with the Courts and Tribunals Service on a proposal that the Minister must prove will suitably remunerate solicitors. We do not want those negotiations to take place through the Committee, because we are in the middle of them, and it is difficult to know how close we are to agreement.

Mr Elliott:

I appreciate that.

Mr MacDermott:

We have put forward what we feel is a positive proposal. It is one that will allow the Courts and Tribunals Service to make the required savings in order to make the legal aid scheme work within budget. We are confident that our proposals will meet that criterion. The Courts and Tribunals Service must decide whether it sees it that way.

Mr Hunter:

We had a useful meeting with the Minister, but it was really too early to have any substantive

discussion with him on that topic. The issue was covered only touched upon lightly during the meeting.

Mr McNarry:

I am intrigued by what I have heard. Commercialism relies on the market paying the market price, whereas the Law Society relies on the taxing master. You made a comment about well-off people and more people having to pay their own legal costs. What constitutes a well-off person who will not be able to obtain legal aid? There may be a greater number of such people if the economy nosedived. People need to get a grasp of those numbers.

We are talking primarily about legal aid, and I do not want to wander from that subject. How does the fee, which you believe to be unacceptable, for a solicitor to carry out legal aid work compare with the average fee that solicitors command for working for someone who actually pays?

Mr Connolly:

We are in the middle of negotiations and do not know what that fee will be turn out to be. However, if someone runs their own firm, a point will be reached at which the payment offered will mean that that person will lose money. At that point, the person in question will have no choice but to refuse the work, because the fee paid would mean them going out of business. Sole practitioners may well go out of business. I said earlier that the experience that is increasingly being seen in England —

Mr McNarry:

Is that not your choice? Solicitors do not have to take legal aid cases. You are a business, and I walk around the high street and see all your shops advertising what you are going to do.

Mr Connolly:

It is absolutely our choice, and I absolutely agree with you. However, if politicians are going to force all small legal practitioners out of business, they must decide —

Mr McNarry:

You cannot turn it around to politicians forcing anybody. We are talking about commercialism, and part of your business is that you carry out legal aid work. From looking at all the figures you

have given to the Committee, I am unsure how much a company that gets £2·5 million from legal aid gets from other work. Those figures are not there for me, but again I come back to the point that it is your choice.

The Minister said the cost for legal aid must come down, and he will be answerable for that. What he said is very popular in the public domain, because a perception of earnings is formed through the media. They are quite distant, certainly from those of politicians who work in this place. There is a gap. However, they are also quite distant from those of the plumber that your colleague mentioned. Do you believe that the Minister is trying to tamper with the profession or with your right to a fair wage?

Mr MacDermott:

It is our choice whether we do legal aid work. Most solicitors who do legal aid work do so because they feel that they can provide a service to the community. However, it is society's choice as to whether it feels that justice, including civil justice and criminal justice in particular, is important to it. An individual who faces the rigours of the court and the opposition of the Police Service, the Public Prosecution Service, Forensic Science and any other agency of the state, is entitled to have a good defence.

Mr McNarry:

I accept that.

Mr MacDermott:

That is the point, though. That is what the choice comes down to. It is our choice whether to do that work, but society's choice whether it wants a yellow-pack, third-rate criminal justice system. However, that will result in yellow-pack, third-rate decisions and justice that does not come out right.

Mr McNarry:

State agencies have done it.

Mr MacDermott:

If you examine the cost of state agencies as opposed to defence agencies in relation to Crown Court trials, you will find that state agencies have much more resources available to them. The

state agencies have at their disposal the Public Prosecution Service, the Police Service of Northern Ireland and Forensic Science, all of which are funded, and they get any other funding, for doctors, for example, as and when they require it.

Mr McNarry:

I hear your case. I am asking you the questions that would be asked of me. You do not always get the opportunity to explain; therefore, hearings such as this are an opportunity for you. I am always being asked to explain, but on many occasions my explanations would be inadequate. I am learning, as I am here. You mentioned the importance of the legal aid service. Why do the costs appear to be so high? Is the granting of abnormally high levels of access to legal aid a factor? Do we need to look at that? I understand that people need to be defended, but do some people not take advantage of that? Is that comparable to your fees being too high? Is it a combination of both, or is something else going on? Is legal aid too easy to get?

The Chairperson:

Please come to the question, Mr McNarry.

Mr McNarry:

Chairman, you have got to allow me to —

The Chairperson:

I thought I was doing that.

Mr McNarry:

The manner in which you are addressing me and stifling me makes it very difficult to come to the point in my own way, Chairman. I will work at it.

The Chairperson:

Mr McNarry, you are about the only one in the room who feels that way. You are entitled to feel that. Anyway, a ruling has been made. Come to the question or pass it over, whichever you desire to do.

Mr McNarry:

I tell you what, Mr Chairman, you deal with it.

The Chairperson:

Have a nice day.

Mr McNarry:

I will have a nice day. It is good to work with you.

The Chairperson:

If you wish to answer Mr McNarry's question, —

Mr Connolly:

I will repeat what has been said in general terms. Mr McNarry said that recent headlines give the impression to the person on the street that solicitors are overpaid. I ask you to look at what is happening in England. If we impose such low fees, as Pearse said, we get yellow-pack law — I had not heard that expression before — and we dumb down the legal system to such an extent that there will be big offices full of solicitors in central locations of large populations. With the greatest respect, it is not for the commission to make those decisions. The Assembly decides what type of legal system or access to justice that it wants; it should leave the Law Society out of it.

The Assembly must decide what type of access to justice it wants and what the value of small firms is. I said that there are 400 firms here that are not spoken for. Why were they not mentioned until we mentioned them today? All those firms are small and are not making much money. I am sure that you know of many of them. They do not make much money, but they provide a good service. They provide telephone advice for free.

Mr McNarry:

I appreciate that, but the choice comes down to whether you provide legal aid. You decide whether you will make your living as a result of that choice. The figures that we have been given show that the 100 top-earning solicitor services were paid £48 million in legal aid and that the 100 top-earning barrister services were paid £30 million. We do not know what the overhead costs are to offset those payments. I accept your comments that a number of companies have difficulties, especially small companies. The figures that I quoted are those that the public see, and they do not show that the companies did not make money or that their profits were very low.

We do not see balance sheets that show that detail, and it might help us if, somewhere down the line, you were able to furnish us with those.

Mr Connolly:

It is not our right, of course, to interfere in private practices and ask them for information such as their profits, costs, etc. When going through the list that has been presented, you get quite quickly to firms, even in the top 25 to top 30, that were paid sums of around £396,000, £298,000 and £259,000. Those are substantial legal aid firms with a large number of staff. It is difficult for us because the headlines tend to show only the top 10 firms, but there are more than 500 firms that provide services in the community. If a choice has to be made on whether that service is worth keeping and whether something should be constructed to ensure that that service —

Mr McNarry:

You are right in that we have to decide on the service and the provision. You said that you think that the budget can be met. It may sound like a ridiculous question, but, if politicians are asking you to meet a budget that you say you can meet, what is the big argument about? I really want to know only that.

Mr Connolly:

In a sense, this debate or discussion is taking place a little early because we are in the middle of discussions. If we were to come back to you in four weeks and say that the issue had been sorted out, you would ask what the debate had all been about.

Mr McNarry:

I am saying that because you have said that you can meet the budget.

Mr Connolly:

We said that we are hopeful.

Mr MacDermott:

The distinction is that we say that our proposals meet the budget, but the Courts and Tribunals Service has not agreed with us on that yet. It has not costed it, so that is the issue. I keep harping on about justice, but the issue of how much should be spent on justice is one of the most important issues that we are discussing. In the context of the entire justice Bill, which will

include policing costs, a budget of £79 million is not a huge amount. We are confident that our proposals to the Courts and Tribunals Service will meet the requirements of that budget and without a dilution of the service that is provided. We are confident that, when the Courts and Tribunals Service analyses our proposals, it will come to the same conclusion. If it does —

Mr McNarry:

Between you and the barristers, the figure that we have is £78 million.

Mr MacDermott:

Yes, at present. That is in the top 100. The firms below that also get some income, taking the total beyond that.

Mr McNarry:

That is minimal?

Mr MacDermott:

Yes, but we are confident that we will meet that budget, and we hope that the Courts and Tribunals Service will come to the same conclusion.

Mr McNarry:

OK. We will look forward to hearing that —

The Chairperson:

Mr MacDermott has said that he is confident of meeting the budget. Gentlemen, thank you for your presentation.

Mr MacDermott:

Thank you, Chairman and members.