



Northern Ireland  
Assembly

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COMMITTEE FOR JUSTICE

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**OFFICIAL REPORT**  
(Hansard)

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**Remuneration for Defence Counsel in  
Crown Court Cases**

24 February 2011

**NORTHERN IRELAND ASSEMBLY**

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**Members present for all or part of the proceedings:**

Lord Morrow (Chairperson)

Mr Raymond McCartney (Deputy Chairperson)

Lord Browne

Mr Thomas Buchanan

Lord Empey

Mr Paul Givan

Mr Alban Maginness

Mr Conall McDevitt

Mr David McNarry

Ms Carál Ní Chuilín

Mr John O'Dowd

**Witnesses:**

Mr Robert Crawford ) Northern Ireland Courts and Tribunals Service

Mr John Halliday )

**The Chairperson (Lord Morrow):**

Members will recall that, at last week's meeting, the Committee was notified that the Law Society and the Bar Council were to submit a joint proposal on remuneration for defence representation in Crown Court cases. The Committee agreed to request the views and comments of the Department on that submission. The Department has responded and officials are here today to answer questions and provide further clarification or information. Our papers include

the Law Society and Bar Council's proposal; the Minister's response and the Hansard report of the evidence heard on 10 February 2011.

I welcome Mr Crawford and Mr Halliday. Mr Crawford, members will know, is head of the public legal services division, and Mr Halliday is criminal legal aid policy adviser. Gentlemen, you are very welcome here today. Will you briefly outline the Department's views on the Law Society and the Bar Council's joint proposals?

**Mr Robert Crawford (Northern Ireland Courts and Tribunals Service):**

Certainly, Chairman. I will try to be brief in presenting the Minister's view on the joint proposal, roughly in order of the importance of the reasons for which he cannot accept it.

First, the Minister is concerned that the proposal still leaves a significant differential between fees paid in Northern Ireland and those paid in England and Wales. His concern comes from the requirement to have these or any proposals that we come forward with approved by the Department of Finance and Personnel (DFP). The Minister cited the differentials in his letter. Solicitors are 100% more expensive in Northern Ireland than in England and Wales and barristers are 23% more expensive in Northern Ireland than in England and Wales. Overall, Northern Ireland is 46% more expensive. The Minister's view is that he could not possibly get that approved by DFP and the Finance Minister.

In comparison, our existing proposals are 76% more generous in Northern Ireland for solicitors, 12% more generous for the Bar and 31% more generous overall. The Minister felt that accepting the proposals of the Courts and Tribunals Service represented a good outcome for the legal profession in Northern Ireland and one that would provide some measure of reassurance that we would not run the risk of encountering some of the issues that have arisen in England and Wales.

The other issue that concerned the Minister was that the joint proposal makes somewhat less savings than previous proposals from the Bar Council and from the Law Society, so it does not narrow that particular gap.

The third point in response to the joint proposal is that a number of specific issues were raised, for example, that of the disclosure of material released by the Public Prosecution Service (PPS), which was discussed at length at a previous meeting. We in the Courts and Tribunals Service are happy to work with the Law Society and PPS to try to resolve that issue. As the Minister stated in his letter, if that produces an outcome that leads to changes being needed to deal with issues that arise in a small number of cases, we would seek to address those, and the Minister would be happy to address that when we review the current proposals.

On 10 February, I think that it was the Law Society that recommended or suggested that the Committee monitor former very high cost cases (VHCCs), which would be these cases and others, and we would be happy to do that. We believe that we could commence a review after the new arrangements had been in operation for six months. So, it would not take too long to have revised proposals in place if we needed to tweak what we have. I stress that, if we felt that that was needed, the amendment would be minor.

The Minister's view is that rather than wait to try to carry out that work, which could take some time, it is better to move ahead now with the proposals previously tabled by the Courts and Tribunals Service, on the basis that doing so would commence savings that are badly needed immediately. At present, about £1.5 million in savings a month is being foregone. If further time were to be taken up in negotiation, the Minister's view is that the final decision will be run into the summer and the cost consequences of that would be significant.

Those are the main points, Chairman. Unless members want me to, I will not go into greater detail.

**The Chairperson:**

In summary, you are saying that it does not come near.

**Mr Crawford:**

It comes close to the overall budget, but the calculation in the joint proposal falls short by about £600,000. You might recall that we said that the additional savings required to move from a £79 million budget to a £75 million budget would include £1 million from administrative savings and

civil legal aid. However, we have given some indicative figures for that, which relate to £2 million for civil legal aid and £2.5 million from potential administrative savings. In fact, the administrative savings figure will be lower. However, with those indicative figures, we intend that the total will be £4 million. That may have been misunderstood. The joint proposal seeks to make £4.5 million in savings from that area. One of the difficulties with that is that we have not yet identified the civil legal aid savings. It may be difficult to make them within the timescale, but, in presenting the joint proposal, £600,000 less savings are being made from Crown Court remuneration. That is why I said that there is a lower savings level than there was previously in the Bar Council's proposal. I refer to it because it was the previous closest contender.

**The Chairperson:**

You mentioned the figure of 100%.

**Mr Crawford:**

Yes. We costed and went over the figures again as recently as this morning. Previously, we had said that, if we needed to bring solicitors in Northern Ireland down to the level of remuneration in England and Wales, it would require a 57% cut. The point of that is that their remuneration is already more than double the level of England and Wales. We represented that on the basis of the joint proposal into how much more generous Northern Ireland is. The precise figure is 100.8% for solicitors, 23% for the Bar, and 40% for the overall package. Ours is running at 31% more generous. We are already sensitive to the fact that Sammy Wilson expressed explicitly that DFP would look at the differential between Northern Ireland and England and Wales. Although there are some things that we can say to justify a slightly higher level of expenditure in Northern Ireland, it is difficult to explain why professional fees in Northern Ireland should automatically be higher than professional fees in England and Wales on a scale of that magnitude.

I do not want to quote ministerial correspondence, but I will refer to a letter dated 20 September that was sent to the Minister. The explicit reference in that letter makes it clear that the focus would specifically be on the differential between Northern Ireland and England and Wales and that there would be a concern if that differential was significant. I want to reflect the Minister's concern: he feels very strongly that moving even further away from the England and Wales comparator would make it extremely difficult to get the proposal through DFP.

Our savings look so significant because, as we went through this process with the profession, our examination of the very high cost cases revealed that the level of expenditure was much higher than it should have been and that claims that were put in were excessive. In support of that, I make the point that we challenged 39 claims recently. A few more have come in since, and 33 of those claims for appeals have been withdrawn. Therefore, in 33 out of 39 cases, appeals seeking a higher level of remuneration from the taxing master were dropped when they were challenged. Therefore, there is evidence that the claims in VHCCs were excessive. The claims represented overpayment, and, when we did the figures, we found that we were making a lot more savings by dropping VHCCs than we had anticipated.

The essence of the joint proposals is that a lot of savings are made from VHCCs and money saved there can be put back into standard fees. The Minister's concern is that that changes the differential even more from what is an already generous position. Taking money from an area that has been shown to be overclaiming and putting it into an area that has been funded quite generously in comparison with England and Wales is a difficult piece of logic for the Minister to accept.

**The Chairperson:**

The Law Society's submission states explicitly that the fee structure proposed comes within the budget set for 2013-14 of £75.2 million. That cannot be clearer.

**Mr Crawford:**

That is not quite accurate. When we look at the numbers and the mathematical additional, it appears to be accurate. They use the figure of £4.57 million for the additional savings. However, £4 million of additional savings is needed to get from £79 million to £75 million, which we propose to find from administration savings and from civil legal aid not yet identified.

**Ms Ní Chuilín:**

I was going to raise that point, because the Law Society and the Bar are saying that, as the Chairperson outlined, this is coming in on budget. We seem to be getting so close, and yet we are so far away. I repeat my concern about the fact that that figure of £79 million was in the public

domain at one stage. However, because of budget constraints, that then went down to £75 million, but there was no public dimension to it. Now, the Bar is saying that it is on board with the £75.2 million, but you are saying something different. For whatever reason, there seems to be blockage to getting this sorted.

**Mr Crawford:**

I will deal with your two points more widely. As regards your first point about the budget, if you were to take the £79 million and leave aside the additional £4 million savings, the joint proposal would be £600,000 short. In fact, that proposal is further away than the Bar's previous proposal, because it relies on the Courts and Tribunals Service making an additional saving of £600,000 in the future, which would then be taken off the savings proposed for criminal legal aid in the Crown Court. That is a concern because those savings would be made immediately; however, the savings yet to be identified in civil legal aid would not be made until the end of the period.

Another way of looking at it is this: £500,000 a year from this financial year onwards is worth a lot more than £500,000 made from civil legal aid, even if it can be made in 2013-14. We have not put that detail in, because there is kind of an accountancy point about the £500,000 being made every year; whereas, we have tended to keep it simple and present the figures for 2013-14. However, the point is that the joint proposal makes fewer savings than previously advertised and relies heavily on the admin and the civil legal aid savings.

**Ms Ní Chuilín:**

My other point is that there has always been a variance between the amounts paid to solicitors and barristers here in comparison with other parts of Britain, Scotland and the South, and although I am not justifying that, it is not something new. DFP is, therefore, going to object to that massive hike. There need to be proposals for making the amounts paid more realistic, if that is what you are suggesting. However, again, that detail is not here.

My other question is about the Courts and Tribunals Service. Are there any differences between what the Courts and Tribunals Service pays here in comparison with what is paid in other jurisdictions?

**Mr Crawford:**

I will deal with the first one. I think that the Treasury has pointed out that legal aid expenditure here was significantly higher in the past, and that it why we ended up with a budget of £79 million and considerable sums of money to tide us over in the meantime. So, you are quite correct: it is not a new point. The difficulty is that no measures were successfully taken by the Court Service over the past number of years to bring that differential closer, which is why we are in this situation where so much needs to be done so quickly.

On your second point, I am not aware of a difference in the Civil Service pay scales, but if there is, it is not a significant one. In other words, people in Northern Ireland are not paid more than their counterparts in England and Wales. The joint proposal and our proposals would see lawyers in Northern Ireland being paid significantly more than their counterparts in England and Wales, and we are quite prepared to justify that for a number of reasons. However, the bigger the differential, the harder it is to sell to DFP.

**Ms Ní Chuilín:**

The challenge now is that 33 out 39 cases have been dropped or will not be pursued — is it the tax master?

**Mr Crawford:**

Sorry?

**Ms Ní Chuilín:**

I am talking about the administrative costs for barristers.

**Mr Crawford:**

The administrative costs have been dropped from the proposals. We originally thought we would be able to include administrative costs in very high cost cases because there would be a reduction in work, but when we spoke to our accountants who have to prepare the business case for DFP, they asked whether posts would be surrendered. The answer is no, because those people are already doing criminal appeals work, so no posts will be suppressed, in which case, we cannot declare a saving.



We understand how that confusion arose in the discussions, because we had hoped to be able to put that in. Again, it would have made the proposal look better to DFP, but unfortunately we were not able to do that. They have dropped that, but simply because it was not there and could not have been included. We understand the initial confusion.

The proposals also drop the assignment of two counsel. The Committee will consider those proposals later in the equality impact assessment (EQIA). Again, the Minister is unhappy that that should be dropped in its entirety because we believe the proposals we are now presenting take account of the concerns of the Committee, judges and the Attorney General. It is right to make savings where there is such a significant difference in the numbers of cases that have two counsel here when compared with England and Wales. I did not mention that at the start because it was not specifically to do with Crown Court remuneration, but that is another concern.

I have just one other point on money. The Minister said in his letter that, because we have adopted a Northern Ireland bespoke approach rather than simply following that of England and Wales, the structure of the fees for counsel means there will be additional costs to the PPS. Again, we have not put those in as a cost in our proposal because it depends where PPS ends up, but in all probability, the Department of Justice will have to find £500,000 to give to PPS to compensate for the additional cost caused by our choice of a Northern Ireland approach rather than the graduated fees scheme (GFS) that they have in England and Wales.

Even if we were making savings right on the budget, we would be concerned that that cost would hit the budget and that legal aid would end up overspent if money had to be transferred to the PPS.

**Mr McDevitt:**

Mr Crawford, could you give a breakdown of your £4 million savings? How much of that is administrative, how much is fees and how much of it is other types of savings?

**Mr Crawford:**

The current estimate of what can be made in administrative savings in 2013-14 is £1.5 million. I

think we originally submitted a figure of £2.5 million in an earlier paper. That was inaccurate for that year. The civil legal aid savings will make up the difference. If £4 million savings are required, civil legal aid will make up the difference. We have already advertised to our colleagues in finance, and through them to the Department generally, that we have some doubts about the ability to make the civil legal aid savings in that timescale.

**Mr McDevitt:**

What efficiency is £1.5 million?

**Mr Crawford:**

It is 5% year on year.

**Mr McDevitt:**

That is not very challenging really, is it?

**Mr Crawford:**

It is the same as is being applied to the Department.

**Mr McDevitt:**

Your Department is getting a light touch here. Everyone else is being hit twice as hard as you are; you are getting off with 5%. The Bar Council and the Law Society are coming to you and asking whether you can do better than 5%, and you are saying that that you would rather have your easy ride, and those guys can pay for your efficiencies. That is the extent of the £600,000 that you are talking about. You want them to subsidise your efficiency, or your lack of it.

**Mr Crawford:**

I do not think that is a fair comment, exactly, because it is the same as —

**Mr McDevitt:**

How is it not a fair comment? You are getting away with a 5% efficiency —

**Mr Crawford:**

Five per cent year on year is a 15% cut in 2013-14 and a 20% cut in 2014-15.

**Mr McDevitt:**

If you spoke to every other Department in Northern Ireland these days, they would bite your arm off for that. You are asking professional bodies, effectively, the private sector, to subsidise your unwillingness to make another marginal efficiency.

**Mr Crawford:**

I do not believe that is subsidising it —

**Mr McDevitt:**

Well, that is what they are doing.

**Mr Crawford:**

Twenty per cent at the end of the comprehensive saving review (CSR) period is still a significant cut in administrative saving.

**Mr McDevitt:**

The net effect of the scrap you are having is that you are telling us that the reason their budget is unacceptable to you is because they are assuming a greater level of efficiency than you are willing to give.

**Mr Crawford:**

First, the use of the additional savings to create an extra £600,000 to then be taken off the amount to be saved in the Crown Court is only one of the objections that the Minister concluded was important —

**Mr McDevitt:**

That was your first objection, was it not?

**Mr Crawford:**

It was the first objection. I think we made the point first that it did not quite add up, but the main objection, and I tried to stress this in my oral evidence, is the difficulty with getting DFP approval.

**Mr McDevitt:**

Let us deal with the first objection. You said that there was a difference between NI and England and Wales, and then you said that it does not deliver the savings. However, you could achieve that level of efficiency and the Minister could take the decision quite legitimately and politically that he wishes to see a greater level of efficiency. At a time of a massive economic downturn, you would think that the actions of any Department that wants to put more money back into the economy would be in the interests of this region. It also happens to be in the interests of justice, but let us park that. This has become a very clinical financial debate, rather than one about the interests of justice, and that is interesting.

You also said that you had concerns with DFP. At what point did DFP say that it was its policy that lawyers in Northern Ireland must be paid more or less the same as lawyers in England and Wales?

**Mr Crawford:**

I think that actually takes away from the point that additional savings are required to be made to bring the budget from £79 million to £75 million. If additional administrative savings of £2.5 million were made, the outcome would be to make less savings from civil legal aid, and we are greatly concerned that we may not be able to do it within the timescale.

It is not the Department's first view to change the savings for Crown Court remuneration. Those savings would come in immediately, whereas the savings from civil legal aid would come in at the end of the process. The first choice would be the savings that we earmarked for civil legal aid that may not be made within the timescale. Therefore, even if the logic of your argument was accepted by the Minister, it would not benefit the savings to be made from Crown Court remuneration, but those from civil legal aid.

**Mr McDevitt:**

That is a very interesting answer, but it was not to the question that I asked you. I asked you at what point the Department of Finance and Personnel came to you and told you that lawyers in Northern Ireland cannot earn different fees to their counterparts in England and Wales?

**Mr Crawford:**

In his letter to our Minister on 20 September, the Minister of Finance and Personnel stated his concerns about the differential between the remuneration rates between Northern Ireland and England and Wales. We have formal correspondence to that effect.

**Mr McDevitt:**

So, are you telling me that the Minister of Finance and Personnel will veto an agreement that your Minister would approve just because it has differential rates in it?

**Mr Crawford:**

Not because it has differential rates, but because it has such high differential rates.

**Mr McDevitt:**

Are you saying to me that the Minister of Finance and Personnel will walk over the top of the Minister of Justice and veto an agreement unless he is happy that lawyers are paid a different rate? That is despite the fact that it is in the draft Budget, it meets the criteria and does everything that it says on the tin financially from his point of view.

**Mr Crawford:**

I can say only that my Minister is concerned about that, as for the Finance Minister —

**Mr McDevitt:**

That is what I am trying to get to the bottom of. Is it David Ford or Sammy Wilson?

**Mr Crawford:**

I explained that David Ford, as the Minister of Justice, is concerned that the proposals will not be acceptable to the Minister of Finance and Personnel, and I also referred to a letter in which the

Minister of Finance and Personnel expressed those concerns. I do not know whether I can go further on the view of the Minister of Finance and Personnel.

**The Chairperson:**

This Committee is turning the Finance Minister into the Minister of Justice.

**Mr McDevitt:**

It is an awful quandary that we are in. I think that I will leave it there.

**Mr McCartney:**

I have a couple of points, but I want to understand the process initially. You will be aware that the Committee made the suggestion that the Bar and the Law Society should get together and come up with a joint proposal, and they obviously submitted that to the Department. Were both bodies given a copy of the letter that the Minister sent to the Committee, which contained the rebuttal?

**Mr Crawford:**

Not in the time available, because the Minister signed that letter only early this week. They have not been provided with a copy of that to date, but I am sure that the Minister would have no objection to providing them with a copy.

**Mr McCartney:**

That brings me to my point, and we all know that this has gone from one to the other. There was a very clear proposal from the Committee, which the two bodies accepted. Would it not make good sense for a part of the process to involve a meeting between the officials and the two bodies to outline each other's positions? It would also allow parties to listen to each other and come to a conclusion.

The Committee received the information only today, and I assume that the same applies to the two bodies. This will go on for another session at least before we reach a conclusion, if we do reach a conclusion.

**Mr Crawford:**

There are two points there. First, on a technical point, I spoke to both bodies, admittedly yesterday and this morning, or perhaps it was the day before, because the Justice Bill was being debated yesterday. Leaving that aside, I spoke to the Minister fairly quickly after the 10 February meeting at which the Committee made its suggestion, and I sought his view on whether he wanted us to prepare a further reiteration of our proposal with a view to having a further round of discussions. He is clearly of the view, as expressed before, that any further movement would risk not getting the proposals through. He gave that direction fairly quickly after the 10 February meeting, and, having seen the joint proposal, he has not changed his view.

**Mr McCartney:**

I understand that part of it. I understand the Minister telling you where he is at. However, in much the same way that he gets advice — he does not do this in a vacuum — he has decided how much lawyers should be getting. I am sure that most of those tables are as new to him as they are to us. Given that it seems to make sense, I propose that, as part of the process, you should meet. Last week or the week before, we discussed whether it is a negotiation or a discussion. Whatever it is, it seems logical for you to sit across a table from the people who have put together a joint proposal. We have a fairly detailed rebuttal, but we do not understand the complexities of the situation, but the two bodies would. I do not want to predict the outcome of such a meeting, but we could certainly not accuse you of carrying out a paper exercise. You said that you spoke to them. I assume that you did not give them half of the detail that is in this paper.

**Mr Crawford:**

I do not claim to have briefed them.

**Mr McCartney:**

I am not saying that you did claim that, but, in speaking to someone, it is understandable that you would not go into the detail that you would in a written communication. I am wondering whether the Minister indicated that there should not be a meeting, or did he suggest that you just hold the line?

**Mr Crawford:**

We put it to the Minister that, if he wanted to make further changes, here were the possibilities and here were the costs. His view was that a further round of discussions would not achieve anything, because further movement in that direction, particularly on percentages of standard fees, would be unlikely to produce an agreement.

He took a similar view on the joint proposal, namely that he wanted to respond formally to the Committee in the time available without taking further time to have a round of meetings that might not produce an agreement. The Minister reflected in his letter and we reflected to the Committee in previous meetings that we are happy to continue working on particular cases that have concerned members of the profession. Following the 10 February meeting, we met the Public Prosecution Service, which took away the cases that the Law Society had identified. Work will go on with that. The Minister's view is that, rather than hold up savings that could be made now, it is better to move ahead and to build further bits of work into a review, which, after we have about six months' data on the how the new process is operating, we could carry out fairly quickly.

**Mr McCartney:**

I accept that I may be overstating this point, but there was a difference in the process when the two groups got together to make a joint proposal. Was it relayed to the Minister that, in those circumstances, in which you disagreed with their proposals, rather than conducting a paper discussion, it might have been a better idea for you to sit down with them so that they could explain their proposals in detail? Previous discussions were carried out separately, resulting in the two bodies reaching separate conclusions. You can see why it was difficult to say which proposal was the best to take forward or whether there should have been a bit of this and a bit of that. However, for a joint proposal, I find it difficult to understand why there was no meeting for you to explain your position. Has your position changed to any degree since the discussions began?

**Mr Crawford:**

Since the discussions began, certainly. The discussions really began three years ago. Discussions with the Bar started last February. As we pointed out at previous meetings, fairly early in that



process, the Courts Service agreed — I was involved in the negotiations at that point — to see whether we could examine a Northern Ireland bespoke system, which was based on the 2005 rules rather than the graduated fees scheme. We felt that the graduated fees scheme was perfectly adaptable to Northern Ireland, which was said before. However, we were able to come to accept a Northern Ireland bespoke system. We accepted the proposal from the Bar to extend the standard fee grid to deal with cases that ran for more than 25 days, so that got built in as well. During the public consultation, we accepted a number of proposals made by the profession that led to about £300,000 in savings being given up for particular adjustments that were made.

The Minister's view is that a large part of what is in the current proposals reflects representations made by the legal profession over the past three years and, therefore, further discussion at a cost of £1.5 million a month, with the result that the proposals would not be able to be implemented until the summer, is a lot of cost, especially when he believes that there is not much prospect of any significant further change. The Courts and Tribunals Service proposals represent the product of at least three years' work in conjunction with the profession, including at least two sets of public consultation. John was involved in the first review of the 2005 rules that started in 2007. Since 2007, the Court Service has been trying to make changes. I think that the Minister feels that a further attempt is simply drawing out the process.

**Mr McCartney:**

I understand that. However, we have to accept the fact that the two bodies coming together was different to the way it proceeded previously. The rebuttal of this to the two bodies, and I do not want to speak for them, is done now through the Committee.

**Mr Crawford:**

First of all, the two bodies did not come to us to tell us that they were preparing a joint proposal. We found that out through the Committee Clerk advising the Department. We then received a copy of the joint proposal —

**Mr McCartney:**

Had they informed you, would you have had the meeting?

**Mr Crawford:**

There might have been more time to have the meeting. However, we got the joint proposal at 4.45 pm on Friday, and I think that the Committee received it about the same time. We were conscious that the Committee was meeting to discuss it today, and the Minister wanted to get his response to the Committee. I am not saying that we could or could not, or would or would not. It was simply the fact that the formal communication that a joint proposal was being produced was discovered last Friday and, like the Committee, only had sight of it.

**Mr McCartney:**

Would you consider having a meeting —

**Mr Crawford:**

I will certainly refer that to the Minister.

**Lord Empey:**

I am not sure that I fully appreciate all the minutiae of this. What is the explanation for a scale of costs for solicitors that is over double what it would be in England and Wales? What is the rationale for that?

**Mr Crawford:**

That rationale is where we start from and, at the moment, it is considerably more than that. We are attempting to make savings and cuts.

**Lord Empey:**

Why are they higher than that?

**Mr Crawford:**

They are higher because the fees are higher.

**Lord Empey:**

Why are they higher?

**Mr Crawford:**

The structure of the fees in Northern Ireland is different to that in England and Wales. The principal reason for the fees being higher in Northern Ireland is because of the fact that the basic trial fee that is paid for every case is higher. The trial fee in England and Wales is much lower and the amounts are then added on for particular pieces of work and so on. They are quite different systems, but that is the fundamental explanation as to why the fees work out to be more expensive. I have examples if the Committee wants them. The basic trial fee in Northern Ireland is about double that in England and Wales.

**The Chairperson:**

The Department does not have a problem with the principle of them being higher. Is that right?

**Mr Crawford:**

The consequence of us accepting a Northern Ireland bespoke system is, effectively, that we have to then apply the higher initial trial fee. We accepted the arguments of the profession that there are some difficulties in England and Wales. We would not accept that there are legal wastelands, and there are issues in England and Wales about the way they contract their work, and so on. However, we believe that leaving rates in Northern Ireland somewhat higher than England and Wales provides some protection. They will, of course, be subject to review, but the arguments that are being made by the profession are that a cut to the England and Wales level would significantly damage access to justice in Northern Ireland. The Minister's view is that leaving the rates significantly higher in our proposal provides protection for that. We acknowledge that what we have in these proposals is, in a way, a fairly crude approach that involves making percentage cuts rather than looking at particular types of cases where savings should be made, but that is in the interests of making the savings quickly. If they are not made quickly, we cannot bring legal aid within budget.

**Lord Empey:**

It is as well that Mr Crawford is not sitting in front of the Public Accounts Committee (PAC) in London. I am sure that we all accept that there is an issue about the quality of representation in the interests of justice. I do not know the minutiae of it, but I am sure that we could accept that there are, perhaps, historical and other reasons why fees are higher. You say that there are

structural reasons. I have still not heard any rationale as to why they should be twice as high, unless there is some dramatic difference in the quality of representation that people in England and Wales get. Can we take from what you say that, if we have a budget of £75 million or £79 million or whatever, people have worked out the costs according to the budget rather than establishing what the charges are and then reaching a budget?

**Mr Crawford:**

I am sure that that is how it was done in relation to the joint proposal.

**Lord Empey:**

I am sure that you will also agree that that is not the way that budgets should be constructed.

**Mr Crawford:**

It is not. It would not be our normal way of doing a budget in the Civil Service. That is correct.

**Lord Empey:**

Given the pressure that the budget is going to face, it strikes me that that position does not seem to be very robust. Mr McCartney's point about a meeting makes sense. Other Departments, not least the Department of Health, Social Services and Public Safety and the Department of Education, are struggling with the Budget, so I am quite sure that members of this Committee will be held to account by the Assembly and others when we have a Budget debate. If somebody who is making a case for rejigging the Budget reads the transcript of this meeting and looks at the Minister's letter and so on, I am quite sure that they could make the case that this is an area that requires further examination. I also take Mr Crawford's point that the meter is running, which seems to be his fundamental point. Unless we get some agreement on the revision, he is unable to put any break on the current outflow of funds. That is the fundamental point that he is making.

**Mr Crawford:**

Very much so. I would also add that, before my time in this position, my colleagues originally calculated that, if we moved to the graduated fee scheme, Northern Ireland's savings would be £6.5 million. They thought that that might be an optimistic view, so, in the consultation paper, the standard fee savings were estimated at £5 million. We are now proposing to make £3 million

in savings. The real reason why we are making fewer savings and why the differential is so much higher is the outcome of the discussions that we had with the legal profession. In defence of that, however, we are getting rid of very high cost cases completely, and those still exist in England and Wales. We feel that it would be appropriate to set that off. We will do that strongly in our discussion with DFP, because that area needs to be fixed.

**Lord Empey:**

The sort of money that you are talking about would, for instance, keep the adult apprenticeship scheme going. In that scheme, 5,500 people are receiving training and so on to give them better opportunities for work. That is the scale of all of this. You are talking about significant amounts of money. If the money is going in one direction, it is obviously not going in another. However, we are where we are, and I suppose that you cannot change course radically too soon. I accept that there is a pattern involved, but, equally, I would have thought that, if you were in a PAC-type environment, you could sell tickets for that.

**Mr Crawford:**

Before Lord Empey joined the Committee, I mentioned that a value for money review of criminal legal aid is under way, and we expect to receive the draft report within a week. We fully expect to be at the PAC in Northern Ireland in due course. Personally, I suspect that that will be a tougher gig than the PAC at Westminster.

**Mr A Maginness:**

What is the objective of these negotiations?

**Mr Givan:**

Do you mean discussions?

**Mr A Maginness:**

We had that debate last week.

**Mr Crawford:**

I think that we have done that one to death.

On the first objective, the reason that the discussions began was that there was a strike by the Bar. The proposals to introduce the graduated fee scheme and to reduce the VHCC fees from £180 a QC were being opposed. The reason that the discussions started was that there was a strike. The objective of those discussions was to see whether an agreed way forward could be found that would be acceptable to the profession and that would bring legal aid expenditure below the budget. I would emphasise the phrase “the agreed way forward” in that sentence.

**Mr A Maginness:**

So what is the objective?

**Mr Crawford:**

The objective of the discussions when they began was to find a way forward that would, hopefully, end the strike and also find an approach to legal aid, Crown Court remuneration and other areas.

**Mr A Maginness:**

Yes, but what is the objective in terms of the budget?

**Mr Crawford:**

The clear point was that legal aid expenditure had to be within budget.

**Mr A Maginness:**

That was a paramount consideration.

**Mr Crawford:**

Absolutely.

**Mr A Maginness:**

Give or take £100,000 here or £100,000 there, you are within budget now, according to the joint proposal from the Bar Council and the Law Society.

**Mr Crawford:**

I think that the difference is £600,000.

**Mr A Maginness:**

Well, £600,000 out of £79 million does not represent an awful lot.

**Mr Crawford:**

Against that we also have to set the potential additional costs to the PPS of £0.5 million, which we have not put into any proposal.

**Mr A Maginness:**

This is between you and the legal profession.

**Mr Crawford:**

In the business case that we present to DFP, we have to show costs for every department. In this case, the figure is £0.5 million, so that would reduce the savings by £0.5 million, even though it may leave the legal aid budget untouched. I mention that because these are issues that we have to consider.

**Mr A Maginness:**

Every time you come to the Committee you change things.

**Mr Crawford:**

I think that the point about the PPS has been made on several occasions.

**Mr A Maginness:**

Well, we will go through that. Anyway, every time you come to the Committee you seem to be changing things. I ask you what the objective is, and you go on about a strike. We then come to the point that the paramount objective is to get within budget. The proposal from the profession is within budget, or within a beagle's gowl of the budget. I would have thought that that would be satisfactory from the Department's point of view.

**Mr Crawford:**

Again, I repeat what I said about the Minister's concern that the differentials in the standard fees are such that he would not be able to get the joint proposal past DFP. I think —

**Mr A Maginness:**

Can I just stop you there? I cannot recall you raising that issue at our last meeting. Maybe you did, but I cannot recall it.

**Mr Crawford:**

I think that we raised it at a previous meeting. I think that it came up in the discussion about the various discussions with the profession. The point was put to us that the only issue that had been an objective was the budget. We attempted to explain that, throughout the discussions, we said quite explicitly that, in the end, any agreement had to be acceptable to the Minister and that it was not just about meeting the budget in an accountancy sense; the actual nature and content of the proposals had to be acceptable to the Minister as well.

**Mr A Maginness:**

It is a matter for the Committee to reflect on, but I cannot recall you raising DFP as a major problem in relation to this budget target.

**Mr Crawford:**

It has been raised at previous meetings.

**Mr A Maginness:**

I see it as being imported into present discussions in the same way that you are now importing the concept of more or less establishing parity, or near parity, between the fees in England and Wales and those in Northern Ireland.

**Mr Crawford:**

I do not think that it is near parity. Indeed, we are not seeking to achieve parity.



**Mr A Maginness:**

That issue seems to dominate what you are saying today. It has been given considerable emphasis. It was raised before, but you are giving it considerable emphasis, and it is a benchmark issue now. You are really saying that, if it does not establish parity or near parity, there is no deal.

**Mr Crawford:**

We are not aiming for near parity. The Courts and Tribunals Service proposal would not produce near parity. What the Minister is concerned about is that the joint proposal is even further away — considerably so — and at a level that would not be acceptable —

**Mr A Maginness:**

We could go on for ages. Did you ever say to the Law Society and the Bar, “By the way, if these negotiations do not create a situation in which your fees are reflective of those in England and Wales, there is no deal”?

**Mr Crawford:**

You will find that they have actually quoted me as saying that to them. We were talking about the Minister not being able to consider a proposal for an across-the-board cut in Bar Council fees of less than 10%. They quoted that in evidence to the Committee.

**Mr A Maginness:**

If the paramount objective is to be within budget, I cannot understand why the joint proposals, which came as a surprise to you, are not acceptable to you and the Department.

**Mr Crawford:**

I have set out the Minister’s view and concerns on that. I am not sure how to add to that.

**Mr A Maginness:**

I have a final comment. I do not get a clear view of what the Department really wants from the negotiations. The Department keeps introducing different aspects when it reaches the point of near conclusion, which is very unfortunate.

**Mr McNarry:**

I have listened very interestedly to the discussion. At the outset, I welcomed the announcement to reduce costs in legal aid. I think that the Committee generally welcomed that at the time. I just wonder what we are being drawn into. I am not so sure that it would be as easy for other people's remuneration claims — and there are many — to be discussed in a Committee to the degree that we are discussing this issue. To be frank, I am losing patience with it. I am certainly not going to play the role of rebuttal messenger or give cover to this or any other Minister. I would like to ascertain what exactly he is doing.

I do not believe that it was the Committee's intention to agree to what the two bodies come up with. It was more a case of it being a good idea to get them together to come to an agreement. We need to be clear about that. I am concerned about how long we have spent talking about this. My main concern is how the proposals would impact on the Department's published spending plans for 2011-14, because those are what we have to work with. We are drawing closer to a date when we will either agree or not agree. I recall hearing, on at least two occasions, from the two professional bodies that they could live within £75.2 million. I heard that very clearly.

I am coming to the crux of the matter. Is the Department now saying to the Committee and the two professional bodies that that is it, this is where we are and this is what we are doing? Cutting to the chase, is that what is being said? Is the Department saying that those are its proposals and that the Minister is determined? Can you speak on behalf of the Department and the Minister and tell the Committee that this is what the Minister wants, this is what he is doing and, although he would very much like the support of the Committee, irrespective of that, in the channels to which he is accountable, this is what he is going ahead with?

**Mr Crawford:**

I can do some of that, as much as I can.

**Mr McNarry:**

I would rather that you did it all; it is one answer.

**Mr Crawford:**

The first point is that the Minister has considered the joint proposal, has communicated in writing and has today decided that that cannot be the basis of the way forward.

The second point is that he is keen to make progress on the Courts and Tribunals Service proposals as quickly as possible. He is still open to receiving and considering comments from the Committee. However, it is the Minister's view that he wants to take this into legislation within a matter of weeks. DFP has asked for an Executive meeting —

**Mr McNarry:**

Just give me a little bit of leeway, Chairperson.

I am not sure whether there is an Executive meeting today. If there is, your Minister will be at it. I understand that discussing the Budget may be on the agenda. Allied to that Budget is the importance of not only your Minister's spending plans but every Minister's spending plans. Does your Minister have complete spending plans to discuss at that meeting?

**Mr Crawford:**

I understand that he has.

**Mr McNarry:**

Are those plans based on what you are telling us today?

**Mr Crawford:**

They are. They are on the basis that the legal aid budget will be £75 million at the end of the CSR period.

**Mr McNarry:**

Is that not the end of it then?

**Mr Crawford:**

The point is that the Minister will need to make those changes or changes.

**Mr McNarry:**

With all due respect, that is not good enough for you or your Minister or us. I have, in black and white, your Minister's proposed spending plans. You could not run a business on the basis of planning what you are going for but then changing your mind, negotiating or doing this, that and the other. We are talking about a four-year budget. You could not run a business on the basis of those plans. You are saying that there is a bit of indecision, a bit of indiscipline and a few ifs and buts. That is Del Boy stuff: "It might be all right, Rodney, if we move things about." I want to hear something specific. I want to hear something definite. For me to make representations on this budget, it has to be complete; it has to be a budget.

**Mr Crawford:**

The proposals, or something like them, need to be laid before the Assembly before it dissolves if savings are to be made to meet the budget in legal aid in the timescale set out in the draft Budget 2010.

**Mr McNarry:**

Do you mean laid by the Minister of Finance and Personnel?

**Mr Crawford:**

The Minister of Finance and Personnel countersigns, which is why DFP approval is so important. However, if we are not to lose more of the savings, the timescale is that the proposals must be laid before the end of March. If they are not, there will be a gap in the legal aid budget.

**Mr McNarry:**

Finally, you are telling me that the Department is saying that, as of right now, the draft spending proposals remain intact.

**Mr Crawford:**

Yes.

**Mr McNarry:**

There is no change, and there will be no change.

**Mr Crawford:**

It is not that there will be no change, because the Minister would still welcome comments from the Committee in the time that remains.

**Mr McNarry:**

That is rather exasperating. How long have we been here?

**Mr Crawford:**

I am only here to report.

**Mr McNarry:**

I respect that.

**The Chairperson:**

To be fair to the officials, if there is some blue sky-thinking today that has not been brought to the subject before, they will take that away with them and tell the Minister that the Committee has come up with something that has never been thought of. I am not sure that that is going to happen, but anyway.

**Lord Browne:**

Page 3 of the Minister's letter says that:

“the Bar and Law Society assert that the new joint proposal would deliver £16.76m in annual savings. This cannot be confirmed as there are elements in the proposal that cannot be costed.”

What are those elements?

**The Chairperson:**

Before you answer that Mr Crawford, I will let a Member ask a supplementary question on what Mr McNarry said. I had intimated that I would let her do so.

**Ms Ní Chuilín:**

It is a supplementary question to do with what Alban Maginness said. You can come back to me at the end.

**Mr Crawford:**

The joint proposal includes a proposal that all material provided by the prosecution to the defence should be counted for the purposes of page count thresholds for higher rates of fees. That cannot be costed because we have no idea how many pages that would involve in each case. In fact, we believe that that goes further than the concern that was expressed because, in many cases, the prosecution provides a schedule to the defence team of materials that it holds in addition to the served evidence. The defence team will go down the list and say what material it wants. In many cases, it will be handed over without any conflict or difficulty. All of that material would be included for the purposes of the page count and, therefore, the fee would increase. We have no costing for that in the joint proposal nor have we any ability to cost it. That is one of the difficulties with that approach.

**Lord Browne:**

Are there any elements that apply to the Northern Ireland Courts and Tribunals Service that cannot be costed?

**Mr Crawford:**

No, we costed our proposal fully. We have attempted to produce a proposal that is fully costed, and I think that we have succeeded.

**Lord Browne:**

Are you confident that the figures that have been produced by the Northern Ireland Courts and Tribunals Service are accurate?

**Mr Crawford:**

I am as confident as I can be.

**The Chairperson:**

Mr Crawford, the joint submission from the Bar Council and the Law Society makes an assumption that no further cost-savings measure will be introduced in respect of the assignment of counsel. If the Department's proposals on Crown Court remuneration are adopted, do you envisage that that will come within budget, or will living within budget still depend on the introduction of other proposed measures, such as a fixed means test and changes to assignment of two counsel?

**Mr Crawford:**

In the Courts and Tribunals Service proposals, we have included the assignment of counsel and criminal legal aid means testing in our calculation of the total saving, but, because our total saving exceeds the requirements that are needed for the budget, there is some leeway in relation to the proposals. For example, if the Committee were to decide not to proceed with criminal legal aid means testing, that could be dropped completely, as I think I said to the Committee previously. Under the joint proposal, that facility would not exist. It assumes that the means-testing proposal would be made in full for savings.

Would you mind, Chairman, if I were excused for a second to visit the gents? John will continue in my absence.

**The Chairperson:**

Do not let Mr Halliday away as well. *[Laughter.]* If you were asked the same questions, would you give the same answers?

**Ms Ní Chuilín:**

Mr Halliday might be able to answer my question. You say that you do not anticipate any additional costs but you know that the PPS needs £500,000. If, at a later stage, the Committee were to find that two counsel representation incurs additional costs, how would that cost be found in the budget? It seems to be a moveable feast.

I have a second point to put on the record. The Hansard report shows that negotiations were mentioned, not discussions; Anthony Harbinson said "negotiations". I doubt that Hansard

reported that incorrectly, and I doubt that I heard it incorrectly. I am just using the Hansard report for reference; if it is needed, it is there. If it is the case that there is a different outcome on the position on the statutory rule in relation to two counsel representation, will that be reflected in the current budget? If it is not, how will that money be found, and where will it come from?

Mr Crawford, while you were away, Mr Halliday said yes to everything. *[Laughter.]*

**Mr A Maginness:**

You could not trust him.

**Mr John Halliday (Northern Ireland Courts and Tribunals Service):**

Not proceeding with the two counsel proposal will mean that we will lose savings of in the region of £1.5 million, which would have to be found elsewhere.

**Lord Empey:**

Mr Halliday denounced what Mr Crawford said when Mr Crawford was away, but apart from that it was all right.

**Mr Crawford:**

I will have to read the Hansard report carefully.

**Ms Ní Chuilín:**

That was my other point; you should read the Hansard report carefully.

**The Chairperson:**

It is all right, Mr Crawford. He did not stray too far.

**Mr Crawford:**

If Mr Halliday has not made this point already, I will point out that there is nothing in the joint proposal that would allow criminal legal aid means testing to be changed or for lower savings to be made.



**The Chairperson:**

Gentlemen, thank you for your attendance.