



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Access to Justice Review:
Department of Justice

10 April 2014

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

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

Witnesses:

Mr John Halliday	Department of Justice
Mr Mark McGuckin	Department of Justice
Mr Mark McGuicken	Department of Justice

The Chairperson: I welcome Mark McGuckin, deputy director; John Halliday; and Mark McGuicken, if my briefing paper is right. There is a slight difference in the spelling; there is an "e". It is a bit like Givan and Girvan. *[Laughter.]*

Mr McCartney: We know the difference. *[Laughter.]*

The Chairperson: If I say something I should not say, it is probably Mr Girvan you are talking about. *[Laughter.]* You are all very welcome to the meeting. I will hand over to you at this stage, and then members will have some questions.

Mr Mark McGuckin (Department of Justice): Thank you very much for your introduction, Mr Chairman, and for the opportunity to brief the Committee on the progress that we have made against the departmental action plan. I will keep my introductory comments brief, as you have the written briefing in front of you and I am aware that members will probably wish to probe on particular points of interest.

I will start by explaining the papers you have in front of you and what we are trying to achieve through them. Annexe A represents the six-monthly report in the tabular format that the Committee requested. It sets out the various milestones for each of the projects that make up the programme, and provides a brief comment on the current status of each project. It is intended to let the Committee know at a glance where we are.

On this occasion, I have also provided a more detailed cover note for the Committee, which was intended to address some of the issues that the Committee had raised with me previously. In particular, in this covering paper, I have sought to provide an overview of the overall progress against the action plan, provide a preliminary analysis of the savings from changes to criminal legal aid and set out the areas on which we intend to focus over the next 12 months or so.

In terms of overall progress, the report flags up the steps that have been taken to reduce the costs in criminal cases through changes in the way that work is remunerated, with further initiatives being planned or taken forward. We have also commenced the first of the reforms to civil legal aid regarding levels of representations that have just been introduced. Work has been carried out on rationalising financial eligibility criteria, and we are developing a new fee structure for civil cases.

Research into the legal needs of children and young people is being prepared for publication. We will shortly put advice to the Minister on the way forward in relation to money damages. We hope to bring forward a consultation paper dealing with issues regarding the scope of civil legal aid. Of course, the Committee will be aware that the Legal Aid and Coroners' Courts Bill has been introduced, and I thank the Committee for its assistance in bringing that area of work forward.

At an earlier appearance before the Committee, members expressed interest in a number of areas, which I have sought to address in the report. The Committee sought clarification on the reduction in the number of cases in which two counsel were granted in the Crown Court. Prior to the introduction of the new rules in April 2012, two counsel were assigned in some 50% of cases. In the calendar year 2013, two counsel were assigned in just 20% of cases, which is precisely on target.

The Committee sought further information on very high cost cases (VHCCs). Before the reforms were introduced for the Crown Court, some five new VHCC certificates were being granted per month. Most of those cases have worked their way through the system, although there remain a small number where the bills have not yet been received. There are still a number in the Magistrates' Courts, but provisions for VHCCs in Magistrates' Courts will be removed when we make the amendment rules approved by the Committee last year.

We have set out in the paper the reduction in the costs of VHCCs in the Crown Court. We are undertaking a more detailed analysis of Crown Court costs, and intend to share that with the Committee when we present our proposals for further reform after the Easter recess.

The Committee also queried criminal legal aid expenditure in 2012-13. A figure of £31 million is quoted in the Legal Services Commission annual report. I can confirm that that is a technical accounting figure that takes account of provisions that have been made for future expenditure. In that year, there was a particularly large movement in provisions of £19 million. However, page 61 of the annual report and accounts records the actual cash payments in that year of some £50 million for criminal legal aid.

The Committee asked for a comparison of costs in Northern Ireland with costs of legal aid in England and Wales. We have not yet included this in the paper, because the issues are complex. The legislative framework in each jurisdiction is different, which makes direct comparison problematic. The closest are probably the Crown Court, and we can do a direct comparison of cases that run here and the fees that would have been paid had the fee structure in England and Wales been applied. In fact, that is what we did in our latest Crown Court review, and it informed the project looking at Crown Court fees.

In relation to civil legal aid, however, the scope is very different between Northern Ireland and England and Wales, where, for example, private family law has been removed from legal aid. We are continuing to look at this to see what useful information could be provided, and I will report further to the Committee when we complete that.

Finally, I have sought in the paper to set out where we intend to focus our attention and efforts in the next 12 months or so. We have a number of projects under way or at an advanced stage of planning, covering a range of issues. They include the Legal Aid and Coroners' Courts Bill, including secondary legislation; finalising the current round of adjustments to Crown Court remuneration; completing the development of a new standard fee structure for civil cases across all case types and court tiers; proposals for changes to funding of money damages cases; a registration scheme for solicitors and counsel; proposals for expert witnesses; and the access to justice review part two. Looking further ahead, I expect the future work programme to be informed by progress against the wider action plan, but also the findings and recommendations coming out of the access to justice review part two.

I hope the Committee found the briefing helpful, and I am happy to take any questions.

Mr McCartney: In relation to expert witnesses, what precisely is that going to entail?

Mr McGuckin: There are a range of expert witnesses used in the court system to advise in cases. We are looking at whether it would be appropriate to introduce a standard fee or a standardised fee structure for them. There are issues associated with the availability of experts in certain areas, and that has introduced a degree of complexity.

Another area we would like to look at is whether there is mileage in adopting an approach whereby a single court-appointed expert witness could provide testimony in a case, rather than having a number of them. That is something we would like to explore in the consultation paper.

Mr McCartney: Is the report on the legal needs of children and young persons now ready for publication?

Mr McGuckin: That report is complete. It is with us and going through final proofs and being prepared to put to the Minister, and then for publication.

Mr McCartney: And we should have that — ?

Mr McGuckin: After the Easter recess, I guess, now.

Mr McCartney: On some of the other ones, work should be nearly completed, yet they have not started. Is there any particular reason for that?

Mr McGuckin: In terms of the things that we are not taking forward, there is material in there in relation to the public defender service, for example. We included that in the consultation paper on Crown Court fees. It is a huge exercise, and we simply have not got the resources to do it at this stage. That is why we have put it on the long finger.

There are a couple of other things. The reform of the green form will be informed by looking at the broader scope issues, so we will wait until we get to that stage before we commence on that. We have not really started work on the on-call duty scheme yet. We might get to that over the summer. The other thing highlighted in the document was the funding code, which, as you know, we are addressing through the Legal Aid and Coroners' Courts Bill and looking at that in a different way.

Mr McCartney: And exceptional grants?

Mr McGuckin: We are hoping to come to you with the exceptional grant in May.

Mr McCartney: Will the rejigging of the Lord Chief Justice in terms of inquests have any impact on that, or is it not related?

Mr McGuckin: No.

Mr A Maginness: Thank you for your report to the Committee. How advanced are you on alternatives to money damages?

Mr McGuckin: This is a very long-standing piece of work that predates me and many of my predecessors.

Mr A Maginness: I appreciate that.

Mr McGuckin: That is what I was told when I came to it. We have had significant engagement on that with both branches of the profession and with the insurance industry. We are in the final stages of putting together a policy paper to go to the Minister for final decisions. I want to bring that to a conclusion over the next couple of months so that we can bring it to the Committee and start to move forward.

Mr A Maginness: You talked about really the autumn before you would have something well-defined.

Mr McGuckin: I would like to get back to the Committee before the summer recess with something, at least.

Mr A Maginness: This is a crucial area for the vast majority of people who engage in law and wish to have access to justice on the civil side. It is of great importance. Getting an alternative scheme to the current civil legal aid scheme would be important.

Mr McGuckin: That is what we are trying to do and why we are spending time to get that right now, so that when we come to the Minister and Committee with proposals, they are solidly and firmly based and will meet the needs going forward.

Mr A Maginness: Are there ongoing discussions with the Law Society and the Bar Council on other areas, leaving aside the area which we have just discussed?

Mr McGuckin: We talk to them all the time. For example, John and I are engaging with both the Law Society and the Bar on Crown Court fees and money damages. We are engaging very closely with them on the civil fee remuneration. Last year, we had the consultation on a set of proposals. They did not attract a lot of support. We are engaging very closely with them to try to develop a scheme which will meet the needs of the legal aid budget and the professions going forward, and the individuals who benefit from that. We have had positive and close engagement with both branches of the profession in taking that forward. Money damages is one; clinical negligence is another. So, we have ongoing engagement with them on a range of areas.

Mr A Maginness: Obviously, you will ultimately make your own decision as a Department. However, without prejudice to your ultimate right to do that, how are those discussions proceeding?

Mr McGuckin: They are very positive. I do not think that we will ever come to agreement on all aspects of everything that we are talking about. Collectively, we recognise the need for reform and change. We come to it from different perspectives, obviously, but the discussions are positive and engaging. Arguments are made and accepted. I can only characterise that engagement as very positive, actually, on both sides.

Mr A Maginness: Thank you very much.

Mr Elliott: I have just one query about the tables for the VHCC Crown Court costs and the non-VHCC Crown Court costs. Your note at the bottom states that, unfortunately, the figures are skewed by the additional Crown Court judge and that you want to indicate that you will carry out further analysis of that because it clearly shows a significant increase over the past four years. I am just wondering whether that is a displacement.

Mr McGuckin: Part of it is displacement and part is an increase in volume. The cases that were previously classified as very high cost cases are still coming into the system, but they are remunerated in a different way.

Mr Elliott: So it is just displacement.

Mr McGuckin: No. It is not just displacement; they will be remunerated at a lower level under the new fee structure. So, there is some increase going into what are called the overall Crown Court costs in future years, because some of those cases have moved across. Sorry; any case which came in after the new fees were introduced will not be classified as a VHCC, but still needs to be prosecuted through the system and therefore attracts a fee at a lower level. So, some of that increase is down to those cases being remunerated in the standard —

Mr Elliott: We have almost been led to believe that the very high cost cases have totally disappeared. This is the first time that I have heard this type of explanation, that they are just going somewhere else.

Mr McGuckin: Well, people will still commit murder and will still have to be prosecuted for that, and their legal representatives will be remunerated. However, they will be remunerated under the standard Crown Court fee system which was introduced, and not under the very high cost case approach.

Mr Elliott: You did say that you would have further analysis of that. When can we expect that to come back to us?

Mr McGuckin: My intention was to bring it back to the Committee when we come with the new proposals for Crown Court fees, which I think will be some time in May. It is quite complex to work out the increases in volume, the reductions in average-cost cases that have been delivered through the introduction of the new fees, and the overall increases that are a consequence of bringing in the additional Crown Court judge in Belfast and the throughput from that. We are trying to get a sophisticated analysis that will help explain where the movements have taken place, where there may have been some displacement of those cases that had previously been classified as VHCCs but are running through the standard fee structure, and where there are increases in volume.

Mr Elliott: Will that analysis also give us the difference between what it would have cost through very high cost cases and what it will cost now?

Mr McGuckin: We had not planned to do that, but we could look to see whether that could be included.

Mr Elliott: I think that it would be useful if we could at least get an indication. It could demonstrate where —

Mr McGuckin: We would have to make certain assumptions around that, though, about which cases we could classify as VHCCs.

Mr John Halliday (Department of Justice): The last VHCC scheme required people to keep records of their hours worked. Now that we have moved over to the standard fee, where you do not have to keep records of the hours worked, we would not have those records to be able to do that in individual cases.

Mr McGuckin: We might be able to do some kind of a proxy on it, but I am not sure how reliable it would be. We will have a look at it when we are doing the analysis to see whether we can put something in.

Mr Elliott: It may be very difficult for us to judge how much actual savings there will be in the system through that process if we do not get some sort of analysis.

Mr McGuckin: One of the things we might be able to do would be to look back at the original projections in the business case and see where that trajectory was taking us if we had not made a change to the fees back in 2011.

Ms McCorley: Go raibh maith agat, Chair. Thanks for the presentation. I just want to ask about the pilot schemes for the alternative approaches, looking at partnerships with the advice and voluntary sector. What is your assessment of those? Have they been successful?

Mr Mark McGuicken (Department of Justice): Yes. There are two currently running; there is one with the Law Centre in relation to asylum and immigration and human trafficking, and there is another with the Housing Rights Service which provides an in situ court advice for people who come to the County Court for ejection proceedings and to the High Court if they are having houses taken off them.

The one with the Law Centre is an ongoing contract that has been running for a number of years. We picked it up, rebranded it and put new objectives in it and the Law Centre has a contract for two years that expires at the end of this financial year. The Housing Rights Service scheme has been running for two years and has proved to be very beneficial to people who turn up on the day who have had no previous engagement with a solicitor or had no advice. They are given that, and the judiciary has welcomed that very much at the County Court and the High Court. It expired on 31 March, and the Housing Rights Service has asked for a further extension, which we will put to the Minister positively and hope to get through.

We will evaluate both projects at some time during this year just to see what the outcomes are. We have a lot of output data on how many people have used the service, but we need to look at the

outcomes and the overall impact that it has made, not just to legal aid but to the people going through the system.

Ms McCorley: OK. So you cannot say for sure whether it has been better to have had that in place than not at this stage?

Mr McGuicken: Certainly, people would not have got the Housing Rights Service one. Legal aid is not available for that service to have representation at ejectment and repossession proceedings. That is not what the service is about: it is about giving an additional layer of help. It does not actually stand up and represent the person in the court, but it has proven very beneficial and the judiciary has actually commented on how beneficial it has been in trying to retain people in their homes, which then obviously has a better impact for social housing and stuff like that. Anecdotally, and from numbers going through, they have had very good impacts, but we need to look at the overall outcomes.

Ms McCorley: OK. Certainly, in the current climate, I know that things are starting to get a bit better, but it would be good if those were to continue.

Mr McGuicken: We would like to see the Housing Rights Service scheme more joined up with the work that DSD does around money advice and stuff like that. I understand that DSD is going out for a new contract some time this year for the next four years, and we would like to link it in more formally with that, but we obviously have to have those discussions with DSD.

The Chairperson: No other members have indicated, so I thank you all for coming to the Committee. It is much appreciated.