

Justice Agenda 2022

Northern Ireland
Assembly Election

THE LAW SOCIETY
OF NORTHERN IRELAND



100
YEARS

FOREWORD FROM THE PRESIDENT

As we look forward to the Assembly elections at a critical juncture for Northern Ireland I am pleased to put forward the Justice Agenda 2022, setting out the Law Society of Northern Ireland's justice priorities for the next mandate at Stormont. This is the first document of its kind in the Society's 100-year history, and it is important to be clear from the outset that the Society is, and always will be, politically neutral. The contents of this document are equally relevant to all those standing for election regardless of their political affiliation.

Solicitors are an integral part of our community, even though the profession's role is perhaps not always well understood. Solicitors provide a vital service to people in difficult times – helping victims of crime or assisting those facing family break up or bereavement. They also guide people through life's more positive milestones such as buying a house or starting a business. The profession is also a significant economic driver, providing many thousands of well-paid jobs and supporting a thriving economy, helping NI businesses grow and innovate and helping NI Plc attract inward investment. As such, the profession can be a **positive and constructive voice** which must be heard by those in government.

At the heart of the priorities set out here is the belief that **Access to Justice** is one of the cornerstones of a properly functioning democracy and a fair society. As such, it is something which should be cherished and supported across the political spectrum. For too long the focus of justice policy has been on budgets, to the detriment of the ordinary people who require legal help to protect their rights. Reform is necessary and we are seeking a more strategic approach to deliver Access to Justice for all and not just those who can afford it. This means sustainable and realistic investment in justice outcomes and fostering greater collaboration across the system, including between the solicitor profession and the various arms of government involved.

In setting these priorities, we have considered the unprecedented circumstances facing the justice system and wider society as we all look to regain some semblance of normality following the coronavirus global pandemic. The Law Society has spent much of the pandemic period engaging across government to maintain services in the courts and across the legal sector. We have repeatedly highlighted the opportunity to re-think and improve the current system, rather than simply reinstate it. We continue to urge decisionmakers to **be ambitious and to challenge the status quo.**

2022 marks the Law Society of Northern Ireland's Centenary Year. This will involve reflecting on the past hundred years but, more importantly, we will be putting down the foundations to ensure that our justice system is efficient, resilient and **fit to serve the public for the next hundred years.** The Law Society will be taking forward initiatives linked to the centenary to improve awareness of the important role of the solicitor profession across many different areas. In this short document we can only touch the surface of the many issues important to the profession. The Law Society will continue a programme of constructive engagement throughout the election period and into the new mandate at Stormont .

In conclusion, I urge all Parties and every individual seeking election to the Assembly to **commit to putting Access to Justice at the centre of their plans for government.**

A handwritten signature in white ink, appearing to read 'BN', with a horizontal line underneath.

Brigid Napier

President

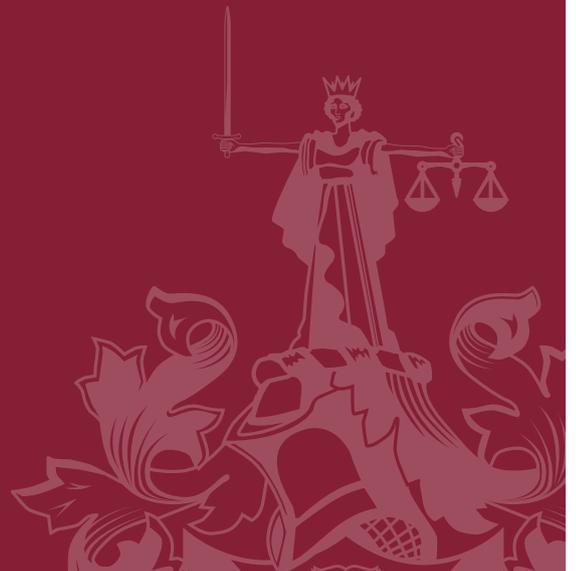
The Law Society of Northern Ireland

ABOUT THE LAW SOCIETY

The Law Society of Northern Ireland is the professional body for the solicitor profession in Northern Ireland. The Society regulates the solicitor profession, exercising its statutory functions under the Solicitors (Northern Ireland) Order 1976.

The Society upholds professional standards, working in the public interest to ensure confidence in the solicitor profession in Northern Ireland. The Society is responsible for admitting newly qualified solicitors to the profession and for the continuing professional development of all solicitors.

As a member organisation, the Law Society represents and supports circa 3,000 practising solicitors working in approximately 470 solicitor practices and in public, private and third sector organisations. Through its Policy & Engagement function the Society acts as the voice of the profession, representing the profession's interests, engaging with government and other stakeholders. More broadly, the Society works in the public interest to influence law reform, defending everyone's right to have access to justice and upholding the rule of law.



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ACCESS TO JUSTICE

Access to justice is an essential right of all citizens in a democratic society. Whether it is someone seeking advice on an employment issue, a parent seeking access to their child in a matrimonial dispute or someone defending a criminal charge, everyone deserves access to effective legal advice and representation.

Legal aid is an essential element of a fair justice system, protecting the most vulnerable and ensuring access to justice for those who could not otherwise afford legal representation. In the year to March 2021, despite the disruption of the pandemic, over 63,000 cases were granted financial help through legal aid¹.

Beyond the intrinsic value that legal aid brings through the protection of citizens' rights, there are compelling economic reasons for investing in justice and in legal aid, in particular. A recent study commissioned by the Community Justice Fund² has shown that the benefits of legal aid include significant savings to other areas of public expenditure. This reinforces the conclusions of research from the World Bank³ which demonstrated the cost of not investing in legal aid in terms of the delay, disruption and inefficiency which results from the absence of effective legal representation

For too long, the legal aid conversation in Northern Ireland has been focused on cost. This has overlooked the benefits not only to society's most vulnerable who require legal aid but also the wider societal and economic benefits. The next Assembly mandate is an opportunity to take a more strategic view of the role played by public funded legal services and to recognise that the benefits of investing in the legal aid system far outweigh the costs.

¹ Legal Services Agency 2020-21 Annual Report <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/lsani-annual-report-and-accounts-2020-2021.pdf>

² <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>

³ <https://documents1.worldbank.org/curated/en/592901569218028553/pdf/A-Tool-for-Justice-The-Cost-Benefit-Analysis-of-Legal-Aid.pdf>

PRIORITY 1

PROTECTING THE LEGAL AID BUDGET



A sustainable Legal Aid Budget is vital if Access to Justice is to be a reality. Upon the devolution of justice in 2010, legal aid expenditure in Northern Ireland was over £100m. This has faced significant cuts over the last decade to the point where the baseline budget allocated for legal aid in 2021-22 was just £76m. The recent Budget consultation proposed further cuts, taking the budget to just £74m per annum over the next three years. This proposal would accelerate the decline in the legally aided sector and must be rejected.

We are locked in a vicious cycle where cuts lead to poorer outcomes. In the meantime, the most vulnerable are denied their rights and legal firms can no longer afford to provide legally aided services. Action is needed now to protect citizens' right to access justice. Legal aid claims have been steady at c. **£82m** over recent years, and as a bare minimum this amount **must be protected as the baseline legal aid budget**.

The Law Society urges all Parties seeking election to the Assembly to protect our most vulnerable citizens and commit to maintaining the legal aid budget at a sustainable level.

PRIORITY 2

SUSTAINABLE PUBLIC FUNDED LEGAL SERVICES



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. The number of solicitors doing legal aid work is shrinking and it is becoming harder to attract young professionals into these areas of business. To address this and help ensure that Northern Ireland has a sustainable legal aid sector, the next NI Executive should:

- **Commission an independent review of legal aid fees** to ensure that fees are set at an appropriate level; and
- Follow the example of the Scottish Government and **bring forward an Apprenticeship scheme to support trainees into legal aid practices.**

PRIORITY 3

CLOSING THE ACCESS TO JUSTICE GAP



To qualify for legal aid a person must satisfy a financial eligibility test. Many of the eligibility thresholds for civil legal aid have remained unchanged in Northern Ireland since April 2009. Average earnings in Northern Ireland rose 31%⁴ between April 2009 and April 2021. This means that fewer and fewer people qualify for legal aid, resulting in an ever-widening **Access to Justice Gap**. This must be addressed to ensure that those on lower incomes have their rights protected. **The incoming Executive should increase the eligibility thresholds for civil legal aid.**

⁴ Source: NI Annual Survey of Hours and Earnings: 2009 median full-time earnings: £439, 2021 median: £575
<https://www.nisra.gov.uk/statistics/labour-market-and-social-welfare/annual-survey-hours-and-earnings>

PRIORITY 4

ADDRESSING 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.

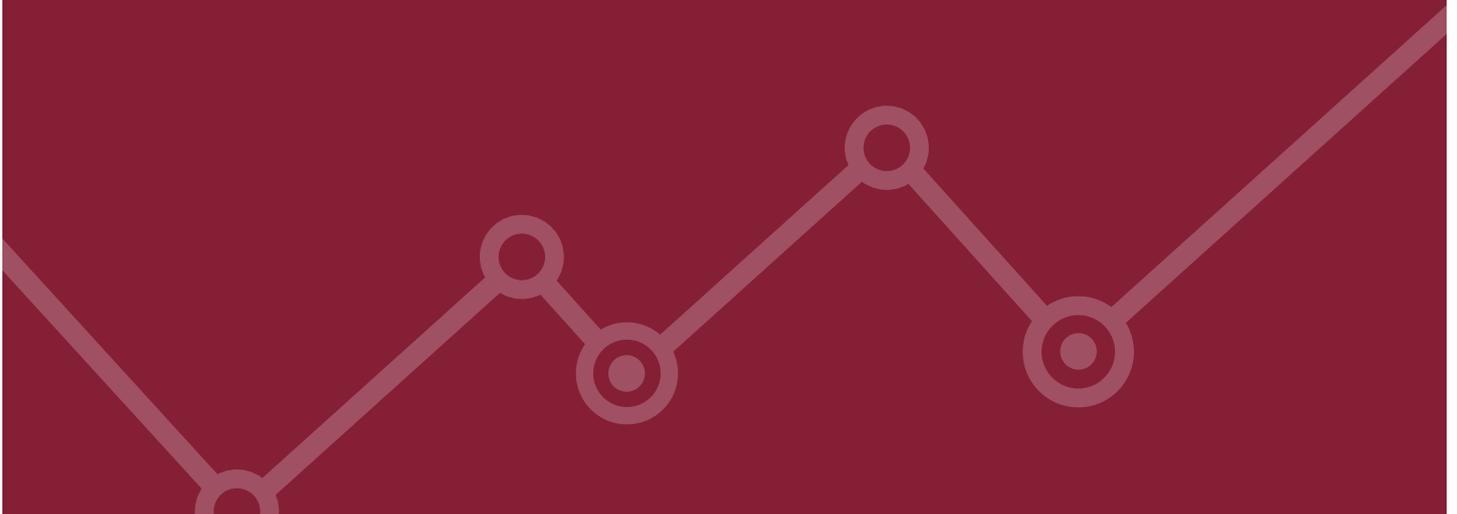
The Law Society has publicly raised its concerns around the United Kingdom Government proposals outlined in the Command Paper ‘Addressing the Legacy of Northern Ireland’s Past’. The Society considers that these proposals contravene the UK’s duty under the European Convention on Human Rights to hold independent and effective investigations into the deaths that occurred during the Troubles.

The Law Society urges all Parties to **work towards a solution which upholds the Rule of Law** and is in compliance with Article 2 of the ECHR and all other national and international obligations.

POST-COVID RECOVERY

The global Covid-19 pandemic has had a wide-ranging and profound impact on all aspects of life. This has been no different for the solicitor profession where firms have had to adapt to the new normal of home and hybrid working. The disruption caused by the pandemic will be felt for years to come. By the end of 2020, almost half of firms reported a significant impact on turnover and a number had been forced to reduce costs through redundancies.

Much of the Law Society's efforts over the past year have been dedicated towards the recovery of Court business in the wake of the pandemic. The Society also engaged intensively to secure the reopening of the Land Registry to allow conveyancing work and financial lending to recommence. Now, with the firm hope that the worst is behind us, the focus turns to recovery. We consider that the solicitor profession is uniquely placed to support wider economic recovery.



PRIORITY 5

RECOVERING COURT BUSINESS



While business activity in some legal sectors has recovered well, court-based work has taken much longer to recover. Crown Court business in particular is lagging behind and indications are that it could take years to recover. The response of policymakers to these challenges has been focused on increasing capacity: more courtrooms, more prosecutors etc. Capacity and throughput of cases clearly has a role to play in making up lost ground. But “more of the same” misses the point that, before the pandemic, Northern Ireland’s justice system was unacceptably slow and in need of reform.

The next Executive should seize the opportunity presented by the disruption of the pandemic to **modernise and transform our Court system**. The core objective for all courts is to deal with cases *justly*. Lengthy delays and inefficient processes militate against this objective and it is clear there is much more that can be done.

As a starting point, the Recommendations of **the Gillen Review** (*Report into the Law and Procedures in Serious Sexual Offences*) and the introduction of **statutory time limits** for completing criminal cases should be priorities in the next Programme for Government.

Further, the Lady Chief Justice’s Judicial Modernisation Paper⁵ outlines proposals which would streamline processes across many of our courts, accelerate digital change and introduce more flexibility to the system. These proposals, which aim to ensure a modern court system which is just, proportionate and accessible, should be embraced and funded in the next mandate.

⁵ <https://www.judiciaryni.uk/sites/judiciary/files/media-files/Judicial%20Modernisation%20Paper%20September%202021.pdf>

PRIORITY 6

SUPPORTING ECONOMIC RECOVERY



The legal sector is an important contributor to the Northern Ireland economy, supporting thousands of jobs and adding an estimated £400m to the local economy⁶. The last decade has seen a great deal of change to the NI legal economy. Many firms from other jurisdictions have established in NI through merger and acquisition activity while international law firm back office operations have grown. While this brings economic benefits to NI Plc, the new dynamic also presents challenges. Of particular concern is the struggle by many NI firms to recruit and retain talent in an increasingly tight legal labour market.

Of further concern are the legal impediments to doing business in NI. As a practical example, Northern Ireland is an outlier on these islands and throughout the world as our law does not universally accept electronic signatures as legally valid. Obstacles such as this could be easily removed by the new Executive. The Law Society is committed to playing its part in an economically successful Northern Ireland through the provision of excellent legal services and supporting law reforms which make Northern Ireland an appealing place to do business. This requires a focal point in government to generate momentum and drive change. The next mandate should see the establishment of a statutory Civil Justice Council for Northern Ireland **with an initial focus on modernisation and supporting economic recovery.**

⁶ Source: CityUK

JUSTICE REFORM

The disruption caused by the global coronavirus pandemic has shown that, when required, government, businesses and citizens can rapidly adapt to unprecedented challenges. As we look to rebuild the justice system after the disruption of the past two years, government must harness the opportunity 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.



PRIORITY 7

PROTECTING THE PUBLIC THROUGH 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. We oversee all education and training requirements necessary to practise as a solicitor and set a high bar for professional standards. And we have a strong track record of regulating and enforcing compliance with these standards.

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 was interrupted when Northern Ireland was without a functioning Assembly or Executive. The new Assembly mandate should see the **full establishment of the Legal Services Oversight Commissioner**. Government should work with the Law Society to develop a shared implementation plan.

PRIORITY 8

DIGITAL TRANS- FORMATION



The global pandemic has fast tracked adoption of digital solutions across the justice system. This has yielded gains through speedier processing, greater efficiency and cost savings. It is vital that the gains made in this area are not lost and that government supports further development and innovation.

It is welcome that legislative provision has been made to ensure that remote court hearings can continue to take place until the Autumn of 2022 under the Coronavirus Act 2020. However, a long-term solution must be put in place.

The Law Society is working with the Northern Ireland Courts and Tribunals Service and the Land Registry to shape digital transformation. Further investment in digitisation is required across the board, to better facilitate hybrid court proceedings and expedite and improve all areas of the justice system. The Society is calling for **sustained investment into digitisation across the justice system.**

PRIORITY 9

MODERNISING CIVIL JUSTICE



Justice reform is often focused on the criminal justice system. But throughout their lives people are more likely to come into contact with the Civil and Family Justice System. This can often be at difficult times such as after suffering an injury in an accident or when dealing with divorce or the death of a loved one. It is therefore vital that our Civil Justice System is able to deliver good outcomes for the public.

The Department of Justice should re-establish the Northern Ireland Law Commission. Northern Ireland is the only part of the United Kingdom and Ireland without an independent body keeping the law up-to-date and fit for purpose. This should be put right without delay.

The Law Society welcomes the Justice Minister's *Civil Justice Modernisation Delivery Plan* published in July 2021 and has committed to work with the Department of Justice on the reform of Civil and Family Justice. In the next mandate, the Department of Justice should **bring forward a new Civil Justice Modernisation Strategy** to implement the recommendations of the Gillen Review of Civil Justice and to ensure that Northern Ireland's Civil Justice System keeps pace with the changing nature of our society.

PRIORITY 10

PROMOTING MEDIATION



While litigation through the courts is often unavoidable, it is not the only means to securing good 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 court process.

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 Service provides a highly skilled panel of trained mediators and an affordable Schedule of Costs. The recent launch of The Meeting Space at Law Society House provides a new state of the art Mediation Centre at the heart of Belfast's Legal Quarter.

In the next mandate, **the Northern Ireland Executive should prioritise mediation** as an alternative to litigation which can lead to better outcomes for all parties.

NEXT STEPS

The Law Society commends these priorities to all those seeking election to the Northern Ireland Assembly in 2022. Access to Justice should be a vital part of the policy discourse during the election campaign and must be at the heart of the next Programme for Government and Assembly mandate. Over the coming weeks and months the Society will engage the Northern Ireland Parties on the basis of these proposals. This engagement will continue into the new mandate at Stormont where the Society will continue to push for justice reform and greater Access to Justice for all.

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