

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG

Christine Darrah
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

16 April 2021

Dear Christine

CRIMINAL JUSTICE (COMMITTAL REFORM) BILL

At the Committee meeting on 25 March, officials agreed to provide the following information in relation to the Criminal Justice (Committal Reform) Bill:

- The current costs associated with committal proceedings, including legal aid costs;
- Information on the modelling to determine the fees and legal aid changes required as a result of the Bill and what the anticipated legal aid costs are;
- The average length of time taken to dispose of different types of Crown Court cases and how much of this time is attributed to each part of the criminal justice system; and
- Details of the benefits realisation mechanism that will be used to evaluate the success of the Bill and the effectiveness of its provisions.

This information is provided in Annexes A to D respectively.

The issue of **expert witnesses** was also raised at the Committee meeting. The Department has subsequently engaged with both the Public Prosecution Service and NI Courts and Tribunals Service and it appears that expert witnesses are rarely called during the traditional committal hearing process. This suggests that there would be limited benefit in retaining the ability for expert witnesses to be called to give oral evidence during committal.

Yours sincerely

CLAIRE MCCORMICK DALO

The current costs associated with committal proceedings, including legal aid costs

1. The Criminal Justice (Committal Reform) Bill seeks to expand the use of direct committal, as provided for in the Justice Act (Northern Ireland) 2015, to all offences that, as an adult, are triable only on indictment and to remove the need for oral evidence at the committal hearing, for those offences not yet directly committed.
2. As a result, it is anticipated that less work will be undertaken at the magistrates' court and there will be different operational processes for criminal justice organisations involved in the prosecution of cases in the Crown Court, including the Public Prosecution Service (PPS) and the Crown Court, to support effective case management.
3. The final Bill will provide a firm foundation for relevant criminal justice organisations to develop and agree new operational processes and associated Crown Court rules. This work is being taken forward via a multiagency Committal Reform Programme and will allow resource implications for relevant criminal justice organisations to be modelled. This will form part of a business case that will require approval before the new measures are introduced.
4. Identifying the current specific costs of the committal process for individual organisations, for example PPS and the Northern Ireland Courts and Tribunals Service, is complex as these activities are conducted as part of a range of other activities and not easily separated. However, as part of the work to develop and agree new operational processes and associated Crown Court rules outlined above, the resource implications for relevant organisations will be identified.
5. Costs for legal aid in relation to committal proceedings can be more readily identified. Whilst there is a composite committal legal aid fee, there are many additional fees that are attributed to this process. These are outlined at Annex E.

6. Modelling work has been undertaken to identify the impact of the Criminal Justice (Committal Reform) Bill on the number of hearings and case numbers in the magistrates' court, and the associated legal aid costs.
7. For example, for 2019, this has identified that the combination of:
 - abolishing oral evidence at the committal hearing in the magistrates' court; and
 - direct committal for offences triable only on indictmentwould reduce the number of cases subject to committal by 29% and the number of committal hearings by 37%.
8. Based on management information, work has also been undertaken to model the average legal aid cost for cases progressing through the committal process. For example, in 2019 the magistrates' court element of cases progressing through the committal process cost on average £2.96k for a Preliminary Enquiry (PE) compared to £5.7k for a case progressing by way of Preliminary Investigation (PI) or mixed committal. These are likely to be underestimates as total fees for all cases are unlikely to have been submitted.
9. For illustration, based on these figures, this would release funding of approximately £1.4m to be redirected to support legal aid expenditure under the new direct committal processes.
10. As noted above, while less work will be undertaken at the magistrates' court, there will be different operational processes for criminal justice organisations involved in the prosecution of cases in the Crown Court, including the need for earlier engagement to support effective case management.
11. It is important to note that no additional cases will be transferred to the Crown Court as a result of the Bill, but cases will be brought at an earlier stage. It is envisaged that different operational processes will mainly be required for cases that proceed

by way of charge to the Crown Court, with minimal impact on cases proceeding by way of summons.

12. Modelling shows that offences triable only on indictment – i.e. those directly committed per the Bill - represent approximately 30% of the total Crown Court caseload. Of these, just over half (55% based on a three year average) proceed by way of charge, representing approximately 17% of the total Crown Court caseload. For illustration, this would equate to approximately 210 cases based on 2019 figures.

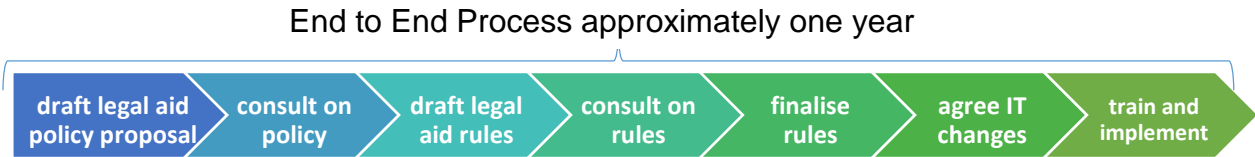
13. The final Bill will provide a firm foundation to develop and agree new operational processes and associated Crown Court rules. Work is ongoing with relevant criminal justice organisations to develop these rules which will allow resource implications to be modelled, with a view to rebalancing resources between the magistrates' court and Crown Court.

Information on the modelling to determine the fees and legal aid changes required as a result of the Bill and what the anticipated legal aid costs are

1. To coordinate the implementation of committal reform the Department has established a multiagency Committal Reform Programme led by the Committal Reform Programme Board. The Committal Reform Programme has representatives from relevant criminal justice organisations and has four Projects: Legislation, Legal Aid, IT and Business Change.
2. The Legal Aid Project has objectives to:
 - produce the necessary legislation to amend current legal aid rules which is consistent with the statutory criteria the Department is required to adhere to under Article 37 of the Legal Aid, Advice and Assistance (NI) Order 1981, namely:
 - a) the time and skill which work of the description requires;
 - b) the number and general level of competence of persons;
 - c) the cost to public funds of any provision made by the rules; and
 - d) the need to secure value for money.
 - implement the operational and ICT changes required for the Legal Services Agency to make payments under the new Legal Aid Rules.
3. As noted above, modelling work has been undertaken to identify the impact of the Criminal Justice (Committal Reform) Bill on the number of hearings and case numbers in the magistrates' court, and the associated current legal aid costs.
4. There are a number of stages to the completion of new Legal Aid rules. The Project will require the new direct committal process to be specified following the passage of the Criminal Justice (Committal Reform) Bill and the development of

Court Rules. Once these stages have been finalised the necessary policy development and consultation can be undertaken. The legal aid project will engage directly with the Justice Committee at the consultation stage and any amending legislation will be subject to the normal committee scrutiny procedures. There will also be a need to review and update the Legal Services Agency IT system and train staff on policy and technical changes.

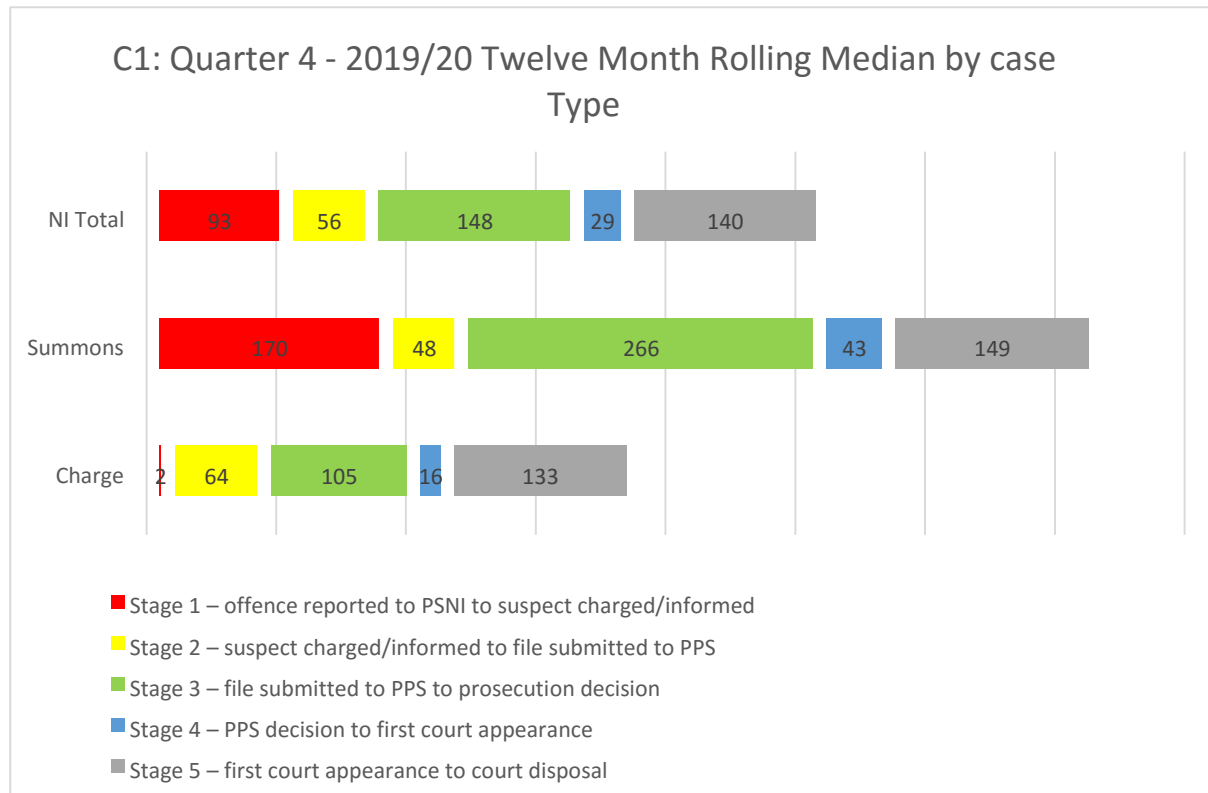
- 5. It is envisaged this Project will take approximately one year to complete, with the key stages illustrated below:



The average length of time taken to dispose of different types of Crown Court cases and how much of this time is attributed to each part of the criminal justice system

1. Data has been developed by the Department's Analytical Services Group (NISRA statisticians) to measure and monitor end to end case processing times from the point that an incident is reported to PSNI until the disposal of a case at court. This is based on information from the Causeway system (the criminal justice electronic messaging system) resulting in consistent information across the justice system.
2. For Crown, magistrates' and youth courts, data is analysed by region and offence type and broken down into five key stages of the journey of a case through the criminal justice system:
 - Stage 1 – offence reported to PSNI to suspect charged/informed;
 - Stage 2 – suspect charged/informed to file submitted to PPS;
 - Stage 3 – file submitted to PPS to prosecution decision;
 - Stage 4 – PPS decision to first court appearance; and □ Stage 5 – first court appearance to court disposal.
3. This information is based on management information and used internally for performance development.
4. Quarter 4 2019/20 provisional data indicates that the median time taken from an offence being reported to the time a case is disposed in Crown Court was 565 days. For cases that proceeded by way of charge the median was 410 days compared to 862 days for summons cases. Table C1 below provide a breakdown of the time spent at each stage by case type (charge v summons). [Note that cases that proceed by

way of charge will be attending court from the point the suspect has been charged at stage 2. For these cases the court appearance at stage 5 refers to the stage in court following the formal decision to prosecute by PPS.]



- Based on provisional management information, the median number of days for a case proceeding by way of a Preliminary Investigation (PI) or a mixed committal to progress from PPS Decision to committal took 110 days in 2019 and 128 days in 2018. This compares to 35 days in 2019 and 34 days in 2018 for cases proceeding by way of a Preliminary Inquiry (PE).

Details of the benefits realisation mechanism that will be used to evaluate the success of the Bill and the effectiveness of its provisions

Background

1. To coordinate the implementation of committal reform the Department has established a multiagency Committal Reform Programme led by the Committal Reform Programme Board.
2. This has representatives from relevant criminal justice organisations and has four projects:
 - Project 1: Legislation – responsible for delivering agreed high level business processes, the Committal Reform Bill, Court Rules and Crown Court Handling arrangements.
 - Project 2: Legal Aid – responsible for delivering revised legal aid Rules.
 - Project 3: IT – responsible for delivering technical changes and testing.
 - Project 4: Business Change – responsible for delivering new business and operational processes, funding and resources, engagement and communication, training and benefits realisation.
3. The Business Change Project is responsible for the identification, definition, tracking, realisation and optimisation of benefits within the Programme. As well as agreeing key measures, the Business Change Project will consider how this information will be delivered including development of any technical changes.
4. Measurement of the benefits or impact is grouped into three categories: process monitoring, impact assessments and global metrics. Table 1 below outlines some key

metrics to be monitored. Key measures will be compared to baseline measures, where appropriate, from which the improvements will be calculated.

Table 1: Metrics

Process Monitoring	High Level Indicator
Process	<ul style="list-style-type: none"> • General metrics pertaining to the number and proportion of directly committed cases. • The average number of court hearings / adjournments in directly transferred cases (across both the magistrates' courts and Crown Court and overall). • General metrics pertaining to the number of committal hearings processed without oral evidence. • Number and proportion of indications of guilty pleas entered at magistrates' court. Number and proportion of guilty pleas entered overall by stage in court case. • Number and proportion of forensic submissions. • Number and proportion of remand cases. • Monitor the number of cracked and ineffective trials, discontinued cases.
Time	<ul style="list-style-type: none"> • The average number of days to complete direct committal cases. • The average number of days to complete committal hearings (in both instances timings will be subdivided into the five key stages and by various factors such as offence type, charge / summons) • Time spent on remand will be monitored.

Cost	<ul style="list-style-type: none"> • Cost of legal aid of direct committal in the magistrates' courts and Crown Court. • Cost of legal aid of cases processed by way of a preliminary inquiry. (Overall costs and were possible broken down by stages and fee purpose)
	<input type="checkbox"/> Costing metrics for individual organisations including the Public Prosecution Service (PPS) and NI Courts and Tribunals Service are being developed in line with process changes.
Impact	High Level Indicator
Experiences	<input type="checkbox"/> Qualitative research investigating the impact of direct committal and removing oral evidence pre-trial on victims, witnesses, defendants and staff.
Global Metrics	High Level Indicator
Perception	<input type="checkbox"/> It is hoped that initiatives such as committal reform should enhance confidence and victim and witness satisfaction with the criminal justice system. Whilst it will be difficult to directly attribute changes in confidence and satisfaction to specific initiatives, confidence and satisfaction measures in the NI Safe Community Survey and NI Victim and Witness Survey will be monitored with interest.

Summary of potential fees payable to defence representatives in cases undergoing committal proceedings in the magistrates' court

Below is a summary of potential fees payable to defence representatives in cases undergoing committal proceedings in the magistrates' court. This provides an illustration of the majority of potential fees that might be claimed for a generic case. Fees for Queens' Counsel are included, although it should be noted that it is uncommon for Queens' Counsel to represent clients in the magistrates' court. Due to the vagaries of cases which present, there may be other fees or payments which are not covered below, however these would be uncommon. The relevant legislation is the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009 (as amended). For each fee, the relevant legislative provision is provided in brackets.

Composite Committal Fee (Schedule 1 Paragraph 4 (and table 1 after Schedule 1 Paragraph 9))

A composite committal fee is payable for cases which are committed to the Crown Court from the magistrates' court. The fee is intended to cover the majority of work done in the magistrates' court up to and including the first day of the committal proceedings. The fee is as follows:

Solicitor £820 Junior Counsel £800 Queens' Counsel £1600

Additional PPE Fee (Schedule 1 Paragraph 8B)

If the pages of prosecution evidence (PPE) exceeds 750 pages, an additional fee of 50% of the committal fee is payable.

**Solicitor £410 Counsel
£400 Queens' Counsel
£800**

Additional Days Fee (Schedule 1 Paragraph 8 (and table 1 after Schedule 1 Paragraph 9))

If the committal proceedings exceed 1 day, an additional fee of £200 is payable for each additional day that the proceedings took place.

Solicitor £200 per day Counsel £200 per day Queens' Counsel £400 per day

Additional Defendant (Schedule 1 Paragraph 11)

If a defence representative is defending more than one defendant in the same case, they are entitled to a payment of 20% of the committal fee for each additional defendant.

Solicitor £164

Counsel £160 Queens' Counsel £320

Fixed Fees (Schedule 1 Paragraph 14)

Defence representatives can also claim a number of additional "fixed fees" for work carried out in the magistrates' court for a case that will ultimately undergo committal proceedings. These are summarised as follows:

Bail Application – **Solicitor £75 / Counsel £120 / QC £240** Compassionate Bail Application – **Solicitor £180 / Counsel £180 / QC £360**

Bad Character Application - **£75**

Hearsay Application - **£75**

Disclosure Application - **£75**

Special Measures Application - **£75**

Late Sitting Fee - **£80** (Schedule 1 Paragraph 19)

Travel Allowance (Schedule 1 Paragraphs 21 and 22)

Solicitor £24.75 per hour for travel to a court which is not their local court.

Counsel £12 per hour for court appearance more than 20 miles from Bar HQ.

Exceptional Preparation (Rule 10A)

Defence representatives can apply to the Legal Services Agency (LSA) for Exceptional Preparation if they consider that the case/issue meets the statutory criteria. An amount of hours required to complete the exceptional preparation must be stipulated. The request will be assessed by the LSA and the number of hours considered appropriate by the LSA will be allowed under exceptional preparation. Exceptional Preparation is paid in addition to the committal fee and any other fixed fees.

The hourly rates are as follows:

Senior Solicitor - **£100 per hour**

Solicitor - **£80**

Apprentice - **£40**

Queen's Counsel – **£100**

Junior Counsel - **£80**