



Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT
(Hansard)

Legal Aid Dispute

23 June 2011

NORTHERN IRELAND ASSEMBLY

COMMITTEE FOR JUSTICE

Legal Aid Dispute

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Stewart Dickson
Mr Seán Lynch
Ms Jennifer McCann
Mr Basil McCrea
Mr Alban Maginness
Mr Jim Wells

Witnesses:

Mr David Ford)	The Minister of Justice
Mr Robert Crawford)	Northern Ireland Courts and Tribunals Service
Mr David Lavery)	

The Chairperson:

I welcome David Ford, the Minister of Justice; David Lavery, director of the Northern Ireland Courts and Tribunals Service; and Robert Crawford, head of the public legal services division. The session will be recorded for Hansard and the transcript will be published on the Committee's web page. Minister, we asked you to come along to give us an update on the legal aid situation. The other issue is around sex offences, which we will deal with later.

Mr Ford (The Minister of Justice):

As there has been some publicity, perhaps I should mention initially that there was a death in custody in Maghaberry prison yesterday evening. All the usual examinations are being carried out. At this stage, there is no sign of any suspicious circumstances. It is obviously a tragedy for an individual family, but that is all I can say on that point at this stage. I thought members might want to know that.

As Committee members will recall from when we met on 26 May, the new rules for legal aid took effect from 13 April. A number of solicitors who would have been remunerated under the new rules have withdrawn from cases. That action now appears to be supported by some barristers. Between the new rules coming into effect and yesterday, there has been a total of 233 cases with 301 defendants. Ninety-four solicitors' firms representing 269 of those 301 defendants have come off record. Eight firms representing eight defendants remain on record, and, at the moment, 14 firms with 20 defendants remain formally on record, though no certificate for the Crown Court has been applied for.

Members will know that I have a responsibility under the European Convention on Human Rights (ECHR) and the Human Rights Act 1998 to ensure that defendants who cannot afford to pay for their defence are provided with the necessary legal assistance. In circumstances where some solicitors are declining to take on the Crown Court work, I have done what I can to help defendants by providing them with a list of solicitors willing to take on their case, which has been sent to all unrepresented defendants, including defendants on remand.

Three solicitors' firms in England and Wales have asked to be listed, but they cannot be included on our list until the Law Society allows them to take on work in Northern Ireland. Officials have asked the Law Society to waive the normal requirements to allow unrepresented defendants to receive legal advice as quickly as possible. It is my understanding that the requirements for them to have had three years' service before being authorised to take on work in Northern Ireland can be waived for those who have experience in other jurisdictions.

I have also asked officials to compile a list of barristers who are willing to take on Crown Court work at the new rates following reports that some barristers were declining that work in

support of the solicitors. The list will be made available to solicitors taking on Crown Court work who are having difficulty finding barristers.

I am disappointed that a number of solicitors and barristers who originally put their names forward have since asked for their names to be removed. There have certainly been reports in the media that a number of them appear to have come under pressure from other members of the legal profession. The legal profession operates in what is supposed to be an open and competitive environment, and I believe that those who are prepared to carry out the work at the rates that were approved by the Assembly should be allowed to do so. I encourage solicitors and barristers to return to normal working so that defendants receive the legal advice that they are entitled to and cases are not delayed to the detriment of victims. I asked the Law Society and the Bar Council to make it clear to their members that bringing pressure is unacceptable.

As I told the Committee at our previous meeting, I offered both branches of the profession an early review of the new rates as soon as enough cases have progressed through the system in order to ascertain how those new rates are coming into effect. I wrote to the president of the Law Society and the chairman of the Bar Council about it last week, and I had replies from both of them yesterday. As a result, David Lavery and Nick Perry, the permanent secretary, hope to meet the two branches of the profession early next week. It is absolutely clear that that can be only on the basis that the new rates are now in law, and we have offered to see what difficulties may arise when cases are progressed. Any suggestion that we could somehow go back to renegotiating something by a stroke of my ministerial pen is simply legally impossible, even if it were to be the right thing, which it is not.

At this stage, I have to consider other actions. On Tuesday at Question Time, I made it clear that my ambition is to see those who normally carry out legally aided defence work doing so in normal ways. If not, we will have to look at the other options, which include inviting solicitors and barristers from outside Northern Ireland to put their names forward for work in this jurisdiction, or commencing the use of the powers that are available but not yet commenced in the Access to Justice (Northern Ireland) Order 2003, which would allow the Legal Services Commission to directly engage the services of solicitors and barristers to provide the legal advice and representation that is needed. That latter option would perhaps be only an interim measure,

but the Committee will note that similar legislation exists in England and Wales and in Scotland, where it provides the legal basis for the public defender services that operate there. Contingency planning is under way because I am determined to ensure that we preserve access to justice.

I remain disappointed that a number of solicitors and barristers are not currently prepared to take on the Crown Court work at the new rates. The rates are more generous than those in England and Wales. As far as we can see, we have the most generous legal aid system per head of population anywhere in the world. The new rates were introduced following lengthy and detailed discussion with the legal profession, which extended over a period of about three years. Although we did not reach agreement on the final points, we did, as requested by the profession, introduce a specific bespoke system for Northern Ireland, rather than simply replicating the system that operates in England and Wales. We have accepted many of the representations that were made, but, as I said on a number of occasions, we cannot afford the amounts of money that were being requested.

The cuts in Crown Court remuneration, including the complete removal of very high cost cases, are absolutely necessary to reduce the cost of legal aid. Even with those changes, more savings will be needed, and we are looking at efficiencies across the administration. I have offered the review, which would normally take place only after two years, as early as possible when a sufficient number of cases are through to ascertain its value, but we simply cannot afford to pay anything more than the rates that are currently in force.

On Monday, I was in London for a meeting of the British-Irish Council, and I had a meeting in the Ministry of Justice (MOJ) before I went there. One of those who I met was Jonathan Djanogly, the Minister who is responsible for legal aid in England and Wales. You may have seen in the media that he is proposing to make further significant cuts in legal aid payments as they apply in England and Wales. As we said on a number of previous occasions, those payments are already somewhat lower than ours. That is the position as it stands, and I am very happy to take questions from any member.

The Chairperson:

I heard in the media that the Ministry of Justice was looking at a reduction of £290 million in

England and Wales. Given that our Department of Justice has a ring-fenced budget, have we had any indication of what the Barnett consequential from that might be on our legal aid budget?

Mr Ford:

The simple answer is that I have not seen anything formal on that. I think that the Ministry of Justice is talking about a cut that is somewhat in excess of the figure that you mentioned. My understanding is that it is in the region of £450 million, but I do not have the detail on it. When Jonathan Djanogly spoke to me, he was about to make the announcement the following day, so I got a broad picture rather than the full detail. We will be getting details to follow through. I presume that we can accept that there will be a Barnett consequential of -3%, or whatever it is, of the figure that is covered.

The Chairperson:

The 2003 Order allows the Legal Services Commission to employ people under a defender-type system. Do any of the rules need to go through the Committee for that to take place, or can the Legal Services Commission legally press the button and do that without having to come back to here?

Mr Ford:

My understanding is that the commencement of that part of the Order is simply down to a ministerial decision and does not require Committee approval. Is that correct?

Mr David Lavery (Northern Ireland Courts and Tribunals Service):

Yes, I think that is right.

Mr S Anderson:

Thank you, Minister, for providing us with an update on this ongoing issue. You touched on the list of solicitors. What concerns me is that a number of solicitors who were on that list asked to be removed from it. I think that you said that that was maybe following pressure from others in the legal profession. I and others have listened to the reports, one of which stated that one particular solicitor had not read up on the case papers before taking the case. To me, that person has been tainted in some way because of the ongoing dispute. Is there anything that you or your

Department can do to help those who are willing to work but maybe feel pressurised by colleagues to remove themselves from the list? I missed the numbers. How many are on the list? Is it still decreasing?

Mr Ford:

There are a number of different points. First, I think that I said, or I certainly meant to say, that there have been some reports in the media of pressure being applied to some people. I have no knowledge of that. I am certainly disappointed that those who were on the list as willing to work have subsequently withdrawn their services after their names were published. I have no knowledge as to why that was. We have not been running round, ringing people up to ask them why they have withdrawn from the list. The fact is that a number who were publicly stated to be prepared to work have withdrawn.

You mentioned the specific issue of a solicitor who was criticised for apparently not carrying out his duties properly. My understanding is that — I am going to be careful here — complaints have been made about that individual and by that individual against others. I shall leave it at that. I cannot go into any further detail. I am sorry; I missed your third question.

Mr S Anderson:

Is there anything that you, as Minister, or the Department can do to assist —

Mr Ford:

I am not sure that we can actually assist people in carrying out their professional duties as independent practitioners. I know that staff in the Courts and Tribunals Service may, at times, end up giving bits of assistance to various people for whom we are not directly responsible. However, I am not sure that advising a solicitor or barrister as to how to conduct a case is within our remit.

Mr S Anderson:

We do not know how much pressure is being placed on certain individuals or firms not to take part in the new arrangements. Obviously, from your answers up to now, it is clear that those people have not come back to say why they came off the list. I was trying to find out whether

there was any feedback from those people who came off the list. However, we do not know the reasons for that at the present time, because they are not willing to say.

Mr Ford:

I certainly have not been given any indication as to the reasons why, and I do not think that officials have. Those people simply came off the list.

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

We do not ask for a reason, so we do not have any hard indication of that.

Ms J McCann:

You are very welcome. Thanks for your presentation. I have just a couple of questions. My first question is a more general one about criminal legal aid. Who actually decides whether someone is entitled to legal aid in a criminal case?

Mr Ford:

I will let Robert answer the technicalities of that.

Mr Crawford:

For criminal legal aid, it is the judge.

Ms J McCann:

I know that the review of access to justice is looking at civil cases. When we met representatives of the Bar Council the other day, they talked about the fact that they cannot prepare for cases in the same way because of your decision. I have a follow-up to the question I asked the first time. As a new member of the Committee, I have not been privy to all the debate that has been going on. Are you still assured that people who need access to legal aid but cannot afford to pay privately will be given the same level of representation that someone who could afford to pay for it would have? Will that be the case when people come to trial?

Mr Ford:

I would be concerned that there might be problems if the current actions continue. That is why I

said that we are prepared to look at the alternatives, which are whether some firms outside Northern Ireland are prepared to work or whether the issue of direct employment by the Legal Services Commission needs to be considered. The Bar Council apparently said that the new rates mean that they cannot prepare cases. I find that difficult to accept when the new rates are more generous than the rates under which barristers work on very similar cases in England and Wales.

We are not restricting any individual's access to justice and we are not restricting their right to get defence in a particular case. All we have done is change the amounts that solicitors and barristers are to be paid. I am fully conscious of the main part of your question. I have made clear that my first choice is for those who have been doing this work to continue to do so in the same way at the new rates. However, we are prepared to look at whatever other options may be necessary to ensure that access to justice is granted.

Ms J McCann:

I have one other quick question: are you considering where the savings from legal aid in civil cases will be put? I am thinking of people who do not have access to public funds, maybe women who are victims of domestic violence but whose immigration status means that they would not get legal aid. I previously asked questions in the Assembly about non-molestation orders. Would you look at putting finances saved through this scheme into that area?

Mr Ford:

The reality is that we need to make savings right across the legal aid budget, whether administratively, in civil cases or in criminal cases. I would be pre-empting the review of access to justice if I went much further than that, so I will be cautious. As you are aware, we were at least able to remove the upper limits so that women — effectively, it is almost always women — seeking non-molestation orders would be entitled to legal aid. Even if they were subsequently liable to make a contribution, they would at least receive the legal aid in the first place for things such as non-molestation orders, which have to be carried out in a hurry. I think we are showing a certain degree of creativity in how we are using savings, but the reality is that every part of the legal aid budget is under pressure.

Mr McCartney:

Thank you for the presentation. I have a number of issues. I am trying to get a clear picture of where we are at present. How many cases have proceeded to the Crown Court?

Mr Ford:

Robert is probably best placed to give the figures.

Mr Crawford:

It is not quite that simple, because cases may be adjourned. However, since 13 April, nine defendants and eight firms are listed as having a defence certificate with representation.

Mr McCartney:

Is it fair to say that opposition to this is rock solid?

Mr Crawford:

The figures certainly show that the number who are unrepresented is considerably larger. There are 269 defendants.

Mr McCartney:

I asked this question at a previous meeting when the Minister was here: is this perhaps a worse situation than any of us envisaged? Did part of the advice received by the Minister state that we would be in this situation?

Mr Ford:

It is certainly a worse situation than we would have hoped for. I am fairly sure that there was no specific advice on what was envisaged. What was absolutely clear was that, in looking at the budget for legal aid, there were real difficulties and action had to be taken. You used the term "rock solid". I am not quite sure what rock solid is. My understanding is that some solicitors who are officially off record have been to visit remand prisoners in jail. I am not quite sure why, if they are supposedly off record, they are going there. You used the term rock solid, but that does not sound very rock-like to me.

Mr McCartney:

I do not know either, but they could be going to explain why they are off record.

Mr Ford:

In which case, presumably, one visit would do.

Mr McCartney:

Well, I do not know how many visits they have had, nor have we been told. We can deal only with what is put in front of us.

Mr Ford:

I appreciate the point. I am asking for that issue to be followed up to find out exactly what is happening.

Mr McCartney:

I am asking about that because there is an impasse, and we need a way out of it. The offer of a meeting between your officials and the two professional bodies is obviously an indicator of that. However, if the backdrop is that you are saying that it is not legally possible at the stroke of a pen, I can understand that, but it is legally possible if there is a meeting of minds and some tweaking can occur. It is possible to find a way round the problem legally.

Mr Ford:

It is possible to find a different way of doing things. The issue would have to be that any different way of doing things would have to go the Assembly with the normal procedures. A business case would have to be approved by the Department of Finance and Personnel. It would take a significant period of time to carry through. That is why I was pleased that I got the letters back yesterday from the Law Society and the Bar Council agreeing to a meeting. I am asking Nick Perry and David Lavery to ascertain what is or is not possible at that meeting. We need to make it very clear to those who are withdrawing from their normal operation that there is no instant fix to go back. That is why I believe that the review of the new rates is the best and most reasonable offer that could be made at this stage.

Mr McCartney:

We have had presentations from the accountants who are acting on behalf of the two bodies. We have had evidence from the Department saying that the figures cannot be costed, which is in direct contrast with what the two bodies are saying. However, nowhere in the process have we heard that the two sets of accountants have sat down so that, in some way, we can have a definitive decision about inaccuracies and so forth. We are left with people who say that they can come within budget and others who say that the figures cannot be costed, but we have no sense that the two sets of number crunchers, for want of a better term, have sat down and disputed the figures that have been presented to the Committee. We have not seen that, and I wonder whether that could be a part of the process.

Mr Ford:

It may be that that could be part of the process, but it still would not alter what is currently the legally set rate as determined by the Assembly. To me, that also illustrates the reality of where we are compared with what may have happened previously. It is the job of the Assembly, on the recommendation of the Department of Justice, to set the rates. It is not an arbitration exercise between the lawyers and the Department. I get the impression that that may have been what happened in the past under different arrangements when budgets were easier, but it is not the reality of the life that I live.

Mr McCartney:

OK. That is understood. I am not saying that it is an arbitration process, but when you are trying to make up your mind —

Mr Ford:

I know that you are not, but some people were thinking that that is what it was.

Mr McCartney:

People can speculate, but phrases such as “reports in the media” are not helpful when trying to establish fact. There are reports in the papers every day of the week, and you and I know that they are wholly and wildly inaccurate. When we are trying to present facts about who is doing what and how they are doing it, we should not be using that type of phrase.

Mr Ford:

The simple point that was put to me — Robert can go into detail if it is needed — was that one aspect of the joint proposal from the solicitors and the barristers included payments for additional evidence beyond the prosecution bundle, which were unquantified and unquantifiable.

Mr McCartney:

That is around disclosure.

Mr Ford:

It was around additional disclosure. That was something that could have added enormously to the costs, on an almost open-ended basis. That was the kind of thing, it seemed to me, that was completely impossible to take into account, because we simply could not cost it.

Mr McCartney:

If that was off the radar or was fixed at a certain rate, could there be a meeting of minds?

Mr Ford:

I am not sure whether there could be a meeting of minds on the basis that we have to start from the rates that are now in statute. Certainly, I am keen to see that my officials explore the issue. Asking the director of the Courts and Tribunals Service and the permanent secretary to meet the two professions at the beginning of the week is, as far as I can see, treating issues as seriously as we can.

Mr McCartney:

That is to be welcomed. We support that. Thank you.

Mr A Maginness:

Minister, are you surprised at what has happened, given the fact that the Law Society and the Bar Council went to your Department and negotiated with your officials a joint proposal, which was empirically established to be within budget by independent auditors Goldblatt McGuigan? The Law Society and the Bar Council were of the view that the legal aid budget had to be within the

parameters of the budget that you had set, which was agreed earlier at Hillsborough. The Law Society and the Bar Council presented reasoned and reasonable proposals, which you rejected. Then, at the tail end of the Assembly mandate, you proceeded to push through the rules that you now say are impossible to change. Can you be surprised by the reaction of the professions to what you did to abruptly end those negotiations and to just push through your own proposals?

Mr Ford:

I would probably have to dispute several of the premises on which you have just made that statement. First, officials did not “negotiate” with lawyers in the normal sense of the word. There was discussion. However, it was the responsibility of the Department of Justice to make decisions. It was not some two-sided negotiation process. It is the Department’s responsibility to live within the budget that was, as you said, part of the allocation.

You referred to figures being empirically established by — I think that you said — “independent auditors”. Well, Goldblatt McGuigan was brought in by the Bar Council. Certainly, when I go into any negotiations and call in aid, I tend to assume that somebody whom I paid will support my case and not that of the opposition.

Mr A Maginness:

Minister, I thought that you said that they were not negotiations.

Mr Ford:

And your point is?

Mr A Maginness:

You just said they were negotiations.

Mr Ford:

No, I did not say that they were negotiations; I said that if I went into negotiations —

Mr A Maginness:

By implication —

Mr Ford:

No. I am talking about a loose analogy, not specifically about what happened. The reality is that Goldblatt McGuigan was paid by the Bar Council. In those circumstances, I would be extraordinarily surprised if a body of professionals was not asked to assist in justifying the case that is being made by those who are paying that body.

You also said that “reasoned and reasonable proposals” were made and that I rejected them. Well, I am afraid that, for the reasons that I just explained to Mr McCartney, I do not believe that an open-ended budget was either reasoned or reasonable in the circumstances in which we live and given the other financial pressures on the Department of Justice in all that we have to do with a decreasing budget over the next four-year period. So, I do not accept that those proposals were reasoned or reasonable.

That also seems to me to tie in with the suggestion that our figures were incredibly close. If they were that close, why on earth would so many lawyers have withdrawn from action? It seems to me that that can only be because they think that there is a significant difference between what they want and what it is possible for the Assembly to fund.

I also reject the premise that we pushed something through. As I said, certainly in the Assembly Chamber and in my previous appearance before the Committee, that issue was under consideration by the Department and various processes of formal consultation took place for around three years. In delaying that in seeking to reach an agreement, and in the time in which we agreed a bespoke Northern Ireland arrangement as requested by the two professional bodies, it cost the Department of Justice’s budget £1.5 million every month that we delayed.

By putting through the process at the stage when it became clear that, having asked for a further meeting with my officials on, I think, 8 March, and, then, turning up on 9 March to say, “It is our joint proposal or nothing”, the two professional bodies were not prepared to consider anything other than their proposals, I had no choice but to ensure that the regulations were laid. I note that those regulations then passed through the Assembly last week with nobody praying against. I must, therefore, assume that that is the will of the Assembly.

Mr A Maginness:

Could I ask you a further question about the figures that were presented by the Bar Council and the Law Society? Those figures were, as I said, presented by independent auditors on behalf of the Law Society and the Bar Council. Did you or your officials produce alternative figures to demonstrate that the proposals put forward by the Bar Council and the Law Society are as imperfect, unreasonable, impractical and open-ended as you have suggested?

Mr Ford:

I am afraid that you are repeating the points that I have just dismissed, and I do not propose to repeat what I said. You keep using terms such as “independent” and “audit”. A firm of professionals engaged by the Bar Council produced the figures that the Bar Council wished to put forward. If you wish to keep repeating the word “independent”, I will say that back every time, but I do not think that that is terribly constructive. The issue was that we worked with the figures that were prepared by the Courts and Tribunals Service, and those figures went through a full assessment within the Department of Justice core and were approved by the Department of Finance and Personnel. That is the way I understand every part of public finance to operate in this region.

Mr A Maginness:

Are you saying —

The Chairperson:

I am going to move on.

Mr A Maginness:

Just one last point.

The Chairperson:

This is the final point, Mr Maginness.

Mr A Maginness:

You say that there is a meeting between some of your officials, the Bar Council and the Law Society next week. However, if you are saying now that there is to be absolutely no alteration to the rules, what is the point of that meeting?

Mr Ford:

I am sure that a distinguished barrister such as yourself is not suggesting that I can somehow change the law by personal whim. I made it clear that the point of next week's meeting is to see what procedures can be put in place on the basis of what I have offered — an early review of that which is now set in statute. That is the only arrangement that we can possibly make. That is something that I have put on offer for a considerable number of weeks now. There is nothing further that can be offered, given that the new rates are in statute.

We have to ensure that we get the justice system working. We will deal with whatever may be perceived as any anomalies in the new system as it operates on the basis of empirical evidence as to its operation. We are prepared to do that significantly earlier than the normal two-year requirement for review, but there have to be enough cases through for it to be possible to review it. That is the position that we have stated for some time and that is the position that I put to you.

Mr A Maginness:

That is a policy of confrontation, not a policy of compromise.

The Chairperson:

OK —

Mr Ford:

I would have thought that that is the only policy of compromise possible given what is already set in statute. If you can suggest how we vary statute, other than by the properly approved procedures for varying statute, perhaps your professional colleagues can put that to the meeting next week.

Mr B McCrea:

I apologise for my delay in getting here; I was unavoidably detained. I also apologise if I ask you any questions that you have answered in your briefing paper. Nevertheless, I will do my best.

What is the current legal aid budget that you are working to on an annual basis?

Mr Ford:

Robert will give the figures.

Mr Crawford:

This year, it is just over £83 million. It will drop to £75 million by the end of the current spending review period, three years from now.

Mr B McCrea:

What was the comparative figure that was agreed at Hillsborough?

Mr Crawford:

At Hillsborough, the settlement figure was £79 million at the point of 2013-14. We are now in a spending review period that runs one year beyond that.

Mr B McCrea:

You will maybe have to help me. Has there been a reduction in the legal aid budget vis-à-vis that which was agreed at Hillsborough?

Mr Ford:

Yes, because of the fact that the Department of Justice is ring-fenced to MOJ and the Home Office for England and Wales, we experienced an in-year reduction last year as well as the ongoing Barnett consequentials. Unlike other Northern Ireland Departments, we had our budget cut in-year because of that ring-fencing.

Mr B McCrea:

That is helpful, Minister. I recall imperfectly that, in the run up to the Hillsborough agreement, a

lot of negotiations took place about the legal aid budget, which was increased, reduced and increased again. I presume that there was a lot of articulation on that, because there was a significant point about why it had to be at the level that it had to be.

Mr Ford:

I was not the Minister of Justice then. I can go only with the conclusion of those discussions, rather than the various waves as the discussions went through.

The Chairperson:

I am conscious that we are trying to discuss the dispute as opposed to what was in the Hillsborough agreement. We should try to keep to the issue of the dispute.

Mr B McCrea:

I will be guided by you on that, Chair. As I understand it, people believed that certain agreements were undertaken and that certain budgets were struck. For whatever reason, and I accept the reason that the Minister has given, we are below that figure. That is what I was trying to tease out or, at least, reassure myself of. Having made that point, I am happy to move on to the next modest point. For reasons that are not in the Minister's control, there has been some disappointment, whether justified or not, with the level of the legal aid budget.

I am surprised — not that I have that much experience — and interested to note that the Bar Council and the Law Society have a united front. Usually, they have some differences in such issues. It suggests to me that we need to find a way of looking again at resolving the issue. When you were dealing with Mr Maginness's interjection, you said that you would perhaps listen to any constructive issues that we raise. Are you aware of any other mechanism that could speed up the review other than waiting for the number of cases to go through and then having a review?

Mr Ford:

I do not see how we can review the new arrangements unless we see how they work in practice. Normally, it would take something like a year for the cases to go through the system. We have said that we see the potential for enough being done so that six months might be enough. Indeed, to some extent, it might be a rolling review through that period so that you would not sit and do

nothing for six months but would start to accumulate data to go through. In my terms, all of those are reasonable offers, because the law says that those regulations are now in place and a review happens in two years' time. That is a significant speeding up, but I do not see anything else that we can do beyond that.

Mr Lavery:

I will amplify what the Minister said. In writing to the legal profession, the Minister invited solicitors and barristers to meet officials, which, as the Minister said, we hope to do next week. The purpose of the meeting is to discuss their views on how the work of the review might be taken forward, including the issues that require consideration; the timescale and the context in which those issues could be addressed; and the review's modalities, including whether there would be benefit in including in the arrangement scope for independent expert advice. That is quite a wide-ranging agenda, and there was a reasonably encouraging response from the two professional bodies in that they would at least be willing to meet to explore that menu of issues.

Mr B McCrea:

That is helpful. I read between the lines the breadth of discussion material. Without trying to compromise any position, I think that it would be useful if we could find a resolution to this matter. One way of checking whether legislation needs to be reviewed is to review cases. Given that the report that has already been put, we can anticipate that there are certain problems, and that might give you cause for review. I do not want to compromise any discussions, but I want to urge you to see whether we can have a reasonable and responsible approach from all of us. I take your point that the new fees are set in legislation that has gone through the Assembly, so all of us take our share in that. Nevertheless, if we are all taking our share, we want to encourage you to see what you can do for the best.

My final observation, which you need not respond to, is about a point that was raised by my colleague Mr Maginness. All businesses get audited by independent auditors. Just because auditors are paid a fee does not mean that they are not independent. We need to look for whatever professional advice we can find that will help us to move forward on an agreed basis.

Mr Ford:

We need to be careful. The term “audit” as normally applied to the accounts prepared by business is not quite the same thing as examining figures put forward in proposals.

Mr B McCrea:

I have no wish to fall out with the Minister, who is expert on such matters.

Mr Ford:

I am delighted to hear that.

Mr B McCrea:

However, I point out that it may be useful if we can find, where possible, an agreed basis on which to go forward.

Mr Lynch:

Most of my questions have been covered.

The Chairperson:

I will call you more often. *[Laughter.]*

Mr Dickson:

I apologise for arriving somewhat late to the discussions. Forgive me if some of the following issues have been covered. Does the Minister agree with me that the current legal aid situation reflects poorly on the profession because of its continued desire to disrupt its own profession and the services that its members are required to deliver, given that the regulations have passed into statute and the Minister has given a clear understanding and undertaking to review legal aid? I agree with my colleague Mr McCrea: the reality of life is that a genuine review can come about only when some work has been done that can be tested against the arguments that people put forward. Finally, Minister, do you agree with me that any review may result in moving the status quo up or down?

Mr Wells:

That is a tough one. *[Laughter.]*

Mr Ford:

I do not think that you were here earlier when I referred to some solicitors who had originally applied to go on the list but subsequently withdrew, and to reports that suggested that there was a degree of pressure — I will say no more than that — applied. We have no departmental knowledge as to why any individuals may have withdrawn from that list, but it has certainly been suggested that pressure may have been applied in some cases. I would regret it if those who seek to operate as professionals were carrying out unprofessional conduct of that kind. I repeat that I have no evidence to say that that is the case, but it would be deeply regrettable if it were.

It is the case that any review may go up or down. The blunt reality is that, even with the changes that are currently being made, the overall package of the legal aid budget still leaves us facing potential pressures of £3 million or £4 million a year, which are, as yet, unfunded. As I said before, in this society, the suggestion that we should be funding legal aid at a continually high level rather than putting resources into policing, community safety or the work of the Youth Justice Agency, does not sit well outside the doors of this Building.

The Chairperson:

Minister, at what point in this dispute do you have to draw upon your contingency to set up this public defender-type service and start employing solicitors directly?

Mr Ford:

That is the kind of question that should not have to be asked. I have made it absolutely clear that my ambition is to get arrangements back so that those who have been doing this work continue it. However, in the terms in which you couch the question, it seems to me that, because of the Crown Court timetable and the fact that we are about to go into the summer recess, and the fact that some of these cases will start to come forward in September and October, there will be significant pressures around access to justice in the autumn if we do not have lawyers working under one format or another.

I hope that we can continue to work under the current arrangements, which have served Northern Ireland. However, it is also clear that, when we see what is happening with the partial operation of the public defender system elsewhere, for example in England, Wales and Scotland, that other options may have to be in play.

The Chairperson:

OK.

Mr A Maginness:

On a point of clarification: the Minister referred throughout this session to pressure being put on solicitors to withdraw. Every time, he qualified it by saying, "But I have no evidence". Will the Minister clarify whether, in fact, he has evidence or not? And, if he has no evidence, will he withdraw a baseless suggestion that pressure is being put on solicitors to withdraw?

Mr Ford:

I have made it clear that we have no information in the Department. I am also aware, whatever views we hold of the media, that the frequency with which such suggestions have appeared suggests that there may be something happening out there. I find it difficult to see why some people would put their names forward as willing to do the work and then withdraw in any other circumstances. However, I repeat that I have no specific information, but it is clear that difficulties are being created by the fact that a fair number of those who said that they were willing to do such work have withdrawn from it.

Mr A Maginness:

It is baseless.

The Chairperson:

We are going to move on. However, I have met the Law Society and I know that there is an official complaint in and an official investigation is taking place into what has been alluded to in the media reports.