

THE BAR *of*
NORTHERN
IRELAND

RAISING *the* BAR

PRIORITIES FOR THE
POST ELECTION PERIOD





About the Bar of Northern Ireland

- 1 The Bar of Northern Ireland is a thriving 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 the courts, barristers play a vital role in safeguarding the legal rights afforded to all citizens right across Northern Ireland.
- 2 The maintenance of an **independent referral Bar** represents one of the cornerstones of the legal system in this jurisdiction. The existence of a strong and independent Bar is paramount in promoting public confidence in the expert representation provided by barristers. As independent professionals, barristers are free of any external pressures or intrinsic interests other than to serve their clients to the best of their ability, whilst also serving justice and fulfilling their duties to the court.
- 3 Justice is a precious asset; it underpins our democracy, freedoms and civil society. It should never be treated as a costly commodity that must be rationed, or as a benefit or product subject to commercial conventions. Against this background, legal professionals, alongside political representatives and policy makers, have a duty to ensure that access to our system of justice is **available to all**.

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- 4 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 600 self-employed barristers work from the Bar Library building in Belfast. Rebuilt in 2003 following a substantial investment of over £20 million by the Bar Council, the Library provides access to training, professional development opportunities, research technology and modern facilities which enhance the expertise of individual barristers and ensure the highest quality of service to clients and the court. The Bar does not receive any external funding to support this model; it is entirely self-sufficient and funds the development and regulation of the profession from its own resources.
- 5 All barristers operating independently from the Bar Library building 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 circumstances of the case. The consequences of all barristers working together from the same building, using the same facilities and sharing this same ethos has helped to facilitate unhindered access to legal representation for a range of causes throughout the history of Northern Ireland. The cohesion and collegiality of the Bar has thus ensured a broad acceptance of the impartiality of the Northern Ireland legal system, thereby aiding the administration of justice.
- 6 Today our barristers specialise in practising across all areas of law and legal disputes in courts and tribunals in Northern Ireland, the Republic of Ireland and the UK. They are engaged for their services in the criminal courts, civil money damages disputes, consumer legal actions, commercial cases, chancery disputes, family breakdown, public and administrative law and provide expert opinions in complex matters of law. Increasingly, barristers are also retained to act in cases outside the conventional courtroom setting such as alternative dispute resolution, tribunals, disciplinary hearings and a broad spectrum of public and private inquiries. The Bar has opened **The Resolution Centre**, a bespoke facility to cater for the growing mediation and arbitration market in Northern Ireland.
- 7 **Legal advocacy** supports the effective and efficient operation of our justice system; it is a skill which takes significant time and effort to acquire. The extensive training undertaken by barristers distinguishes them from other members of the legal profession. Barristers with a qualifying degree will complete the Diploma in Professional Legal

Studies which is the professional stage of training for the Bar of Northern Ireland before undertaking a 12-month pupillage during which they are required to do extensive mandatory training in advocacy. Ongoing advocacy training also forms a key part of the Bar's continuing professional development education for members throughout their careers at the Bar. A hallmark of the Bar's success in developing these skills is exemplified through the fact that 10% of our barristers have been awarded the rank of Queen's Counsel, an internationally recognised mark of outstanding ability in advocacy and legal skills.

- 8 A career at the Bar requires a commitment to ongoing **learning and self-development** over many years. Members of the Bar give freely of their time to deliver high quality advocacy training to peers and to mentor colleagues in need of support. Many undertake regular pro bono work to represent clients and to support a wide range of charities and voluntary organisations.
- 9 The justice system must recover from the devastating effects of the Covid-19 pandemic. Waiting lists for court appearances have reached chronic proportions. There is a real concern that many in our society will experience the reality that justice delayed is justice denied. Legal professionals have shown enormous adaptability and creativity to keep the system operating to the best of their ability. This has taken its toll on a committed and dedicated group of expert professionals. They are keen to see the immediate increased use of the available courts to help deliver justice in the most appropriate way.
- 10 Technology has improved the efficient disposal of straightforward matters. This should assist in delivering efficiencies. However, extreme care must be taken in doing so. The interests of justice and the rights of the participants, including their Article 6 rights, must be protected. Studies have shown that technology can prove ill-suited to complex cases where sensitive issues are at stake. Indeed, rather than enhancing access to justice, certain changes can introduce impediments to the proper conduct of proceedings. Justice must be done and be seen to be done. It must not be a distant, compromised or remote experience for those involved in complex cases. Further reforms must be designed in close consultation with legal practitioners, taking into account the needs of their clients.

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"Effective advocates simplify rather than complicate; can see the wood from the trees and enable others to do so; and thereby can contribute to just outcomes and save court time and public money".

Independent Criminal Advocacy: Jeffrey Review Report, 2014

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- 12 The **independence** of our barristers is of paramount importance and a vital virtue. As independent professionals, their entire purpose is to selflessly serve, fearlessly and rigorously, their clients' interests and to achieve the best possible result, whilst fulfilling their duty to the court. It is in the public interest to maintain and develop the independent Bar. Only an independent group of specialist advocates can guarantee that anyone, no matter how unpopular they or their cause may be, receives the highest standard of expert and impartial representation. As a society with a history of conflict and division, we must guard and protect such independence, never taking it for granted, as it enshrines our rights to access to justice and a fair legal system.
- 13 The **rule of law** is one of the fundamental foundations of any democratic society. It is the principle that the law applies to all and that no-one, including the Government, is above the law. A strong, independent and vibrant legal profession has always been vital to ensuring that the rule of law is upheld in Northern Ireland; the challenges of being a legal professional in a society in conflict have emphasised the very real importance of these foundations in our recent history. The independent Bar maintains the constitutional principle of the rule of law. Barristers regularly appear in court to represent those who are challenging unlawful decision-making by public bodies, a process called **judicial review**. Their professional independence enables them to speak truth to power when arguing their clients' cases.
- 14 We live in **politically charged times** and threats to our democracy are neither historically nor geographically remote - as demonstrated by the illegal invasion of Ukraine by Russia. We must never become complacent about our hard-won rights, secured and protected by an independent legal and justice system in Northern Ireland.

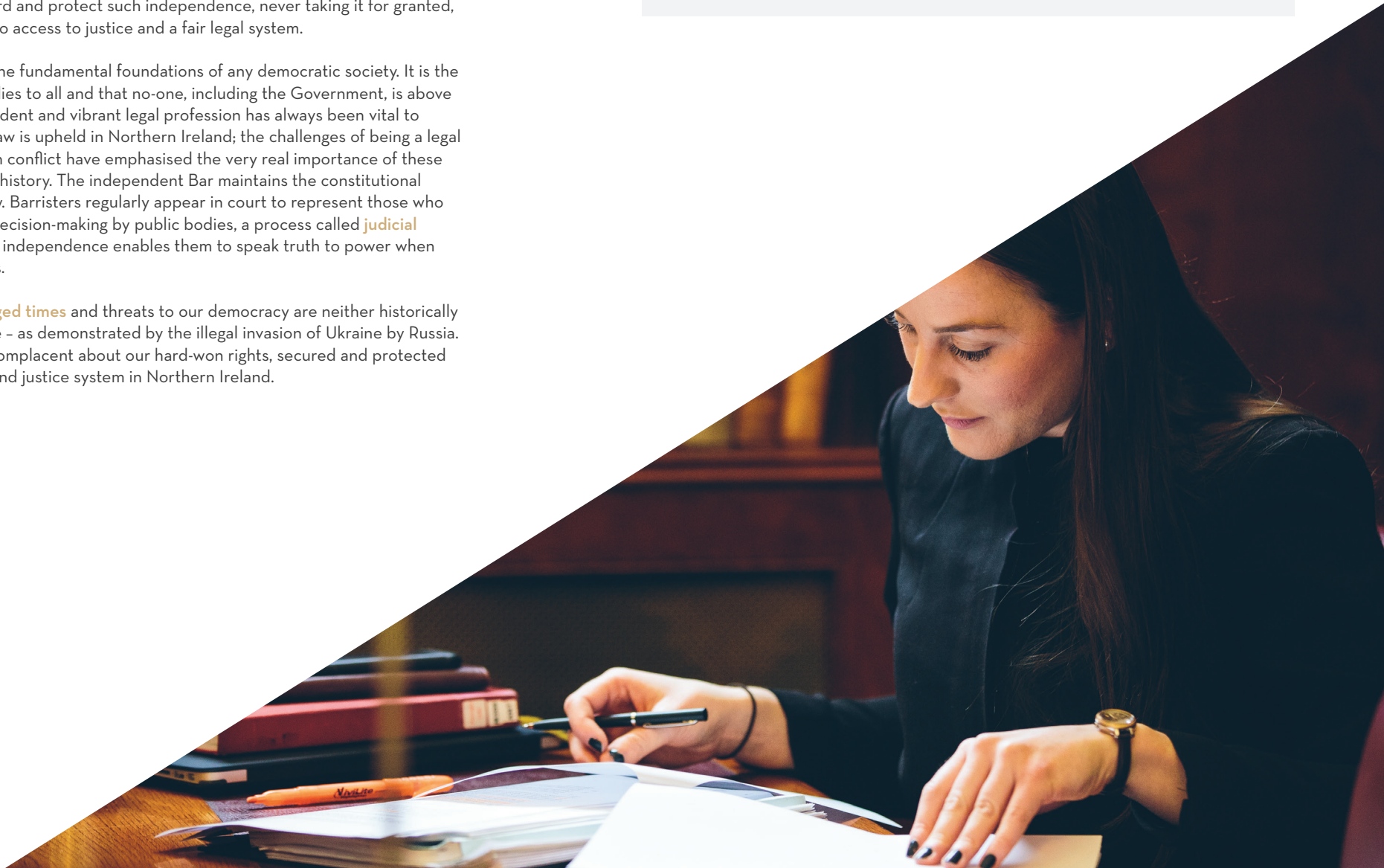
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"The existence of an independent Bar is central to the working of the courts and thus the rule of law, and without the rule of law, justice and democracy are nothing".

Lord Clarke, "Why the Bar matters and will go on mattering", World Bar Conference 2012.

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- 16 Access to justice is a **fundamental principle** of the rule of law which protects society's most vulnerable and enables citizens to effectively exercise their rights. Our courts should be accessible to all, not just because individual parties in a dispute can afford it or somehow are considered to deserve the benefit, but because it must be recognised that court rulings serve the whole of society. As Lord Reed observed in his Supreme Court judgment in *UNISON v Lord Chancellor* (2017), "Access to the courts is not ... of value only to the particular individuals involved."
- 17 For too long, the **legal aid conversation** in Northern Ireland has been focused on cost. This has overlooked the wider societal and economic benefits brought about by appropriate investment in our justice system. A narrow focus overlooks the human value and dignity of people who require legal aid to help them cope with challenges that they cannot face alone. The post-election period provides an opportunity to take a strategic view of the role played by publicly funded legal services and to recognise the benefits of investing in the legal aid system.
- 18 Access to legal aid has become increasingly restricted in recent years. Without specialist advocates to navigate complex legal issues, cases involving personal litigants inevitably experience delays, cost extra and are more likely to risk injustice.
- 19 There must be strategic direction and stability in Northern Ireland's **legal aid** policy to ensure that it is properly recognised as an indispensable part of our justice system. Research from the Joseph Rowntree Foundation on Poverty in Northern Ireland 2022 shows that nearly one-in-five people in Northern Ireland live in poverty, including around 190,000 working age adults. The level of dependency upon legal aid directly relates to the prevalence of poverty and social deprivation across our society.
- 20 In 2010, as Policing & Justice became a devolved matter for Northern Ireland, legal aid expenditure in Northern Ireland was over £100m. There have been significant cuts in the last decade to the point at which the baseline budget allocated for legal aid in 2021-2022 was just £76m. The recent draft Budget proposed further cuts, leaving the budget at just £74m per annum over the next three years. This proposal will create **generational harm to the justice system**, a warning delivered by the Justice Minister.

- 21 Our politicians and policy makers must recognise the value and meaning of justice to our society given the important matters of **public interest** at stake; it matters what happens to children when parents separate or divorce; it matters that those who appear in the Crown Court have proper representation to ensure fair trials; it matters that those who are guilty of crimes are properly prosecuted; and it matters that those who suffer personal injuries or financial loss have effective remedies in our Courts. Decision makers must not view such issues as costly, abstract luxuries. These are fundamental matters of real human concern that will impact their constituents and that have far-reaching societal and economic impact if not properly addressed.
- 22 The establishment of a **ringfenced legal aid budget** of not less than £82m to secure access to justice is critical. We urge an incoming Executive, elected representatives and policy makers to ensure that our most vulnerable citizens are protected and have access to justice today and into the future.

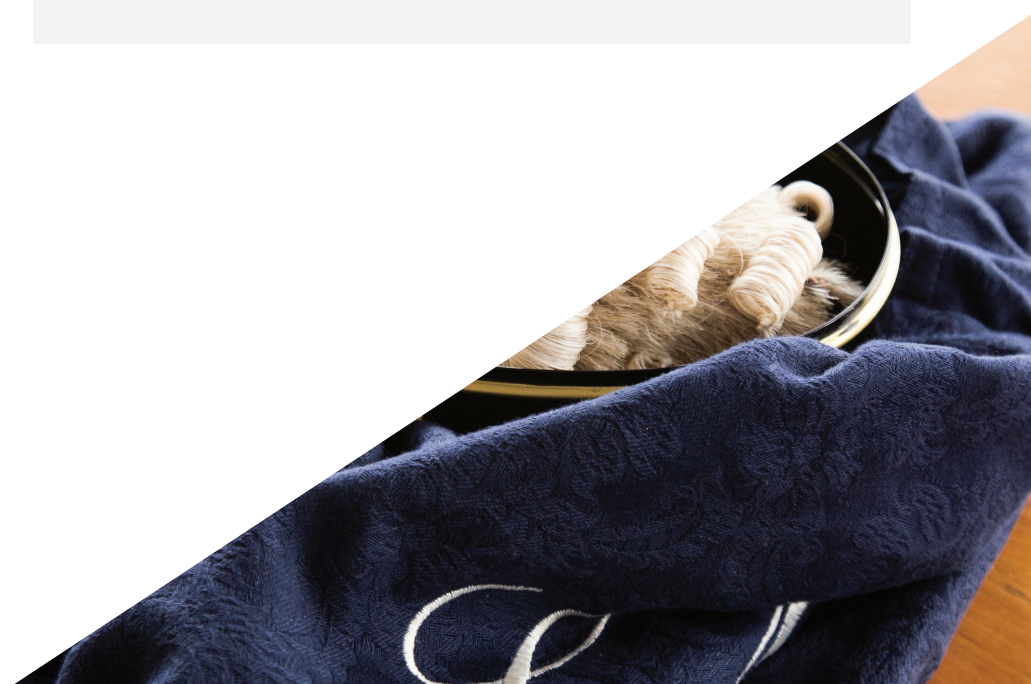
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"Access to legal advice and representation is a fundamental ingredient of the rule of law, and the rule of law together with democracy is one of the two principal columns on which a civilised modern society is based... access to justice is a practical, not a hypothetical, requirement. And if it does not exist, society will eventually start to fragment".

Lord Neuberger, former President of the Supreme Court, 2017.

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- 24 The Bar of Northern Ireland aims to provide the **highest standard** of service. Every Barrister called to the Bar of Northern Ireland is subject to the Bar's Code of Conduct which sets out the standards of professional conduct and practice required of barristers in this jurisdiction. In addition, the Bar Council invests significant resources in the delivery of ongoing professional training and education for barristers. This programme of work represents a vital tool in ensuring the application of consistently high standards of practice and allowing for the regular review of developments in the law in response to the requirements of the profession, clients and others.
- 25 Another quality assurance measure undertaken by the Bar Council is active regulation of the profession. Our **regulatory activity** is discharged by a Professional Conduct Committee which incorporates input from independent lay members. This Committee has extensive powers to impose a range of penalties on a barrister for professional misconduct, including significant fines and suspension or disbarment from practice.

- 26 *“Distancing the professional bodies from complaints handling might diminish their first-hand knowledge of problems arising within the profession and their ability to help members address them at the earliest opportunity... the legal profession in NI should continue to discharge regulatory functions, subject to enhanced oversight arrangements”.*

Bain Review, Department of Finance and Personnel

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