



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Welfare Reform Bill:
Committee Consideration

5 February 2013

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 Mark Durkan
Mr Fra McCann
Mr David McClarty

Witnesses:

Ms Martina Campbell	Department for Social Development
Ms Jane Corderoy	Department for Social Development
Mr Michael Pollock	Department for Social Development

The Chairperson: We are just now opening our formal session, and I welcome everybody into the room this morning. I ask members to switch off all their phones, and so on, because this is the worst room for interference with the Hansard recording. Last week again we had a number of problems, and I have been advised by Hansard about how difficult that makes it to record these meetings properly.

I also ask members to declare any interests relevant to today's agenda. None has been declared.

We have an apology from Sammy Douglas; Mark Durkan has to be in the Chamber; and I think we have apologies from Michael Copeland as well.

The substantive item today is the Welfare Reform Bill. The Committee heard from the Minister and his officials on the Committee's recommended proposals last week, and we also heard from the Clerk of Bills on the different options available to the Committee in respect of recommendations and amendments that members may wish to put. I suggest that today we consider the Minister's response and revisit the proposed amendments, if needs be. Copies of the Minister's response, the amendments and a paper prepared by the Committee Clerk can be found in members' tabled items.

We are here this morning to recommence our discussions around the Minister's response and to go over the options open to the Committee, with the focus on a series of recommendations that calls on the Minister to take the issues to the Executive for consideration. If the Committee is broadly in agreement with that approach, I suggest that we go through the Minister's paper to ensure that we are content with the way forward for each proposal and reflect on the issues that are non-cost-related. The Committee met in closed session and has had a brief discussion as to how we see the way

forward. I suppose that, in essence, we want to consider whether we should deal with the report by way of going through the Bill as we do, clause by clause, and tabling any amendments that people want to put forward, or should we seek to reach a consensus report. I want to formally put that to the Committee. Is the Committee of a mind to seek a consensus report, as opposed to a report that will necessitate a range of amendments? Are members content that we seek to secure that?

Members indicated assent.

The Chairperson: We will do that and, to facilitate it, we will go through the paperwork that has been provided to us. We had some limited discussions on it last week. In light of that, we propose to have our discussions on the papers that we have today, and then we will ask the officials to provide an updated paper to our meeting on Thursday. In other words, we will not be here tomorrow but we will return for a Committee meeting on Thursday morning. It should not be a lengthy Committee meeting on Thursday. We will resume meeting for the remainder of the days, if we need to, to consider an updated paper from officials.

The main purpose of this is to try to reach a consensus report because, on a number of issues, members feel that they do not want to be restricted on some of the views that they might have on the basis that something may or may not break parity, or something may or may not cost something. We had a situation last week where we were told that something would cost us £24 million and, then, on questioning that figure, we were told that it might not cost that. I, for one, am not prepared to proceed on that kind of flawed basis.

On the basis of that decision, the Committee will try to get a consensus report. We believe it will be a strong report and it will allow the Minister to go to the Executive on the basis that we have a twin pillars approach. On the one hand, we will seek flexibilities in the Bill, and on the other, we will look for mitigating measures that may or may not be taken by the Department or the Executive as a whole. We cannot guess what the Executive will do in their spending priorities. We cannot dictate that, and we are not privy to some of those discussions.

On that basis, we will go through the papers that we have this morning. I will ask the Committee Clerk to take us through the first paper, and see where we are at on that.

The Committee Clerk: Perhaps if we go through the Minister's paper first, members can make themselves fully aware of what has been suggested. As I indicated before, last week the Minister said that, where costs are attached, he will be content to take any recommendations that the Committee may have to the Executive for formal discussion and potential agreement. There were some issues last week that required clarification, particularly in relation to amendments 2 and 3.

Would members like to have a look at the Minister's paper? It begins with "Issues/Topics". It starts with clauses — this was listed in the Committee's papers as clause 2, but it actually refers to clause 99. It relates to the twice-monthly payments being the default position. It would cost approximately £24 million if everyone were to take up the option.

The Chairperson: This is the paper entitled annex 1, is that right?

The Committee Clerk: Yes. "Annex 1" is in the top right-hand corner. Chair, if members are content with the information that they have on that particular clause, there are some issues around whether "fortnightly" is the same as "twice monthly", as you remember last week.

Ms Martina Campbell (Department for Social Development): Yes. As it is a monthly payment now, it will not be quite fortnightly; it will be a bi-monthly payment, so it depends on the assessment. Tommy O'Reilly has offered to come to do a specific briefing on payments and the taper. I can arrange that, if members wish.

Mr Brady: You are saying that the first payment has to be monthly.

Ms M Campbell: It has to be monthly.

Mr Brady: Then the IT system can be adjusted. Why can you not adjust the initial payment? If you are going to change the system, change the system. Presumably the agency is able to do that. It is only the logistics of it. I do not understand it.

Mr Michael Pollock (Department for Social Development): I think it must be something to do with the software, Mickey.

Mr Brady: It does not make sense. If you are going to pay it the following month fortnightly, bi-monthly or whatever, why not the first time? They also talk about exceptional circumstances. Who decides those?

Ms M Campbell: The exceptional circumstances issue is out for consultation, so —

Mr Brady: Yes, I think we heard that. I am still just a wee bit wary about that. That can be very subjective.

Ms M Campbell: So, that will be decided by the decision-makers. Once the criteria and definition of "exceptional circumstances" are agreed, the agency will bring that work to the Committee. Once all that is agreed, the exceptional circumstances will be decided by the decision-makers.

Mr Brady: If you have an IT system that pays bi-monthly, you would assume that that is put in place. You seem to be saying that you are putting in place a different one at the start, and then —

Ms M Campbell: Yes, I get your —

Mr Brady: I cannot imagine it being any cheaper to do it that way.

Mr Pollock: It is probably something to do with the default position on the IT system in the rest of the UK, because the bulk of the payments would be monthly.

Mr Brady: In a sense, they have an extra six months here to sort that out.

Mr Pollock: I cannot remember the number of man days but it was something like 10,000 man days necessary just for essential variables for the Northern Ireland IT system, like our postcodes and things like that.

Mr Brady: That sounds like the amount of time the Committee has spent on the Welfare Reform Bill.

Mr Pollock: Pardon?

Mr Brady: Ten thousand man hours.

Mr Pollock: Something like that.

Ms M Campbell: Join the club.

The Chairperson: Before we go any further, I really do not want people telling me "it might be". I cannot work on the basis of what might be. I am sorry, Michael, but —

Mr Pollock: No, that is fair enough.

The Chairperson: I know that you may be trying your best, but if somebody cannot tell me what will be or what will not be, I do not want to hear anything in the middle, because that does not mean anything to me. I cannot make a decision on what might be something, sorry.

Ms M Campbell: Well —

The Chairperson: I know what might happen as a result of a consultation on the universal credit and split payments. That will work its way out, so something might happen there. However, if someone comes here and tells me at this stage of the game, "Well, that might be because of", I am sorry but I really do not want to hear that.

Ms M Campbell: Actually, Chair, the second paragraph of the explanation under twice-monthly payments came from the agency. It says:

"To be able to offer a twice monthly payment or split payment from the start of the claim DWP has advised will require significant changes to the ICT over and above that already agreed."

If a split or bi-monthly payment is required from the start of the claim, that can be done clerically, but it cannot be done using the IT as it is structured at the moment, if that makes it any clearer.

Mr Brady: Tommy O'Reilly mentioned six hours per claim.

Ms M Campbell: Yes.

Mrs Cochrane: What I picked up last week from Tommy was around the fact that a lot of benefits are currently paid fortnightly. Therefore, when you move to universal credit, because it will be paid monthly or twice monthly, you have to make that change initially. The issue seems to be that the initial change has to be made to make it be paid monthly, because it will be 24 payments in the year rather than 26 if it is being paid twice a month. So, there is an initial change for everybody, whether you will continue to have two payments in the month.

Mr Pollock: That is our lay understanding, Chair, but we will clarify that for you. However, it is tied into the overall IT system and the fact that the bulk of the caseload, which is the whole of the UK, will be on monthly payments.

Ms M Campbell: The best approach would be for me to ask the agency to attend on Thursday and clarify the position, because we are not close enough to that detail, if that is acceptable.

The Chairperson: Bear in mind we were told that we were getting flexibilities, so I want to hear about the flexibilities.

Mr Brady: I am sure that Judith knows more about computers than I ever will, but I just want to clarify about that first monthly payment made to people. There then has to be a decision made somewhere for somebody to be paid bi-monthly or fortnightly. I would be very wary about that happening seamlessly because a system will have to be put in place to accommodate those people who want to be paid bi-monthly as opposed to those who want to continue to be paid monthly. That just seems very complicated. I am sure that there is some computer-speak somewhere that says that it has to be done this way, which I would not necessarily agree with.

I am just wondering, because the logistics of putting in those people who want to be paid bi-monthly — it seems to be a more complicated way of doing things than having the people who want to be paid monthly programmed in and those who want to be paid bi-monthly programmed in as well. There is almost a danger that someone who wants to be paid bi-monthly is going to just carry through, and you know as well as me that human nature being what it is, that is quite likely to happen to a number of people. The safeguards are maybe not necessarily as safe as they could be. I think that maybe clarification is needed on that.

Ms P Bradley: I would prefer the default position for everybody to be bi-weekly rather than monthly. However, if this is the way it has to be, and if we accept that and everybody gets paid monthly from the beginning, I estimate — and I know that you do not want to hear estimates — that 90% of people are going to want it bi-monthly. That has to be done clerically — manually — by someone if they want it.

Ms M Campbell: No. If everybody decides to go to bi-monthly, the agency is saying that that is more than what was agreed. What it has agreed is for a percentage of the caseload to go bi-monthly. Therefore, anything over and above that agreement would have to be done clerically because the IT system apparently cannot cope with that volume.

Ms P Bradley: OK, and it will go over. We know that it will go over. It is not going to be the estimate that the agency agreed to, so the people who are over that have to do you know what. That could end up taking a very long time for a team of people to sit and do that manually. That in itself is another worry, with people asking to be paid bi-monthly and maybe having to wait a further six or eight weeks for that to be processed manually.

Ms M Campbell: Yes, well, Tommy said six hours to do a clerical case. I am sorry, Chair, but we are not close to that detail, so I really think that the agency would be better placed to attend on Thursday and provide all that clarification.

Ms P Bradley: They are going to be inundated.

Mr Pollock: What we are getting is that you have concerns about the IT and people falling through and possibly having delays in their payments, and you want to try and get some sort of assurances about what safeguards are built into that system and, in particular, why someone has to go on monthly if, ultimately, they are going to be paid bi-monthly. Am I right?

Ms P Bradley: I could accept everybody being paid monthly and that that is the default position if it was then easy for everyone to move on to bi-weekly, if it was a smooth process and if it could be done before the end of the following month. However, I do not see how that is going to be a smooth process or be done in time. There will be people who will fall into financial hardship, there is no doubt about that. I could accept the proposal if we knew that it was going to be —

The Chairperson: Yes, I can understand that. I am also mindful that we were told that the system has been deferred for a number of months to get it right. Now, it seems we are being told that actually it will not be right in the way in which you would see it as being right.

Mr F McCann: Chair, Paula has covered much of what I was going to say.

Ms P Bradley: You are joking, Fra.

The Chairperson: It is not necessary to report all that.

Mr F McCann: Every time we discuss this we get more and more confusion about the thing. When we were debating it, we were fairly clear in our minds what we were asking to be done. When the Minister came back and said that he had flexibility with this, it seemed to fit with what we had argued that we wanted done, but it actually does not. It is going to be much more complicated for people to work the system. The flexibility seems to be designed more to frighten people off from asking for bi-monthly payments, as it might mean they have to wait longer to get their money, and, as Paula said, they may fall into debt waiting for that to happen. People talked about that, and Alec raised the point about making the system ready to deal with that flexibility. The system is not ready, and it will never be ready to deal with the bi-monthly payments we have asked for. In fact, people will nearly have to withdraw from the system to have their benefits paid, rather than being part of a system that has been set up.

Mr Pollock: We should certainly be able to get some assurances as to processes and what will happen and when. Essentially, IT systems are fairly rigid: if you tell them to do A they will do A and if you tell them to do B they will do B. The Minister pointed out that there is a cost attached to getting a system to be able to do both A and B. That is maybe where the Committee has some reservations as to how flexible the system will be.

Mr F McCann: What really gets me — Mickey constantly raises this issue — is the computer system that was put in place to deal with child support and the hundreds of millions of pounds that were spent on it. I take it that there has been a huge cost for a modern new system. When I lift my phone and turn it on, I can talk to it. It does not always listen to me, but I can talk to it and tell it what to do. I am amazed that people spend hundreds of millions of pounds on a system, yet they cannot press a button to change it to twice weekly or say to it that we want to operate the thing. It just amazes me that that amount of money can be spent on a computer system, but it cannot be adjusted to do that.

Mr Brady: I just want to make the point, Chair — and I am sure that we are all aware — that when pension credit was centralised and transferred to Derry it took three years to get it working any way properly. They were bussing civil servants in from all over the place. There were people coming from the Plaza, Newry and all sorts of places, being put up in Derry over the weekend and working Saturdays and Sundays. It still took three years to get it right. You have that in the back of your mind.

And yet pension credit was one benefit, which was probably relatively straightforward. All it does is make a change for relatively small numbers of people over 60. Universal credit is going to involve

huge numbers — you are talking about something like 300,000 — and it is a much more complicated benefit than pension credit.

Michael, you said you press a button to do B, but in pension credit they must have pressed Z, because it took them three years.

Mr Pollock: I take your point, Mickey. However, you will hear about the exceptions and the people who fall through the net.

The Chairperson: I actually think that we are now starting to the job of IT experts and everybody else. We need to be very careful.

Ms Brown: We are talking about bi-monthly payments. The estimated annual cost is in and around £24 million, although we are not sure about the accuracy of that amount. If an individual opts for a bi-monthly payment, it will take six man hours per person or per case to do that. I do not know whether we have a percentage of how many people are going to request bi-monthly payments, but if it is in the region — the consultation is coming back about 80%. Do we have a cost of how much it will cost us to move that 80% times the six man hours per case? What is the estimated cost for making that the default position?

Ms M Campbell: As I understand the position, the six hours apply when payments have to be made clerically if a person wants bi-monthly payments from the first payment. The clerical workaround for that is six hours.

The agency has not given us an estimate for the best case scenario. The worst case scenario is that all payments will be made bi-monthly, and the agency estimated the cost of that to be £24 million. I think that the agency is still working on the best case scenario, which is that 150,000 will require bi-monthly payments, which is roughly half the caseload. I will seek to have that information for the Committee on Thursday.

The Chairperson: Thank you for that, Martina. That brings me back to the point that we have had a position from the outset of wanting split payments to be facilitated, and we have outlined all the arguments for that.

I am being generous when I say that we are still working on estimates, guesstimates and worst case scenarios, and I understand all the reasons for that. However, by the same token, theoretically, we will be asked to agree to accept something on the basis that it might cost this and might not cost that, plus the fact that a very important consultation is ongoing on the very issue of split payments. The most generous description that I can find is that this is a work in progress.

I think that the Committee would be wise to stick to its original agreed position of wanting the Department and the Bill to facilitate split payments. The precise details of that and the associated costs are matters that will need to be deliberated on and decided further down the track. Why should I come down on one side or other of the argument when I do not yet have all the information? I would like us to stick with the position that we agreed initially. It seemed to make sense, and we are trying to work on that basis. If there is to be a cost attached, whether to a worst case scenario or a less worse case scenario, that is not a decision that we can take. Once the consultation is completed, the Executive will look at that, and they will get the costs associated with any split payment criteria. At best, I am being asked to make a decision without having most of the really pertinent information.

At this stage of the game, I think that the Committee would be wise to stick with its original position. That is a decision that we will have to consider. That is part of the thinking behind us reaching a consensus report rather than making amendments, particularly when those amendments would be premature to say the least.

The Committee Clerk: Chair, the Committee had an issue with split payments last week. Patricia, you referred to it last week, and I just want to remind members about it.

The Clerk of Bills: The Committee wanted to explore amendment Nos 2 and 3. These deal with a situation in which, for example, one party is in paid employment and the payment is to be made to the other party, the claimant, and all other payments are to be made through a split payment. Clause 99 already contains regulation-making powers that could give effect to those intentions, if that is where the Committee intended to go on the basis of an amendment. Clause 99 allows for split payments and

for payments to be made to a nominated person who, in the Committee's words, could be the main carer or second earner. That is how it is currently drafted.

What the Committee asked for was much more specific. Last week, I drew to your attention the fact that, to be much more specific than what is already in the Bill, you would need to think a bit more about the definitions. It would be up to the Committee to accept that the Bill already includes such regulation-making powers and, for example, seek clarifications or recommendations. Alternatively, if you were to decide that you wanted to be much more specific, when you talk about one person being in paid employment, you need to be clear about whether you are talking about just one party to a couple who is in either part-time or full-time employment and the other party not having any employment. If it were to be drafted like that, it would cover only that group of people. If you want to be more specific than that, the regulation will be very detailed. In some ways, that is why these things are done by regulation, because — *[Inaudible.]* — policy and regulation-making power and then the — *[Inaudible.]* — brought back to consider at a later date.

The other point is that, as drafted, all other employment payments would be split. It is extremely specific. I draw to your attention — *[Inaudible.]* — if you want to be that specific — *[Inaudible.]* — acknowledge that there are regulation-making powers in the Bill. You could clearly specify, for example, by recommendation, what you would like the regulation-making powers to do rather than trying to legislate and define things that would be extremely difficult to define.

The Chairperson: That points to the need to consider the outworking of the consultation. We cannot bypass that. We have to bear in mind that the consultation goes out to all the key stakeholders. The Committee's very strong view was that split payments need to be facilitated. The precise nature of that will come down at some point to specific amendments in the Assembly. You are saying that the Committee amendment might actually be too prescriptive; that it is a good idea, but maybe we have not used precisely the right wording. The Committee was very clearly of the view that it wanted split payments to be facilitated for a whole range of reasons. I am not asking you to agree all of this formally now, but I presume that this is what the Committee is still minded to see.

Ms P Bradley: If I had to list my priorities, split payments would be near the top. However, I do not want us to get tied in to this amendment, with the result that other vulnerable people will be affected by a rule that we have made. I am in full agreement with what you said.

The Chairperson: OK. On that basis, we will move on to the next item.

The Committee Clerk: The next issue raised concerns the claimant commitment. There are no associated costs, but the Minister did not consider that legislative change was appropriate. I just want to see whether the Committee can indicate how it wants to move forward. The Committee will recall that this relates to a situation in which, in a joint claim, one person refuses to sign.

The Chairperson: The Committee felt that it was very unreasonable that, if one person refused to sign a commitment, the whole family was penalised. A cooling-off period is provided for, but nothing after that. Have I remembered that correctly?

Ms M Campbell: Yes, there is a cooling-off period.

The Chairperson: And then nothing?

Ms M Campbell: Not until the claimant comes back to the agency, and it would be a new claim at that stage.

The Chairperson: Yes, but it is our understanding that there is a cooling-off period and then —

Ms M Campbell: That is it. After that, they are off the books.

The Chairperson: So the claim just dies a death and is off the books. The Committee felt that this was not reasonable at all. There needs to be a solution to that. The Committee's view remains that this is not a reasonable or sustainable position.

Ms P Bradley: I suppose that all these issues are priorities, and this is another one. My only concern, which was brought up last week, is about opening up the system to false claims. That could easily

happen, so this needs to be tweaked in some way. I agree that we cannot leave the most vulnerable without money. Whether it is for 24 hours or longer, it is too long. If a female comes in with her children, and her partner has not signed the commitment, what else is in place?

Ms M Campbell: If the unwilling partner does not sign the claimant commitment, nothing else is available.

Ms P Bradley: In that case, we may need to look at making available another fund rather than people having to make a separate claim, which would be open to fraud. Another option may be to have a separate fund for use in such situations. I do not know whether that may be a way round it.

The Chairperson: Remember that members' tabled items include options for the Committee. Paula, you suggest a separate fund. We can recommend anything, including that this situation needs to be sorted out or there must be some means by which vulnerable people are not left penniless. We can table something. I think that the Committee —

Ms P Bradley: We cannot leave these people without anything.

The Chairperson: — seems to be of the view that, in the event of one person in a couple deciding that he or she is not going to bother their backside to sign, for whatever reason — they could be vulnerable for all we know— it is not reasonable to penalise the whole family. Everybody has accepted that that cannot be allowed to pertain. So our recommendation could be as simple as, "Go and find a solution", "Make a fund available", or whatever. However, this certainly has to be resolved. I do not know the answer, but it seems ridiculous to leave it as is.

Mr F McCann: I find myself agreeing with a lot of what Paula has said this morning. A key point that she raised was the time that elapses between a person refusing to sign the declaration and a family even being eligible for the hardship fund. It is about trying to narrow that gap. If a family member says, "That does not represent me; I want to put in a claim in my own right", it needs to be dealt with. It cannot be put back. One difficulty with crisis loans is that some people have had to wait for a certain period to elapse from the time of application before being offered such a loan. We need to look at that intervening period.

Ms P Bradley: I know that we discussed this last week, and I do not want to go over it all again. However, the fact that somebody is applying, whether to a fund or through a fresh application, they would have been getting that money anyway if their partner had agreed to sign. It does not cost more because it is money to which they would have been entitled anyway. Therefore, this would not be a big financial burden.

Mr Brady: Following on from what Paula said, I just want to clarify that nothing at all is available in the cooling-off period, so people will be left without anything. Even if it were the case that hardship payments were made available, unlike current hardship payments, they would be recoverable from benefit, so the person would still be penalised.

Ms P Bradley: That cannot be a hardship payment.

Mr Brady: Paula's other point was about this leading to fraud. In my experience, people who are going to commit fraud will do so anyway. In those cases, it would be much easier to follow up on the possibility of fraud or alleged fraud. For instance, when the female partner claims separately, I imagine that the Department's follow-up enquiries would be fairly rigorous. That is because, over the years, one of the hardest things to prove was that couples who claimed separately were living together. From a fraud perspective, you would nearly have to sit outside their door for 24 hours a day, seven days a week, because they would have children in common, access and visiting rights, and so on. It would be more difficult, in a sense, to commit fraud, so something has to be put in place, which follows on from what you said, Paula. I am starting to agree with you.

Ms P Bradley: This is really bad, Chair. *[Laughter.]*

The Chairperson: That is what consensus is all about.

Ms P Bradley: Let us see how far we get.

The Chairperson: We are not doing too badly. The next item on our list is third-party verification. Again, this should have been relatively simple, should it not?

The Committee Clerk: Yes, Chair. The Minister said that he would provide an assurance that the current practice of allowing third-party verification would, in effect, continue. I do not think that there is an issue for the Committee, other than it may want to acknowledge or welcome that.

Ms P Bradley: I would like to welcome it.

The Chairperson: OK, is that fair enough?

Members indicated assent.

The Chairperson: We move on to the issue of 16- to 17-year-olds registered in training but not placed. Is that all right?

Ms M Campbell: Sorry, Chair, I cannot remember whether it was you or the Deputy Chair who asked last week for more information on that from the Department for Employment and Learning (DEL). We expect to receive information on the numbers that might apply later today. DEL assured us that it was not aware of any 16- to 17-year-olds waiting for a training place. We are confirming that that is still the position.

Mr Brady: Chair, may I just clarify something? When children come out of care at, say 16, normally, social services still have the duty of care — Paula can correct me if I am wrong. The paper states:

"Under this clause as an under-18 year old care leaver cannot qualify for Universal Credit unless they are part of a benefit unit with responsibility for a child (either as a lone parent or as part of a couple) or a limited capability for work or work related activities recipient. Care leavers cannot qualify on the grounds that they are without parental support or pregnancy post-confinement/or as a carer."

Currently, if someone under the age of 18 is estranged from the family home and claiming benefit, does that mean that they do not qualify?

Ms M Campbell: There are exceptions in the regulations for those people.

Mr Brady: So they will be covered?

Ms M Campbell: Yes, they will be covered.

Mr Brady: For children coming out of care, usually social services —

Ms M Campbell: Social services should pick up the tab in that situation.

Mr Brady: That is what the Minister means by changing the social security system.

Ms M Campbell: Yes.

Mr Brady: Hardship payments were made in 413 cases. Were those social fund crisis loans?

Ms M Campbell: No, those were jobseeker's allowance (JSA) hardship payments, which cover people over that age as well.

Mr Brady: Would that have been recoverable from benefit?

Ms M Campbell: I am not sure about that.

Mr Pollock: Not previously, but I think that it would be under the new system.

Mr Brady: That is the issue: again, they are being penalised.

Mr Pollock: It is a hardship payment. It is not a penalty as such.

Mr Brady: That is OK. Thanks.

The Chairperson: Are we happy enough with the explanation given and the situation that it provides for?

Mr Brady: The issue was to do with youngsters who fall outside the normal criteria. Michael, you said that, under the present system, a hardship payment is not recoverable. In the new system, however, it seems that some young people will be put below subsistence level.

The Chairperson: What do we want to do with this item?

Mr Brady: We need clarification. Martina said that, currently, those 413 claims are under JSA and not recoverable. In my experience, there will always be children who fall outside that. Not too many, it has to be said, but you will get children who are not in the parental home or, having come out of care, are on a training course or a waiting list for courses.

Mr Pollock: As Martina said, the indication from DEL is that very few would be affected by this, but we are trying to get the exact numbers.

Mr Brady: The point that I am making is this: we still have a duty of care to help even a small number of children in those circumstances. They are probably the most vulnerable, or more vulnerable than most. If those numbers could be obtained —

The Chairperson: Do you think that you will have those figures this afternoon?

Ms M Campbell: We hope to get a response from DEL today.

The Chairperson: Ok. We will move on. The next item is restrictions on entitlement. Are members content with the response?

Mr Brady: May I have clarification? Essentially, does that mean that, if a claim is for less than seven days, the benefit will not be paid, but the person will be notified of an underlying entitlement?

Ms M Campbell: Yes.

Mr Brady: That could be six days. There are three waiting days.

Ms M Campbell: It would be four days.

Mr Brady: Four, sorry, because there are three waiting days. That is all that someone would have to live on for that period.

Mr F McCann: I am being a bit flippant, but, if someone ended up owing six days' benefit, would the agency let that go because the cost of collecting it may be prohibitive?

Ms M Campbell: Sorry, if a person owed six days' benefit? Oh, no, I take that back. I misheard.

The Chairperson: The Committee sought assurances from the Minister on whether that would affect passported benefits and was told that it would not.

Mr F McCann: It still seems an unfair situation if people are owed money. As I said before, the money used to be measured down to the penny.

The Chairperson: I understand. There are two issues. The first is the loss of benefit for those three or four days. Martina, you are saying that it would be for four days. The second issue is whether that would impact on passported benefits, and we do not know. Fra, I presume that this does not change

your first concern but does change your second. Are members satisfied with the response to the passported benefit issue? Will we welcome that reassurance?

Mr F McCann: Yes.

The Chairperson: We will come back to the loss of payment for three or four days. Is that fair enough?

Members indicated assent.

We now turn to clause 10, "Responsibility for children and young persons". We are told that this is a parity issue and that the potential cost of the proposed change is £11 million a year.

Mr Brady: The Minister has asked whether the Committee wants to pursue this. I would have thought that disabled children were among the most vulnerable of those who will be affected, so I think that it is worth discussing.

The Chairperson: This is in line with our earlier decision to ask the Minister to take to the Executive anything that carries a cost. The decision for us to make is simply whether the Committee would still prefer that lower payments were not made. We will put that to the Minister, and it will be forwarded to the Executive. Subject to what comes out of that, it will be up to Members and parties to make a decision at Further Consideration Stage. However, we would still like the position to be that those people will not be disadvantaged in the way that has been described. Are members happy enough to move forward on that basis?

Members indicated assent.

The Committee Clerk: I know that it is difficult to distinguish between what is and what is not a priority for the Committee, but it would probably help the Minister if the Committee, when issuing a series of recommendations, indicated what exactly are the priorities as the Committee sees them: for example, whether disabled children are a key priority as opposed to split payments. I know that it is difficult to decide between two different animals, but it would be helpful to the Minister and the Executive if the Committee could do that.

The Chairperson: We would probably be better doing that when we have decided on all our recommendations. We could then decide whether we needed or wished to weight any of them.

Mr F McCann: I do not expect the officials to be able to answer this question, but is there a definition of "greatest need"? Who determines that when dealing with people, including children, with disabilities?

Mr Pollock: Fra, that is, in a sense, down to the Programme for Government and the Executive's priorities.

Mr F McCann: Ministers will not define "greatest need" when it comes to disability. Will somebody with the relevant experience sit down to do that? All we have been told about is the split between the two rates: over 8,000 people will be on the lower rate, 7,500 will be on the higher rate and any money saved will go to those in most need. How do you determine who is in most need?

Ms M Campbell: The eligibility for the disabled child additions is linked to the rate of disability living allowance (DLA) that the child is getting. The definition of "severely disabled" or the degree of disablement will be determined in that mechanism. The coalition Government are saying that, in directing resources to those in greatest need, 6,000 children will receive more under this measure. They feel that that is right and proper because those children are the most severely disabled.

Mr F McCann: Nearly 8,000 people, however, will receive less.

Ms M Campbell: That is true.

Mr F McCann: That is what I am asking: how do you determine —

Ms M Campbell: That is linked to their rate of DLA.

Mr Pollock: It is their current entitlement.

Mr F McCann: Is it a box-ticking exercise, or is it based purely on medical evidence that may be provided?

Ms M Campbell: It is based on their assessment for DLA. Do you know what that assessment is?

Mr F McCann: So it is a box-ticking exercise that determines their disability. I am talking about the assessment.

Mr Pollock: It will be down to their current entitlement.

Mr F McCann: I know that you probably do not have the details, but the system seems totally unfair. They say that there will be winners and losers with levels of disability. That seems totally unfair not only on a child who may need the money but on the people who provide the level of care that is required for a child.

Ms M Campbell: There will, of course, be transitional protection for existing people for however long —

Mr F McCann: One slight move, and that is away.

Mr Pollock: There are other —

Mr F McCann: It is like discretionary payments.

Mr Pollock: — protections in the benefit cap for universal credit. If a child or a member of a household is affected by disability, they are exempt from the benefit cap. There are some safeguards, Fra.

The Chairperson: Are members content with the position that they previously adopted? This issue could be around parity or cost. The cost decision is outwith our gift.

We move to clause 12, "Other particular needs or circumstances". There are a number of issues. We are being told that it is a parity issue and that costs are attached.

Mr Brady: We are dealing with the severe disability premium. I want more reassurance that it is not based on the current assessment for employment and support allowance (ESA), which is, essentially, a work capability assessment. Most people accept that that is fundamentally flawed. It has been condemned by the British Medical Association and other bodies. Therein lies the problem: there is inconsistency in assessing people. In my experience, a severe disability premium can make a big difference to the lives of older people who live alone. It gives them a much better quality of life than they would have had if they did not receive it. Essentially, the move is to reduce what they will receive. We are talking about a carer-type premium or a disability premium. People will not be able to get both, but in the current system, they can. That is a fundamental issue for people who suffer from disability. Unless the assessment for ESA is changed dramatically, many people will suffer as a consequence. Any of us here can quote examples of people who have been found to be capable in the context of the work capability assessment. That type of assessment is appalling. Last year in England, 32 terminally ill people were found capable because of that assessment, and they died within a month or two. That is the statistic, and those are the Department's figures.

Mr Pollock: You previously raised concerns about the assessment process, Mickey. I think that that is right. There is a serious cost tag attached to this issue. The rationale that is outlined is to try to do away with overlapping provision.

Mr Brady: I will make one final point. The issue is money. Since the Atos contract was signed, it has got over £400 million from the Government to do something that is fundamentally flawed and does not work for the majority of people. I quoted an example recently of a fella with Down's syndrome whose mother was asked how long he had had the condition and when she thought that he would be better.

She challenged the health professional and was told that they were not interested in the condition. They were there to fill in forms and not to ask those questions, and they were not going to deviate from that.

Ms M Campbell: That is a contractual, not a policy, issue.

Mr Brady: Unfortunately, the contract is as a result of the policy. To use that hackneyed phrase: the two are inextricably linked.

Ms M Campbell: I accept that they are linked, but it is not the policy intention that that incident and similar ones should have happened. It is about the performance management of the contract rather than the policy intention.

Mr Brady: I know what you are saying, but I do not necessarily accept it. Essentially, Atos is a data-processing firm and has very little medical background.

The Chairperson: To go back to the root of the issue: the Committee was concerned at the removal of a severe disability premium. The Minister outlined that it is a parity issue, and he did not want to consider that amendment. There is an associated cost, so it would have to be discussed further.

Mr G Campbell: In the paper, the costs for the severe disability premium are there, and "plus admin costs" is in brackets. I know that we are all speculating about how long a piece of string is, but is there any concept of what the admin costs might be?

Ms M Campbell: No. The Bill team came up with that, and when the methodology is set out in square or round brackets, the team has calculated that. The agency was unable to give me a cost.

Mr G Campbell: In the response, that is the single biggest cost.

Ms M Campbell: It is huge.

Mr G Campbell: It is about one third of the projected annual costs. We are back to the issue of likely outcomes. The figure is £52.6 million, which looks as if it has been more precisely analysed and is a round figure.

Ms M Campbell: It is based on the number of claimants who are currently in receipt of the severe disability premium within income support: 17,000 multiplied by the rate of the premium, which is £59.50, multiplied by 52 weeks. Last week, I said — I will say it again — that maths is not my best subject, but I got someone else to check those figures. That is our estimate, but it is only an estimate because we have not included any IT costs or clerical workarounds because the IT system has not been built for that purpose.

Mr G Campbell: Does "admin costs" cover clerical and IT costs? Is all that encompassed?

Ms M Campbell: Yes. There will be admin and IT costs if we are going to go down that route.

The Chairperson: It does not make sense for members to say that we accept that and will forget about it, because it is a big issue. We will all eventually have to face people screaming because of the £60 million that will come off the money for people with a severe disability. We are discussing technical, IT and administration issues in Committee, and all that will be lost in a welter of publicity outside of here. As I read it, the Committee is still concerned with the removal of a severe disability premium and wants that to be dealt with. Whether it will, ultimately, be dealt with and how it will be dealt with is anybody's guess, but that decision has to be taken at a later stage in the Assembly.

We will move on to clause 38, "Capability for work or work-related activity".

Do we have a scheduled time to suspend for a lunch break? It is an Assembly plenary day.

Mr G Campbell: You will get consensus on that. *[Laughter.]*

The Chairperson: The Assembly will break for lunch at 12.30 pm. Could we deal with clause 38 and then have a break? We will move to the Minister's response on the proposed way forward.

Mr Brady: On the primacy of medical evidence, the Minister states that he:

"wishes to advise the Committee that medical evidence is part of the package of evidence considered by Decision Makers".

What currently happens and would have continued to happen is that a decision-maker does not normally get the medical evidence until there is an appeal. You said that the Health Committee is talking to GPs and consultants about costs, and, in my experience of appeals, medical evidence is available from a GP. If people attend an orthopaedic surgeon, for instance, because they have a problem with their back or their leg, or they attend a neurologist because they have a chronic condition, a GP will have had reports over the years, and there is no cost involved. A GP types a code into the computer system — all GP practices are computerised — hits a button, and the reports come out. The person gets the report and takes it along to the meeting.

The difficulty is that, at the work capability assessment, people bring reams of medical evidence to the "health professional", and that person says, "No, I am not here to look at that." So a decision-maker does not get it because if a decision-maker got enough medical evidence, people would not be put through the assessment. The primacy of medical evidence is not a big deal. If good medical evidence is available that shows that a person has a condition that means that he or she is incapable of work, that is easy enough and should be obtained at the start rather than at the end because, in fairness to decision-makers — I have spoken to them about this — they get it at the end of the process. In people's experience, medical evidence comes when someone goes to an appeal tribunal. The reason that a doctor sits on the appeal tribunal is to disseminate the medical evidence and, along with the legally qualified member, make an informed decision on it. It would also cut out costs.

Ms M Campbell: You made a few points, Mickey, and I will try to remember them. The reason for the suggestion of writing to the Health Committee is that, during initial discussions, somebody on this Committee — I cannot remember precisely who it was; I thought that it was you — said that claimants who went to their GP or consultant to get medical evidence were being charged. However, the issue of charging is not for our Department. It is for the Department of Health, Social Services and Public Safety to take up because it is to do with the GP contract. The agency will bear the cost of obtaining medical evidence when the Department or the agency asks for it, so there should be no cost to a claimant. In response to what you said about medical evidence not being asked for at the start, a claimant will quite often produce medical evidence at appeal, but the agency is introducing a new procedure. Before a case gets to appeal stage, it will speak to a claimant to try to get that evidence, if it is available. The purpose of that is to reduce the number of appeals. So that should probably cover —

Mr Brady: It would probably go a long way. The present DLA forms contain a statement from the person who knows you best, which is usually a GP. So somebody gets a GP to fill that in. It depends on the GP how much information is put in. That then goes to a decision-maker, who says, "I can't make an informed decision without a bit of medical evidence". The decision-maker sends for a factual report, for which the Department pays the GP.

Ms M Campbell: That is right.

Mr Brady: So the system that is in place necessitates reasonably good medical evidence that the Department, if necessary, pays for. My point is that some GPs may charge — [*Inaudible.*] — because that information is already available in the computer. If people are going to go to a specialist to get new medical evidence, that is a different issue. I am saying that good medical evidence is already available, and there is no reason why a GP cannot press a button and hand it to you.

Ms M Campbell: The agency is saying that it is introducing a new process that is aimed at trying to overcome that.

Mr Brady: That, however, should not necessarily take away from the primacy of medical evidence, on which it seems fundamental, sensible and feasible for you to go forward, because if it is available, it cuts out a number of quite expensive appeals. If it is going to save the public purse, that may be one direction to consider to save some money. It is just a suggestion.

Ms M Campbell: I accept what you say. I restate the Department's position: medical evidence is part of a package that has to be considered. Although claimants may not be capable of doing their normal job, they may be capable of doing another job, and we have to look at all those factors in the round.

Mr Brady: I accept that, and I went down that alternative employment road years ago: a person not being fit to be a welder, for example, could be a bingo caller or a lift attendant. The nearest lift attendant job that we had at that time was in Lisburn. So somebody from Newtownhamilton was travelling by bus to Lisburn, standing all day in a lift and then developing a chronic back problem. Forgive me if I am sceptical about all that.

Ms M Campbell: I know.

The Chairperson: Very unlike you.

Mr F McCann: I want to make a small point about appeals. In Britain, tens of thousands of people appealed decisions, and the subsequent discussions raised a number of concerns. Rather than trying to short-circuit the appeals process by allowing people more time to disclose their illnesses, there were discussions about how they would limit the appeals process, therefore curtailing the number of people making appeals. To cut down on the number of appeals, they wanted to make it more difficult to make an appeal. Is that the same process that they are talking about here? You said that there may be a period between when people go and the appeal.

Ms Jane Corderoy (Department for Social Development): No. I think that clause 101 refers to mandatory reconsideration, which is a reconsideration process in the agency before it goes to appeal. It is supposed to be about speeding up the process and getting that information. Instead of waiting to go the whole way through an expensive and time-consuming exercise —

Mr F McCann: Is that for a review?

Ms Corderoy: — of getting new information, it will do this review. I think that it is done in some places anyway, but it will be put on a statutory footing so that all that evidence and so on is brought earlier, and it can be resolved sooner.

Mr F McCann: At that stage, are you saying that full medical disclosure will be available at the review to the person who will be making the decision?

Ms Corderoy: There should be as much evidence as a claimant or decision-maker needs at that point.

The Chairperson: The Committee's concern is about medical evidence being at the heart of all this. It may be closing a gap on that. I am trying to be generous.

Mr Brady: May I ask just one quick question? You mentioned the reconsideration procedure, but surely that is already in place in the current system.

Ms Corderoy: It is not there legally; it is not mandatory.

Mr Brady: I dealt with a case yesterday in which a person was turned down. I made a phone call and was able to put a reconsideration application in place, so a system is already in place.

Ms M Campbell: Yes, but it is not mandatory.

Ms Corderoy: It is not mandatory or statutory. It will be brought across everything now.

Mr Brady: Some do it.

Ms M Campbell: Yes. When, like you, I worked in appeals, many years ago —

Mr F McCann: It was too long ago to remember.

Ms M Campbell: — it first went to a different adjudication officer, as they were called in those days. Those officers reviewed the evidence impartially and decided whether everything had been taken into account before a case went forward. This development puts that on a statutory footing.

The Chairperson: In a way, all that supports the Committee's concerns. It could go some considerable way towards addressing those concerns. You have also suggested that we write to the Health Department. I presume that that is a given and that people can do that.

I will suspend the meeting until 1.30 pm.

Committee suspended.

On resuming —

The Chairperson: All right, folks? Everybody is welcome back. So, we turn now to clause 42, on pilot schemes. Again, this is where the Committee wanted to try to ensure that in future policy decisions, changes and proposals to change policies there was a facility to have pilot schemes here because, obviously, we do not believe that information gathered elsewhere is pertinent to here. I take it that that remains the position of the Committee?

Mr Brady: I just echo Alex Easton's remark from the last mandate that we have our own pilot schemes.

Mr McClarty: There are peculiar circumstances here that should have been taken into consideration, namely the legacy of the past number of years and the impact that that has had. Obviously, no consideration was given to that.

The Chairperson: OK. The departmental response on the matter states that the:

"Minister notes the Committee's concerns and will write to Lord Freud, at final stage".

On that basis, I presume that we are happy enough with the position that we have already agreed.

Members indicated assent.

The Chairperson: We now turn to housing, and the first item is mortgage interest. Again, there is a cost issue, so, in line with our earlier decision, we will want to retain our position and leave it for the Executive to consider whether they are prepared to support us.

Members indicated assent.

The Chairperson: Turning to underoccupancy, again there are financial implications. We do not know the extent of that. That, clearly, is an issue that will have to be taken into consideration here by others for mitigating measures. Are members happy enough to move forward on the basis of the position that we have already adopted?

Members indicated assent.

The Chairperson: Moving on to sanctions, the Committee agreed to ask the Minister whether there was room for variation in respect of the proposed sanction regime. The departmental response states that that would be a breach of parity. Again, there are potential costs, and we are not sure what they may be.

Mr F McCann: Alex Attwood was the Minister who introduced sanctions in the first instance. Is the Department happy that the decisions that people are being handed are the correct decisions? When asked, Alex Attwood said that sanctions would not be widely used. Since they have been introduced, thousands of people have been reported for sanctions or had sanctions levelled against them. That seems to go against the spirit of what we were told by the Minister. Is there an internal review mechanism that allows people to deal with individual cases? I know people who live beside me who have been sanctioned. They probably depend on their parents for money. It is nothing to them,

because they say, "Well, I will go to my ma and da." Their parents are already under pressure. That is just for, say, turning up late to sign on or forgetting to sign on and things like that. If people are suffering sanctions for what seems to be fairly low-key stuff, what is it going to be like for people who end up with two years' or three years' sanctions?

Mr Pollock: We reiterate that the sanctions regime is not meant to be punitive. It is designed to try to ensure that individuals accept their responsibility and move on from there. I cannot comment on individual cases.

Mr F McCann: I appreciate that.

Mr Pollock: The agency has mentioned on several occasions that it is monitoring the use of sanctions and the reasons why they are used. That sort of information is available and will be available for putting a report into the Assembly to state the amount. There was previously a difficulty with looking at numbers reported for sanctions, because it was not looking at the entire population. Essentially, a lot of the people who could have been considered for sanctions were not included in that headcount. Whenever you saw x amount being referred and such a percentage being actually sanctioned out of that, it was a misreading because DEL took the decision out of the decision-makers' hands when the decision on sanctions should have been with the decision-makers. They should have said that there are x thousand who should be included in that overall count to start with.

Mr F McCann: Does DEL actually make the decisions or advise them of the decision to sanction?

Mr Pollock: In the past, a lot of the people who could have been sanctioned were not referred for sanction. Whenever you were saying that 100 people were referred for sanction and 80 of them were actually sanctioned, it did not say that another 1,000 should have been sanctioned, and so the overall count was actually 80 out of 1,100. There is a misreading of the percentage of people who were referred and the percentage who were sanctioned.

Mr F McCann: About 18 months or two years ago, I received a response that stated that 26,000 people had been reported for sanction but only 9,000 or 10,000 were sanctioned. We were given assurances in the Assembly by Alex Attwood that sanctions would not be widely used. That is a hell of a lot of people who have been sanctioned. They lost their benefit. Some of them did not even realise that they had been sanctioned because the money did not have an impact on their ability to survive.

One of the reasons that many in the Assembly bought into the initial idea was the whole argument that you were putting in place a mechanism to protect the person behind the counter who may be attacked. That all fell into the wider early sanction things. When the Assembly voted, that is when the assurances were given that sanctions would be used only under certain circumstances.

Ms M Campbell: Appendix 2 of the document that the Minister sent shows the latest figures for the numbers referred, the number of sanctions imposed and the number of claims disallowed. The total number of referrals was roughly 8,500. The total number of sanctions imposed was 823, so that is less than 10% of the referrals. Seventeen hundred were disallowed, which is roughly 20%; I am sure that Michael will correct my maths. Almost 6,000 claims were disallowed, which is more than 80%.

Mr F McCann: I understand that. There is a figure in the box there; it says that the total number of referrals was 10,015 and there were 2,219 sanctions imposed. The number of claims disallowed was 728 and the number of claims allowed was 7,068. When you say "claims allowed", what does that mean?

Ms M Campbell: That means that a sanction was not imposed. Based on the evidence that is before the decision-maker, the decision-maker decided that no sanction should be applied, for example, because the claimant had some mental illness or some other reason, including childcare arrangements, that prevented him or her from attending the work-focused interview or going for a job or whatever.

It means that the option of applying sanctions is taken only in extreme cases. As we have said on a number of previous occasions, and as Mickey has acknowledged, the standard of decision-making in Northern Ireland is exceptionally high.

Mr F McCann: That is fine. We will probably keep going back to the sanctions element because, although you said that sanctions are applied only in extreme cases, 20% is a bit extreme. It represents a substantial number of people.

Mr Brady: I have a couple of points. We are talking about the statistics on sanctions that we have at the moment. The difficulty is this 35 hours spent looking for work. How can someone prove that they are doing that? Let us be honest, who is going to spend 35 hours — seven hours a day, five days a week — looking for work that is not there?

Ms M Campbell: I think that our friend common sense comes in there. At the moment, people are supposed to spend a specific amount of time looking for work and should be able to show some sort of evidence that they have been willing to do so. Obviously, I cannot speak with authority on that, but I would have to say that common sense would have to prevail.

Mr Brady: What about fraud sanctions?

The Chairperson: Fraud sanctions are dealt with later on. Clearly, the Minister has considered the concerns that have been expressed and has agreed with DWP to pursue the possibility of varying sanctions. On that basis, we are happy enough to move on.

The next item is clause 45, the contracting-out clause. The issue is that people were fearful of it being used to introduce privatisation. The briefing document states that the:

"Minister wishes to confirm that there are no plans to use this clause to privatise services currently delivered by the public sector."

Obviously, it is more to do with DEL, but the Minister has given that assurance, which is welcome.

The next item is the time-limiting of the contribution-based employment and support allowance to 365 days, which is dealt with in clause 52. The Committee sought information from the Department on whether there would be a lead-in time for this to allow people to prepare.

There were two or three issues on which the Committee sought clarification. We are told that the Minister:

"shares the Committee's concerns around the timelimiting of contribution-based ESA to 12 months, however the cost of not implementing this measure is approximately £3m per month."

The Minister said that he would listen to the Committee's views and then go to the Executive. The Committee's views probably remain similar. Are members happy with that?

Members indicated assent.

The Chairperson: The next item is ESA youth claimants, which is dealt with in clause 54. The Committee wanted to know how many people would be affected and what would happen to the estimated 3% of people who do not move to income-related ESA. People have raised the concern that there is an equality issue here in that no other contributory benefit waives its conditions of receipt. The briefing document states that the Minister:

"does not believe that there is a strong enough case for making exceptions as this proposal puts young people on the same footing as other groups and treat them in the same way in relation to entitlement based on paid National Insurance contributions."

It is the argument as to whether there is a strong enough case. Do members have the same view on that as they expressed at the outset?

Members indicated assent.

The Chairperson: OK; we will move on to the personal independence payment. This one is around the length of time that a person is allowed to spend abroad. The Minister has agreed to continue to raise with the Work and Pensions Minister the issues of the number of claimants here and the higher incidence of mental illnesses among claimants here. Is everybody happy enough with that?

Members indicated assent.

The Chairperson: Clause 86 relates to prisoners on remand. The Minister:

"notes the Committee's concerns but believes that the policy intention to treat those people on remand or who have their conviction quashed in the same way as people are treated who go into hospital and that is a fair and equitable approach."

Are members happy enough with that response?

Members indicated assent.

The Chairperson: The timing of report to the Assembly is in clause 88. I remind the Committee that it has concerns that the period for a report to the Assembly on the operation of assessments under section 79 is too long. The Committee, therefore, requests that the time period in clause 88(a) should be amended from two years to one and in clause 88(b) from four years to two. Are members happy enough with that position?

The Minister is said to be sympathetic with the Committee's concerns, however, in practice, it would take six months to deal with a deviation from that. The Minister just has a concern about the value of pursuing annual reviews. I would not have thought that it was a die-in-the-ditch issue, so —

The Committee Clerk: I think, and the Department may confirm this, that the issue was whether or not there was really enough data available within that period to have a report that would be in any way meaningful.

Ms Corderoy: The Committee has a particular concern about people coming off DLA and having to apply for PIP. We think that the numbers involved would be very small within that time period to gather the data that would enable any meaningful conclusions to be drawn or recommendations made. Certainly, with the delay in bringing in the managed reassessment of PIP — I think that DWP anticipates laying the report by December 2014 — we should really and essentially be able to catch that within a year. I think that the delay has actually accommodated what the Committee wanted in relation to that.

Ms M Campbell: The other issue is that we are happy to bring to the Committee a sort of factual report of the numbers of claims, numbers reassessed, numbers not getting through or the outcomes of that. We are happy to facilitate that factual and practical type of solution rather than a legislative one.

The Chairperson: Mickey, obviously this has, in some way, dealt with or at least alleviated the issue of having a longer period for migration. Am I right in saying that? Mickey, did you want to come in there?

Mr Brady: Sorry, I thought that we were onto —

The Chairperson: The timing of a report to the Assembly.

Mr Brady: Sorry, it is the PIPs.

The Chairperson: Are we happy enough with that, then?

The Committee Clerk: Chair, just to clarify, is the Committee's position on the way forward on that one to acknowledge that there are issues with data collection and it will pursue other formal statistical reports from the Department as an alternative?

The Chairperson: The Committee wanted these things dealt with in as timely a way as possible, given their importance. There are practical issues or difficulties around doing that, particularly when you have a later time frame for migration. That may be very reasonable. I would not think that the Committee is going to fight over that.

Ms M Campbell: We would welcome that, Chair.

The Chairperson: Clause 109 makes provision for the recovery of PIP benefit overpayments. The Committee was unhappy about what it thought was an inherent unfairness in compelling a claimant to repay an overpayment when the overpayment was due to departmental error. The Committee sought a review of the level below which recovery of the overpayment will not be sought. That level is currently established at £65.

We are told:

"The Department will consider the 'Overpayment Recovery Guidance', to see if any additional clarification is needed for Decision Makers."

I think that people were of the clear view that recovery provisions for a departmental error were unfair.

Mr Brady: One of the things is the fact that the statistics that we have been getting since 2007-08 indicate that error accounts for more money than fraud, yet people are penalised quite strictly for fraud. Even now, I do not think that they put it on your record — *[Inaudible.]* — I do not think that that happens any more.

Ms M Campbell: It would not go on your record, as such. It is a performance management issue, so it would be within the context of the annual appraisal.

Mr Brady: It almost confers an infallibility on the Department. Even if it gets it wrong — *[Inaudible.]*

Ms M Campbell: It is just like the bank or your employer.

Mr Brady: Look at what happened to banks. That was why they had to bail some of the banks out, which cost £700 billion.

Ms M Campbell: There are still getting their bonuses.

The Chairperson: Exactly.

Mr Brady: Give civil servants bonuses — *[Inaudible.]*

The Chairperson: People see an inherent unfairness in that. While we do not have any control of the banks, we might have some influence over this policy. We can deal only with what we have some influence over. Are Members happy enough with the position that we have adopted so far?

Members indicated assent.

The Chairperson: I think it sends a message: let us address error as well as driving down fraud.

We will move to fraud sanctions, which are about the level of fines and so on. We felt that there was an issue of disproportionality. The paper states:

"The Minister believes that Administrative Penalties provide an alternative for claimants and in some cases may be a much more appropriate solution. The Minister would like the Committee to reconsider this in light of the information provided by the Department ... The cost of not implementing administrative penalties is estimated at £0.1m."

This is an issue of proportionality. Are members happy enough to stick with what we have?

Members indicated assent.

The Chairperson: We will move to clause 111: "Period for withdrawal of agreement to pay penalty". The paper states:

"Minister will give an assurance that this (good reason) will be covered in guidance but the scope to increase to 28 days will also need an amendment to this clause."

That was in response to a concern that we had. The paper states:

"The Committee was concerned about the reduction in this 'cooling off period' and is seeking assurances that this will be addressed in the guidance."

We are told that it will be addressed in the guidance. The hope to increase the period to 28 days will need an amendment. Have we dealt with that by way of suggested amendments? Patricia, can you remember?

The Clerk of Bills: No.

Ms M Campbell: We said that we would bring that amendment forward just to tweak the wording to make it to read:

"not more than 28 days."

The Chairperson: OK, that is fine. Are members happy enough with that?

Members indicated assent.

The Chairperson: That is welcome; thank you for that explanation.

We move to clause 113, which concerns the loss of benefit for three years for a first offence. The Committee was obviously very concerned that benefit would be stopped for three years for a first offence. The Minister says that he notes the Committee's concern, but that this is a deterrent to prevent serious fraud. We are told that to have something different will result in a breach of parity and there will also be costs attached. We do not have any figures for the costs attached.

Again, members were of the view that this was disproportionate because, in the event that it was for a first offence, there would be a loss of benefit for three years. That also aligns with the fact that people will also be prosecuted. As I recall, it is a double jeopardy issue as well. Is that not right? It is the same provision. Does this also come into play where someone has been prosecuted?

Ms M Campbell: Yes.

The Chairperson: So it is like double jeopardy as well. It is disproportionate. Are members happy enough to leave as is?

Members indicated assent.

The Chairperson: We will move to Clause 115, which relates to cautions. The paper states:

"The Committee recommends that cautions should be retained."

We are told that the Minister wants to discuss the impact of a caution on a person's criminal record before deciding whether cautions should be retained. That was an argument around cautions in the legal definition, or someone being told —

Ms M Campbell: A slap on the wrist.

The Chairperson: — get yourself sorted out and it will be all right. People were looking for a similar type of regime, in which people could be advised that there is a problem with their claim and that they should sort it out, and, if it is sorted out, it is sorted out. Obviously, that does not deal with serious systematic fraud or intentional fraud. Obviously, that will all take its course, as it should. This is about having the ability to say to people that they might be making a misclaim.

Mr F McCann: I think that you, Martina, said earlier that it is about having a common-sense approach to how this is dealt with. A warning or ticking off for many people is far better than ending up with a criminal record, which may go against them in job applications.

Mr Pollock: That is where we are concerned. If everyone was offered the choice between paying £350 or 10% or whatever and having a caution, they would have opted for the caution. The knock-on effect of that is the formal caution that you are talking about in those circumstances. That would have an impact on you applying for a job, obviously.

The Chairperson: The Committee was of a mind that it wanted to retain that informal caution, so that people are advised that there may be a problem —

Mr F McCann: It is usually a deterrent, anyway.

The Chairperson: It appears to be successful and appears to work everywhere else. Are we happy enough with that?

The Committee Clerk: So, does the Committee want to maintain its current position? These are formal cautions that we are speaking about under clause 115.

The Chairperson: If I remember correctly, the Committee wanted a system in which people could be called in for some potential error in their claim — *[Inaudible due to mobile phone interference.]* It should be an informal situation. The Housing Executive bring people in to tell them that they could be in breach of their tenancy because they are doing a, b or c, and, if it stops, the problem is solved; it is not on anybody's formal record. That does not deal with fraud.

The Clerk of Bills: Chair, are you suggesting that that could be dealt with by way of a recommendation rather than — *[Inaudible.]*

The Chairperson: It is either/or. The Committee wanted to make sure that there was that facility.

Mr F McCann: The debate the other day was about whether the formal caution is recorded on the record. I think that the answer was yes.

Mr Pollock: That is correct.

Mr F McCann: The vast majority of people you are talking about are women, because they, more or less, deal with the benefits. The vast majority of them are terrified before they go into interviews. That is usually enough for them. Many of the fraud officers would have, at the end of the day, said, "I have to report this, but it will go with the recommendation that there is an informal caution." I think that that is what they were talking about. That allows people off.

The Committee Clerk: If members want to retain cautions, clause 115 will not be amended.

Mr Pollock: The Bill does away with the formal caution.

The Committee Clerk: That will do away with the formal caution. You want to —

The Clerk of Bills: My understanding is that the Chair wanted something addressed relating to informal cautions. The clause deals with formal cautions. You would need to take away the formal caution, because it could impact on jobs and things like that. You might want, in addition to that, to make a recommendation around the Committee's position on informal cautions and ask about whether they occur. If they do not — *[Inaudible.]*

The Chairperson: Obviously, when we do the formal stuff, we will revisit that to make sure that we have it right.

The Clerk of Bills: Maybe the Department — *[Inaudible.]*

Mr Pollock: The Committee will deal with that in its report.

The Chairperson: The next issue is Assembly control, which is dealt with in clauses 33 and 91. The paper states:

"The Examiner has recommended that the Committee amendments that would make regulations under the powers in clauses 33 and 91 subject to confirmatory procedure where the supplementary or consequential provision amends, modifies or repeals a statutory provision".

Again, that is just for us to up the level of scrutiny.

Mr Brady: The Ad Hoc Committee's recommendation — *[Inaudible due to mobile phone interference.]*

The Chairperson: The advice that we received from the Minister is:

"officials are currently considering this issue further in conjunction with colleagues in Office of the Legislative Counsel and Departmental Solicitors Office."

Are members happy enough with that?

Members indicated assent.

The Chairperson: We asked for options at a previous meeting. There was a list of them in your paper, Kevin.

The Committee Clerk: Has there been any further update on those discussions?

Ms M Campbell: No, there is not.

The Chairperson: Are there any other papers, Kevin?

The Committee Clerk: There is always another paper, I am afraid.

As I was saying earlier, this is a paper that I prepared and which goes through all 134 clauses and the relevant schedules. Its purpose is to bring the Committee up to speed on its position and those of the stakeholders on the clauses. I just wanted to confirm with the Committee whether it is content that it sums up the issues as far as members are concerned to date. We could go through it today or, if members want, we could review it on Thursday.

The Chairperson: Realistically, we are not going to get through it now.

The Committee Clerk: On Thursday, I suppose, it will be a case of you taking members through and asking them whether they are content, for example, that the issues relating to the first six clauses are what the Committee has considered and has heard from stakeholders. If there are any other comments to be made, I can make them.

The Chairperson: This is really the essence, or the beginning of the report that will go to the Assembly.

Mr Durkan: We are dealing with clauses and how we would like to implement them. We know what came from stakeholders and most Committee members on the clause that deals with independent advice. There is news from Westminster today that, in response to the Work and Pensions Select Committee's report, the Government have announced a £65 million advice services transition fund that will run from April 2013 until April 2015. That is funded by the Cabinet Office.

Mr F McCann: Where did that come from, Mark?

Mr Durkan: It was announced at Westminster today.

Mr F McCann: Where is it for? Where does it take in? What regions?

Mr Durkan: It does not mention us.

Mr Pollock: If it is a UK-wide initiative, there would be a Barnett consequential and Northern Ireland would get its share of the cake. That is the theory, anyhow.

The Chairperson: OK. There will be a number of other items. The report will be a substantive body of work that will encapsulate the evidence that we have taken from stakeholders, the Committee's deliberations, the engagement with the Department and the responses from the Department and the Minister.

There are other items. For example, although the Ad Hoc Committee's report, as I said before, does not have formal status in so far as it was not endorsed by the Assembly, it made 15 recommendations that were endorsed by all the parties. So, you would figure that those recommendations will have to be fed into our report in some shape or form.

There are things that are outwith the particular clauses of the Bill, but we may want to make recommendations that they should be supported. That was one of the issues that the Committee previously agreed to.

Mr Durkan: I mentioned it because it was just hot off the press.

The Chairperson: Absolutely; it is a very important reminder.

Mr F McCann: In the broader scheme of things, once distributed, it may not be a lot of money. Obviously, it would go the Department first because of, as you said, the Barnett consequentials.

Mr Pollock: It would come into the block and it is then for the Executive to decide what the block's priorities are.

Mr F McCann: Would it not be a different matter if was specifically earmarked for advice?

Mr Pollock: It is termed non-hypothecated, which means that it is down to the Executive to decide where it goes. I do not think that they can necessarily ring-fence stuff like that, but it strengthens any Minister's case. For example, if there was a particular initiative at a UK level, say for health or education, that Northern Ireland wanted to pursue, the Minister concerned may want to use the Westminster argument as a lever at the Executive table because by doing so he would have a better chance of grabbing that sort of money from DFP.

Mr F McCann: As we have argued, and I think that Mark said, good advice is a big plus in a lot of the stuff that we are dealing with. Is there a possibility that we could raise the subject of the £65 million and what we would get when it is divvied up? So, if we are looking at advice services and it comes through to DSD, we would know that x million pounds may be available for advice-givers.

Mr Durkan: That is the £65 million question.

Mr F McCann: That is it.

The Chairperson: You will be keen to know that the Health Minister is on question 5, so I will have to leave very soon because I have a question down. I do not want my knuckles rapped by the Speaker. No hypothesis there; I will just be chastised.

Mr Brady: Maybe in the meantime, Michael, you can explain what non-hypothecated means.

Mr Pollock: It is just a finance term that DFP has that means that the money is not ring-fenced.

The Chairperson: It just means that money has been allocated for that notional purpose.

Mr Pollock: It means that, like everything else, you have to argue for it.

The Chairperson: Exactly.

Mr Pollock: And win the argument.

The Chairperson: OK. So we will come back on Thursday morning for our Committee proper, after which we will go swiftly to the Welfare Reform Bill. I am advised that it is going to be a long Committee meeting. I ask members to go through that consideration of the Bill paper just to satisfy ourselves that it encapsulates what we want. As I said earlier, Kevin will try to prepare a narrative that the Committee can support in furtherance of our objective of agreeing a report that there is consensus on.

Thank you very much for your support today again, Martina and Michael.

Ms M Campbell: Thank you. Bring a sleeping bag on Thursday, then?

The Chairperson: Thank you.