



Justice Agenda

A Plan for
Better Justice

THE LAW SOCIETY
OF NORTHERN IRELAND



Foreword from the President

As we welcome the return of devolved government to Northern Ireland, after a two-year absence, the Law Society is publishing this **Justice Agenda** with the aim of ensuring that Justice features highly on the Northern Ireland Executive's agenda.

When the Law Society published the first version of the Justice Agenda, we were looking towards the 2022 Assembly elections, highlighting the key Justice priorities that an incoming Executive would be required to tackle. At the heart of this was a looming crisis in **Access to Justice** which required urgent attention. Now, two years on, the urgency has only grown and Access to Justice continues to be the central pillar of our approach to better Justice, rooted in the belief that Justice must be accessible to every citizen, not the preserve of a privileged few. This requires sustainable and realistic investment in Justice outcomes, recognising the value that Access to Justice brings to our citizens and wider society and acknowledging the critical importance of the solicitor profession in delivering this public benefit.

Upholding **the Rule of Law** is another of the Law Society's key priorities. We believe it should also be a priority for our elected representatives. Unfortunately, the principle that the law should be applied fairly and independently to all, has been undermined in recent times and the legal profession has borne the brunt of attacks and intimidation simply for doing their jobs. We should need no reminding in this jurisdiction of the serious and irrevocable harm that such dangerous rhetoric can lead to. In this Justice Agenda, I am proud that the Law Society is proposing measures to put respect for the law back on a sound footing. This includes, crucially, **the Rule of Law Pledge** which the Society will be urging all of our elected representatives to sign up to.

The final section of this document deals with the **reform** our Justice system clearly needs. The members of the Law Society are the lifeblood of the justice system, present at the interview room and in the board room, on the high street and the High Court. They occupy a unique position in the system to identify the critical issues and challenges and to bring forward solutions to propel our Justice system forward. Our priorities for reform include a concerted, multi-agency effort to eliminate the delays that have bedevilled our courts for too long, re-establishing the NI Law Commission to bring us back into line with our neighbouring jurisdictions and a renewed focus on mediation and alternative dispute resolution. All of this sits alongside the Law Society's commitment to continued excellence in the legal profession and our support for the establishment of the Legal Services Oversight Commissioner.

The solicitor profession is an integral part of our community, providing vital services to people in difficult times – helping victims of crime, assisting those facing a family breakdown, supporting businesses to thrive. The profession is also an economic success story for Northern Ireland – Belfast is now host to more international law firms than anywhere in the UK outside of London and the sector accounts for over 6,000 jobs and adds almost half a billion pounds to our economy every year. I urge our political leaders to consider the priorities set out here and work with the profession to build a Justice system that delivers for the people of Northern Ireland.

A handwritten signature in white ink, appearing to read 'Darren Toombs', is positioned above the name and title. The signature is fluid and cursive, with a long horizontal stroke at the beginning and a large loop at the end.

Darren Toombs

President

The Law Society of Northern Ireland

About the Law Society

The Law Society of Northern Ireland is the professional body for the solicitor profession in this jurisdiction. As a member organisation the Society represents its 6,000 members, including approximately 3,000 practising solicitors working in the private, public, and third sectors. The solicitor profession is a vital component of Northern Ireland's economy, creating close to half a billion pounds of economic value every year, directly employing over 6,000 people, and supporting many thousands more.

The Society regulates the solicitor profession, exercising its statutory functions under the Solicitors (Northern Ireland) Order 1976 by upholding professional standards and working in the public interest to ensure confidence in the solicitor profession in Northern Ireland. It is responsible for admitting newly qualified solicitors to the profession and for the continuing professional development of all solicitors.

The Society acts as the voice of the profession, representing the profession's interests, engaging with government and other stakeholders, as well as working in the public interest to uphold the Rule of Law, to influence law reform and to promote Access to Justice.



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Access to Justice

Access to Justice is a cornerstone of any fair and democratic society. Whether it is a parent seeking access to their child in a family dispute, someone facing a criminal charge or a vulnerable person seeking asylum, everyone deserves access to legal advice and representation.

Legal aid is an essential component of Access to Justice and helps ensure that the most vulnerable - those who could not otherwise afford legal representation – are protected. This support is greatly needed in Northern Ireland - in the year to March 2023, c.64,000 cases were granted legal aid assistance¹.

There are also compelling economic reasons for investing in Access to Justice with studies² showing that legal aid expenditure provides significant benefits to individuals and the wider public. In fact, there is a heavy cost associated with *not* investing in legal aid in terms of delay, disruption and inefficiency.

Northern Ireland has a fundamental problem in how it funds legal aid with a fixed budget, set well below the level of need. This results in legal aid payments being delayed by months. This is unsustainable for any business where cashflow is critical. These delays, coupled with legal aid fees which have not increased in decades, are bringing us to a crisis point where solicitors are forced to stop providing legal aid services, leaving communities without access to legal support.

For too long, the legal aid conversation in Northern Ireland has been focused on cost, overlooking the benefits that arise from investment in justice. Our Assembly must take a more strategic view of the role played by public funded legal services and recognise that the benefits of investing in the legal aid system greatly outweigh the costs.

¹ Legal Services Agency Annual Report 2022-23:

https://www.justice-ni.gov.uk/sites/default/files/publications/justice/legal-services-agency-ni-annual-report-and-accounts-2022-23_0.pdf

² Law Society of Scotland: <https://www.lawscot.org.uk/media/359230/social-return-on-investment-in-legal-aid-technical-report.pdf>

Community Justice Fund:

<https://atjf.org.uk/wp-content/uploads/2021/09/Defending-the-public-purse-The-economic-value-of-the-free-legal-advice-sector-September-2021.pdf>

World Bank: <https://documents1.worldbank.org/curated/en/592901569218028553/pdf/A-Tool-for-Justice-The-Cost-Benefit-Analysis-of-Legal-Aid.pdf>

PRIORITY 1

Deliver a Sustainable Legal Aid Budget



A sustainable Legal Aid budget – set at the correct level and delivered in the correct manner – is vital if Access to Justice is to be sustained.

Legal Aid is a demand-led service - those who meet the eligibility criteria for Legal Aid have a statutory right to this assistance. The number of Legal Aid applications granted has varied greatly from year to year, ranging from c.64,000 to c.74,000³. Despite this, the budget for Legal Aid is fixed meaning that when demand exceeds the available funding, the Legal Services Agency (LSANI) can only manage its budget by delaying payments to providers.

LSANI's target for paying Legal Aid bills ranges from 12 - 24 weeks with payments only made after the conclusion of a case which may have taken years to complete. Delaying payment for work already completed is unacceptable in any scenario and runs in stark contrast to the NI Civil Service's published target to pay invoices within 10 working days⁴. It is particularly damaging to the many solicitor practices depending on prompt payment for reliable cashflow.

Added to this is the fact that in every year since the devolution of justice in 2010, the opening budget for Legal Aid has been insufficient. This creates a situation where the LSANI carries forward a growing volume of unassessed bills because it does not have the funds to pay. In 2022-23, the value of LSANI's unpaid bills peaked at over £26m. This is clearly unsustainable.

The Law Society is calling for **a sustainable legal aid budget**. This means setting the opening budget at a realistic level, facilitating prompt payment to providers. It also requires reform of the current arrangements – this is a demand-led service and should be funded as such.

³ Page 24, Legal Services Agency Annual Report: https://www.justice-ni.gov.uk/sites/default/files/publications/justice/legal-services-agency-ni-annual-report-and-accounts-2022-23_0.pdf

⁴ NICS prompt payment tables: <https://www.finance-ni.gov.uk/topics/account-ni/nics-prompt-payment-tables>

PRIORITY 2

Deliver Independent Reviews of Legal Aid



Access to Justice relies on the availability of a skilled legal profession. Solicitor firms in Northern Ireland are predominantly small businesses and need to be profitable to survive. A sustainable and resilient legal aid sector therefore depends on setting fees at a realistic level. However, fees in Northern Ireland have remained unchanged for decades and have been eroded by inflation. Over 2022 and 2023 – facing double-digit inflation and energy price spikes – this has become a crisis. It is hardly surprising that the number of firms offering legal aid services is shrinking and it is becoming harder to attract young lawyers into these areas of business.

At the same time, more and more of our citizens are falling into the Access to Justice Gap, with many of the eligibility thresholds for civil legal aid sitting unchanged since April 2009 - almost 15 years. Average earnings in Northern Ireland rose 47% between April 2009 and April 2022¹. The net result is fewer and fewer people qualify for legal aid and fall into an ever-widening Access to Justice Gap.

This stagnation is unacceptable and ultimately it works against the interests of justice. Contrast the situation in England & Wales where the Bellamy Report² recommended significantly higher fees and investment in Criminal Legal Aid and a review of Civil Legal Aid is underway.

The appointment of His Honour Tom Burgess CBE to conduct a Fundamental review of criminal legal aid in NI is a welcome first step and the Law Society will provide all possible assistance and evidence to support this work. Independent reviews of Civil and Family legal aid should also be brought forward without delay. These reviews should prioritise:

- **Setting fees at an appropriate level** which accounts for the significant increases in the costs-of-doing-business and remunerates solicitors for their valuable expertise;
- **Closing the Access to Justice Gap** by increasing the eligibility thresholds for legal aid; and
- **Ensuring the sustainability of the sector** for the long-term.

⁵ Source: NI Annual Survey of Hours and Earnings: 2009 median full-time earnings: £439, 2022 median: £592:
<https://www.nisra.gov.uk/statistics/labour-market-and-social-welfare/annual-survey-hours-and-earnings>

⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041117/clar-independent-review-report-2021.pdf

PRIORITY 3

Launch a support scheme for trainee solicitors



Research commissioned by the Law Society shows that Northern Ireland has too few law graduates and solicitors to sustain the demand for legal expertise in the NI economy⁷. Our network of small general practices – the backbone of our community justice system – is being undermined by recruitment challenges and the communities they serve are being left behind.

The Society has taken steps to increase the number of trainees entering the profession and introduced a Centenary Bursary to provide financial support for those entering the solicitor profession from challenging socio-economic backgrounds. However, we cannot address this issue alone. Part of the answer lies in sustainable public funding which allows our young professionals to see a viable and valued career path. Targeted efforts are also required to support young professionals into general practice across the jurisdiction. NI is not alone in facing these challenges – in 2021 the Scottish Government launched a £1 million traineeship investment fund as part of a £20m package to strengthen the resilience of the legal aid sector in Scotland.

In order to preserve our communities' access to legal services, the Executive should support the network of solicitors by **bringing forward a trainee support scheme for legal practices across Northern Ireland** which would:

- Promote Access to Justice by reducing the risk of legal aid deserts in our communities by training future generations of legal aid solicitors;
- Help to tackle the 'brain drain' in Northern Ireland by encouraging new trainees to join and stay within the community justice sector; and
- Support a thriving, regionally-balanced legal economy in Northern Ireland.

⁷ <https://www.lawsoc-ni.org/study-into-solicitor-profession-in-northern-ireland-published>

Upholding the Rule of Law

The principle that the Rule of Law applies equally to all is a key cornerstone of a fair and democratic society with the independence of the legal profession one of the most important pillars which supports this principle. Solicitors work diligently to protect their clients' rights, hold others to account for rights violations, ensure that individuals have Access to Justice and safeguard a fair and impartial system.

Internationally, respect for the Rule of Law is not a given – corruption, political interference and persecution of legal professionals is unfortunately commonplace across the globe. In this jurisdiction, we have made incredible progress and seen relative peace and stability since 1998 and we have the potential to take for granted the protections and freedoms which are afforded by the Rule of Law which is embedded within our legal and political systems.

Regrettably there has been a steady erosion of respect for the Rule of Law in public discourse in recent years. This has led to the shameful situation where threats, harassment and intimidation is aimed at solicitors simply for carrying out their professional duties. Too often it has been ill-conceived comments made by elected representatives that has fanned the flames. At the same time, Government proposals and draft legislation which run counter to international law and obligations jeopardise our standing on the global stage and serves to further undermine the Rule of Law.

It is a core responsibility of a democratic Government to uphold the Rule of Law at both a domestic and international level. This coincides with further responsibilities of the Government to protect the public and guarantee equity for all. Both the legal and political systems should work together to protect and uphold the Rule of Law for the benefit of all within our society.

PRIORITY 4

Pledge support for the Rule of Law



The independence of the legal profession and the Judiciary is fundamental to the preservation, promotion and safeguarding of the Rule of Law.

In recent years, the Law Society has, with alarming regularity, been required to publicly call on media and politicians to desist from dangerous rhetoric aimed at lawyers. Whatever the political views surrounding an issue, it is fundamentally wrong to criticise solicitors for fulfilling their professional duty to represent their clients' interests. Criticism associating lawyers with the actions or causes of their clients leads to threats, intimidation and worse against members of the legal profession for simply carrying out their jobs.

In Northern Ireland, we are all too familiar with the dangers that can arise when lawyers are criticised for the causes they represent. Tragically, many practising lawyers and members of the Judiciary who had put themselves in harm's way in upholding the Rule of Law, were murdered during the Troubles. It is vital that we stop the backsliding of recent years and ensure that those who work in the interests of justice are not subjected to threats or persecution.

The Law Society will therefore be bringing forward a new initiative, encouraging all elected members of the Northern Ireland Assembly to show their full support for the Rule of Law by **signing 'The Rule of Law Pledge'**.

More details and the Pledge will follow later this year.

PRIORITY 5

Deliver a Bill of Rights for Northern Ireland



The Law Society of Northern Ireland is a staunch defender of Human Rights. Upholding human rights is a critical piece of our justice system allowing ordinary people to hold those in power accountable for their actions.

Northern Ireland has been at the forefront of developing human rights caselaw and in many respects the protections afforded by the Human Rights Act 1998 are working well, achieving the right balance between the Executive, Legislature and Courts. However, there is “unfinished business” as The Belfast/ Good Friday Agreement envisaged that “rights supplementary to those in the ECHR” would be brought forward in the form of a Bill of Rights for Northern Ireland.

More than 25 years after the Agreement little progress has been made on a Northern Ireland Bill of Rights. The Law Society believes that all communities here stand to benefit from the increased protections that a Northern Ireland Bill of Rights would provide. Therefore, the Law Society calls for the Executive to **deliver a Bill of Rights for Northern Ireland.**

PRIORITY 6

Address the Legacy of the Past



Solicitors play a vital role in supporting victims and survivors across all communities to access justice in relation to events that happened during the Troubles in Northern Ireland. The Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 significantly undermines the Rule of Law.

The Law Society has been a vocal opponent of this legislation, from its earliest stages and throughout its parliamentary passage. We have consistently raised our concerns about - among other things - the prohibition on civil cases and closing of legacy inquests brought about by the Act.

The Act has been widely criticised and opposed by victims and survivors, their representative groups, civic society and across the political spectrum. The legislation is unsurprisingly subject to a number of court challenges in our High Court and will be before the European Court of Human Rights in an inter-state case brought by the Irish Government.

The Law Society remains strongly opposed to the prohibition on new civil claims and the closure of legacy inquests brought about by this Act which denies access to justice to many. While we will closely monitor the ongoing legal challenges, we will continue to advocate for a different approach. We urge the Government to bring forward new arrangements which can command the confidence of victims and survivors and uphold the Rule of Law, in compliance with international obligations.

Justice Reform

The disruption of the global coronavirus pandemic has shown that, when required, government, businesses and citizens can rapidly adapt to unprecedented challenges. As we continue to rebuild the justice system following the disruption of the pandemic, there is a risk that we may fail to take the opportunity to deliver real reform and improve justice outcomes. This means no longer accepting undue delays and instead embracing the use of modern technology and investing for the future.

The need for reform of the justice system in Northern Ireland was clear before the disruption brought about by the pandemic. Justice is not unique across the public sector in this regard. The issues in justice are in some respects very similar to the more well-known problems in the health service – a stretched workforce, long delays, historic under-investment and the urgent need for modernisation.

The concern of the Law Society is that Northern Ireland risks sleepwalking towards a point of no return in the delivery of justice. The new Executive has an opportunity to turn the situation around if they have the appetite for the reform – and investment – that is required. This means getting serious about tackling the delays that have plagued the system for decades, being innovative and embracing modern technology and investing for the future.



PRIORITY 7

Establish a Speeding Up Justice Task Force



Long delays in Northern Ireland's Courts are nothing new but the current position is indefensible. The statistics paint a grim picture – in 2021-22 in Northern Ireland's Crown Court, the median charge case took 535 days, the highest in the last 5 years⁸. Sexual offence cases were even worse - the median a startling 742 days - with these unacceptable delays leading victims to withdraw cases. Meanwhile, a CJINI report⁹ found that almost 40% of NI's prison population have not stood trial or been convicted. This snapshot demonstrates the dire state of the criminal justice system in NI – with similar issues of delay evident in civil and family courts.

The core objective for all courts is to deal with cases justly. Lengthy delays militate against this objective. Fortunately, good work has already been done to point the way forward with the reviews undertaken by former Lord Justice Gillen prime examples. These recognise the need to look for answers and work with partners outside of the justice system to tackle the issues.

Some of the most innovative work and best outcomes have come from collaboration across Government departments and beyond. The Substance Misuse Court – part of the Problem-Solving Justice initiative – brings health professionals and the third sector together with lawyers and the judiciary to achieve positive impacts – cutting reoffending rates and improving outcomes for those before the court. Unfortunately, it remains a pilot without the necessary investment to mainstream it.

The Law Society is calling for the Executive to **establish a new Speeding Up Justice Taskforce to tackle the delays in our Courts**. Key Justice stakeholders including the legal professions as well as other Government agencies should come together to take a joined up approach to solving the root causes of delay.

⁸ <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/Case%20processing%20times%20for%20criminals%20dealt%20with%20in%20court%202021-22%20-%20accessibility.pdf>

⁹ <https://www.cjini.org/TheInspections/Inspection-Reports/2023/Jan-Mar/The-operation-of-Bail-and-Remand-in-Northern-Irela>

PRIORITY 8

Re-establish the Northern Ireland Law Commission



The legal sector is an important economic contributor to Northern Ireland, supporting thousands of jobs and adding an estimated £400m to the local economy¹⁰. Nevertheless, there are still too many legal impediments to doing business in NI. As a practical example, Northern Ireland is an outlier as our law does not universally accept electronic signatures as legally valid. Obstacles such as this could be easily removed. Further, proposals including draft legislation to modernise and simplify land law and reform the operation of bail and remand have been made previously by the Northern Ireland Law Commission. These substantive proposals unfortunately remain on the shelf.

The Law Society is committed to playing its part in a successful Northern Ireland by ensuring continued provision of excellent legal services and supporting reforms which make Northern Ireland work better. But this requires a focal point in government to generate momentum and drive change across the wide range of issues involved. To this end, this mandate should see the Department of Justice **re-establish the Northern Ireland Law Commission** to modernise and keep our law up-to-date.

¹⁰ Source: CityUK

PRIORITY 9

Promote Mediation



While litigation is often unavoidable, it is not the only means of securing justice outcomes. Mediation is now well established as a cost-effective means of resolving disputes. Courts and legal advisers will now encourage parties to explore the scope for resolution of their dispute before coming to court. Mediation has a high success rate, is faster and is usually less expensive than taking a case through the courts.

At a time when courts continue to be faced with backlogs, solicitors are leading on mediation as an alternative to litigation. The Law Society Mediation Service¹¹ (LSMS) provides a highly skilled panel of trained mediators and an affordable Schedule of Costs. The Meeting Space at Law Society House provides a state of the art Mediation Centre at the heart of Belfast's Legal Quarter – the ideal launchpad for a renewed focus on mediation.

The Department of Justice has advanced a scheme to encourage mediation in non-family civil litigation without the need for prior approval where at least one party is legally aided. This is a welcome development, and a similar approach should be adopted in other justice areas. The Northern Ireland Executive should **promote mediation as an alternative to litigation** which can lead to better outcomes for all parties as well as being cost effective and efficient.

¹¹ <https://mediatorsni.co.uk/>

PRIORITY 10

Protect the public through the effective oversight of legal complaints



Protecting the public is the principal duty of the Law Society as the regulator of the solicitor profession in Northern Ireland. Government, the Society and the profession must work together to enhance the public's trust in the legal profession.

The Legal Complaints and Regulation Act (NI) 2016 paves the way for enhanced independence in the handling of complaints against members of the legal profession. It achieves this through the establishment of a new office of Legal Services Oversight Commissioner. The full implementation of this legislation has been delayed by the periods when Northern Ireland was without a functioning Assembly or Executive.

The Law Society calls for the **full establishment of the Legal Services Oversight Commissioner** without further delay. Government should work with the Law Society to develop a shared implementation plan.

A Plan for Better Justice

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Address the Legacy of the Past



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