

Access to Justice under threat

Presentation to the
Justice Committee of the
Northern Ireland Assembly



THE **LAW SOCIETY**
OF NORTHERN IRELAND

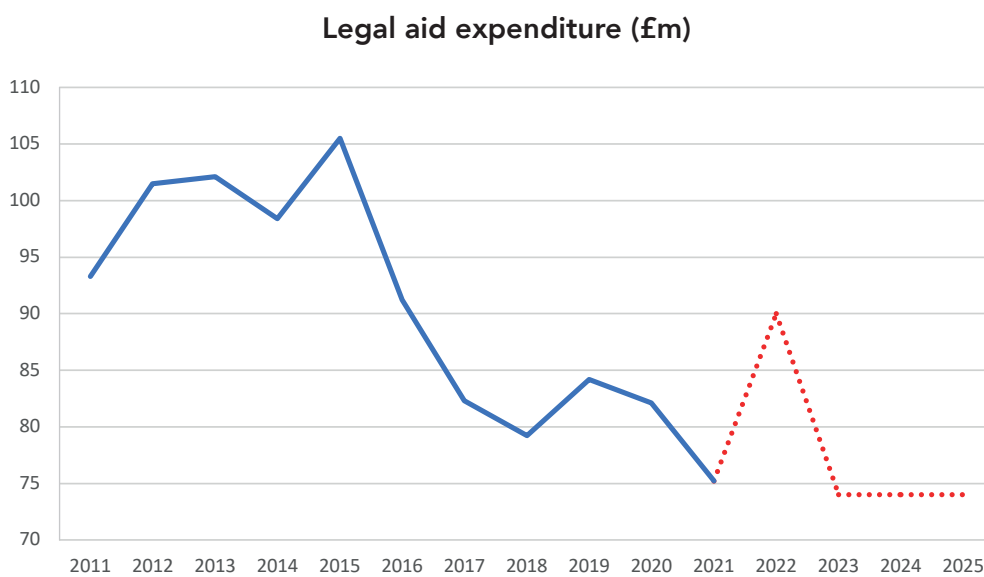


100
YEARS

Reduction in legal aid expenditure in Northern Ireland since 2010

Figure 1 below shows legal aid expenditure since the devolution of Policing and Justice in 2010. The red dotted line shows DoJ estimates for 2021-22 (which includes substantial COVID supplementary funding) and the funding projection under the draft Budget.

Figure 1

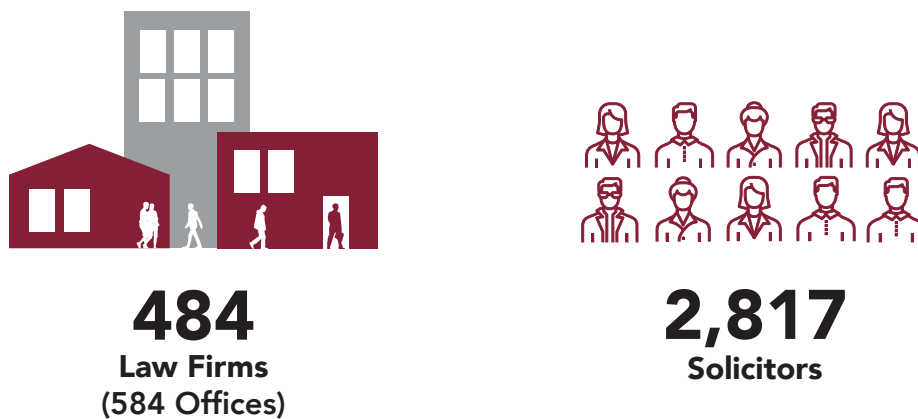


Source: Department of Justice / Legal Services Agency

The solicitor profession in Northern Ireland

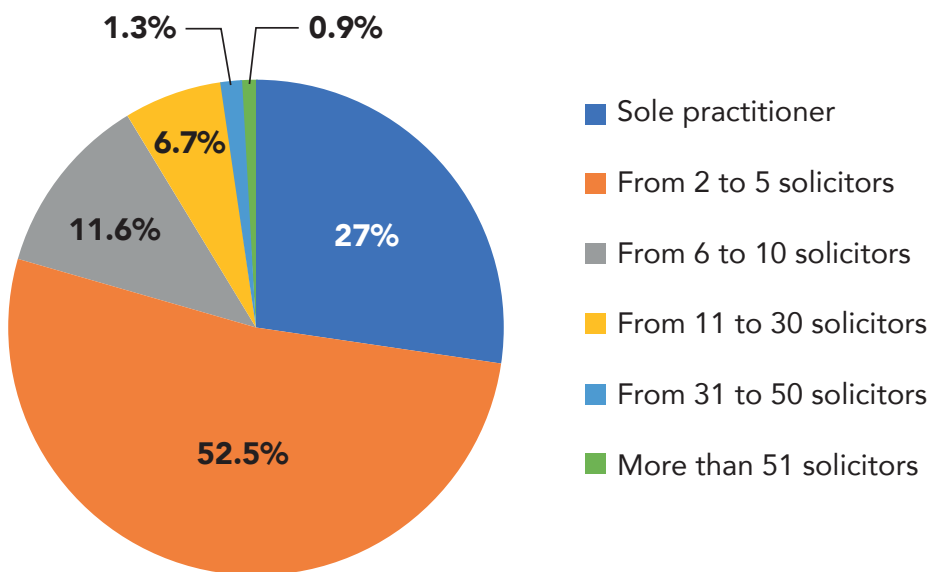
Figures 2 and 3 provide an overview of the solicitor profession in Northern Ireland. Over three quarters of firms have five or fewer solicitors. Over a quarter of firms have only 1 Solicitor.

Figure 2: Overview of NI solicitor profession



Source: LSNI data

Figure 3: Make up of solicitor practices

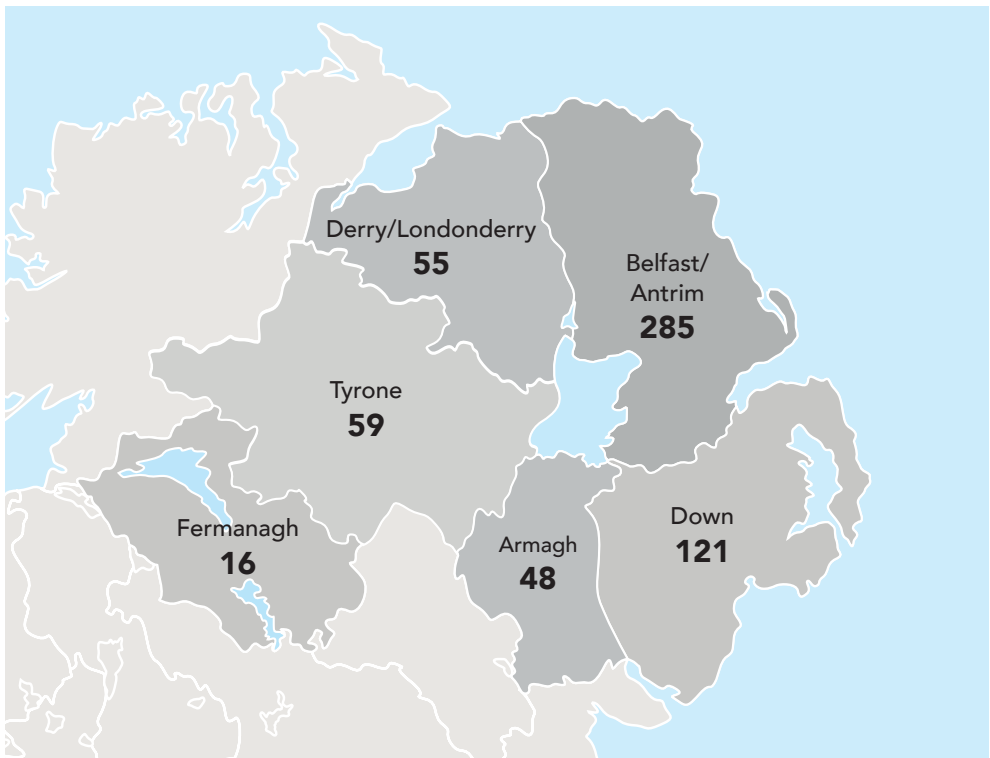


Source: LSNI data

The threat to access to justice in rural communities

The proposed budget cuts will not be uniform. The map below shows that outside of the Greater Belfast area, access to local legal representation is already scarce. The draft budget risks creating an urban / rural Access to Justice divide.

Figure 4: Number of law firms by county



Source: LSNI data

Case study: County Fermanagh

To illustrate the threat to Access to Justice, the Law Society has examined the legal profession in County Fermanagh. There are currently just sixteen solicitor firms in the County.

Figure 5: Firm Size

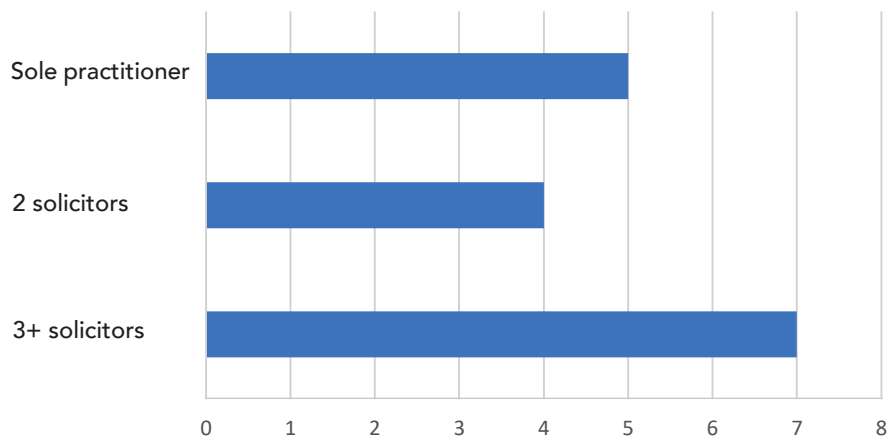
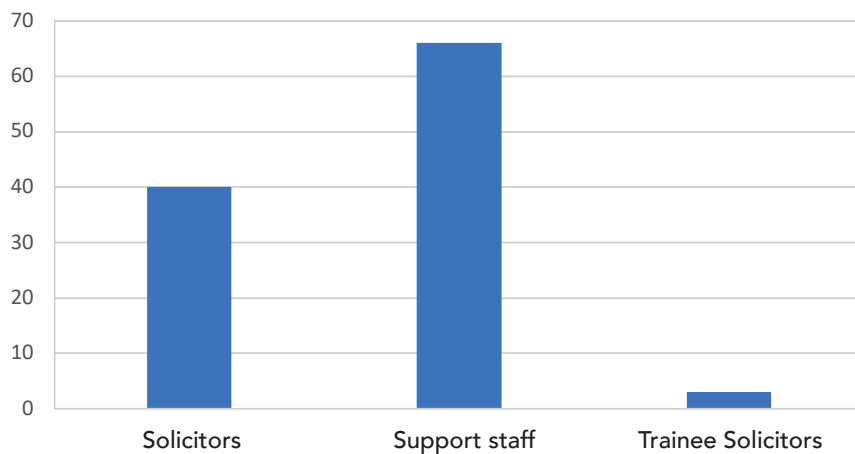


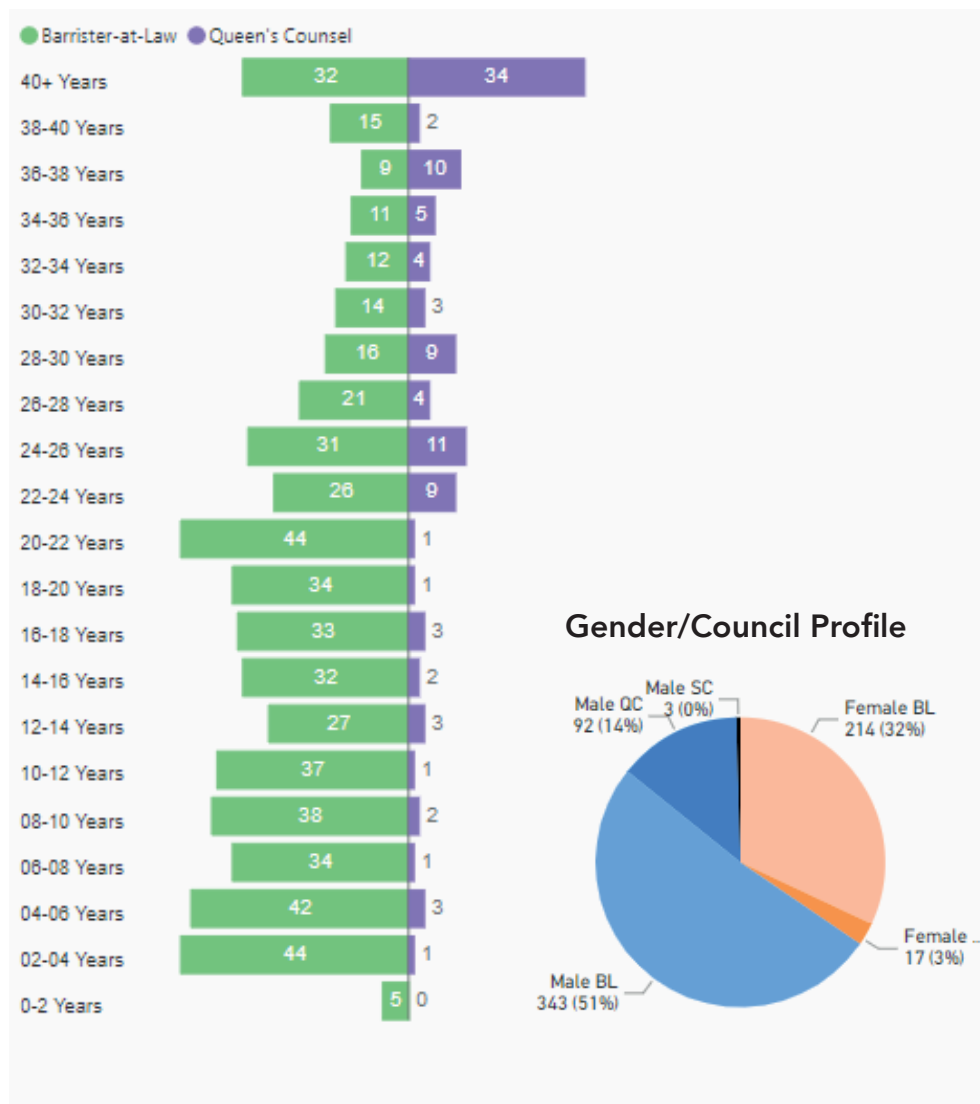
Figure 6: Employment profile



Overview of Barrister Profession

There are approximately 650 barristers in independent practice in Northern Ireland. Each year the Bar admits 20 new entrants from the Institute of Profession Legal Studies in Belfast. All barristers are self-employed sole traders who operate from the Bar Library building in Belfast. For several years the Bar, through a series of financial support measures and other policies, has been striving to increase the gender and socio-economic diversity at the Bar.

Years of Call by Counsel



The Bar Library provides access to training, professional development opportunities, research, technology and modern facilities which enhance the expertise of individual barristers and ensure the highest quality of service to clients and the court. The Bar does not receive any external funding to support this model; it is entirely self-sufficient and funds the development and regulation of the profession from its own resources.

All barristers operating independently from the Bar Library building practise under the 'cab rank' rule. This requires barristers to accept instructions from a solicitor in any field in which they are competent, regardless of their views of the client or the circumstances of the case.

The independence of our barristers is of paramount importance and a vital virtue. As independent professionals, their entire purpose is to selflessly serve, fearlessly and rigorously, their clients' interests and to achieve the best possible result, whilst fulfilling their duty to the court.

Research from the Joseph Rowntree Foundation on Poverty in Northern Ireland in 2018 shows that almost a fifth of our population lives in poverty, including around 220,000 working age adults. The level of dependency upon legal aid directly relates to the prevalence of poverty and social deprivation across our society.

It is estimated that approximately two thirds of all barristers practising in this jurisdiction will have a practice that will mainly or exclusively entail the provision of legal services funded by Legal Aid.

Barristers are not responsible for setting or administering the Legal Aid Budget. They are also not responsible for the Legal Aid rates that they are in receipt of. Furthermore they are not at liberty to insert themselves into legally aided cases of their own accord. Their involvement only comes about after the case itself has been granted certification by either a Judge or the Legal services Agency and the instructing solicitor has chosen a particular barrister to best represent their clients' needs.

Access to legal aid has become increasingly restricted in recent years. Without specialist advocates to navigate complex legal issues, cases involving personal litigants inevitably experience delays, cost extra and are more likely to risk injustice.

Meanwhile many highly motivated, talented and qualified young barristers who have entered the profession to serve justice and help others are struggling to sustain viable practices at the Bar. Given the levels of socio-economic deprivation in parts of our society, it is not surprising that many seek to apply their professional skills and gain early experience in legally

aided cases, yet they are being denied the opportunities afforded to their predecessors as they embark on their legal careers. This has the potential to create serious long-term problems for our justice system.

Impact of Budget Proposals Upon the Bar

The Department of Justice has suggested that the 2% proposed cut to the Department’s draft Budget will reduce funding available for legal aid.

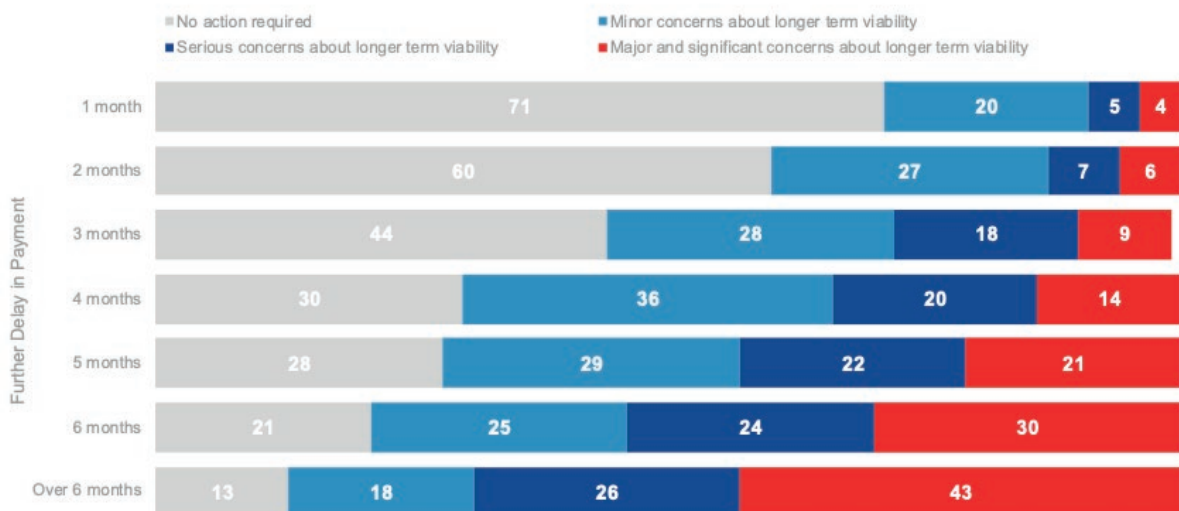
Legal Aid expenditure is typically at least £82 million per annum. However, the funding available under the proposed budget will be £74.19 million per annum. Over three years, a 2% cut will mean the Department will spend £23.23 million less on the provision.

By the end of the three years a cut of 2% per year could see payment times extended from the historic target of 8 weeks for standard fees to 47 weeks. If the Department of Justice applies the proposed budget cuts in this manner it will mean that the only barristers who might possibly withstand the resultant cashflow pressures will be the older, typically male barristers based in Belfast who have accumulated sufficient reserves from previous years.

The Bar Council is currently conducting a survey to assess the impact of proposed payment delays upon practitioners. The survey has not concluded yet but based on 249 responses to date (approximately 38% response rate) we can already see the following picture.



Impact of further delays in payments



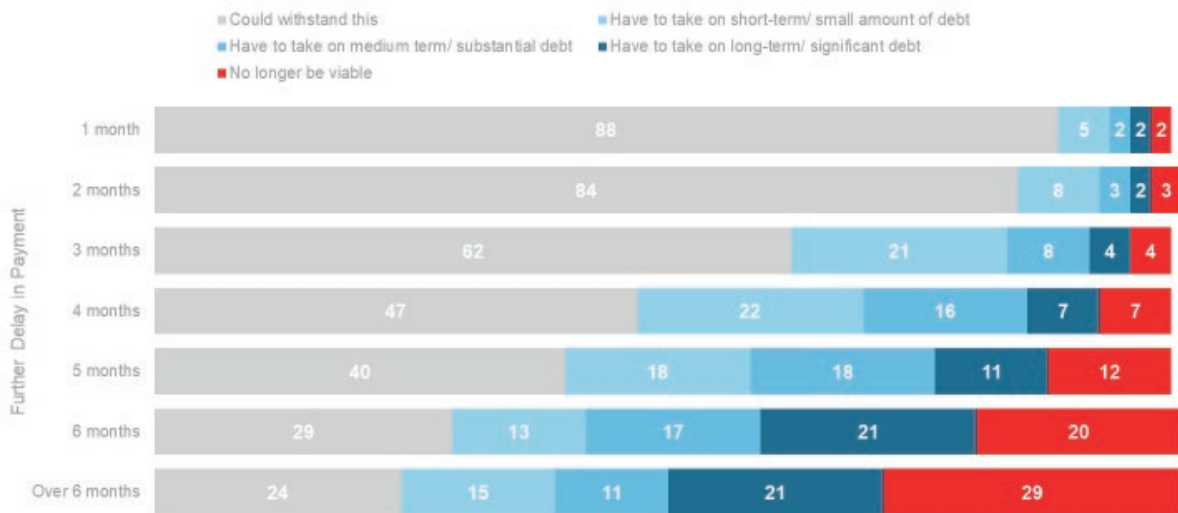
This shows a rapid escalation in the concerns about retaining a viable practice as payment times become extended. Even a delay of 3 months would see more than a quarter of the profession having serious/major/significant concerns about viability.

- 68% of barristers with less than 5 years' practice and 51% of those with 6-10 years' practice have serious/major concerns about viability if payment delays reach 5 months (20 weeks).
- 48% of female barristers have serious/major concerns about viability if payment delays reach 5 months (20 weeks).
- 55% of barristers outside Greater Belfast have serious/major concerns about viability if payment delays reach 5 months (20 weeks).

Assessing how barristers might address these concerns the graph below shows that practitioners will face the stark choice of having to take on long term and significant debt in order to survive or to cease practice altogether.



Impact of further delays in payments



Further analysis of the profile of barristers who have said that their practices would cease to be viable reveals the following.

- Practices begin to cease being viable after even a 1 month delay with the impact being felt most acutely by those aged under 30 or with less than 5 years' practice.
- The pace at which practices become non-viable more than doubles every 2 months. This pattern is again seen most starkly with those aged under 30 or with less than 5 years' practice. It is also seen with female barristers and barristers who practise outside of Greater Belfast.
- Attention should also be drawn to the growing debt burden that would have to be undertaken to stay in practice. This is an unsustainable position.

If the projections indicated in this survey were to be realised it will mean that significant and irreversible gaps and imbalances will emerge in the ability of clients to gain access to justice. In addition to the existing delays in the criminal justice system and backlog of cases caused by Covid, the Budget will pose a further direct threat.

Not only will the budget damage the availability of instructing solicitors but clients will also no longer be able to have the same choice of counsel to represent them in court. The Bar will be less representative of society and face a generational crisis to replenish the pool of Legal Aid barristers. Barristers who might potentially retain a viable practice will be under huge financial and workload pressure. Ultimately this places the client's ability to have sustainable, reliable and meaningful access to justice in grave danger.



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