

FROM THE OFFICE OF THE JUSTICE MINISTER

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Our ref: JCP\25\123

23 May 2025

Dear Kathy,

### **Lady Chief Justice's Comments on the Justice Bill**

Thank you for your letter dated 9 May 2025 regarding the Lady Chief Justice's Comments on the Justice Bill.

#### **New custodial disposal for children**

We note the Lady Chief Justice's concerns regarding the lower age limit of 14 for the new Youth Custody and Supervision Order, and the examples cited. Children aged 13 and under are being removed from the scope of the new order as we do not wish custody to be used for this age group for anything other than very serious offences, in line with international children's rights standards and our obligations under the UN Convention on the Rights of the Child. The Youth Justice Agency has significant expertise in delivering community orders, engaging with and providing support for children of all ages, to enable them to comply and complete their disposals. Their success is demonstrated by the very low number of community orders that are breached – less than 2% of all orders over the five-year period 2019-2024 across all age groups. Allowing the threat of custody to be used to force compliance with community orders for such young children therefore seems unnecessary.

Whilst we understand the second issue raised, regarding the same offences potentially having different outcomes which are age dependent, this has always been – and will always be – the position in law. The same is true across a range of current court orders. For example, children must be 16 or over to receive Community Service or Combination Orders, or orders of detention in a Young Offenders Centre. Indeed, if two children aged 9 and 10 were engaged in offending behaviour, only one of them might face charges due to the age difference. The Lady Chief Justice expresses concern that setting an age limit of 14 may encourage coercion and exploitation of younger children. However, removing this, or setting a lower age limit, could potentially draw more children into custody, which is a worse scenario, particularly as research indicates that the deeper children penetrate the youth justice system, the less likely they are to stop offending and grow out of crime. The line has to be drawn somewhere, and it is clear from the statistics that courts are not using custody as a sentencing option for younger children, which is a positive position we wish to maintain. In the last six years, only two children aged under 14 were given a custodial sentence. Over the same period, 80% of children serving a custodial order were aged 16 or 17. We are therefore only legislating for what happens in practice, and this position received considerable support during our consultations on the new custodial order. All other sentencing options – including community disposals and custody for serious crimes – will remain for this younger age group.

### **Taxation of Legal Aid Costs**

The provision in the Bill on taxation of legal costs and the role of the Taxing Master will not have any implications for taxation in District Judge ancillary relief matters: it applies only to High Court and Court of Appeal cases.

The amendment focuses on taxation in the High Court and Court of Appeal. These court tiers were prioritised as taxation in these court tiers cover a large range of case types and accounts for a significant proportion of costs to the legal aid fund. In addition, these court tiers were the priority of the Public Accounts Committee (PAC) which culminated in the PAC recommendation to bring this expenditure under the purview of the Department therefore making this reform a Departmental priority.

FROM THE OFFICE OF THE JUSTICE MINISTER

The Department will engage with the Lady Chief Justice directly to discuss her views on the issue of taxation in District Judge ancillary relief matters.

I hope that this information provides some clarification on the points raised.

Yours sincerely,



**DAVID GRAHAM  
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**Northern Ireland Assembly  
Committee for Justice**

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9 May 2025

**Lady Chief Justice's Comments on the Justice Bill**

Dear David

At its meeting on 1 May 2025, the Committee for Justice considered correspondence from the Lady Chief Justice in which she commented on aspects of the Justice Bill.

In relation to the proposed new custodial disposal for children aged over 14 years, the Lady Chief Justice stated:

“In considering the new disposal outlined it is of some concern that a child under the age of 14 cannot be made subject to a youth custody and supervision order which may create difficulties with compliance. Once it is established that the court does not have the power to impose a custodial order (as a sanction of last resort) it can be anticipated that there may be an increase in ‘non-compliance’ cases.

The age limits proposed for the new custodial disposal may be problematic as it has the potential for offenders brought before the Youth Court on the same offences having outcomes which are age dependant. It is entirely foreseeable that, solely on the basis of age, one co-accused may be facing a YCSO whilst another, on the same facts may not. There is also potential, borne out in a recent case, that older controlling parties could use this freedom from risk of detention to persuade under 14s to act for them.”

The Committee agreed to seek the Department's views on the concerns raised by the Lady Chief Justice on this issue.

On the taxation of legal aid costs, the Lady Chief Justice stated:

"I have noted the provisions within the Bill touching on taxation of legal costs and the role of the Taxing Master and indeed I understand the Committee has requested some additional information from the Taxing Master. I will therefore not comment on this in any detail save to suggest that it would be helpful to have clarity on the implications arising for taxation in District Judge ancillary relief matters on which the Bill is silent."

The Committee agreed to ask the Department for clarity on this point.

A response by 23 May would be appreciated.

Yours sincerely

*Kathy O'Hanlon*

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**Clerk to the Committee for Justice**