



**Northern Ireland
Assembly**

COMMITTEE FOR JUSTICE

**OFFICIAL REPORT
(Hansard)**

**Northern Ireland Courts and
Tribunals Service**

9 June 2011

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Stewart Dickson
Mr Peter Weir

Witnesses:

Mr Anthony Carleton)
Ms Geraldine Fee) Northern Ireland Courts and Tribunals Service
Mr David Lavery)
Mr Peter Luney)

The Chairperson:

The next item is an overview briefing from the Courts and Tribunals Service. I welcome David Lavery, the director of the Courts and Tribunals Service; Peter Luney, the deputy head of business operations; Anthony Carleton, who I recall from a previous role, the head of business support; and Geraldine Fee, head of criminal and coroners policy. This session will be recorded by Hansard. I invite David to give us an overview of about 10 or 15 minutes.

Mr David Lavery (Northern Ireland Courts and Tribunals Service):

I planned to speak for only about five minutes.

The Chairperson:

That is even better.

Mr Lavery:

I will just make some opening remarks. The Chair introduced my colleagues. The head of business operations is unable to be with us this morning, so her deputy, Peter, is attending instead.

I will just make some introductory remarks because the Committee will have received some preliminary briefing on the Courts and Tribunals Service. The Courts and Tribunals Service is the successor to the Northern Ireland Court Service, which was established in 1979 to create a unified court administration for Northern Ireland with responsibility for the administration of all of the courts in Northern Ireland, including the Magistrates' Courts and the Coroners' Courts. I mention those in particular because across the water, in England and Wales, they were the responsibility of local authorities.

In 1979, a unified Court Service was established. It was a Westminster-facing Department, and our Minister was the Lord Chancellor in London. For technical reasons, we were a separate Civil Service; we were not part of the Northern Ireland Civil Service or the Home Civil Service. That changed, of course, with the transfer of responsibility for policing and justice to the Assembly in April 2010. We took the opportunity to rebrand as the Courts and Tribunals Service because, over the past few years, we have assumed responsibility for running quite a number of Northern Ireland's tribunals as well as courts. We are now technically an agency in the Department of Justice for Northern Ireland. We still have some areas of policy responsibility that are a legacy of our history when we were part of the Lord Chancellor's family of Departments. However, we expect that there will be some restructuring of the Department of Justice this year, with the Courts and Tribunals Service's responsibilities being much more focused on court and tribunal administration and with our policy work being more at the core of the Department.

There is a statutory duty on the Department of Justice to ensure that there is an efficient and effective system to support the business of the courts in Northern Ireland. The agency called the Courts and Tribunals Service is the body through which that statutory duty is discharged. I mentioned tribunals. We currently run 14 of Northern Ireland's tribunals, and the plan is to

assume responsibility for most, if not all, of the remaining tribunals over the next year or so.

We also have responsibility for the Enforcement of Judgments Office Northern Ireland, which is a centralised system for enforcing civil court judgments. Unlike the bailiff system across the water, the Enforcement of Judgments Office is a centralised public service organisation that is responsible for collecting payments when judgments are not paid.

One of our core responsibilities is to support the Northern Ireland judiciary, of which there are 72 full-time members, with whom we work closely. We also have responsibility for the legal aid system, although that is likely to be one of the non-core activities that will move in to the Department itself in the course of this year. We also have some legacy responsibilities for judicial appointments. The Lord Chancellor used to be the Minister for Judicial Appointments. The remaining responsibility that we have in that area is that we sponsor the office of the Northern Ireland Judicial Appointments Ombudsman, which deals with complaints of maladministration arising from judicial appointment schemes.

Lastly, I will give you a sense of the scale of the business. As I say, the unified Courts and Tribunals Service has a budget of just about £85 million, of which about £27 million takes the form of civil court fees. For civil court business, parties actually pay fees, and that area of the business is largely self-financing on a full-cost-recovery basis. The courts in Northern Ireland typically transact about 100,000 cases a year at all the different court levels. The tribunals to which I refer typically deal with an additional 16,000 cases. We have a staff of around 830, some of whom are at our headquarters in Belfast and at the courts in Belfast. Many of our staff work throughout the Province at the various courthouses and court offices. We have courthouses at 20 locations outside the greater Belfast area.

When we entered into a partnership with the Equality Commission a number of years ago, we made a public commitment to have a workforce that is reflective of the community that we serve, and we developed an equality action plan with the Equality Commission to achieve that. Our workforce is now pretty representative of the working population; it comprises around 56% from the majority community, 41% from the minority community and 3% who are neither.

Where we are unrepresentative of the community is probably in gender. We have a predominantly female workforce; around 69% of our staff are female and 31% are male. That is because the type of employment is particularly suitable for females. A lot of our staff live and work in local communities, and we have quite flexible employment arrangements in that people can work flexible hours or choose term-time working and so on. The work seems to be particularly well suited to that demographic.

That is all that I wanted to cover by way of giving the Committee a sense of what we do. Hopefully, the introductory briefing that we sent you in advance will have filled in some of the gaps. We are very happy to assist the Committee if there are any particular areas that you want to explore with us.

The Chairperson:

Thank you very much, Mr Lavery. I suspect that the Committee will want to bring people back to discuss specific areas. I recognise that this is a general overview. The most topical issue is the legal aid dispute. Are you able to update us on where we are with that? How many cases have gone off record, and how many defendants do not have representation?

Mr Lavery:

I was going to say in my introductory remarks that I am prepared to speak on any topic other than legal aid, because, having spoken about it at the Committee last week, I do not feel emotionally strong enough to deal with it. I think that there are the guts of 160 cases affected. There will be more defendants than that, but there are at least 160 cases where solicitors have come off record. The latest figures that I have are for Wednesday, by which stage 78 firms of solicitors had come off record.

As the Committee will know, the Minister received a request for a meeting from the chair of the Bar Council and the president of the Law Society to discuss a range of issues, although, obviously, the legal aid dispute was touched on. That meeting took place on Tuesday evening here at Parliament Buildings. I think that it is right to say that that was a constructive discussion, but there were no immediate issues emerging from it that suggest an early resolution of the current situation. I am afraid that we are where we are.

The Chairperson:

What is the extent of the response from the solicitors who have now been contacted? I have heard that the Department thinks that it is good and is satisfied with it, but do you have the exact number of solicitors who have said that they are prepared to work in the new system?

Mr Lavery:

I genuinely do not have the exact numbers. The solicitors were written to and asked to respond by close of play today. By Tuesday, when we met the professional bodies, we had received a number of positive replies from firms of solicitors. Others have been received subsequent to that, but I genuinely do not have the number with me. Later on, we wrote to all of the barristers in Northern Ireland to ask them whether they were willing to work at the rates that have been prescribed, and there is a slightly longer response time for that. I am not in a position to assist the Committee with exact numbers on either front, other than to say that I know that there have been indications from solicitors and barristers that they would undertake work at the current rates.

There have been discussions about various other options, such as people coming from across the water. There were one or two approaches from firms across the water. We know that historically, in the past couple of years, because the fees have been so high, a number of barristers have come across to take on high-profile cases. The Minister's objective is to have wide choice for defendants before the criminal courts and a wide choice of local solicitors and independent counsel doing that work. It is not our objective to introduce a new supplier base, if you like, by the back door.

We were asked by the professional bodies to develop a bespoke remuneration structure, which we did. The rates are still higher, like for like, than rates for equivalent work in England and Wales. The Minister has indicated that he is willing to undertake an early review of the new remuneration arrangements to see whether there are any aspects that are particularly unsatisfactory. However, he is on record as saying that he cannot pay the rates that the profession has demanded. That, I am afraid, is where we stand at the moment.

The Chairperson:

Is there an option being considered whereby the Legal Services Commission or the Department could employ solicitors directly?

Mr Lavery:

There is a facility for that in the legislation that established the Legal Services Commission, which is the legal aid authority. It would allow the commission to employ its own lawyers. There is a public defender scheme in Scotland and a slightly differently structured scheme in England and Wales. There are comparators. When people talk about public defender schemes, they tend to think about America, where it is not a strong brand but has a particular reputation. We do not need to look as far afield as that, however. There are models in England and Wales, and particularly in Scotland.

The Chairperson:

So that could be an option?

Mr Lavery:

It is on the statute book, so Parliament must assume that that was an option that was left open to us. I said in my earlier remarks that the Minister will look at other ways of ensuring that defendants have proper representation before the courts and that witnesses see their cases progress in a timely fashion. He will look at other options if circumstances suggest that he has to do that, but our strong preference would have been to have worked with the professional bodies. We had a very constructive engagement with them right through to the last lap of this exercise. I do not believe, even yet, that we are so hugely far apart that some radical restructuring of defence services should be necessary, but it is certainly a possibility. It is legislatively permissible, and there are schemes in Scotland that we are looking at carefully should the need arise to come up with a different approach.

Mr McCartney:

Thank you for your presentation. I want to make a couple of points. I hope that the Committee played a supportive and constructive role in dealing with the legal aid issue. The Chairperson has covered the main points, so I will not ask any questions on them. I am concerned about the

situation that may arise where a defendant has already employed a solicitor but that solicitor will no longer take the case forward and the defendant says that he does not want any other solicitor to represent him. Where do defendants stand legally in that situation?

Mr Lavery:

Well, they are being encouraged by the courts, that is to say, by the judges, to make strenuous efforts to find legal representation. It is our intention, as you know, to make the list of solicitors' firms that have confirmed their willingness to work at the new rates available to the courts and to the defendants before the courts. Defendants obviously have the right to instruct a solicitor of their choice, but, equally, solicitors have the right to decline to do the work if they feel that it is not remunerated at an appropriate rate. However, as we stand today, there are solicitors who are on record as having indicated a willingness to work at these new rates, so I imagine that the courts will expect defendants to make every effort to find another solicitor who will represent them if their original solicitor is no longer willing to do so.

Mr McCartney:

Could a trial judge then say at the point of trial, "I am proceeding", even if a defendant has said that he is opting out?

Mr Lavery:

I suppose in theory that is possible, Raymond, but I think that we would all be disappointed if it reached the scenario that you sketch out. Nevertheless, logically, that is where we could end up, but no one should be without representation if there are firms and barristers confirming their willingness to do this work. Although I cannot assist the Committee this morning with the number of willing solicitors, there will inevitably be some delay because the number will not equate to the 80 or so solicitors who have come off record so far. It will take time for that capacity to build up, so the courts may have to manage the listing of cases to avoid the sort of scenario that you have described.

Mr McCartney:

The acting Director of Public Prosecutions told the Committee that, at times, the resources that he has for the prosecution are not the same as those of the defence barristers and legal teams. Has

your agency a role in that? Can it make observations? It is a matter of public confidence in the administration of justice. I do not want to refer to particular cases, but we hear anecdotally of cases in which there are two or three defence counsel but less experienced people on the prosecution side. Those are qualitative judgements, but there can be an imbalance on the prosecution side. Has your agency a role in making that type of observation? If you do not, who has, apart from the Director of Public Prosecutions?

Mr Lavery:

In the previous mandate, we told this Committee's predecessor that we intend to introduce new rules on the assignment of QCs for defendants. We intend to change the arrangements so that the trial judge will decide whether the case requires a QC as well as a junior barrister. "Junior barrister" is a misleading expression; it could refer to someone of immense experience. However, at the moment, the decision as to whether someone gets a legal aid certificate for two barristers or one is made at Magistrates' Court level. We think that that is the wrong stage, and we will bring forward legislation before the summer recess that will move the point of decision to the Crown Court. We think that, by the time the case reaches the Crown Court, the judge will be able to assess whether the Public Prosecution Service is bringing a QC to prosecute the case or whether there are issues about equality of arms. That will be a contribution towards the creation of a more level playing field.

The facts speak for themselves. The proportion of cases in Northern Ireland that have QCs on the defence side is much, much greater than the proportion across the water. Although we are not necessarily introducing the change to drive that figure down to any particular level, we think that the decision is better made by the judge who sees the legal team on the prosecution side and the seriousness of the case. He is better placed to make that decision.

There will, however, be a report from the Criminal Justice Inspection on government procurement of legal services. There is a lot of comment in that emerging report on how there can be an imbalance between prosecution and defence. One thing that the Chief Inspector will say in the report is that there should be a levelling off of the resources available to the two sides, which is essentially the point that you are making. I am sure that the Committee will be interested to see that report and to talk to Dr Maguire about his recommendations.

Mr McCartney:

I have one small point about the demands made on members of the judiciary. Who makes the case for more judges and magistrates?

Mr Lavery:

That is now the responsibility of the Judicial Appointments Commission, although it obviously listens carefully to what the Chief Justice has to say. The Chief Justice, as you know, is the president of all of the courts, and he is in the happy position of also being the chair of the Judicial Appointments Commission, so I suppose he would advise himself.

Mr McCartney:

One side of his brain could be advising the other side.

Mr Lavery:

Obviously, there is a significant independent element to the commission as well. It is looking at whether we need more County Court judges, for example, because, as the Committee knows, we are increasing the jurisdiction of the County Courts for civil cases. Because more cases will go to the County Courts rather than the High Court, the commission is now being asked to look at whether we need more County Court judges. It is an interesting aspect of our arrangements under the Justice (Northern Ireland) Act 2002 that that decision lies with the commission, in consultation with the Department, which obviously foots the bill.

The Chairperson:

Thank you very much. That concludes the session, as no one else has indicated that they wish to speak.

Mr Lavery:

There are three very disappointed officials here.

The Chairperson:

You are getting off lightly.