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# Draft Budget 2025/26

The Bar of Northern Ireland Response

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## 1. Introduction

The Bar of Northern Ireland welcomes the opportunity to make a submission to the Department of Finance on the Draft Budget 2025/26. We commend the work of the Department in delivering this Draft Budget for consultation as they work towards putting public finances on a more sustainable footing.

We are aware that in the absence of a functioning Executive and Assembly the Secretary of State was responsible for setting the budget at Westminster. During this period, there was no in-year monitoring, and civil servants had limited powers to determine spending within Departments. We are also cognisant of the fact that in the last two years, the Budget set at Westminster fell below the indicated level of need. The recent decision to uplift NI's fiscal floor by introducing a needs-based factor of 24% is welcomed, however, this measure may well be insufficient to address levels of need. It has been recognised that 24% does not "fully capture comparative underlying need"<sup>1</sup> and it is not a "settled calculation but presents a basis on which to move on..."<sup>2</sup>

In this context, the NI Executive has a budget of £19.3 billion for 2025/26, with almost 95% coming from the UK Treasury's Block Grant. The Department of Justice opening Resource DEL allocation (excluding earmarked items) in the Draft Budget is £1.350 billion, which is an increase of 10.9% on the previous financial year. With this opening allocation, the Department of Justice would see a slight increase in the proportion of funding allocated to Justice; accounting for 8% of all RDEL in 2024/25, and would account for 9% in 2025/26.<sup>3</sup> This is welcomed.

However, the chronic and historic underfunding of the Department of Justice is still of great concern. This underfunding is having a detrimental effect on the justice system and the sustainability of the profession. In particular, there are worrisome trends in the management of Legal Aid funding, with the LSA applying payment delays as a budgetary management tool. In this response, we detail the demand-led nature of Legal Aid, and make an argument to transfer the funding of this service from Resource DEL to Annually Managed Expenditure (AME). In prioritising the finite funding available to the Executive, it is integral that there is acknowledgement of areas where investment will bring the greatest return in terms of

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<sup>1</sup> Professor Jodie Carson and Professor Stephen Farry, "A Focus on Public Sector Transformation in NI" (January 2025) Ulster University Strategic Policy Unit <[The Strategic Policy Unit](#)>

<sup>2</sup> Paul MacFlynn, co-director of the Nevin Economic Research Institute quoted in Garrett Hargan, "Explainer: What is the Fiscal Framework and what does it mean for Northern Ireland?" (21 May 2024, Belfast Telegraph)

<sup>3</sup> Department of Finance, "2025-26 Draft Budget" <[2025-26 Draft Budget Document](#) | [Department of Finance](#)>

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## Draft Budget 2025/26

The Bar of Northern Ireland Response

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economic and social value; Legal Aid is one such area, and this response details the benefits that come with investing in Legal Aid.

### **1.1. About the Bar of Northern Ireland**

The Bar of Northern Ireland is a profession of self-employed barristers in independent practice with a unique specialism and expertise in legal advocacy. Members of the Bar champion the Rule of Law, serving the administration of justice and public interest. In exercising their duties both to their clients and courts, barristers play a vital role in safeguarding the legal rights afforded to all citizens across NI.

The maintenance of an independent referral Bar represents one of the cornerstones of the legal systems in this jurisdiction. The existence of a strong and independent Bar is paramount in promoting public confidence in the expert representation provided by barristers.

Around 650 self-employed barristers work from the Bar Library building in Belfast. The Bar Library is a focal point for the profession, providing access to research, technology, and modern facilities which enhance the expertise of individual barristers and ensure the highest equality of service to clients and the court.

All barristers operating independently from the Bar Library practice under the “cab rank” rule. This requires barristers to accept instructions in any field in which they are competent, regardless of their views of the client or circumstances of the case. A key advantage of the independent referral Bar model in a jurisdiction of this size is that any qualified solicitor, regardless of the size or location of their practice, can instruct any of the available cohort of independent barristers to help their clients with even the most complex or specialist legal issues.

## **2. Justice Shortchanged**

The Department of Justice has received the worst budget settlements over the last 10 years when compared with other Executive Departments, and it is chronically underfunded. This underfunding is mismatched with the demand-led nature of the services delivered by the justice and legal systems, and it is leading to structural problems across the system and within the legal professions.<sup>4</sup>

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<sup>4</sup> See Official Report: Minutes of Evidence, Committee for Justice, meeting on Thursday 25 April 2024. “Briefing by Mrs Naomi Long MLA, Minister of Justice” <[Minutes Of Evidence Report](#)>

## Draft Budget 2025/26

The Bar of Northern Ireland Response

Between 2016/17 and 2023/24, the total block grant received by the NI Executive increased by 37%. In this same period, the opening Resource DEL allocations allocated towards the Department of Justice seen an increase of just 16%. This can be compared with the opening Resource DEL's allocated to the two other 'core' Departments; Health and Education, which increased by 52% and 31% respectively.<sup>5</sup>

In terms of expenditure per head, according to the UK Treasury's Public Expenditure Analysis, over a ten-year period of 2012/13 until 2022/23, overall Executive expenditure per head increased by 34%, whilst overall Justice expenditure per head decreased by 1.98%.<sup>6</sup>

There has also been a decrease in the proportion of the overall Budget being spent on Justice. In 2011/12, Justice accounted for 12% of the overall Resource DEL, and in 2022/23, this fell to just 8%. This can be contrasted with the Department of Health, which went from accounting for 42% of all Resource DEL in 2011/12 to 51% in 2022/23.<sup>7</sup>

In addition to this, despite the well-known fact that it costs more to run public services in Northern Ireland, analysis carried out by the NI Fiscal Council 2023 noted that the real terms spending increase between 2019/20 and 2022/23 on Justice was 23.9% smaller than its Whitehall equivalent Department.<sup>8</sup>

Therefore, whilst acutely aware of the finite funding available in Northern Ireland, it is clear that justice is shortchanged. This was recognised by the then Minister of Finance, Conor Murphy MLA who noted that the Department of Justice's settlement in 2022, "provided it with a lower level of increase against baseline than other departments."<sup>9</sup>

This underfunding has caused structural problems to the system. Issues apparent in the health service are now plaguing the justice system such as long delays and backlogs, a dedicated but stretched workforce, historic underinvestment, and the need for structural reform. This underfunding is also failing victims and defendants through the delays in case progressions as a result of backlogs. The average time taken for a case to be dealt with at all criminal courts in

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<sup>5</sup> Figures derived from Department of Finance Budget Plans from 2016/17 until 2023/24 <[Budget plans | Department of Finance](#)>

<sup>6</sup> Figures derived HMT Public Expenditure Statistic Analyses (PESA) from 2012 until 2024 <[HMT Public Expenditure Statistical Analyses \(PESA\) - GOV.UK](#)>

<sup>7</sup> Based on data available through Department of Finances Budget Plans 2011/12 – 2022/23 (n 4)

<sup>8</sup> Northern Ireland Fiscal Council, "The Public Finances in Northern Ireland" (2021) <[The public finances in Northern Ireland: a comprehensive guide | NI Fiscal Council](#)>

<sup>9</sup> Written Ministerial Statement, Minister of Finance, "2022-23 Budgetary Position" (11 October 2022)

## Draft Budget 2025/26

The Bar of Northern Ireland Response

2023-24 was 190 days.<sup>10</sup> As a result in 2023/24 it was found that only 7% of victims were 'fairly confident' in the effectiveness of the justice system, whilst none were 'very confident'.<sup>11</sup>

Furthermore, since Justice was devolved in 2010, the finite funding provided to the Department has been largely engulfed by Police Services and Public Safety. As demonstrated in Figure 1A, it has steadily taken up over 70% of the overall justice expenditure.<sup>12</sup> This leaves little financing available for other services integral to the functioning of the system.

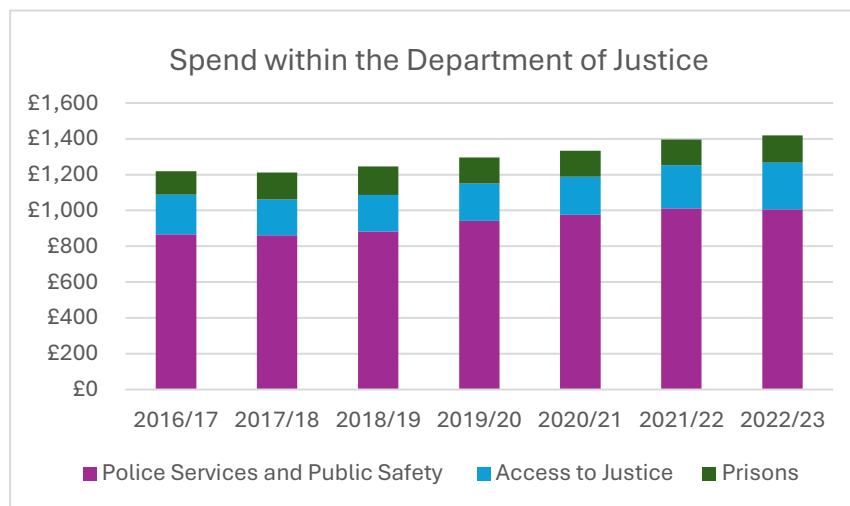


Figure 1A: Department of Justice expenditure Source: PESA UK

Access to justice is split between payments to the Legal Services Agency (LSA) and the NI Courts and Tribunals Service.<sup>13</sup> In 2022/23, it was reported that the LSA spent £101.8 million on payments, this represents around 7% of the overall Justice expenditure.<sup>14</sup>

### 3. Demand-led Service

Legal Aid is an indispensable part of our justice system, and is central to ensuring access to justice, especially for the poorest and most vulnerable people. It is a cornerstone in ensuring equality before the law, and this is integral in a society which has been marked by such conflict

<sup>10</sup> I Graham & C Murphy, "Case Processing Time for Criminal Cases Dealt with at Courts in Northern Ireland April 2023 to March 2024" (Department of Justice, August 2024) < [Case processing time for criminal cases dealt with a courts in Northern Ireland 23/24 | Department of Justice](#)>

<sup>11</sup> Commissioner for Victims of Crime, "2024 Victim Survey: Key Findings" (September 2024) < [2023-24 Victim Survey Results.pdf](#)>

<sup>12</sup> Based on data from HMT PESA (n 5)

<sup>13</sup> NI Fiscal Council (n 7)

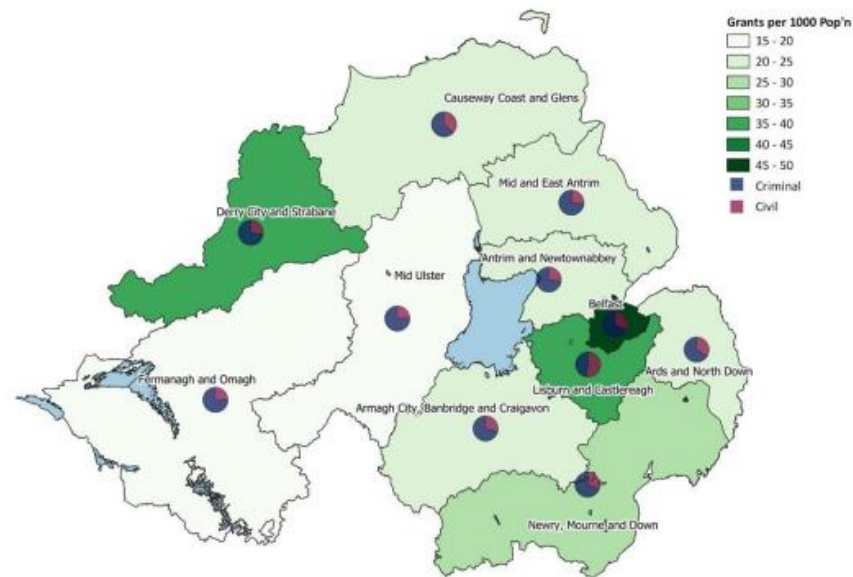
<sup>14</sup> Legal Services Agency Northern Ireland, "Legal Aid in Northern Ireland: Annual Statistics to March 2024" Statistical Bulletin 2/2024 (27<sup>th</sup> June 2024)

## Draft Budget 2025/26

The Bar of Northern Ireland Response

and violence.<sup>15</sup> As noted by the World Bank, “...legal aid is intrinsically tied to the concept of the state and its duty to guarantee equality of arms as an element of equality under the law.”<sup>16</sup>

Demand for publicly funded legal services is difficult to profile and predict. In Northern Ireland, there is typically a high expenditure on Legal Aid, in part, due to the socio-economic characteristics of the population. This is evidenced through the fact demand is particularly pronounced in areas which experience long-standing socio-economic difficulties.



**Figure 3A** Applications granted per 1,000 population, by Local Government District, 2023/24. **Source:** Legal Services Agency Statistical Bulletin 2/2024

Northern Ireland is one of the ‘poorest regions’ of the UK.<sup>17</sup> In 2021, it was reported that NI’s disposable income averaged at just £17,646 per year, compared with the UK average, which was £21,679.<sup>18</sup> A subsequent report in 2023 found that on average, families in NI are left with

<sup>15</sup> The Law Society of Northern Ireland in association with Rocket Science, “The Value of Legal Aid in Northern Ireland: Final Report” (4 June 2024) <[Social Value of Legal Aid | The Law Society of Northern Ireland](#)>

<sup>16</sup> World Bank, “A Tool for Justice: The Cost Benefit Analysis of Legal Aid”

<sup>17</sup> Asda Income Tracker, Report: September 2023, Centre for Economics and Business Research [PowerPoint Presentation](#)

<sup>18</sup> Office for National Statistics, “Regional gross disposable household income, UK: 1997 to 2021” (14 September 2023) <<https://www.nisra.gov.uk/statistics/economic-output-statistics/gross-disposable-household-income>>

## Draft Budget 2025/26

The Bar of Northern Ireland Response

only £95 disposable income per week.<sup>19</sup> To qualify for Legal Aid, applicants must not make more than £234 per week.<sup>20</sup>

Furthermore, 70% of NI households receive a benefit of some kind, which can be compared to 62% of the UK as a whole.<sup>21</sup> Whilst the employment rate in NI currently stands at 71.7%, compared with 74.55% of the UK, and since 2008, it has averaged at 4.8% lower than the UK.<sup>22</sup> Similarly, 26.7% of NI's population is classed as economically inactive, meanwhile, in the UK, this figure sits at 22.2%.<sup>23</sup>

Despite the heightened demand for publicly funded legal services, the Legal Services Agency (LSA) is subjected to a fixed baseline budget. Up until the recent announcement of £120 million towards the Legal Aid fund, the budget allocations have been nowhere near meeting the annual demand of £115 million. As a result, the LSA has required various in-year payments to keep up with demand and ensure that payment times are met. We are aware that the Department submitted that they required an additional £6 million in the October Monitoring Round to ensure that Legal Aid payment times did not increase above the 12-week delay. They noted that if they wanted to get payment times down to 4-weeks, this would have required an additional £15 million.<sup>24</sup>

The Department has sought to justify its practice of payment delays by attributing them to this underfunding. The policy of applying payment delays was confirmed by a senior DoJ official in a briefing to the Committee for Justice when she noted that when the Department needs to make financial savings, the Legal Aid budget is their "go-to".<sup>25</sup> The Bar has challenged the Department on this, and based on the recently announced budget increase of £120 million for Legal Aid, the Department will presumably ensure that payment delays are no longer applied.

In addition to the late payment of fees, rates for legally aided work have not been reviewed when they should have been, and have remained static for decades, falling chronically behind inflation. In Criminal Legal Aid, there has been no increase in the level of fees since the inception of 2005 Rules. Similarly, although the Civil Legal Services Remuneration Order (NI)

<sup>19</sup> Ibid.

<sup>20</sup> Department of Justice, "Legal aid FAQs" <[Legal aid FAQs - financial eligibility in advice and assistance | Department of Justice](#)>

<sup>21</sup> Northern Ireland Statistics and Research Agency. (2023). Family Resources Survey: Northern Ireland 2021/22 cited in Law Society (n 15)

<sup>22</sup> Northern Ireland Statistics and Research Agency, "Northern Ireland Labour Market Report" (2024)

PIVTOAL "Economic inactivity in Northern Ireland" (May 2024) <[Economic inactivity in Northern Ireland - Pivotal Public Policy Forum](#)>

<sup>23</sup> Pivotal, *ibid.*

<sup>24</sup> Official Report: Minutes of Evidence, Committee for Justice,

<sup>25</sup> Official Report: Minutes of Evidence, Committee for Justice, meeting on Thursday 13<sup>th</sup> June 2024, "Budget 2024-25 and June Monitoring Round: Department of Justice" <[Minutes Of Evidence Report](#)>

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## Draft Budget 2025/26

The Bar of Northern Ireland Response

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2015 made provision for a formal review of remuneration every three years, the Department failed to discharge these statutory obligations in 2018, 2021, and 2023. Through the Department of Justice's Enabling Access to Justice Programme, the Justice Minister announced an interim 16% uplift to criminal and civil fees. This comes from a recommendation in the Independent Fundamental Review of Criminal Legal Aid carried out by Judge Burgess. However, a much greater correction to fees is required and justified, and the Bar is continuing to supply evidence in support of those increases to the Burgess Working Group.

The restrictions on the Legal Aid budget are having a negative effect on the sustainability and viability of the legal profession. Many highly motivated, talented, and qualified barristers who have entered the profession to service justice, are struggling to sustain viable practices at the Bar. Given the levels of socio-economic deprivation across large parts of our society, it is not surprising that many barristers seek to apply their professional skills and gain experience in legally aided cases.

However, the Bar is concerned that the issues with remuneration and payment delays are creating a situation where members of the Bar are forced to divert their expertise to other areas of work, and this is leading to a lack of expert advocacy being made available to vulnerable members of society. There is a concern that the failure to promote, protect, and ensure fair remuneration for emerging practitioners will result in a generation of young lawyers pressed to seek other areas of work. This will have a knock-on effect on the diversity of the Bar.

Concerns about the viability of the profession were recognised by His Honour Tom Burgess in his Fundamental Review of Criminal Legal Aid in Northern Ireland. Judge Burgess noted, "*while further work is required, there are immediate issues that need addressed given my conclusion that there is a serious downward slide in the viability of both arms of the profession to provide the appropriate and necessary high level of service in the criminal legal system at the present levels of remuneration. This has been the subject of detailed examination, starting at university level through to established practices. My conclusions are based on hard evidence, examined where necessary by third parties on my behalf, to ensure that I have an accurate picture*".<sup>26</sup>

We urge the Executive to recognise Legal Aid as a demand-led service, and fund it accordingly. We believe there is a strong argument for transferring the funding of Legal Aid from Resource DEL to Annually Managed Expenditure. This would recognise Legal Aid as a component of the

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<sup>26</sup> His Honour Tom Burgess C.B.E, "Fundamental Review of Criminal Legal Aid" (August 2024, Published on 3<sup>rd</sup> December 2024) <[Fundamental Review of Criminal Legal Aid - Final Copy with Appendices.pdf](#)>

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## Draft Budget 2025/26

The Bar of Northern Ireland Response

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welfare system, as well as its demand led nature. It would also mean that the Department would no longer have to utilise payment delays to manage the Legal Aid budget.

#### **4. The Economics of Legal Aid**

It is often said that Northern Ireland is the biggest spender of Legal Aid per head in Europe. The Bar of Northern Ireland describes such rhetoric as lacking context, and based on an over simplified analysis of the provision of Legal Aid. The most recent report released by the European Centre on the Efficiency of Justice in 2022 noted that NI spent €42.71 per person on Legal Aid in 2020. This can be compared with the European average spend per head which was €8.61. In this study, England and Wales recorded expenditure of €22.25 per head, whilst Scotland spent €20.18.<sup>27</sup>

It has been well established, that comparing Legal Aid expenditure between countries with different legal systems lack appreciation of the administrative arrangements of individual jurisdictions.<sup>28</sup> The Law Society NI noted that a country's spending on Legal Aid is "never the full story".<sup>29</sup> Indeed, countries with a more inquisitorial system tend to provide advice and assistance to the public through the courts and perform many other duties which would be undertaken in the UK by a legal professional. This, therefore, leads to a comparatively lesser spend on Legal Aid, and an increased spend on their courts and judiciary.<sup>30</sup>

This can be demonstrated in the European Centre on the Efficiency of Justice report, in which Switzerland spent €132.1 on their Courts whilst only €20.09 on Legal Aid. Similarly, Monaco spent €161.8 on its Courts and only €6.40 on Legal Aid.<sup>31</sup> Both of these jurisdictions have legal systems which are based on an inquisitorial tradition.

Furthermore, it is important that figures on a state's Legal Aid expenditure are placed in context. As previously noted in our response, Legal Aid is demand driven; therefore, it is important to consider the levels of poverty, deprivation and mental health issues, which are higher more prevalent in Northern Ireland than the rest of the UK.

In this way, figures on Legal Aid are unfairly sensationalised to draw upon "populist perceptions" of "fat cat lawyers" which target "already demonised groups" in society.<sup>32</sup> When

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<sup>27</sup> European Commission for the Efficiency of Justice, "European judicial systems CEPEJ Evaluation Report" 2022 Evaluation cycle (2020 data)

<sup>28</sup> Department of Justice, "Report of the Access to Justice Review part two" (September 2015)

<sup>29</sup> Cited in *ibid.*

<sup>30</sup> CPEJ (n 27)

<sup>31</sup> *Ibid.*

<sup>32</sup> Asher Flynn and Jacqueline Hodgsons, "Access to Justice and Legal Aid: Comparative Perspectives on Unmet Legal Needs" (2017, Hart Publishing) Chapter 1: "Access to Justice and Legal Aid Cuts: A Mismatch of Concepts in the Contemporary Australian and British Legal Landscapes".



## Draft Budget 2025/26

The Bar of Northern Ireland Response

in reality, proper investment in publicly funded legal services can deliver savings across Departments and public services. We argue that in periods of fiscal challenge, there should be greater focus on prioritising investment in areas which will ultimately save money in the longer-term, and bring wider economic benefits.

A study carried out by Rocket Science, commissioned by the Law Society of Northern Ireland found that in Northern Ireland, for every £1 invested in Legal Aid, it generates £8.32 in benefits.<sup>33</sup> Similarly, in England and Wales, a study found that for every 100,000 people in receipt of free specialist legal advice, a saving of £2.2 billion would occur over the next ten years.<sup>34</sup> Indeed, it has been proven that not providing Legal Aid can create a “false economy” as the costs of unresolved problems displace to other areas of government spending, such as health care, social services and prison services.<sup>35</sup>

Research has found that investment in Legal Aid can reduce pressure on the provision of health services. Wide access to justice provides expert support and representation to citizens during challenging life situations. This can reduce demand for mental health service provision, for example. This was noted by Rocket Science who found that 95% of 1,001 GPs they interviewed considered that a lack of legal advice on social welfare issues negatively affected a patients’ health.<sup>36</sup> This was also considered by the Equality and Human Rights Commission in England and Wales, who noted that the cuts to Legal Aid provisions, although difficult to quantify, were causing costs to the health service “as a result of increased mental and physical health problems for those with legal issues they cannot or struggle to resolve...”<sup>37</sup> This should be of particular importance in Northern Ireland, as it has been recently recognised that regional health services are “dire and diabolical”.<sup>38</sup>

Sufficient funding for Legal Aid can also result in fewer children requiring social service intervention, and thus reducing resource in this area. Research has found that children who entered court-supervised care, remain in care for less time if their parents had legal

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<sup>33</sup> The Law Society of Northern Ireland in association with Rocket Science, “The Value of Legal Aid in Northern Ireland: Final Report”(4 June 2024) <[Social Value of Legal Aid | The Law Society of Northern Ireland](#)>

<sup>34</sup> The Access to Justice Foundation and The Bar Council, “The Value of Justice for All” (August 2024) pragmatix advisory <[The value of justice for all - The Access To Justice Foundation](#)>

<sup>35</sup> World Bank (n 16)

<sup>36</sup> Law Society NI (n 12)

<sup>37</sup> Dr James Organ and Dr Jennifer Sigafoos, “The Impact of LASPO on Routes to Justice” (2018) Equality and Human Rights Commission, Research Report 118 <[The impact of LASPO on routes to justice | EHRC](#)>

<sup>38</sup> Jayne McCormack, “Health service pressures are dire and diabolical – O’Neill” (BBC News, 13 January 2025) <[Northern Ireland hospital pressures are dire - Michelle O'Neill - BBC News](#)>

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## Draft Budget 2025/26

The Bar of Northern Ireland Response

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representation.<sup>39</sup> Furthermore, there is evidence that increased investment in Legal Aid can reduce instances of Domestic Abuse and provide greater protection for individuals.<sup>40</sup>

Furthermore, investment in Legal Aid can reduce costs in other areas of the justice system. Access to Legal Aid means that fewer cases go to court, as more cases are resolved quickly through expert legal representation.<sup>41</sup> The availability of Legal Aid will also result in fewer litigants-in-person, which will enhance the efficiency of court proceedings, and cut costs.<sup>42</sup>

Finally, ensuring the availability of Legal Aid is integral in post-conflict societies, as access to justice can assist in mitigating the risk of fragility, conflict, and violence.<sup>43</sup> The UN and World Bank has cited grievances around social group-specific exclusion from access to justice as an arena that informs the risk of violence, with their Pathways to Peace report identifying access to justice as part of the “glue that binds state and society together”.<sup>44</sup>

### **5. Conclusion**

We appreciate the constrained position of public financing in Northern Ireland, and the finite money available. It is evident that NI is not being allocated sufficient funding to address historical overspends that have accrued during the absence of an Executive. As a result, Departments are overspending, and the needs of Departments significantly outweighs the financing available for allocation.

This submission highlights the consequences of the underfunding of the justice system, negatively impacting the administration of justice, and access to justice.

Our response also highlights that Legal Aid is being funded by a fixed budget, despite being demand-led. This has resulted in the Legal Aid budget needing various in-year injections to try and keep pace with demand. We have suggested that funding Legal Aid through Annually Manged Expenditure would recognise the uncontrollable nature of Legal Aid and would mean that the Department of Justice would no longer have to apply budgetary management tools to live within the Budget.

Finally, we believe it is integral that the Executive prioritises investment towards areas which bring social and economic returns. An invest to save approach is vital. In this response we

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<sup>39</sup> Law Society NI (n 12)

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> House of Commons Justice Committee. (2015). Impact of Changes to Civil Legal Aid Under Part 1 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 cited in *ibid*.

<sup>43</sup> World Bank (n 13)

<sup>44</sup> United Nations & World Bank, “Pathways for Peace: Development Approaches to Prevention of Violent Conflict” (2018)

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## Draft Budget 2025/26

The Bar of Northern Ireland Response

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emphasised the savings that could be made to other Departments, and within the Justice system, if there was sufficient investment in Legal Aid.