

ORAL STATEMENT ON MINISTERIAL RESPONSE TO THE ACCESS TO JUSTICE REVIEW

On 13 September 2011, I announced the publication of the final report of the Access to Justice Review and invited views on its 159 conclusions and recommendations. I have considered the responses very carefully, and I am today publishing my formal response to the Review, together with a Departmental Action Plan setting out the 38 reforms I propose to take forward within the life of this Assembly. The projects set out in the plan cover more than 100 of the 159 recommendations in the final report of the Access to Justice Review. The Plan will be a living document and further reforms may be added to it if I conclude that they are necessary, and that it is feasible for my Department to deliver results within a meaningful timescale.

I said when I was elected Justice Minister that my goal is to create a better justice system for everyone. For people who are victims of crime, for those involved in seeking redress through the civil law, or who need the assistance of the legal system to resolve family or other disputes, for those who are called to give evidence and for those facing prosecution as defendants.

The Access to Justice Review has made a very significant contribution to my thinking about how to achieve that goal, and I am grateful to all who made submissions to the Review team and who provided comments as part of the public consultation.

Today I want to set out the programme of work that I will take forward. I have set three strategic objectives in the Departmental Action Plan:

- improving access to justice;
- bringing legal aid expenditure within budget; and
- improving governance and accountability.

While each of these three objectives is important, I want to stress the particular importance that I attach to the first – improving access to justice. It is perhaps inevitable that coverage of my statement today will focus on the aspects that are aimed at bringing expenditure within budget. But the

Access to Justice Review was about much more than that, and so is my response. Indeed, half of the 38 projects within the programme are aimed at improving access to justice. That reflects my desire to see real and lasting improvement in the justice system, and to ensure that the justice system plays its full part in creating a fair and just society. It is also an indicator of just how much work will be needed to achieve that.

Another 12 projects are aimed at the second objective of bringing legal aid within budget. The high cost of legal aid has been one of the most common complaints that I have received, from members of the public and from MLAs on behalf of their constituents. Few would deny that certain aspects of the arrangements for the provision of legal aid here have been too generous. The challenge that faces all of us who are committed to access to justice, is to maintain and improve such access but to do so on a real value-for-money basis. I am determined that we will not go down the path being followed elsewhere, whereby budgets are cut by reducing the scope of support for those who genuinely need assistance in accessing justice. Rather, we must work together – elected representatives, the legal profession, voluntary and community organisations – to develop and deliver reforms that are both effective and affordable.

The reform programme set out in the Action Plan also includes 7 projects intended to improve governance and accountability. That is another area where there has been significant public concern, as well as critical reports by the Northern Ireland Audit Office and the Public Accounts Committee. The Justice Committee has also expressed its concern about accountability for legal aid expenditure.

Addressing issues of accountability and ensuring that proper measures are in place to protect against fraud has to be a priority and the Plan reflects that. I am confident that my proposed reforms, and other improvements in governance already underway, will address the problem, but if more work is required it will be taken forward as quickly as possible.

When I published the final report of the Review last year, I said that consultation would not hold up work to deliver necessary reforms, and it has not. I have already acted on some of the

Review recommendations, and work has begun on 25 of the 38 projects listed in the Departmental Action Plan.

Indeed, work on some of the Review recommendations has been completed. For example, the Review commented on the need for tight and precise criteria for decisions on how many counsel should be funded in cases in the Crown Court, and new, tighter criteria were introduced in April 2012. Experience to date suggests that the new rules will save £2m each year, more than originally anticipated.

The Review recommended the introduction of a new power for the Northern Ireland Legal Services Commission to recover money from convicted defendants where it becomes clear that they can afford to pay for their own defence. Since I became Justice Minister, Members - and constituents - have raised a number of high profile cases with me, where convicted defendants had received legal aid but it subsequently became clear that they were well able to pay the fees for their defence teams.

I am pleased to tell the Assembly that I have made new Rules to allow costs to be recovered in such cases, and the Rules were laid before the Assembly this morning. The Rules, which will introduce Recovery of Defence Costs Orders, will come into force in the autumn after the start of the new legal term.

In other areas good progress is being made. I accepted the Review recommendations that my Department should seek to develop partnerships with the voluntary and advice sectors, and that we should make more use of pilot projects. A pilot project to help people facing court action for housing repossession or eviction for rented accommodation, by way of grant funding for the Housing Rights Service, is now underway. In addition to providing funding, we have also found a way to expand this service to the whole of Northern Ireland, to areas where it was not previously available, and this is now being rolled out.

Work has also begun on developing an alternative approach to what are known as “money damages” cases. The Review recommended that such cases, which include claims for such things as injury from tripping, should be removed from the scope of legal aid once an alternative approach had been

developed. The Legal Services Commission has been working for some months, in discussion with the legal profession and representatives of the insurance industry, to develop alternative arrangements, and good progress has been made. That is the kind of constructive engagement that I want to see replicated across the wider programme of work.

Other projects within the programme have the potential to bring yet further improvements to the justice system. The provision of early legal advice is very important in ensuring that both criminal and civil cases progress quickly and get the right result. The current system for funding early advice, known as the “green form” scheme, is regarded by all, including the legal profession, as administratively time-consuming yet provides very poor financial control. The Plan includes a project to review the “green form” system, and to develop a better approach. I believe that this should be widely welcomed.

I have also commissioned a mapping exercise to explore the current use of alternative dispute resolution mechanisms in the justice system. As I have said on many occasions, I believe that there is scope for better use of such approaches, both to avoid some time-consuming and expensive court proceedings and, where appropriate, to support proceedings. The mapping exercise will begin work in that area.

I will also be commissioning a review of the legal needs of young people. While my Department gathers and considers a wide range of information about legal needs and experiences, it does not at present have sufficient understanding of the legal needs of young people and children, and I do not believe that we should assume that they have the same needs as adults in the justice system. I am, therefore, commissioning research to ensure that the Department’s policy development can be properly informed in respect of the needs of children and young people.

Turning to my second strategic objective, that of bringing legal aid within budget, Members will be well aware that there has been significant public criticism of the high cost of legal aid, and that the Northern Ireland Audit Office has been very critical of the extent to which expenditure has exceeded the available budget.

Since taking up office, I have made significant improvements to legal aid. But more needs to be done. Although I have brought through reforms that will save £20m each year, that isn't yet enough to bring legal aid expenditure within the annual budget, which will reduce to £75m by 2014/15. The progress made in relation to criminal legal aid must now extend to civil legal aid, and the Plan includes 12 projects which will make further savings of more than £8m each year when fully implemented, and I am confident that we can make enough progress on these reforms to bring legal aid within budget by 2014/15.

There will be a comprehensive review of remuneration for legal representatives in civil legal aid, with a view to putting in place more accountability, as has already been done for criminal legal aid. I estimate that this work will deliver savings of some £4m each year. Work on this has begun.

A review of the arrangements for funding legal representation in civil cases is already underway, and I plan to bring forward proposals for new criteria, again drawing on the criminal legal aid work, in the autumn. This project is expected to save some £3m each year.

A comprehensive review of legal aid fees in magistrates' courts is well advanced, and I plan to publish proposals for consultation in the autumn, and a review of fees in the Crown Court will commence in January of next year.

I have also commissioned work to consider the introduction of a fixed means test for criminal legal aid, and to review the existing means test for civil legal aid. In developing any proposals, I will consider very carefully any impact on access to justice, to ensure that legal aid remains available for those who really need it. This work is underway, and I plan to publish proposals by next year.

Taken together, I am confident that all of the projects which focus on legal aid expenditure should bring legal aid within budget by 2014/15, and will ensure that it remains within budget thereafter.

My third and final strategic objective is the improvement of governance and accountability where there has been criticism by the Northern Ireland Audit Office, the PAC and the Justice Committee. Members have also raised this individually, through correspondence and Assembly Questions. Seven projects in the Plan aim to address this. They include the introduction of a compulsory registration scheme, whereby those legal practitioners wishing to undertake work funded by legal aid must sign up to agreed standards, and improvements in the internal management information and IT systems operated by the Legal Services Commission.

The potential for fraud in legal aid has been a particular concern, as highlighted recently by the Comptroller and Auditor General in his report on the Northern Ireland Legal Services Commission's 2010-11 accounts. The Action Plan includes two projects which relate directly to the PAC and auditors' concerns, with one project specifically to address the issue of potential fraud.

Accountability is a critically important issue for all government departments, and I will commission further work if required to ensure that proper accountability for legal aid is put in place and maintained.

I have today set out my reform programme in some detail. I believe that it can deliver real improvement in the justice system, in a meaningful timescale. I will work with the judiciary, the voluntary sector, legal profession, other Departments and statutory agencies to ensure that it does so.

DEPARTMENTAL ACTION PLAN 2012-15

PROJECTS

Note: the projects in the action plan are grouped according to their contribution towards one of three strategic objectives:

- Improving access to justice
- Bringing legal aid expenditure within budget
- Improving governance and accountability of legal aid

No.	Title	Description	<u>Milestone 1</u> Project starts	<u>Milestone 2</u> Public consultation	<u>Milestone 3</u> Target for completion
Strategic Objective 1: improving access to justice					
1	Reduce delay	Examine the causes of delay in the criminal justice system. (AJR 3)	Project has begun	N/A	2013
2	Legal needs of children and young Persons	Commission and publish research into the legal needs of children & young people. (AJR 42)	Autumn 2012	N/A	2013

No.	Title	Description	<u>Milestone 1</u> Project starts	<u>Milestone 2</u> Public consultation	<u>Milestone 3</u> Target for completion
3	Accredited solicitors / solicitor advocates	Develop policy for legal aid remuneration and quality assurance for solicitors exercising rights of audience. (AJR 140, 141, 142)	<u>Magistrates courts:</u> project has begun	Autumn 2012	2013
			<u>Crown Court:</u> January 2013	2013	2014
			<u>Civil legal aid:</u> autumn 2012	2013	2014
4	On call duty scheme	Develop and implement a system to deliver early legal advice to persons in custody, to agreed quality standards. (AJR 24, 26, 27, 28)	Autumn 2012	2013	2013
5	Alternative approaches for funding (e.g. grant funding/ contracts)	Develop different approaches to the funding of civil legal advice and assistance to improve support for the assisted person, and implement pilot projects to test those approaches. (AJR 52, 53, 58, 101, 127, 129)	Project has begun	2013 for general approach (individual pilots may not need consultation)	2013

No.	Title	Description	<u>Milestone 1</u> Project starts	<u>Milestone 2</u> Public consultation	<u>Milestone 3</u> Target for completion
6	Basic legal advice ("Green form" scheme)	Develop a new system for the provision of basic advice and assistance. (AJR 55, 56)	2012	2013	2013
7	Expert witnesses	Conduct a review of the use of expert witnesses and make recommendations to improve their use to speed up proceedings and better manage costs. (AJR 73, 74, 119)	Project has begun	2013	2013
8	Alternative to money damages	Consider an alternative mechanism for the funding of money damages cases which secures and improves access to justice. (AJR 90, 91, 92, 93, 95)	Project has begun	2013	
9	Alternatives to money damages - communication	DOJ to heighten awareness of the potential role of legal expenses insurance. (AJR 90, 91, 92, 93, 95)	Autumn 2012	2013	2013
10	Exceptional grant inquests	Review the use of exceptional grant funding. (AJR 111, 112, 113, 114, 115)	Project has begun	2013	2013

No.	Title	Description	<u>Milestone 1</u> Project starts	<u>Milestone 2</u> Public consultation	<u>Milestone 3</u> Target for completion
11	Single guilty fees	Consider setting a single fee for all guilty pleas in criminal cases, as part of the Reviews of magistrates' courts and Crown Court fees. (AJR 29, 30)	<u>Magistrates courts:</u> project has begun	2013	2013
			<u>Crown Court:</u> January 2013	2013	2014
12	Diversionsary interventions	Urgent consideration is given to introducing prosecutorial fines and implementing the diversionsary interventions legislated on to date, and the continuing development of restorative justice and youth conferencing. (AJR 34)			2013
13	Mixed Model	Develop a mixed model for the delivery of advice and assistance. (AJR 43)	2013		2015

No.	Title	Description	<u>Milestone 1</u> Project starts	<u>Milestone 2</u> Public consultation	<u>Milestone 3</u> Target for completion
14	Advice/ Voluntary Sector	Develop partnerships with the advice and voluntary sector. <i>(AJR 44, 45, 46, 51)</i>	Autumn 2012		2015
15	Early advice in respect of diversionary measures etc.	To ensure that children, young people and adults have access to appropriate advice so they are in a position to give informed consent when offered diversionary measures, pre-court advice, including the advice provided at police stations. Review legal advice provided outside police stations. <i>(AJR 25, 35, 36, 37)</i>			2014
16	Contingency planning	Undertake contingency planning to ensure continuity of provision of publicly funded legal services. <i>(AJR 39)</i>	Project has begun	May not be required	2014
17	Civil Justice Council	Consider setting up a Civil Justice Council. <i>(AJR 155, 156)</i>	2013		2014

No.	Title	Description	<u>Milestone 1</u> Project starts	<u>Milestone 2</u> Public consultation	<u>Milestone 3</u> Target for completion
18	Scope review of operation of family justice system	Consider how a review of the operation of the family justice system could be taken forward	2012		2013
19	Alternative dispute resolution	<p data-bbox="479 544 819 568">(AJR 68, 69, 70, 84, 89)</p> <p data-bbox="479 580 920 679">Promote and support a suite of alternative dispute resolution mechanisms.</p> <p data-bbox="479 692 1032 794">(AJR 48, 50, 59, 60, 61, 62, 63, 64, 65, 66, 67, 79, 80, 81, 82, 83, 102, 104 & 107)</p>	Dependant on outcome of scoping exercise (project 18)		N/A

No.	Title	Description	<u>Milestone 1</u> Project starts	<u>Milestone 2</u> Public consultation	<u>Milestone 3</u> Target for completion
Strategic objective 2: bringing legal aid within budget					
20	Future structure for service delivery	Examine the future structures for the delivery of legal aid. (AJR 145, 147, 150, 151, 152)	Project has begun	N/A	2012
21	Introduce Recovery of Defence Costs Orders	Introduce the power to recover costs from convicted defendants with sufficient funds and consider scope to recover funds which have been confiscated. (AJR 31, 32) [Estimated saving: £200k p.a.]	SL1 stage completed on 24 May 2012	3 February – 27 April 2012	Completed June 2012
22	Fixed means test for criminal legal aid	Conduct further work prior to introducing a fixed means test for criminal legal aid in the magistrates' court and consider further privately funded defendants. (AJR 13, 14, 15)	Project has begun	2013	2013
23	Review of magistrates' courts fees	Review of the 2009 Rules governing remuneration for criminal cases in the magistrates' courts. (AJR 17, 18, 24)	Project has begun	2012	2013

No.	Title	Description	<u>Milestone 1</u> Project starts	<u>Milestone 2</u> Public consultation	<u>Milestone 3</u> Target for completion
24	Civil legal aid remuneration	Review the levels of remuneration for civil and family cases with a view to identifying the necessary savings for legal aid to live within budget by 2014/2015. (AJR 54, 85, 86, 87, 88, 116, 117, 118, 130) [Estimated saving: £5.6m p.a.]	<u>Civil legal aid</u> : project has begun	2012	2013
			<u>ABWOR</u> : autumn 2012	2013	2013
25	Level of representation in civil and family cases	Review the levels of representation in civil and family proceedings at the magistrates' court, County Court and the High Court. (AJR 71, 72, 75, 76, 77, 78) [Estimated saving: £2.8m p.a.]	Project has begun	2012	2013
26	Financial eligibility	Review financial eligibility for civil legal aid. (AJR 120, 121, 146)	Project has begun	2013	2013
27	Funding Code	Complete development and introduce the Funding Code - being developed by the Legal Services Commission – to prioritise funding for more serious legal problems. (AJR 40, 41, 126, 180)	Project has begun	2014	2014

No.	Title	Description	<u>Milestone 1</u> Project starts	<u>Milestone 2</u> Public consultation	<u>Milestone 3</u> Target for completion
28	Representation	Review the level of representation in criminal proceedings in the magistrates' court and Crown Court. (AJR 16, 21) [Crown Court. savings estimated at £2m p.a.]	<u>Crown Court:</u> project has been completed	Completed in 2009	Completed in April 2012
			<u>Magistrates courts:</u> Project has begun	2012	2013
29	Review of Crown Court fees	Conduct a Review of the 2011 Rules governing remuneration for cases in the Crown Court. (AJR 20)	January 2013	2013	2014
30	Scope of civil legal aid	If further savings are required, consider reducing what legal aid is available for – the scope of legal aid. (AJR 45, 109,125)	Dependant on outcome of other projects		2014
31	Clinical negligence	Review legal aid funding of clinical negligence cases. (AJR 98)	2012	2013	2014

No.	Title	Description	<u>Milestone 1</u> Project starts	<u>Milestone 2</u> Public consultation	<u>Milestone 3</u> Target for completion
Strategic objective 3: improve governance and accountability					
32	Legal aid appeals	Introduce a new mechanism for legal aid appeals and improve decision making. (AJR 122, 123, 124)	Project has begun	Not required Report to PAC by end 2012/13	2013
33	Management information project – legal aid forecasting	Develop an accurate forecasting model for legal aid, including a reliable mechanism for average case costs. (AJR 6, 7, 9, 10, 12)	Project has begun	Not required Report to PAC by end 2012/13	2013
34	Compulsory registration scheme	Develop and implement a compulsory registration scheme for solicitors conducting legally aided cases (AJR 97, 132, 133, 134, 135, 136, 137, 138)	Project has begun	2013 (if required) Report to PAC by end 2012/13	2014
35	NILSC IT improvement	Develop and put in place replacement for NILSC case management system. (AJR 149)	2012	Not required Report to PAC by end 2012/13	2015
36	Management information project – justice system forecasting	Develop an integrated forecasting system on a justice wide basis. (AJR 6, 7, 9, 10, 12)	2013	Not required Report to PAC by end 2012/13	2015

No.	Title	Description	<u>Milestone 1</u> Project starts	<u>Milestone 2</u> Public consultation	<u>Milestone 3</u> Target for completion
NIAO/PAC: governance/accountability projects in response to NIAO/PAC reports					
37	Counter-fraud project	Develop and implement an effective counter-fraud strategy, leading to lifting of the current qualification of the NILSC's accounts.	Project has begun.	Not required Report to PAC by end 2012/13	2015
38	Integrated remuneration strategy	With PPS, develop a common approach to the remuneration and governance of publicly funded legal services within the justice system.	Project has begun	Not required Report to PAC by end 2012/13	2013

