

THE **LAW SOCIETY**  
OF NORTHERN IRELAND



**Northern Ireland Executive  
Consultation**

**INFRASTRUCTURE 2050: THE INVESTMENT  
STRATEGY FOR NORTHERN IRELAND**

**Response of the Law Society of  
Northern Ireland**

**April 2022**

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## **ABOUT THE LAW SOCIETY**

The Law Society of Northern Ireland (the Society) is a professional body for solicitors, regulating and representing all solicitors in Northern Ireland.

The Society represents over 2,800 solicitors working in approximately 470 firms throughout Northern Ireland in the public sector, in business and in the community and voluntary sector. Members of the Society thus represent members of the public, small, medium and large enterprises, government bodies and charities, making the Society uniquely placed to offer constructive comment on policy and law reform proposals across a broad range of topics.

**April 2022**

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## RESPONSE

The Law Society of Northern Ireland (the Society) welcomes the publication of the draft Investment Strategy for Northern Ireland and the opportunity to respond to this consultation. While there are many key areas covered within the strategy, our response focuses mainly on the aspects which relate to ‘justice and community safety’ as set out in Objective 2 on strengthening essential services.

### **The Executive’s Vision for Infrastructure**

‘Justice and community safety facilities’ are rightly recognised as one of the ‘essential components of our infrastructure that touch on all our lives’ within the vision of the strategy. We welcome that there will be investment in the transformation of the justice system to support the delivery of a modern, responsive justice system.

### **Objective 2: To strengthen our essential services**

#### ***Need for investment in the criminal, civil and family justice system***

Within Objective 2 on strengthening essential services, the Society welcomes the recognition that change is required to deliver an “accessible, responsive and efficient” justice system. We welcome that criminal justice is mentioned specifically in the strategy as an area in need of improvement. However, the Society considers that the narrative on Justice contained in the strategy is too narrowly focused on criminal business. Civil and family justice are equally key aspects of our justice system which also require investment, and therefore should explicitly be referenced and considered within this strategy.

In respect of criminal matters, significant investment is required in various aspects of the criminal justice system to ensure it can be modernised and remain fit for purpose for current and future generations. The Northern Ireland Audit Office (NIAO) published a report in March 2018 ‘Speeding up justice: avoidable delay in the criminal justice system’,<sup>1</sup> which highlighted a number of structural issues within the criminal justice system, particularly around delays. An efficient criminal justice system is essential to ensuring our communities feel safe and secure, and this is rightly recognised as a public priority within the strategy.

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<sup>1</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/pac/2017---2022/inquiries/speeding-up-justice/niao-report/niao-report---speeding-up-justice.pdf>

As well as investment, the various agencies and organisations within the criminal justice system, such as the PSNI, PPS, Probation Board, Forensic Science NI etc should work together more collaboratively and closely on new initiatives in association with other users such as the legal profession, victims and witnesses' groups and providers of support services to consider each other's needs so that a more effective and efficient system can be achieved for the benefit of all.

Moreover, there are particular issues regarding the Crown Court. The Public Accounts Committee (PAC) report on 'Speeding up the Justice System' (October 2021)<sup>2</sup> highlighted that "the unreasonably slow pace of Crown Court cases has been a long-standing issue in Northern Ireland. Crown Court cases take excessively long and their progress through the court is punctuated by administrative delays and adjournments". This has been exacerbated by the Covid-19 pandemic, and the current backlog of cases is of significant concern, with estimates that they will continue beyond 2027 without additional funding. This is unacceptable for victims and witnesses and will lead to further pressures for the legal profession with cases taking longer to complete. This needs to be addressed.

As outlined above, justice reform is often too focused on the criminal justice system (as can be seen within this strategy). But in reality, people are more likely to come in contact with the civil and family justice system. This can often be at difficult times – e.g. after suffering an injury in an accident or when dealing with family breakdown or the death of a loved one. It is therefore vital that the civil and family justice system also receives adequate funding to be able to deliver good outcomes for citizens.

Many of the priorities set out within the Department of Justice's (DoJ) Civil Modernisation Plan (July 2021)<sup>3</sup> aim to make the system more accessible, fairer, proportionate, and responsive. There is a need for investment to ensure that the priorities within that Plan can be fully delivered to ensure benefits for all. An updated Civil Justice Modernisation Strategy should be brought forward for the next Assembly Mandate to implement the outstanding recommendations of the Gillen Review of Civil Justice and to ensure that our Civil Justice system keeps pace with the changing nature of our society.

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<sup>2</sup> <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/pac/reports/speeding-up-justice/report-on-speeding-up-the-justice-system.pdf>

<sup>3</sup> <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/2021-civil-justice-modernisation-delivery-plan-5.pdf>

Within the Law Society's *Justice Agenda*,<sup>4</sup> we recommend the establishment of a statutory Civil Justice Council for Northern Ireland, which should initially focus on modernisation and support economic recovery following the Covid-19 pandemic. This body should be adequately funded so that it can oversee and co-ordinate the modernisation of the civil justice system.

### ***Need for investment in courts system***

Entering the courts process is one of the primary methods that an individual can use when attempting to access justice. The strategy recognises that “our system is too slow and is delivered from facilities that are often antiquated and use outdated technology” and sets out that “this needs to change, as our communities deserve a justice system in which every element is...more accessible, responsive and efficient”. It is welcome that the strategy sets out that the Northern Ireland Courts and Tribunals Service (NICTS) will “target investment to deliver a more consistent standard of accommodation, facilities and services for all court and tribunal users”.

The Covid-19 pandemic created many challenges for the justice system, particularly within the courts. Nevertheless, the disruption caused by the pandemic has shown how rapidly adaptations can be made. Throughout the Covid-19 pandemic, the delivery of digital services was developed and improved within the court estate, allowing for business to progress. The introduction and extension of facilities for proceedings to take place remotely has been beneficial, resulting in time savings for the judiciary and practitioners, particularly in case management hearings and administrative proceedings. The gains made have also resulted in speedier processing and the potential for cost savings.

As we look to rebuild the courts system after the disruption of the past two years, opportunities must be harnessed to bring real reform to the system, drive up standards and improve justice outcomes. This means no longer accepting undue delays, embracing the use of modern technology and investing for the future. The PAC report (October 2021)<sup>5</sup> set out that “It is essential that the Department and other justice organisations build upon [new ways of working introduced by Covid-19] to introduce new technologies to support service delivery and to nurture a culture that is committed to fully harnessing the potential

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<sup>4</sup> [https://www.lawsoc-ni.org/DatabaseDocs/new\\_6240530\\_law\\_soc\\_justice\\_agenda\\_2022assemblyfinal.pdf](https://www.lawsoc-ni.org/DatabaseDocs/new_6240530_law_soc_justice_agenda_2022assemblyfinal.pdf)

<sup>5</sup> <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/pac/reports/speeding-up-justice/report-on-speeding-up-the-justice-system.pdf>

of technology to make processes more efficient and effective”. It recommended that “The justice system should regularly benchmark its utilisation of technology with other jurisdictions to ensure that it continuously tests its practices against best practice elsewhere”.

There is no doubt that the Covid-19 pandemic fast-tracked the adoption of digital solutions across the justice system, particularly in the Courts and Tribunals Service. It is vital that the gains made in this area are not lost and that further development and innovation are supported. It is welcome that legislative provision has been made to ensure that remote court hearings can continue to take place until Autumn 2022 under the Coronavirus Act 2020. The Society is advocating for a long-term solution to be put in place to ensure remote hearings remain available. As and when such a position is established, this must be supported by sufficient investment in IT infrastructure to support the smooth running of remote hearings.

The Lady Chief Justice’s Modernisation Paper (September 2021)<sup>6</sup> and the DoJ’s Digital Strategy 2021-26 (January 2022)<sup>7</sup> outline proposals which would streamline more processes across many of our courts, accelerate digital change and introduce more flexibility to the system. These proposals, which aim to ensure a court system which is just, proportionate and accessible, should be embraced and adequately funded. Investment in digitisation is required to better facilitate remote and hybrid court proceedings. This further reinforces the case for sustained investment into digitisation of the courts system.

Furthermore, while we welcome the strategy’s aim of investing in ‘IT in the justice system’ as innovative and needed, it seems contradictory to be pursuing this while at the same time proposing to cut the budget for the NICTS for their day-to-day operations. Following the announcement of the Executive’s draft Budget 2022-25, the DoJ modelled a 2% cut to the NICTS Budget and assessed that this would lead to: “a reduction in court sittings and potential court closures resulting in significant delays...with associated impacts on victims and witnesses; families and children; vulnerable adults and children.” Any reduction in court sittings would be harmful to Access to Justice and would further exacerbate current delays within the court system. Potential court closures are also concerning and would also have negative consequences on Access to Justice.

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<sup>6</sup> <https://www.judiciaryni.uk/sites/judiciary/files/media-files/Judicial%20Modernisation%20Paper%20September%202021.pdf>

<sup>7</sup> <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/nicts-digital-strategy-2021-2026.pdf>

Lastly, modern technology, whilst useful and has many benefits, is not a panacea. Some of the more complex and sensitive cases require hearings in person within suitable venues. It is therefore welcome that the strategy states “for cases that go to court, we need improved buildings that meet the needs of vulnerable witnesses and defendants”. There is a general view amongst legal practitioners that many cases in fully contested hearings where witnesses are involved do not lend themselves to be conducted remotely. There is therefore undoubtedly a need for investment within the court estate to modernise facilities and ensure that buildings remain fit for purpose for both hybrid and in-person hearings.

### ***Need for investment in DoJ’s legislative programme and wider strategies***

In the 2017-22 mandate, the DoJ brought forward five major Bills, tackling domestic abuse and violence, stalking, human trafficking, and a number of the Gillen recommendations. This is backed up by other significant policy initiatives such as strategies to tackle domestic and sexual abuse and violence against women and girls. Progress in these areas will be undermined by an under-funded, under-performing justice system.

Moreover, the reviews of some of the recently introduced pilot initiatives, which adopt a problem-solving justice approach (such as the Substance Misuse Court) indicate that they have the potential for significant benefits for society at large. However they require significant upfront investment to be successful. These initiatives are at risk due to a lack of funding which is disappointing given their potential longer-term benefits. Any reduction to these programmes will inevitably increase the risk of harm to vulnerable people, and will place pressure on the police, courts, and prison numbers due to the likelihood of re-offending.

### ***Need to recognise the interconnectedness between justice and other areas of public infrastructure***

There is compelling evidence indicating that investment in the justice system generally, as well as in legal aid, can lead to savings and unburden public spending in other areas, such as health. Research conducted by the Community Justice Fund (September 2021)<sup>8</sup> found that investment in legal aid generated substantial savings in other areas of public

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<sup>8</sup> <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>

expenditure including health. Additional analysis undertaken by Citizen's Advice (2015)<sup>9</sup> demonstrated that in England, GPs report that almost one fifth of their time is consumed by non-medical issues such as employment, housing and welfare benefits - issues which would be better dealt with by solicitors in a properly funded justice and legal aid system.

Moreover, parallels exist between the people served by both the health and justice systems – often the most vulnerable in our society. What must be understood is that cutting back on one public service, such as legal aid or other support mechanisms within the justice system, will have a detrimental impact elsewhere. Due to the level of interdependence between the public health and justice systems, deductions should not be made from one to supplement the other. Preventative services and the early addressing of issues within the justice system often prevent issues escalating, subsequently resulting in cost savings. Therefore, investing properly so that the problems at source can be tackled will help reduce the burden on the health system. In addition, the justice system has suffered many of the same problems as the health service, such as delays, backlogs in cases, and a stretched workforce, due to a failure to invest and modernise. Therefore lessons should be learned to avoid the situation worsening, and investment is required to facilitate this.

### ***Need for alignment of the strategy with the budget process and the Programme for Government***

The Northern Ireland Audit Office's Report on the Northern Ireland Budget process (June 2021)<sup>10</sup> highlighted the need for 'greater synchronisation between the budget process and the process for establishing the capital investment strategy' and found that there is 'little alignment between the capital investment strategy, budgets and the medium-term fiscal plan'. The report also recommended that budget allocations should be linked more clearly to the outcomes identified in the Programme for Government. Access to Justice is defined as a key outcome in the Programme for Government under the heading 'Everyone feels safe – we all respect the law and each other'. The position advocated in the draft Budget 2022-25 would make this outcome unachievable, and the level of proposed funding for the DoJ would undermine many of the objectives within the strategy.

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<sup>9</sup>[https://www.citizensadvice.org.uk/Global/CitizensAdvice/Public%20services%20publications/CitizensAdvice\\_AVeryGeneralPractice\\_May2015.pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Public%20services%20publications/CitizensAdvice_AVeryGeneralPractice_May2015.pdf)

<sup>10</sup>[https://www.niauditoffice.gov.uk/files/niauditoffice/NIAO\\_Report\\_NI%20Budget%20Process%20Report\\_Combo\\_4\\_WEB.pdf](https://www.niauditoffice.gov.uk/files/niauditoffice/NIAO_Report_NI%20Budget%20Process%20Report_Combo_4_WEB.pdf)

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The Society therefore wishes to highlight the importance of clear alignment of this strategy with the outcomes set out in the Programme for Government and other Executive or Departmental strategies, and the need for sustainable investment so that priorities can be achieved.

### ***Need for further engagement***

Further engagement on the detailed plans around the development of this strategy needs to be done in consultation with the Society and other key stakeholders so that it can work for everyone involved within the justice system. This is particularly the case in relation to plans to innovate (e.g. increased use of technology in the courts system), which require careful consideration.

Investing purely in public sector infrastructure will not be transformative without engaging the legal profession who are the lifeblood of the system. Regardless of how sophisticated an IT system is, it will be self-defeating if it doesn't work for the end user. Due regard must therefore be given for the end users of technology i.e. solicitors and their clients. New systems or processes should be designed in conjunction with the solicitor profession to ensure it meets their needs. The introduction of new technological systems also requires adequate guidance and training and possibly financial support if significant transition is required.

Therefore, we advocate for a co-design approach to the delivery of this strategy, accommodating key stakeholders from the beginning. It is our desire to be consulted with and involved in the design of any future technological solutions, so that the end result can be as successful and as optimal as possible. This should ensure that it works well for both administrators and end-users.

Any un-consulted or sudden changes are to be avoided as they would undermine the aim of achieving better efficiency. For example, the lack of engagement on previous projects such as LAMS meant the initial implementation had the negative effect of slowing down rather than speeding up processes and of frustrating practitioners.

Therefore, there should be deliberative engagement with the Society so that ideas can be put forward and constructive feedback can be given. Any proposed changes should be developed in conjunction with the profession and communicated to the profession in

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advance so that the transition to the use of new technologies can be as seamless as possible. There should also be collaborative engagement and co-design with other stakeholders across the justice system so that any systems or processes introduced work well for all those within the justice system.

## **CONCLUSION**

In conclusion, we welcome the recognition of the justice system as a key area of public infrastructure that requires investment. The stated aims of improving infrastructure, technology and criminal justice outcomes are commitments which we are pleased to see. However, this should not be confined to criminal justice only. Civil and family justice, and the wider legal system are also in need of investment and modernisation. Expansion is therefore needed so that the wider justice and legal system is captured in this Investment Strategy instead of only fragmented parts of it.

We also recommend consideration of the interconnectedness between justice and other key areas of public infrastructure, such as health and housing. This should be taken into consideration before cuts are made to one to boost the other, as this could have lasting negative impacts.

Moreover, engagement with the Society and other key stakeholders across the justice and legal system is required to ensure that the requirements of users within the system are taken into account and accommodated in the development stages so that needs are fully understood and can be delivered upon to ensure the smooth transition to the use of new technologies.

We trust our contribution is constructive and we look forward to future engagement on the matters outlined above.