

THE **LAW SOCIETY**
OF NORTHERN IRELAND



NI Assembly – Committee for Justice
Consultation
THE JUSTICE BILL

**Response of the Law Society of
Northern Ireland**

March 2025

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ABOUT THE LAW SOCIETY

The Law Society of Northern Ireland (the Society) is the professional body for solicitors, regulating and representing all solicitors in Northern Ireland.

The Society represents c.3000 solicitors working throughout Northern Ireland in approximately 440 firms in the private sector, and practitioners in the public sector, in business and in the community and voluntary sector. Members of the Society thus represent members of the public, small, medium, and large enterprises, government bodies and charities, making the Society uniquely placed to offer constructive comment on policy and law reform proposals across a broad range of topics.

March 2025

RESPONSE

The Law Society of Northern Ireland (the 'Society') welcomes the opportunity to provide a response to the NI Assembly Committee for Justice's Call for Evidence on the Justice Bill. Rather than providing commentary on all Clauses contained within the Bill, the Society has focused its response on the areas set out below which are of most relevance to its members.

Part 1: Biometric Data

The retention of biometric data intersects closely with Article 8 of the European Convention on Human Rights (ECHR), which provides for the right to respect for private and family life. However, this right is subject to limitations, and the competing interests of the State and individual. The European Court of Human Rights (ECtHR) has held that the retention of fingerprints and DNA pursues the legitimate purpose of the detection and, therefore the prevention of crime.¹

Definition of Biometric Data

The Bill's current definition of "biometric data" is limited to fingerprints and DNA, leaving out other data types that are increasingly relevant. This narrow interpretation raises concerns about whether it fully captures the breadth of biometric information now in use.

In today's technological landscape, biometric data goes far beyond just DNA and fingerprints. Facial recognition technology which is widely deployed via CCTV systems and databases that match faces with mugshots illustrate how the scope of biometrics has expanded. Other forms, including voice recordings, iris scans, and behavioural identifiers such as gait analysis, are either already in use or on the horizon for police and law enforcement. It is important that the definition is wide enough to capture developments in biometric data, and this should be aligned with established frameworks, such as the definition contained within Article 4(14) of the UK General Data Protection Regulation (UK GDPR):

"Personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data."

¹ *S and Marper v United Kingdom* [2008] ECHR 880 – para 100

Moreover, the Bill does not explicitly include custodial photographs within its definition of biometric data. The Information Commissioner's Office (ICO) has previously noted while a photograph itself does not constitute biometric data; it can acquire biometric status if specific technical processing takes place. There is a need for further consideration on whether this should be provided for in the Bill, particularly as the taking and retaining of custody photographs can interfere with an individual's rights under Article 8 of the ECHR.²

It is noted that the proposed inclusion of Article 63Z(4) to the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE Order), the Northern Ireland Commissioner for the Retention of Biometric Material is tasked with keeping "under review" both existing and emerging biometric technologies that may be used by law enforcement. The Society welcomes this provision as a proactive step to future-proof the legislation as it may be an appropriate way in which to ensure review of the definition going forward so that it continues to encompass all emerging biometric technologies.

New retention model

The current position in Northern Ireland of indefinite retention of biometric data diverges from that in other local jurisdictions, as well as across the European Union. The Society welcomes the move away from the indefinite retention period for biometric data to a new model which includes the creation of maximum retention periods. This helps to align the position in Northern Ireland with standards across other local jurisdictions and at EU level.

The practice of indefinitely retaining the DNA of an un-convicted person was challenged in *S and Marper v United Kingdom* [2008] ECHR 880. The European Court of Human Rights (ECtHR), in applying a four-stage analysis, found that it created an unjustified interference with the right to private life under Article 8. It also set out that where a person is convicted, the level of the offence is also relevant. In response to this judgment, the Department of Justice brought forward amendments under the Criminal Justice Act (Northern Ireland) 2013. However, these have never been commenced.

In *Gaughran v UK* (2020), the ECtHR found that the current policy and practice of the indefinite retention of NDA profiles, fingerprints, and photographs of individuals convicted of a criminal offence violated Article 8 of the ECHR. The ECtHR also noted that the retention period should reflect both the gravity of the offence and the evidence retention needs.

² *Gaughran v UK*

The above rulings emphasise that any biometric retention regime must be proportionate and respect individuals' right to privacy. The new model should take into account the factors highlighted in both these judgments. In addition, at an EU level, there are provisions under the EU GDPR and EU Law Enforcement Directive which set out principles around the handling of personal data and safeguards for the protection of personal data. These remain relevant to Northern Ireland under Article 2 of the Windsor Framework.

It is necessary to ensure that the new retention model:

- is proportionate to the aims of detection and prevention of crime
- does not disproportionately interfere with the right to private life (Article 8 ECHR)
- considers the seriousness of the offence(s) committed and the need to retain the data
- provides an opportunity for an individual to challenge the continued retention of their biometrics
- reflects reoffending patterns

Moreover, in *Gaughran*, the Court specifically noted the “*absence of any real possibility of review*” as a key failing in the system. Therefore, the Society welcomes the requirement for the Department to make regulations to set out a review process for long term retained material by the Chief Constable under Article 63U of the Bill. However, there is a need for clear guidance and standards on how this would operate in practice. It is also important that the regulations set out clearly the grounds on which an individual may be able to apply to the Chief Constable to request the destruction of their material.

Power to extend the retention period

The Society welcomes the safeguards to be introduced under Article 63S to the PACE Order, which require the Chief Constable to seek a District Judge's order to extend the retention of biometric material beyond its scheduled destruction date. It is important that individuals can access legal representation for these applications through Legal Aid under a criminal certificate to ensure access to justice.

This requirement effectively prevents any unilateral decision by the Chief Constable to retain material indefinitely. By vesting the decision-making power in a District Judge, they will assess whether there are substantial grounds for believing that extending retention will assist in protecting life, preventing serious harm, preventing serious crime or disorder, or

aiding in the identification of an individual. Additional assessment for its proportionality considering Article 8 ECHR, and relevant case law, will ensure that this power to extend the retention periods is not mishandled.

Commissioner for the Retention of Biometric Material

The Society notes the plans under the Justice Bill to expand the role of the Northern Ireland Commissioner for the Retention of Biometric Material to have independent statutory oversight of the acquisition, retention, use and disposal of biometric data to be included as Articles 63B to 63R of the PACE Order. Independent oversight is helpful to enhance transparency, public confidence, and compliance with human rights obligations and standards. However, the expanded remit of the Commissioner must be clearly defined to avoid any potential overlap with any other Commissioners, and so that it complements other existing bodies.

Additionally, it should be noted that biometric data is classified as a 'special category' of personal data under Article 9(1) of the UK GDPR and the Data Protection Act 2018. Given its heightened sensitivity, these types of data warrant enhanced protection through more rigorous safeguards. Expanding the role of a clearly defined Biometrics Commissioner will help ensure that these additional protections are effectively implemented and maintained.

The expansion of the remit of the Commissioner to keep under review both existing and emerging biometric technologies used by the PSNI and other public bodies for law enforcement is welcome to ensure the regime can adapt to external developments. This process should take into account the views from a range of stakeholders.

Views on proposed amendments

In relation to the proposed amendment in respect of a statutory power of the PSNI to require a person to return to a police station later for a photograph, it is noted that this includes a power to dictate a time and place for photographs to be taken. The ability to specify a precise date and time might be overly rigid and there may be merit in adopting a more flexible approach, setting out particular timeframes.

In respect to the proposed grace period available to the PSNI for deleting DNA and fingerprint material from 14 to 28 days, while it is important to factor in time to apply to the Biometrics Commissioner, it is important that material is not retained for longer than necessary.

Other

Lastly, it is important to consider the interlink between the provisions in this Bill and Legacy cases. The implementation of the provisions contained within the Criminal Justice Act (Northern Ireland) 2013 which aimed to create a compliant regime following the ECtHR judgments was delayed due to concerns about undermining investigations into unresolved Troubles-related cases in Northern Ireland. The Independent Commission for Reconciliation and Information Recovery (Biometric Material) Regulations 2024 provide for the retention of biometric material that must otherwise be destroyed under various statutory destruction provisions for use by the ICRIR in conducting investigations into Troubles-related deaths. However, it will be important to consider the wider regime around this particularly in the context of the UK Government's current plans to address the legacy of the past in Northern Ireland. This may be an area which could be considered further by the Commissioner in conjunction with other stakeholders.

Part 2: Children

The provisions within Part 2 of the Bill seek to address bail and custody arrangements relating to children. While reform to the youth justice system is welcome, the Society would like to highlight several concerns in relation to bail and custody arrangements for children.

It is vital that international best practice and standards are adhered to in relation to the custody and bail arrangements applied to children. For example, the United Nations Conventions on the Rights of the Child states that children should only be arrested, detained, or imprisoned as a last resort and for the shortest time possible.

Clauses 4 and 5 require custody officers to take into account a range of additional factors including the public order threat of arrested individuals, the child's records, and the maturity and capacity of the child. As it stands in Northern Ireland, the police are afforded broader powers to detain children than the courts, and it has been highlighted in previous reports, including by the NI Law Commission, that this inconsistency contributes to a large number of short-term admissions to juvenile centres.

Studies have shown that children illustrate greater levels of risk-taking behaviour, and that early contact with the criminal justice system can have detrimental effects on children. This is known as the revolving door effect, owing largely to the complex backgrounds of children who encounter the criminal justice system. Children in contact with the criminal justice system frequently have additional needs and require more specialised advice and assistance to understand their bail conditions and the court processes. Solicitors play an important role in that process.

These same considerations apply to Clauses 6 and 7 of the Bill which address the right to bail, conditions of bail, and arrest for absconding or breaking bail conditions. The age, maturity, and capacity of a child to understand their bail conditions and the decisions being made by police and the courts must be a foremost consideration. Article 12 of the Criminal Justice (Children) Order 1998 provides for the presumption of bail in relation to children. The Youth Justice Agency recommended a strict adherence to this statutory presumption, supported by the provision of bail information and support services, proportionate and realistic bail conditions where necessary and the availability of appropriate accommodation. The Society would recommend that bail conditions only be placed on children where absolutely necessary and that a record of decisions be provided in age-appropriate language to the child and their legal representative. This should also apply to

Clause 14 where a court must give their reasons for detaining a child for longer than 3 months in an open court.

Clause 8 addresses accommodation for children on bail, and this is an area of significant concern to the Society and other stakeholders. It has been highlighted over the years that children are often remanded in custody and refused bail solely because of a lack of accommodation. The Youth Justice Agency and Law Commission have previously advised on the development of appropriate emergency, short-term, and long-term accommodation for children, with appropriate resources for agencies such as Extern, MindWise, and the Youth Justice Agency. The Society would echo those recommendations to avoid children being remanded in custody unnecessarily.

The Society is aware of several pilot solutions, such as bail fostering within certain Trust areas, that have proven successful. However, it must also be acknowledged that young people have raised concerns that bail fostering adds additional stress onto an already complex situation and may not be appropriate for every child. Bail support services should also be expanded to all children facing a bail decision, as this would provide equality of provision, especially for male children. Support should also be provided for the adults taking care of children on bail to ensure the wellbeing of the child. The importance of adult supervision during bail cannot be overstated.

In relation to clauses 13 to 17 of the Bill concerning places of detention, the Society welcomes the clarification in the law that children should not be detained with adults. The increased maximum age for remand in youth detention centres along with the removal of custody care orders for children under 14 is also welcome. The United Nations Convention on the Rights of the Child recommends that the minimum age of criminal responsibility be set at a minimum of 14. The Department of Justice had issued a consultation on this issue in 2022, in which the Society supported the increase to a minimum of 14, with consideration for further increase in the future. It is therefore welcome that many of the Bill's provisions apply only to children between 14-18, and that more focus will be placed on community support for children aged 10-13.

Part 3: Live Links

The Society welcomes the inclusion of Clauses 20 and 21 within the Bill to formalise the use of Live Links for police interviews and extensions of detention. Solicitors and their clients alike have availed of remote attendance at interviews, which has resulted in a number of benefits, including reducing delay, travel and waiting time.

Within remote processes, the rights of the interviewee and detainee must be observed at all times, including access to confidential and private consultation with a legal representative, as well as access to medical advice whilst in a Police Station. Legal representatives should also be kept fully informed at all times.

In respect of the provision within Clause 20 which allows a custody officer to transfer physical custody of a detainee to an officer who is not involved in the investigation and who would be responsible for facilitating the live link interview with the investigating officer, it is important that roles and responsibilities are clearly defined.

It appears to the Society that appropriate safeguards have been put in place to protect the rights of detainees. In particular, the inclusion of conditions requiring them to receive legal advice on the use of Live Links and giving the appropriate consent are welcomed. Specific reference to “the arrested person’s solicitor” or “legal representative” within the various definitions of Live Link is also welcome. However, as noted above, it is important that individuals are able to seek legal advice at all stages in the process.

Codes of Practice to reflect the changes must be updated so they set out the procedures clearly. For example, it is important that there is an obligation for documents to be supplied to a representative involved in the process via remote means and provision should be added to ensure that legal representatives are kept updated at all times, ensuring that their representations can be made before any decisions are made.

It is important to note that the quality of the internet connection within custody suites can sometimes be a difficulty. To address this, steps should be taken to ensure that live link interviews and hearings are conducted to a satisfactory standard whereby attendees are visibly identifiable and what they say can be clearly heard and understood. This should involve additional investment where necessary.

Part 4: Administration of Justice

Administration of Justice – Criminal Proceedings

Clause 25 of the Bill aims to close the gap in existing legislation. It is important that all remedies are open to the accused. Whilst ‘No Bills’ are rare in practice; it is vital that the legislation is tidied up to close the loophole and ensure that no issues are presented for the accused and complainant/victim.

A potential concern in respect of this Clause would be when direct transfers come into operation as issues and questions can usually be raised at the committal stage.

Legal Aid – Statutory Charges Register

Clause 27 proposes to amend Schedule 11 of the Land Registration Act (Northern Ireland) 1970 by including certain charges created under Article 12(5) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 and Article 17(7) of the Access to Justice (Northern Ireland) Order 2003. Such a charge is described by the Legal Services Agency (the Agency) as a Statutory Charge.

Currently the Agency registers the amount due under a Statutory Charge against the title to a property owned by the person who has benefitted from the receipt of Legal Aid to protect the Agency’s interest and to alert potential purchasers and mortgagees to the existence of the Statutory Charge. This will be registered as a mortgage in the Registry of Deeds where unregistered title is involved and as a charge in the Land Registry where registered title is involved.

This new Clause provides an opportunity for the Agency to have a further mechanism available to it to secure its interest in recovering a Statutory Charge through registration in the Statutory Charges Register. The main function of this Register is to record charges and restrictions that arise under statutory provisions, rather than charges that have been created by owners of land. One of the advantages for the Agency of using this Register is that the Agency will not have to investigate whether the title to the property to be charged is registered or unregistered. The Register is map-based and all applications for registration must be accompanied by a map which accurately identifies the property.

Whilst the Society has no objection in principle to the Clause, it is unclear to us whether this Clause is meant to serve as an alternative to the existing arrangements involving

formal registration of a legal mortgage or charge against the title holder or whether it is to be used in conjunction with those existing arrangements.

We also consider it would be prudent to ensure that these changes have been considered in light of impending changes to the Land Registry Digital Registration Platform.

In due course an extensive awareness raising programme will be required to ensure that the processes to be adopted by the Agency going forward to secure a Statutory Charge and the consequences thereof are fully understood by members of the public and the solicitor profession.

Legal Aid – Taxation

Clause 28 will insert a new section 59A of the Judicature (Northern Ireland) Act 1978, which will preclude the High Court and Court of Appeal from granting orders of taxation for legal aid costs where the Department has the necessary legislation and administration in place to determine payment for those services. The aim of this clause appears to be to restrict the role of the Taxing Master in legal aid cases. This is of major concern to the Society and its members as it will result in a significant departure from the existing arrangements, which we consider are currently operating appropriately in relation to the assessment and payment of solicitors' professional fees.

The Explanatory and Financial Memorandum to the Bill state that the *“provisions will not be commenced, and will therefore have no effect, except where this is done, on a project-by-project basis, to enable the proper operation of any new remuneration systems as they are developed”*. There is a complete lack of clarity on what alternative measures may be considered by the Department of Justice and how future commencement decisions may be made or brought into force. This approach raises considerable concerns on the ability of the Justice Committee and wider Assembly to adequately and properly debate and scrutinise any projects relating to this provision. In our view this is a risky approach to adopt and will have the ultimate effect of reducing accountability and oversight.

The Department of Justice is currently undertaking an Enabling Access to Justice Reform Programme, which consists of five pillars. One of these pillars relates to a review of the taxation assessment process. This project is still at an early stage, proposals for the first phase being still awaited. We therefore consider that the inclusion of this Clause is premature and that it should be removed from the Bill. It can be legislated for, if required,

once alternative arrangements have actually been developed, articulated and consulted upon. The sequencing process between consultation, reviews and bringing forward provisions within legislation appears to be somewhat out of sync.

The Society believes that the current process of Taxation under Order 62 of the Rules of the Court of Judicature whereby a solicitor submits their bill in respect of a case to the Taxing Master who assesses and determines the amount of legal costs to be paid should not be changed. At present solicitors prepare a detailed Bill of Costs in relation to the work undertaken and the disbursements incurred by them, often engaging a Cost Drawer to assist. This involves the preparation and production of an itemised Bill which details on a line by line basis every step taken in the case to include all attendances with clients and their witnesses, all correspondence and telephone calls in and out, the instruction of experts, consultations and attendances at court etc. Each item should relate back to the file. Vouching documentation is required to be lodged in relation to any disbursements and Court Orders made.

The Taxing Master has the responsibility of assessing whether work was reasonably and properly undertaken. The body of evidence supplied to inform this process undergoes close and careful scrutiny. This process ensures that the level of remuneration is reasonable and appropriate. We consider that as regards solicitors' fees it is transparent and thorough and should not be replaced or amended. To remove it may lead to unintended consequences including for example discouraging practitioners from undertaking Legal Aid work, which would exacerbate the current crisis within Legal Aid and would ultimately have a fundamental impact on the ability for the most vulnerable in our society to access justice.

Whilst the Public Accounts Committee recommended change to this process due to its concern that taxation is not subject to audit or accountability through the normal government procedures, it is unclear how much detail they were supplied with in respect of the process insofar as it relates to the assessment of costs due to solicitors. Figures provided by the Department for the years 2013-2014 until 2016 highlighted that 90% of bills were reduced after taxation. Whilst this was subject to major criticism, it is important to highlight that this demonstrated the ability of the Taxing Master to reduce bills where appropriate. In addition, the position has somewhat changed since that report, particularly given the lack of uplift and reform to Legal Aid fees. Whilst the Taxing Master route is more time consuming and costly, resulting in the practitioner having to wait longer for the

payment of the fee, it is a fairer process, recognising the skill and time required for the services provided by the solicitor. Moreover, the number of cases that the Taxing Master deals with has been considerably reduced by the introduction of standard fees, particularly in criminal cases, so the concerns highlighted in the PAC report are somewhat reduced.

It is important to note that the Taxing Master is an independent judicial office holder, subject to standards and Court Rules. As a judge, the Taxing Master has a legal duty to protect the Legal Aid Fund, as was emphasised in the Taxing Master's response to the PAC in 2016. The Taxing Master is ultimately accountable to the Lady Chief Justice as the Head of the Judiciary.

Clause 28 aims to remove the role of the Court, which is concerning, and would have a significant impact on the independence and fairness of the process. It would also remove the ability of oversight which is important in any system regarding the spending of public funds. It is also important to note that taxation is and remains a feature of Legal Aid systems in other common law jurisdictions such as in England Wales where Costs Judges play an important role in maintaining independent oversight, in Scotland where the Auditor of Court will assess bills for taxation and in the Republic of Ireland where the Office of the Legal Costs Adjudicator (formerly known as the Taxing Master's Office) assesses Bills of Cost. The proposal would create a more restrictive regime in Northern Ireland, bringing it out of line with the judicial oversight that is in place in other common law jurisdictions. It also raises concern around the transparency and fairness of assessments.

While there is no direct interaction with the Department or the Legal Services Agency, the Department retains the right to intervene and can make representations. If someone is dissatisfied with the decision in an individual case, they can ask for a review by a High Court judge, meaning that there are suitable appeal mechanisms in place. Therefore, we consider that reliable and secure arrangements for determining appropriate remuneration are already in place. Moreover, we understand that the Legal Services Agency already has its own arrangements in place for the flagging of higher cost cases and liaises regularly with the Office of the Taxing Master.

It is unclear how the proposed reform will result in improved accountability and predictability over legal aid expenditure in relation to the professional fees of solicitors. Legal Aid is a demand led service and therefore expenditure will fluctuate depending on

the number of cases within the system. The nature of the demand led system must be recognised.

Amendments

Repeal of vagrancy legislation

The Society supports the repeal of the Vagrancy Act 1824 and the Vagrancy Act (Ireland) 1847 which would decriminalise rough sleeping and begging, as the existing laws are outdated and ineffective in tackling complex social issues. There are many multi-faceted underlying issues associated with vagrancy and taking a criminal approach does not tackle or resolve these issues. This approach also undermines the dignity of individuals who require support rather than punishment.

In the case of *Lăcătuș v. Switzerland*,³ the European Court of Human Rights held that an outright ban on begging in public places violated Article 8 of the European Convention on Human Rights (ECHR), noting that *'the measure pursuant to which the applicant, an extremely vulnerable person, was punished for her actions in a situation in which, to all appearances, she had lacked any other means of subsistence and had thus had no choice but to beg in order to survive, diminished her human dignity and impaired the very essence of the rights protected by Article 8 of the Convention'*. The Society therefore has concerns that the continued use of vagrancy legislation fails to meet human rights standards and obligations, particularly Article 8 ECHR.

We agree that there is a need for a shift from a punitive approach to a supportive one, which should help to facilitate long-term solutions, rather than dragging someone through a criminal process unnecessarily. Moreover, it is our view that the current criminal justice framework already provides sufficient mechanisms to address public order concerns without resorting to vagrancy laws.

Use of live links in courts and tribunals

The increased opportunity to avail of Live links in a wide variety of cases was introduced into Courts and Tribunals in Northern Ireland as a temporary measure under the Coronavirus Act 2020 and has been continuously renewed every six months through statutory instruments. In previous consultations the Society had signalled its support for remote hearings and is now pleased to see live links being placed on a permanent

³ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-207695%22%5D%7D>

legislative basis, given their increased use and the major efficiencies that they have resulted in for solicitors and court-users.

The Society continues to recognise that certain cases are better suited to being heard remotely – such as administrative proceedings, remands in criminal courts and case management hearings in civil courts – than others which should continue to be heard in-person – such as fully contested hearings. The Society concurs with the Department that the correct approach at this stage is that juries continue to sit *in situ*.

Open Justice

Open justice is a key principle in the justice system. Permitting the public to see and hear proceedings through limited transmissions and broadcasts will increase the transparency of proceedings for the benefit of the public and the Society takes no issue with this when it is deemed appropriate by the Courts to do so.

The Society is of the view that adequate digital infrastructure must be put in place to accommodate many users on the platform. It is not unforeseeable that some future high-profile case, broadcast in the public interest, may put the system under pressure. Appropriate plans should be put in place to mitigate against this risk if it were to arise.

Directions

The Society welcomes the presumption of giving evidence by live link in certain cases, including for example in certain single-participant proceedings. Where possible the Society would like to see a similar presumption extended to cover other such appropriate hearings.

In respect of the ‘interests of justice’ test, there is a need for consistency in the application of this test. Society members report that different approaches continue to be adopted by different judges which can create uncertainty and confusion. Therefore, the Society fully supports the proposed amendment which will insert a legislative obligation that Courts and Tribunals have regard Guidance issued by the Lady Chief Justice, where applicable. The Society would be willing to engage to inform the development of any existing or future Guidance based on feedback from its members. It is hoped that this development will contribute towards increased uniformity and predictability across the system, which is vital for all concerned.

The Society also appreciates the liberty afforded to the parties whereby they are able to apply to the court to make or vary a live links direction.

Safeguards

The Society approves of the statutory safeguards put in place with respect to live links, limited transmission and broadcast directions. Particularly the requirements to apply the 'interests of justice' test and to take into consideration the views of the parties to the proceedings. The Society expects these checks would encompass and protect a person's Article 6 ECHR rights to a fair trial. Additionally, the Society welcomes the condition that requires participating persons to be able to see and hear all other persons taking part in the proceedings.

Different issues are likely to arise with live links depending on the nature of proceedings and the Society suggests that the Courts consider how certain individuals, such as elderly persons, persons with disabilities, mental health issues, learning difficulties, caring responsibilities or whose primary language is not English can be best accommodated. Policies and procedures must ensure that all parties:

- have access to proper equipment platforms and training
- have access to Guidance in Plain English
- can confidentially communicate with one another throughout
- maintain respect for the integrity of the court and court processes.

The Society also welcomes the requirement for the Court or Tribunal to provide reasons why it has refused an application for a direction. The Society expects this information to be useful in any future review of the operation of live links to ensure a consistent approach across the system for judges, practitioners and court users.

Offences

The offences in relation to participation through live link, limited transmission or broadcasting seem to the Society to be a proportionate response to protect the solemnity of the court.

Since not everyone who avails of remote hearings will have a legal background, it should be communicated explicitly to all participants and attendees in advance of entering each hearing that the recording of proceedings is a fineable offence. This should be

accompanied by a Code of Conduct for remote attendees clarifying how they should behave.

Recording of proceedings

The Society also observes the Court's power to direct the recording of proceedings. The Society would welcome a clear policy statement on the purpose of and use for these recordings, where or how they will be stored and if they will be deleted. The Society would also query what procedures are in place in the event a data subject access request is submitted with respect to such a recording.

System robustness

The Society trusts that the proper policies and procedures will be put in place to ensure that the live link system is robust enough for the increased use that these provisions portend to.

Access to technology and broadband for citizens is an important consideration, particularly for those in rural areas, who should not be disadvantaged. It is also important to recognise the varying quality of internet connections in Northern Ireland and that technical issues occur in all systems and platforms. Consideration should therefore be afforded to allowing evidence to be given as audio-only in certain limited circumstances. This should include when it appears appropriate to the Court that having both video and audio is interfering with or impairing a remote attendee's ability to effectively participate in proceedings. The Society suggests that a further option might be made available to witnesses so that they can give their evidence in Hearing and/or Evidence Centres with secure and good quality broadband. Moreover, there must be continued investment in technology to ensure technical issues are minimised and efficiencies continue. Ongoing engagement with the solicitor profession regarding experiences of using NICTS technology on the ground must take place so that improvements may be made where necessary.

The Society understands the administrative work that underlays remote hearings such as co-ordinating with attendees and checking that there are no technical issues in advance. The Society suggests that this work continue and be formalised as a Live Link protocol as standardisation and consistency in approach is important for all.

CONCLUSION

The Society welcomes the opportunity to submit a response in respect of the Consultation on **the Justice Bill**.

We trust our contribution is constructive and we would like to be kept informed of any subsequent proposals formed as a result of this consultation.