



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Legal Aid and Coroners' Courts Bill:
Department of Justice

28 May 2014

NORTHERN IRELAND ASSEMBLY

Committee for Justice

Legal Aid and Coroners' Courts Bill: Oral briefing by the Department of Justice

28 May 2014

Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Tom Elliott
Mr William Humphrey
Mr Seán Lynch
Ms Rosaleen McCorley

Witnesses:

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| Ms Siobhan Broderick | Department of Justice |
| Mr Padraig Cullen | Department of Justice |
| Ms Carol Graham | Department of Justice |
| Mr Mark McGuckin | Department of Justice |

The Chairperson: We will work our way through the Bill clause by clause, asking officials to briefly outline the purpose of each clause and the Department's response to the issues raised. We will then invite questions from members before moving to the next clause.

I welcome Mark McGuckin, deputy director of the public legal services division; Siobhan Broderick, deputy director of the civil justice policy and legislation division; Carol Graham, the Bill manager; and Padraig Cullen, principal legal officer in the public legal services division. You are all welcome to the meeting. As normal, this will be recorded by Hansard and published in due course. I am going to hand over to you to outline briefly clause 1. I am not sure who is taking the lead.

Mr Mark McGuckin (Department of Justice): Thank you, Chairman. I will take the lead for quite a lot of this.

As an overall summary, the purpose of the Bill is to dissolve the Legal Services Commission and to create new arrangements for the delivery of legal aid in Northern Ireland, within the Department of Justice. Clause 1 will dissolve the commission and transfer its functions and staff to the Department. On transfer, it is intended that an executive agency will be created within the Department to administer the delivery of legal aid services.

Clause 1(5) refers to schedule 1 to the Bill, which makes provision for the transfer of "assets, liabilities and staff" from the commission to the Department. The clause is pretty straightforward. I am not sure, Chairman, whether there were too many comments. The Legal Services Commission welcomed the clause. The Bar Council welcomed any improvement to ensure transparency, predictability and accountability, and we believe that the new arrangements will facilitate that.

The Chairperson: Do members have any questions on clause 1? OK. We will move to clause 2, which is about designation of the director of legal aid casework.

Mr McGuckin: Clause 2 makes provision for the appointment of a director of legal aid casework. The purpose behind the creation of that statutory position is to help ensure that there will be no ministerial involvement in individual funding decisions on civil legal services. The Minister will be required to designate an individual as the director, and the director's function will be to take decisions on the grant of funding for civil legal services in individual cases. Subsection (2) requires the director to carry out the functions of the office on behalf of the Crown. Subsection (3) provides that the service as the director is service in the Northern Ireland Civil Service, and subsection (4) requires the Department to provide civil servants or other persons to give appropriate assistance to the director.

We had a number of comments from the Law Society, the Association of Personal Injury Lawyers and the Bar Council in relation to this clause. The Law Society suggested that it should be an externally recruited figure, preferably somebody with experience in civil justice matters. The Association of Personal Injury Lawyers was concerned to ensure that the director of legal aid casework was legally trained, and argued that that would reduce the number of appeals. The Bar Council outlined concerns that there was no requirement for the director to be legally trained or qualified and that that might lead to more challenges through the process. In response to that, the Department says that the director will take each of his decisions individually and independently of any interference. The director will have recourse to independent legal advice as and when required. An awful lot of cases that go through requests for civil legal aid are relatively straightforward, and the majority of them will go through on the first request or after subsequent information has been required. It is only in more difficult circumstances that there is a need for a review process. In taking his decisions, the director of legal aid casework will have access, as required, to legal advice to support that process. The director will require a number of skills in running a large agency with a considerable budget such as this, and legal support is just one of those.

Mr McCartney: The Law Society said that somebody external to the Department should be recruited. Is that a possibility? Could that happen, or do you feel that it has to be from within?

Mr McGuckin: It depends on the nature of the appointment. The person who is employed in an agency is normally a civil servant. So, if you appoint somebody from outside the Department or the Civil Service, they will, on appointment, effectively become a civil servant. They could be recruited from outside the Department. For example, it is a Senior Civil Service post, and all those posts at those grades are currently being recruited externally. There is an external competition running now and, ultimately, an external person could go into the post. As I understand it, the Law Society, at one stage — it is going back a number of years — had an individual who had previously been a civil servant running the legal aid department for it.

Mr McCartney: The Bill states:

"The Department must designate a civil servant in the Department".

I am not saying that that should not be the case, but does it have to be the case? In other words, if someone outside the Department sees this advertised, are we legislating so that they cannot be appointed?

Mr McGuckin: Not necessarily. Were the person to be recruited, they would be appointed to the Department first, and the Minister would then designate that individual as the director of legal aid casework. So you could run an external competition; it would not be a public appointment as such, but somebody would be recruited to the Department and then designated as the director of legal aid casework.

Mr McCartney: I do not think that is clear from reading it. It says:

"The Department must designate a civil servant in the Department".

If you were to read that in an advertisement, you might think that if you are not in the Department, you cannot apply.

Mr McGuckin: If it went to an external recruitment process to fill the post, the process would make clear that your appointment would be first to the Department and, following that, you would be designated as the director of legal aid casework. The Minister would address that issue.

The Chairperson: Would there be an internal and external competition?

Mr McGuckin: We do not have any plans to do that at this point. I am not sure that we have looked precisely at what the mechanism is for the transfer of the existing responsibilities. There is an individual who is currently the chief executive of the Legal Services Commission, and we would have to look at what happens to that individual and the potential for retaining the expertise over a transition period, then look at how you fill the post again in the future.

The Chairperson: Taking that transition into account, in the future will there be competitions for this post, or would it just be the Minister designating whoever he wants? Will there always be a competitive process for someone to get this job?

Mr McGuckin: There would not necessarily always be a competitive process. There are a number of ways in which people get moved around in the Senior Civil Service (SCS). You could have a direct competition into the post; you could have a competition within the existing grades of staff across the SCS in all of the Departments; or you could be looking at a managed move within the Department or, more generally, across the SCS.

Mr Elliott: On the same topic, I am not comfortable with the way it is written, as Mr McCartney has highlighted:

"The Department must designate a civil servant in the Department".

You have indicated, Mark, that were there to be wider recruitment, the person would be recruited into the Department and then be appointed director. However, should it not be the opposite way round? The person should be recruited to the position, and then become a civil servant. To me, that is better. I do not want to discard the opportunity for a civil servant to become director, but I also do not want to discard the opportunity for someone from outside the Civil Service, or certainly the Department, to be appointed.

Mr McGuckin: Going back to what I said in response to Mr McCartney, there are a number of ways in which this type of post can be filled. Sometimes, it will be done through direct recruitment into a post. When you do that, ordinarily you become a civil servant first and the post-holder second, because you bring with you rights, such as tenure and so on, that are wider than just that post-holder. In most cases, you are recruited into the SCS and then find your way into a particular post.

There have been occasions in the past, and they will probably continue, where people are directly recruited into a post, but it is usually through the process of becoming a civil servant in response to that particular post. They then retain the right to be able to move to other posts.

Mr Elliott: You say that that is the normal way of doing it, but is there anything to stop an open recruitment process that could allow people who are not civil servants, but also people who are civil servants, to apply for that post? Is there a method to do that?

Mr McGuckin: Yes, there is. It is the same as any open competition. If the post was identified as one for which you wanted to have an open competition, that competition is not just open to people outside the Civil Service but to people internally in the Civil Service. They are not excluded from it. Any competition would be open to both internal and external candidates, if it was an external recruitment process specifically for this post.

The Chairperson: Clause 3.

Mr McGuckin: Clause 3 is on the exercise of functions by the director, and it includes a number of safeguards to guarantee and protect the independence of the director and his decisions on the grant of civil legal aid in individual cases. Subsection (1) requires the director to comply with directions given by the Department and to have regard to guidance issued by the Department. Subsection (2)(a) provides that the Department must not give a direction or guidance about the granting of civil legal aid in individual cases, and subsection (2)(b) places a duty on the Department to ensure that the director

acts independently of the Department when applying direction or guidance. Subsection (3) requires the Department to publish any directions or guidance, and subsection (4) provides for directions and guidance under the section to be revised or withdrawn from time to time.

As an overview, the Department can issue guidance and direction about carrying out the director's functions, but not in respect of individual cases. Indeed, the Department is under an obligation to ensure that the director acts independently when applying a direction or guidance in relation to an individual case. To go further, when the director refuses an application for funding or further funding, there is provision elsewhere in the Bill for an independent appeal panel to hear appeals against those decisions.

I will look at the comments from the consultation. The Law Society stated that the Department had not taken on board the concerns of the Joint Committee on Human Rights about the designation of a departmental official as the director of legal aid casework. The Committee felt that adherence of such an official in the Civil Service code pledging loyalty to the Minister of State effectively trumped the practical arrangements of the guidance. A number of other concerns were raised by the Joint Committee on Human Rights on the need to ensure compatibility with article 6, and the Law Centre proposed a number of amendments. I do not propose to go through all of those, because they will be in your briefing. However, when we were putting together the safeguarding regime over individual decisions when we were developing the new arrangements, we were very alert to the issues that had been raised by the Joint Committee on Human Rights, and, indeed, the Joint Committee on Human Rights was concerned about the independence of the director of legal aid casework in an environment where there was not access to an independent appeals mechanism. We addressed that in Northern Ireland by making provision in the Bill for an independent appeals mechanism. So the final arbiter, ultimately, if the director of legal aid casework refuses an application for funding or further funding, is that independent appeals panel, which we will talk about later on. I think that we have addressed in the provisions the concerns that some individuals have highlighted, which came from the Joint Committee on Human Rights in Westminster.

Mr McCartney: In relation to the specifics of the Law Centre's amendments, is there any particular reason why you think they would not strengthen the Bill?

Mr McGuckin: I am just checking to see whether I have that.

Mr McCartney: It is on page 8 of Hansard. The reason I ask is that I know that you were at the meeting in the Long Gallery. A number of people there raised issues and concerns about independence and conflict of interest. To me, these two proposals seem to strengthen and militate against those concerns.

The Chairperson: Have you found them, Mark?

Mr McGuckin: Yes. I have them here. The Law Centre has suggested the addition —

Mr McCartney: In relation to clause 3(1)(a) it is:

"comply with directions given by the Department about the carrying out of the Director's functions...save where this compromises the Director's independence".

That is the Law Centre's addition there. Have you any particular reason why you do not find it acceptable?

Mr McGuckin: I do not think that it is necessary. What we are protecting here are decisions on individual cases. Clause 3(2) states that the Department:

"must not give a direction or guidance about the carrying out of those functions in relation to an individual case, and ... must ensure that the Director acts independently"

while doing that. I am not sure what is added by the additional element that has been suggested.

Mr McCartney: I accept that it becomes very explicit about independence and, in a sense, if you do not feel that those words are necessary, then putting them in should not be a burden.

Mr McGuckin: We looked at this in the broader scheme, and I think that there are some comments which came from wider consideration in Europe about what a legal aid scheme should look like and its dependence. We looked at how the director would apply his function within the broader legislative framework. The director will consider applications, and one of the concerns was about applications for funding to challenge decisions of Government. In all the activities that he undertakes, the director will be bound by the specific requirements of each of the schemes involved, which set out the criteria for taking those decisions, and will do that independently of the Department.

The other aspect to that is in regard to drafting. We went through the detail of the Bill as it came up with the legislative draftsman. I am not sure whether there would be any unintended consequences that we cannot identify at this point in time if we added additional wording into the carefully crafted wording of the legislative draftsman.

Mr McCartney: OK, but just as a sort of proposition, if this became an amendment, it is not something about which you would say, "If you do this, it will result in something that is negative to what we are trying to achieve". I do not expect you to answer that here and now.

Mr McGuckin: I cannot see it having that impact at this point, but I would like to take it away and look at it.

Mr McCartney: It is the same with the proposition in relation to clause 3(2). Reading it and from what was said at the presentation in the Long Gallery, it seems to add strength to what you are trying to achieve, particularly when issues of independence and conflict of interest are raised. Can I ask that you come back with a considered view of that? If they were tabled as amendments, what effect would they have?

Mr McGuckin: Again, I do not think that there is anything there, particularly. I am not sure about the extent to which it actually provides any strength to the clause as it stands or the overall scheme as it stands. I tend to look at this as an overall package of measures to which each of the clauses contributes, in its own way, to pulling together.

Mr Padraig Cullen (Department of Justice): If it is of assistance, I wonder whether I might intervene with an additional comment. The letter from the Departmental Assembly Liaison Officer (DALO) before you addresses the potential impact of directions and guidance. If I may, I refer you to the fifth page of the note. We set out there that it may be important to address the issue of the potential impact. Some misunderstanding may perhaps have arisen about the potential impact of directions and guidance. It notes that:

"it must be emphasised that any direction or guidance issued by the Department cannot override"

relevant legislation, whether that be primary or secondary legislation. The guidance and directions sit under the umbrella of the formal primary legislation and the details of the secondary legislation. I hope that is of assistance to the Committee. You will see that the DALO letter goes on to give two examples: one of a direction and another of guidance that has been issued to date.

Mr McCartney: Are you saying that those particular amendments apply here?

Mr Cullen: Yes, in that there is a clear understanding of what directions or guidance can do. They cannot override legislation, whether primary or secondary. Respectfully, in the wealth of material that is before the Committee, that point of detail is clearly articulated by us.

The Chairperson: We will move to clause 4.

Mr McGuckin: Clause 4 deals with the delegation of the functions of the director. Subsection (1) allows the director to delegate his functions. That enables the director to delegate, for example, decision-making on the merits of a legal aid application, the application of any relevant merits test for a particular area of work with regard to a legal aid application and the ongoing monitoring of decisions.

Subsection (2) provides under clause 3 that the Department may give directions about the delegation of the director's functions. The Department will be able to require the director to delegate or not to delegate particular functions and to give directions about persons to whom the director may or may not delegate those functions.

Subsection (3) ensures that the function of the director may be delegated entirely or subject to limitations or conditions. For example, decision-making on the merits and financial eligibility may be delegated to a provider, whether they be solicitors, those in private practice or the voluntary not-for-profit sector, on particular matters or subject to financial limits as to the amount of work that can be carried out on a case before it must be referred to the director for a decision on further legal aid funding.

Subsections (4) to (8) make provision about the effect of delegation in the earlier subsections. Subsection (4) provides the power to limit the duration of a delegation and to revoke it. There are a number of other protections as you go through it. The Association of Personal Injury Lawyers suggested that anyone who is considering an application for legal aid, whether it is the director or someone who has functions delegated to them, should be legally qualified and have legal knowledge, experience or training.

The Bar Council also talked about the existing system of appeals panels. In effect, the clause is about the ability of the director of legal aid casework to delegate decisions to his staff and outside the organisation; for example, to a solicitor in a particular scheme, to do a certain amount of work. For instance, under the green form scheme, they would be able to do a certain amount of work before having to come for approval to the director of legal aid casework. That is what this facilitates.

Mr Elliott: Does the director have the authority to delegate at present?

Mr McGuckin: I believe that he does, yes. Part of this is about easing the process and facilitating decisions to be taken at the right level.

Mr Elliott: At present, could that be delegated to an outside panel or group of lawyers?

Mr Cullen: Under the current legislative framework, under secondary legislation, yes. Solicitors deal with initial funding, which is called legal advice and assistance, under what we refer to as the green form scheme. Solicitors apply the financial eligibility test for that and can provide work up to a specified limit. When they reach that limit, they can apply to the Legal Services Commission for an extension of funding. However, in the first instance, the solicitor decides. The solicitor applies the financial eligibility test for the second form of funding under what we call ABWOR — assistance by way of representation — and can apply to the commission for authority to fund the work to go to court for certain types of cases. So, it would be a matter of reproducing that form of arrangement for the lower level of cases. In the County Court or High Court, solicitors must apply to the commission for funding.

The Chairperson: We will move on to clause 5.

Mr McGuckin: Clause 5 provides for the production of an annual report by the director of legal aid casework on how he carried out the functions of his office during the financial year. The other provisions are about sending it to the Department and its being laid. The clause has been broadly welcomed, although the Law Centre raised an issue about late publication by the Legal Services Commission of its annual reports and accounts. It is fair to say that the situation has improved significantly in the commission, and, generally, the reports are now published in line with the required framework. As I think you pointed out, Chairman, there are other requirements as to the publication of annual reports and accounts.

There is a question mark over whether this report would form part of the annual report and accounts or form a separate report. However, we envisage that it would be published in line with the timing of those.

The Chairperson: OK. If members have no questions, we will move to clause 6.

Mr McGuckin: Clause 6 introduces schedule 2 to the Bill, which contains a large number of amendments. The main statutory provisions governing legal aid are encompassed in the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 and the Access to Justice (Northern Ireland) Order 2003. The 2003 Order will, ultimately, replace the 1981 Order, but large parts of it remain non-commenced, and that has been a complicating factor in bringing forward the Bill.

To support the legal aid reform programme, the provisions in articles 10 to 14 and 17 to 20 of the 2003 Order, regarding civil legal services, will be commenced at the same time as the commission is dissolved. Pending commencement of articles 21 to 31 of the 2003 Order, regarding criminal defence services, representation in criminal cases will continue to be provided under Part III of the 1981 Order.

As an interim measure, the Bill will also amend Part III of the 1981 Order to replicate some of the provisions in the 2003 Order regarding the assignment of solicitors and counsel, provide for a registration scheme and place restrictions on the disclosure of information in relation to criminal legal aid. Chairman, I am not sure whether you want to go into the detail of that now or whether you want to pick it up during the discussion of the schedule.

The Chairperson: If you are going to cover it in the schedule, we can do it then.

Mr McGuckin: The only comment was from the Bar Council, which said that it had sought legal advice and that it would revert to you in due course. We would welcome sight of that as well.

The Chairperson: That is fine. I have no questions on clause 6. Do you want to touch on clause 7? Had you planned to, or will we move on?

Ms Siobhan Broderick (Department of Justice): I was going to ask whether we can deal with clauses 7 and 8 together, because they are interlinked.

The Chairperson: Yes.

Ms Broderick: They both deal with the Coroners' Courts, as you can see. Clause 7 makes the Lord Chief Justice president of the Coroners' Courts by amending section 12(1D) of the Justice (Northern Ireland) Act 2002. That section lists the courts of which the Lord Chief Justice is already president, and it is amended by the addition of the phrase "Coroners' Courts" to the list. The inclusion of that amendment in the Bill makes it subject to cross-community support under section 84 of the Justice (Northern Ireland) Act 2002.

Clause 8 requires the Lord Chief Justice to appoint one of the coroners to be presiding coroner, who will have responsibility for the Coroners' Courts and the other coroners. It also provides that the presiding coroner will hold office in accordance with the terms of his or her appointment. If the office becomes vacant, the Lord Chief Justice may then appoint an acting presiding coroner, pending a new appointment. These provisions are consistent with the existing arrangements for the appointment of presiding a County Court judge and a presiding district judge for Magistrates' Courts. Clause 8(3) and (4) provide for some small consequential amendments that arise. Two comments were received in respect of those. The Human Rights Commission asked whether the provisions would assist in mitigating delay in the Coroners' Courts. The Policing Board asked a similar question, and asked for more details in respect of the presiding coroner.

The changes are intended to assist in the better administration and case management of inquests, including legacy inquests. The role of the presiding coroner will be to facilitate the coordination and management of cases in the inquest system, including legacy cases.

The Chairperson: There are no questions on that. Thank you, Siobhan. We will move on.

Mr McGuckin: Clauses 10 and 11 deal with supplementary and incidental provisions and repeals. Are you happy enough with those, Chairman? Shall we just move on to the schedules?

The Chairperson: Yes. We have no issues with those clauses.

Mr McGuckin: Schedule 1 is straightforward. It is about transferring the staff of the Legal Services Commission to the new executive agency in the Department of Justice. The Bill provides that:

"Persons who immediately before the dissolution date are employed by the Commission are transferred on that date to employment in the Northern Ireland civil service".

The Transfer of Undertakings (Protection of Employment) Regulations (Northern Ireland) 2006 will apply, and all staff will move to Northern Ireland Civil Service terms and conditions. That is fairly

straightforward. The Information Commissioner identified that he would be in touch regarding the transfer of records from the commission to the Department. We welcome that engagement.

The Chairperson: Is that everything on schedule 2?

Mr McGuckin: That is schedule 1.

The Chairperson: Sorry. We have yet to cover schedule 2.

Mr McGuckin: Schedule 2 contains a large number of amendments, which I have introduced already when talking about clause 6. I will go through them. The first substantive issue is the assignment of solicitors and counsel. The Bill gives the Department the power to make rules that must grant a legally aided person the right to select any representative — solicitor or counsel — to act on his or her behalf, provided that the representative has not been prohibited from being so assigned by either the Law Society or the Bar Council. There is a rule-making power and the Department could, among other things, prescribe the circumstances where the right to select a representative did not apply or restrict the right to select the representative in place of a representative who was previously selected. Effectively, there is a fundamental right to select your own representatives, but there are occasions when people want to change their representative, and the rules would set out when it is reasonable to make such a change, for example when there is a fundamental breakdown in the relationship between the individual and their legal representative. I am not sure that any comments were raised on that aspect.

The Chairperson: The Examiner of Statutory Rules raised an issue with the Committee that affirmative resolution initiates a lot of this but that it is subject to negative resolution subsequently. He suggests that it should be affirmative on all occasions. What is the Department's view on why it should be negative resolution?

Mr McGuckin: I will defer to Pádraig on that. However, to set the context, my understanding is that, with issues like this that are set down in rules and regulations, it is standard practice to allow the Assembly the opportunity to look at the first set and the detail of what is included in those rules and regulations and to consider carefully what their intent and practice is. Subsequently, there are minor changes and modifications made to those, and it is normal practice for them to be taken forward by negative resolution, because they are, effectively, reasonably minor changes to an existing framework. Pádraig, do you want to add anything?

Mr Cullen: The Committee may have available to it the supplementary note that the Department submitted upon receipt of the advice of the Examiner of Statutory Rules. We record, as Mark said, our understanding that statutory rules are normally subject to the negative resolution procedure. We also refer to the fact that the current drafting of the clauses reflects the previous approach in the Justice Act (Northern Ireland) 2011, which made two reforms to financial eligibility in respect of criminal legal aid whereby it is provided that the first set of rules will be subject to the draft affirmative procedure but that subsequent rules will be subject to the negative procedure, as the clause is currently drafted. We respectfully note the views expressed by the Examiner of Statutory Rules. If the Justice Committee, together with the Assembly authorities, wants to provide that all the rules should be subject to the draft affirmative procedure, the Department would not wish to argue against that.

Mr McGuckin: I will continue with schedule 2 and the issue of register of solicitors and counsel eligible to be assigned. The Bill gives the Department the power to make rules in relation to representatives who are eligible to be included in the proposed registration scheme. That will be subject to a further public consultation and affirmative resolution by the Assembly prior to implementation. The scheme is included in the Bill only because the Department is not in a position to commence the criminal defence services provisions in the 2003 Order, and it is necessary for the provisions in relation to the criminal elements of the registration scheme to be re-enacted.

The rules could prescribe the code of practice setting out the conditions that must be met by representatives to qualify for registration; require registered representatives to comply with the code; enable compliance with the code to be monitored; and introduce sanctions if representatives are not in compliance with the code. That was in the 2003 Order but was not commenced. In looking at the Legal Services Commission's performance, the Public Accounts Committee was critical of the delay in bringing that forward. We have engaged with the Law Society in developing a code, and we plan to engage with the Bar Council.

The Law Society was concerned that there was an element in the 2003 Order that required the Department to consult the Lord Chief Justice, the Law Society and the General Council of the Bar of Northern Ireland and undertake such other consultation as appears to him to be appropriate. There are other provisions in the 1981 Order that require the Department to consult with a number of statutory consultees, including the Lord Chief Justice and the Attorney General. In bringing forward the rules under this rule-making power, in compliance with its obligations, the Department will always consult with the Law Society and the Bar Council. In other words, it was not necessary to prescribe the statutory consultees because they are already covered in the 1981 Order. Furthermore, we have established that we would consult with the Bar and the Law Society on these issues as a matter of good practice.

The Chairperson: OK. Thank you.

Mr McGuckin: The Bill includes provision to prevent the disclosure of information in connection with a person seeking criminal legal aid except with his or her consent as permitted under the prescribed rules made by the Department. It brings the schemes for civil and criminal legal aid under the same practice. Effectively, that means that, if information is being disclosed by an applicant in support of their legal aid application, it will not be disclosed more generally. However, that does not preclude the publication of information in relation to the amount of funding paid to any person as part of that process. I do not know whether there were any concerns about that.

The Chairperson: No.

Mr McGuckin: The next issue relates to the funding of civil legal services by the Department. This is largely about replacing the arrangements for the Commission with the new agency of the Department. The Law Society outlined that, at paragraph 6(11) of schedule 2 —

The Chairperson: I am sorry for interrupting but, as far as I am aware, we have no further issues with schedule 2, unless members have anything to add. It is just to save some time. You have addressed the issues that we have taken note of.

Mr McGuckin: Are you happy enough with the issue of appeals panels? Some issues were raised about the composition of appeals panels and so on. Maybe I could take a minute to address that?

The Chairperson: Around the appeals mechanism and illustrating the independence of it?

Mr McGuckin: Yes.

The Chairperson: OK.

Mr McGuckin: The existing appeals mechanism is a panel of barristers and solicitors who have been nominated by the professional body. They hear appeals against decisions to refuse the granting of legal aid or to refuse further funding. In the Bill, we have made provision for enhancing the existing arrangements, in line with the public appointments process, through a new set of appeal panels to hear those appeals. When we originally consulted on that, we suggested that an appeal could be heard by an individual sitting alone. In response, consultees came back and said that you would get a better outcome if you had a panel of members. Consequently, we agreed to provide for a panel of three members.

We were keen to ensure that there was a range of experience on the appeal panels and to open it up to people who have experience in the relevant areas; for example, social care and so on for family matters. Consultees made a very strong argument for having lawyers on the appeal panels and said that the presiding officer of an appeal panel should be a lawyer. We will bring forward regulations to facilitate that. Therefore, appeals against the refusal of civil legal aid or the refusal of additional funding will be heard by a three-person appeal panel, the presiding officer of which will be a practising lawyer. We hope to have some wider experience on the panels, but we expect a number of lawyers to be involved.

Mr Elliott: Is an appeal panel's decision final?

Mr McGuckin: An appeal panel's decision is final. It is subject to oversight by the High Court through the judicial review process. Therefore, a decision by an appeal panel can be judicially reviewed, but it

will not go back to the director of legal aid casework for ratification. A panel's decision, once taken, is final.

Mr Elliott: I am just thinking of the Agriculture Department's appeals process, whereby the Department can overturn an appeal decision that finds in favour of an applicant. This is not like that.

Mr McGuckin: No, it is not like that. To be fair, when we developed our proposals, we looked very carefully at what was happening in England and Wales. The Joint Committee on Human Rights at Westminster voiced concerns about the independence of the overall process. In our view, the independent appeal panel and the construction that we have now will underpin the independence of decision-making.

Mr Anderson: For clarification, when you say that the independent appeal panel will be a three-person panel, will that involve three specific people or will three persons with specific expertise in various areas be chosen? Will three specific people sit on the panel forever and a day until they are replaced, or can you choose from a number of people with expertise in a number of areas?

Mr McGuckin: We are working up the detail of the proposals, and we will bring those to the Committee as part of the regulations. The intention is, effectively, to have two panels of people. One panel will comprise the chairs or presiding officers of individual appeal panels, and there will be another panel from which to draw members. We hope that, if there were a set of appeals for a specific class of cases, you would try to make sure that you had people with appropriate experience on the panel. We are not seeing a significant number of appeals coming forward. Something like 70% of initial applications are awarded on the first or second pass.

We plan to improve the administrative processes so that, when an application is refused, the applicant gets detailed reasons for that refusal. If those reasons amount to a deficiency in the application, they will be able to address those when they make a second application, because they will have been provided with the detail. If an application is refused because it sits outside the remit of the scheme to which they have applied, that will be made clear. Through that process, we hope to reduce the number of cases that are refused and reach the appeal stage. Therefore, the appeals panels will hear a much smaller number of appeals.

Mr Anderson: So there could be two appeal panels.

Mr McGuckin: It could be several appeal panels.

Mr Anderson: A number of people will be appointed to sit on those appeal panels.

Mr McGuckin: Yes.

Ms Broderick: The only other issue is the Attorney General's amendment, if you want me to address that.

The Chairperson: I had not really planned to ask you about it, to be honest.

Ms Broderick: OK.