
Draft Programme for Government 2016-2021

Consultation Response

Introduction

1. The Bar Council is the representative body of the Bar of Northern Ireland. Members of the Bar specialise in the provision of expert independent legal advice and courtroom advocacy. Access to training, experience, continual professional development, research technology and modern facilities within the Bar Library enhance the expertise of individual barristers and ensure the highest quality of service to clients and the court. The Bar Council is continually expanding the range of services offered to the community through negotiation, tribunal advocacy and alternative dispute resolution.
2. The 2011-2016 mandate and associated Programme for Government saw the first full term of devolved policing and justice powers in Northern Ireland which brought a range of challenges and opportunities for the Assembly and legal profession. The Bar welcomes the opportunity to respond to the consultation on the new draft Programme for Government for 2016-2021. Our response focuses primarily on the justice related elements of the document.

General Overview

3. The Bar acknowledges the new approach reflected within the Programme for Government which focuses on the major societal outcomes that the Executive wants to achieve with a focus on *“improving wellbeing for all”* the people of Northern Ireland. The Bar also accepts that the draft Programme for Government is setting a direction and time will be required to embed the new approach.
4. The Bar welcomes the acknowledgement that the Executive will need to work collectively and across boundaries in pursuit of the various outcomes contained within it. We very much welcome the recognition that for this to work effectively Northern Ireland needs a cohesive Executive which engages collaboratively *“with local government, the private sector, voluntary and community sectors and beyond”*.
5. However, as the action plans have yet to be developed for each outcome, it is difficult to have full confidence that the aspiration of collaborative working will be fully realised and that the time required to embed the new approach will not become significantly extended. This is of grave concern because the description of each of the outcomes makes clear that progress on a wide range of interdependent indicators will contribute to the achievement of each outcome. Detailed action planning will therefore have to address the inevitable challenges regarding the sequencing, alignment and prioritisation of these interdependent

and potentially competing indicators in order to enable the associated outcomes to be achieved in a timely manner.

6. The effective integration and co-ordination of these action plans is considered by the Bar to be a key priority because the specific justice related outcomes and indicators will be acutely impacted by effective integration with other outcomes. There are in fact only 3 specific indicators that directly relate to justice, which seems to potentially understate the importance of the contribution from justice towards the outcomes to which they are linked. Provided that there is genuinely effective co-ordination across all other outcomes and indicators, the number of specific indicators in a given area may be of lesser importance. However, in the absence of more detailed action plans or methodologies to describe how such integration will be achieved, it is difficult to have confidence at this stage.

Access to Justice

7. A specific area of concern for the Bar is the fact that the strategic outcomes, supporting indicators and measures do not sufficiently address the major issues facing the justice sector over the course of the new mandate. There is little mention of the importance of safeguarding access to justice in Northern Ireland despite the promotion of a faster, fairer justice system forming a key tenet of the Department of Justice's work between 2011 and 2016.
8. The Bar is concerned that the draft Programme for Government for 2016-2021 fails to recognise the combined societal factors that contribute towards the important impact of legal aid in improving the lives of people across our society. For example, it is in the public interest that legal advice is available when the parents of children separate or divorce; it matters that those who appear in the Crown Court have proper representation to ensure fair trials; it is vital that those who are guilty of crimes are properly prosecuted; and it is important that those who suffer personal injuries or financial loss have access to effective remedies in our Courts. Consequently, legal aid represents an indispensable part of our justice system which provides many vulnerable individuals in our society the only practical means of enforcing their basic legal rights.
9. The Bar calls on the Executive to recognise the importance of legal aid in supporting outcome 7 around the creation of a safe community where respect for the law is upheld which consequently helps to improve wellbeing for all. It is also relevant to Outcome 11 relating to the provision of high quality public services. We have always contended that legal services must be planned based on long term need and quality delivery, not merely budget requirements. During

the course of the previous mandate the Department of Justice commissioned the Access to Justice Review 2 and this will have significant bearing on the provision of legal aid but also potentially on the effectiveness of the justice system (indicator 38) and therefore the Bar believes that the Executive should include a commitment to improving access to justice within the indicators in the Programme for Government for 2016-2021.

10. The scope and format of a new indicator in this regard should be akin to those used in relation to the indicators associated with other demand-led services such as health and thus may take the form of something akin to % of the population presenting a valid need for legal aid assistance; % of people receiving (and also those denied) legal aid who are satisfied with their experience of the justice system and trends in the type and volume of cases for which legal aid is granted.

Reducing Crime and Reoffending

11. Indicator 1 relates to the reduction of crime and will be assessed by use of a lead measure relating to the prevalence rate of the number of victims of any crime. Whilst the Bar would agree that this measurement should be taken into account, we would suggest that this indicator has been framed too narrowly and thus the measurement is also too restrictive. Whilst the overall prevalence rate of the number of crimes being committed is undoubtedly relevant, so too is the more detailed analysis of the nature of those crimes and the demographic profile of the victims of such crimes. Too narrow a focus on the overall prevalence rate will potentially mask trends regarding the seriousness of the crimes being committed and the profile of victims of crime.
12. Therefore we consider that the indicator should be broadened to try and encompass the reduction in the rate, repetition and severity of crime. Thus in addition to looking at the prevalence rate this indicator must also look at the mix and nature of crimes being committed and in so doing would provide a much enhanced contribution towards the other indicators that are affected by this indicator and also to the overall societal outcomes that are contained within the draft Programme for Government. The Bar considers that if Indicator 1 were reframed as suggested it would in particular complement Indicator 39 in relation to reducing reoffending.

Effectiveness of the Justice System

13. The Bar notes that outcome number 7 in the Programme for Government highlights “*a safe community where we respect the law, and each other*”. This is linked to indicator 38 which will contribute to the achievement of outcome, namely an “*increase in the effectiveness of the justice system*”. Page 107 highlights that the lead measure for this will be the “*proportion of criminal cases processed within guideline time limits*”.
14. As with other parts of the document, it is of significant concern to note that an indicator is being developed that has an associated lead measure for which no current data exists. This inevitably complicates the ability to establish the extent of the opportunity and whether progress is being made.
15. The Bar also contends that the proposed lead measure is a very restrictive measure for determining an increase in the effectiveness of the justice system. The Programme for Government even highlights that this lead measure provides just “*one element*” for understanding the system with “*overall confidence, justice outcomes and efficiency*” briefly referenced as other measures which are subsequently disregarded. It is for these reasons that we advocate the expansion of Indicator 1 above and we believe that a comprehensive suite of measures, focusing on more than just criminal cases, will be required in order to appropriately consider the effectiveness of the justice system. Therefore we would call on the Executive to elaborate on this area by providing a number of vital measures by which to fully assess the performance of the system in helping to ensure the outcome of “*a safe community where we respect the law, and each other*”.
16. The Bar also believe that the significant work done in the previous mandate to look at methods of achieving greater efficiency in the justice system should be used as part of the data set to monitor the increased effectiveness of the justice system. It cannot be assumed - but must be assessed - that measures aimed at improving efficiency will produce a more effective system. Consultation exercises and decisions in relation to the rationalisation of the Courts Estate, the Access to Justice Review 2 and proposals that emerged from the Justice Committee in relation to innovation within the justice sector all contained proposed measures and criteria in relation to proposed efficiencies within the justice sector that must be linked to any assessment as to whether these and other changes have been successful in improving the effectiveness of the justice system.

Draft Programme for Government 2016-2021

Consultation Response

17. The draft Programme for Government also highlights the Department's plans to introduce statutory time limits (STLs) for criminal cases with guideline time limits being developed to enable transparent reporting in the shorter term in relation to the Youth Court, Magistrates' Court and the Crown Court. The Bar contributed to the Department of Justice consultation on statutory time limits in March 2016. We have a number of concerns in relation to the introduction of STLs given that there is also a need to address the underlying causes of delays in the system. The general experience of criminal practitioners suggests that much of the delay in proceedings across the criminal justice system can be located in a number of areas, namely: delays in the investigative process, delays in the putting together of prosecution files, problems in relation to secondary and third party disclosure, lack of witness availability and lack of court time.

18. The Bar urges caution in relation to the inclusion of STLs in the draft Programme for Government as a measure of the effectiveness of the justice system given that there are clearly a range of other factors which contribute to delays across the system which STLs alone cannot address.

Conclusion

19. The Bar welcomes the opportunity to comment on the draft Programme for Government and looks forward to engaging in the next steps in the process. We are keen to influence the future development of relevant action plans at the earliest possible opportunity and to work alongside the Executive and Assembly in promoting an efficient and effective justice system.