Northern Ireland Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Welfare Reform Bill: Key Issues

14 November 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Ms Paula Bradley
Ms Pam Brown
Mr Gregory Campbell
Mrs Judith Cochrane
Mr Michael Copeland
Mr Sammy Douglas
Mr Mark Durkan
Mr Fra McCann
Mr David McClarty

Witnesses:

Ms Martina Campbell	Department for Social Development
Mr Mickey Kelly	Department for Social Development
Mr Conrad McConnell	Department for Social Development
Mr Michael Pollock	Department for Social Development

The Chairperson: I formally welcome everybody to the meeting as we resume our scrutiny of the Welfare Reform Bill. I remind members, and urge everyone in the room, to switch off all telephones and other electronic devices. I remind people that this particular room is the worst for interference from phones. You heard the presentation from the Hansard people telling us that there is very bad reception in here, so will people switch off their phones, please? I ask members to declare any interest relevant to the agenda today. If nothing is to be declared, we will move on. There are no apologies and nothing under Chairperson's business, so we are straight into the Welfare Reform Bill.

There are a couple of procedural positions to remind ourselves of today. Today's meeting is for the Committee to try to establish a clear position on each of the key issues considered at yesterday's meeting and, in fact, throughout the Committee Stage of the Bill and to decide how it wishes to proceed on those. Having decided on how it wishes to proceed, the Committee will then forward those issues to the Department and ask the Department whether it is willing to make the changes as requested by the Committee. On receipt of the Department's responses — for example, the Department may refuse to amend a particular clause as requested by the Committee — the Committee can then decide how it wishes to proceed. For example, the Committee may lay down its own amendment, seek assurances from the Minister or include any recommendations in its report.

The papers you have in front of you today are the issues paper based on yesterday's discussion, which also includes a range of general options open to us; the Committee Clerk's original issues

paper; the report by the Examiner of Statutory Rules on the delegated powers memorandum; and the Bill itself. The Committee Clerk has prepared a summary of the issues discussed yesterday, which you have in front of you, identifying, as best he can, where the Committee may wish to consider further action. Again, those may or may not be relevant to the Committee, or members may want to take action on other parts of the Bill in addition to those. It is entirely in the hands of members. I stress that the paper presented by the Committee Clerk is a best guess of where the Committee is at, but that does not mean that it is not open to any member to raise any other issue that is not referred to in the papers you have in front of you. It is entirely open to every member to raise any issue in the Bill for discussion or amendment. We will start off today using the Committee Clerk's paper just to inform ourselves of where we left off yesterday.

Quite a number of officials are kindly here this morning. I thank them for being here. The purpose of their attendance is to help us if we need any further assistance as we go through the Bill. Obviously, the Department is not involved in the discussions. Those are entirely and exclusively a matter for the Committee. I thank the Department for being here in such numbers and seniority. I am not sure how often we might have to avail ourselves of your information. Hopefully, it will not be that much.

Mr F McCann: They are ganging up.

The Chairperson: There are more of you than there are of us.

I propose that we work through the issues in the paper that the Committee Clerk has tabled this morning. That picks up from where we were yesterday. I suggest that we work our way through particular clauses today. There may well be some amendments that people want to put forward that will be easily agreed unanimously — there may be no contention — but there may be others that require a little bit more thought from members or to which members have direct opposition. Notwithstanding any of that, I suggest that, as has been done quite a few times before, if someone wants to put an amendment forward, we can discuss it. If there is direct opposition, people might want to push that to a vote, but I recommend that, if people want to table amendments, they can table them and discuss them, and we can seek information from the Clerk of Bills over the next couple of days on whether or not they are actually competent. That is without prejudice to how members would eventually vote on the amendment that is formally tabled.

In other words, if someone has an amendment that they want to put forward, let them do so and have a discussion around that with the rest of the members. Then, let us seek from the Clerk of Bills information on whether that amendment would be competent if formally put to the meeting. It is without prejudice to anyone's eventual voting on it. That allows people to fully explore that. We do not have any extra days, so we have a tight time frame to work through, but we are still within our time to table amendments, discuss them, check them for competency and then formally vote on them, if that is what people want to do. So, I am asking for people's indulgence, if you like. If there is an issue that they are not entirely sure about, at least let us go and check for competency. There may not be that many of those, if any. I am just giving that as general guidance this morning.

OK. So are members happy enough to start? The way we left it yesterday was that the Department will get back to us on some issues, but I am presuming — in fact, I have been advised — that we do not have any updates at this moment in time. I did not really expect there to be any for obvious reasons; it was only yesterday that we were here. So, for the record, I just wanted to say that there are no further updates from the Department at this stage. We will get those updates at a later stage in the next few days.

I reminded members yesterday that the issues paper presented by the Committee Clerk was not necessarily definitive. So, do members want to raise any issues at this point that were not included in that paper? If not, are we happy to move on to the paper in front of us today?

Mr Brady: There are some amendments that I want members to discuss without those necessarily going to any sort of formalised vote or anything like that. I think that we need to bear in mind that the Standing Order issue will come up on Monday, hopefully, and depending on what happens there, the Ad Hoc Committee may have some bearing on any decisions, suggestions or anything else that comes out of today. So it is really about throwing out some suggested amendments for members to discuss. I think that there is consensus on the issues in the legislation that are causing members problems.

The Chairperson: I take that on board. That will obviously be on members' minds. However, for the record, we have to work on the basis that we are at scrutiny stage and, therefore, have to complete our work programme within the time frame envisaged, with the report finalised and forwarded by 27 November. There are a number of factors for members to bear in mind, not least the consultation on universal credit, David Freud's intervention, and so on and so forth. Members will have all those issues in mind. That is why I am saying that members should feel free to raise any issue of concern today by tabling an amendment. As I said, if there is any contention, it does not have to be voted on today, but it needs to be checked for competency. That is the way I want to proceed today.

Mr F McCann: I just want to make a point about today's proceedings. You said that members may table amendments, but that does not take away from our right to table amendments from a party perspective. I just want to put that on the record, because we fell once before when this was brought up and we were accused of not dealing with it through the Committee.

The Chairperson: It is the Committee's responsibility to fully scrutinise the Bill in the here and now. We can seek to amend it in any way that members feel is necessary. Ultimately, any amendments will be voted on. I remind members that the Committee has a number of options open to it. It can table amendments and then either agree to those or not. It can also provide a narrative to the Assembly, with recommendations, observations and suggestions. The Committee may not necessarily feel that amendments are necessary or appropriate for some issues, but I imagine that there will be unanimous support for amendments on a whole range of issues. Let us work our way through that. Those are the options. Members can table amendments, go for direct opposition, introduce new clauses or provide a narrative with recommendations. We have all those options, so members should not feel in any way inhibited.

That is why I am asking for the Committee's indulgence in that — this has been done before and it is good practice — if members table amendments and we are all agreed on those amendments, let us just agree them and put them forward for competency checks, and so on and so forth. However, if there are amendments that members are not 100% sure of, we will let those amendments be tabled so that we can have a discussion about them, and then we will send them away for competency checks, and so on and so forth. Such amendments will then be brought back here, and members will vote on them, if they are tabled. All that will be done without prejudice to members' ultimate voting intentions. Members should feel free — in fact, it is your job — to seek to change the Bill. There is no point, in six months' time, saying, "I could have tabled an amendment". I certainly want to make sure that nobody in the Committee stands accused of not putting their points forward here. Everybody around this table promised that they would give full, maximum and robust scrutiny to the Bill. They have done that so far. That will continue to be the case, because we, as a Committee, need to be able to stand over the work that we have done so far. That is our job, and we are doing it professionally. We will be judged against that.

If members are happy that that is the general approach that should be taken, we will move on. It will be important that members put forward amendments, if they have them. They can have them recorded and checked.

I will take members through the papers. One details the issues that the Committee may wish to consider in the context of possible changes to the Bill. The first item in the issues paper is clause 2, which is in respect of claims. The main approach that was discussed by the Committee was that applicants should have the choice. In other words, the default position should be a fortnightly payment, and in the case of joint applications, there should be the choice to receive a split payment. There are a number of issues around the recipient and the nature of who the recipient might be. If I remember correctly, the discussions around this revealed that some of it could be a split payment. It does not have to be, but it could be down to the recipient and what category of person the recipient might be, and whether it is a main carer or whatever. Again, there are a number of issues around the claims.

Mr Brady: As regards frequency of payment, the Minister stated:

> *"the IT system functionality will be developed to enable the computer system, where necessary, to split the payment between the two parties in the household and, again where necessary, to make two smaller payments a month rather than the single full monthly payment. In the majority of cases, there will be a single monthly payment to each household in receipt of universal credit, but these payment flexibilities will allow for different payment arrangements where necessary, not least where vulnerable customers will find budgeting difficult. With that in mind, I have tasked my*

officials to develop and consult public representatives and voluntary sector representatives on a set of guidelines for determining the circumstances when the universal credit payment should be split or made on a twice-monthly basis."

We should not rely on guidelines. We do not know what may or may not be in the guidelines or regulations. I suggest that it needs to be written into the Bill. The guidelines or regulations can then adhere to that, but it needs to be part of the Bill. A lot of the stakeholders talked about various issues around the regularity of payments, including the issues of the main carer, the second earner and the split payments, particularly in cases in which there is the potential for domestic violence. I throw that out to get people's views on it. Obviously, there is a default position. If people want to be paid monthly, there should be a choice. That needs to be part of the Bill as opposed to some nebulous idea that it may be in the guidelines.

If you are going to talk about vulnerability and who does or does not need more or less frequent payments, it very much comes down to subjective decisions that are made by front line social security officers as opposed to being able to follow actual legislation. That is important. I do not think that it is contentious. They have talked about the banking systems that are undeveloped. If the wherewithal is in the IT system, why do you need to rely on some untried system that they have been talking about or that they may or may not talk about? It seems to be unnecessary. Are there any views on that?

The Chairperson: OK. Patricia, I just want your guidance on some of this, if you are happy to do that.

Mr G Campbell: I am unclear about what is meant by the reference in clause 2 about the choice of fortnightly payment and then the default position. Is the amendment suggesting that the default position is fortnightly?

The Chairperson: I think so because that would mirror the views of most of the stakeholders.

Mr G Campbell: Would that mean that for what I presume would be the bulk of claimants who would simply want things to remain as they are and would not be proactive in trying to change them, that they would, upon commencement of the new system, be recipients on a fortnightly basis unless they chose otherwise? Is that the effect of this?

The Chairperson: I presume that that would be the outworking, yes.

Mr G Campbell: Right, and for them to want to change, they would have to say, "No, I prefer to have it monthly"?

The Chairperson: Yes.

Mr G Campbell: Just so we are clear.

The Chairperson: In the same way, Gregory, that the Department's initial view was that people would get their rent paid to them. That was a change, and the flexibility was agreed that the rent would be paid directly to the landlord. That is the default position; you can opt out of it.

Mr G Campbell: For me, there are two issues. One is the choice of the claimant, which would be met in that, although because the default position is fortnightly, I think that would mean, human nature being what it is, that most people would just have the default position because most people do not proactively ask for change if they have been accustomed to a particular system for a long time, rather than the default position being monthly unless they chose fortnightly.

Cost is another issue. What would the greater cost be if the default position is the one that is likely to pertain for most claimants? I have no figures, but I assume that only a minority of people would proactively say no. What is the cost implication of that as opposed to the reverse being the case? I presume that the Department will tell us in due course.

The Chairperson: I think that the Department said yesterday that there would be a handling charge or something of that nature. One thing that will guide me in this is that there will be some things that I would like to see being done, whether in this Bill or in something else. So, if that is what I want to see done, I will try to secure that. Of course, when the Committee completes it report and puts it to the Assembly, that report is not binding on the Assembly or the Department, as you know. In the course

of debate, the Minister or the Department may say that that is all very well but that it will cost x number of pounds, and that, therefore, it is prohibitive. You will get arguments about whether the amendments are appropriate, costly or involve parity. I presume that all those issues will come into the debate. It will then be up to all Members and all parties in the Assembly to vote according to the outworkings of those discussions.

What will guide me is that some things we will eventually be told cost x number of pounds. When I looked at the issue of the handling charge a while ago, the figures that you would be talking about across the whole of the North would be less than some regions in England, Scotland and Wales. The exceptions in, say, the north-west of England would be larger than the whole cohort here. Therefore, if it is accepted over there that it will cost more than the whole budget here would be for the handling of it, I do not think that that is a credible argument. However, that is my opinion. The figures will be presented to us in the debate by the Minister and Department accordingly. I expect that there will be a lot of twists and turns in those arguments. At present, my approach is that if I want something changed, I will try to get it changed. I may have to be convinced in the course of arguments that that is not sustainable or cannot be delivered. You have to make your choices eventually.

Mr Durkan: I am sympathetic to the suggestion or proposal — it is perhaps just a suggestion — but you mentioned the very point that I was going to mention about the cost per transaction. Gregory raised concerns that we do not have figures in front of us — *[Inaudible.]* — based on them. It was discussed for long enough yesterday whether we should have those figures in front of us at this stage.

The Chairperson: We should be clear that if we put forward ideas, suggestions, proposals and amendments, the Department will say whether it will endorse them and why it will not. You will then vote on it on the basis of that information.

Mr Douglas: I asked the question yesterday of how much it will cost to change the whole IT system. From what I know, the Department was saying that it is very much about encouraging people to go on to a monthly payment if they want to go into work. Is there any evidence that if people get monthly payments, it will help them when they get a job? They would probably be paid monthly anyway.

Mr Brady: Iain Duncan Smith spoke in the Houses of Parliament — I am sure that Gregory heard him — and his rationale was that if people get paid monthly, they will get used to being paid a monthly salary. The difficulty is that we have a low-wage economy where many people are paid weekly or fortnightly because they are paid the minimum wage.

The Minister said that the IT system functionality will be developed to enable the computer system, where necessary, to split the payment between the two parties in the household and, where necessary, to make two smaller payments a month rather than the single full monthly payment. That will be an integral part of the IT system, and you would presume that if that is effective and fit for purpose, you press a button and you are either paid monthly or fortnightly. I do not think that it will be a huge cost. In the context of England, Scotland, Wales and the North, that is 3% of the population. Therefore, you would imagine, to follow on from what the Chairperson said, that the cost will be greater in, for instance, the north-east of England where there will be divergence and, presumably, people will ask for fortnightly payments. The IT system has the functionality. Sammy asked yesterday about the difficulties. We will need time to sort this out, but if it is sorted out properly, I am not sure why it should be a problem.

Mr G Campbell: I am not hard and fast on this other than if the cost proves to be prohibitive. However, I want to pick up the point that Sammy made. I take Iain Duncan Smith's rationale that when people are preparing to get into work, you would like to think that the welfare benefit payment system would allow them to make that transition more smoothly by giving them their benefit payments monthly and allowing them to move into work and get their pay monthly. Where a large cadre of people, whether it is because of their geographical disposition or because of their age profile, is unlikely to get permanent employment, that is probably less of a relevant consideration. However, for somebody who is 23 and is temporarily unemployed but hoping to get employment, it may become more of a consideration. I am not hard and fast. The issue is about the default position. Should it be monthly, which will help people who may or who are likely to get into work, or should it be fortnightly, which would facilitate those who are unlikely to get into monthly paid employment and have become accustomed to more frequent payments?

The Chairperson: There is a proposition on the table that we look at an amendment to make that the default position. Is that right, Mickey?

Mr Brady: Yes.

The Chairperson: I do not hear any other people, and my sense of the Committee's discussions until now is that most people broadly agree with that. That is my clear sense, and nobody is indicating to the contrary. Patricia, does that help you to design the amendment or to check it for competency?

The Clerk of Bills: Yes. You might want to consider letting the Department know that that is your idea and see whether it has any concerns. If I am reading this correctly, you had suggested that there would be a choice of fortnightly payments, which would mean that a person could decide or be given an option one way or the other. However, you now seem to be moving to the point that everyone would move to a fortnightly payment unless you opt otherwise. Is that correct?

The Chairperson: Mickey is making that argument.

Mr Brady: Patricia, could I add that universal credit would be payable monthly or twice monthly as requested by the claimant?

The Clerk of Bills: Are you suggesting that the choice should be written into an amendment?

Mr Brady: Yes.

Ms P Bradley: For the likes of tax credits that choice is there already.

Mr Brady: Yes.

Mr Douglas: That is a good point.

Ms P Bradley: I agree with the twice monthly payments because when we read it, it seemed that you would only get that sort of payment in exceptional circumstances. If that had not been the case, we would not have gone on about it so much. Again, put it to the Minister and let him come back to us.

The part about the split payments is a must. That is in the same clause that you were talking about. It definitely has to be put in to protect the vulnerable and children.

The Chairperson: Is it the mind of the Committee that we move forward on the basis of what Mickey has suggested, subject to there being a competent amendment and the Minister's response? Are members content that that is how we proceed?

Members indicated assent.

The Clerk of Bills: I will summarise that and draft something for members that will provide a choice of payment and an ability to have split payments if you so wish.

Ms P Bradley: With a joint application?

The Clerk of Bills: Yes.

The Chairperson: There was an issue about the recipient and the main carer. I am trying to think of the precise details, but a range of organisations raised that issue. They did not all raise the same point, but some sectors argued about the recipient. That might even be on a joint application if you know what I mean. Some of those things are related, but they are not all tied together.

Ms P Bradley: The point about the joint application needs to be a little more steadfast. Those in abusive relationships will have no choice about who gets the money. We need to look at that a bit more and what we say on it needs to be a bit more steadfast. As many of the witnesses said, the person with the main responsibility of care should be the one who gets the — I do not know; I think we need to be a bit more — *[Inaudible.]*

The Chairperson: I think that that was quite strongly put by all —

Ms P Bradley: If it is left as the payment going to the household in which there is an abusive relationship, you can rest assured that the abuser, whether the male or the female, will take control of the money. It could be either/or.

The Chairperson: That was quite universally put.

Mr Copeland: I want to make sure that I am reading this correctly. Where a joint application is made, they will be able to choose to receive a split payment. Does that mean that they, as individuals, can choose to have a monthly or a fortnightly payment? Do you follow what I mean? In other words, if the payment is split and one person in a couple says that they want it fortnightly and the other wants it monthly, will that option be available?

The Chairperson: You might have to look at that as a consequence. That may or may not happen. I do not know.

Mr Copeland: Complications.

Ms P Bradley: You are already complicating things.

Mr Copeland: I know of people who have to make mortgage payments and who may like to do it like that. I was asked to ask that question.

The Committee Clerk: I just want to clarify that there are at least two distinct issues here. The first is that the default position will be that there will be fortnightly payments. The second is the split payments. Perhaps the view of the Committee might be to make that the default position as well so that when a joint application is made the payment will be split.

The Chairperson: There are three related issues regarding claims. There is the frequency issue, which we have dealt with; there is the option for split payments; and there is the option as to who the money goes to in the first instance in a joint application, and people have, largely, argued for the main carer. That is the point that you were making, Paula. Therefore, there are three issues, and we have dealt with the first one, which is the frequency. We are now on to the question of split payments. If I remember correctly, people have agreed that there should be the option for split payments. However, there is also the third issue, which is about the main carer being the recipient in a joint application. Is that right?

Mr Brady: We have some suggestions on that, Chair, as well.

Ms P Bradley: I would say so, Chair.

Mr Brady: This is one that I prepared earlier.

The Chairperson: Just one second, Mickey.

The Clerk of Bills: With regard to the recipient option, if you were moving towards a potential amendment, there would need to be some discussion about how you would define "preferred recipient". To refer to our discussion last week, there are other options for the Committee to raise a concern, make a recommendation or seek an assurance from the Minister as well as an amendment. It may be that you want to have a discussion about other options that you feel are suitable in certain circumstances.

The Committee Clerk: At the risk of too many cooks spoiling the broth, it is on the back page of the issues paper and is referred to as general approaches that the Committee can take. That lays them out in broad terms.

The Clerk of Bills: Members can do more than one of those or they may have a mixture. For example, you might decide that you want potential amendments on the frequency and the split payment in relation to the recipient. You may want the Department to do more work on that and it may be suitable for a recommendation, if that was the way that you were moving.

The Chairperson: As I said earlier, we have a number of options. At present, we are going through two or three, and we seem to have agreed on the first two. We have to see whether those amendments are competent and what the Department's responsibility will be.

Mr Brady: My point deals with gender equality and personal wealth, as some stakeholders talked a lot about that. It is where one or both members are in paid employment with the payment being made to the main carer or second earner. With regard to the split payments, members will be coupled separately in cases where both members are not in paid employment, but the payment will be split on an equal basis — or words to that effect. That is dealing with the split payment and dealing with the main carer and second earner, which is usually the woman.

The Chairperson: Obviously, those are options.

Ms P Bradley: I wanted to talk about what we were saying before Mickey came in there. Would it be a better idea for us to go through all of this today and decide between us what we would like to see changed and then look at it after that to see what we would want to be in an amendment or in a recommendation? We could just look at the changes first. Would it be easier to work it that way rather than trying to pick something and say that we are doing that?

The Chairperson: If I read the Committee, it seems that people have agreed on the need for greater frequency as a choice; they have agreed split payments as a choice; and it seems that we are now agreeing on the main carer or a similar format as being the recipient in a joint application. There may be other issues. It seems that there are those three areas of agreement. As I said earlier, Patricia will look at those over the next day or two for competence and for amendments, and the Department will give us its formal response. Then we will formally vote on whether you want those amendments.

Ms P Bradley: That is better.

The Chairperson: In a way, that is what you were saying, Paula.

Mr G Campbell: Chairman, the issues set out on the back page are very helpful. It is set out in bullet points and covers the issues fairly comprehensively: you can put forward an amendment, written clarification, etc. However, if we went through the issues and then came back and categorised each — if we are definitive about a series of them and we want to put forward amendments, then we do that. If another series of them requires further elaboration, they will fall under a separate category, and so forth, rather than dissecting each individually and going through a navel-gazing exercise in each sector to see where they fit. That may help us to progress the clause-by-clause consideration.

The Chairperson: Sorry, Gregory, I do not totally follow that. I am working on the basis that we consider clause 2, which is around the claims, and then move to clause 4. For example, three issues came up in the first section around clause 2, and people have agreed that that is what they want to go to, and the Department may, for whatever reason, say no or yes. In theory, the Department could say next week that it can embrace two of those but not the third. It will then be up to members to formalise and vote on the proposed amendments.

Mr G Campbell: My issue is really one of housekeeping. We spent some time considering clause 2 and now move to clause 4. In relation to where clause 4 sits in relation to the bullet points at the back of the paper, are we sufficiently constrained to say that that definitely requires an amendment and here it is, or do we need more information? Rather than repeat clause 2-type discussions to and fro for 40 minutes on every occasion, we should say where the clause fits in relation to the bullet points. If the clause fits in bullet point 3, then stick it in bullet point 3 and move on to the next one.

The Chairperson: OK, let us try to work on that basis. Members have the papers.

The Clerk of Bills: Admissibility has been mentioned a couple of times. Ultimately, the question of admissibility is for the Speaker to decide. We will draft proposed amendments and advise the Committee on whether there is concern about admissibility. The Bill in general is very widely scoped. Therefore, some of the admissibility criteria will relate to whether your proposed amendments are relevant. The fact that the Bill is so widely scoped will make the admissibility criteria a bit easier. I will advise you on that as time goes on. I am looking for you to indicate areas where you are leaning towards submitting an amendment, just to give me as much policy framework as you can so that I can come back with something on it.

The Chairperson: Based on the latter part of our discussion, we will work through the paper before us. As Gregory suggested, where people put forward amendments, you will consider whether we need an amendment, whether we need more information, whether the Department might embrace our concerns or whether it is sufficient that the Committee deals with it by way of a recommendation to the Assembly. We will work through the paper, but the paper is not exhaustive and people need to be mindful that we will return to anything that they are interested in when we complete this exercise. Are members content that we have dealt with clause 2 on the claims elements?

Members indicated assent.

The Chairperson: Clause 4 is "Basic conditions". There was a fair bit of discussion around the fact that a claim would fall completely if one person in a joint claim failed to sign a commitment within a specified time-framed cooling-off period. I recollect that the Committee's view, which I share, was that that was not acceptable. That is one of the issues. Do members have a view on that?

Mr Brady: Yes. We have been told that if one of the couple does not agree to sign, there could be a four-week cooling-off period during which no money is paid. Would it not be possible for the willing signatory to make an application as a single claimant and have responsibility for housing costs and children tied to them and not the other person? There is a cooling-off period, but you have to assume that if someone, for whatever reason, is unwilling to sign it initially, it would be brought forward by the Department. Four weeks seems grossly unfair on the person who is willing to sign the claimant commitment and fall into line with the requirements that are set by the Department.

The Chairperson: In the evidence that we received, people were generally, if not universally, of the view that it would be very unfair to penalise a claimant who was compliant with the commitment for someone else's failure. Are members agreed that the Committee does not think that that is fair and that we want that rectified?

Members indicated assent.

Mr Brady: I do not want to be seen to be dictating the pace, but this is something that I have gone through and thought about. It is predicated on issues that stakeholders have discussed with the Committee. It is not out of kilter with what has already been discussed by the Committee and, indeed, brought to the table by stakeholders.

The Chairperson: In fairness —

Mr Brady: It is inherently unfair to penalise someone who is willing to do something.

The Chairperson: The Committee agrees; you can rest your case. In fairness, the Committee has deliberated thoroughly on these matters, and members have made their positions clear. It will boil down to how many amendments people want to make and what recommendations they want to make on a mixture of any or all of the bullet points on the back page.

Members and stakeholders were keen that third-party verification be available.

Ms P Bradley: I am definitely for that. At present, your social worker or whoever else can verify who you are. As we said yesterday, there are many cases where people have had to leave their house without all the documentation that they need.

The Chairperson: Are members content to agree that?

Members indicated assent.

The Chairperson: The third point is the concern about 16- and 17-year-olds coming out of care. People are looking to see whether they can be added to the list of specified groups.

Ms P Bradley: Yesterday, the Department spoke about those coming out of care. Until what age does the Department of Health, Social Services and Public Safety have to look after someone coming out of care? What is its cut-off age? Is it 18?

Mr Brady: It was18.

The Chairperson: It is 18, I think.

Ms P Bradley: Up until the cut off, the Department of Health is the one that financially supports you if you are coming out of care; it is not the Department for Social Development.

Mr Brady: There may be other 16- and 17-year-olds, and if those kids have signed up for schemes but have not yet got a placement, it is unfair that provision is not made for them. It may not apply to many people. Recently, I had an issue in my constituency where social services in conjunction with a housing association will have a number of flats that children can move into and move on. It will be well staffed and looked after. There are kids who are estranged from the family home for whatever reason and who do not come under that category.

Ms P Bradley: They will be under the health service.

Mr Brady: It is incumbent on all of us to have a safety net for all those vulnerable people who have a statutory obligation to be looked after.

Ms P Bradley: I agree. There are many young people who are not academic. We see the figures for children leaving school at 16, some of whom cannot read and write for various reasons. It could be through dyslexia, for example, and we need to protect those young people as well. In an ideal world, we want everyone to stay on at school until they are 18. However, that does not happen.

The Chairperson: Fair enough. I am getting the impression that there is general agreement on this.

Mr F McCann: This year, it was announced in the Assembly that 36,000 young people left school with no GCSEs.

The Chairperson: Under clause 4, "Basic conditions", the Committee has three points of concern. Are members content that they want the Bill amended to reflect those concerns?

Members indicated assent.

The Chairperson: Clause 6 relates to restrictions on entitlement. People are concerned about the prescribed period for which payment will not be made, which is that such a prescribed period may not exceed seven days. If I remember correctly, that also related to the underlying entitlements and passported benefits. If I am wrong about that, I am sure that I will be corrected. Does anyone have a specific recommendation or amendment on that?

Mr Brady: People would not get paid in under seven days, so there was going to be an issue around passported benefits. That is bound to be a problem. That concern was expressed by a number of stakeholders and members.

The Chairperson: Is there a remedy or proposal?

Mr Brady: I am not sure, but it needs to be looked at. Perhaps there could be some discussion around the issue.

The Chairperson: Members had shared concerns about entitlement. Do you want to reflect on that or ask the Department to come back and clarify?

Mr F McCann: Mickey has laboured the concern for a considerable time that 10p could knock somebody out of passported benefits. We probably need clarification on that. Martina touched on that yesterday during one of the discussions.

The Chairperson: Martina, are you in a position to elaborate on that?

Mr Michael Pollock (Department for Social Development): We can clarify that although there may be no payment, the entitlement would persist. That would preserve entitlement to passported benefits. That may give you some assurance.

The Chairperson: Thanks for that.

Members will have heard that there is some assurance there, which is part of our guidance as to how we might deal with the issue. We have an assurance. People may want to test that at some point. You have dealt with that by way of an assurance from the Department. I remind members that they can table an amendment in Committee or in the Assembly. That option is still open.

Mr Douglas: Chair, we have been through all this stuff before. I am struggling to recall what my notes were at the time and what the issues were. Is it possible to get the Bill folder? There are so many things that it is hard to remember what the issues were.

The Chairperson: The large Bill folder is available if any members want to see it. Members should feel free to ask if they are not sure about something. This is an important part of your statutory responsibility in the Assembly, so make sure that you follow up any concerns. If members are happy enough, we will move on to clause 10, which is the issue of responsibility for children and young people.

There is some concern about the possible loss of the disability element of tax credit. The Department has indicated that for those in receipt of it, the higher earnings disregard and the taper should make up any reduction in income as a result of the change. However, new claimants will not be able to avail themselves of it.

Mr F McCann: Some concern was voiced yesterday that people who are currently on it will be entitled to it, but there will be a difference for people who go on it. Any change in circumstances for those already in receipt of benefit will knock them out of the benefit. I think that I raised that issue a couple of weeks ago. So it is not as straightforward as it states in the paper. Any change of circumstances at all will be seen as those people coming out of that benefit, so it will eventually have an impact on the vast majority of people coming through, and there will, therefore, be a reduction in the amount of money that they receive.

The Chairperson: I suppose that that could be new claimants or new claims by different claimants. It is more appropriate to state that. That is a consequence, Fra, and you have rightly drawn attention to it. Michael Copeland, were you looking in?

Mr Copeland: No.

The Chairperson: You have some of the concerns in front of you. Are there any suggestions, proposals, suggested amendments or considerations that you want the Department to take on board?

Mr F McCann: For clarification, how many people will be affected by it immediately, and how many people will be protected in the short term?

The Chairperson: I presume that the people "protected", as you describe it, Fra, will only be those who are currently receiving it, but they are protected only until they make a new claim.

Mr F McCann: It is short term.

The Chairperson: They are protected as long as their claim does not change.

Mr F McCann: How many people will be affected by it?

The Chairperson: I presume all of them at some point.

Mr F McCann: Of course. I am asking for a figure.

The Chairperson: Do we have figures?

Ms Martina Campbell (Department for Social Development): I think that I gave you figures yesterday on the number of disabled tax credit claimants who are in receipt of the disability premium. I do not think that I gave you figures, and I do not have them with me, on the number of people currently getting the disability premium within income support, for example. We would have to request that from the agency.

Mr F McCann: Thanks very much.

Mr Brady: The change will mean the difference between about £58 and £27. It is a fair amount of money, and it needs to be addressed in more detail. The figures on the number of people affected will be important. It is over £20 a week. The rationale is to spread the money out more evenly, but if a child has a disability, he or she has a disability. The purpose of the severe disability premium is to enhance the quality of such children's lives. Essentially, you are lessening that by taking away a sum of money.

The Chairperson: How do we want to proceed? We have a number of options. We can table an amendment, a statement of concern or make a recommendation. We could do a number of things. We should remind ourselves that, as Gregory pointed out earlier, we have a number of options at every stage of the way.

Mr Copeland: We need to establish the cost before we can do anything. That will be a repeating theme throughout, because we do not have the information to take the decisions.

The Chairperson: So members are expressing concern about the loss of money but want figures before we make a formal decision.

Clause 11 deals with housing. The key issue, again, was underoccupancy. There was concern that if people take a part-time job, they would lose the support for mortgage interest. The Department outlined that that would be to do with earnings disregards, tapers, and so on. There is also an issue around the definition of a "room". The policy intent was outlined by the Department. I was very struck by the Housing Executive's presentation to the Committee, but *[Inaudible.]*

Mr Copeland: There are also issues around people who have had their homes adapted by the provision of a disabled bedroom, which leaves a bedroom free. It is rather unjust to ask them to pay a levy on the free bedroom. Again, it comes down to cost.

The Chairperson: There are options, although, later this month, there will be an intervention from David Freud, so people might want to take that into consideration. I spoke to the Minister about the issue. I was concerned by his recent assertion that he would not change this, because it seemed to fly in the face of meeting with David Freud and looking for flexibilities. I am sure that they are still looking for flexibilities. Again, take that into account. Does anyone have an amendment to propose?

Mr Brady: The straightforward option would be to remove the underoccupancy provision. The Minister talked about Freud coming over to assess the impact, but he has already pre-empted the outcome of that visit with the information he gave to a correspondent last Friday.

One of the big issues with underoccupancy here has been the lack of suitable alternative accommodation. It would not be going too far to introduce words such as "unless suitable alternative accommodation is available" in the Bill. The Housing Executive made a very good point that if the measure were introduced in the morning, it would not be able to implement it.

Another issue is the nature of housing in the North in general and particularly in places such as north Belfast. In normal circumstances, it would be considered that there is suitable alternative accommodation in north Belfast. However, we do not have normal circumstances, and that is part of the difficulty. That is why there cannot be a one-size-fits-all provision. The housing situation in the south-east or north-east of England has no particular bearing on the housing situation here. That has to be borne in mind.

Mr G Campbell: From what I can see, under point 5, we are seeking a response, although the Department has been fairly clear. This is a key issue, and I agree with the point that has been made. If push came to shove and this was implemented next week, there would be a serious issue with the

practical outworking of the policy in that the housing providers would not be able to provide accommodation because there is not the practical availability of suitable property.

We need something from the Department. Receipt of that, and whatever Lord Freud elaborates on, should take us to the point at which we have to make a definitive decision on how we try to remedy it. As it stands, it will be exceptionally difficult to implement.

The Chairperson: From all the discussion so far in Committee, I take it that most people do not like the idea of underoccupancy for the reasons that you outlined, Gregory. People do not see it as fair or practical and think that it will have serious repercussions. Therefore, at this stage, the Committee does not support that provision. As a result of David Freud's intervention, the Executive may come up with something or the Department may embrace something. However, the Committee needs to state its mind on the provision. I am taking it that the Committee does not like the underoccupancy provision in the Bill.

Mr Durkan: There are huge practical problems that people have outlined not only today but many times previously. There will be massive financial implications in implementing the policy. It is worth establishing the cost of not proceeding with the underoccupancy provision so that it can be compared with the cost of proceeding with it. That is important when so many people will be made homeless as a result. In addition to the massive financial cost, there will be a societal cost.

The Chairperson: That is the displacement cost that was referred to.

Mr Brady: There are a number of options, one of which is to not introduce it at all. The second option deals with the problem of having no suitable alternatives. If you are going to introduce something about there being no suitable alternative accommodation available, you will have to write in something to reflect the particular circumstances that prevail in the North. That would have to define the criteria for suitable alternative accommodation. You have to take into account the existing housing strategy; the legacy of segregation; the right of people with disabilities to independent living, which has already been talked about with regard to adaptations; people's informal caring responsibilities; and the impact on family life. In many cases, with this legislation, you may be talking about displaced costs. You will be talking about people possibly being made homeless. There will be an impact on health, so costs will shift to other areas.

There are other options, such as underoccupancy that allows one spare room without the loss-of-housing-benefit penalty or the exclusion of box rooms. I know that the Department talked about 4 feet by 10 feet, which is 40 square feet. There are issues that may open up that discussion. In some cases, people would end up sleeping diagonally in some of those small rooms. I think that the Department had originally talked about 6 feet by 10 feet, which is 60 square feet. Certainly, the most up-to-date size that we have is 40 square feet.

Mr Pollock: It is 40 square feet.

Mr Brady: So the size of a box room has been reduced. Those are just suggestions, Chair.

Mr F McCann: I want to follow on from that. Mickey has covered some of the issues. The clause on underoccupancy highlights the fact that people do not understand the way in which housing operates here. There are a couple of issues. The number of people who will be affected is 32,500. Over the next two years, only *[Inaudible.]* units will be built to accommodate that. Since its introduction, around 12,000 people have already been affected by the shared room allowance, which taps into the discretionary payment fund. So people who are in private rented accommodation tap into the discretionary payment fund. Even the increase, if you have 32,500 people, is certainly not enough, but it is short term. So you will be picking that up.

When people from the housing associations were here as witnesses, they said that although they oppose it, they still have to get money. That was in terms of evictions. At some stage, there could be large-scale evictions. In the survey that was conducted in Portadown and Lurgan, the vast majority of people said that they would not move. You will end up with direct confrontation between tenants and housing providers. It throws up all sorts of difficulties. All that needs to be taken into consideration.

Mr Douglas: On Monday, in response to your question, Chair, the Minister said:

"Delaying this change will directly cost the Northern Ireland Executive up to £9 million."

It is interesting. My main point is that he went on to say:

"I will be happy to discuss with the Committee a range of measures that we will bring forward that make sure we can address this and mitigate the difficulty without the burden of a further £9 million on the Executive."

I am sure that the Committee to which he refers is us. He is saying that he would be willing to discuss that. I wonder whether there is an opportunity. I know that time is running on for some of the issues. It would be good to have an eyeball-to-eyeball discussion with the Minister on some of those issues. The Department has done a good job. It would be very helpful if we could get the Minister to discuss some of the key issues. Have you suggested it?

The Chairperson: I will tell you what I was going to suggest. A number of members have already raised the issue of underoccupancy and the impact that it is likely to have. The shared view in the Committee seems to be that members do not like it. They are very concerned about it. They share concerns that have already been raised by key stakeholders. We would prefer that that underoccupancy provision was not in the Bill. So, as I say, we are getting into those kinds of arguments. You can see that where a number of those issues are raised, there is broad agreement. There is no real opposition to any of them. So on that issue — I will bring in Gregory in a wee second — people around the table seem to be saying universally that they do not like it. They want the Department and/or the Minister to deal with it. How they deal with it is —

Mr Douglas: Chair, I do not think that there will be broad agreement on all those matters. We are not quite sure what the implications are, even at this stage. However, there are certainly broad concerns, particularly on that issue. As I think that I said yesterday, that is the main issue that people have been asking me about, whether it has been in my constituency office or up here.

The Chairperson: The only option that we have, in that regard, is to make clear our opposition to it. It is then up to the Minister or the Department to come back with a response. You have outlined some of that, Gregory.

Mr G Campbell: It is a general point, Chair. We are coming around to the issue that is the elephant in the room. I think that there will be a broad consensus on what we would like to happen and the changes that we want in the Bill, but when it comes down to it, there will be issues — whether it is underoccupancy or a series of other things — on which the Department will say, "Yes, we can do that, and if we do it, here is the cost." Sammy quoted what the Minister said.

At that point, every one of us can say that that is still our position. However, the man sitting down there has to take a decision. He is the man who says, "If I do what the Committee wants, I have to go and find £x million." We can all say that we think that it is right that he should do it, but he has to go and get the money from somewhere. That is the bottom line. Whatever we do, there are consequences, alternatives, choices and costs. I am more than happy to go along to try to get a consensus to make what is, initially, a partly unacceptable Bill more acceptable, but at the end of it, a hard choice has to be made, and we cannot duck it.

The Chairperson: You are spot on. The process of working here is that we are saying what we are unhappy with, or what we want to see done. Obviously, there may be competency or admissibility issues, as the Clerk of Bills has described it. The Department and/or the Minister will come back and say, "Yes, that is a very good idea, but it will cost too much" or "It cannot be done."

Equally, it is also up to the Minister to seek to get that flexibility. Some of it may not cost money. He may have a conversation with Mr Freud and get one of those flexibilities that he said he would grant. So it is conceivable.

The Committee needs to state clearly what it is for and what it is against. We may eventually have to take decisions, which will undoubtedly involve hard choices. You are absolutely right on that, but the Committee needs to have a view on what it wants to do and what it wants to see happening. I take it that, at the moment, members are opposed to the current provisions on underoccupancy. That is what we are stating. So it is up to them to convince us otherwise. We will then take a formal decision on it, whether it means opposing that clause or whatever the precise mechanism might be. Subject to the response we receive, we will return to clause 11 formally. Is that fair enough?

The Clerk of Bills: It might be helpful if the Department can clarify that voting against the clause refers to clause 11. There is no reference that I can see to "underoccupancy". So I assume —

Mr Pollock: It is clause 69.

The Clerk of Bills: I was looking at clause 11 *[Inaudible.]* regulations.

Mr Pollock: Clause 11 deals with housing costs.

The Chairperson: Will whoever is going to address that come to the table to facilitate Hansard? We are not picking up the sound. I am sorry, it is not your fault. The sound in the room is not good.

Mr Pollock: Clause 11 deals with housing costs under universal credit. The clause that introduces underoccupancy is clause 69.

The Chairperson: Are you happy enough with that, Patricia? Thank you for that, Michael.

Mr F McCann: I want to make a short point. I accept Gregory's point and what you have said. We need to work towards agreeing flexibilities that allow us to deal with the issue. We also need to work out the consequences of our accepting the Bill. We could be dealing with large-scale evictions. A figure of £18 million has been quoted as the cost; Sammy quoted £9 million. However, if that is the consequence of saving people from being evicted, we must pick up the bill. We need to find the money.

The Chairperson: I do not contradict that for a second, Fra. At the moment, the Committee has made it clear that it is against that provision because of the impact that it will have.

Mr F McCann: Gregory has said that there is a cost consequence. You can look at the cost consequence both ways. The cost of our not dealing with that and its leading to evictions or serious problems may be a cost that we want to bear.

The Chairperson: That is right, but it is subject to the response that we receive.

Mr F McCann: I appreciate that.

The Chairperson: Ultimately, those are the considerations on which you will have to base your vote. Is that fair enough?

Mr Douglas: During this process, people have come to us and suggested things that have an attached cost. At some stage, it would be good to know the overall cost of some of the things that we want to implement, never mind clause 69.

The Chairperson: The second point is about support for mortgage interest. That concern was fairly widely debated. The concerns included people taking part-time work that may exclude them from mortgage interest support. The Department argued that that would be catered for by way of earnings disregards and a taper. Do members have a view, recommendation or proposal?

Mr Brady: Mortgage interest support has already caused problems for people when it kicked in about a year ago. This element of the Bill will cause increasing problems. We have seen the results of that. It was mentioned yesterday that Spain has stopped evictions for two years because of the number of people being affected. I have no doubt that if this provision is introduced, it will cause more problems. It is being suggested that if people get a job, at least their housing costs would carry on for at least four weeks or whatever.

The difficulty is that if people get any type of work, their mortgage interest support stops, and they are also expected to look for a better-paid job. We all know that mortgages do not simply stop. They carry on, so people are not able to say to a building society or bank, "I will be OK in two, four or six weeks' time or in a couple of months." A building society or bank will look for their money relentlessly. For many people, a mortgage can end up being a millstone around their neck, and therein lies the

difficulty. A building society or bank will usually give people about three months, but if people are not in a position to keep up their payments, they are in serious trouble.

Mr Douglas: Was it part of the problem that if someone takes a part-time job for even 10 hours a week, he or she would lose their mortgage interest support?

The Chairperson: The Department said that that is offset by earnings disregard and tapers. I am simply repeating what the Department said. However, you are right; it is about part-time work.

Mr Douglas: We can talk about the current situation, but we do not know how economic conditions will change over the months and years. More people could lose their jobs.

Mr Brady: We have talked about this issue for ages and, with respect, I am not sure that even the departmental officials know what tapers are all about. Nobody seems to be clear. We talk about earnings disregards, which is fairly easy to understand, but tapers will depend on how many hours people are working, how much they are earning, and so on. Apparently, you go in one end bad and come out the other end glowing. I am not sure of the concept of tapers, which is an important part of mortgage interest support. We are being told that if you go in one end on benefits or part-time work, you will come out the other end much better off. That is what universal credit is being sold on. I am not sure how that works in practice.

The Chairperson: I am trying to reflect accurately the views of the Committee overall. My understanding is that the comments expressed by the Committee show that we are concerned. I have not heard any contrary arguments to that. The policy intent is to encourage people to go to work. If people take a part-time job, they will lose their mortgage interest support. However, the Department said that that is offset by earnings disregards and the taper. Why do we not ask the Department to come back in the next few days and tell us more about the taper and earnings disregards and how they will actually work?

Mr G Campbell: That is under point 5.

The Chairperson: The Committee is concerned about the implications of this. We do not like it and so want to make sure that it is addressed. We are told that it can be addressed by the taper and the earnings disregards. So let us have that fully explored. Is that fair enough?

Mr F McCann: I asked the Department yesterday to come back to us about people entitled to income-based jobseeker's allowance who will lose all mortgage help.

Mr Douglas: Chair, may I just check something that I am not quite sure about? We also talk about the potential for a review. Can we include that as part of the whole process in case there is a major change in the economic climate? Greece going belly-up, for example, would put pressure on all of us.

The Chairperson: There is obviously the whole question of monitoring, and so forth, that will have to be dealt with in the Bill. We can also make it clear that the Committee's view is that all of this needs to be reviewed. We will come back to that at the end of this more mechanistic approach, if members are happy enough with doing that.

I am working off the issues paper that we have in front of us. The definition of a box room has already been discussed. There is concern about what a box room is, how it is defined and how that impacts on underoccupancy. I take it that people have expressed their concerns and that they will be in the mix of our discussions.

If that is OK, we will move to clause 12, "Other particular needs or circumstances". The removal of severe disability payment has raised concern. Are there any views or representations on that?

Mr Brady: People have expressed concern about the severe disability premium being removed.

The Chairperson: Will members speak up?

Mr Brady: The severe disability premium was to enhance the quality of life for those with severe disability, and taking it away makes it more difficult for them to manage. Much the same as disability

living allowance (DLA), which will become the personal independence payment (PIP), it is there to give people a better quality of life by enabling them to pay for things that they could not normally afford. Again, the severe disability premium is specifically for people who live alone or with another disabled person, and its removal is a matter of concern.

Mr G Campbell: That will be under point 6, then, Chairman.

The Chairperson: OK, the suggestion is that we will deal with that by way of point 6, which is an expression of our concern. If members are happy with that, we will move on.

Clause 26 deals with higher-level sanctions. Three points of concern are highlighted in the paper, but members may want to raise others. There is a general concern about whether these sanctions are disproportionate. There is a specific concern about the fact that a convicted person's prison sentence will be coupled with a three-year sanction. Then there is the concern that the five days allowed to present "good reason" is not long enough. That concern was presented to us by a range of stakeholders who suggested that the time allowed should be more like 15 days. If I remember correctly, the Department said that it may accept that and, where good cause was proven, it would have some discretion. However, I am not 100% sure on that.

Mr Brady: The difficulty with the sanctions proposed in the Bill is how draconian they are. There is compelling evidence from various organisations' research that sanctions do not act as a deterrent to somebody who wants to commit social security fraud on the scale that these sanctions will presumably try to stop.

The question was asked yesterday about doing some sort of comparison of the current sanctions regime with the proposed one. Perhaps that needs to be done. We need to know what effect sanctions actually have, because in my experience over years of dealing with people on benefits, sanctions did not really have much effect. Organisations have done research that indicates that they are not a deterrent.

Mr Copeland: It is also important to note that, under the current regime, fraud is coming down, which is to be welcomed. I would be keen to know the differences foreseen or implied in changing the regime.

The Chairperson: Quite a number of stakeholders, if not all, raised the issue of the higher level of sanctions being disproportionate. Some argued that, obviously, some people are wilful but that there are many others who would be classified as vulnerable in some way or other, and it is they who are more likely to fall foul of these rules.

Mr F McCann: It was said yesterday and again today that we await information from the Department on the amount of people who have been sanctioned. It is my understanding that there are two different methods of sanction. People can be reported by the Department for Employment and Learning (DEL) to the Department for sanction, and a decision-maker or supervisor will look at that and decide whether a sanction should be applied. I take it that that is the way that it works. That will give you the information that you need to make a decision on whether this is even necessary.

The Chairperson: Well, members asked the Department yesterday to come back with information about the current sanctions regime, how it might change and what they think the differences might be.

Mr G Campbell: I was going to suggest that, under point 3, we seek correspondence from the Minister about the severity of the sanctions to see whether there is the possibility of a variation.

Mr Pollock: As Fra said, we are gathering information. We have some, but it is only about the failure to attend cases. We can provide that to the Committee Clerk for your information, but we will try to come back with more. You were asking for information over a three-year period.

Mr F McCann: That would give us a complete picture. We are being asked to make a decision here. There was a debate in the Assembly three years ago, and it was agreed to bring in sanctions. Complete information should give us a breakdown of the number of people whom it was proposed to sanction and those who have been sanctioned over a period. That should give us an idea of how sanctions have worked.

Mr Pollock: I should say that there will be qualifications on some of the information. When you talked about DEL referring people, as we explained yesterday, ultimately, the decision on the sanctions should be for the decision-maker in the Social Security Agency. For long enough, a lot of people were not being referred to the decision-maker, and DEL was taking the decisions itself, effectively. So there will be a qualification on some of the figures that we provide, but we can explain that to you at the time.

Mr F McCann: I remember an answer to a question that I raised with the then Minister, which indicated that, even over a short period, thousands of people had been reported by DEL for sanction but only about a third were actually sanctioned. It would probably be easy enough to get that information because there seems to be a fairly close working relationship at that level between DEL and the Department for Social Development.

Mr Pollock: I am looking at figures for "failure to attend" cases from March to August this year. There are totals of, for example, fortnightly job search reviews not attended, non-attendance at a work-focused interview and non-participation in a work-focused interview. A total of 5,407 people could have been sanctioned; a sanction was imposed on a total of 1,717. Those are the sorts of figures, but, as I say, I would rather you looked at the information in its entirety.

Mr F McCann: I appreciate that.

The Chairperson: In general, there is a serious concern about the proportionality of the sanctions. We will get that information back from you, Michael, and thank you for that. However, there is a proposal that we write to the Minister to ask him directly whether he is prepared to look at variations in the sanctions regime. Is that the proposal? We will wait for the information. That is, in a sense, two responses.

Mr Brady: Initially, when the sanctions were introduced in the previous mandate, we were told that they would not be used that often, but the figures indicated that they were. The difficulty is that, once enshrined in legislation, they can be used. There is no empirical evidence that sanctions work.

Mr Douglas: We also discussed the increase in mental health issues in Northern Ireland, particularly people who have depression and others with learning difficulties. The Department said that, where that is the case, it would be flexible and sensitive. That is in the mix.

Mr Copeland: The guidance, or standard operating procedures, that the decision-makers apply will colour my view. I have experience of two or three such cases. Two cases were of people whose stated condition was agoraphobia, which meant that they could not come out of the house. Both were sanctioned before their cases were reconsidered. Generally, the cases that I deal with are not of people who just could not be bothered attending; they either cannot be contacted or are not capable of understanding the importance of attending. After intervention, the system has righted itself, but my concern is about what happens to those folk in the period between an unsound decision being made and subsequently being rectified. I am concerned about what people have to do to keep the wolf from the door, for want of a better phrase. The guidance will be of massive significance to me, because the decision-maker is merely applying a set of circumstances to the guidance and giving an opinion based on both. It is important that everything is seen in context.

The Chairperson: You make a fair point, but it is important to remind ourselves that this is an enabling Bill. Rightly, therefore, people are paying due attention to the fact that whatever goes through in the Bill will enable a lot of other things. Some of those things may be addressed by way of regulation and guidance, and it is important that we consider all that in the round. Sammy Douglas made that point a minute ago. My thinking on this is governed by the fact that it is an enabling Bill. If I am supporting the clause, I am aware that it will enable certain things to happen at a later point. So I will need to satisfy myself that what I am enabling will be appropriate and fair. Are members happy enough that we have dealt with that?

We will move to clause 38, which is about the capability for work or work-related activity. All members had a major concern about the primacy of medical evidence in assessing people. That is a fundamental issue. I do not think that I am wrong in saying that we have had a lot of discussion on Atos. Concerns have been outlined about that process and how a similar situation might arise when moving from DLA to PIP. It has certainly been an area of focused discussion between the Committee and a wide range of stakeholders.

Mr Brady: People are being assessed because they have a particular condition. Let us take the migration from incapacity benefit to jobseeker's allowance. People were on that benefit because of a medical condition. The condition may be long term, chronic or short term. If the medical evidence is available to the decision-maker, it seems common sense that they can use that to make an informed decision. At the moment, we have a tick-box exercise carried out by somebody who really does not know the person.

People should be assessed by a health professional who has the competence to assess their physical and mental capabilities. I am sure that all members are hearing stories about this in their constituencies. Lord Morrow mentioned one case in which somebody was either blind in one eye or had lost an eye. I have had people coming into my office wearing medical aids given to them by Musgrave Park Hospital, and the nurse who did the tick-box exercise did not know what those aids were or their purpose. The assessor needs to be competent.

The primacy of medical evidence would circumvent a lot of the problems that people experience. If you have good enough medical evidence, it makes it easier for the decision-maker to come to an informed decision. There has to be some process put in place. If you attend a consultant, that is in your GP records, all of which are now computerised. I found that when I was representing people at appeals, there was a particular code that the doctor can press on the computer that prints out the consultants' reports. That makes the information much easier to access. There is no huge logistical exercise involved. It is common sense, and it would not cost anything.

The Chairperson: Getting to the nub of this and trying to summarise, I think that there seems to have been universal concern about the need for medical evidence to have primacy in assessments. Is that a fair reflection of what people are arguing? That needs to be written as a formal amendment or recommendation. It is up to the Committee to decide that. We have laboured the point with the Department. I have never received satisfaction that medical evidence will have primacy. That seems to be the mind of the Committee.

On that basis, we move on to clause 42, which concerns pilot schemes. Yesterday, we discussed at length the need to have pilot schemes here. If I remember correctly, Martina, you made the point that if the Bill is enacted, you will be able to have bespoke pilot schemes here. I think that the concern was expressed by members that the Bill was predicated on a range of pilot schemes, none of which was conducted here.

Mr Brady: In the initial stages of welfare reform, back in 2007-08, pilot schemes were introduced in Oxfordshire, Manchester and a few other places in England. Alex Easton, who sat on the Committee at that time, asked why there was not one here. If you are talking about parity, which is comparing like with like, we should have been entitled to one here. No valid reason was given for not introducing a pilot scheme here. Most of the pilot schemes have been in the south-east of England and were predicated on very expensive rental costs, different types of housing, and so on. It goes back to the whole argument about the prevailing conditions here being somewhat different — in many cases, very different —from there. Why did we not have a pilot scheme?

The Chairperson: Point 6 allows us to express our concerns about that. That has been done. I presume that we want to make sure that pilot schemes are run here as part of any future policy deliberations.

Mr Brady: Yes, but if the Bill is enacted and pilot schemes come along later, it does not matter what conclusions they come to because it is a fait accompli. We are now going through the Bill and there has been no pilot scheme here, but we can express our concern. If, as we are told, the Bill is predicated on what happened in the south-east of England and other places, it does not reflect the circumstances that prevail here.

The Chairperson: I do not disagree with a word that you are saying, and I do not think that anybody else does either, but we have to deal with the Bill that is front of us. I am simply saying that there is an option to express serious concerns about that, and members seem prepared to do so. However, we also have to reflect on whether we need to make it very clear that, for any future policy decisions, pilot schemes need to be done here. That would mean requiring proper evidence from here, whatever the policy issue.

The Committee Clerk: The Committee could express its concerns that Northern Ireland has not been included in pilot schemes to date, and it could make a recommendation that any future pilot schemes include Northern Ireland.

Mr F McCann: *[Inaudible.]* It does not reflect the conditions here in the way that it reflects conditions in parts of England. When Martina was speaking yesterday, I picked up that it was like putting the cart before the horse. Martina did not say that, but I am saying that. We could end up with a Bill going through and then having the option of running a pilot scheme. It is a bit crazy.

The Chairperson: I am not saying that we will run a pilot scheme. This is not an issue of passing the Bill and then running a pilot scheme based on the Bill. What I am saying is that, unfortunately, no pilot scheme was run before this Bill was produced and tabled here. We are universally agreed that that should never have happened. We are not happy with that at all, and we will express our concerns. We are also saying that, in any future policy deliberations, there need to be bespoke pilot schemes here.

Mr G Campbell: I am happy enough with the thrust of that, although maybe we need to add the words "where appropriate". It might be the case that there is some future policy decision for which we do not require a pilot. I would have thought that, on most occasions, we probably will want a pilot, and, on this occasion, we are concerned that there was no pilot scheme. I cannot think of the circumstances, but there might be some policy decision that obviously needs to be made and so does not require a pilot scheme. I am content, as long as we do not insist that, on each and every occasion on which a policy decision is to be taken because it has been implemented in GB, we must have a pilot scheme. Where appropriate, we should have one, and we should have had one on this occasion.

Mr Copeland: Forgive my lack of knowledge, but when we see the regulations, can we state that there should have been a pilot scheme?

Mr F McCann: That is what Martina was saying.

Mr Copeland: The answer is yes, then.

Ms M Campbell: As Fra said, you cannot have a pilot scheme until the primary legislation is in place. Not only do you need the primary legislation, you need the regulations in place to enable you to have a pilot scheme. When the regulations come forward, any pilot scheme must satisfy the three conditions outlined, the first two of which are about making the process simpler or changing behaviour. I have forgotten the third one, but all the conditions are in the Bill. Any pilot scheme would have to tick all those boxes. When the regulations come forward, you will have an opportunity to have an input into any proposal for a pilot scheme.

Mr Brady: On that point, Martina, as far as I am aware, most pilot schemes are to test systems or schemes. What you are saying is that, as the primary legislation and regulations have to be in place, it is a fait acccompli. So what we would really be doing is a review of how it will work, not a pilot scheme to see how it might work. That is my point. You are simply telling us about the pilot schemes that have been carried out. However, Gregory's point is valid enough. We would not look for a pilot scheme for everything. The difficulty here is that the Bill is life-changing because this reform is the biggest change since 1948. Yet, here in the North, people seem to be expected just to put up with whatever comes across, without any particular reference being made to the prevailing circumstances here. We have been discussing it so much that everybody is fully aware of the difficulties and differences that exist and persist here, and therein lies the problem. Really, you are talking about a review of how it might work, and if some particular area of the legislation is not working, we might tweak it, but there will be no fundamental changes made if the Bill goes through in its present form. That is the difficulty. It is really a review to see how it works. For instance, with the likes of underoccupancy, I think that it is worth including in the legislation the fact that there should be a review within a very short time to see whether it is impacting on vulnerable people because those are the people whom we are trying to protect in all this.

Ms M Campbell: As I said, there are conditions, two of which are to make universal credit simpler to understand or administer; or where a scheme is likely to promote people remaining in work or help people to obtain work. The review and evaluation of policies is a normal part of policymaking, and I do not know whether we need, necessarily, to have that in the Bill. I do not agree with you that a pilot

scheme under this would be merely a review. Generally, a pilot scheme introduces an innovative scheme.

Mr Brady: On that point, the Housing Executive told us that it is running the pathway scheme in the Lurgan/Craigavon area. From what it says, that is to find out the possible impact of underoccupancy, etc. However, that pilot scheme may come up with the finding that it will not work in that area. Presumably, that would then be fed into any discussion on the introduction of underoccupancy.

Ms M Campbell: Yes, and that would be reflected in the regulations where appropriate.

Mr Brady: Yes, that is the point. We do not know what will be in the regulations or the guidance. The Chair has said constantly that we are dealing with what is in front of us, which is what is in the Bill. If we take underoccupancy as it is in the Bill now, there is no doubt that it will cause huge problems for people. Therefore, irrespective of the outcome of the pilot scheme in the Craigavon area, that will not necessarily reflect what may happen in the rest of the North. Of course, there should be a review, but it is implicit that the criteria and the context of any review should be part of the Bill because it needs to be very specific in dealing with particular issues that the Bill will introduce, particularly underoccupancy. I do not think that you can get away from that. A review could be very wide-ranging. In the context of the Bill, any review, particularly with regard to sanctions, underoccupancy and the transfer from DLA to PIP, has to be very specific in its terms of reference. That is the point that I am making.

The Chairperson: I agree with the notion that we need to have pilot schemes available to us here, and I accept entirely the notion that that should be where it is appropriate. We are not insisting that, on every day of the week, there must a bespoke pilot scheme on every issue. Personally, I think that the terms of reference for the three conditions are too prescriptive. They basically say, "Here is the very limited scope within which you will review." By their very nature, pilot schemes are about innovation and looking at something new and fresh. I have never heard of a pilot scheme being prescribed in this way. In my thinking, that runs completely counter to the concept of pilot schemes. Members appear to be of the view that they want to have pilot schemes available where they are appropriate. I think that the terms of reference for the three conditions are too prescriptive. I do not hear any counterargument to that. So we are telling the Department that we are not happy with the prescriptive nature of the three conditions.

We move on to clause 45. It is 12.00 noon, and I am in the hands of the Committee. Do you want to break now for an hour for lunch and return at 1.00 pm? Are members happy with that?

Mr G Campbell: It is either that or a large dose of headache tablets.

The Chairperson: In the afternoon session, I suggest to members that when a member makes an argument or a suggestion about an amendment, see that there is no opposition to it. They do not need to elaborate on the argument.

Committee suspended.

On resuming —

The Chairperson: Folks, thank you for attending the meeting this afternoon. We are resuming our scrutiny of the Welfare Reform Bill. We adjourned the meeting at clause 42, so we will resume on clause 45. Clause 45 deals with the claimant commitment for jobseeker's allowance. An issue was raised about the insertion of:

"such other person as may be designated".

Does anyone have anything to add to that or a query to raise?

Mr Brady: It really should reflect both sides in a way. Can it not be that the claimant commitment be prepared by an employment officer in consultation with the claimant? Otherwise, it will be a unilateral and kind of arbitrary condition. Clause 45 states:

"such other person as may be designated for that purpose".

That could be anyone. It could be someone who is walking past at the time.

The Chairperson: What are you suggesting? Are you not happy about that?

Mr Brady: Other members will want to comment, but a concern was raised by stakeholders and Committee members.

The Chairperson: OK. We have a suggested approach to it. Clause 45(2) refers to that. Is it that people were afraid that this was opening the door to privatisation?

Mr Brady: Yes.

The Chairperson: People were concerned about that, and although the Department advised us that it had no immediate plans — I think that that was the term used — that did not rule out future plans. I am not saying that the Department was suggesting that either. Given that this is enabling legislation, members are concerned by that phrase and do not like its inclusion. That is the issue.

Mr Brady: The point was made that that happened in the past, and there is no doubt that it opens the door to it happening again.

The Chairperson: Therefore, do we want to get formal clarification that this is not about privatisation? If it is about privatisation, people may want to propose that that phrase be deleted.

Mr Brady: This is not a criticism, but all that the officials could say was that there are no immediate plans. That could change next week. It could change tomorrow. Another issue is that officials' — civil servant — jobs are potentially being put at risk, and I am sure that the unions have already addressed that. It just seems that it is opening the door.

The Chairperson: We have options. Do we want to seek an assurance from the Minister and the Department that this is not about enabling privatisation? That seems to be the concern shared by members and stakeholders. Is that what we want to do? Then, subject to the response —

Mr Brady: Yes.

Mr F McCann: The Human Rights Commission wants clause 30 amended to protect against that by requiring contracted private and voluntary sector providers to comply with the Human Rights Act 1998. Therefore, a number of amendments have been suggested.

The Chairperson: Are members happy enough to proceed on the basis that we want assurances that this is not enabling privatisation?

Mr Douglas: Chair, do we need any legal advice? I have made a note that the unions opposed the insertion of "or such other person", because the provision suggests non-public service workers might assume that role.

The Chairperson: We could tell the Department that we are concerned about this and that we do not want to enable privatisation. Therefore, can we get assurances that that is not what this is about? I am working on the basis that the Department told us that there were no immediate plans, but, in fairness to the officials, it could not go any further than that. Are we happy enough?

Members indicated assent.

The Chairperson: We move to clause 52, which deals with people's entitlement to contributory allowance after a period of one year. Members seemed distinctly concerned about that. What do you want to do about it?

Mr Brady: There will be a cost involved. It is purely a cost-saving exercise. The same thing happened in 1996. Where previously people had got unemployment benefit for 312 days, it went down to six months with the introduction of jobseeker's allowance. That means that if the partner of a person — at the end of that person's contributory entitlement — is working a specified number of

hours or more, the claimant will not get any benefits. It is an immediate cutback on benefit. That is where the difficulty lies.

Some stakeholders and Committee members asked what happens to all the money that is saved. Where does it go? Does it go back into the social security system or elsewhere? People who have paid contributions for 30 years may unfortunately fall sick or something and get only a year's benefit, irrespective of what they have paid.

The Chairperson: I do not think that an answer has been provided on that one. My assumption is that there is no pot of money sitting somewhere for benefit; it is demand-led.

Mr Brady: The point was made that when she was in power in 1986, Thatcher put the national insurance fund into the red because the money was used to subsidise private pension schemes for the better-off, if you like. Therefore, there may be an element of that. Again, I accept that that is a different issue from the one that we are dealing with.

The Chairperson: It is.

Mr Douglas: If we oppose the clause or seek to amend the time period, will there be a cost? If so, what will it be?

Mr Brady: There will be a cost.

Ms P Bradley: There will be a massive cost.

The Chairperson: We are told that there will be a cost, but we first need to take a view on whether it is or is not a good idea. If our sense is that it is a bad idea, we can say so and let the Department tell us the cost.

Ms P Bradley: Another point to make on this clause — I am getting a bit lost with all these at the minute — concerns when people are notified of the changes. In mainland UK, people have been given a much longer run-in period than we will be giving people when the changes come into force. Was that not one of the issues around this as well? Furthermore, there is the bit to do with contributory employment and support allowance (ESA) for people who have been working and find themselves out of work. Those people are being treated in the same way as someone who has never worked. Those are two of the things that were highlighted.

The Chairperson: There are two particular concerns. The third one is about where the money went to. The priority for us, I suppose, at the minute is to work out what will happen through this provision.

Mr Brady: I do not think that the Department is in any position to tell us where the money goes. The points that Paula raises are more relevant.

The Chairperson: How do we want to deal with that? There is a menu of options on the back page of the issues paper.

Ms P Bradley: We need to find out what the financial implications are for the people being notified. I think it rather unfair that we are slightly different, in that respect, from the rest of the UK, where people were given a longer period of notification than our people will get. There will be financial implications no matter what, so we need to know what they are.

The Chairperson: There is a table somewhere in the explanatory memorandum. Is it right to say that members are not happy with the provision whereby people lose their contributory benefit after 12 months? Subject to costs, that may determine how the Committee wishes to vote on the clause when we do clause-by-clause scrutiny.

Ms P Bradley: For me, that issue is slightly muddier. It is not as black and white as some of the other clauses about which I feel very strongly. However, there are some issues that need to be clarified before I can come to any decision on clause 52.

The Chairperson: OK. Therefore, the two points on which we want the Department to come back on formally are the lead-in time for this if the clause becomes law and the provision itself, as well as the associated costs. Is that fair enough?

Mr F McCann: I do not mean to prolong this debate. We know that the entitlement period will last for a year. You said that people who have paid contributions for 30 years will be affected. Is there any way in which we can be given a couple of scenarios that set out how much this will impact on people financially? We are asking what the cost will be to the Assembly. However, what will be the cost to people who have worked all those years? Is there a possibility that those scenarios can be painted? For example, can we have for a family, someone claiming who has two children or a single person?

The Chairperson: Are members happy enough that we ask for that?

Members indicated assent.

The Chairperson: Let us move on clause 54, which deals with conditions relating to youth. Our concern here is that stakeholders generally oppose the abolition of ESA, but the Department has stated that almost 97% will move to income-based ESA. It is unlikely that new claimants will qualify for income-based ESA.

You have heard evidence from a range of stakeholders and may now need to familiarise yourselves for a moment or two. Take the time to do that.

Mr Brady: It might help to find out how many of those young people will be affected. The Department talks about 97%, but it is incumbent on us to take into account the people who will not be safeguarded. I think that the figure mentioned was £390,000. On the face of it, that is not an awful lot, but these are young people who may have quite severe learning disabilities, and the whole purpose of the old severe disablement allowance and then youth incapacity benefit was to safeguard those young people and ensure that they had an independent income from the age of severe disablement allowance, which was 16. It was accepted that they had long-term, ongoing problems that might never be resolved.

The other difficulty that I have is that once they move into income support-based ESA, they are then into a pool. Once the enabling legislation is in place, and possibly regulations and guidelines, which may lead to other things, they may all be subsumed into a particular direction of work that is not there or schemes that may not be of benefit to them. That needs to be addressed.

The Chairperson: OK. Mickey, so you want the figures for the 3%?

Mr Brady: If that is possible.

The Chairperson: Or not so much the figures as the impact.

Mr Douglas: Do we not already have those figures?

The Chairperson: We were told that 97% would be exempt.

Mr Brady: We got the financial figure: £390,000. I am not sure of the actual numbers.

Mr Pollock: We had some figures for ESA youth, which is for ages 16 to 20, and another figure for a cohort of 20- to 24-year-olds. We are trying to see whether we can discern from that the population in receipt of contributory ESA youth that would be affected. Mickey mentioned the £390,000, which is the cost per annum. I do not know whether we have a figure for the actual number of claimants who will be affected.

Mr F McCann: This is just a point of clarification. If 90% are moving across, surely, after a year, they will lose the benefit anyway.

Mr Pollock: We think that 97% will move across to income-based ESA.

Mr F McCann: With the new rules that are coming in, that will last for only a year, so —

Mr Pollock: That would be income-based, Fra, as opposed to the contributory.

Mr Brady: If the 95% are on income-based ESA, I presume that they and other people on income-based ESA who have particular medical problems will be reassessed. The point about disability allowance and youth incapacity was that it was accepted that those youngsters would never be able to work in the normal sense, so it was almost an indefinite award that carried on. It was accepted that if you had a particular condition, it was not going to go away. If those people are subsumed into that kind of a pool and reassessed, it may point them in directions in which they are not able to go.

Mr Pollock: It is 97%, but if it is envisaged that they have a condition such as you say, I surmise that they would still be assessed.

Mr Brady: It brings us back to the point that was raised this morning about the primacy of medical evidence. Obviously, their condition is based on a particular physical or psychological condition. It goes back to how effective or informed the decision-maker is on the evidence that is available.

Mr Pollock: Absolutely. In all the evidence that we have presented, we have asserted that medical evidence should be given due weight and that cognisance should be taken of it. However, there is an underlying trend as well: disability or a health condition does not necessarily dictate that an individual should be condemned to a life on benefits, which it has dictated, to some extent, in the past.

Mr Brady: Condemning people to a life on benefits is another issue. In a lot of cases, people do not have that choice. You are saying that medical evidence should be considered in conjunction with other factors. The point that I am making is that in the current system — I presume that this will carry through if it is not changed by Atos — you have somebody who ticks a box, and then the decision-maker gets that report and bases his or her decision on that. In my experience and, I am sure, in the experience of other people, the decision-maker does not have ready access to the full medical picture. In a lot of cases, it is only at appeal that the medical evidence is presented. I have had people coming in whose appeal did not even go ahead once that medical evidence was presented. At that point, it was accepted that the medical evidence was of such benefit that the appeal did not have to go any further. The point about the primacy of medical evidence is that decision-makers have all that in front of them and they make a decision. It is not just a tick-box exercise. In fairness, the anecdotal evidence that I am getting back is that the majority of people who carry out those assessments are not interested, not particularly well-informed about the condition and do not really care. That is the reality.

Mr Pollock: We have discussed the assessment process and the primacy of medical evidence. It is one of a range of factors. Certainly, given the sorts of conditions that we are talking about, it is a very important one. The decision should, in any case, be reasonable. If it is based on a serious health condition, you would expect that to be taken into consideration by the decision-makers.

Mr Brady: I will give just one small example —

The Chairperson: OK, but we do not want to be —

Mr Brady: I do not want to drag this out, but this is an important point. I have heard of cases of people who are diagnosed with MS and who are in remission and doing reasonably well. They go for one of those tests. They still have the condition, which is progressive. One question they are being asked is how far they can walk. If they say they can walk 100 yds or 50 yds, which is a relatively short distance, they are then asked how far they could go in a wheelchair. Those are people who are doing their best to make sure that they do not end up in a wheelchair. That is the type of thing that is happening. There should be proper medical evidence.

The Chairperson: Thanks, Michael.

OK, just to recap on how we will deal with this clause; do we want to get the information on how it will impact on people?

Mr Brady: I think Michael said they had some information but not definitive information.

The Chairperson: OK, so we will wait for that. Is that what we are saying? Fair enough, then.

We will move on to the personal independence payment. A couple of issues were raised about clause 86 and the issue of people in prison and people being out of the jurisdiction. People had some issues about the various components of allowances, and people in prison would be deemed to be having those paid for. So, it is an issue of duplication of public money. I think that is what the Department outlined. Does anybody have a view on that?

Mr F McCann: I raised this yesterday. I just cannot understand why allowances would be stopped for people, especially elderly people, who have to leave the jurisdiction for health purposes because they have underlying problems. That could probably run to thousands of people. In Spain, they pay yearly to send their pensioners to the coast. I cannot understand why that measure is being brought in. It has to affect the health of thousands of pensioners.

The Chairperson: The issue was that some stakeholders and even other organisations argued that there needs to be a longer period for that, however long that may be. Am I right in saying that the current period is four weeks?

Mr Brady: I think that officials mentioned yesterday that it depends on whether you are undergoing medical treatment. The argument could be that you have arthritis and you went abroad to alleviate your condition. Is that medical treatment or otherwise? If your doctor recommended it, it could, in a very loose fashion, be termed as medical treatment. It is a dialectic argument, I suppose.

The Chairperson: OK, do you want to ask for precise clarification on that? The Department for Work and Pensions (DWP) stated that entitlement would end after four weeks abroad, except if the absence was for medical treatment, when the period of absence can be extended to a maximum of 26 weeks. So, we want to clarify what "treatment" means.

Mr F McCann: How do you define "treatment"?

The Chairperson: OK, are members happy enough with that?

Members indicated assent.

The Chairperson: No members have raised any issues about the prisoners' daily living component.

Clause 88 is entitled "Report to the Assembly". I think, Sammy, you were one of the people who had an issue with this, which was about reporting back to the Assembly at an earlier date than that which is proposed in the Bill. The Department reflected that it would take a couple of years before you would be able to have any qualitative judgements, but that does not mean to say that you might not still want to have a report earlier. If people are concerned about the outworking of this, why not go earlier rather than later?

Mr Brady: If you wait two or three years to review or assess a system and it is a bad system, the damage will have been done for a lot of people. Even if you change it, it may not alleviate the problems that those people have had in those two or three years. It is contentious legislation anyhow, which is all the more reason why it should be reviewed or assessed after a much shorter period than two or three years. Presumably, if you wait two or three years, people will say that the system is already here and nothing can be done about it. The difficulty is that the Bill is so wide-ranging and is going to have an impact on so many people, particularly vulnerable people, that damage could be done in a relatively short period, especially when it comes to underoccupancy and all the other issues that we have been talking about.

The Chairperson: Well, there was a proposed amendment. I am just trying to track where that amendment came from. It proposed that a report should be produced within one year and then two years after that. Are members content that they would prefer that option?

Members indicated assent.

The Chairperson: That is the recommendation of the Committee.

Mr Douglas: I want to go back to Mickey's point. If, as part of the implementation of this legislation, one or two major issues arise that cannot wait for even a year, will there be an opportunity to review or amend it somewhere along the line? I am sure that we are not going to get it all right. As I said yesterday, there was a report in 'The Independent on Sunday' about the planning of the IT systems. It said that it could be another 18 months before the issue is resolved. The Government obviously did not foresee all the problems that they were going to have. If there is a major issue, is there some way of addressing it?

Mr Mickey Kelly (Department for Social Development): As I said in the previous meeting, there are two issues. Mickey was talking about the first one, as were you, which is the outworkings of how the providers do the thing. There is another issue about the assessment criteria, which are part of it. In the previous meeting, I explained that it will take a bit of time for the assessment criteria to bed down and to get enough people through the system to give a qualitative analysis of what is happening. In addition, in line with what the Department for Work and Pensions is planning — we use the same assessment criteria as it does — if we do an earlier review, we will probably not be able to make any significant, Northern Ireland-specific changes to the assessment criteria until DWP has completed its study. That is what happened with the Harrington report and all those things as well. However, the agency will work through the performance management system that will be in place for the provider, which is a different issue about how the work is being done as opposed to what the criteria are. However, the timing of a formal review of the system will be a matter for the Committee.

The Chairperson: OK. Thanks for that.

Obviously, there is a suggestion that we go for a period of one year. The Bill specifies two years, but we are saying that we want a review after one year. The issue is of such importance that whatever information is available after a year should be made available. On the further point that you made, where people see evidence that there is a problem with any legislation, never mind this Bill, or any policy that a Department pursues, you would expect that there would be a facility to deal with it immediately.

You expressed a general concern around monitoring and reviewing. Whatever about particular provisions in the Bill, we need to return to that by way of one of the bullet points. We need to put on the record our general view of that and that we may want to address it in specific clauses. We will return to that at the end, before our final report is completed. That has been a recurring theme from you, Sammy, and others as well.

Whenever the Harrington report is mentioned to me, it is like a virtual report in my mind. I have never seen Mr Harrington, but I have heard about him quite often. We were due to meet him here but he never turned up. He was on the sick. *[Laughter.]* I do not know whether he was on contributory contributions or not.

Mr F McCann: I think that he wants to know whether his benefits were stopped after a year.

Mr Douglas: Was he working abroad?

The Chairperson: It does not warm my heart, I have to say.

We move on to clause 103, which is about the recovery of benefit payments. Concern was raised that claimants might have to pay back quite large overpayments that were given to them as a result of departmental error.

Mr Brady: It is inherently unfair. The argument that the Department and the officials have used is that people should know that they are getting more benefit. My point was that people assume, rightly or wrongly, that the Department knows what it is doing. People may think that it is a windfall or a bonus — I am not being funny when I say that. In my experience over the years, when people receive extra money, they do not necessarily question it. The difference now, of course, is that rather than getting a giro, the money goes into their bank account, and people do not always check their bank or Post Office accounts regularly. When you were getting only £60 a week and you got a giro for £200, you thought, "Great", but you might have assumed that it was an error. However, if it goes into a Post Office or bank account, you may not come to that conclusion, and it might be three or four weeks before you notice. Most people who receive their benefit into a Post Office account look at it on a fairly regular basis. However, people who have bank accounts may live on overdrafts, so it is not

always obvious. A person may be penalised because of someone else's mistake, and we have the statistics to show that customer error and departmental error are ahead of fraud. That is the reality.

The Chairperson: We looked at what type of claimant might be exempt from some of this and whether people would have access to hardship payments, and so on. There are quite a lot of issues around that.

Mr Brady: The problem is that hardship payments are recoverable from your benefit. So, it is a short-term solution but a long-term problem. If you get the money deducted from your benefit, you get a double whammy, because they are deducting your overpayment and then they are deducting a hardship payment. It will discourage people from going for hardship payments, so they will be even worse off than they were in the first place. I do not think that it is unreasonable to suggest that.

The Chairperson: People had varying degrees of concern about the inherent unfairness of the type and principle of recovery.

Mr Brady: The Department used to just write it off as a departmental error. It was the Department's fault, and it would put its hands up and take the hit. It would be interesting to find out the actual amounts involved in individual cases. I cannot imagine huge amounts of overpayments due to departmental error. I worked with a fellow who had paid someone who had been dead for six months; he just kept issuing order books. That is the sort of thing that you would obviously want to avoid. However, that was a highly unusual case. I cannot imagine that happening now.

The Chairperson: Conrad, do you want to come forward and say something? I want the situation clarified. I do not want to have any awkwardness or embarrassment in the room. The departmental officials are sitting in what is described as the Public Gallery, as opposed to sitting at the table, and that is because the Department does not want to be, and should not be, included in the Committee's deliberations. However, departmental officials are here to help us and to provide any additional clarification and information that we might need to help us. We do not want to put the Department in the invidious position of being at the table and contributing to the debate, because this debate is between Committee members. I want to make sure that everybody understands that. There is no slight intended.

Mr Douglas: I think that Conrad said that there would be circumstances when you would not chase an overpayment. In those situations, would there be guidelines?

Mr Conrad McConnell (Department for Social Development): I was here last week talking about penalties. That is a slightly different issue, I suppose, from guidance on whether to pursue an overpayment.

Mr Douglas: Maybe it was somebody else who said that.

Mr McConnell: The policy intent behind this is not in doubt, in the sense that it is to recover money from people on the basis that the money should not have gone to them in the first place. That is the basic policy intent. I was keen to help there because you asked about the figures and the level of the problem. I can maybe help out with the figures for loss. Overpayments due to staff error in the agency are about £13 million per year. That compares with £19 million for fraud and £7 million for customer error. I just wanted to clarify that. That is the scale of the loss through staff error, where money has gone to someone who should not have got it, albeit that it was a departmental fault.

The Chairperson: The level of staff error is almost double the level of customer error.

Mr McConnell: It is. It is £7 million for customers, £13 million for staff and £19 million for fraud. If we add the figure for customer behaviour to the figure for fraud, we get about £26 million, against the figure for staff error, which is £13 million. So, customer loss through error or fraud is double the loss through staff error.

The Chairperson: The claimant behaviour is better than the staff behaviour, or efficiency, for want of a better word.

Mr McConnell: It means that the loss through customer behaviour is double the loss through staff mistake.

Mr Brady: In fairness, staff in Social Security Agency offices are under extreme pressure, and they are under-resourced. In fairness to them, they are dealing with people. The issue that I am raising is not about the level of staff efficiency because I think that they do extremely well in the circumstances in which they are forced to work. The difficulty is that I do not think that that should then be passed on to the customer through no fault of their own. In fairness, people do not have a wide-ranging knowledge of benefits. If they had, I, as a welfare rights worker, would have been out of work for 30 years. You have to take all that into account.

Somebody made the point that an overpayment of under £65 may not be recoverable or may not be pursued. There may be some way of looking at that figure and making it more acceptable. Maybe the Department could look at that and come back with a comment.

The Chairperson: There were issues around the level of recovery and the maximum amount of recovery. I accept that, in some cases, there are justifiable and understandable reasons for error; an error is a mistake. However, it highlights to me the fact that I do not know when there has ever been a benefit take-up campaign or initiative by the Department that has not resulted in people getting more money, so there is a considerable amount of error in the first instance. I am just making the point, although it is a slightly different issue.

Is there consensus in the Committee that there is an inherent unfairness in this? Is that what you are saying? Would you like that to be addressed by the Department more formally?

Mr Durkan: I fully sympathise and agree with the points that Mickey made, particularly around claimants maybe not detecting that they have been overpaid or even that they have received too much money in error. However, there might be difficulties in legislating for that if you were to say that claimants should not be required to pay back an overpayment. Suppose that someone, through some crazy mistake, got £10,000 that they were not supposed to get —

Mr Brady: I think it is a contradiction to say that people on benefits get too much money anyway, but that is another issue.

The Chairperson: You mentioned the figure, and Conrad dealt with it last week. There is an issue around the £65. You are talking about a reasonable amount being the trigger for recovery. Is that what people are saying? It is unfair to generalise at that level. If someone were to get a substantial amount of money, they would certainly know that that is money that they should not have received or were not entitled to under the circumstances. There is an issue around the reasonable level at which that would be triggered. Is that fair enough, Conrad? Thank you.

So, for the record, members are concerned about that issue. They want the Department to review the level at which recovery would be triggered. Is that fair enough?

Members indicated assent.

The Chairperson: We now move to clause 109, "Penalty in respect of benefit fraud not resulting in overpayment". People would be penalised for intended fraud even though no fraud actually occurred and no financial benefits accrued. Basically, the question was this: how can you penalise someone if they intend to do something but do not actually do it?

Mr F McCann: Is that a fine on thought?

Mr Brady: The £350 is an arbitrary figure. It may not be proportionate to the amount that may or may not have been involved. Also, even if someone in particular circumstances were taken to court, that may not be the extent of the fine. They would be paying more, and then, of course, they may have other benefit deductions. We are talking about proportion and it being proportionate to the degree of alleged fraud or whatever that may be. We are looking into crystal balls and deciding that somebody may commit fraud. I am not sure how that works.

The Chairperson: In a way, you are rolling clause 109 and clause 110 together.

Mr Brady: They are inextricably linked.

The Chairperson: OK, but they are two clauses. Clause 109 is in respect of benefit fraud not resulting in any overpayment, and clause 110 deals with overpayment and recovery, the fines that are attached to that and the maximum amount. They are linked, but they are different clauses. Does anyone have a particular view on clause 109, such as that it penalises somebody for something that has not been done even though they intended to do it? It is an important stand-alone clause.

Mr Brady: Is there a cost involved if it were not imposed?

The Chairperson: I think that some people had wanted the retention of access to a caution. Am I right? People were making the case for a caution as opposed to a penalty because you have not actually benefited from your alleged or intended fraud. Is the Committee looking at it from that point of view?

Mr F McCann: Are we saying that we would prefer a caution?

The Chairperson: Obviously, there are cautions in clause 115, but if I remember correctly, people were arguing that you are going to fine or penalise someone for intended fraud even though they did not benefit from it. That is clause 109, and clause 110 obviously comes next.

Conrad, you might have another comment on that. I am concerned about putting you in an invidious position, but maybe you want to shed a bit of light on it.

Mr McConnell: I have nothing really to say about the suggestion. I go back to the points that I made last week about the policy intent. I know that applying figures to this is difficult because no actual loss is incurred. I go back to some of the figures that I mentioned last week around what happens if we do not catch someone attempting to commit fraud and they then go on to commit fraud. Fraud, on average, can go up to maybe £4,000 per case. In some extreme cases, there can be £50,000 fraud. If we do not catch fraud at the outset, it can turn into something very serious, with lots of money involved. I simply point out that the average level of fraud is about £4,000 per case. Perhaps that helps the Committee in thinking about the £350 and whether that is proportionate.

Mr Brady: If you are talking about £50,000, you are talking about fairly hard-core fraud.

Mr McConnell: Oh, yes, that is what I said: in an extreme case, it is around £50,000, but the average is around £4,000.

Mr Brady: Was it felt that cautioning people was an option? I know from dealing with people over the years that people were very scared of being taken in to be cautioned. I would have thought that that was fairly effective. That is being done away with now. I am not sure what the rationale is for removing the caution. When people are cautioned, they are taken in and the issue is very clearly explained to them. That goes back to what you said about fraud carrying on if undetected. If people are cautioned and told very clearly about the consequences, they cannot say a year later that they did not know. If they continue to prosecute a fraud after having been warned, they have no redress. If someone is cautioned and stops what they are doing, it is an effective deterrent.

Mr McConnell: That maybe takes us into clause 115, "Cautions", and the whole general point about cautions staying or not staying. I suggest that the internal penalty that we apply as an alternative to a prosecution does something similar to a caution in that it provides the alternative to a court. It deals with your offence as it happened and leaves you clear as to what the intention would be next time round if you were to come back having committed a second offence. So, I would suggest that the internal penalty does some of what the caution already does anyway.

The Chairperson: Thanks, Conrad, for that. I am just stuck. I have a fairly strong view on this. If the Housing Executive has a tenant against whom there are complaints and there is some evidence that the tenant is misbehaving or not honouring their tenancy agreement, the Housing Executive will bring that tenant in and speak to them. It does not penalise them, fine them or put them out of the house. It advises them that they are acting contrary to their tenancy agreement and that there are two or three steps at the end of which, if bad behaviour is not modified, eviction or whatever else will takes its course.

In clause 109, we leave ourselves open to what I think is a dubious legal concept. We are saying, "We think that you are intending to defraud us and we will fine you. We have not convicted you of anything or proven anything but we will fine you." If I thought somebody was trying to defraud the system, I would be calling them in and talking to them. Experience would tell you that most people in those circumstances would fairly quickly moderate their behaviour. I think there would be more evidence to suggest that that would be the way to go. That is my assumption, so I feel uneasy about penalising someone for something that we have not found them guilty of.

Mr Douglas: Apologies, Conrad, if you have already answered this, but is this clause an expansion rather than a new clause?

Mr McConnell: It is maybe worth adding to what I said last week. There is an important element to this as well. At the minute, we have no option but to prosecute someone for attempted fraud. There is no other means open to us. This clause gives us a second choice — an alternative, another option — so it is on top of what is there at the minute. At the minute, we have no option but court. From that perspective, it gives us and the customer the option of not ending up in court for something they did.

Mr F McCann: I am finding it difficult to work out the definition of attempted fraud.

Mr McConnell: There is a legal definition. I would not be able to —

Mr F McCann: It is near enough a fine for thought.

Mr McConnell: An example would be someone who submits a claim form or provides information to us that if deemed to be true, would entitle them to money in the benefit system but it is not true information; for example, their means are not right or their income has been reduced when it is actually higher in reality or whatever. It is about telling that untruth. It is about the misrepresentation of facts that would entitle you to money if you were believed. That is the attempted fraud. It is attempting to get money to which you are not entitled because you have misrepresented your circumstances.

Mr Brady: The misrepresentation has happened but the overpayment does not because it is nipped in the bud. It comes back to what we were talking about previously: failure to disclose and misrepresentation. The argument is that you cannot disclose something that you do not know, but you can certainly misrepresent something.

Mr McConnell: You can.

The Chairperson: OK. Is there any information on the number of people who are convicted of attempted fraud, Conrad?

Mr McConnell: I do not have that information at the moment. It is not something that we regularly come across. Certainly, at the minute, when anyone goes through the Public Prosecution Service (PPS) and on to the court system, it is for actual overpayment or actual loss. I cannot think of any cases where there has been attempted fraud.

The Chairperson: I asked where the evidence was, and suggested that that was *[Inaudible.]* as opposed to saying to people, "I think your claim might be wrong there."

Mr F McCann: I missed the meeting a couple of weeks ago when you were here before, Conrad. In the past, I did quite a number of cases for people, and we went down to your office to meet your officers. By and large, most of the people involved were women in very low-paid jobs, earning 30 quid a week, and they were petrified out of their skins. The relief came at the end. When they went in and got that caution, they were on the verge of nervous breakdowns. You know that yourself; people are petrified. The caution and warning — although they may have been working in low-paid jobs — was enough to frighten them into a situation where the vast majority of them never did it again. So the cautions worked, and there is probably clear evidence that they did.

Most of the information on benefits is provided in a letter of perhaps 16 pages of gobbledygook, which people get through the door to explain what the benefits are and what they have to do. Most people do not read that, and do not read what is on their benefit books. A lot of people may have problems with literacy or have mental health problems. Mickey raised that the last time as well. How do you

penalise or punish people who fall into that category? In the past, we have been told a number of things, such as, "Do not worry, it will never really happen". We were told that about sanctions, but thousands and thousands of people have been sanctioned over the past three years.

Mr McConnell: I will go back to my point. We made this point last week as well. We would not seek to prosecute anyone for fraud unless we were satisfied that they had actually committed fraud, and fraud has to be intentional. This is not about mistakes and is certainly, most definitely, not about people who genuinely do not understand something or make a genuine mistake on a form that is hard to read or because they have certain problems that mean that they are unable to tell us things.

I go back to another key point on fraud. Anyone who believes that he has not actually committed fraud may say to the court that he did not act intentionally. Then it is up to the Department and the PPS to make a decision on whether there is sufficient evidence to go to court to say that we are satisfied that the person acted intentionally. Fraud is definitely not about mistakes.

Mr F McCann: Conrad, you are an experienced officer, an official in the Department. Most of the people who you are dealing with do not have the wherewithal to understand or deal with the stuff that you are talking about. That is where the problem lies. You talk about the court end of it. The fact of life is that people will be fined.

The Chairperson: Can I make the point that we are now straying into having a debate with the Department? That is not what we are doing here.

Mr F McCann: I understand. However, I am talking about the consequences of the decision —

The Chairperson: I understand that. I have no problem, and you are right to make that point. I am just saying that we are now engaging Conrad in a debate that he should not be a part of, and I do not mean that disrespectfully.

Mr Brady: I think that the difficulty in this particular legislation is that it is about people who, they think, are going to commit fraud. You either commit it or do not. One cannot speculate. If someone makes a voluntary omission in giving a statement about his circumstances or anything else, if they give the wrong information, it is fraud. That is fraud clear and simple. However, you cannot speculate as to someone's intentions. Someone may have given the wrong information by mistake. So you should have a clear-cut idea of what fraud is, not this kind of nebulous definition of, "We think you might be going to commit fraud because you gave us an incorrect statement." If that is the case, just charge them with fraud. Do not be saying that you think that they were going to commit fraud.

The Chairperson: There are a couple of things. Obviously, part of the discussion strays into the broader issue of cautions as a tool for the Department, as opposed to it being able only to prosecute. That is the concept of and the argument around clause 115.

Clause 109 is about people being penalised for intended fraud. Intention is subjective. That is a difficult clause for me to support, in so far as I see the way in which other Departments work, and I have referred to the way that the Housing Executive deals with people's tenancy obligations. I imagine that if the Department noticed a discrepancy with a file, it would speak to the claimant and get the matter clarified very quickly. I imagine that the evidence would show that if people were confronted with that and if fraud was intended, it would be stopped fairly quickly.

I am encouraged by the Department's figures, which show that fraud and claimant error is down. Those are positives. Therefore, if I were the Department, I would want to build on that because those are the strands that seem to be working. For me, it is inherently difficult to levy a fine against or penalise somebody for something that they may be thinking about doing but have not actually done. That is different from actually committing fraud, where you have to take the consequences. On that basis, I am uncomfortable with clause 109.

Mr Douglas: Conrad made a good point. I think we would all agree that it would be better if we could stop people getting to the stage of committing fraud, which, as Conrad said, is, on average, £4,000. Is there any evidence to suggest that the fine, which is a minimum of £350, would deter people from committing fraud any more than a caution? Let us say that we went for a caution, as the Housing Executive does, is there any evidence that that would work as well?

Mr McConnell: Some people view these things differently. A caution goes on a person's record, so some people would view that as a very bad thing, and they would not want a stain on their record — even a caution for benefit fraud.

Mr Douglas: When you say "record", do you mean a criminal record?

The Chairperson: You are not talking about a criminal caution; you are talking about the Department saying that your claim is wrong, and it is has been noted?

Mr McConnell: Are you suggesting that that could be a formal warning? I am talking about the formal caution as we would recognise it and as I have talked about in this conversation.

The Chairperson: I think that we are talking about the Department speaking directly to the claimant. It is like saying to Mr or Mrs Bloggs, "Let us have a wee look at your claim. Can we clarify that what you have submitted is accurate?" In my experience, that has very quickly rectified the problem.

Mr McConnell: Yes, that is a different thing.

The Chairperson: I think that the evidence would clearly show that that is what works. I said earlier that I am very encouraged that the Department's figures on claimant error and claimant fraud are well down. That should be welcomed and supported.

Mr F McCann: You may find that anybody who was fined £350 or more would have to go out and do the double to pay that off.

The Chairperson: OK. Fair enough. I am trying to get the sense of the Committee. I take it that members are not happy with that clause and would like to see the issue revisited by the Department.

We move on to clause 110, which is about the amount of penalty, where you would have a fine levied against you as well as recovery, and so on. There are two or three points in there. Does anyone want to make any specific recommendations or arguments about that?

Mr Brady: In that particular —

The Chairperson: With regard to clause 110, which deals with recovering money that has been given to a claimant in error. Even if that money was paid to a claimant in error, that money would be recovered, and the claimant would also be levied with a fine. Do people think that that is wrong?

Mr Brady: It is a double whammy.

The Chairperson: Again, that goes back to what we talked about earlier, which was the level of fairness and what might be fair. If a big amount of money was paid to somebody, they would know that it was wrong and that they would have to pay it back. It would be deemed, if it was beyond a certain amount of money, as a slap on the wrist as well as having the money taken off you.

Mr Brady: May I just clarify something, Conrad? Innocent misrepresentation is still —

Mr McConnell: Innocent misrepresentation? Are you referring to civil penalties? We discussed that last week when we were talking about negligence. We used the example of people who did not have a reasonable excuse for not telling us about things, as opposed to an intention of fraudulent behaviour, or, on the other end of the scale, a genuine mistake. Yes, that is still there.

Mr Brady: If that is the case, then we are talking about the recovery of the overpayment as opposed to having two penalties. You are going to be penalising somebody. We keep going back to this, and we cannot get away from it. People on benefit are paid at subsistence level, so if you are going to have overpayment recovery of £5 a week, the person will be £5 below subsistence level. If that person then has to pay an additional fine, if you like, that is going to cause particular problems for particular people. That is one of the issues of which we have to be very mindful.

The Chairperson: OK. What is the Committee's view? You are talking about somebody being fined £350 up to a maximum of £2,000.

Mr Brady: Is that not a reason for looking at whether there has actually been an overpayment, where benefit has been lost from the public purse? If it has not, why would you punish somebody, particularly if you have marked their card and they, hopefully, will not do it again?

The Chairperson: Is this in any way addressed by the earlier point about the level of money at which recovery is triggered? Are members asking the Department to revisit that? We will have to make a decision about that.

Mr Brady: I would agree to that.

The Chairperson: OK. That is what we are asking for. Thank you.

Clause 111 is about the period for withdrawal of agreement to pay a penalty. Again, we raised the issue of the cooling-off period being reduced from 28 days to 14 days. If I remember correctly, there might have been some discussion around further discretion on that, about extending it beyond the 14 days where there was a good reason to do so.

Mr McConnell: We said that we would consider that. I have not got an answer for you yet, but our conversation last week was about whether that balance is right. Some members said that the longer period allows claimants time to get better and proper advice. Our view was that we did not want to get in the way of that.

Mr Brady: It is cost-neutral as well.

Mr McConnell: Yes.

The Chairperson: Are members content to move on to clause 115, which deals with the general issue of cautions?

Were members satisfied with the responses from the Department on clause 111, which is that, although the cooling-off period was reduced from 28 days to 14 days, if there is any reasonable reason why the person cannot get that advice or cannot get a solicitor, that is acceptable? How is that dealt with? Will it be in the guidance?

Mr McConnell: Yes.

The Chairperson: So, are members are content with the assurances on that?

Members indicated assent.

The Chairperson: OK. Thank you for that.

Clause 115 deals with cautions. Conrad referred to this clause earlier. Again, members are looking at the option of cautions as opposed to prosecutions. Do you want to revisit the main point, Conrad? This comes into the discussion on three clauses.

Mr McConnell: I will just add that some people will view cautions as a better outcome than the internal administrative penalty, but others will see it as a worse outcome because it goes on your criminal record. For many people, especially those who are thinking about their work and their jobs, the internal administrative penalty is a better outcome because it is not a formal caution and does not go on your record.

I simply make the point that people view these things in different ways. Some people think that one is worse than the other and vice versa, depending on their circumstances and their view and all of that. So, it is not necessarily that one is worse than the other; it depends on what you think personally.

Mr F McCann: Would you give people the choice of a caution or a fine?

Mr McConnell: No, we would tend to offer people the administrative penalty as a first option for cases at the lower end of the fraud scale. We would offer cautions somewhere in the middle, leading up to

prosecution generally for cases over about £2,000, when there would be court proceedings. Going back to the general point, for some people, a caution may be seen as a better result; others may see the penalty as a better result.

Mr F McCann: If there was an offer of a caution or a fine, people might like to take the caution.

Mr McConnell: We would not offer one or the other. We would use guidelines according to the scale of the fraud and take the lower-end fraud cases for the administrative penalty first, offer a caution to the middle cases, and the more serious cases would go to court.

Mr Brady: Just to clarify this, you said that the caution goes onto your criminal record. Surely that means that you will be prosecuted and found guilty.

Mr McConnell: No, no. It is not a conviction.

Mr Brady: Are you saying that the interview under caution, which is now recorded in the office, forms part of a criminal record?

Mr McConnell: A formal caution goes onto someone's criminal record.

Mr Brady: That is only if they already have one?

Mr McConnell: No, a formal caution, which means at the end of your case —

Mr Brady: No, sorry, that is what I want to clarify. You say, "At the end of your case". Presumably that means, as a result of that caution, the Department, particularly the fraud end, has to decide whether it will prosecute you.

Mr McConnell: Yes.

Mr Brady: So, if there is an informal type of caution, which was talked about, the formal caution that you are talking about is an integral part of the whole case against a person. That is the point I am making.

Mr McConnell: Yes.

Mr Brady: So, for that to go onto your record, you then have to be taken to court, found guilty and have a criminal record. Is that the case?

Mr McConnell: No, no. Maybe I should clarify.

Mr Brady: That is what I was wondering.

Mr McConnell: Maybe what was described earlier as the informal caution in the Housing Executive context was about some sort of warning, some sort of, "Don't be doing that again."

Mr Brady: Let me just clarify that. You are taken into the office and interviewed under caution, as happens. You can take someone in with you — I have been to a couple of them — and the fraud officer puts a new tape in and goes through all that, a bit like a police interview.

Mr McConnell: Yes.

Mr Brady: You are saying that that, standing alone, becomes part of a criminal record. Surely that is the beginning, the initial stage of a prosecution? That is the point I am making.

The Chairperson: Yes, I know you explained, but that is not the —

Mr McConnell: There is an interview under caution, and what the word "caution" means at that point is that you are cautioned that you do not have to say anything unless you wish to do so.

Mr Brady: I understand that.

Mr McConnell: That explains your position legally for the purposes of what you want to tell us later on, and we may use that in evidence.

Mr Brady: I understand that but what I am saying is —

Mr McConnell: That is interview under caution, which is a very separate thing. Interview under caution happens in a suspected fraud case. At the end of the investigation, which includes the interview and other evidence that we may or may not have, we come a point where we may want to decide what to do with the case.

Mr Brady: If the case is not then progressed to the court, does that caution stand alone as part of that person's criminal record?

Mr McConnell: At that point, —

The Chairperson: Sorry, Conrad, there are three usages of the word "caution" today. One is the caution that we referred to earlier about the Housing Executive bringing in a tenant to tell them that they are under notice. We were suggesting that the Department might consider, basically, giving someone notice that it thinks there is a problem and hopes that it does not happen again. That is an informal caution. The caution that you are referring to is, when you are brought in for an interview, you are told that you are under caution, which is a legal definition. Therefore, anything that you say can be used in evidence. The caution we are talking about here is where, at the end of an investigation into alleged fraud, the Department may find you guilty; you have done it, and the Department will give you a formal legal caution that will be on your record. Is that right?

Mr McConnell: That is it.

Mr Brady: So, it actually goes on as part of a criminal record.

The Chairperson: Yes, at the end, but not the caution that you would have been aware of.

Ms P Bradley: The caution is your penalty.

The Chairperson: When you accompanied a claimant in —

Mr Brady: I just wanted to clarify that.

The Chairperson: Do you want to elaborate on that or are you all right? *[Laughter.]* You are under caution if you do. *[Laughter.]*

Mr Brady: I think that we have sorted that one out.

The Chairperson: Now, what do you want to do about it? *[Laughter.]*

Mr Brady: I think that I will go for the fine. *[Laughter.]* Fra said that he would help me.

The Chairperson: You would be destitute after that. Are people content?

Ms P Bradley: Our paper details the concern about the removal of cautions, particularly for minor offences. Is our concern about the removal of the caution for minor offences?

The Chairperson: Yes.

Mr F McCann: Is that a caution 1?

The Chairperson: Conrad made the point that there are two ways of looking at this. You have an option for a caution or an administrative penalty. Is that right?

Mr McConnell: That is right.

The Chairperson: In the absence of that, it is prosecution. That is the point that you are making?

Ms P Bradley: Effectively, you are trying to take away the right to a caution, so people are left with only two options instead of three. Surely it would be better to have the third option in. We should not be removing anything.

The Chairperson: That is the view that has been expressed by the members.

Mr Brady: That was very succinctly put.

Ms P Bradley: Can we go now?

The Chairperson: I could have brought you in earlier, Paula. *[Laughter.]* You are released, Conrad. *[Laughter.]*

Mr Brady: Under caution, you might have to come back.

Mr McConnell: Thank you.

The Chairperson: I think that Paula's suggestion is that we want the option. That means that we are saying to the Department that we want that to be retained. We are looking for that full embrace.

Mr Douglas: It wants to remove it.

The Chairperson: Yes.

We move on to the report of the Examiner of Statutory Rules on the delegated powers memorandum. The Examiner has recommended that the Committee amendments that would make regulations under those powers — clause 33 and clause 91 — be subject to confirmatory procedure where the supplementary or consequential provision amends, modifies or repeals a statutory provision or at least a provision of Northern Ireland primary legislation. It is really just to give the Assembly more of a say. It is about the way in which the regulations are brought forward. That would also form part of a discussion at the Executive about the overall conduct of a Bill and all the rest of it. It is as much a political decision as anything else. Are members happy enough to endorse that and note it? Basically, it suggests that we need the strongest possible say from the Assembly. We are looking for the Department to agree to that. Are members happy enough?

Members indicated assent.

The Chairperson: I have nothing further on the paper that was very kindly provided by the Committee Clerk earlier. Are there any other matters that members want to raise that were not in the paper? We agreed this morning that we would work through the paper and then return to any matters that members may wish to raise that are not in the paper.

Mr Brady: Clause 44, clause 47 and clause 96 about the benefit cap.

The Chairperson: Sorry, Mickey?

Mr Brady: Clause 44 is about Assembly control. It states:

> *"Subject to the following provisions of this section, any regulations made under this Part are subject to negative resolution."*

The Chairperson: We have just dealt with that.

Mr Brady: Sorry, but I just wanted to ask whether it can be changed to "affirmative resolution"? Does it have to remain "negative"? Is that something for the Assembly or Executive to debate?

The Chairperson: We covered the point that we wanted the Department to take on board about the report of the Examiner of Statutory Rules. It specified a number of regulations, but I think that, in general, people have agreed that this will be a political discussion, obviously, for the Executive.

Mr Brady: That is what I wanted to check.

The Chairperson: We are asking the Department to look at that. It is really about the Assembly having the maximum authority on the matter. The Department has agreed to take that away and look at it. Martina is nodding her head quite positively. Has that answered your question, Mickey?

Mr Brady: Yes. My other question was about the benefit cap.

The Chairperson: What number is that?

Mr Brady: Clauses 95 and 96.

The Chairperson: OK. Do you want to speak to those two clauses Mickey?

Mr Brady: Clause 95 talks about this:

"Regulations may provide for a benefit cap to be applied to the welfare benefits"

excluding child-related benefit in the calculation. That would be an option, in the case of a single person or couple. Quite a while ago, Mark raised that point. At the end of the day, I think it is also incumbent upon us to be involved in protecting children. Essentially, if you follow that logic, in that kind of situation, the oldest child will be treated better, in a sense, than the youngest. We have heard quite a lot about how the cap can be predicated upon the number of children. So if someone chooses to have five or six children, it may impact upon the amount of benefit that they get. That is unfair on the children, who do not necessarily have that choice. If Iain Duncan Smith had been around when I was coming into being, as the youngest of five, I might not be here. That is another way of looking at it. *[Laughter.]*

The Chairperson: That is an interesting thought.

Mr Brady: It is, and I am sure there is many a one who would agree with Iain Duncan Smith.

It is a form of social engineering. We have heard a lot about this being intended to discourage people from having larger families. Their benefit will be impacted upon because of that. It is something that we need to address. Have people any views? This is an important question.

Mr Durkan: I have been thinking about those very clauses, and I think they need further discussion. There has been a bit of discussion around the benefit cap, with regard to child-related benefits and exemptions. It is important to have that discussion again and see how we can move it forward. However, as regards child-related benefits, I definitely think that the Committee should be looking at that more closely.

Mr Brady: At an earlier stage, the people who would be affected by the cap would be a relatively small number. It might be useful to get some figures on that because they may be very few. We are talking about large families, and, historically, people here have larger families than those in England, Scotland and Wales. Therefore, it comes under the particular circumstances that prevail here. We have heard about the nuclear family, which is 2·4 children. People here tend to have very nuclear families of perhaps 4·8 children. I just want to make that point because it is something that is particularly relevant to the North.

The Chairperson: OK. Have we any suggestions or recommendations?

Mr Brady: One suggestion might be to try to get some detail on the numbers that might be impacted upon by the cap. We have heard a lot of talk about —

Ms P Bradley: I know that we received the figures yesterday, and the cap will affect over 1,000 households. However, when you take away the DLA part of it, where there is no benefit cap, the figure goes down to 620 households.

We are quite fortunate in Northern Ireland, because this is based upon the English housing rate, so we have come off really quite well here. We worked that out yesterday, and I have written it down here. If you are a couple with children, or a single parent with children, you are in receipt of £2,166.66 a month, which is a heck of a bit more than some of my friends' families, where both parents are working and they have children. So, I think that we will have quite a bit of difficulty in arguing this one. I take it that we are not looking at the single one; it is only the couple or the single parent with children. It affects a small number, albeit it still affects a number, regardless of whether it is only one person.

Mr Brady: It comes back to the duty of care. There are 624, or whatever, families affected, and there are children involved. I think that it is incumbent upon us to give them as much protection as the people who are getting £2,166.

Ms P Bradley: That is what the benefit cap is set at; it is a substantial amount of money. A lot of people who are working and have families are not receiving that amount of money. They are making decisions as to the number of children they have. I do not agree that people should be told how many children they should have; it is up to them how many children they have. Most couples, my friends or people who I know and have been with over the years, would say that they could not afford to have another child or to have three or four children. They would say that they could only afford to have, and to give the best start in life to, two children, for instance.

Mr Brady: With respect, we are talking about two different things. We are talking about benefits, which are not high. They are subsistence level, by the Government's own admission. We are also talking about the low-wage economy. The report that came out in the week before last stated that a living wage should be £7·20 an hour, but the minimum wage is £6·19. We live in a minimum-wage economy, so it is as much to do with the low wages. I take your argument. People will say, "I am not earning that, and I am working." However, that is not the problem of the people on benefit; it is the problem of the people who are paying the wages. That is a different issue. We are talking about people on benefit. If we were dealing with employment legislation, we would, obviously, be talking about the minimum wage and various other things.

Ms P Bradley: Sorry to cut in again, but if you were earning that amount of money as a salary, which equates to £32,000 a year, or something like that, for a 40-hour week, you would be getting much more than a very good wage.

Mr Brady: How many people do you and I know who are earning that? I do not know many people who are earning that.

Ms P Bradley: Yes, but you can get it on benefits. People are going to look at that and ask what incentive there is to work if they can get that on benefits.

Mr Brady: I understand what you are saying, but if you follow that rationale, we could say that, if someone is earning only £20,000 a year, somebody on benefits should get only £10,000 to give them an incentive to work. That is not the issue. The issue is the benefit system. People get paid a low amount of money on benefits; they do not get a huge amount of money. The difficulty that we have is the low-wage economy. It is as simple as that.

I think we are talking about two different things. We are talking about the perception that is out there of people working and getting only £15,000, while somebody on benefit is getting £20,000. In fairness, I think that that is part of the media/Government propaganda that has been stirred up and suggests that all these people are sitting on benefits and getting huge amounts of money for doing nothing, while Joe Soap is out working his backside off and not getting half of it.

Ms P Bradley: I know that not everybody and not every household receives that amount of benefit a week. In fact, a lot are far off getting that on benefits. However, that equates to a job that receives a salary of £32,000, or whatever, a year. I know what you are saying, Mickey. Yes, we have a low-wage economy here, but even if you bring people up to the average wage of £20,000, it is still £12,000 above that. I know that a social worker is paid £16,000 for the first year after they graduate. They would need to be a postgraduate for seven years before they would get up to £32,000.

Mr Brady: Part of it is the issue around children and saying that people should not have children unless they can afford them. What if somebody is in a reasonably well-paid job, is pregnant and then loses a job very quickly, as has happened. I am sure there are people in FG Wilson or in the Civil Service or in public service who thought that they had a good, secure job. A lot of what we have heard around this legislation is predicated on all of that social engineering and people being told that they can have only x number of children, otherwise the state will not pay them. The state has a duty of care to the children.

Ms P Bradley: I agree with that, and I do not agree with social engineering. It is up to the individual how many children they have.

Mr Brady: I understand that. It is the parent's choice. I am interested in the children's welfare.

The Chairperson: Do you want to say anything else, Paula?

Ms P Bradley: No, it is fine.

The Chairperson: I am not sure that we are going to get agreement on this now. Perhaps members should look back on it, and we will return to it tomorrow. As there are no other issues, we will come back at 10.00 am tomorrow. I thank the departmental officials for being here all day and for their help.