

### Introduction

1. The Bar Council is the representative body of the Bar of Northern Ireland. Members of the Bar specialise in the provision of expert independent legal advice and courtroom advocacy. Access to training, experience, continual professional development, research technology and modern facilities within the Bar Library enhance the expertise of individual barristers and ensure the highest quality of service to clients and the court. The Bar Council is continually expanding the range of services offered to the community through negotiation, tribunal advocacy and alternative dispute resolution.
2. The Bar welcomes the opportunity to respond to the second consultation phase on the new draft Programme for Government for 2016-2021, including the associated delivery plans and further details on the data identified as necessary to monitor progress. Our comments focus primarily on the justice related elements of the document linked to the indicators around outcome 7 on *“we have a safe community where we respect the law and each other”*.

### Outcome Seven

3. The Bar recognises the importance of outcome 7 and strongly endorses the fundamental role of the independent judiciary and legal professions in ensuring public confidence in and the maintenance of the rule of law in Northern Ireland. We welcome the collaborative engagement focus of this new style of outcomes-based government for partnership working across the justice system with stakeholders well placed to provide vital support in delivering on outcome 7.
4. We note the *‘what are the issues’* section outlined at page 93 in relation to this outcome, including the section on entitled *“reduce crime and the harm and vulnerability caused by crime”*. We agree with the statement that *“there are a number of crucial factors that impact on offending which need to be understood, and which should influence the actions we take”*. We think that it is necessary to understand the root causes of crime and reoffending and believe that this will highlight vital inter-dependencies that exist between health, education, economic wellbeing and the justice system. Any responses to these multi-faceted issues must be cross-cutting and comprehensive in nature.
5. We also acknowledge the section at page 94 on the increased effectiveness of the justice system. However, we would urge that some care is taken when making the comment that *“speed is one element of confidence in the system”*. We believe that the reference relates to the elimination of avoidable delay from the system and this is a more appropriate descriptive to use than ‘speed’. Every effort should

indeed be made to eliminate avoidable delay but it would be wholly counterproductive to sacrifice the merits of an internationally recognised system of independent and effective justice in pursuit of faster, but poorer, outcomes. It is vital that the criminal and civil justice system is governed by due process rather than an undue focus on speed.

6. In addition, the figures at page 97 highlight the average time taken to complete criminal cases with 515 days referenced in the Crown Court during April 2015 to March 2016. We would raise the potential unintended consequence from the withdrawal of services by legal representatives for defendants under the Legal Aid for Crown Court Proceedings (Costs) (Amendment) Rules (Northern Ireland) 2015. Therefore these figures are unlikely to be representative of the average time typically taken to complete such cases. We would welcome the provision of figures across a longer period in the Crown Court in order to improve the reliability of the average times detailed in the draft Programme for Government.
7. Whilst speed may be an indicator of efficiency, measures of public confidence in and satisfaction with the outcomes being delivered by the justice system would be more representative of the effectiveness of the system. We therefore think it is important that views are obtained and monitored with regard to the public perception of whether ultimately people feel justice was properly served by their engagement with the justice system. We support the plan to continue the monitoring of confidence levels in the criminal justice system but would highlight that it caters for a wider range of needs beyond criminal justice. The Bar believes that Outcomes 6 and 12 respectively also depend on effective justice systems in the areas of employment and commercial law and this should be supported by measuring and responding to indicators relating to effectiveness in these domains too.
8. It is essential that Outcome 7 also relates to the ability of people to access the justice system and measures must exist to ensure that we have an inclusive system of publicly funded legal services. This must rank above concerns about speed as if we fail to put the necessary funding in place to preserve the essential scope of legal services then we will fail to enable sections of society to even engage with the justice system.

### **Reducing Crime and Reoffending**

9. The delivery plan for Indicator 1 on reducing crime highlights the prevalence rate with the percentage of the population who were the victims of any NI Crime Survey crime. We highlighted in our previous responses that this indicator is

framed too narrowly and may prove restrictive. We acknowledge the recognition at page 3 that the NI Crime Survey has its limitations and that the use of recorded crime levels also presents challenges given the levels of under reporting. Consequently, we welcome the proposal for the development of data to enable the measurement of harm caused by crime, with a particular focus on the most vulnerable. However, we would query how this will address the recognised issues around the under reporting of crime. This must also be considered in relation to the management of victims and witnesses across the justice system with the plan for a new Victim and Witness Action Plan set to be published in 2017.

10. The Bar recognises the importance of reducing reoffending and the early intervention approach articulated in respect of problem solving justice throughout the delivery plan associated with indicator 1. We note the plan for early interventions with young people on the cusp of the criminal justice system. However, we would point out that practitioners believe that this work needs to start even earlier than this as many of these young people have often already been through the family justice system.
11. The Bar is supportive of this focus on preventative work with young people. However, we would query how this will be implemented in practice given the potential financial cost and the pressures presently being experienced by professional support services working to address some of the socio-economic factors outlined on page 6 such as family dysfunction, poor educational attainment, unemployment, mental health issues, substance misuse and lack of stable accommodation. Many of these services are being provided in the community by NGO groups and others, yet they are already significantly overstretched with long waiting times in place.
12. We also note that the Department of Justice will work across the justice system and with other Executive Departments, particularly health, to take this early intervention work forward beyond the pilot project outlined. The security of both funding and cross-departmental working for the progression of this approach is to be welcomed; however, given the experience of joint working between the Department of Health and Justice, there will be considerable work will be required to achieve this.
13. In addition, we note the planned pilot substance misuse court for early 2017 to be taken forward with input from DOJ, Probation, NICTS, Health, PPS, PSNI, OLCJ, NIPS and DfC. The Bar would welcome recognition that the involvement of the representative bodies of the legal professions will be required in order to ensure that the views of practitioners are taken into consideration in shaping this project.

### Respect and Reconciliation

14. The Bar notes the delivery plan document for indicator 26 to increase respect for each other, indicator 31 to increase shared space and indicator 35 to increase reconciliation. We welcome the commitment to review and strengthen equality legislation in relation to race, disability, religion and political opinion during 2016 – 2020 to ensure appropriate protection for people from discrimination and harassment. We recognise that there is a need for such a review to ensure that this legislation is fit for purpose and reflective of society in Northern Ireland.
15. The Bar also endorses the proposal to continue work to resolve the outstanding issues relating to the legacy of the past on an ongoing basis over the PfG period. Practitioners have previously highlighted the issues in relation to legacy inquests with these cases not being heard in the courts. We would welcome progress by the Executive Office and the Department of Justice in addressing this issue.

### Effectiveness of the Justice System

16. Indicator 38 relates to increasing the effectiveness of the justice system. The Bar notes the commitment to law reform with committal proceedings identified as one area for change. The changes include direct transfer of specified offence types to the Crown Court, direct transfer of early guilty plea cases, and reduction in the number of mixed committals and oral evidence delivered at PE/PI. The Bar is concerned at the cumulative impact of these reforms on the right to a fair trial for a defendant, particularly a reduction in oral evidence delivered by at PE/PI. Committal proceedings can represent a significant and important procedural element in determining whether there is sufficient evidence to allow a case to proceed to trial. The focus on speeding up justice should not be the sole consideration in progressing these law reforms.
17. In addition, we note the intention to finalise policy considerations on whether to introduce STLs by the end of 2016. The Bar has previously highlighted a number of concerns in relation to the introduction of STLs given that there is also a need to address the underlying causes of delays in the system. The general experience of criminal practitioners suggests that much of the delay in proceedings across the criminal justice system can be located in a number of areas, namely: delays in the investigative process, delays in the putting together of prosecution files, problems in relation to secondary and third party disclosure, lack of witness availability and lack of court time.

18. We would urge caution in relation to the progression of STLs as a measure of the effectiveness of the justice system given that there are clearly a range of other factors which contribute to delays across the system which these alone cannot address.
19. In addition, we welcome the creation of the baseline data for indicator 38 given that rigorous data recording procedures will assist in providing an evidence base for assessing the operation of the various court tiers. However, we would reiterate the point made above that the figure of 515 days for cases in Crown Court may not be representative of the average time typically taken to complete such cases given that the data includes the period of the withdrawal of services by legal representatives.

### **New Approaches**

20. The Bar notes that the Executive “*will consider new approaches through testing of pilots and roll out of evidence based programmes to improve public services*” at page 102 of the main consultation document. We welcome the willingness to improve the justice system and strongly endorse the need for robust evidence bases. Under this heading, the PfG itemises a list of activity including “Develop digital justice” and “Review civil and family justice effectiveness”. Unfortunately within the delivery plans, there is no further information in relation to either of these projects and we would request more detail on what is envisioned, planned and budgeted for.

### **Outstanding Issues**

21. The Bar is keen to work with the Executive and Assembly in promoting an effective and efficient justice system. We are unclear from the delivery plans linked to outcome 7 as to how a range of other major areas of work of the DOJ will be progressed. It remains uncertain as to how the Department will deal with other reform programmes, particularly the outworkings of the Access to Justice 2 Review from 2015 and the Gillen Review of Civil and Family Justice. It is vital that the DOJ provides coherent prioritisation and alignment of the various reform programmes in an effort to bring some strategic direction and stability to this policy area for the years ahead. However, it is concerning that there is little mention of any action around this or the importance of safeguarding access to justice in any of the DOJ delivery plans.

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## Draft Programme for Government 2016-2021

### Consultation Response

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22. The Bar accepts that the new PfG focuses very much on the major societal outcomes that the Executive wants to achieve and that time will be required to embed the new approach. However, there remains considerable uncertainty as to how the delivery plans will work in practice in the context of a number of the major strategic issues facing the justice sector over the course of this new mandate. We look forward to receiving this additional clarity and working with the Department to achieve the outcomes which will ensure the continued confidence in the justice system.