

ORAL STATEMENT ON ACCESS TO JUSTICE REVIEW –

FINAL REPORT: 13 SEPTEMBER 2011

Members will have heard me speak previously, in this chamber and elsewhere, of the opportunities that the devolution of justice provided us with, including the opportunity to reshape our justice system to fit the needs of Northern Ireland. Members will also recall that with this in mind, in September last year I commissioned a fundamental review to help develop our thinking on how best to ensure Access to Justice in our society. Today I am pleased to publish the report of the Review, and to begin a period of public consultation on its findings and recommendations.

Fair and effective access to justice is an essential element of getting justice right, critical to building confidence and an important part of our vision for a future justice system. Our present system is built around providing financial assistance to those who could not otherwise find the money to pay for legal representation. But I wanted a review that would examine other approaches, and better ways of using the funds available.

I would like to thank Jim Daniell and his team for their very detailed work over many months to produce this report. I would also like to thank those who offered comments or otherwise contributed to it.

The report is a very comprehensive analysis and contains 159 conclusions and recommendations and I would encourage Members to read it carefully. Since I became Minister of Justice, legal aid has been one of the areas prompting members of the public to write to me, and I know that many of you have also received correspondence about situations where the system appears not to work well. In my replies to those who have written to me, I have said that I expect this report to provide ideas for solving some of those problems, and I believe that it does so.

Public consultation on the report will last for three months. Many people and organisations made representations to the Review Team as their work progressed, and I would like to thank all those who offered ideas or who shared their experience of the system. It is important that all who wish to comment are given the opportunity

to tell us what they think needs to be changed. Having received and considered those comments I will make a formal response in the New Year.

But I would also reassure Members that the period of public consultation will not hold up the delivery of changes which we are already making, and which have been endorsed by this report. In the Justice Act, for example, the Assembly legislated for new powers that will allow the recovery of legal aid costs from convicted defendants who can pay. That development has been endorsed by this report and I will shortly be publishing proposals for commencing those powers.

The report suggests that responsibility for financial assessment in relation to such a means test should fall to the Legal Services Commission.

It also proposes that the Legal Services Commission should take on responsibility for decisions to certify for the use of counsel in the magistrates' courts. That responsibility currently rests with the judiciary, and I will want to consider carefully the views of the Lord Chief Justice and the Attorney General about the proposed change.

There are other areas where the findings of the report coincide with work already underway.

The report highlights the importance of continuing to scrutinise legal aid expenditure, noting that spending on legal aid in the Magistrates' courts rose by around 38% over the last financial year. This is partly because of an increase in the volume of cases, but higher average costs also appear to have played a large part. A review of the legal aid fees paid for cases in the Magistrates' courts began last month, and that exercise will consider the issues identified in the report.

Running alongside the review of Magistrates' courts fees will be a review of the fees paid for legal advice given to those under arrest and held in police stations. This is particularly important for people being investigated for criminal offences, and has been endorsed as a requirement by European human rights case law. Good early advice is essential to ensure that a defendant's rights are protected. The report makes recommendations to improve the current arrangements, particularly the establishment of a more formal duty solicitor scheme across Northern Ireland. There are useful models for this in other jurisdictions, and picking up on these

recommendations the review which has just begun will look at how our system can be improved.

Turning to other areas covered by the report, it notes the public concern that has been expressed about what appear to be disproportionate costs to the legal aid fund, and to the justice system as a whole, when defendants elect for trial by jury at the Crown Court in cases of alleged dishonesty involving goods or cash of relatively low value. There were a small number of high profile cases in the last year. While the report concludes that the right to elect for trial by jury should remain, it makes helpful proposals on how costs can be contained.

The report considers diversionary measures and alternatives to prosecution for the less serious first and second time offenders, including fixed penalty notices, prosecutorial fines and conditional cautions. Some progress has been made in Northern Ireland in recent years, especially in the field of restorative justice, but the report suggests that a more ambitious approach could yield positive results. It suggests that Northern Ireland, with a centralised prosecution service and the PSNI covering the whole of the jurisdiction, is particularly well suited to such an approach. The report commends, in particular, the approach taken in Scotland and we will want to look carefully at this.

The report looks at the possibility of introducing one standard fee to apply whether there is a guilty plea or the case goes to trial (as is the case in Scotland), as a measure to avoid unnecessary prolonging of some cases. It suggests that further research on this is needed and I have asked officials to take this forward as part of the work we already have underway through the Speeding up Justice Programme.

Members will know that in recent months, in response to a withdrawal by many solicitors from Crown Court cases, I had to consider the emergency introduction of a public defender service to ensure that unrepresented defendants could have access to the legal advice and assistance to which they are entitled under the European Convention on Human Rights and the Human Rights Act. I am pleased to confirm to the Assembly that such withdrawal action has now ended, and the contingency plans that were being developed have not been necessary.

The report, however, notes that public defender arrangements are in place in Scotland and in England and Wales. While emphasising the benefits of the independent private sector legal professions, and in particular their clear independence from the state, the report states that it is right to undertake contingency planning to fill any gaps in supply. Emergency measures are not required immediately, but in response to this report I would welcome comments on whether such a service should be introduced here.

The report rightly records that the interests of victims and witnesses are central to the justice system, and notes the work that has been done, and continues to be developed, by the Department of Justice, the Criminal Justice Board and a range of public and voluntary sector agencies. This remains a high priority for my Department and is something on which we will be working closely with the Justice Committee in the coming months.

In looking at Civil Legal Aid, the report considers how to give priority to the most vulnerable in society and how to encourage early resolution of disputes.

It finds that cases concerning family and children account for 70% of the current spend of civil legal aid and this is clearly a problem that needs to be addressed.

Unlike the current proposal in England and Wales, which would remove private family law cases from the scope of civil legal aid, the Review Team has recommended that legal aid should continue to be available for those who are financially eligible in such cases, but that the system should discourage the use of the court to prolong or re-open disputes. The report notes that many cases do not necessarily need to be resolved in a court hearing, and recommends the use of mediation, collaborative interventions or other alternatives to court proceedings.

It makes a number of detailed proposals on legal aid costs in family cases, for example, that as legal aid for undefended divorce cases heard in chambers requires a minimum of legal work it does not warrant the presence of counsel. The report proposes that legal aid funding in such cases should be limited to an appropriate standard fee.

The report also identifies Public Law children's cases as an area where costs could be reduced without risking harm to the quality of the outcome. The number of parties that receive publicly funded representation, the level of representation, the type of legal representation appropriate to the court tier and the use of expert witnesses are identified as other areas where savings might be made.

In this area, the report's findings go much wider than legal aid, and it recommends that there be a fundamental review of family justice in Northern Ireland. This is a key issue and I would very much welcome views on that proposal.

I support the finding that many cases do not necessarily need to be resolved in a court hearing and the recommendation for the use of mediation and other alternatives. My views on that underpinned my decision to commission this review. Some of these are already being used in Northern Ireland, but the report recommends that they be developed further.

For example, neighbour disputes and anti-social behaviour may be suitable for community based Alternative Dispute Resolution rather than applications before the court for injunctions or prosecutions.

One significant area that was examined was money damages cases. The report recommends that conditional fee arrangements – that is no win, no fee – should be introduced in Northern Ireland, with safeguards to prevent an escalation in costs with, perhaps, an insurance based solution enabling plaintiffs to insure against the legal cost of losing.

The cost of civil legal aid, the importance of ensuring that limited resources are properly targeted and the need to ensure value for money, are also recurring themes. We have already made significant changes which will reduce the cost of criminal legal aid, and the report recommends significant changes to legal aid fees in civil cases. It proposes the introduction of a standard fee structure and harmonisation of the rules for financial eligibility, and suggests that consideration be given to increasing the contributions from those who can afford it and the inclusion of housing equity in the calculation of capital limits. On value for money, it recommends the establishment of a statutory registration scheme for providers of legally aided

services, together with proportionate and cost effective systems for monitoring quality.

The report recognises that contracting and best value tendering could play a part in enabling market pressures to secure efficiencies in service provision. That issue is also addressed in the recent Criminal Justice Inspectorate report on the Use of Legal Services by the Criminal Justice System published before the summer. The report also considers the establishment of alternative business models enabling solicitors, barristers and other professionals to work together in one organisation, as already happens in England and Wales. We will want to look carefully at the experience from other jurisdictions in considering this.

Section 8, “Living within Budget and the Options for Future Savings” sets out some detailed proposals for savings and I will consider these very carefully.

The report has also made proposals for how we manage Access to Justice, recommending that all legal aid policy, which is currently split between the Courts and Tribunals Service and the Legal Services Commission, should be brought together within the Department of Justice as part of the new Access to Justice Directorate. However, it states – and I completely agree with this principle – that individual decisions on the grant of legal aid should be taken independently of government or political influence. It concludes that the body charged with such decisions should remain at arm’s length from the Department. Again, I completely agree with that principle. Whatever changes we make to structures will be to improve efficiency, reduce unnecessary costs and to allow us to bring forward necessary reforms as quickly as possible.

The report is very comprehensive, and I would like once again to thank Jim Daniell and the small Review Team for the amount of work they completed in just twelve months. It is impossible to do justice to it in a brief statement today, but it provides a broad and far-reaching agenda of work for us to take forward in the months and years ahead. Given its importance, I would encourage Members, and the wider public, to read it and comment as part of the consultation.