



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

**Access to Justice Review: Briefing on
Responses to Consultation**

23 February 2012

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 Colum Eastwood
Mr Seán Lynch
Mr Alban Maginness
Ms Jennifer McCann
Mr Basil McCrea
Mr Peter Weir

Witnesses:

Mr Robert Crawford	Department of Justice
Ms Angela Ritchie	Department of Justice

The Chairperson: From the Department of Justice, I welcome Robert Crawford, deputy director of public legal services, and Angela Ritchie, also from the public legal services division. This session is being reported by Hansard. I invite Robert to take over. I am sure that members will have some questions.

Mr Robert Crawford (Department of Justice): Angela Ritchie worked as a member of the access to justice review team and has since returned to the Department to take forward work on the implementation of the review. The final report of the review was published on 13 September 2011. As you will all know, it was a comprehensive report with 159 conclusions and recommendations. You will recall that the Committee received a presentation on the final report from Jim Daniell and Angela in October last year. At that time, the Committee decided that it would not comment immediately but await the outcome of the consultation.

We are back before the Committee today to brief members on the way forward. The consultation period ran for three months. A number of organisations asked for extensions, notably the Human Rights Commission, because of the change of commissioner. Final responses were received only on 12 January. We received 47 responses in total, and they came from a wide range of public sector and private sector organisations, individuals, the voluntary sector, the legal profession and others.

In members' packs, there is a summary of the responses, set out against each of the conclusions and recommendations, and we hope that that presentation will be helpful. Overall, in the responses received, we found broad support for many of the recommendations in the review. However, even where the respondents were supportive, we often received quite a lot of commentary on how recommendations ought to be taken forward. Indeed, there were additional suggestions, advice and thoughts from groups and organisations. There is quite a lot of detail in that, and we have not yet finished our analysis of it to put advice to the Minister. There is still a lot to be gone through. One of the issues, of course, is that respondents did not always agree, so, in some cases, you will find that respondents took differing views on the recommendations, and we will have to make a judgement on how to proceed.

There are some areas where we can say that there is definite support for the review's conclusions. For example, most respondents who chose to comment were broadly supportive of exploring alternative dispute resolution mechanisms, and there is quite a lot of support for alternative mechanisms for supporting people involved in the justice system, perhaps through greater use of the voluntary sector. However, there is a wide range of views about what type of cases are appropriate for alternative dispute resolution and how that should be taken forward — what the practicalities should be and what concerns there might be if we move away from a system, as at the moment, which is primarily the provision of advice through the legal profession. Again, there is quite a lot of work to be done to bring forward detailed proposals.

There was quite a lot of agreement on other areas. For example, there was unanimous support for the introduction of recovery of defence cost orders. You will recall that the Committee considered that issue a couple of weeks ago, and consultation has now begun. In addition, there was broad support for the move of policy responsibilities into the core Department of Justice, and that happened on 7 November as an administrative decision to bring all policy responsibilities together. As for the way forward, in the draft Programme for Government the Minister committed to making a formal ministerial response to the review by June. That response will set out a comprehensive programme for future reform. The review stated that there should be proper programme management in the delivery of reform, and I recall that that was raised in the Committee's consideration of the review when Angela and Jim attended in October. We propose to establish a formal programme, with projects underneath the formal programme board being managed to a set of priorities decided by the Minister in consultation with the Committee and more generally.

The formal programme of reform that we are seeking to prepare, and which the Minister will decide upon, will take into account recommendations by the Public Accounts Committee and relevant reports by Criminal Justice Inspection. Therefore, we hope to have one programme that will wrap together everything relating to access to justice. I should also mention that that will go wider than the Department of Justice because some of the review recommendations deal with areas that are the responsibility of other Departments. For example, social services' responsibility for ensuring safety of care of children at risk falls to the Department of Health, Social Services and Public Safety. In wider family law, there is a full range of legal issues that can follow after a relationship breaks down, which fall within the responsibility of the Department of Finance and Personnel. In preparing his ministerial response for June, the Minister of Justice will want to consult his Executive colleagues in those areas in particular, and, undoubtedly, more widely.

In preparing his response, the Minister will consider all 47 responses that we received. He will also wish to consider any views of the Committee. If the Committee has any thoughts on priorities, or if there are any areas on which you feel there is particular sensitivity or concern, the Minister would like to know about them in advance of preparing his response. I am sure that he would also want me to say that he will want to discuss that draft response with the Committee when he has reached decisions on his view on the way forward. He will also wish to receive any thoughts that the Committee may have at this stage, so that they can be fed into the draft.

I will not go into the report in more detail but if members have questions on the forthcoming process, or if there are queries about the report, I will ask Angela to deal with those because she is the expert on the detail.

The Chairperson: Thank you. It is a very detailed report to consider. When do you hope to have the final set of proposals that the Minister intends to take to the Executive?

Mr Crawford: That is very much dependent on when the Minister reaches his decision, but we are aiming for the Programme for Government target of publication in June. Therefore, I think that the Minister will want to consult the Committee by the end of April in order to give it time to consider and respond before the response is finalised.

Mr McCartney: I have a couple of observations on issues that I raised in October. From a distance, there seems to be a relationship between the access to justice review and the access to justice Bill that is going through Parliament at Westminster. Is that correct?

Mr Crawford: Not exactly. The Department asked the access to justice review team to take into account what was happening at Westminster, along with a number of other issues, and they did that. Angela will speak about how that was done.

Ms Angela Ritchie (Department of Justice): There is a link between any reform of legal aid because there is a system of public funding across all these isles. However, the review decided to take a different approach to the one taken in England and Wales, where, in response to the budgetary pressures, the approach has been to remove areas from the scope of legal aid, which simply means what legal aid is used for. They have decided to take out of that scope significant areas of law in different types of legal disputes, particularly private family law, which involves disputes between separating parents in respect of their children.

Our review preferred the approach that has been taken in Scotland in meeting budgetary concerns, which is to try to reduce the cost of the services that are provided rather than the nature of services that are funded. We are quite confident that the recommendations in the review can meet the savings that have been identified to date.

Mr McCartney: I asked that question because there was widespread opposition to the Westminster approach, and the Bill has been postponed as a result. Will it be possible, as we take this forward, to provide us with a table of the policies as envisaged at Westminster, and the difference with what we are doing here and how that is closer to the model in Scotland?

Ms A Ritchie: Yes.

Mr Crawford: We could certainly set that out in the Minister's draft response.

Mr McCartney: Could we have it in the shorter term to help us to come to our position? This is about dealing with access to justice and, in the wider context, about delay and all those other issues. However, legal aid seems to be at the centre of it, and the observation will be made that, last week, it will be this part of legal aid and, in two weeks, it will be another aspect of it. If legal aid is undermined, access to justice then becomes a bigger issue, because if most people do not have legal aid, access to justice will be denied.

Mr Crawford: Are you looking for a comparison between the review recommendations, and England and Wales?

Mr McCartney: It is more the policies. There were a number of headline policies at Westminster on access to justice. They are now severely curtailed. It has been said that we are taking a different approach, and it would be nice to see it in table form so we can ensure that, if there is a flawed process under way somewhere else, we are not following it.

Ms A Ritchie: We can certainly do that. It is a mapping exercise, but it is certainly achievable.

Mr McCartney: A lot of people have made the observation — we have said it here — that, sometimes, Westminster ideas are lifted and copied for here. That is not to say that we should not take a good approach just because it is from somewhere else. However, we certainly want to satisfy ourselves that it is good.

Mr Crawford: We can map the current position and map the access to justice review recommendations against England and Wales. However, at the moment, we cannot map what the Minister will decide to do, but we can certainly do that as soon as he has reached his decision.

Mr McCartney: I would at least like to be assured that we are not following the Westminster model that is now seen to be flawed.

Mr Weir: Mr McCartney's suggestion is reasonable, but if you are producing some sort of table, it would be useful to include a column for commentary as well. I agree that, where flawed proposals have come under criticism and have effectively been dropped, it is important to highlight where there are differences or if that line is still being followed. However, if there have also been particular proposals that may, in whatever shape or form, mirror or be very similar to what is there in England and Wales, and a university paper states are a reasonable idea, we should not, by the same token, need to spend a great deal of time scrutinising stuff when everybody is more or less of a consensus that it is a reasonable enough position. We do not want hairs raised when they do not have to be. Therefore, a bit of commentary on that table could be useful so that we can concentrate on areas where there are still some difficulties.

Mr Crawford: If it is helpful, Chairman, we would also like to cover Scotland because the review has drawn heavily on its experience.

Mr Weir: Yes.

Mr McCartney: Yes, of course.

Mr A Maginness: I apologise for being late; I have just returned from the Committee for Enterprise, Trade and Investment meeting in Newtownards. I am sorry that I missed your introduction. I endorse what Mr Weir said. For example, in England, serious attempts have been made on alternatives, particularly in relation to civil legal aid. They have not been particularly good at keeping costs down. Costs to the state may be down, but costs to the ordinary punter have not been kept down, because there are excess fees that have put up the cost of litigation astronomically and referral fees have, indirectly at least, cost the ordinary motorist and insurance companies dear as well.

It is important to learn from that experience. There may well be better experiences in Scotland, which I think Ms Ritchie would be quite enthusiastic about. If we could hear about positive experiences as well, it would be very helpful, because civil legal aid, in particular, seems to be a very difficult matter to address. I do not think that there are any easy wins in this; I think it will be difficult for everybody all

round. Information on the positive experiences would be good and would counterbalance the more negative experiences that I have highlighted.

Again, I apologise for being late, but I want to understand the Minister's approach. We have the 'Access to Justice Review' document, the consultation responses, and so forth, which I have gone through. There are a number of measures contained within this, which, at least in part, the Minister is already introducing. What exactly is the approach of the Department and the Minister? Is he going to bring forward a full package or is he going to bring about piecemeal change? I do not mean that in a derogatory way; I mean factual, descriptive piecemeal change, such as the introduction of non-judicial penalties, for example. I think that that is important. Will that come in further legislation? The proposal in relation to two counsel is another issue. Are we going to have a piecemeal approach, or is there going to be one structured framework whereby the Minister will come to the Assembly and say, "Here it is. I have worked out all of the architecture. Here are the measures."

Mr Crawford: I addressed some of that earlier, but I will recap.

Mr A Maginness: I apologise.

Mr Crawford: No problem. There is a Programme for Government commitment on this. The Minister is proposing to make a ministerial response in June. That will include a full programme for legal aid reform and wider access to justice reform. Up to now, we have been bringing individual proposals to the Committee. I think we gave a general briefing, but that was as long ago as 20 May 2010. In a sense, that is the old reform programme. There will be no new proposals brought to the Committee in any significant area, unless there is an emergency, prior to the Committee having the opportunity to consider the new programme.

As I said earlier, the Minister would like to hear from the Committee now, if possible, about any priorities or issues that he should consider in drafting that programme. I think it is safe to say that he will want to consult the Committee on that before publishing it. That publication is intended for June, and it will set out, in a full project management way, the various projects that will fall under the programme, which will allow it to be seen in the round. I think that is what you are suggesting, and it will be precisely that.

The Chairperson: No one else has indicated that they have a question. Thank you very much for coming along.