



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Review of the Legal Aid for Crown Court
Proceedings (Costs) Rules (Northern Ireland)
2005 — Interim Post-consultation Report:
DOJ

6 February 2014

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Tom Elliott
Mr William Humphrey
Mr Seán Lynch
Mr Alban Maginness
Ms Rosaleen McCorley
Mr Patsy McGlone
Mr Jim Wells

Witnesses:

Mr Nigel Hamilton	Department of Justice
Mr Mark McGuckin	Department of Justice

The Chairperson: I formally welcome Mark McGuckin, head of public legal services division; and Nigel Hamilton, criminal legal aid policy adviser in the Department's legal services division. You are both very welcome to the Committee. This will be recorded by Hansard and published in due course. Let me hand over to you to take us through the paper.

Mr Mark McGuckin (Department of Justice): Thank you very much for your introduction, Chairman. I have recently taken over as head of public legal services division in the Department of Justice (DOJ). I have responsibility for the reform of legal aid, and I look forward to engaging with the Committee on that important issue. The purpose of our visit to the Committee today is to provide an interim report on the outcome of the public consultation on Crown Court fees and to outline the steps that we are now taking to finalise our proposals.

The Committee will recall that the Department has a statutory obligation to review Crown Court fees every two years. The review was undertaken in the first half of 2013. As part of that work, we carried out a comparison of the fees payable in the Crown Court in England and Wales. We found that the fees paid in Northern Ireland were considerably higher than those in England and Wales. The consultation document contained several proposals to bring our fees into line with those elsewhere and to improve value for money. In addition, we made proposals for reform of the fee structure for guilty pleas. The consultation finished at the end of October, and we received 25 responses in total.

It is fair to say that our proposals were not universally welcomed by the professions. In their formal responses, they rejected any reduction of the Crown Court fees at all.

Mr Wells: Understatement of the century.

Mr McGuckin: They challenged our comparisons with England and Wales, claiming that they were fundamentally flawed. They indicated that, if the guilty plea were removed, it would need to be replaced by some other form of payment. They argued that the fee reductions would have an adverse impact on individual legal practices.

Clearly, there is a need to bring the legal aid budget under control. Although Crown Court fees have been reduced, the costs are still too high.

We do not accept that our comparison with England and Wales is flawed, as we took a representative sample of the cases in Northern Ireland and compared the fees paid by the Legal Services Commission with the fees that would have been earned had those cases been run in England and Wales. I am happy to say more about this should the Committee wish.

Since the closure of the formal consultation, we have engaged bilaterally with the Law Society and the Bar Council. Our aim is to get a better understanding of their objections and to hear their views on the options for guilty pleas. We were keen to ascertain whether there were any areas on which we could reach agreement. The consultations have been constructive and productive. The Law Society pointed out to us that a large proportion of the difference between solicitors' costs in Northern Ireland and those in England and Wales can be explained by the long-established practice that solicitors attend counsel in the Crown Court in Northern Ireland. This is not now the case in England and Wales. In addition, it asked for consideration to be given to reclassifying a range of offences where fees do not currently reflect the seriousness of the offence: for example, aspects of affray; hijacking; or causing death by dangerous driving. The also asked us to target fees where cases are prepared for trial but do not subsequently proceed and to consider how best to address the issues with the guilty plea 2 fees.

The Bar Council was concerned that further cuts were being made so soon after the previous reductions. It suggested that the comparative analysis with England and Wales was flawed and expressed concern about the potential impact of the removal of the guilty plea 2 fees. We have taken away the suggestions from our engagement and we are currently costing some options and revised proposals. In doing this, we are keen to ensure that, once the necessary cost reductions have been made, the remaining resources are targeted at areas where the greatest cost is incurred on behalf of the legal aid client. It will take us a few more weeks to work through this material and develop our thoughts into costed proposals.

I recognise that the Committee will be very interested in our firm proposals for the next steps in the reform of Crown Court fees, however, given that we are having a constructive engagement with both branches of the profession, we consider that it is appropriate to continue while we are making progress. I would not say that it will be possible to reach agreement on all aspects, but it is important that, where possible, we take account of the representations made to us. The report that we have tabled gives an outline of the key aspects coming from each area of the consultation.

The Chairperson: Thank you very much, Mark. We have some quick questions. What criteria were used for picking the 213 cases that were used? The Bar Council raised the point that they are not necessarily representative of the work that it is involved in.

Mr McGuckin: The 213 cases represent 20% of the cases that went through the Crown Court in that particular year. We tried to get a cross section of all of the cases that would be heard, starting from those that started with a guilty plea right through to a full trial. The Bar has raised that issue with us, and we have shared all the material with it and are planning to spend further time with it to explain the particular cases involved and how the comparisons were made with the fee structure in England and Wales.

The Chairperson: On the level of savings that has been derived from the changes that led to the strike at one point, or withdrawal of services, as I think they called it, the indications seemed to be that the Department underestimated how much has been saved and thinks that, actually, you have achieved more than has been expected. Is that correct?

Mr McGuckin: That is not my sense of the savings delivered. It takes a period of time for those savings to work through the system. We will not see the full impact of them until 2015-16, by the time all of the cases have worked through the system, particularly some of the very high cost cases.

However, I do not think that our estimate of the savings that have been delivered from those original changes to the structure is any different from what it was at the time they were made.

The Chairperson: One example given to me was that the changes that came in through the reduction in two counsel, that has reduced now from 55% to around 10% of cases, means that the £500,000 anticipated savings are now £2 million.

Mr McGuckin: That figure has been quoted to me as well. We have not gone back to test the accuracy of it yet. We think that, if you take an analysis at a particular point in time, it may well show that, in a series of cases at that point in time, 10% of them had two counsel rather than the figures that we were looking for. However, you need to look at it over a period of time, rather than at a specific point in time. I think it is closer to the estimate that we made, albeit that, at certain points in time, it might have come out at around 10%. We will check that figure and analyse it as part of our further work.

The Chairperson: I suppose that that bears a degree of the evidence as to why the legal profession seems to be confused about why it is reviewed now when the levels of saving have still not worked through the system to give the Department a clear picture of how much is actually being spent on criminal legal aid. Why the review now?

Mr McGuckin: First of all, there is a statutory requirement on us to look at them every two years. That is what we were engaged in when we started the process. Looking at how the new fees are applied in particular cases and making comparisons with elsewhere was a solid way of doing that. Looking at the cost per unit as applied to the new fees, rather than looking at the overall costs of the system while the old fees worked their way out of the system. We think that is a very firm basis. There is a statutory requirement for us to do it. We see the length of time that is involved in delivering savings from the system as the cases go through, so we need to plan ahead for future cost reductions at an early stage.

The Chairperson: You do not have any final proposals yet, and that engagement with the representative bodies of the legal profession is ongoing. Do you anticipate revised proposals from what was initially in the paper? Whereabouts are you in that discussion?

Mr McGuckin: We anticipate some revisions. We have certainly had some good representations and we have a very positive engagement with both branches of the profession. As I said at the outset, we are not going to come to complete agreement on it anywhere, but we are trying to narrow the areas of disagreement. They have made some very valuable points about ensuring that we target the remaining resources to the areas where the work is done and that some of the steps that we propose to take do not have unintentional consequences. For example, we are looking at the GP2 fees, what comes in behind those and at some of the areas where they have asked us to look at changing the classification of the cases and the fees that are paid because of the seriousness of them. There is a lot of material to go through. We are costing those at the moment and over the next few weeks. By the end of March I hope to be in a position to bring forward final proposals.

Mr Dickson: Thank you for bringing an update to us. I recognise that the discussions are ongoing at this stage. In your briefing, you referred to a comparison between Northern Ireland and England and Wales. You said that, in Northern Ireland, solicitors and counsel work together at a particular level as opposed to one person operating the system in England and Wales. How much of an impact does that have on costs in Northern Ireland? The other side of that question is what impact would it have if we reduced to the England and Wales model? Would that be a deficit to the justice system?

Mr McGuckin: That is a very important question and one that we need to analyse carefully. In relation to the first part of it, I think we projected the difference in cost at around 43%. We suspect that around 18% of that difference is down to solicitors attending counsel in court in Northern Ireland. We think it is important that we carefully analyse the impact that preventing solicitors from attending counsel in Northern Ireland might have. We are at an early stage in that. The implications, for example, could be delays in cases running through court because the solicitor is not there. There would potentially be an additional workload of barristers. You could potentially run into further adjournments of cases. Having identified that, we want to analyse the impact before we take that step. So, there are potential and, as yet, unidentified consequences that we need to assess and identify how to ameliorate before we move down that line.

Mr Dickson: I can understand the issue of delay, but that would not affect the quality of outcomes in representation. Would it?

Mr McGuckin: No, I do not think so. The solicitors support the barrister. The argument that solicitors will make is that they are familiar with the client, the details of the client's family, the case and history and so on and are able to share that information with the barrister and provide up-to-date briefings on those areas. The quality of the barrister will still be there going forward.

Mr Dickson: We have so shortage of qualified barristers.

Mr McGuckin: No.

Mr McGlone: Thanks very much, gentlemen, for being with us. I had recent experience where I was with a constituent on a case where an appeal was heard by the Legal Services Commission, and I found that to be very useful. It was successful in her case, which, in fact, was quite a difficult set of circumstances. Without going into the detail of that, is it the case that the proposal from the Department suggested doing away completely with that appeal body?

Mr McGuckin: With the current appeals mechanism.

Mr McGlone: Yes.

Mr McGuckin: Just for clarification, you are talking about the process that exists currently where a solicitor has applied for civil legal aid on behalf of a client who has been refused by the Legal Services Commission and it has gone to the appeal panel that currently sits. The proposal, which will come before this Committee shortly and on which the Committee considered the results of some consultation, is to change the existing arrangements for the commission and also for the appeals mechanism. We are proposing to close the commission and to transfer its responsibilities to an agency in the Department of Justice. As you might recall, we have consulted on that, and legislation will be introduced shortly on it. As part of that process, we are instituting what I consider to be a more robust appeals mechanism to consider appeals against decisions that will be taken by the director of legal aid casework in the new agency. That appeals panel will be appointed through the public appointments process and will be independent of the agency. It will hear appeals against the decisions made by it. It will be similar to the existing mechanism, but it will be more independent and will be done through a public appointments process. Currently, the appeals panel is nominated, as I understand it, by the Law Society and the Bar Council. In the future, that will be done through the public appointments process.

Mr McGlone: What are the projected savings from that?

Mr McGuckin: From changing the appeals mechanism or creating the agency?

Mr McGlone: From changing the appeals mechanism. That is where I started out from. I am trying to find out the *raison d'être* for this, because I am of the mind, "If it ain't broke, why fix it?"

Mr McGuckin: There are relatively modest savings coming from that, however, going back to the creation of the Legal Services Commission in 2003, there was a requirement at that stage to introduce a new appeals mechanism. The appeals mechanism that currently operates is a carry forward, and it was an interim arrangement that was put in place from when legal aid was administered through the legal aid department in the Law Society. That is why the individuals who are involved in those decisions are nominees of the Law Society and the Bar Council. That interim arrangement has lived for rather longer than was anticipated when the commission was established. Indeed, the commission consulted last year on changing those arrangements and making appointments to the appeals panel rather than nominations. It has shelved those plans because of the further plans to create the agency and to create an independent appeals panel.

Mr McGlone: What do you mean by "independent"?

Mr McGuckin: It is independent entirely of the agency and of Government.

Mr McGlone: Are you saying that the current mechanism is not independent?

Mr McGuckin: It is a sort of hybrid and has nominees from the Law Society and the Bar Council. Some of the criticism that we have received — they are in direct response to criticisms from the Public Account Committee — are about the independence of those arrangements. Nominees from those bodies take decisions about the awarding of certificates to clients and to clients through solicitors.

Mr McGlone: That brings me back to my point. To make a considered opinion of a case that takes account of the intricacies of the applicants or appellants that come before them, I would venture that someone in that position would need to have some legal knowledge or expertise. They would need to have a bit of an idea of the intricacies of the law. This was a complex case and needed to have someone who could cast their eye over it. I mean no disrespect to anyone else, but I would not have been able to do it. I would venture that that expertise is independent in so far as they are adjudicating in the same way as a court would: independently and on the merits or demerits of a case and the application for appeal.

Are you suggesting that that pool of legal expertise — it does not break the bank, and I think that they just do it for costs — should be cast aside in the interests of what is referred to as another independent panel that may not have a pool of legal expertise? It is either that or you reinvent the wheel.

Mr McGuckin: Not exactly. I agree with you entirely about the complexities of the cases that get through to the appeals panel. They should be complex. Part of the structures that we propose to introduce will ensure that the appeals panel gets to address only those appeals that really require its expertise. Our proposal is that the appeals panel should always be chaired by a lawyer and should consist of three members. I suspect that, in many cases, the panel will consist of three lawyers, although we have made provision for the inclusion of non-lawyers with particular expertise in, for example, family matters and so on. The appeals panel will always be chaired by a lawyer in the new mechanism.

Mr McGlone: Are we throwing out something that works perfectly well? There have been some criticisms of how the panel is nominated and constructed, and we propose that the members will be public appointments and go through a rigorous public appointments process. They will also have a length of tenure when they are appointed. The process will be much more rigorous.

The Chairperson: I want to try to help members. We are talking purely about criminal legal aid and fees, Mr McGlone.

Mr McGlone: I appreciate that.

The Chairperson: I will not curtail you, and fair play to Mark for responding to your question. However, the proposals for reforming the Legal Services Commission in that Bill have not come to the Committee yet. Today's session is purely about criminal legal aid and the fees associated with that.

Patsy has it on the record, so you know what is coming when that comes to the Committee.

Mr A Maginness: Thank you for outlining the position that has been established between the Department and the legal profession. I wish you well in your discussions. I think that it is better to try to work these things through and reach agreement on changes.

Your declared aim is parity with Britain, but whether that works out is another matter. You will be aware of the huge criticism of the way in which legal aid has been cut in Britain. You have heard of chambers in Britain, for example, Michael Mansfield's chambers, simply being dissolved because they believe that they cannot work under the new system. The system in Britain has come under considerable criticism from the judiciary, not least from the Lord Chief Justice. Now, is that the sort of service that you want to give to the people of Northern Ireland?

Mr McGuckin: Absolutely not. I do not think that what we are suggesting is parity with England and Wales. Quite different systems operate in the two jurisdictions. Although it is helpful to make a value-for-money comparison, we need to apply those arrangements to the particular circumstances that we have in Northern Ireland. That is what we have tried to do. We made the initial comparison. We suggested, as part of the consultation, that we introduce the English system, which is a graduated fees scheme. We did not get any take up on that. The graduated fees scheme is considered to be extremely complex in its operation, and I would echo that, from our comparison of the fees of the

cases that we looked at in the Crown Court. It is complex. However, we have to be alert to issues of cost and cost effectiveness within the system as well. We are seeking to bring the cost down and to target and direct the fees appropriately, to where — as somebody in the Bar Council referred to it the other day — the heavy lifting is done. We want to sort out any of those anomalies, look at the seriousness of particular offences and make adjustments where that is appropriate.

Mr A Maginness: However, you will accept that, in 2011, a new dispensation — as it were — was introduced in relation to costs. For example, the very high cost cases were effectively abolished. You also had a very significant reduction in the standard fees. That was in the region of, what, 40% or thereabouts?

Mr Nigel Hamilton (Department of Justice): I believe that that was the case, yes.

Mr A Maginness: Standard fees have been reduced by 40% and very high cost cases have gone. Exceptionality has been removed, and provisions were introduced to reduce the number of counsel in criminal cases. Instead of having two counsel, you would have one counsel and so forth. And there has been a very considerable reduction there, from 50% to 10%, where you would have one counsel dealing with criminal cases in the Crown Court.

Mr McGuckin: That percentage figure has been presented to us, and, as I said earlier, we are looking at exactly what —

Mr A Maginness: But you would not disagree that there has been a reduction.

Mr McGuckin: Absolutely, there has been a reduction.

Mr A Maginness: A significant reduction.

Mr McGuckin: There has been a reduction, yes.

Mr A Maginness: A significant reduction.

Mr McGuckin: I guess that it is significant, but I will come back to you on that point.

Mr A Maginness: OK. Given all that, what would you estimate to be the savings in relation to criminal legal aid since 2011?

Mr McGuckin: As I said in response to a question that the Chairman asked, it takes a while for all the savings to work through the system. I think, at that stage, we estimated a reduction of £18 million. That will not go through fully until the year 2015-16, so there has been a gradual reduction. It is difficult to assess precisely the reduction since that time because of some steps that have been taken to reduce the backlog and the additional Crown Court judge, which has been operating in Belfast and has increased the throughput. So, the overall figure has gone up rather than down, but the trajectory, looking at the cost for each case, is on its way down. However, we will not see the full effect of the new fees until about 2015-16.

Mr A Maginness: Criminal legal aid expenditure in Northern Ireland in 2012-13 was £31 million. Do you agree with that figure?

Mr McGuckin: No, I do not.

Mr A Maginness: Why not?

Mr McGuckin: Because it is not right. *[Laughter.]*

Mr A Maginness: Well, tell me how it is wrong. Are these not the published figures?

Mr McGuckin: They are one set of figures that were shown in the Legal Services Commission's annual report. When you read further into the report and see the figures at the back that take into

account provisions and other issues, the spend on criminal legal aid that year was more like £48 million.

Mr A Maginness: So, when it publishes a figure of £31 million, should you not accept that figure?

Mr McGuckin: No, you have to read it in the context in which it has been written.

Mr A Maginness: May I just stop you there? If somebody says, "Look, expenditure's £31 million. There it is in the report", am I not being reasonable in saying that that is the amount of money that has been spent?

Mr McGuckin: You are being reasonable. That particular figure, in the context in which it was written, is a bit misleading. It misled me as well until I got it clarified.

Mr A Maginness: So, once again, we look at the figures of the Legal Services Commission and cannot depend on them being accurate as far as legal aid expenditure is concerned.

Mr McGuckin: If you look at the totality of the report that that figure was taken from, the figures are 100% accurate. The interpretation placed on that figure could be misleading. It is not terribly helpful.

Mr A Maginness: How, then, do we move forward in a situation in which the figures published by the Legal Services Commission keep changing, we have estimates or guesstimates, and we have no seriously reliable figures on which to base any sort of reasonable evaluation of the system?

Mr McGuckin: We have reliable figures on the actual spend across each court tier and each type of legal aid being spent in each year. There are reliable figures to say precisely what they are. It is slightly more problematic for forecasts. We have taken on a lot of work to develop the forecasting model.

Mr A Maginness: Let us deal with that. You are saying that we have had the cuts of 40% in standard fees; we have got the very high cost cases removed; we have got exceptionality removed; we have got provisions for the number of counsel in a case dealt with, and there has been a significant fall in the number of counsel involved in cases. We still cannot see the full working out of that in savings because there is so much of a backlog in cases. Additional work is generated because of the fact that they are trying to deal with a backlog in Belfast and so forth. Although there are savings hidden within the figures, they are not being presented to the Committee or the public at large. You are saying that you will work on forecasts etc, but you still want to go ahead with further reductions in legal aid here, despite the fact that we have made significant advances. That is not a reasonable position to adopt or to give to professionals working in that area.

Mr McGuckin: I think that you have made a number of points about steps that have been introduced already to deliver savings against the legal aid budget and about the fact that we are aiming at a moving target. Legal aid is a demand-led service. You are also aware that it takes time for cases to work through. When the new fees are introduced, they are not applied retrospectively to the existing cases in the system, but they apply to the cases that come into the system and for which legal aid certificates are awarded after that. Yes, there is a period of time in working those through the system. If we had not had the increase in business as a consequence of the additional Crown Court judge and other steps that we are taking, and which are to be welcomed because they reduce the backlog and the delay in the system, there would be greater clarity in the trajectory of the figures going down. We can do an assessment of the cost for each case and see that reducing over time as well. We do not have that analysis in front of you currently.

However, we need to prepare. You made the point entirely and effectively: we need to prepare now to look at further reductions to live within budget in the years ahead, because it does take that period of time for the cases to wash through the system and for the new fees to be applied.

Mr A Maginness: Yes, but the point that I am making is that you are looking for reductions. If you got your way, you want to see a reduction in fees of 45% for solicitors and 30% for barristers under option 1. Under option 2, you want to see a reduction in fees of 45% for solicitors, 46% for junior counsel and solicitor advocates, 31% for led junior counsel, 20% for leading junior counsel and 29% for Queen's Counsel. You are looking for very hefty reductions, by anybody's standards; yet you premise that on figures that are altering by the month, not just simply by the year. The Legal Services

Commission does not know where it is in relation to the spend on legal aid; yet we are working on these figures, you have significant reductions already in 2011, and you are saying to the legal profession that you want an average cut of say 30% or 40% in addition to the 40% you have already got. Surely that is very unreasonable and very unsatisfactory.

Mr McGuckin: We have explained in value-for-money and cost-effectiveness terms how the fees that are paid in the current schemes in Northern Ireland compare with the fees that are paid in England and Wales. We have identified some of the differences as a consequence of that, and Mr Dickson raised the issue of solicitors attending counsel in the Crown Court in Northern Ireland. If that was removed — that is a piece of work that is not done any more — that is a significant proportion, as I explained, of the difference between the two jurisdictions. Clearly, we are looking at that and examining its implications before any of the final decisions are made, but that represents one big area. The other bit relates to how the fees are calculated and the level of remuneration and targeting that available remuneration at the appropriate places.

Mr A Maginness: I understand the latter point with regard to tweaking and trying to maximise points here and there on the guilty pleas and that sort of thing. I think that there is a reasonable case there. However, in looking for those massive reductions, having got a previous very significant reduction, it is a very hard proposition to fully understand or be sympathetic to.

My final point is more of a comment. I have been lobbied by quite a number of solicitors firms doing criminal defence work. They are not big firms. There are some big firms, but they are largely small firms, and they are saying that they will go out of business or will have to lay off staff — ancillary staff and professional staff. If you get to that point, you are damaging the sort of legal service that we are proud of here in Northern Ireland. That would be to the detriment of everybody.

I put that point to the officials because I do not see any evidence of any work being done on the actual impact of the cuts on firms. In fact, the Minister has said in the Assembly from time to time that he is not concerned with the impact on the legal profession. He just adopts a laissez-faire attitude to it.

The Chairperson: We will keep that comment hanging and go on to other questions.

Mr A Maginness: OK.

Mr McCartney: Thank you very much for your presentation. I take it that you have taken over from Robert Crawford.

Mr McGuckin: I am afraid so. *[Laughter.]* You will have to live with me for a while.

Mr McCartney: Do not sound so pessimistic. Alban has already given the backdrop to this. Given your brief, when you come at this, do you do a wider analysis of the impact of the reduction in fees?

Mr McGuckin: We do as much as we can. If you have a single solicitor who operates a practice entirely on criminal legal aid, there may well be challenges associated with that. It may well be that people have to look at their business models and change them somewhat. Our aim is to get legal representation, and the funding for that legal representation, to the clients who need it. In the consultation document, we did a partial analysis based on the information that we have. We invited the representative bodies to provide any additional information that they could. Anecdotal stories have come back to us saying that it will have an adverse impact and that people will be laid off. We do not have any detailed information on which to make further assessments. If that is available, we would welcome it in order to make the assessment. We have said that to the professions.

Mr McCartney: Some of the changes that are proposed are not exactly the same as in England and Wales, but you can see the trajectory. The Lord Chief Justice in England has raised concerns about the quality of service. Is that part of your remit? I will put it in very broad terms. The Department spends so much money on legal services. Are you given the task of saying, "If it is x amount, we need to reduce it by -y"?

Mr McGuckin: My focus is currently on reducing the legal aid budget at the same time of having the target of not reducing access to justice and, if possible, increasing and improving access to justice. Some of the comments that we have heard from England and Wales are in the context of the further

set of reforms and cuts in legal aid that are proposed there. Our reforms do not do that. The comparisons are based on what is currently being paid there.

Mr McCartney: As we said to Robert Crawford a couple of times when he was in your position, we do not get the full picture at times. In the past, it was the high-cost trials. Now, it is family law and civil legal aid. We have asked for the full picture before. I am not saying that it is an easy task. However, if you had the full picture, it would allow us to get a better sense of the wider impact on quality. The legal profession has been accused of many things at this Committee. However, quite recently, a solicitors firm stated very openly that the decision of the Department or the PSNI to challenge every case in the hearing loss trials was a needless expenditure on legal fees. So, people say that we have to cut legal fees. We have been round the houses here about hearing loss because the Department said that the best advice was to challenge every case rather than a class action. It is now turning out that that may not have been a wise decision.

Mr McGuckin: I am pleased to say that that did not affect the legal aid budget. I understand the point that you are making.

Mr McCartney: It affects the Department's budget.

Mr McGuckin: Yes.

Mr McCartney: So, if the Department was operating with a leaner budget that was better managed, legal aid might not come under the same scrutiny.

Mr McGuckin: The budget for legal aid has been set, as we know, and we have consistently breached that budget since devolution. We are taking steps to —

Mr McCartney: One of the criticisms that has been made is that the budget has always been underprojected. When Robert last appeared here, he said that you were now going to try to do it in a more efficient way because it is accepted that it was never really properly forecast.

Mr McGuckin: It is about improving the forecasting model to determine the requirement. An improved forecast will not increase the budget; it will just give you more confidence about how far short you are.

Mr McCartney: In the past, the big argument was, "Here we go again, we need more money for legal aid". I am not saying that there is a pressure on the Department's budget, but it was accepted that, sometimes, the forecasting was poor and every year it looked as if you were looking for more money rather than having a better forecast.

Mr McGuckin: By April of this year we will have a new methodology in place. It will take time for all the information to work its way through that methodology, but there will be incremental improvements in the forecasting requirement.

Mr McCartney: When will you have a better idea of the reforms to date? You had an exchange with Alban about what was printed. There was further research done that said that it is not quite like that. We can see £31 million in savings, and you believe it, possibly.

Mr McGuckin: The figure of £31 million of spend was the one that was quoted there. We can do work on that and come back to you. With me coming in and taking up this role, it provides an opportunity to look at the totality of the programme that we are involved in and then to refocus that. If it would be beneficial to the Committee, we could probably bring forward a paper that sets out where we plan to focus our efforts and what we are trying to achieve with that over the next 12, 18 and 24 months.

Mr McCartney: Could you even reflect on what you have already achieved?

Mr McGuckin: It would be useful to do that, yes.

Ms McCorley: Go raibh maith agat, a Chathaoirligh. Thank you for the presentation. I want to go a wee bit beyond what Raymond and Alban were laying out. If you continue to reduce the legal aid budget, it will have impacts on firms of lawyers and firms of solicitors and the people who do the work and on the quality of work. The next bit of that is how it impacts on people who need legal aid and

might end up as victims of bad legal decisions and may, for example, be imprisoned falsely. Many of those people are already vulnerable, and it is those impacts that I would be very concerned about. People have talked about miscarriages of justice and the cost of remedying those decisions.

Mr McGuckin: Those are all potential risks in any reform, when we are trying to reduce the cost of the system and ensure that everything remains in the scope of the system. You are looking at the unit costs and trying to drive them down. Our assessment is that it should not impact on the quality of the representation that people are able to get, certainly on some of the things that Mr Maginness was referring to in the earlier exchanges, where you are reducing the number of counsel and awarding only senior counsel in the most serious cases where they are required. That is about targeting the resource at the most serious cases, and that will continue to be the case. There was nothing in our analysis that would demonstrate that there would be a diminution in the quality of the service to individual legal aid clients. We will need to keep that under consideration as the new fee scheme rolls out over time.

Ms McCorley: I find it difficult to see how there would not be a diminution of quality of the service provided if you are going to reduce the budget significantly and seek further cuts for a third time. Somebody has to suffer, that is my view.

Mr N Hamilton: You have to look not just at the overall budget but at the actual unit cost, which Mark referred to. The cost of a case here is twice as high as it is in England and Wales, even including the cuts that we made the last time. Although budget is an issue for us, the exercise that we did looked at actual cases in the system and at how they would be treated in England and Wales and how they would be treated here. It is still twice as expensive. For the taxpayer, that is still a question worthy of exploring further.

Mr McGuckin: To extrapolate from that, what you are saying is that, in England and Wales, at those fees people were getting the appropriate representation.

Ms McCorley: Well, we will just have to wait and see how it works out.

Mr Wells: I am sure that the people of North Belfast have risen up to a man and lobbied Mr Maginness, saying that this is a terrible situation and that solicitors, barristers and QCs are having their pay cut. Maybe North Belfast is rather different from South Down, but I am getting a slightly different reaction. I spent a lot of time in court recently for various cases, and I was approached by many of the legal profession and had full and frank exchanges with them. I think that you are right: there is a slight difference of emphasis between you and the legal profession on this issue, a slight divergence of opinion, should I say. If we were to bring spending on legal aid down to the same level as the rest of the UK, how much would we save if we went like for like on all cases?

Mr McGuckin: I do not know that I have done that calculation. Perhaps I could bring that back to the Committee.

Mr Wells: I cannot see any rationale, having done this analysis of over 200 cases. A criminal is no less or no more guilty in Basingstoke than Belfast or in Luton than in Londonderry, so therefore you are dealing with similar circumstances, a similar need for adequate representation and a similar legal situation. I do not understand, now that we have moved on to a more peaceful situation in Northern Ireland, why we would still even consider a higher tariff. Was it ever considered that we would simply have parity with the rest of the UK?

Mr McGuckin: The way that the systems operate is different. For example, in England and Wales, they have a broader range of cases that go to the Crown Court. In Northern Ireland, as Mr Maginness will be aware, a lot of those cases would be heard in the Magistrates' Court, so you cannot really just lift exactly the structures that they have. There was no appetite for that in the consultation. The 213 cases that we took were real cases and were representative of the cases that go through the Crown Court in Northern Ireland, and that is why we felt that that analysis had a degree of robustness and validity in it to identify where savings might be appropriate.

Mr Wells: If I rob two banks, one in Lurgan and one in Luton, and I go separately for trial, is there anything intrinsic in doing it in Lurgan that means it is more expensive to have a fair trial and a proper representation on a like for like basis?

Mr N Hamilton: In Lurgan, you would have your solicitor attending counsel, whereas in — Leeds, was it, you suggested?

Mr Wells: Luton. It was alliteration: Lurgan and Luton.

Mr N Hamilton: In Luton, you would not have your solicitor with you in Crown Court.

Mr Wells: Would my defence be weakened by that situation?

Mr McGuckin: There is a custom and practice issue there. Nigel has pointed out the major difference, and that is solicitors attending counsel. We have not fully analysed the impact that taking them out of the Crown Court in Northern Ireland would have, and we need to do a bit more work on that before we would have confidence about what those impacts would be. We would need to have a number of consultations on that. Aside from that, I think that the answer to your question must be no.

Mr Wells: Do the stats show that, as a result of the gold-plated system that we have here or had here that, there is any less miscarriage of justice or any higher standard of defence? In other words, do the stats show that, if you commit a crime in Northern Ireland, under our system, you have a much better chance of getting off because of the representation that you would receive?

Mr McGuckin: You could put it a slightly different way and ask whether, if you are accused of a crime in Northern Ireland — not necessarily that you have a better chance of getting off if you commit a crime — there is a different level of defence. I do not know that the stats would show anything. Anecdotally, we are told by the Bar and the Law Society that there is a lower level of cases when there are allegations of a miscarriage of justice, for example. However, I do not have the stats to demonstrate whether that is accurate.

Mr Wells: If our standards are higher because we are spending much more money, that would indicate some justification for present system. However, if we are spending a huge amount of cash and sending it to the Kevin Winters of this world and the big solicitors who had more than £2 million in legal aid last year and that is still not producing a higher standard of representation, money is clearly being wasted. Should that analysis not be carried out?

Mr McGuckin: We could look at it. I am not sure whether it has been carried out before now. There are differences in this system, and sometimes such an analysis might not necessarily throw up useful information.

Mr Wells: I hope that you are successful in taking the process through. I do not know what sin you committed in a previous life to have to do this.

Mr McGuckin: It was grievous. *[Laughter.]*

Mr Wells: It was very grievous. I am told that you had a shock of black hair until you took this post on two weeks ago.

Mr N Hamilton: And I had hair. *[Laughter.]*

Mr Wells: If you carry it through to fruition, how much per head will we still be spending more on legal aid in Northern Ireland than in the rest of the UK?

Mr McGuckin: A range of initiatives and proposals are under way, and we are at an advanced stage in consulting the Crown Court on it. We are consulting on civil legal fees as well, and that is a very big exercise. It is designed to deliver savings. I am not sure about comparisons because you are talking about different bits of the system. If we introduced the full range of savings on Crown Courts, we would probably be at the same level per head of population. Leave aside the cost per head of population, look at the unit cost of the case and ask this: how much does it cost to bring a case through the Crown Court in Northern Ireland and a case through the Crown Court in England and Wales? We can probably do that comparison. We have some for the Crown Court.

Mr N Hamilton: An average case through the Crown Court in England and Wales costs about £5,000. Here, it is, on average, about £16,000.

Mr Wells: Does that not tell you something?

Mr McGuckin: It tells you to be cautious. I go back to the earlier point that the Crown Court in England and Wales deals with a broader range of cases. It deals with some less serious cases that, in our system, are dealt with very effectively in the Magistrates' Court. Our Crown Court deals with a subset of the cases that go through in England and Wales and deals with the more serious cases. So you would expect that sort of thing. Comparisons between the cost of a murder trial or an aggravated burglary could be more useful.

Mr Wells: I had pure brown hair before I started on the Justice Committee, so our roles have had the same effect.

When this is all over, will we still be left with the most expensive legal aid system in western Europe? I have seen stats from other countries, and even the British system seems to be very generous compared with other parts of the EC.

Mr McGuckin: I suspect that other costs might rise as we try to bring ours down.

Mr Wells: That is very diplomatic. I had full and frank exchanges with QCs, junior counsel and solicitors, and they said that the fees will eventually be reduced to such an extent that people will stop tendering and offering to do the work. Is there any evidence that that is happening in GB and that, because of the changes are already being implemented, people are starting to turn work away and having difficulty getting representation?

Mr McGuckin: There is some anecdotal material from England and Wales. I am not sure how accurate it is or whether there has been a study into it; we can check that out. I am not aware of anybody in Northern Ireland turning away legal aid clients at this time.

Mr Elliott: Thanks for the presentation. Will you give me a definition of "very high cost case"? I know that you have ended them, but when does a case become a very high cost case?

Mr McGuckin: I cannot; I will see whether Nigel can. That is working its way out of the system, so, since coming into post, I have focused on the ones that are still there.

Mr Elliott: I appreciate that, but I assume that there are still some in the system that are not complete.

Mr N Hamilton: The definition of a very high cost case was one that was projected to last a particular time; I think that the figure was 60 days. If a case was projected to last 60 days, it was classified as a very high cost case and paid under a different fee regime. It is interesting to note that we had only one case last year that would have fallen into that category. If we refer to the England and Wales scenario, we see that no case currently in the system would come under the definition of very high cost case.

Mr Elliott: That is interesting. Why were there so many previous to this?

Mr N Hamilton: I hesitate to say that the system was being abused. However, I think that, at the time, a solicitor could look at a bundle of evidence and say that a case could last 40 days or 60 days — whatever the figure was. However, many of our cases do not go to trial. A case could collapse at an early stage or the amount of evidence presented at court is much less than anticipated and so would not fall into the category of very high cost case when it comes to court.

Mr Elliott: It sounds amazing that we have spent so much money on very high cost cases over the past years, and, all of a sudden, when you wean them out, none is coming forward.

Mr N Hamilton: I agree. It is one reason that we had to remove the very high cost case provision. On reflection, when you look at the cases coming before the court, you will see that none of them should have qualified ultimately.

Mr Elliott: Chair, would it be possible for officials to give us some written detail — I do not know how much detail they can give — on some of the very high cost cases that were coming forward and which now appear not to be coming forward? Could they at least give us an analysis?

Mr McGuckin: It is not an issue that I am particularly familiar with, but I am happy to see whether we can pull some material together on the historical position of very high cost cases and where we think we are with them working their way through the system.

Mr Elliott: I have one other question. What impact have delays in the justice system had on the legal aid budget? If there are delays in the police getting a file to the Public Prosecution Service, the PPS getting it to the courts and perhaps the courts being adjourned on occasions, what impact has that?

Mr McGuckin: The fees depend on the number of appearances, and there is a range of refresher fees. Delay does not necessarily help. However, I could not say off the top of my head whether there is a precise percentage that we could quote to you.

Mr N Hamilton: My perception is that it would be relatively limited, because delays would take place when the case was at the Magistrates' Court, where standard fees apply. It is more a question of time in between appearances at court, rather than, as Mark rightly suggests, refresher fees at trial. Once a trial starts, generally it starts and will finish. I do not think that such situations would affect legal aid so much.

Mr Elliott: That is interesting. Personally, I have no difficulty with your looking at legal aid and trying to reduce the budget. However, pressure needs to be kept on where there can be other efficiencies; for example, delays. One of the issues that regularly come to me is that there are serious delays in the system; I am not pointing to one aspect. I know that others are working on that. I would like to see that work being taken forward in co-operation with you so that it all moves forward as a package.

Mr N Hamilton: It is all very much tied together.

The Chairperson: Thank you. No other members have indicated that they wish to speak. You are engaged in an ongoing piece of work. It is important that we get as much evidence as we can. If we could avoid contrary views from the legal profession and the Department — if you could come to an agreed position — it would make our job very easy. If an agreed position cannot be found, we need to reach our own judgement. If you bring forward proposals to do with the fees, we need to know for sure that the evidence we are getting is correct. I am not opposed to reducing the fees, but I want to make sure that there is the proper evidence to do that. A judgement has to be made on value for money vis-à-vis ensuring access to quality representation. That can be a subjective notion, and I need to make sure that we get the right evidence to allow us to take a decision.

The last time that this happened, there was outcry and uproar, and I do not think that the legal profession did itself any good by saying that it was at a tipping point and that things would be disastrous. Clearly, it was not at a tipping point. We are now hearing the same arguments about a tipping point. That may be the case; I am not going to say that it is not. However, I am trying to make the point to you gentlemen that if you ask us to decide between different interested stakeholders, you must be very sure that your evidence cannot be challenged. At the moment, it is being challenged by the profession, and I look forward to getting further information.

Mr McGuckin: As I said at the outset, we are engaging with the profession to try to narrow the areas of disagreement. Fundamentally, the profession will be opposed to cuts in fees, and it would be good if we could get areas of agreement. We will come to you with the evidence base. That is why I was keen to get the interim report to you so that you could see the shape of the process and where it was going. It also allows us to do further work before we come back to you with firm proposals.

The Chairperson: Thank you very much.