

Follow-up Inquiry into the Funding of Public Services in Northern Ireland

Bar of Northern Ireland Response

Summary

This response from the Bar of Northern Ireland speaks to the current assessment of need and the consequences of the Autumn Budget. It details the financial situation facing public services in Northern Ireland, focusing on the justice and legal systems. It will demonstrate that there remains a chronic and historic underfunding of public services, and this is leading to structural problems and shortfalls. In particular, it looks at the Department of Justice's expenditure and budget allocations, and how the underfunding is impacting the legal profession.

1. Introduction

The Bar of Northern Ireland (the Bar) welcomes this opportunity to make a submission to the Northern Ireland Affairs Committee's follow-up inquiry into the funding of public services in Northern Ireland (NI). Public financing in NI is unsustainable; this is in part a consequence of political instability which has led to inconsistent in-year monitoring and budget setting, and a lack of ministerial direction.

In 2022, we responded to the initial Inquiry through a joint submission with the Law Society of Northern Ireland. In this response we highlighted the core problems which were caused by the underfunding, and the impact that a lack of an Executive had on budgetary management and strategic decision-making across NI Departments.

Since this response, the Northern Ireland Executive has been restored. They have laid a Budget for 2024/25, consulted on a draft Programme for Government, and the UK Government have announced an uplift to NI's fiscal floor; introducing a needs-based factor of 24%. These are all welcomed developments. However, there is still progress to be made to place our public services on a sustainable footing.

This response will speak to the current assessment of need and the consequences of the Autumn Budget from the perspective of the Bar of Northern Ireland. It will do this by detailing the financial situation facing public services, focusing on the justice and legal systems. In doing so, we hope to demonstrate that whilst the measures undertaken above are helpful, there

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remains a chronic and historic underfunding of public services, that needs to be addressed, as it is leading to structural problems and shortfalls.

The Department of Justice (DoJ) has received the worst budget settlements over the last 10 years in comparison with other Executive departments and has been chronically underfunded. This underfunding is mismatched with the demand-led nature of the services delivered by through the justice and legal systems, and this is leading to structural problems across the system, and throughout the legal profession.¹

1.1. About the Bar of Northern Ireland

The Bar of Northern Ireland (the Bar) 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 the 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. Barristers provide specialist legal advice and advocacy to their clients. They enable individuals, organisations, and businesses to exercise their legal rights and fulfil their duties.

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 quality 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 the

¹ 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](#)>

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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. Public Finances

In the last decade, there has not been a functioning Northern Ireland Executive (the Executive) for six years, and this has negatively impacted upon the quality of public service delivery. In the absence of an Executive, the Secretary of State for Northern Ireland is responsible for setting the budget. However, there are no in-year monitoring rounds, and civil servants are granted only limited powers to determine spending within Departments.² As a result, there is little ministerial direction or accountability, which impedes progress on vital public service transformation and the sustainability of public service delivery.

In the last two years, without an Executive, the budget allocated by the Secretary of State has fallen below the indicated level of need in NI. As a result, we are aware that Departments have been overspending in an attempt to deliver vital public services. In 2022/23, there was an estimated overspend of £660 million, and the Executive had to borrow £559 million to address it.³

We are aware that in 2023, the NI Fiscal Council carried out research which sought to update the Holtham Analysis of Relative Need.⁴ The original analysis did not account for justice and policing, and did not utilise data from NI for its regression analysis. The updated analysis, therefore, accounted for these factors, and dictated that for every £100 spent on public services in England, it would cost £124 to run the equivalent services. As a result, in 2024, the UK Government announced they would apply a needs-based formula of 24% to the Barnett Consequentials from 2024/25 onwards.

² Pivotal, "Who is governing Northern Ireland?" (February 2023, Pivotal Briefing)

³ "Northern Ireland Finances 2022-23" Volume 723: debated on Thursday 24 November 2022 <[Northern Ireland Finances 2022-23 - Hansard - UK Parliament](#)>

⁴ Northern Ireland Fiscal Council, "Updated estimate of the relative need for public spending in Northern Ireland" (May 2023) Technical Paper 04/23 <[Updated estimate of the relative need for public spending in NI | NI Fiscal Council](#)>

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This uplift, along with an additional £918 million received from the Autumn Budget has been largely well received, as the NI Executive is set for the largest financial settlement in its history for the 2025/26 year. However, this scale of funding still remains insufficient to address the challenging situation facing public finances in NI.

We are cognisant of the criticism that the 24% uplift has received from economists and academics. One economist recently noted that the uplift was not a “settled calculation but presents a basis on which to move on...”⁵ Indeed, a paper published by the Ulster University Strategic Policy Unit noted that the figure does not “fully capture comparative underlying need” as they contend that it depends upon whether the NI Fiscal Council utilised the most suitable timeframe.⁶ NI Fiscal Council relied on data from a 5 year period 2017-18 and 2021-22, and this was a period in which the Department was significantly underfunded, and this could have resulted in an under-representation of need.

Carson and Farry argued that if the analysis utilised the period immediately post-devolution, which they argue more ‘accurately reflects’ the justice and policing need in NI, the relative need factor would be 127. Additionally, if the NI Fiscal Council utilised a long-run average over the period of 2010-2021, the relative need would be 125.⁷

We argue that the additional funding secured through the Autumn Budget, and the uplift introduced from 2025/26 is still not enough to put public services on sustainable footing and achieve the transformation they require.⁸ Indeed, it is clear that these additional monies will be absorbed by addressing already accrued overspends and public sector pay raises, and will therefore, not be adequate to sustain services or meet inescapable pressures.⁹ Furthermore, the uplift applies from 2025/26 onwards, and does not provide a recurring uplift proportionate to the level in which NI was funded below its need from April

⁵ 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)

⁶ 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](#)>

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

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2022. This was recognised by an economist who noted that it “makes a mockery of the last two years of fiscal pain” inflicted on NI.¹⁰

We would also contend that in light of this fiscal pain being inflicted on Northern Ireland, the Executive should be paying greater heed to prioritising investment in areas which will ultimately save money in the longer-term and have wider economic benefits. Legal Aid has been proven, through multiple research findings, to deliver wider savings across government and associated social benefits.

A study by PwC into Legal Aid commissions in Australia demonstrated that every \$1 of Commonwealth funding allocated to Legal Aid commissions generated a return of \$2.25 in quantitative benefits.¹¹ Investment in Legal Aid can bring savings in other Departments, in the form of fewer evictions, families remaining together, avoidance of A&E visits and better mental health outcomes.¹² This, therefore, lessens the demand for other services, such as health and social care, and improves outcomes and quality of life for individuals.

However, in the straitened circumstances that the Executive finds itself in, Legal Aid is narrowly viewed as a standalone cost to be cut in the short-term, rather than a vital part of solving wider social issues. This myopic view is a reductive action taken under pressure, to balance in-year budgets, rather than a strategic analysis to place investment in places which will bear long-term savings and social benefits.

This response will now explore the chronic and historical underfunding of the DoJ, as well as the impact this is having on the justice system, and the legal profession, to demonstrate that further action is necessary to address the crisis that public finances in NI is in. Without it, services will continue to deteriorate, and in the case of the justice system, access to justice will be further threatened.

¹⁰ Paul MacFlynn (n 5)

¹¹ 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](#)>

¹² World Bank Group, “A Tool for Justice: The Cost Benefit Analysis of Legal Aid” (2019) < [World Bank Document](#)>

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3. Justice Shortchanged

The DoJ is historically underfunded; consistently receiving the worst budget settlements when compared with other core Departments. As depicted on Figure 3A, since 2012/13, spend per head on justice has decreased by 1.98%, whilst spend per head on other services such as health and education has increased by 54% and 26% respectively.¹³

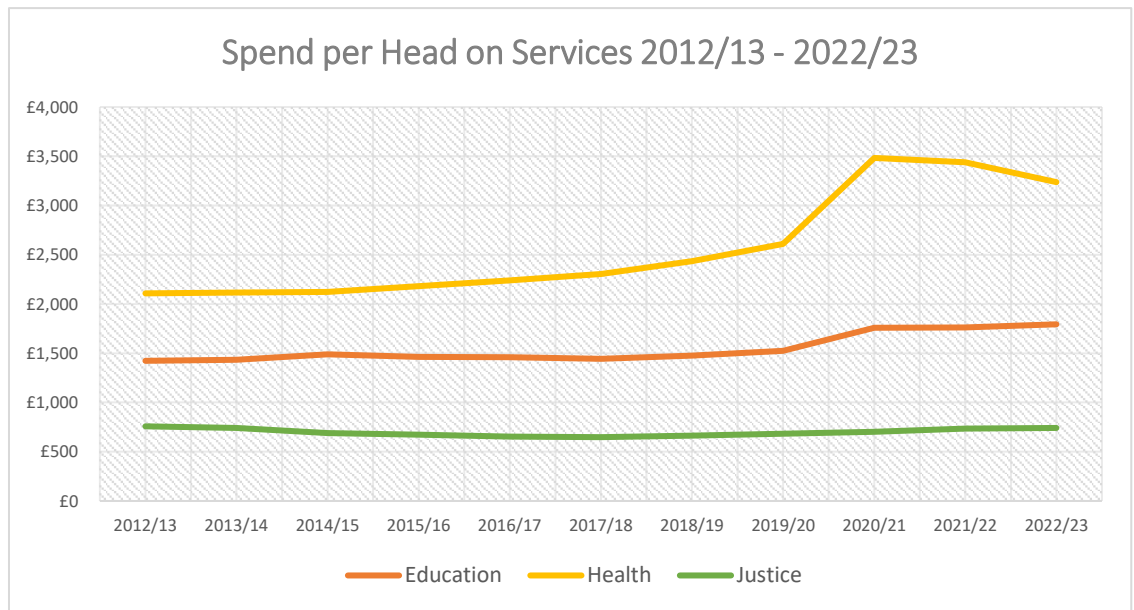


Figure 3A: Spend per Head on Education, Health, and Justice. Source: PESA

Additionally, since 2016/17, the Department of Justice has only seen a 16% increase in budget allocations, whilst Department of Education has seen a 31% increase and Department of Health a 52% increase. Furthermore, since 2011/12, the Department of Justice has gone from accounting for 12% of the overall Resource DEL to just 8%. In this same time period, the Department of Health has grown from accounting for 42% of Resource DEL to 51%.

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

¹³ Note: 'Spend' in this context refers to overall expenditure and differs from Departmental Allocations. These figures are based on UK Treasury's Public Expenditure Statistic Analysis (PESA) from 2012-2023

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This demonstrates that the DoJ is ‘shortchanged’, and this was recognised by then Minister for Finance, Conor Murphy, in a statement on 11th October 2022. He noted, *“It was recognised, at the time of the draft Budget, that the DoJ settlement provided it with a lower level of increase against baseline than other departments.”*¹⁴

This underfunding has caused structural problems to the system. Issues apparent in the health service are now plaguing the justice system – long delays and backlogs, a dedicated but stretched workforce, historic underinvestment, and the need for structural reform. In our 2022 submission we noted that the justice system required reform before it reached a crisis point. Regrettably, in the years that have followed, the lack of sufficient financing has resulted in the system reaching this crisis point.

According to the UK Treasury’s Public Expenditure Statistical Analysis, there are three key categories within the DoJ; Police Services and Public Safety, Access to Justice, and Prisons. Since justice was devolved in 2010, the PSNI has engulfed a large proportion of the overall budget. As demonstrated by Figure 3B, Police Services and Public Safety has steadily taken up over 70% of the overall justice expenditure. This has left little financing available for other services integral to the functioning of the system.

¹⁴ Written Ministerial Statement, Minister of Finance, “2022-23 Budgetary Position” (11 October 2022)

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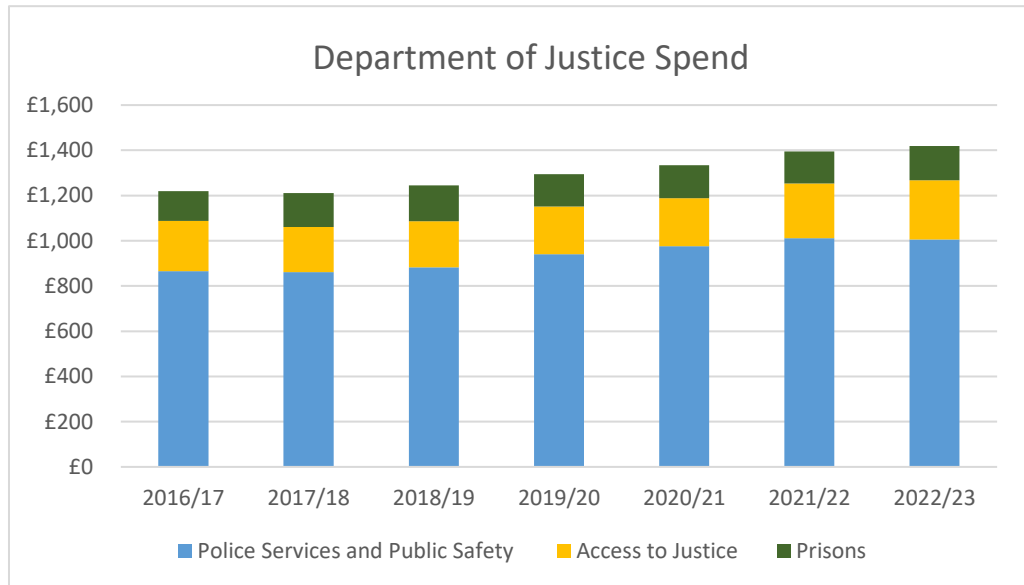


Figure 3B: Department of Justice Spend Source: PESA

Access to justice is split between Legal Services Agency (LSA) and the NI Courts and Tribunals Services. In 2022/23 it was reported that the LSA spent £101.8 million on payments, which represents only 7% of the overall justice budget.

3.1. Strain on the Justice System

The underfunded and crisis-riddled justice system is failing victims and defendants through the delays in case progressions which are the result of backlogs. The average time taken for a case to be dealt with at all criminal courts in 2023-24 was 190 days.¹⁵

In the Victims Survey 2023-24, it was found that 29% of respondents waited over 3 years for their case to be heard, whilst a further 10% waited 2-3 years for their case to be heard. As a result of these delays, victims are losing faith in the effectiveness of the system. The Survey found that out of 165 victims, only 7%

¹⁵ | Graham and 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](#) >

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were 'fairly confident' in the effectiveness of the system, whilst none were 'very confident' in its effectiveness.¹⁶

Legal practitioners are working hard to address delays and reduce the backlogs at criminal courts, and have made some progress, with the average time taken to deal with a case in 2023/24 seeing a decrease of 7.8% from the previous year.¹⁷ However, in order to achieve this, practitioners are working at 130% capacity, with no increase in fees, and often waiting three to four months for payment upon completion of a case, with cases often taking years to complete.

3.2. Fixed Budget for a Demand-led Service

Legal Aid is an indispensable part of our justice system, protecting the most vulnerable and ensuring access to justice for those who could not otherwise afford legal representation. It is a demand-led service – as those who meet the set eligibility criteria to avail of Legal Aid have the statutory right to this assistance. Demand in NI for Legal Aid is high, for example, in 2023/24, a total of 63,881 cases were granted Legal Aid.¹⁸ However, demand for publicly funded legal services is difficult to profile and predict. Furthermore, the demand for Legal Aid provision is pronounced across Northern Ireland and particularly pronounced demand can be evidenced in council areas experiencing long-standing socio-economic difficulties.

Northern Ireland is one of the 'poorest regions' of the UK.¹⁹ In 2021, it was reported that NI's disposable income averaged at just £17,646 per year, compared with the UK average, which was £21,679.²⁰ A subsequent report in 2023 found that on average, families in NI are left with only £95 disposable income per week.²¹ To qualify for Legal Aid, applicants must not make more

¹⁶ Commissioner for Victims of Crime, "2024 Victim Survey: Key Findings" (September 2024) < [2023-24 Victim Survey Results.pdf](#)>

¹⁷ Murphy (n 15)

¹⁸ Legal Aid in Northern Ireland: Annual Statistics to March 2024 (June 2024) < [Legal Aid in Northern Ireland: Annual Statistics to March 2024 published today | Department of Justice](#)>

¹⁹ Asda Income Tracker, Report: September 2023, Centre for Economics and Business Research < [PowerPoint Presentation](#)>

²⁰ 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>>

²¹ Asda (n 19)

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than £234 per week. This level of poverty in NI leads to a greater proportion of the population being eligible for Legal Aid.

There is direct correlation between public expenditure and the greater socio-economic challenge that exists across Northern Ireland. Unsurprisingly, this causal relationship results in public expenditure per capita being higher than the UK average in several areas, health, and education for example - and is certainly not confined to Legal Aid.

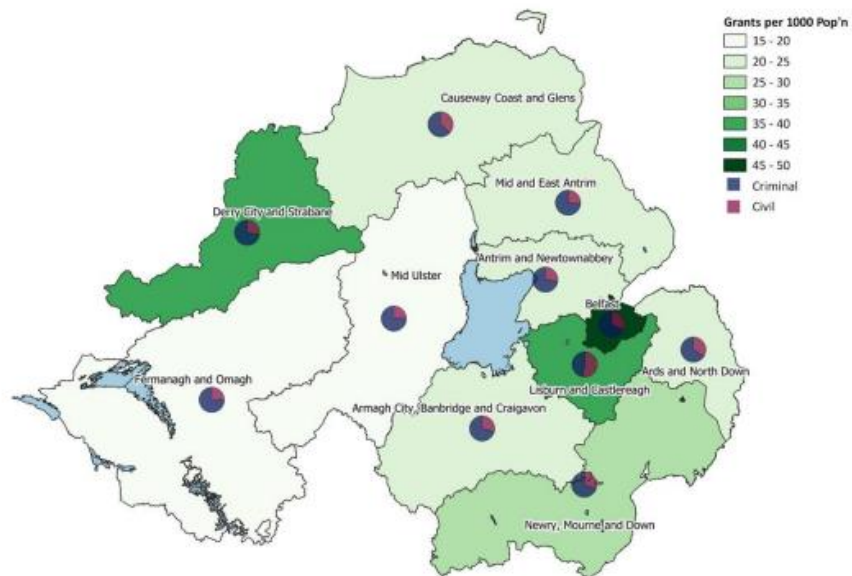


Figure 3C: Applications granted per 1,000 population, by Local Government District, 2023/24. **Source:** Legal Services Agency Statistical Bulletin 2/2024

In terms of crime rates, there are higher rates of more serious and complex crimes, such as homicide and violence against the person. Furthermore, the ongoing security situation and presence of paramilitary activity adds an extra layer of complexity to crimes. The PSNI's statistics relating to security situations are maintained on a separate database from recorded crime. In 2023, they recorded eight bombing incidents, 33 shootings, 31 casualties of paramilitary

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style assaults, 19 casualties of paramilitary style shootings, and 104 security related arrests under the Terrorism Act.²²

Despite the heightened demand for publicly funded legal services, the LSA is subjected to a fixed baseline budget of £94 million per year, which is nowhere near meeting the annual demand of £115 million.²³ As a result, the LSA requires various in-year payments to keep up with demand and ensure that payment times are met. Most recently, the Department of Justice submitted that they required an additional £6 million in the October Monitoring Round to ensure that 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.²⁴

The mismatch between available resources and the demand for services has resulted in the Legal Services Agency (LSA) applying payment delays to practitioners in a short-termism approach to budget management. The LSA would say that this is a result of the structural underfunding of the DoJ, which means that the LSA must carry a growing volume of unassessed bills on their books as they cannot afford to make the payments. The policy of applying payment delays was confirmed by a senior DoJ official in a briefing to the NI Assembly's Committee for Justice when she noted that when the Department needs to make financial savings, the Legal Aid budget is their "go-to".²⁵

Prior to 2005, Crown Court fees for solicitors and counsel were assessed by taxation. The 2005 Regulations introduced a major change insofar as they provided for standardise Crown Court fees for practitioners in the vast majority of cases. Practitioners at the time understood that the changes may result in reduced fee levels and these concerns were expressed during consultation. However, the Northern Ireland Court Services stated that in return for these

²² Northern Ireland Statistics and Research Agency "Police Recorded Security Situation Statistics: 1 January 2023 to 31 December 2023" (5 January 2024)

²³ Official Report: Minutes of Evidence, Committee for Justice, meeting on Thursday 26 September 2024, "Budget Update and October Monitoring Round: Department of Justice" <[Minutes Of Evidence Report](#)>

²⁴ Ibid.

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

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changes, practitioners would definitely benefit from prompt and consistent payment times.

In the years that followed the 2005 Rules, the LSA set formal targets and Key Performance Indicators by which to measure payment timescales. They did not agree these targets with the professions, and they do not reflect the views of the profession as to a reasonable timeframe for payment. In any event, these targets have continually lengthened over time.

In 2020/21, the LSA set a target of 95% of payments being made within 8 weeks, in 2021/22, this was increased to 95% being paid within 12 weeks due to insufficient funds. In the 2022/23 financial year, the LSA noted that it was no longer in a position to set Key Performance Indicators for payment timescales anymore. However, the Justice Minister noted in April 2024 that DoJ had a backlog of £20 million in Legal Aid, and if this went financially unaddressed, the payment times could go out to 22 weeks. As of October 2024, the Department was still facing pressures of £9 million in Legal Aid costs.²⁶

The LSA is subject to express statutory duties both to assess fees claimed on the foot of representation provided under a Legal Aid Certificate, and also to pay representatives the amount assessed in accordance with the applicable Regulations. It must discharge both of these obligations within a reasonable period of time. The permissible period is ultimately a statutory requirement and is not subject to administrative discretion. Accordingly, the budget necessary to discharge these duties derives from the number and extent of valid Legal Aid claims which have been made. The governing legislation does not permit the LSA, by means of administrative action or policy provision, to alter its assessment and payment obligations, by reference to its available budget. Therefore, it is our view that the current practice of the LSA to defer and delay payment is contrary to its statutory obligations and is unlawful.

In addition to the late payment of fees, rates for legally aided work have not been reviewed when they should have been and have now 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. A reduction of

²⁶ See Official Report for Committee for Justice Thursday 26 September (n 23)

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fees occurred with the introduction of the 2011 Rules with a further reduction being applied in the 2016 Rules. Similarly, although the Civil Legal Services Remuneration Order (NI) 2015 made provisions for a formal review of remuneration every three years, the Department failed to discharge these statutory obligations in 2018, 2021, and 2023.

Cumulative inflation in the period between March 2005 and December 2023 has been 70%. Therefore, in real terms, after adjusting for inflation, most fees have been reduced by between 53% and 63% since 2005. Additionally, independent analysis undertaken by Goldblatt McGuigan found that, based on the rates set in 2016, most fees are now 20%-37% less than the rates set in 2005. Meanwhile, since 2016, public sector pay has increased by between 13% and 23%.

The underfunding of the Justice budget, and the subsequent decision of the Legal Services Agency to apply payment delays to manage their budget, is creating a situation where access to justice is in crisis. This situation, coupled with stagnant rates of Legal Aid fees, gave rise to the withdrawal of services by the Criminal Bar Association in November 2023, and again in October 2024. Furthermore, the policy of payment delays has culminated in a regrettable situation whereby the Bar Council, in conjunction with the Law Society, has had to issue Judicial Review proceedings against the Department. These proceedings are live at present.

An argument can be made here that the funding of Legal Aid could be transferred to Annually Managed Expenditure (AME). AME is used to fund social security benefits, and this change would reflect the demand-led and uncontrollable nature of Legal Aid, and mean that the Department would no longer have to control the spending of it.

3.3. Impact Upon the Legal Profession

The restrictions on Legal Aid payments are having a negative effect on the sustainability and viability of the legal profession.

Many highly motivated, talented, and qualified young barristers who have entered the profession to serve justice, are struggling to sustain viable practices at the Bar. Given the levels of socio-economic deprivation in parts of our society,

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it is not surprising that many seek to apply their professional skills and gain experience in legally aided cases.

However, the Bar is concerned that these issues with remuneration and payment delays is creating a situation where younger members of the Bar diverting their expertise to other areas of work, thus 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 younger members of the Bar will result in a generation of young lawyers seeking out other areas of work, thus cementing a view that publicly funded legal work is undervalued and underpaid.

These consequences can be acutely seen in the Criminal Bar Association. In 2024, the CBA conducted a membership survey for their response to the Independent Review of Criminal Legal Aid. This survey found that a substantial proportion of the CBA relied 75-100% on Legal Aid work, and of the 156 respondents, 41.3% did not envision that they would still be carrying out Criminal Legal Aid work in five years' time. When prompted for factors which would contribute to them leaving this practice, the most common reasons cited were unsustainable remuneration, delays in payment, increased workload, and stress.

Concerns about 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”* and *“... the timescale relevant to the potential outcome of the unavailability of these services, particularly on the part of small practices and those in rural areas, may well be less than that opined by*

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*some of the authors of the reports that I've received-certainly at the lower end of 5 to 10 years to which they have referred. Time is therefore of the essence."*²⁷

4. Conclusion

Public finances in NI are unsustainable; Departments are overspending and do not have sufficient funding to run services at adequate levels or meet inescapable pressures. It is evident that NI is not being allocated sufficient monies to address the historical overspends that have accrued during the absence of the Executive, as well as the chronic underfunding Departments have suffered.

The measures introduced to attempt to rectify public finances in NI are not sufficient. The reviewed fiscal flooring of an increase of 24% to needs-based funding has been recognised as not being a 'settled calculation' and failing to fully 'capture comparative underlying need'. Furthermore, the 24% only applies from 2025/26 onwards, and does not rectify the recognised underfunding endured during the two years without an Executive.

The reviewed fiscal flooring and additional funding will not be enough to allow Departments to deliver public services to sufficient standards but will instead be used to absorb already accrued overspends. The DoF has noted that following the Autumn Budget, the Executive was still suffering from £160 million in overspends.

We have demonstrated the state of underfunding of public services through the Department of Justice, which is chronically and historically underfunded. This is having a negative impact on the functioning of the justice system, as it is experiencing long delays and is failing victims and witnesses. It is also adversely affecting the sustainability and viability of the profession, as practitioners are experiencing stagnant rates in Legal Aid fees and are waiting 3-4 months for payment. This is resulting in many experienced individuals leaving practice, which will have a huge impact on victims' ability to access justice.

²⁷ His Honour Tom Burgess C.B.E, "Fundamental Review of Criminal Legal Aid" (August 2024, Published on 3rd December 2024) <[Fundamental Review of Criminal Legal Aid - Final Copy with Appendices.pdf](#)>