
Devolution and Democracy in Northern Ireland: dealing with the deficit

Inquiry Response

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 comment on the Northern Ireland Affairs Committee inquiry into devolution and democracy in Northern Ireland. We note that the Committee is seeking evidence on a range of matters, including the effect on services, businesses and communities, the impact on budgeting and legislative timetables and NI's voice in the EU negotiations. The Bar intends to comment mainly on the impact that the current lack of devolved Government is having on the justice sector and legal practitioners working across Northern Ireland's civil, family and criminal courts. We would also preface our comments by highlighting that the establishment of a new Executive and Assembly must be based on the ability to effectively deliver for the population of Northern Ireland on Programme for Government outcomes.

Justice Policy

3. The Bar takes the view that the current political uncertainty is preventing timely decisions being taken in the long-term interests of Northern Ireland's justice system. We want to see decisions affecting the legal sector being made by Ministers who understand the specific priorities and needs of this jurisdiction. For example, a number of justice reform programmes have been undertaken in recent years, including Access to Justice 1 and 2 plus the Gillen Review of Civil and Family Justice, and it remains vitally important that a Minister takes up post in order to allow for the DOJ to coherently prioritise and align the various reform programmes in an effort to bring some strategic direction and stability to this policy area for the years ahead.
4. We would also point out that it would not be appropriate in the absence of an Assembly to assume that legal aid policies in existence in other parts of the UK should be transposed to Northern Ireland. There are a number of reasons for this, including the differing demographic and social pressures in NI and the existence

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of significant differences in our legal system. Meanwhile the Ministry of Justice is also conducting a review into the cuts to legal aid introduced under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. There is a need for any legal aid policy proposals to be specifically tailored to the needs of Northern Ireland and not simply based on the experiences of another jurisdiction.

5. In addition, there were a range of other policy initiatives being progressed by the previous Justice Minister during the 2016-17 Assembly mandate, including the creation of a new domestic abuse offence in Northern Ireland which already exists in England & Wales under the Serious Crime Act 2015. The offence carries a maximum sentence of 5 years' imprisonment. However, since the collapse of the devolved institutions this work has stalled with no Minister in post and Departmental officials unable to continue with this important legislative project.

Personal Injury Discount Rate

6. Meanwhile we are also concerned by the difficulties being encountered by practitioners in personal injury cases in our courts due to the lack of parity with the rest of the UK given that discount rate in Northern Ireland still remains at 2.5%, whilst the changes in England & Wales and Scotland mean that it has been reduced to -0.75% since March 2017. The Bar provided a submission to the Ministry of Justice and Scottish Government consultation seeking views on how the rate applicable to compensation awards should be set in future in May 2017.
7. There have been a number of subsequent developments in England & Wales with the Ministry of Justice publishing a paper in response to the May consultation exercise along with draft legislation on the discount rate in September 2017 which will result in amendments to The Damages Act 1996. Our barristers who are acting for both claimants and defendants across the court system highlight that this situation is continuing to create uncertainty that is resulting in the partial or conditional resolution of cases. The absence of an Executive and Justice Minister throughout 2017 has meant that no legislative provisions have been brought forward to rectify the current anomaly and bring the discount rate into line with the rest of the UK.

Legal Aid in the Family Courts

8. Family justice represents one of the most challenging areas of law in Northern Ireland, often involving highly emotionally charged and personal disputes for all parties. Since 2013 considerable work has been undertaken by both the Department of Justice and the Family Bar Association to achieve a suitable

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structure to standardise payments across all court tiers with the aim of meeting the needs of the clients requiring representation, the practitioners charged with representing their interests to the court and the Department in its role of providing funding. Following the resolution of any outstanding issues, the Department will likely seek to move towards implementation in early 2018. However, the absence of a functioning Executive and Assembly to pass legislative amendments means that it will not be possible to implement any new fee structure across the family courts at present.

Legal Services in Northern Ireland

9. The Bar is also keen for Northern Ireland to be viewed as a place that has something valuable and distinctive to offer to an international marketplace and we therefore want an Executive in place to allow our Ministers to positively promote us in this way. We have recently created an innovative new venue for skilled mediators and arbitrators to assist parties in arriving at alternative resolution options. To complement our existing expertise in providing trusted and independent advice and representation to clients in court, the Bar has recently invested in The Resolution Centre which is a new purpose-designed centre for alternative dispute resolution located at Donegall Quay in Belfast. We would welcome the return of an Executive to allow Ministers to help showcase the legal and business opportunities offered by Northern Ireland on a global stage.

Brexit

10. The Bar welcomed the recognition and protection afforded to various legal issues arising from Brexit with the agreement between the UK and EU of Friday 08 December, including the legal status of the Good Friday Agreement, the jurisdiction of the European Court of Justice and the movement of people, goods and services following the UK's departure from the European Union. Whilst we acknowledge that a significant level of detail remains to be developed, the clarity provided by the agreement will enable the Bar to focus more clearly on the issues affecting the legal and justice sectors in each jurisdiction. This will also assist our barristers in the provision of meaningful advice and assistance to clients who will be seeking guidance on the implications for their business, civic and personal interests. However, we are concerned that the current lack of an Executive means that communities, businesses and other stakeholders will be unable to effectively contribute to the dialogue around the Brexit negotiations as they continue in the coming months.

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Conclusion

11. In summary, the Bar is very concerned at the impact that the lack of an Executive is having on justice policy development and therefore on our members representing clients in the courts across Northern Ireland. In addition, the publication of the Department of Finance's Briefing Paper on Northern Ireland's Budgetary Outlook 2018-2020 on 18 December suggests that budgetary pressures for the DOJ will only become more acute without a functioning devolved administration in the years ahead. We believe that it is vitally important that the political parties reconvene in 2018 with the aim of working towards an agreement to allow an Executive to be formed in order to restore local decision making, long term planning and accountability.