RESPONSE TO CONSULTATION ON PROPOSALS FOR THE RATIONALISATION OF THE COURT ESATE

Law Society of Northern Ireland

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Introduction

The Law Society of Northern Ireland (the Society) is a professional body established by Royal Charter and invested with statutory functions primarily under the Solicitors (NI) Order 1976 as amended. The functions of the Society are to regulate responsibly and in the public interest the solicitor’s profession in Northern Ireland and to represent solicitors’ interests.

The Society represents over 2,600 solicitors working in approximately 520 firms, based in over 70 geographical locations throughout Northern Ireland and practitioners working in the public sector and in business.

Members of the Society thus represent private clients in legal matters, government and third sector organisations. This makes the Society well placed to comment on policy and law reform proposals across a range of topics.

Since its establishment, the Society has played a positive and proactive role in helping to shape the legal system in Northern Ireland. In a devolved context, in which local politicians have responsibility for the development of justice policy and law reform, this role is as important as ever.

The solicitor’s profession, which operates as the interface between the justice system and the general public, is uniquely placed to comment on the particular circumstances of the Northern Irish justice system and is well placed to assess the practical out workings of policy proposals.

May 2015
Statutory Duty and Access to Justice in Local Communities

1. Under Section 68A of the Judicature (Northern Ireland) Act 1978 the Department of Justice is under a statutory duty to provide an efficient and effective system for the operation of the courts and to provide appropriate services to do this. Whilst there has been public discussion concerning the distinction between buildings and services, it should be emphasised that local courthouses are the hubs of main market towns and serve significant numbers in outlying rural communities. These proposals pursue a strategy of centralisation in larger urban areas which is at odds with the principle of access to justice in local communities.

2. In this context, a courthouse is more than a ‘building’. They are places which local communities see as integral to their local infrastructure. Locations of courts were planned to ensure access to justice is served through the provision of welcoming and convenient locations to the population of Northern Ireland. Delivering on this statutory duty requires an overview of the business volumes within the courts, the facilities in place to aid the efficient resolution of cases and the availability of the judiciary to deal with case listings and achieve resolution.

Risks to Witnesses and Local Justice

3. The importance of facilities relates not only to efficiency of disposal, but also the ability to protect vulnerable witnesses from potential contact with abusers. For example, this need for a protective environment is common in cases of domestic violence and sexual abuse and more broadly to prevent interference with witnesses in criminal trials. Higher volumes of business with less capacity may increase such risks overall and these risks should be acknowledged and weighed against the current proposals. The principle of localism also extends to the crucial importance of justice being done and being seen to be done within the local community in which offences occur. The drift towards centralisation undermines this important pillar of our justice system.

Measuring Costs and Benefits

4. Although the Consultation refers to ‘rationalisation’, this implies a commitment to serve the interests of efficiency rather than one which aims to save money by making cuts to services. The Society has concerns that the prioritisation of the latter is leading to a short-term view which ignores the impact of the closures on access to justice and unintended costs created by the reduction of the court estate. Whilst we accept there are budgetary pressures on the Department, it is important that measures taken do not both damage access to justice and potentially lead to increasing costs in the longer term.

5. The consultation paper refers to the fact that other jurisdictions have “dramatically reduced" the number of operative courthouses as part of the overall climate of fiscal contraction. Whilst it is true that court closures have occurred elsewhere, in England and Wales this has amounted to a 28% closure rate and in Scotland there has been a 30% closure rate. In Northern Ireland by contrast, taking into account current proposals and the recent closures in the towns of Larne and Bangor, the
closure rate in this jurisdiction would amount to some 55%.

6. This closure rate is set against a context whereby Northern Ireland has a higher level of socio-economic need and greater numbers of the population in receipt of key benefits. ONS figures from 2012 show that in Northern Ireland gross disposable household income was £13,902 per head, compared with a UK average of £16,791. In addition, Northern Ireland had the joint highest (alongside Wales) proportion of children in low income households at 23%. Consequently, the impact assessment of proposals which would withdraw localised access to key services requires particularly diligent scrutiny.

7. Furthermore, in those jurisdictions already mentioned court closures have been coupled with significant investment packages directed towards improving the IT infrastructure within their court services. Against that backdrop, Northern Ireland is suffering from a disproportionately high rate of closure in terms of the court estate and is not benefiting from the kinds of commitment to increased investment seen elsewhere in the UK.

8. This creates a situation in which the most economically disadvantaged region in the UK could be subject to the deepest round of cuts to the court estate. Given that Northern Ireland has a disproportionate number of people accessing key welfare benefits, it should be taken into account that the financial and other barriers affecting vulnerable court users will be correspondingly higher. These are pivotal considerations when assessing the value of the court estate in terms of providing services to local communities.

The Importance of RIA and a Comprehensive Business Case

Case Studies on Travelling Times

9. In this respect, it should be noted that the target of 60 minutes travelling time to court focuses only on time in transit, rather than taking a more comprehensive view which looks at the context of parents taking their children to school and organising child care to facilitate court appearances, amongst other issues. Longer distances will mean longer periods of children being withdrawn from school in respect of family hearings for example. It is not reducible simply to an abstract question of the amount of time spent within a vehicle travelling - it must consider access which is practical and effective in context.

10. The Society has included two impact studies showing examples where the sixty minute target is significantly exceeded due to the limitations of public transport. (See Appendix 1). Threats to access to justice in a local setting are illustrated by the difficulties created by longer distances to travel, particularly in rural areas with less developed transport links. The impact studies illustrate some of the difficulties with public transport in reaching new court destinations under the current proposals. These involve outlying areas which must add the additional travel time to the time currently expended reaching their nearest court.
11. The case study examples set out in the appendices to this paper are illustrative rather than exhaustive. The Society maintains that a number of similar tests could be conducted across the range of proposals identified and could involve modelling the operation of the remaining courthouses on projections of business against the available facilities. This should involve risk assessments concerning staffing, the treatment of witnesses and accounting for lost resources in terms of delay. Developing and maintaining a comprehensive, efficient and localised courts service forms part of the Society’s overall view that efficiency and economy are best achieved by viewing the justice system in the round and addressing waste and inefficiency to achieve savings.

**Rural Proofing**

12. In relation to court facilities in rural areas, the consultation paper does not discuss the possibility of rural proofing, a widely accepted aspect of good policy making. The Department for Agriculture and Rural Development (DARD) have produced useful guidance on the importance of demonstrating awareness of both intended and unintended consequences of policy making on rural communities.⁠¹ In this context, this omission ignores the impact of weaker transport links in rural areas making additional travelling a disproportionate burden and the potential impact of more limited transport options on the risks to witnesses identified above. Further to these points, there are concerns about rural availability on enforcement of judgment matters.

13. The Department will be aware that DARD recently undertook a consultation process on introducing primary legislation to embed rural proofing in policy making. If implemented, DARD have outlined the “effective implementation of rural proofing across government” as one of its key policy objectives, including through the disclosure or rural proofing data for scrutiny by the Assembly.² The Bill proposes placing a statutory duty on government departments, local councils and potentially other public bodies to consider the needs of rural areas in policy formulation. The administration of local justice is a touchstone issue in terms of rural proofing and the Society would expect the Department to be leading the way in terms of rural proofing its business case for these proposals in advance of the Bill coming before the Assembly.

**Business Volumes and Facilities**

14. To take one example of an impact which might be immediately identified, taking into account the average volumes of cases over the last two years for which figures are available, Omagh will see a 123% increase in business whilst being required to serve a much larger rural area covering County Fermanagh and larger parts of County Tyrone. A comprehensive evaluation would take into account the infrastructure and rurally proof this proposal, given the significant impact it will have on the local area.

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⁠¹ DARD, *Thinking Rural: The Essential Guide to Rural Proofing*

² DARD, 2015, *Public Consultation on Policy Proposals for a Rural Proofing Bill*
15. More broadly, taking into account average caseloads over the last two years in the current courthouses, the lowest percentage increase in business at any of the remaining venues is 35%, which is itself a significant spike in demand for facilities, staff time and listing arrangements. At the opposite end of the scale, Antrim courthouse is facing an approximately 183% increase in business on average should the Ballymena closure proceed, indicating the weightiness of the risks of increasing delay and inefficiencies.

16. The consultation paper does not undertake a detailed regulatory impact assessment of each proposed closure to take into account the population covered, the standard of facilities provided within particular court locations and the transport infrastructure amongst other considerations. It is a glaring omission from the consultation paper, which commits only to keeping the need for an Equality Impact Assessment (EQIA) “under review” during the consultation process.

The Evaluation Study and Displaced Costs

17. Although the NICTS refer to a weighting exercise which examined a range of factors, it is regrettable that this points-based evaluation of current courthouses has not been disclosed as part of the consultation process. Disclosure would have served the interests of transparency and improved the process of public engagement if stakeholders had an opportunity to comment on the assumptions behind such weighting and any conclusions drawn. In addition, the Society note that the NICTS indicated during an evidence session at the Committee for Justice that a business case for the reorganisation of court business would follow the consultation. In our view this business case should have preceded the consultation process for the reasons stated above. This is information material to the outcome of this consultation and respondents should have been afforded an opportunity to make formal comments on the evidence base for this policy.

18. The Society shares the concerns expressed by the Lord Chief Justice that court closures will provoke significant knock on costs for the NICTS which will undermine any savings made from the Modernisation Programme. The consultation document refers to additional consequential savings due to administrative efficiencies, but makes no attempt to estimate any potential costs. This is reinforced by the assertion in paragraph 3.31 of the consultation paper that the overall economic impact of the proposals will be “broadly cost neutral”. This statement requires detailed justification and costs should be appropriately linked to the impact provoked by the proposed reduction of localised court services.

19. For example, one unintended consequence from the closures could be reduced visibility of the PSNI in local communities as officers spend longer periods commuting to and from courts. In addition, longer travelling distances may increase levels of non attendance on the part of participants and witnesses, increasing delay and inefficiency. Given the focus of the Department in reducing avoidable delay within the justice system, it should be cognisant of policies which have the potential to inject delay into the court process. Without a detailed cost-benefit assessment covering each of the locations it is not possible to adequately assess the rigour of the Department’s evidence base for these proposals.
20. Overcrowding is another issue which could result from increasing business volumes at the remaining court locations. This raises additional risks to the wellbeing of vulnerable witnesses due to the possibility of alleged perpetrators and victims using the same facilities. In addition, the running of criminal and family business in close proximity creates new risks in terms of delivering a protective court infrastructure. All of these examples reflect the importance of courts providing a safe and welcoming environment for vulnerable court users and the direct connection between service capacities in delivering on this commitment.

The Modernisation Programme and Management of Facilities

21. The projects outlined in the Modernisation Programme separate the provision of court facilities from overall service delivery, which is likely to lead to thinking in silos. Court infrastructure is an integral part of service delivery and any review of efficiency and economy with NICTS should recognise the two are inextricably linked. It is difficult to see how the NICTS can deliver on their commitment to provide a “sound structural basis” for the justice system without reviewing its operation in the round.

22. For example, in response to an Assembly written question from Jim Allister MLA, the Justice Minister indicated that he expected the Public Sector Voluntary Exit Scheme to “reduce significantly” staff numbers within NICTS, yet the consultation paper does not adequately address how service levels can be maintained with fewer staff should case volumes remain broadly in line with current levels. For example, the proposal to move all cases currently dealt with at Ballymena courthouse to Antrim courthouse – a transfer amounting to an average increase in throughput at Antrim of 183% based on 2013-14 figures – would significantly increase pressures on staff and facilities. The same principle applies to all proposed transfers of business. (See Appendix 2). This is another example of a failure to disclose a business case which appropriately audits the infrastructure and resources of the court estate.

23. Similarly, while the Minister has said that the proposals would also reduce the level of contracted services currently provided, he prevents further discussion of those reductions on the basis that it is a matter for the relevant contractors. Again, this reinforces the need for a full audit of court services and the impact that these proposals would have on the courts’ service to the community if implemented.

24. Further, the NICTS has stated that it has not formally engaged with the Department of Finance and Personnel Properties Division to assess any work or associated costs that might be involved in the re-opening of the Old Townhall Building under some of its proposals, on the basis that such an exercise is contingent on the outcome of responses to the consultation. All of the options being explored should be appropriately subject to a rigorous cost-benefit analysis before savings estimates and impacts can be reasonably stated.

25. This appears to put the cart before the horse. If consultation responses are to be meaningful consultees must be given the opportunity to respond to a properly

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3 AQW 41540/11-15
4 AQW 42128/11-15
developed proposal which demonstrates full consideration of the financial repercussions of its implementation. Respondents should not be expected to second guess whether Departmental proposals are financially efficient. At a time of austerity, proper public consultation is more important than ever to good public administration.

**Full Consultation and the Development of Proposals**

26. The Society notes that in paragraph 3.39 the NICTS refer to the involvement of a number of partner organisations in the developmental phase of these proposals who help to manage and support the justice system, yet this did not encompass the legal profession. This is an extraordinary omission upon which we reserve our position. Legal practitioners are particularly well placed to make observations about the efficiency and operation of court processes and procedures and the capacity and performance of different aspects of the justice system. On that basis, we believe that including the profession in these discussions would have made this phase more representative of those with a stake in the justice system.

27. The concerns raised in this section make it clear that far greater ‘joined up’ thinking is required by the Department in order to deliver efficiency and economy in the justice system. If implemented, these proposals will undermine the important principle that access to justice is best delivered in local communities given the particular circumstances of Northern Ireland. Given the comparatively modest savings forecast by these proposals, further thought needs to be given to the potential costs outweighing any short-term benefits.

**Financial Inefficiencies**

28. In 2014 the Northern Ireland Audit Office reviewed the Trust Statement of the NICTS to 31 March 2013 and reported that at that point the total amount of debt from outstanding payments was around £19 million. In the context of these proposals which are being forecast to save around £1 million per annum, more efficient fine collection could help to meet resource pressures without such closures being proposed.

29. The Northern Ireland Public Accounts Committee produced a Report in January 2015 on the findings of the NIAO. The Report criticised the DOJ/NICTS for not developing more effective and cost-efficient governance arrangements to ensure the collection of fines. In this respect, high administration costs are exacerbated by the failure to recover the monies, representing a significant drain on resources. This provides another example of the need for a thorough audit of business planning in order to deliver efficiencies and protect access to justice across the whole community.
Conclusion

30. The Society welcomes the opportunity to submit a response in respect of the consultation on Proposals for the Rationalisation of the Court Estate.

31. We trust our contribution is constructive and we are happy to meet with the DoJ to discuss any of the issues raised in our response.

32. We would like to be kept informed of any subsequent proposals formed as a result of this consultation and also any changes to the overall policy direction of the topic under discussion along with a stated rationale.
APPENDIX 1

IMPACT STUDY 1: ON THE PROPOSAL TO CLOSE ENNISKILLEN COURTHOUSE

Financial Savings Estimate

- The Consultation document estimates that annual financial savings likely to accrue from the closure of Enniskillen Courthouse would be £92,439.

- According to figures provided by the Justice Minister in answer to a written question put by Jim Allister MLA, £307,240.22 has been spent on refurbishment expenditure for Enniskillen Courthouse between 1 April 2010 and 31 December 2014.

- On this basis, it will take over three years before the money spent on refurbishing Enniskillen Courthouse is recouped and projected savings are seen. To take this course of action could render past investment by the Department otiose and represent a significant lack of spending foresight.

Impact on Court Users from Garrison

- The Consultation document notes that the Department has ‘sought to ensure that the journey time by public transport from the current to the alternative court venue should not, as far as possible, exceed 60 minutes and that people will be able to arrive at the start of the case in which they are concerned and be able to return home by public transport each day’.

- The small village of Garrison in County Fermanagh is, according to Google Maps, currently a 40 minute drive by car to Enniskillen Courthouse – 22.5 miles away. The same journey can be made by public transport within 48 minutes. (See Annex A).

- The travel time from Garrison to Omagh Courthouse, according to Google Maps, is currently 1 hour and 7 minutes by car, without traffic, covering 41.2 miles. The same journey is estimated to take 3 hours and 45 minutes by way of public transport. (See Annex B). That is a 79% increase in the time it would take to make a journey to court from Garrison using public transport and one which vastly exceeds the Department’s stated 60 minute target.

5 AQW 41477/11-15
• Moreover, according to Google Maps outward services from Garrison to Omagh Courthouse only run 5 times per day. The earliest transit begins at 7.21AM and reaches the destination for 11.45AM (4 hours and 24 minutes later). (See Annex C). It therefore appears to be impossible at present for a resident of Garrison to journey to Omagh Courthouse via public transport for the beginning of the court day.

• The inward services from Omagh Courthouse to Garrison present an even bleaker picture. The leaving time closest to the end of the court day is 7.35PM, which is said to get a traveller to Garrison by the anti-social hour of 1.38AM on the next day via public transport (6 hours and 3 minutes). (See Annex D).

• It should also be noted that the public transport services required for the journeys outlined above take travellers through the Republic of Ireland.

• This impact study raises serious questions about the assertions made in the Consultation document about the availability of public transport options for court users, should the proposed closure of Enniskillen Courthouse be implemented. It is the duty of the Department to assess the impact of its proposals on other rural areas like Garrison in order to reach a fair and considered decision in respect of ‘rationalising’ the court estate.

IMPACT STUDY 2: ON THE PROPOSAL TO CLOSE BALLYMENA COURTHOUSE

Financial Savings Estimate

• The Consultation document estimates that annual financial savings likely to accrue from the closure of Ballymena Courthouse would be £223,351.

• According to figures provided by the Justice Minister in answer to a written question put by Jim Allister MLA, £1,675,078.26 has been spent on refurbishment expenditure for Ballymena Courthouse between 1 April 2010 and 31 December 2014.

• On this basis, it will take over seven years before the money spent on refurbishing Ballymena Courthouse is recouped and projected savings are seen. To take this course of action could render past investment by the Department otiose and represent a significant lack of spending foresight.

Impact on Court Users from Carnlough

• The Consultation document notes that the Department has ‘sought to ensure that the journey time by public transport from the current to the alternative court venue should not, as far as possible, exceed 60 minutes and that people will be able to arrive at the start of the case in which they are concerned and be able to return home by

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6 AQW 41477/11-15
public transport each day’.

- The small village of Carnlough in County Antrim is, according to Google Maps, currently a 28 minute drive by car to Ballymena Courthouse – 16.2 miles away. The same journey can be made by public transport within 55 minutes. (See Annex E).

- The travel time from Carnlough to Antrim Courthouse, according to Google Maps, is currently 39 minutes by car, covering 26.7 miles. The same journey is estimated to take 2 hours and 26 minutes by way of public transport. (See Annex F). That is a 62% increase in the time it would take to make a journey to court from Carnlough using public transport and one which vastly exceeds the Department’s stated 60 minute target.

- Moreover, there is no direct public transport service from Carnlough to Antrim, meaning that in addition to the price of a return fare from Carnlough to Ballymena (£7.90), a return fare of £6.80 would be necessary in order to travel the additional journey from Ballymena to Antrim, taking the total journey cost to £14.70 daily.  

- Therefore, not only will the time taken to make a journey to court from Carnlough increase if the proposed closure of Ballymena Courthouse is implemented, but the price of doing same will increase by 46%. Bearing in mind that many court users come from disadvantaged financial circumstances, a fuller assessment of the increased costs, in addition to the time taken, likely to result from proposed court closures appears warranted.

- This impact study also raises serious questions about the assertions made in the Consultation document about the availability of public transport options for court users, should the proposed closure of Ballymena Courthouse be implemented. It is the duty of the Department to assess the impact of its proposals on other rural areas like Carnlough in order to reach a fair and considered decision in respect of ‘rationalising’ the court estate.

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7 Prices obtained from Translink on 28 April 2015
ANNEX A

Garrison, Fermanagh ➔ Enniskillen Courthouse (Driving)

Garrison, Fermanagh ➔ Enniskillen Courthouse (Public Transport)
ANNEX B

Garrison, Fermanagh → Omagh Courthouse (Driving)

Garrison, Fermanagh → Omagh Courthouse (Public Transport)
ANNEX C
Outward Transit Options – Garrison, Fermanagh → Omagh Courthouse

ANNEX D
Inward Transit Options – Omagh Courthouse → Garrison, Fermanagh
ANNEX E

Carnlough, Antrim → Ballymena Courthouse (Driving)

Carnlough, Antrim → Ballymena Courthouse (Public Transport)
ANNEX F

Carnlough, Antrim → Antrim Courthouse (Driving)

Carnlough, Antrim → Antrim Courthouse (Public Transport)
## APPENDIX 2

### The Old Townhall Building

<table>
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<tr>
<th>Year</th>
<th>Lisburn Family</th>
<th>Newtownards Family</th>
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% increase: N/A

### Laganside

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<th>Existing case load total</th>
<th>Lisburn Civil, Criminal &amp; Youth</th>
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% increase: N/A

### Antrim

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% increase: 35%

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% increase: 109%

### Newry (if straight transfer "option 2" adopted)

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% increase: 36%

### Dungannon

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% increase: 36%

### Omagh

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<th>Strabane case load total</th>
<th>New total</th>
<th>Average 10-14</th>
<th>Average 13-14</th>
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% increase: 101%

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