
Northern Ireland Draft Programme for Government

Consultation Response

1. Introduction and About the Bar of Northern Ireland

The Bar of Northern Ireland (Bar of NI) is a profession of self-employed barristers engaged in independent practice with a unique specialism and expertise in legal advocacy. There are around 650 self-employed barristers who operate from the Bar Library under the 'cab rank' rule. This requires barristers to accept instructions in any field which they are competent, regardless of their views of clients or circumstances of the case.

Barristers champion the rule of law, serving the administration of justice and public interest. The existence of a strong, independent, and diverse Bar is paramount in promoting public confidence, and upholding the rule of law.

The Bar of NI is pleased to be responding to the consultation on a Programme for Government (PFG), which is to be welcomed following several years of political stalemate. This submission is in lieu of the consultation survey in order to allow the Bar to provide its analysis efficiently and adequately. This response will address the priorities contained in the PFG which are most relevant to our work; Building a Globally Competitive and Sustainable Economy, Ending Violence Against Women and Girls, Safer Communities and the Reform and Transformation of Public Services.

2. Building a Globally Competitive and Sustainable Economy

The Bar of NI welcomes the inclusion of this priority, which aims to grow a globally competitive and sustainable economy. Northern Ireland (NI) has experienced steady economic growth since the Good Friday Agreement, with GDP levels growing by 38%.¹ However, it still lags behind the rest of the United Kingdom (UK) and Ireland; with high levels of economic inactivity and foodbank usage, and low levels of disposable income.² NI remains the "poorest region" in the UK.³

The actions outlined in the PFG; which target productivity, good jobs, decarbonisation, and regional balance, are broadly positive. However, the Bar of NI believes that it would be useful to recognise the role that upholding the rule of law has on economic sustainability and prosperity under this priority.

The importance of the rule of law in order to build a competitive economy has been recognised internationally. In 2015, the UN General Assembly announced its post-2015 Agenda for Sustainable Development and noted that the rule of law was "essential for achieving such sustainable development, including sustained and inclusive economic

¹ Northern Ireland Assembly, Research and Information Service, "Northern Ireland economic overview" (March 2024) NIAR 123-23 <[Northern Ireland economic overview](#)>

² PIVOTAL "Economic inactivity in Northern Ireland" (1 May 2024):

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

³ Ibid.

Northern Ireland Draft Programme for Government

Consultation Response

growth..."⁴ This was further articulated by the World Bank in their World Development Report, which stated that "the rule of law... is needed for a country to realise its full societal and economic potential."⁵

Economic value is maximised when individuals, businesses and organisations transact with one another in an ordered manner. Legal certainty provides a degree of predictability and confidence, which enables more transactions to occur in that jurisdiction, thus encouraging inwards investment and the exchange of goods and services, which subsequently boosts economic growth and job creation.⁶ Therefore, the rule of law and the robustness of legal institutions are necessary components in building a competitive and sustainable economy.

The value that the rule of law holds has been studied at length. Recent analysis by LegalUK highlighted that the UK has the second largest legal services market in the world, and the second largest in Europe, where it accounts for one third of all Western European legal services fee revenue. English law is often one of the first to provide solutions to complex market issues, driving greater volumes of transactions. It is the certainty and predictability of the law which generates economic growth. Indeed, in 2019, the UK legal services sector generated a trade surplus of £5.9 million.⁷

Various empirical studies have demonstrated the link between the rule of law and economic sustainability. In 2002, a paper studied economic growth across 137 countries, and considered factors such as the rule of law, geography, openness to trade and colonial history as potential determinants of economic growth. They found that only the rule of law could fully explain economic growth in a country.⁸ In 2020, a study aimed to build upon these findings and researched the economies' of countries' between 1998 and 2018. It discovered a positive correlation between GDP per capita and the rule of law, and that countries with a greater adherence to the rule of law, were characterised by less income inequality.⁹

Barristers play an important role in the development of the NI economy, both directly and indirectly. Through their expertise and advice they not only help demonstrate the local breadth and depth of the knowledge economy, but they also play a key role in

⁴ UNDOC, "Security, the Rule of Law and the post 2015 development agenda" (2015) <[Note on Justice Security and post 2015 final.pdf](#)>

⁵ World Bank Group, "Governance and the Law" World Development Report 2017 <[World Development Report 2017: Governance and the Law](#)>

⁶ Lord Hodge, Deputy President of the UK Supreme Court, "The Rule of Law, the Courts, and the British Economy" (4 October 2022) Guildhall Lecture <[Speeches at the Supreme Court](#)>

⁷ LegalUK, "Economic Value of English Law" (5 October 2021) Oxera <[The-value-of-English-law-to-the-UK-economy.pdf](#)>

⁸ Dani Rodrik, Arvind Subramanian, and Francesco Trebbi, "Institutions Rule: The Primacy of Institutions over Geography and Integration in Economic Development" (2002) National Bureau of Economic Research, Working Paper 9305 <<https://www.nber.org/papers/w9305>>

⁹ Sanjai Bhagat, "Economic Growth, Income Inequality, and the Rule of Law" (2020) Harvard Business Law Review

Northern Ireland Draft Programme for Government

Consultation Response

ensuring that our jurisdiction enjoys a strong international reputation, recognised as being both open and transparent, with a strong focus on solving commercial issues and supporting business development.

It is clear that upholding the rule of law contributes towards building a globally competitive and sustainable economy, therefore, it is important that the Executive pledges a commitment to upholding the rule of law. The Bar of NI suggests this can be done through the following:

- Improving the efficiency and effectiveness of the legal system;
- Upholding the importance and quality of the legal profession;
- Upholding the provisions of the Belfast/Good Friday Agreement, particularly concerning rights based matters;
- Ensuring transparent and accountable legislative processes which adhere to the Sedley Requirements.

3. Ending Violence Against Women and Girls

The Bar of NI welcomes the inclusion of this priority, which is incredibly important, given the prevalence of violence against women and girls in this jurisdiction and the long-lasting societal impacts of these crimes upon the victims-survivor and wider society. We support the priorities outlined in the PfG; however, we are concerned about the lack of reference to civil justice and the lack of commitment to ensuring these processes are readily accessible for victim-survivors of abuse, as well as recognition of the importance of legal aid in enabling access to justice for these individuals.

Access to criminal justice is important for victim-survivors of abuse, and we are pleased that the Executive has pledged a commitment to holding perpetrators to account. However, many victim-survivors will need to utilise civil justice processes in order to obtain non-molestation orders, occupation orders, or other private law proceedings including custody and divorce. Therefore, ensuring these processes are as open and accessible through available funding is integral to formulating an effective response to Violence Against Women and Girls.

This priority notes the importance of eradicating barriers to access to justice. However, a key component of ensuring access to justice for victim-survivors is government funding which enables effective legal advice in both criminal and civil proceedings, and this is regrettably not acknowledged in either the PfG or the Strategic Framework.

In terms of affordable legal advice, there have been two key issues identified as obstacles in victim-survivors accessing legal aid. These are the means test, and the slow uptake of the domestic abuse waiver.

3.1. The Means Test

The means test has been recognised as one of the “biggest barriers” facing victim-survivors in accessing legal aid. The test disqualifies many individuals from legal aid, leaving victim-survivors with two options; to either pay for their legal representation out of pocket, or self-represent, which leaves victims-survivors without expert and regulated legal representation.

The means test evaluates an individual’s financial situation to determine eligibility, including their income, capital, and household composition. Domestic abuse organisations have raised the concern of “trapped capital” which prevents many victim-survivors from receiving legal aid.¹⁰ This occurs as the means test operates on the assumption that individuals are able to liquidate their assets/capital, but this is not an option for victim-survivors that co-own a property with their perpetrator.¹¹

Organisations have noted that this current system is therefore, preventing women from utilising the legal aid system to seek justice. Many victim-survivors are having to routinely pay for their own personal protection from their abuser, and in order to do so, many have sold their homes, depleted their savings, or accrued debt. This has impeded on many victim-survivors ability to rebuild their lives after abuse.¹²

It is also pertinent to consider that many perpetrators manipulate civil legal proceedings as a way to economically abuse their victims, with an individual noting to Women’s Aid NI that courts can be used as “another form of abuse”. This is particularly relevant in cases where victim-survivors are not eligible for legal aid, or are paying contributions towards legal costs.

We note that England and Wales’s ‘Tackling Violence Against Women and Girls Strategy’, published in 2021, suggested that a review of the Means Test should be undertaken, and we believe the same should be instigated in this jurisdiction. The legal aid system should be as easy and accessible as possible for victim-survivors of domestic abuse and violence.

3.2. Domestic Abuse Waiver

We are aware that the Legal Services Agency introduced a discretionary waiver, which allowed victims of domestic abuse to be eligible for legal aid when defending certain Children (NI) Order proceedings, despite their financial circumstances.

However, it has been highlighted that many victim-survivors are unaware of this waiver, and of the legal aid process in general. This has resulted in a slow uptake of the waiver,

¹⁰ Surviving Economic Abuse “Denied Justice: How legal aid means test prevents victims of domestic abuse from accessing justice and rebuilding their lives” (October 2021)

¹¹ Ibid.

¹² Ibid.

and many victim-survivors paying out-of-pocket for representation. Therefore, we call on the Department of Justice to do more to raise awareness of the availability of this waiver in partnership with the legal professions and voluntary organisations in their response to Violence Against Women and Girls.

4. Safer Communities

The Bar of NI welcomes this priority which is dedicated to keeping citizens safe and giving them the confidence to live productively and engage fully in society. We recognise a key aspect of this is ensuring access to justice for all. Therefore, we have a number of comments in regard to the actions underlined in this priority.

4.1. Speeding Up Justice Programme

The Bar of NI is pleased to note the proposal for a 'Speeding Up Justice Programme' which will reform the way in which cases are handled. Whilst the time taken to complete cases is generally decreasing in criminal courts, there is still a large backlog of cases, reflecting the continued impact of the Covid-19 Pandemic and related lockdowns. This backlog has meant it is difficult to secure access to justice for all citizens. Barristers are working at 130% capacity to assist in addressing chronic court backlogs, yet payment times for legal practitioners has not kept pace. This has created an acute financial impact upon women and younger barristers, in particular, as they wait 12-16 weeks or more for payment for work completed. The Executive Office will be aware that this matter is subject to live Judicial Review proceedings.

To achieve 'speedy justice,' there must be a diverse supply of legal professionals who apply their skills and expertise for the benefit of all citizens - not just those who can afford it - and are paid fairly and promptly. Therefore, the Bar of NI strongly asserts that a programme dedicated to speeding up justice, should look at urgently stabilising and investing in the criminal justice system which should be the cornerstone of a safe and just society. We consider it essential that the Executive urgently address the looming risks associated with the retention and recruitment of the Criminal Bar, and the remuneration of legal aid professionals, devising measures to make a tangible difference.

A worrisome trend is emerging whereby barristers are leaving practice, particularly in criminal legal aid work. A study carried out by the Criminal Bar Association (CBA) noted that over half of its members relied 75-100% on legal aid funded work, and over 41% of its members did not envision they would be working in criminal legal aid in 5 years' time. When prompted for factors which would contribute to them leaving practice, the most common reasons cited were unsustainable remuneration, delays in payment, increased workload, and stress.

Criminal legal aid fees have not been adjusted since 2015, when they were reduced under the UK Government's policy of austerity. This was recognised by the then Minister

of Justice for NI who noted that austerity was having “significant implications on public spending budgets across Whitehall and the Devolved administrations”. Based on the rates set in 2016, most fees are now 20-37% less than rates set in 2005, and after inflation, fees have been reduced by 53-63%.

Remuneration issues disproportionately affect junior barristers, females, and those from disadvantaged socio-economic backgrounds. Individuals from these backgrounds are finding it difficult to maintain their practice, which is adversely affecting the diversity of the Bar. This lack of diverse and available legal professionals will slow-down the justice system.

4.2. Digital Capabilities

An action underlined under this priority aims to “*drive much needed reform at a system level, underpinned by investment in digital capabilities...*” The Bar of NI recognises the benefits which can come with digital transformation of the Courts and Tribunals Services, including making courts more convenient and accessible.

However, we are concerned that digital transformation will be framed as a panacea for all of the ills of the justice system, and will be introduced at the expense of other much needed investment. It should instead, be introduced as part of a complete approach to justice system reform. We also believe it is pertinent to highlight the concern that online justice systems will “leave certain people behind”.¹³ Therefore, digital transformation should be underpinned by an assurance that it will not restrict access to justice for any section of society who are confined to suffer digital poverty and exclusion.

In NI, there is a digital ‘gap’ between households, businesses, and areas in their ability to access and utilise digital technologies. Indeed, NI has the largest proportion of internet non-users in the UK; sitting at 14.2% of the population. Additionally, 32% of the working age population in NI have limited or no basic digital skills, which is higher than the UK average at 26%.¹⁴ The digital divide is mainly driven by age demographics, and a rural and urban divide.

Socio-economic status is also a major cause of this divide, as those from a more disadvantaged background are more likely to lack basic digital skills, or have inadequate access to digital technology. Therefore, those in greater need of legal aid services will potentially be more exposed to the negative consequences of digital transformation.¹⁵

¹³ Amanda Finaly, “Preventing Digital Exclusion from Online Justice” (2018) A Report of JUSTICE p 1.

¹⁴ Niamh McHugh, “An overview of the Digital Divide in Northern Ireland” (November 2021) Research and Information Services <<https://www.assemblyresearchmatters.org/2021/11/16/an-overview-of-the-digital-divide-in-northern-ireland/>>

¹⁵ Cameron Steele, “The Impacts of Digital Divide” (September 2018) Digital Divide Council <<http://www.digitaldividecouncil.com/the-impacts-of-digital-divide/>>

Therefore, the Bar of NI emphasises the importance of considering the digital divide when discussing digital advancement. We suggest that if the Executive is committed to digitally transforming the sector, it may be worthwhile to consider a strategy dedicated to tackling digital exclusion, in order to ensure that no individual's access to justice is restricted.

4.3. Adequate Resources in Justice Agencies

The importance of ensuring adequate resources within justice agencies to respond to and deal with crime cannot be overstated. However, we are disappointed by the lack of reference to the Legal Services Agency (LSA), and the importance of ensuring adequate resources in it. The lack of resources within this agency has had negative effects on the profession, as the LSA is applying a manifestly unsustainable and inappropriate policy of payment delays to practitioners as a way of managing their budget.

The Bar of NI does not accept that delayed payments to legal professionals should be used as a budgetary management tool. The LSA can take between 12 and 16 weeks to pay practitioners for completed work, whilst all other suppliers are typically paid by the LSA within 30 days. In briefings prior to the restoration of the Assembly, members were advised that, at various times, the Department has anticipated the application of a six-month timeframe for payments.

A senior Department of Justice official has referred to the legal aid budget as the Department's "go-to" when they need to balance the budget.¹⁶ This is not acceptable, and in choosing to apply these delays, it is placing barristers in a wholly unsatisfactory, unprecedented, and unsustainable position, whereby they, rather than the public purse, are effectively funding public service delivery.

The continuing impact of this policy has culminated in a wholly regrettable situation where the Bar Council, in conjunction with the Law Society, has had to issue Judicial Review proceedings against this Departmental policy. These proceedings are currently live.

In ensuring that there are adequate resources within justice agencies to guarantee a safer community for all citizens, the Executive should ensure that the LSA is sufficiently resourced so that it can pay practitioners promptly.

4.4. Chronic Underfunding

We are concerned about the lack of details provided on the level of funding which will be dedicated to this priority and its actions. We would therefore welcome clarity on

¹⁶ Committee for Justice, "Budget 2024-25 and June Monitoring Round: Department of Justice" Official Report: Minutes of Evidence (13 June 2024) <[Minutes Of Evidence Report](#)>

these matters, particularly as the Justice system is suffering from chronic and historic underfunding.

The Justice system is historically underfunded and has consistently received the worst budget settlement when compared with other Departments, and overall Executive spend. Therefore, while the Bar of NI is supportive of this priority, we would appreciate transparency on the funding which will be allocated to implementing these measures, particularly as there are other areas of the system that are suffering due to the underfunding.

5. Reform and Transformation of Public Services

The Bar of NI is pleased to note a priority which recognises the many compounding factors which have resulted in the unsustainability of public services, and the need for urgent reform and transformation. In particular, we welcome the acknowledgement of the chronic underfunding of the Justice Department, which has had a serious impact on the legal profession, and the justice system more generally.

Consistently over the last 10 years, the Justice Department has had one of the worst budget settlements, when compared with other Departments. From 2012/13 until 2022/23, the Justice Department's overall expenditure has increased by just 3% in cash terms; whilst Education's expenditure has increased by 32% and Health by 61% in this same period. Furthermore, in terms of spend per head, Justice is spending 2% less in 2022/23 than it was in 2012/13, whilst Education and Health is spending 26% and 54% more respectively.¹⁷

Justice is also suffering disproportionately when compared with their Whitehall counterparts. The NI Fiscal Council looked at spending increases between 2019/20 and 2022/23 in both NI Departments and the UK Government. Their research demonstrated that Education fared "relatively well" in relation to its counterpart in 2022/23, whilst Justice suffered from a 23.9% difference in allocation. This is despite the well-recognised fact that it costs more to provide public services in NI due to its "unique political and security situation".¹⁸

This underfunding is having negative effects on the justice system, which currently experiencing a high volume of court backlogs and delays, and a worrisome trend of legal practitioners leaving practice.

¹⁷ This is data based on Public Expenditure Statistical Analysis (PESA) published by the UK Treasury.

¹⁸ Northern Ireland Fiscal Council, "The public finances in Northern Ireland: a comprehensive guide" (November 2021) <[the-public-finances-in-ni-a-comprehensive-guide.pdf](#)>

Northern Ireland Draft Programme for Government

Consultation Response

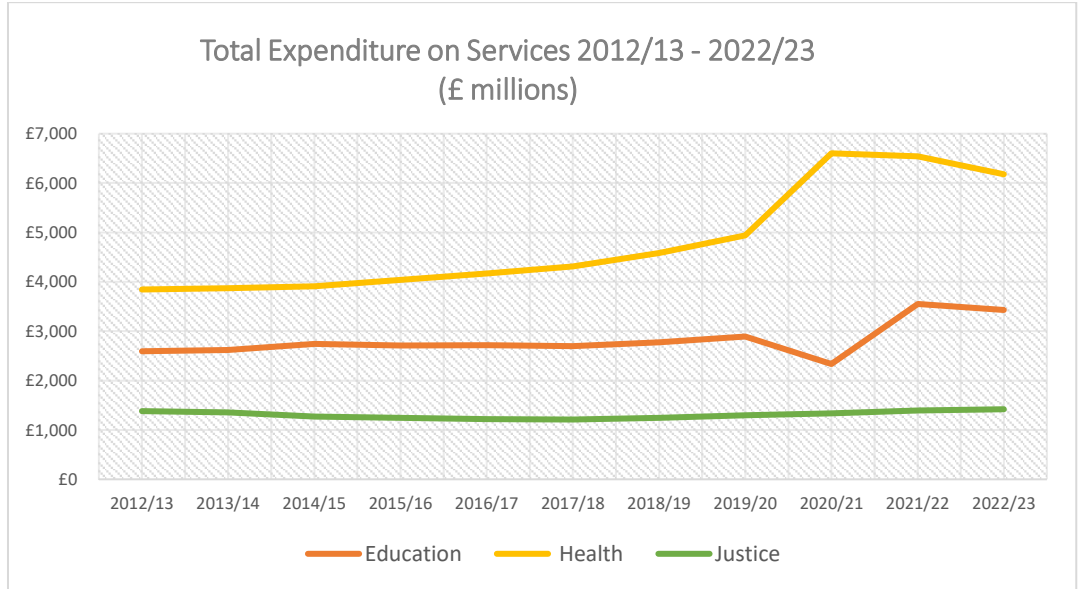


Figure A: Total Expenditure on Education, Health, and Justice. Data sourced from PESA UK Treasury

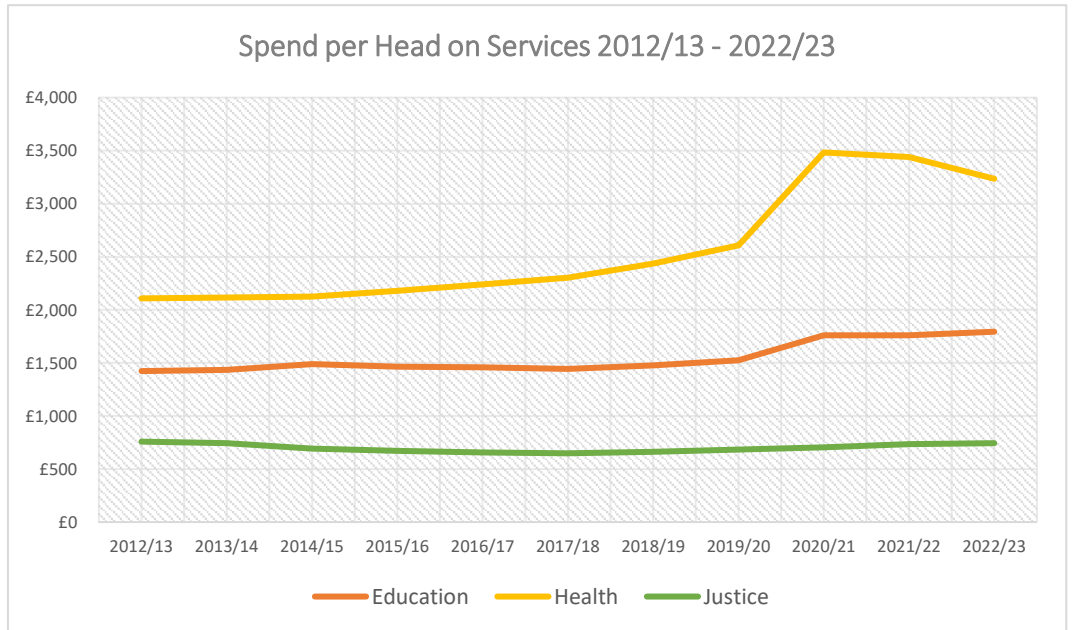


Figure B: Total Spend per Head on Education, Health, and Justice. Data sourced from PESA UK Treasury

Therefore, we support the Executive’s aim of examining “what we do, why we do it, and how we do it”. We would hope that in doing so, the Department of Justice would be able to identify how to maximise its budget to speed up justice, and enhance access to justice. In particular, we believe that the Executive’s aim resonates with the “human value” of legal aid, and how investing in this service, results in savings elsewhere.

Northern Ireland Draft Programme for Government

Consultation Response

The benefits of an appropriately resourced legal aid programme are well evidenced. A study by PwC into legal aid commissions in Australia demonstrates that every \$1 of Commonwealth funding allocated to legal aid commissions generated a return of \$2.25 in quantitative benefits.¹⁹ Similarly, a study in Scotland found:

- For every £1 spent on Legal Aid in housing cases, there was a return of approximately £11
- For every £1 spent on Legal Aid in family cases, there is a return of approximately £5
- For every £1 spent on Legal Aid in criminal cases, there is a return of approximately £5.²⁰

These savings can come in the form of fewer evictions, families remaining together, or children placed in kinship care, avoidance of A&E visits and better mental health outcomes. This, therefore, lessens the demand for other services, such as health and social care, and improves outcomes and quality of life for individuals.²¹

Additionally, there is a wealth of evidence to demonstrate that proper investment in legal aid can result in a more cost-efficient and effective justice system. A functioning legal aid system can reduce the time suspects are held in police stations, decrease the prison population and the number of wrongfully convicted persons, and enhance crime prevention.²²

This, therefore, would be important to consider when looking at how funding is distributed, not just within the Justice Department, but cross-departmentally, as it evidences that appropriately funding this public service, can bring savings to other areas.

In reforming and transforming public services, it is important to consider whether the services are good value for money. However, it has been noted that “the presentation, reporting, and forecasting of the Executive’s finances is fragmented, relatively opaque, and hard to comprehend”.²³ Without consistent and transparent data, it is difficult to discern whether these services are providing good value for money. Therefore, we encourage the Executive to commit to publishing consistent and transparent data on public services expenditure.

¹⁹ PwC, “The benefits of providing access to justice” (January 2023) National Legal Aid <[Final-Public-Report-PwC-The-Benefits-of-Providing-Access-to-Justice1-January-2023.pdf](#)>

²⁰ Law Society of Scotland and Rocket Science, “Social Return on Investment in Legal Aid” (November 2017) <[social-return-on-investment-in-legal-aid-summary-report.pdf](#)>

²¹ World Bank Group, “A Tool for Justice: The Cost Benefit Analysis of Legal Aid” (2019) <[World Bank Document](#)>

²² Ibid.

²³ NI Fiscal Council (n 18)

Northern Ireland Draft Programme for Government

Consultation Response

Finally, we welcome the introduction of a 'Reform and Transformation Unit' with a targeted £235 million 'Transformation Fund' and an aim to "make public services better, more easily accessed, and more efficient". However, the terms of reference and timeline of such a Unit are vague and undetermined. We highlight Scotland's 10-year Public Service Reform Programme for the purpose of comparison, which sets out a clear timeline, and specific ambitions for what it hopes to achieve in the coming years.²⁴