



Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

**OFFICIAL REPORT
(Hansard)**

Use of Legal Services: Department of Justice

22 September 2011

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Colum Eastwood
Mr Seán Lynch
Ms Jennifer McCann
Mr Basil McCrea
Mr Peter Weir
Mr Jim Wells

Witnesses:

Mr Gareth Johnston)	Department of Justice
Mr David Lennox)	
Mr Robert Crawford)	Northern Ireland Courts and Tribunals Service
Mr Raymond Kitson)	Public Prosecution Service

The Deputy Chairperson:

We will now hear from the officials. I welcome Gareth Johnston, who is the head of the justice strategy division, Robert Crawford, who is the head of public legal services, Raymond Kitson, who is the acting deputy director of the PPS, and David Lennox from the criminal justice strategy secretariat branch. I do not know whether you are all going to contribute.

Mr Gareth Johnston (Department of Justice):

I will begin by introducing things, and, as we get into questions, I am sure that colleagues will

come in and respond.

The Deputy Chairperson:

I just want to remind you that this session is being covered by Hansard.

Mr Johnston:

As you said, there is a range of interests represented at this end of the table covering the Department of Justice core, the Courts and Tribunals Service and the Public Prosecution Service. Michael has given you an overview of the report and its recommendations, and the paper that you have today from the Department includes responses to the recommendations in the form of an action plan.

The inspectors made four strategic recommendations to the justice system, and I just want to say a few words about those recommendations. One of the strategic recommendations is a proposal that the use of legal services by criminal justice organisations should be reviewed with a view to market testing of central government services, internal provision and provision by the private sector. A second related recommendation is directed towards the Department of Justice, proposing that there should be a shared approach to the procurement of legal services across the justice system.

We very much understand the background to the recommendation about market testing, but we in the Department need to carry out some further analysis on the extent of procurement of legal services across the justice system. The information that is in the report pre-dates the devolution of justice matters, and so we want to reassess how justice organisations have utilised legal services since devolution. We have commissioned an audit to do just that.

As the report correctly highlights, a move towards a shared approach could not be taken by the justice agencies or the Department of Justice in isolation. The Central Procurement Directorate in the Department of Finance and Personnel would have an interest here, as the issues are much wider than our Department and its bodies, where practices in commissioning legal services reflect those that are used across government. Therefore, we see the point of those first couple of recommendations, and we want to move forward and look at how best we approach

implementation. However, it is something that will involve consultation across government, particularly with DFP. I will say something about that later.

The third strategic recommendation is that the Public Prosecution Service and the Northern Ireland Courts and Tribunals Service:

“should agree a common strategy and timetable for achieving a convergence between the level of prosecution and legal aid fees”.

Mr Weir queried the latest position there. Criminal Justice Inspection, of necessity, looked at the position when its research was done. The legal aid 2011 rules that were introduced in April of this year reduced the standard legal aid fees payable to counsel in the Crown Court. The PPS is also finalising a scheme for remuneration of counsel, which, broadly stated, will bring the remuneration of prosecution counsel to within 5% below the fees paid to defence counsel. In other words, by the turn of the year, we expect that the differential between prosecution and defence fees will have been reduced to 5%.

In the longer term, the outworkings of those new arrangements will need to be monitored. However, there is a commitment from the PPS and the Courts and Tribunals Service to agree by next summer an implementation plan for the longer term way forward on convergence between prosecution and legal aid fees. So we have some actions that will impact very soon by bringing will bring us to within 5% and a commitment to look at the whole issue of convergence and agree plans for the longer term.

I mentioned the 2011 legal aid rules. Although criminal legal aid in general is not the focus of the inspector’s report, it is worth noting that those rules introduced a range of changes. In the course of the previous presentation, members asked specific questions about criminal legal aid. There have been changes to the situation that obtained in the past, and I am sure that Robert will be happy to pick those up in questions if that is helpful. For example, lower fees apply where there is a guilty plea, so counsel is not paid at the same level when it is a matter of doing only preparatory and not court work. Fees now directly relate to the type of case. For example, a murder charge, the length of trial and the subjective assessment that might have been a feature in past have been done away with. Robert will be happy to clarify such points.

To get back to the recommendations of the report: the final strategic recommendation is that:

“The cost of legal services should be determined at the commencement of an assignment”.

That recommendation is accepted in principle. We note that it is often difficult to estimate the progress of cases in advance, but over the coming months we will do work — including with colleagues in the Departmental Solicitor’s Office in DFP — to identify how to take that recommendation forward in practice. The use of a system based on standard fees for future legal work in respect of Crown Court cases for both prosecution and defence teams will provide an accurate determination of fees paid in such cases at the point when counsel is instructed. There may be lessons that we can learn from that for other areas of government legal expenditure.

The report has four strategic recommendations, and then there are seven operational recommendations, which are made in respect of the Public Prosecution Service. That is on the basis that the inspection focused largely on the requirements for legal services that arose from the conduct of prosecutions as opposed to the publicly funded arrangements for the defence, which have been the subject of a separate review by the Northern Ireland Audit Office and, indeed, of discussions by the Public Accounts Committee yesterday.

Raymond will be able to answer any specific questions about the recommendations that are directed towards the PPS, but you will see its responses on the action plan. For example, there is a commitment to review the delivery of the PPS’s court prosecution work, including the development of in-house advocates, and a commitment to give consideration to the introduction of an advocate depute role, as is used in Scotland. The PPS is also in the process of introducing a prosecutor activity sheet to capture the number of court sessions that are covered by prosecutors to assist in their deployment. The cost-effectiveness of the distinction between the roles of directing lawyers and those who present cases in court will also be reviewed, although that review will be in the context of the proposed new scheme for the payment of counsel. New instructions will be issued to counsel on the requirement to provide records of work done following the introduction of the new scheme.

Although the report recognised the strength of existing PPS arrangements on the use of two counsel, consideration will be given to the guidance that is used by the Crown Prosecution Service (CPS) in England and Wales to determine what aspects might be adopted here. A review of the panel of counsel that is used by the PPS has commenced, but the recommendation to consider widening access to that panel will be considered. Finally, the PPS has long recognised the value of a quality assurance scheme on advocacy skills and intends to introduce an assessment mechanism during 2011-12 that is in line with the recommendations by Criminal Justice Inspection.

In the short time since the report was published at the end of June, we have agreed with the Minister and the Criminal Justice Board the way forward as I have briefly summarised it. In short, we see the point and thrust of the recommendations. We want to respond to them as positively as possible, but the issues that they raise about how legal services are procured go more widely than the Justice Department and its arm's-length bodies, so we need to engage with the relevant colleagues to agree what can be done. Inevitably, that will take a little time. However, if the Committee were willing to come back to that in the new year, we should certainly have a clearer position by then. In the meantime, we are very happy to take any questions.

The Deputy Chairperson:

Thank you very much. You will have heard it said that the procurement of services lacked discipline. Have you any comment to make about that?

Mr Johnston:

There are various recommendations about how legal services should be procured, including clearer quotations up front for legal work and assessing the performance of counsel. Those are real issues about securing best value for money, and we want to take them seriously. However, they are not peculiar to the justice sector. Page ix of the report notes that it requires a broader public sector response and the need to involve DFP and its agencies. Dr Maguire today talked about the importance of a response by public sector buyers in general. We have started that process by commissioning an audit of who spends what and where. That will give us the information that we need to start having those discussions with DFP and others. I recognise that the report raises important issues about what is described as a lack of discipline. We take those

seriously. They are not very different from what might apply in other parts of government and the public sector, so we need to move forward in a way that takes account of needs across government.

The Deputy Chairperson:

In your response, you talked about active engagement. Who will that engagement be with? Will it be within the confines of the process to date, or do you intend to widen the scope and talk to the Equality Commission or the Human Rights Commission?

Mr Johnston:

I can see that, if we were making policy changes, there would be a desire to consult more widely. At this stage, in looking at the practicalities of what can be done in government, our key conversations will be with the Department of Finance and Personnel, the Central Procurement Directorate and the Departmental Solicitor's Office.

The Deputy Chairperson:

Can you give me some indication of how quality assurance will be done and at what level it will be carried out? Is it at the sharp end of court performance, or is it right through the process?

Mr Johnston:

Raymond might say something about what PPS is doing on quality assurance, because that is a particular case study. The report has raised concerns about a lack of discipline in areas such as quality. That does not mean that there has not been a focus on quality until now, and, indeed, an important role for our in-house lawyers is ensuring that, when the Department is litigating, the advice that we get from counsel, how people perform in court, and so on is up to standard. We take the point about discipline.

Quality control is an area of legal services that is, perhaps, more challenging than quality control in other professional areas. With architects, a building is built and you can go with building control standards and check that they have been complied with. The same also applies to the medical professions. The fact that I am sitting here today says something about the quality of care that I received from the surgeon and the anaesthetist under whose care I was under a

month ago. What constitutes quality in legal services? It can be a bit more difficult to define that, but the PPS is forging a trail, and we want to learn what we can apply more generally from that.

Mr Raymond Kitson (Public Prosecution Service):

I will build on Gareth's answer. There are a number of layers of quality assurance, but, basically, we are talking about the performance of lawyers in taking decisions for prosecution and then going out and prosecuting those cases in court. Internally, we have quality assurance mechanisms and a quality assurance team, which the chief inspector recognised in one of his recent reports. That team regularly dip-samples the quality of casework, and reports are made to the senior management group, which I chair.

You were particularly interested in advocacy at court. Recently, we agreed with the Bar Council a set of advocacy standards that apply not only to independent counsel but to any of our prosecutors who go out and prosecute in court. That will form the basis of a quality assurance of how people are performing in court. The report, and Dr Maguire, referred to how the CPS is forging ahead with an independent mechanism. We intend to develop with our new panel of counsel, which will be constituted from the start of the year, an independent mechanism. It will be somewhat similar, and will assess the quality of the performance of counsel. For example, we are thinking of having, every six months, almost a management review of counsel. That would be something new for them. There has been a lot of movement in the past, and there will continue to be movement on that.

The Deputy Chairperson:

I do not want to spring this on you, but the report states:

“there is a need for a PPS review of the cost effectiveness of the distinction between the roles of directing lawyers and those who present cases in court.”

Leaving aside the issue of cost-effectiveness, does the PPS hand the case over to a barrister who has not played a part in the presentation of a case?

Mr Kitson:

Mr Corrigan referred to the increase in costs of employing independent counsel in the Magistrate's Court. From the start, our general aspiration at the PPS was that the majority of the cases in the Magistrate's Court would be prosecuted by in-house lawyers. Those are PPS prosecutors who may or not make the decision in the case and take the case forward to prosecution.

Again, there was reference to the resource issue. That is quite right: the aspiration is there, but if you do not have the resources or there is a difficulty with resources you have to determine what your priorities are. You know from the past that one of our priorities is to get the processing times for cases down. Therefore there is a priority to make sure that the decision-making process in the case is not affected by a resource issue.

If you scroll forward to the Crown Court, where the majority of serious cases are taking evidence, the general practice has been to employ independent counsel. A PPS lawyer would do the decision making in the case, and the case would then be handed over to independent counsel to prosecute at court. That is not to say that, on certain occasions — certainly in the more complex cases — counsel would not come in at an earlier stage to advise us what the decision should or should not be.

There was also reference to our developing higher court advocates; that is, in-house prosecutors going into the higher courts, such as the Crown Court. A mix of things is happening, all of which need to be kept under review.

The Deputy Chairperson:

Mine is a layperson's view, but someone who has taken a case right through, gets a feel for it, and who then takes it to court might have a greater chance of success. I am not saying anything about the quality of your prosecutors; however, someone involved from the beginning of a case will have a better feel for it.

Mr Kitson:

There is an argument there, although I would not push it too far. Independent counsel coming in

has the skills to present a case in court. However, at the same time, we are trying to develop our own in-house prosecutors to prosecute those cases in the Crown Court.

The Deputy Chairperson:

My next question might be more for Robert. One of the recommendations was about bringing certainty to the cost of an assignment, as it is called.

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

That question is, in fact, for both of us to answer. The certainty of cost is tackled by the new 2011 rules for Crown Court fees, in that all fees under those rules are standard fees. There is no further use of the taxing master, there is no exceptionality, and there is no way of getting a fee other than as set out in those rules.

To be absolutely specific: the fee is assessed by the type of case; in other words, whether a defendant is charged with murder, sexual offences, fraud or whatever. Cases are categorised. The length of a case is taken into account; we will know how long it runs according to the Court Service record. There is no other way of getting a fee. It is the type of charge and the length of a case, all of which Court Service has in its records. Right from the beginning of a case, as soon as it is listed in the court, the court lists how long it is expected to run. Of course, we know at that point the category of case. At that stage, we can predict pretty accurately what the cost will be.

The same fee structure that we have used is the basis of the PPS new fee structure for counsel. Exactly the same safeguards will apply; there will not be the system that we had in the past, as some members have already mentioned, in which there was uncertainty about what costs would be.

The Deputy Chairperson:

This may be a broad question, but Raymond talked about quality assurance in the PPS. Does that assurance go across?

Mr Crawford:

I am grateful for the opportunity to confirm that: it is exactly the same issue. There are different

models for this in different jurisdictions. For example, across the water we have quality assurance Kitemarks that are used for legal aid purposes: people do not get funding to take legal aid cases if they do not have the quality standard. We are looking at that model. We also want to work with the PPS so that we have common standards. The voluntary registration scheme that the Legal Services Commission operates with solicitors has about 85% take-up; in future, we want to make it statutory for solicitors and barristers. It is very similar to the panel system that the PPS operates. In other words, if you want to take on publicly funded legal work, you sign up to the standards and fees that go along with it.

It is the same issue, although the detail is slightly different. In future, we hope to have a common set of standards.

The Deputy Chairperson:

Say that a decision is made to contest and, eventually, you lose. Does that go right down to the decision or the advice given to contest? Is that quality-assured?

Mr Crawford:

Up to a point. That is getting into the detail of how a scheme would operate. There is a slightly different emphasis on the defence side as the advice to the defendant has to be independent. Second-guessing is not what we are about.

We would look to see whether the advice was based on good information: before advising someone to plead guilty, did a solicitor do a proper review of the information available in forming an opinion and giving advice? We would not be saying that, on balance, he should have given different advice. We are more about asking: did you do the proper due diligence exercise to give the advice that you gave? In other words, did you go through the process? It is more like an audit system whereby at the end of the day the discretion exists in the decision, but you have to be seen to have done all the things that you were supposed to.

The Deputy Chairperson:

There have been cases that have collapsed at the High Court or Crown Court or in even civil actions. People stepped back and said: that case never had a chance. That may be a layperson's

view, and I accept that; however, that is at a high cost to the public purse. Then you wake up and everybody says that that never looked as if it was going to succeed. It is a question of trying to ensure that the same process is not followed and that we do not have such a case every year.

Mr Crawford:

It is a balance between making sure that you do not forget how independent the advice was while still getting good value for money.

Mr Wells:

Thirty-five years ago I had a decision to make: whether to continue with my geography degree or move to law. Every day I sit on this Committee I realise that I made a fatal mistake —

The Deputy Chairperson:

The compass was off.

Mr B McCrea:

You took the wrong path.

Mr Wells:

I have taken the wrong path in life because the fees paid and the cosy relationship between policing and justice before devolution never cease to amaze me. We have a shocking figure that Dr Maguire revealed of a 30% difference between fees paid in Northern Ireland and other parts of the United Kingdom, particularly over the past three years. There is no reason for that; there is the same range of cases. We cannot hide behind the Troubles as we often did and say that we are dealing with cases of murder and bombing so, obviously, fees will be higher. However, those days are, thankfully, behind us.

Were you aware of that huge gap before Dr Maguire's report, and, if you were, why was nothing done about it? Millions of pounds have been shovelled into the coffers of the legal profession that could have gone on hospitals, roads and vital services. Why has it taken so long to realise that millions of pounds have basically been wasted up to now?

Mr Kitson:

I am not sure at whom that question is directed, but perhaps I could take the start in answering it. The Public Prosecution Service — the former DPP — was aware of the disparity in fees between England and Wales and Northern Ireland. The difficulty for us as prosecutors is if one accepts, and I presume that you do, that there should be broad equivalence, if not parity, between the fees paid to the person who is prosecuting and the person who is defending. However, the difficulty for the Public Prosecution Service was that, in the past, fees paid by legal aid were so much out of kilter with the fees in England and Wales. We almost had to raise our fees to match or to try to get some degree of parity with what was being paid to the defence.

Mr Wells:

Yes, but that is simply saying that because there was wastage elsewhere we had to match it.

Mr Kitson:

The figures were mentioned by Dr Maguire. The spend of the Public Prosecution Service in 2010-11 was £4.27 million. You ought to look at that figure in comparison with the figure that was paid in prospective legal aid to the defence. With regard to value for money generally, the Public Prosecution Service's annual budget is £35 million — it is £37 million, although it is going down to £34 million, which averages out at £35 million — and some 60,000 cases are submitted to us by the police; of those, 35,000 would be prosecuted in magistrates' courts and 2,000 in the Crown Court.

Moreover, we provide other services; we do diversion decisions and no-prosecution decisions. Averaging that out, each decision costs about £580. I suspect that that is good value for money on two levels, and particularly good value for money when compared with the cost of legal aid.

Mr Wells:

I will be more specific: legal professionals obtaining a fee when they know that a plea is coming. In the case to which I refer, a scathing comment was made by a judge in Dungannon court when he hauled a firm of solicitors across the coals for presenting, for the umpteenth time, a bill for a case that a solicitor knew would plead long before it came to court. For example, Mr Smith — that is not his real name — saying that he is going to plea; but the solicitor putting in a bid on the

basis that he had prepared work for a full-blown case that could run for several days or weeks.

That firm of solicitors kept coming up with that cunning little ploy, and the judge made those comments only a year ago. I do not know whether you were aware of them; they were reported in the local press. I understand that that situation has now stopped, but why was it allowed to continue for so long?

Mr Kitson:

You are talking about the defence, not the prosecution. On that point, you referred, in your earlier comments to Dr Maguire, about junior and senior counsel and how junior counsel appeared to sit doing nothing. You have to make a distinction between the roles of junior counsel in defence and prosecution: junior counsel for the prosecution plays an important role in the prosecution of a case and very rarely, if at all, sits twiddling their thumbs. In this jurisdiction, for example, junior counsel for the prosecution closes the case to the jury or to the court. For the defence, senior counsel does that.

Mr Wells:

Yes, but we, the taxpayers, could have been paying for that junior counsel in the defence.

Mr Kitson:

You were paying for it. Your comments were more closely related to the role of defence junior counsel than prosecution counsel.

Mr Johnston:

Let me bring in Robert. There have been, independent of the report, important changes recently, not least in standard fees and so on, that are addressing the points that you make, Mr Wells.

Mr Crawford:

First, let me say that it has taken a long time to reform criminal legal aid; that is a fact, and we cannot argue with it. The Northern Ireland Audit Office published a report on 29 June that the Public Accounts Committee discussed yesterday. The report was very critical of the time it has taken to fix those things.

Magistrates' courts fees were moved to a fully standard fee system, with a minimal opportunity for exceptionality and so on, in 2009. It took longer than it should have. However, until 2003 legal aid was run by the Law Society, and the difficulty was getting a handle on what was happening and getting legislation through.

Crown Court fees were improved and moved mainly to a standard system in 2005. Unfortunately, the mistake made then was to leave open very high cost cases. That was fixed in 2011. An interim attempt at fixing it was made in 2009; it was not perfect, but it made improvements. I accept that it has taken a long time, but many of those problems have now been fixed. As I said, the 2011 reforms do not provide the opportunity that existed in the past for people to abuse the system, if I can put it that way, or to make claims that are very subjective and would be assessed very subjectively. They are now very tightly controlled by the use of data that the Court Service has.

I want to move on to a couple of points mentioned earlier. The earnings of counsel were discussed, and the figure quoted was £680,000 a year under the old scheme. That would not be possible under the new fees in Crown Court cases; it would be much, much less, because the most that someone could earn on a daily rate of £800 for each court-sitting day would come nowhere close to that.

The reason why fees were so high in the past was the submission of a brief fee, but that system has completely ended. The Minister will shortly issue direction to the taxing master to ensure that the tiny number of cases still in the system are caught. There are 93 cases in the system, but most of them are under 2009 rules, which cannot abuse the brief fee. The cases under the 2005 rules still could do that, so directions will be issued to apply the same approach to those.

That is what we have done recently. I fully accept that it has taken longer than it should have done for the Court Service to do that.

Mr Wells:

My colleague, David McIlveen MLA for North Antrim, asked a very pertinent question: he asked that the top 20 earners be listed. The gentleman earning £680,000 was not the best paid,

and he supplements his income, meagre as it is, with private work to bring himself up to a basic standard of living. That was in 2008. In 2008, there were people who were bringing home £680,000 of your money and mine; money that could have been diverted to spend on hospitals, roads and vital services. Are you telling me that those people can now live on £160,000 a year?

Mr Crawford:

Essentially, that is the kind of figure you are looking at.

Mr Wells:

My heart bleeds for them.

Mr Crawford:

That figure represents someone being in court every day, which will not be possible. Time would be spent preparing cases, and there will be time when that person does not have a case. Court recesses are lengthy, so earnings from legal aid would be considerably less than that. Under the new rules, it will take time for those figures to feed through, as there are cases in the system and claims will still be paid at the higher rates that existed until April this year. However, more complex cases in this jurisdiction, typically those lasting more than eight or 10 days, will now be paid at a lower rate than in England and Wales.

Mr Wells:

It would make a fascinating study to take a backward look at how much could have been saved. I would love to find out what cumulative savings would have been achieved had the changes that the present Minister has brought in, the changes that Dr Maguire suggests and those that you are bringing in been done 10 years ago. Many of our financial woes would probably be solved because the quantum of excessive expenditure was so high. It grieves me greatly to see this.

Despite these changes, when I open my 'Belfast Telegraph' on a Friday night I see no QCs in 'StubbsGazette' or going to the wall. They are still doing very well, and the public perception is that, until recently, there was a very cosy relationship between the Law Society as it was and the Legal Services Commission.

It is only since devolution and the scrutiny of this Committee and the Assembly that this huge hornets' nest of wastage has been discovered. I will ask the appropriate written question. I have given you warning so that you will have the answer ready: what would we have saved had these changes been introduced in 2001? The answer will be frightening.

Mr Crawford:

I do not think that the figure is immediately available, but I am sure that we would provide it if asked.

Mr Lynch:

Thank you, men. The CJI recommends that the cost of legal services should be determined at the commencement of an assignment. However, the DOJ says that that can be problematic as it is often difficult to estimate the progress of cases in advance. Is that not precisely the point that was made in relation to those involved in the Criminal Court defence representation?

Mr Crawford:

Yes, it was until April of this year. I accept that, but as of April this year, it is possible to predict the cost of any case pretty accurately because either at the point at which counsel is engaged or shortly after comes the stage at which the court sets down the time that the case will be listed for. At that point, we know how many days the case is expected to run, so we can multiply the refresher fees that are paid for those days. As we know the category of the case as well, we can feed that across so that the appropriate fee will be paid.

We can also estimate how many applications and add-on pieces of work might be produced by typical cases; there might be one or two applications, for example, in a typical murder trial. That gives us a pretty good estimate of what that case would come out at.

Those are the figures on which we base our forecasts and calculations of the new rules. They are only now starting to move into the system, and we will be monitoring that over the next six months to a year in order to ensure that we get it right; however, any error will be fairly minimal. There may be more applications than we predict, but the actual amounts for fees have been set. The lawyer will get a fee based on the type of case and on how long it lasts. There is no other

way. There is no longer any uplift; there is no longer any appeal for a higher fee.

Mr Lynch:

The use of the words “problematic” and “difficult to estimate” just —

Mr Crawford:

It was for the higher-level cases until April.

Mr Lynch:

You mentioned arm’s-length bodies, Gareth. Are there any arm’s-length bodies related to DOJ?

Mr Johnston:

The study looked at a range of criminal justice bodies; they are listed on page 10 of the report: the PSNI, the Prison Service, the Court Service, probation, youth justice, forensic science and the Compensation Agency are part of what the inspectors looked at. In commissioning our work, we have involved all those bodies so that we can have a complete picture of what is happening across the justice system.

Mr Lynch:

Therefore they would be determined as arm’s-length bodies.

Mr Johnston:

Yes.

Mr Lynch:

The CJI suggests a common timetable and strategy for achieving convergence between prosecution and legal fees. However, as we all know, new legal fees came in in April, but the target date for the PPS and the Court Service scheme is summer 2012. Why not a common timetable and why the divergence?

Mr Crawford:

We worked reasonably closely with the PPS and we agreed that timetable. There will largely be

convergence to a figure of 5% difference in January or thereabouts when the PPS introduces the new fees that are based on the scheme that we have just brought in. Much of what is in the recommendations will be done by then. What we want in relation to the strategic plan is to agree a mechanism for how we deal with those things in future so that we do not get into a situation in which we move ahead and then the PPS moves and the differential moves up and down and all around. We want a common approach to fees for the future.

We set the target date as the summer because our new fees will only start to appear by then as cases come through the system. The PPS will have a better handle. As I said, we will be able to estimate fees quite early in the process now, so we should be able to do a comparison to see what it is working out at under our two separate new schemes. The next formal review of Crown Court legal aid must take place within two years — that must happen in early 2013 — so what we want is an agreed common approach that we can apply to that review.

I may be anticipating a question, but there is no extra money to increase fees on either side of that equation; therefore whether we leave the alignment at about 5% or do something different is one of the areas that we want to consider to see what seems reasonable.

Ms J McCann:

You are very welcome again. Section 3 of the CJI report refers to alternative dispute resolution. Does that read across to community-based restorative justice processes? We are talking about cost-effectiveness and better value for money, and it has been proven in some cases that community-based restorative justice processes work better and at a much lower cost.

Mr Johnston:

The independent access to justice report that Jim Daniell produced and which the Minister announced just the other day is relevant to that. Perhaps Robert will say something about it.

Mr Crawford:

The review was published on 13 September, and the Minister has asked for responses to it. It does not rule out any form of alternative dispute resolution. As the Minister said earlier this week, the objective is to find a way of solving disputes between people; that does not necessarily

need courts, lawyers, the Justice Minister or legislation. It is whatever works. We want to hear from anyone who feels that there is an appropriate mechanism that could be used at a community level.

One of the areas that we want to look at is Scotland, where, instead of doing low-level fines, they often move to community-based solutions. In other words, there is something other than that. Much of it is about finding support and help. For example, rather than fining someone who has a drugs problem, the person commits to rehab and a support mechanism in their own community. That can apply to other areas as well. Fines are used for many minor offences, and there could be different approaches to that. That is the kind of area that we want to get into.

Ms J McCann:

I want to tease this out a bit. I hear what you are saying, but will it be written into your audit? The Committee has discussed the issue before, and, as recently as this week, I dealt with a case in which a mother of a nine-year-old child was fined for non-payment of a television licence and taken through the court procedure. She was not an habitual offender, but she could not pay because of her financial circumstances. A great deal of money was spent taking that lady through the court system. She was, thank God, able to get a payment plan sorted out, but she almost went prison for non-payment of a television licence.

I have visited projects where young people are doing community service. That is a much better system for the longer term for people who are charged with lesser offences. It is very important to factor that in when you are looking at cost-effectiveness in the longer term. Therefore I am keen to see that in your audit.

Mr Crawford:

Absolutely.

Mr Johnston:

The Department's consultation on fine default is out at the minute. We will start to get responses and will brief the Committee again after the consultation. As the Committee knows, it raises questions about how best we use and enforce fines. Unfortunately, one of the questions that it

raises is not a matter that the Assembly has power over because it has do with broadcasting and is therefore a matter for Westminster. The question is whether non-payment of a TV licence should be a criminal matter at all, particularly in an environment where, if you do not pay your Sky subscription, it is enforced down a civil route. We will need to have discussions with the Department for Culture, Media and Sport across the water about it. However, the consultation seeks to address some of those issues.

The Deputy Chairperson:

I have a final question about the review of the panel of the PPS. The CJI said that you should have a review, but you say that one is already in place.

Mr Kitson:

Yes; we are in the process at the moment. The panel was set up for three years; it started in 2009 and is due to finish at the end of this year. We are reconstituting, which will be a new competition for both senior and junior panel counsel.

The Deputy Chairperson:

Do you accept the criticism about experience in the past?

Mr Kitson:

We will take it into consideration. Panel members were selected by open competition. They could apply, a panel looked at their applications and judged them on the indications on the form about individuals' merit and experience.

The Deputy Chairperson:

Will that change this time?

Mr Kitson:

No; the same basic process will be taken forward. However, there is an issue about opening panel applications to persons who are not members of the Bar in Northern Ireland. That will happen.

The Deputy Chairperson:

Is it an open process? Could the criteria be shared with the Committee?

Mr Kitson:

I see no reason why not; the criteria will be set out in the application forms that go to counsel anyway.

The Deputy Chairperson:

I have no intention of applying; I just want to find out. *[Laughter.]* Thank you for your presentation.