



Northern Ireland  
Assembly

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JOINT MEETING OF THE  
COMMITTEE FOR HEALTH, SOCIAL  
SERVICES AND PUBLIC SAFETY  
AND THE COMMITTEE FOR JUSTICE

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**OFFICIAL REPORT**  
(Hansard)

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**Evidence Session with the Minister of  
Health, Social Services and Public Safety  
and the Minister of Justice on the  
Implications of the McDermott Case**

23 September 2010

**NORTHERN IRELAND ASSEMBLY**

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**Members present for all or part of the proceedings:**

Mr Jim Wells (Chairperson)

Lord Morrow (Deputy Chairperson)

Mr Mickey Brady

Mr Thomas Buchanan

Dr Kieran Deeny

Mr Alex Easton

Mr Tommy Gallagher

Mr Paul Girvan

Mr Paul Givan

Mr John McCallister

Mr Raymond McCartney

Mr Conall McDevitt

Mr David McNarry

Ms Carál Ní Chuilín

Mr John O'Dowd

Mrs Michelle O'Neill

Ms Sue Ramsey

**Witnesses:**

|                      |   |   |
|----------------------|---|---|
| Mr Michael McGimpsey | ) | Minister of Health, Social Services and Public Safety   |
| Mrs Linda Brown      | ) | Department of Health, Social Services and Public Safety |
| Mr Sean Holland      | ) |   |
| Mr David Ford        | ) | Minister of Justice                                     |
| Ms Maura Campbell    | ) | Department of Justice                                   |
| Mr David Lavery      | ) | Northern Ireland Courts and Tribunals Service           |

**The Chairperson (Mr Wells):**

I welcome members to this joint meeting of the Committee for Health, Social Services and Public Safety and the Committee for Justice. I urge members, particularly today, to switch off their mobile phones — do not put them on silent — and all electronic devices. It is vital, because of the seriousness of the evidence session, that Hansard catches every word. In the past, we have lost sentences and paragraphs because some folk, who obviously have such busy lives, were receiving text messages or e-mails during Committee meetings. Please help us in that way.

I inform members that the meeting is being held in public session, and, therefore, I seek members' agreement that the proceedings are recorded and a Hansard report produced. Are members content?

*Members indicated assent.*

I advise members that the joint meeting of the two Committees will be broadcast throughout Parliament Buildings and online.

We have received apologies from Sam Gardiner and Lord Browne; Mary Bradley, Tom Elliott and Alban Maginness may not be here today. We all know where Mr Elliott is this morning. However, that has worked out well, because we have just enough seats for the number of members present.

The purpose of the joint meeting of the two Committees is to hold an evidence session with

the Minister of Health, Social Services and Public Safety and the Minister of Justice on issues relating to the McDermott case. The Committee Clerks have been very helpful.

Mr McCartney, do you have a procedural question?

**Mr McCartney:**

I will wait until you have finished.

**The Chairperson:**

I draw members' attention to the information that has been given to us by the Committee Clerks. Included in that information is a paper setting out the procedures for the meeting, and I hope that members have all had a chance to look at that, however briefly. As it has been agreed that I will be the Chairperson for the meeting, with Lord Morrow as the Deputy Chairperson, I will lead off with the first question, followed by a supplementary question. I will then ask members for any supplementary questions on the specific issue that I have raised. However, that does not preclude members coming in with separate questions. In other words, if a member asks a question that is supplementary to that of another member, he or she will still have a chance to ask his or her own lead question. Therefore, members need not feel that they will be excluded. We have allocated an hour and 20 minutes for questions, which is quite a bit of time.

I will then move on to Lord Morrow, who will ask his question. Again, members can ask a supplementary question that is based on the tenet of his question. As other members wish to come in, they should catch my eye, or that of the Committee Clerk to the Committee for Justice. I would particularly like to hear questions from those MLAs who represent the constituency involved. It is reasonable that they get their questions in as early as possible. However, I will not do anything to preclude anyone from asking his or her question. I advise members that each Minister will have 15 minutes in which to make an opening presentation. The remaining time will be for questioning.

I draw members' attention to the extremely helpful material on which Committee staff have worked very hard to help the joint meeting. Included are a briefing paper that highlights potential areas for questioning; a Department of Justice briefing paper dated 2 September 2010; and the Hansard report from the Committee for Justice meeting on 2 September 2010.

Is John O’Dowd here? He is; I did not see him.

**Ms S Ramsey:**

How could you miss him?

**The Chairperson:**

Given that the Speaker mixed up Michelle O’Neill and Kieran McCarthy on Tuesday — between whom there is clearly such a resemblance — perhaps you can forgive me for not seeing you.

*[Laughter.]*

Also included in that material is the Hansard report from the meeting of the Committee for Health, Social Services and Public Safety on 9 September 2010; the letter from the Lord Chief Justice dated 16 September 2010, of which you will all be aware; a letter from the Minister of Justice dated 20 September 2010; and an extract from the Hansard report covering the questions for urgent oral answer on 21 September 2010.

Since then, Mr O’Dowd — that is why I referred to him — asked a question for written answer of the Minister of Justice — question 195/11 — the answer to which was very recently made available and is extremely pertinent to today’s hearing. Therefore, in case people are, perhaps, not aware of that question, rather than refer to it, we have asked that it be included in the papers. I hope that all members have received that.

A letter from the Minister of Health, Social Services and Public Safety dated 22 September 2010 is tabled, which corrects an answer that he gave to a question for urgent oral answer — AQW urgent oral/11 — which was tabled by me and concerned the status of Dr C. In the Minister’s response to that question, there was a bit of confusion about the status of Dr C. The Minister has dealt with that, and I understand that he will provide us with more information on that issue during the evidence session.

Members have been provided with much material. However, I hope that they will find it helpful.

Mr McCartney, you wanted to raise a procedural issue.

**Mr McCartney:**

I am thankful that the letter from the Health Minister to the Speaker has now been tabled. However, that letter should have been given to the Committee Clerks for this joint meeting; that is important. I was in the Assembly when the Minister made his statement. It is a gross understatement to state that there was a “misunderstanding”. The Minister was very clear, on two occasions, when, in response to Mrs Foster, he said that Dr C was not an employee of the trust. Indeed, he then took a swipe at all of us, saying that, as a result of our not knowing that, many of us attacked a social worker. He was wrong to say that. That should feature large in this morning’s presentation. The case is complex enough as it is. However, when simple factual evidence cannot be presented, it becomes even more so. From reading the letter from the Lord Chief Justice, it is very clear that they were of the opinion that Dr C was an employee of the trust. The Health Minister contradicted that on two occasions. For him to say that that was a misunderstanding is a gross understatement.

**The Chairperson:**

I will not be giving away too many secrets when I say that my lead question will be about tying down completely the status of Dr C. Equally, I am sure that members will wish to come in with supplementary questions on that issue. We will get that matter clarified and out of the way before we move on to the two or three other central issues.

**Ms Ní Chuilín:**

Procedurally, will the Deputy Chairpersons of the two Committees ask questions after you?

**The Chairperson:**

That would normally be the case. In the Health Committee, I always give precedence to the Deputy Chairperson. However, on this occasion, the Deputy Chairperson is Lord Morrow, in his capacity as the Chairperson of the Committee for Justice. If the Deputy Chairpersons of the two Committees wish to catch my eye early, I am sure that we can get their questions in. However, procedurally, the sequence will be as I explained. Also, representatives of the constituency involved should get a crack of the whip.

**Mr McDevitt:**

I note that there is a time limit on the meeting. I presume that that is notional and not a strict time limit. If we need to continue the evidence session, may we continue for as long as we feel that it

is necessary to do so?

**The Chairperson:**

No. The Health Committee meets at 2.00 pm today, and its members will be moving to another room. Lunch is being provided for members at 1.30 pm. If we wish to continue, we may have to meet again. However, an hour and 20 minutes should be more than enough time to cover the crucial issues of the case.

**The Chairperson:**

I welcome the various officials and Ministers who are present. With us are the Minister of Health, Social Services and Public Safety, who is well known to all of us, and the Minister of Justice. They are joined by David Lavery, who is the director of the Northern Ireland Courts and Tribunals Service (NICTS); Maura Campbell, who is deputy director of the justice development division in the Department of Justice; Sean Holland, who is chief social services officer and is well known to the Committee for Health, Social Services and Public Safety; and Linda Brown, who is deputy secretary of the Department of Health, Social Services and Public Safety (DHSSPS).

We have allocated 15 minutes for each Minister to make an opening presentation on behalf of their respective Departments. We will then throw the meeting open to questions, for which we have allocated an hour and 20 minutes. Mr McGimpsey is starting off.

**The Minister of Health, Social Services and Public Safety (Mr McGimpsey):**

Thank you, Chairperson, ladies and gentlemen. I am glad to be here to take the opportunity to provide an update and clarification on the issues arising from this case. To begin, I want to express my deepest sympathy to the survivors and to other members of the community that was affected by the original actions of the McDermott brothers. I want to acknowledge the additional pain that has been caused to that community by the ongoing attention to the case.

This has been a complex and unusual case. It involves historical abuse, over many years, in a small, close-knit community by four brothers, two of whom have a learning disability. The McDermott brothers were arrested in July 2008 and released on bail to their own home in Donagh. In accordance with the joint protocol between the police and social services, the police, on 31 July 2008, informed the Western Health and Social Care Trust gateway team, which took

the necessary action to safeguard children. In addition, when the police interviewed the men, they suspected that James and Owen Roe McDermott may have been vulnerable adults. On 28 August 2008, they were referred by their GP to the Western Trust's learning disability services for assessment. A number of reports were requested by the court to establish their fitness to plead. Those reports did not deal with the issue of where the brothers were residing or would or should reside. At Dungannon court, on 6 October 2009, the brothers were found unfit to plead. By the time the cases were dealt with on 18 June 2010, one of the original four brothers charged had, regrettably, taken his own life. Another brother was convicted by the court and given a custodial sentence of nine years and three years' probation.

The remaining two brothers, James and Owen Roe, could not be given a criminal conviction in view of their unfitness to plead. However, there was a finding of fact by the jury in relation to the matters having occurred. That is not a conviction. Their case was, therefore, disposed of under the Mental Health (Northern Ireland) Order 1986.

I feel that I must make a number of significant points at this stage. Under the Mental Health (Northern Ireland) Order 1986, the court had four options for disposal of the cases: an absolute discharge, which was ruled out immediately by the court; detention under a hospital order; a guardianship order; or a supervision and treatment order (STO). After careful consideration, and taking all the evidence before him into account, the judge determined that the brothers did not meet the criteria for either a hospital or guardianship order. He therefore determined that a supervision and treatment order should be imposed for two years. I should underline that the main focus of the supervision and treatment order is to ensure that the brothers receive treatment.

The court was bound by the Mental Health (Northern Ireland) Order 1986 in determining the parameters of the supervision and treatment order. Those parameters were the duration of the order — up to a maximum of two years — although the judge commented that he would have liked to have made it longer; that residency can be only in relation to the treatment of the brothers, and the judge determined that that should be within the Western Trust area, with the expectation that the brothers should return to Donagh; and stipulation of a supervising officer with the responsibility to make the brothers available for treatment.

The court asked that a social worker from the Western Trust act as a supervising officer. The powers granted to the supervising officer under the Mental Health (Northern Ireland) Order 1986

are extremely limited. The supervising officer cannot compel the brothers to go into hospital, cannot compel them to a place of residence and can approve or disapprove of, but not determine, where they live. This last point can be misunderstood, but it is very important, so let me clarify. The approval or disapproval of residence can be made only in relation to the treatment of the brothers to the delivery of the care plan. The supervising officer cannot insist that they live at a particular address. If the social worker disapproves of an address, and the person insists on residing there, there is, in effect, no sanction available to make them move. The only way that that can be changed is by asking the court for a variation in the supervision and treatment order. That can be done only if the brothers do not comply with the requirements of the order that they submit themselves for treatment. Since their disposal, the McDermott brothers have complied with the requirements of the supervision and treatment order.

In this case, the court also imposed a sexual offences prevention order (SOPO) on the brothers for life. The SOPO, for which the police are primarily responsible, is specifically designed to ensure the safety and protection of children and the public. Under the sexual offences prevention order, social services must approve any contact that the brothers have with children under the age of 16. The brothers were also registered under the Sexual Offences Act 2003 and will remain so for life. The SOPO sets out where the men may go and who they may be in contact with, and it does so in great detail. Although the SOPO does not exclude the brothers from Donagh, they are restricted to particular areas within Donagh.

Although the court had the power, under the SOPO, to determine where the brothers should live, it could do so only if it felt that there was a significant risk to the public. In this case, a risk assessment was completed by the local area public protection panel, and the two brothers were classified as category 1 offenders, which is the lowest category of risk. The local area public protection panel is a multi-agency panel chaired by the Probation Board. Its membership includes, among others, the police, the health and social care trust and the Probation Board. Any breach by the brothers of the conditions in the sexual offences prevention order will lead to rearrest by the police.

In the interest of transparency, and given the recent controversy over the case, I have made available the redacted transcript of the court hearing, as provided by the Courts and Tribunals Service, and a schedule showing all the social care reports. That material clarifies that none of the reports deal with the place of residence of the McDermott brothers. Any decision to prevent

the McDermott brothers from returning home was for the courts to make. In addition, on 21 September 2010, I announced in the Assembly that I have asked the Health and Social Care Board to carry out a case review and to provide me with an interim report, within a month, and a full report thereafter.

Up until now, much of the debate on the issue has been about who provided what report and whether paperwork was properly completed. The Minister of Justice and I have instigated reviews to consider those matters. However, I believe that, at the heart of this case, and particularly for the people of Donagh, there is a bigger issue: an issue of policy. What restrictions should be placed on people whom the courts have found to have committed terrible acts, such as sexual abuse? What factors should be taken into account when determining such restrictions and to what extent should it include the views of individual victims or, indeed, wider communities? As a constituency MLA, I am interested in such matters and am on record as having had an interest in a number of cases in south Belfast. As Health Minister, I may have a contribution to make to the development of such policy. However, I am sure that most people will see that such a matter is not for health and social care to lead on. If my Executive colleague wishes to explore those issues, I am more than happy to play my part in discussions and in the development of such policies.

I want to make one correction. I said that I had provided a schedule of reports. As I understand it, that schedule has not been provided. However, there is a schedule of reports, and I will make it available. The key underlying point is that those reports do not deal with the residency issue.

**The Chairperson:**

Thank you, Minister. I thank both Ministers for agreeing to come forward to the joint Committee meeting at such short notice.

Minister McGimpsey, we need to tie down immediately the status of Dr C. However, perhaps we should allow Mr Ford to speak first, although I have given you an indication of what my first question is likely to be. I apologise, Mr Ford.

**The Minister of Justice (Mr Ford):**

Thank you very much, Chairperson. I am glad to have the opportunity to brief you on the

Department of Justice's response to the issues that were raised by the McDermott case. You have already introduced David Lavery and Maura Campbell, who accompany me.

I welcome the fact that Michael and I are briefing you jointly. It is a highly complex and somewhat unusual case, and separate briefings run the risk of creating confusion, because even subtle nuances can be easily taken for divergences of view. Throughout, I have been committed to working collaboratively with Michael. As evidence of that, we have produced an agreed package of legislative proposals, on which both Committees have been briefed. However, we have to be careful not to stray into matters that properly fall to another Department.

The Committee will be aware of the statement that I made to the Assembly on Tuesday 21 September regarding the McDermott case specifically and, more generally, the handling of sexual offence cases in the judicial system. Therefore, I do not propose to rehearse all the details. However, it is worth recapping briefly on what I regard as the key facts.

As members are aware, I wrote to the Committee for Justice on Monday to advise of the outcome of the urgent review that I instructed the Northern Ireland Courts and Tribunals Service to undertake of the administrative processes in the McDermott case and of all supervision and treatment orders. The review identified a number of errors, principally, that the original STOs did not include the residence requirement and that the duration of the SOPOs, in respect of two of the brothers, was incorrectly stated as five years. In addition, an error in a further STO was identified.

In response to that, I instigated the following remedial action within the Courts and Tribunals Service. First, case records and amended orders are being corrected and reissued. Secondly, the courts' IT system, ICOS, will be updated, staff will be retrained and more robust monitoring procedures will be implemented. Thirdly, an audit of the accuracy of all sexual offences prevention orders made in Northern Ireland will be completed by mid-October. Fourthly, an internal review of the administrative arrangements for preparing, checking and issuing court orders in the Crown Court has been initiated, and an interim report will be produced by the end of September. Fifthly, with the agreement of the Lord Chief Justice, court orders in complex cases will be verified by the trial judge before issue.

However, I emphasise again that although it is clearly unacceptable that these errors occurred,

they did not place the public at any immediate risk. The defendants, James Francis and Owen Roe McDermott, in this case, are subject to the requirements of both the supervision and treatment orders and the sexual offences prevention orders as imposed by the court, together with the notification requirements under the Sexual Offences Act 2003. The terms of the orders were stated within the sentencing judgement issued by the judge and made available to the prosecution, the defence and the trust's representatives. That was the order of the court. The errors in the administrative processes had no material impact on the legal effect of the orders.

As members are aware, to enhance public confidence in the process that I have set in train, I have also requested Dr Michael Maguire, the Chief Inspector of Criminal Justice in Northern Ireland, to conduct a detailed and independent investigation. Although his statutory remit does not permit him to examine the details of the McDermott case, or indeed any individual case, he will undertake a detailed examination of the way in which cases involving sexual offences are dealt with by the justice system during the court stages. For clarity: this is not a review of the wider public protection arrangements but a review of cases within the court system. I expect to have Dr Maguire's report at the end of October.

It is clear that the survivors of the McDermotts' abuse and the wider Donagh community feel that they were not kept adequately informed as this case progressed. That is a matter of real regret and one for which I have apologised. Therefore, as a part of his review, I will invite Dr Maguire to make recommendations on how we can improve the way in which we communicate with the victims in such cases.

In summary, I am determined that the lessons learned from this case will lead to improvements in the administrative procedures in the courts and in how we respond to the concerns of victims and local communities in these very difficult cases.

**The Chairperson:**

Thank you, Mr Ford. We now open the meeting to questions.

Minister, I have given you some notice, but I suspect that you knew that a question was coming about the exact status of Dr C. The reason why this is so important is that, in the letter from the Lord Chief Justice dated 16 September, there is a specific reference to the role of Dr C in this case. There seems to be some confusion because in the oral answer that you gave to Mrs

Foster, you seemed to indicate that he was not employed by the trust, and yet you have clarified it. You said in your letter that you would provide more information to this hearing. Therefore, can we have chapter and verse on Dr C's exact status?

**The Minister of Health, Social Services and Public Safety:**

Again, I apologise. In my answer to Mrs Foster, I confused Dr C with Dr B. There were two doctors: Dr B prepared the report that the court was discussing, but he was unavailable to appear in court on that day, and so Dr C was there. Dr C, in fact, is employed by the Western Trust; Dr B is not employed by the Western Trust. When I told the House that the doctor in question was not employed by the Western Trust, that, in fact, was incorrect. I apologise for that, and I have written to the Speaker making that point.

**The Chairperson:**

Therefore, Dr C was employed by the Western Trust and acting on behalf of it during the hearing?

**The Minister of Health, Social Services and Public Safety:**

He was employed by the trust and he was acting on behalf of it, yes.

**The Chairperson:**

You have seen the letter from the Lord Chief Justice, and the third paragraph on the second page is crucial. It states that the judge said to Dr C:

“So essentially we have to regard the [X] Road property, their home, their residence, as their residence. You can't ... envisage another residence?”

The witness, in this case Dr C, replied:

“No your Honour ...'. A Trust social worker's reports on the brothers were predicated on the basis that the two would be supervised in the family home.”

So that was the representative of the Western Trust giving his expert opinion on behalf of the trust on where the two brothers should live.

**The Minister of Health, Social Services and Public Safety:**

I think that what the expert witness in this case was saying was that he could not envisage them getting care and treatment outside of the family home where they were cared for by their family — two spinster sisters who looked after the two brothers. The two brothers were incapable of

looking after themselves. When we look through the transcript, it is quite clear that that is understood by the court and the judge as he leads down to that and then does ask the question.

The witness says:

“Well, I don't think these ... men could live independently and attend to their normal daily functions without the help of their two spinster sisters who basically do all those daily tasks for them.”

The judge then asked the question:

“So essentially we have to regard ... their home, their residence, as their residence. You can't really envisage another residence?”

The witness agrees with the judge, yes.

### **The Chairperson:**

I will throw open questioning on the specific issue of the status of, and evidence given by, Dr C. Two members have indicated that they want to ask questions, Raymond McCartney and Paul Givan. If any other members wish to ask questions, let me know, and we will try to tie this down. Tommy Gallagher and Michelle O'Neill have added their names. The Deputy Chairperson of the Committee for Justice, Raymond McCartney, will start.

### **Mr McCartney:**

Thank you for your presentation. The case has been described as complex. The Minister of Justice mentioned that nuances can, sometimes, lead to divergence of views and people being misrepresented or making statements that are, perhaps, not wholly correct. However, I take issue with the Health Minister's response to a question for urgent oral answer that was put to him in the House on Tuesday 21 September 2010. In your letter to the Speaker, there is an extract from the Hansard report:

“Because this individual has ‘Doctor’ in front of his name, it is assumed that he works for the trust and, therefore, spoke on behalf of the trust, and everyone is attacking the social worker and the trust. However, that is not the situation as I understand it. That individual was an independent medical expert called by the prosecution service. He was not an employee of the trust.” — *[Official Report, Vol 55, No 4, p182, col 2]*.

That is a very firm statement. I do not think that it is sufficient for you to come here today and say that, somehow, it was a “misunderstanding” on your behalf. You practically accused the rest of us of using that assumption, which was not an assumption on our behalf, because it was clearly written in the letter from the Lord Chief Justice to the Minister. Therefore, I think that we need more of an explanation as to why, on that particular day, you made the assumption that the doctor was not an employee of the trust and said so in very emphatic terms. Indeed, if you were to revisit your performance in the House, you took a slap at any of us who had asked questions on the issue during the past number of weeks, because you felt that you were right, the rest of us

were wrong and that this man was not an employee of the trust. You said that twice in very emphatic terms.

**The Minister of Health, Social Services and Public Safety:**

I have stated the situation. Let me give an explanation, although whether you accept it or not is a matter for you. I received the question that I answered that morning. I spent my time in the House debating a motion on medical negligence that had been tabled by Mr O'Dowd. I had very little time to get into the full detail as far as the question was concerned. Therefore, I made that error, which was to state that the report was drawn up by a doctor who was not employed by the trust, but the explanation was given by a doctor who was. I made that mistake. I have said that, and I have apologised.

**Mr McCartney:**

I understand that you have said that, but you have to cast your mind back to that day in the Assembly. You said that everyone was attacking the social worker and the trust. Anything that I have said in the Committee for Justice is recorded in Hansard. I have also given a number of interviews on Radio Foyle. At no time have I attacked either an individual social worker or the trust. The only thing that my colleagues and I have tried to do in relation to this matter is to bring facts to public attention. This was a gross factual inaccuracy. Indeed, you can go back and watch your performance in the Assembly. You grandstanded because you believed that you were sitting in the position that the rest of us were wrong and had read the Lord Chief Justice's letter incorrectly. You said that we assumed that, because "Doctor" was in front of his name, he was employed by the trust. We need more than the idea that it was a mistake. We all can make mistakes, but in that instance, it was a put-down of the rest of us who are trying to do our job, which is to scrutinise the work of the Health Department and the Justice Department.

**The Minister of Health, Social Services and Public Safety:**

I have apologised. I do not know that there is much more that I can say other than that I apologise; I made a mistake. You can accuse me of grandstanding. I have said that I made a mistake. I have apologised. I have written to the Speaker. I have spoken to the Speaker, and I will make a personal statement to the House on Monday. I do not want to go into the detail of that now, but I have to say, without claiming mitigating circumstances, that we are all trying to do our jobs. I have to tell you that doing my particular job comes with a number of stresses and burdens, and one of the stresses was that the question from the Chairperson of the Health

Committee came to me on Tuesday morning. My officials were drafting a response while I was in the House for the debate on medical negligence. Immediately after that, I had to answer the question for urgent oral answer. It gave me very little time to be briefed on all the details of that question. Whether you accept it or not, that was the circumstance. As I said, I made a mistake, and I apologise.

**Mr McCartney:**

I accept that, but when you made the statement and said that everyone was attacking the social worker and the trust, that was not factually correct.

**The Minister of Health, Social Services and Public Safety:**

I accept that, yes.

**Mr McCartney:**

I mentioned the context. That is the point that I am making, Minister. The context was that you thought that the rest of us had made the mistake and had made the wrong call about the doctor. This is not just about making a mistake between Dr B and Dr C, which can happen. You then used it to attack people who were only asking straightforward questions. You can read the Hansard reports or watch the interviews that I gave; at no time did I attack an individual social worker or the trust.

**The Chairperson:**

Mr McCartney, you asked three questions. If any of your colleagues wish to pick up on this, they can. The members who are down to ask supplementary questions are Lord Morrow, Paul Givan, Michelle O'Neill, Tommy Gallagher, Sue Ramsey and David McNarry. May I close the list at that so that we know where we are going? Does anyone else want to be put on that list?

**Ms Ní Chuilín:**

Not on this issue.

**The Chairperson:**

Kieran Deeny. Are you not down on the list, Mr McDevitt?

**Mr McDevitt:**

No.

**The Chairperson:**

Do you want to be put on it?

**Mr McDevitt:**

I do not know.

**The Chairperson:**

You do not know?

**Mr McDevitt:**

I do not know yet, Chairperson. I think that we have to wait and see.

**The Chairperson:**

I will let Lord Morrow in, and then I will go to Paul Givan.

**Lord Morrow:**

Minister, you have accepted that you have given wrong information in this case. That seems to be the hallmark throughout since this started. It has been difficult to extract information, and there has been a game of blaming somebody else. You were very specific in the House when you said that he was not there:

“He was there as an independent medical expert employed by the prosecution.” — [*Official Report, Vol 55, No 4, p182, col 2*].

Where did you get that information from?

**The Minister of Health, Social Services and Public Safety:**

Could you repeat that question?

**Lord Morrow:**

“He was there as an independent medical expert employed by the prosecution, not as a member of the trust, and he was not there acting for or speaking for the trust.” — [*Official Report, Vol 55, No 4, p182, col 2*].

**The Minister of Health, Social Services and Public Safety:**

I think that I have explained that, Lord Morrow.

**Lord Morrow:**

Where did you get that information?

**The Minister of Health, Social Services and Public Safety:**

The report was written by a Dr B.

**Lord Morrow:**

I am not talking about Dr B. I am talking about Dr C.

**The Minister of Health, Social Services and Public Safety:**

I understood that — I went through a very quick briefing — it was the author of the report who was giving the explanations in court.

**Lord Morrow:**

Did your officials give you the information that Dr C was not an employee of the trust?

**The Minister of Health, Social Services and Public Safety:**

No. They gave me information that a doctor was talking to the report, and I assumed that it was Dr B, when, in fact, it was Dr C.

**Lord Morrow:**

You slapped down Members in the House in a very belligerent way. You more or less accused them of trying to make little of some of the health workers. That was not the case. Do you accept that you made little of the Members in the House that day?

**The Minister of Health, Social Services and Public Safety:**

I think that I said what I said. I made a mistake, and I have apologised. As I said to Mr McCartney, I do not think that I can go any further than making an apology. I will make a statement on Monday.

**Lord Morrow:**

Do you accept —

**The Minister of Health, Social Services and Public Safety:**

I have written to the Speaker, and I have spoken to the Speaker.

**Lord Morrow:**

Do you accept that this has further confused the whole issue and that it further undermines the confidence of not only MLAs but the whole community?

**The Minister of Health, Social Services and Public Safety:**

I think that the issue here is a discussion under the supervision and treatment order, which is about just that: supervision and treatment. That is the role of the supervising officer, the social worker, to ensure that the individuals get the treatment that they require. That is what we were discussing. There is no provision in the supervision and treatment order for residency orders. The tenor of the question that was coming forward was that the trust had played a role in residency. In fact, the trust did not have a role in residency. The Lord Chief Justice's letter makes it clear that the judge makes that determination.

As far as getting Dr B and Dr C mixed up is concerned, I mixed that up. I got a very quick briefing that morning. This is a very complex topic. I got a question that morning. I had to answer that question immediately after the debate on medical negligence, which is not something that you can take lightly. Therefore, my entire morning was spent on that, and I had a very short period for briefing. That is the explanation, whether you accept it or not. I have said to the House and to the Speaker — I will make a statement on Monday — that I apologise for getting Dr B and Dr C mixed up and for the sensitivity that you, Mr McCartney and others may feel.

**Mr Givan:**

Minister McGimpsey, your responses are absolutely appalling. You treated Arlene Foster and the rest of the Members in the House arrogantly and dismissively. It has become your stock-in-trade to treat Members in your arrogant and dismissive manner.

**The Chairperson:**

Is there a question coming?

**Mr Givan:**

There is, yes. You put those people down. You said that the job is very stressful and that you were dealing with a medical negligence issue that morning and that was a difficult case, but this case has been going on for months. Are you telling me and the other members that you got into this case only after that motion in the House that morning? Are you not across the detail of something that has been in the public domain for months? Then you come up with excuses about the job being stressful. The job of every Minister is stressful. In your statement on Monday, I can advise you that there is something that you could do that would be more than to apologise: you could go, if you are not able to do the job on these types of issues.

Dr C and the advice that the trust gave to the judge goes to the kernel of the issue, because the judge acted on the advice that was given to him by the trust, which you denied that Dr C was working for. It has now transpired that he was. I do not think that the answers that you are giving are clarifying the matter satisfactorily. You talk about hurt and pain. I agree entirely that there is a lot of hurt and pain in the community in Donagh. It is the litany of mistakes that has taken place that continues that hurt and pain, and your mistake in the House continues that pain. I think, Minister, that you really need to clarify your position and really think seriously. Are you up to the job?

**The Minister of Health, Social Services and Public Safety:**

I am not sure whether there was much of a question there. I think that my record for three and a half years speaks for itself. As far as the issue is concerned, of course I keep up with the detail of this case and many others. This is not the only thing that comes across my desk. I have to keep on refreshing and refreshing. It is a constant routine and a constant regime, which Mr Givan dismisses as a simple task.

**Mr Givan:**

I did not say that.

**The Minister of Health, Social Services and Public Safety:**

The fact is that I had very little time to brief myself on the fine detail of the case. I got Dr C and Dr B mixed up, and I made an apology for that. The crux of your point was that the judge took the advice of the social worker. The judge determined that the home should continue to be the

residence. He was talking about a supervision and treatment order. That cannot determine the address; it can determine only the area in which a person lives under the law.

**Mr Givan:**

I disagree. I do not believe that.

**The Chairperson:**

We will come back to that.

**The Minister of Health, Social Services and Public Safety:**

Mr Givan is talking again. That is a legal issue. A retrial here probably needs the support of a senior counsel to explain exactly what a supervision and treatment order and a sexual offences prevention order can and cannot do.

**The Chairperson:**

Members, this is not an opportunity for members to express their concern about the response that was given in the House on Tuesday. That is just repetitive. The point has been well made to the Minister that members are unhappy. Therefore, can we try to use the supplementary questions to raise fresh material on the status of Dr C, particularly the importance or otherwise that was given to the evidence that he gave the court, please? The point has been well made that members are unhappy. I think that we need to leave it at that. The Deputy Chairperson of the Health Committee, Mrs O'Neill is next, and I am sure that she will come up with a totally different angle on this issue.

**Mrs O'Neill:**

I do not wish to go over old ground, but the fact that the Minister has come to this joint meeting today to correct what he said in the Chamber on Tuesday reflects the flippant attitude that he took then. That said, as justification for your mistake, Minister, you offered a few excuses: one was that you were busy, and another was that you were confused about the roles of Dr B and Dr C. I believe that you said in your opening remarks that Dr C delivered Dr B's report to the judge. Is that correct?

**The Minister of Health, Social Services and Public Safety:**

Dr B was the doctor in court who was answering the judge's questions.

**Mr Sean Holland (Department of Health, Social Services and Public Safety):**

Dr C.

**The Minister of Health, Social Services and Public Safety:**

Sorry; Dr C was in court. Dr B wrote the report. Dr C was in court that day.

**Mrs O'Neill:**

Dr C is a representative of the Western Trust and was obviously reflecting the trust's view. Dr B was a forensic psychiatrist on behalf of the prosecution. Was Dr C ably informed, or sufficiently informed, to deliver a report that he was not involved in producing?

**Mr Holland:**

My understanding is that Dr B, a forensic psychiatrist who had been commissioned by the prosecution, had supplied a written report to the trust that covered a number of issues, primarily about capacity, but did not recommend residency. Dr C also provided a report to the court, and, on that day, my understanding is that he was speaking and making reference to the content of both reports.

However, I think that the central issue is that, although the transcript has an exchange in which Dr C says that he could not envisage the brothers living anywhere else, following a discussion about their social circumstances and their lack of capacity, the reality is that, as the Minister said, the case was being disposed of under the provisions of mental health legislation. Regardless of what anyone said, there were great limitations as to how far the court could dispose of the matter in terms of residency.

A point was made about approving or disapproving. The very most that flows from the supervision and treatment order is that a supervising officer can approve or disapprove the residency. It is very important, as the Minister said in his opening statement, to understand that, although you may approve or disapprove of the residency, you have no power of enforcement in relation to that. I will give an example: if someone who is subject to a supervision and treatment order chooses to reside somewhere —

**Mrs O'Neill:**

We are going into the area of residency and supervision, which is a completely different area of questioning.

**The Chairperson:**

That will be coming up, I can guarantee you. We will have a whole series of supplementary questions on that, Sean. Keep your powder dry until that section.

**Mrs O'Neill:**

The question was whether the doctor was sufficiently briefed and informed, because the Minister was not sufficiently briefed on Tuesday. It does not give me any confidence. Was the doctor sufficiently briefed to deliver another doctor's report?

**Mrs Linda Brown (Department of Health, Social Services and Public Safety):**

That is not what Sean said. We have a schedule —

**Ms S Ramsey:**

The Minister said it in his opening remarks.

**Mrs L Brown:**

He was supporting the other doctor's report, and he had a report of his own as well, which was on the same topic.

**The Chairperson:**

The next question will be from Tommy Gallagher, who will be followed by Sue Ramsey, David McNarry and, finally, Conall McDevitt.

**Mr Gallagher:**

In the same vein, I want to ask about Dr C, who was employed by the trust. Can we be clear about the role of Dr C? Was Dr C's role to deliver the report of Dr B, even though he was acting on behalf of the trust, or was he there to put forward the view of the trust, even if that differed from the opinion of Dr B, who was unavailable to attend the court?

**Mr Holland:**

I think that the primary role of Dr C on that day in the court was not to put forward anyone's view. It was to offer a clinical assessment of the situation of two men with a learning disability and their susceptibility to treatment. It is a clinical judgement, a clinical matter. That is what that doctor was commenting on. I am not going to second-guess that.

**Mr Gallagher:**

There is something there, Chairperson, which will come up in my main question and has relevance to what we have just heard.

**Ms S Ramsey:**

I thank the Ministers for their presentations. On the issue of Dr B and Dr C, Minister, in what capacity was Dr C there on that day? Whom was he representing? Was he representing the victims, the perpetrator or the trust? Following that, when we find out that, I would like to know whether Dr C had any other involvement in this case prior to that court hearing. We will probably need to check the Hansard report again. Unless I have picked it up wrong, the Minister, in his introduction, said that Dr B was not in court, but Dr C delivered Dr B's report. We need to check that out in case there is more confusion. We should find out why Dr C was in court that morning.

**The Minister of Health, Social Services and Public Safety:**

Dr C was there to provide a clinical assessment of Dr B's report.

**Ms S Ramsey:**

Was he there to represent the victim, the trust or the perpetrators?

**The Minister of Health, Social Services and Public Safety:**

He was called by the prosecution.

**Ms S Ramsey:**

Therefore, was nobody there from the trust?

**The Minister of Health, Social Services and Public Safety:**

It was a prosecution case, so the prosecution would have called various witnesses. Some of them

may be from the trust but also from other agencies.

**Ms S Ramsey:**

Sean mentioned a learning disability in his previous answer to Tommy Gallagher. Therefore, was he there to provide the general view from the trust, or was he there giving the view of the victims or the perpetrator?

**Mr Holland:**

He was using his clinical expertise to provide evidence to the court on the capacity and ability and susceptibility to treatment of the two men.

**Ms S Ramsey:**

Did Dr C have any other involvement in the case until that point?

**Mrs L Brown:**

Yes, he did.

**Ms S Ramsey:**

In what capacity?

**Mrs L Brown:**

I have the schedule that the Minister has said that he will circulate to you. For reasons of confidentiality, names, and so on, have had to be redacted. That is a schedule of the reports that we are aware of, on the health and social care side, that were submitted to the court. I am sure that there would have been other reports from police and other agencies that we are not aware of.

**Ms S Ramsey:**

Will you give us a brief idea of where Dr C's involvement started and at what date it started?

**Mrs L Brown:**

Under fitness to plead, when the court was originally trying to work out whether the men were fit to plead, it received reports to help them. It received a report from Dr C and others, because the court did not take only one opinion on the men's actions; it took a variety of opinions. Therefore, the court had a report from Dr C. Dr C, in turn, had the advice of some psychologists to help him

to form his report to the court. Dr C received professional psychology advice on the brothers' medical condition, and he provided a report to the court to provide a professional view on the brothers' learning disability status at that point. In that report, he made recommendations that they would be unable to provide succinct or coherent instructions to their legal team, and so on. The issue was whether those people could understand the court proceedings and whether they were fit to plead. That was Dr C's first involvement with the case. He later provided a further report, which, as Sean said, provided the court with the trust's views on the men's suitability for a supervision and treatment order. That report, as with all the reports that were provided, did not deal with residency issues. They were about either fitness to plead or susceptibility to treatment.

**Mr McNarry:**

The significance of this is that there has been a trial, and this is not a court conducting another trial. Therefore, I am anxious about the interpretation of the information and evidence that is before us, the interpretation of the court order and the integrity of the witnesses and the professional opinion. I link that to your opening remarks and to the paragraph that you read out, which is very relevant to this evidence session. The same document, the Lord Chief Justice's letter, gives what seems to me to be an example of the judge's experience in case law and his conclusions. It states:

“Based on the evidence the judge determined that the home should continue to be the residence for the brothers after sentencing.”

The judge made that determination based on the evidence.

The question that springs to mind is whether there was a problem with the evidence. Is there something that we need to know about the evidence of Dr C? Was there a problem with it? Was the court misled in any way by any witness? Has the trial judge or the Lord Chief Justice raised any concerns other than those about which the Lord Chief Justice has written to us? The only concerns that he has raised with us are about wanting to ensure that we understand what took place, but are there any legal concerns? Does the Lord Chief Justice have any concerns about the justice system or the evidence that he suggests should be reviewed?

I do not think that that is where we are at. I understand the questioning of errors. There was the error of the five-year SOPO sentence that should have been a life sentence, and I am sure that we will get to that. I am sure that members will also agree that, on a regular basis, we get notes from Ministers saying that they made a mistake in an answer to a question to Member A, B or C.

**The Chairperson:**

Do you have a question, Mr McNarry?

**Mr McNarry:**

As this is a joint meeting of the Health and Justice Committees, and we are hearing joint evidence, will the justice people tell us whether there was a problem with the evidence, whether the court was misled in any way and whether there is any reason for these Committees to think that the Lord Chief Justice has concerns over the procedure, the trial itself or its outcome to the extent that there might be a review?

**The Minister of Justice:**

The simple answer is that all the evidence that I have is that which is contained in the letter from the Lord Chief Justice's office, in the judgement of Judge McFarland and in the redacted transcript, which members have had an opportunity to see. I see nothing in any of those —

**The Chairperson:**

We have not had a chance to see that. The transcript has not yet arrived with us.

**The Minister of Justice:**

Sorry. It was my understanding that you had. However, I see no evidence in the transcript to suggest that there is any concern on the part of the trial judge, Judge McFarland, or the Lord Chief Justice.

**Mr McNarry:**

Will you clarify whether there is any concern about the witnesses and the evidence that they gave?

**The Minister of Justice:**

No. As I understand it, there was no concern about the procedure from any part of the judicial system.

**Mr McDevitt:**

Minister McGimpsey, the Mental Health (Northern Ireland) Order 1986 is the legislation that

gives power to supervision and treatment orders in Northern Ireland. Perhaps you could clarify for us exactly which section of the legislation empowers Dr C, and, for that matter, Dr B, to appear in court and give the evidence that they gave.

**The Minister of Health, Social Services and Public Safety:**

I do not have that sort of detail.

**Mr McDevitt:**

I suspected that you would not.

**The Minister of Health, Social Services and Public Safety:**

I have —

**Mr McDevitt:**

That is fine. It is OK, Minister. Let me read it to you, because we do not have much time. It is paragraph 2(1)(b) of schedule 2A. Frankly, Minister, it would have been helpful if you had perhaps read the legislation before coming here. It reads:

“on the oral evidence of a medical practitioner appointed for the purposes of Part II by the Commission and on the written or oral evidence of one or other medical practitioner, that the mental condition of the accused or appellant ...”.

What I understand we are being told this morning is that both those individuals appeared in court in the form of one medical practitioner. In other words, the views of Dr B and Dr C, who, if Mrs Brown’s evidence is to be followed, both submitted written reports, were corroborated by oral evidence from Dr C.

**Mrs L Brown:**

*[Inaudible.]*

**The Chairperson:**

Linda, could you speak up a bit? We are having problems hearing you.

**Mrs L Brown:**

I apologise if you have not been able to hear me properly. I will answer that question first, and, if you permit me, Chairperson, it would perhaps be helpful if I told you roughly the broad sweep of reports that the judge requested from us. I think that it is very important in this matter to

understand that the court requested a great deal of evidence over a considerable period before making a disposal decision in relation to those vulnerable people. I will start with that, and it may help to answer your question.

I will go back to fitness to plead. The court asked for a number of reports to help it to decide whether the individuals were fit to plead. On that occasion, Dr C, to help him to formulate the report that had been requested, received advice from clinical psychologists. Then there was a psychologist's report from a Dr H, who was a consultant clinical psychologist. We see the recommendation that he would be unable to provide clear instructions to his legal advisers, but the purpose of that report is not detailed here in the schedule. We then have a medical report requested by the court, and that was from Dr M, a consultant psychiatrist. The purpose of that report was to provide a professional view with regard to the brothers' learning disability status, and it concluded that they were not fit to plead. There was then a medical report by Dr C. The Committee will get a copy of all of this, and I apologise that I am talking through it. Dr C came to the same conclusion on unfitness to plead.

Following the court receiving all of those reports, a decision was made by the court on 6 October that the brothers were unfit to plead. The point that I am making quite strongly is that the court decided to take a large number of views to help it to make that decision. On 26 November, a jury found a finding in fact, not a conviction, that those offences had occurred and, given the unfitness to plead, that was not a criminal conviction for those men. The judge, therefore, then had to turn his attention to the disposal of the two brothers. Before doing so, he had to ask for another range of additional reports.

Then the judge asked for a report by Dr B, a consultant forensic psychiatrist, not an employee of the Western Trust. That was a confidential medical psychiatric report, which was to provide an opinion on the disposal of those people as to whether they should go into hospital, have a guardianship order, a treatment order or whatever. The judge came out with the view that a supervision and treatment order would be most appropriate.

The Public Prosecution Service then required a social history report from the social worker, which was a factual report on the family circumstances on a template format that goes to courts in those circumstances. That was also provided about family circumstances: it made no reference to residency.

Finally, there was Dr C, the consultant psychiatrist, who provided a letter to the Public Prosecution Service — I am not sure whether we call it a letter or a report but it was certainly an opinion — and who was to provide the court with the views of the trust on the suitability of the defendants for a supervision and treatment order. He came to the conclusion that he agreed with the views of Dr B on that matter.

**Mr McDevitt:**

Chairperson, I have one minor point. The bits that are relevant to paragraph 2(1)(b) of schedule 2A of the 1986 Order are those last three reports that you have outlined, as I hear you, Ms Brown. They are the consultant forensic psychologist's report — Dr B's report — recommending a supervision and treatment order; the history report by the social worker; and Dr C's report, a consultant psychologist, in which he also offered some views on the suitability of a supervision and treatment order. Did Dr C come to court that day as an officer of the trust to represent orally the views of all those people? That is what I understand has been said today.

**Mrs L Brown:**

I do not have enough information to answer you properly. When you see the redacted court transcript, which I have seen, it may throw more light on the matter for you. I am not sure. I have read the transcript, and it would not enable me to answer your question. As I was not in court at the time, I simply do not have enough information to say that to you. What I will say —

**Lord Morrow:**

Excuse me. Who could answer that question if you cannot answer it? Are they on this planet?

**Mrs L Brown:**

It is a matter of court proceedings. I am not sure whether the judge, at the end of the day, is the person who —

**Mr McNarry:**

The court understood that he was a reliable witness and accepted him as an expert witness.

**Mrs L Brown:**

He was there as a member of the Western Trust because the judge was receiving information

from a number of sources, and he was leaning towards a supervision and treatment order in the community. Therefore, he wanted to take evidence from the clinician who would have to say whether the treatment could be given to those men. You cannot have a supervision and treatment order if the people are not susceptible to treatment. Therefore, it is a medical and clinical opinion, and he needed to take it.

**The Chairperson:**

The last question on this section will come from Dr Deeny. There are folk who have been trying to get an opportunity to speak, but I do not think that we are going to get too much further on this specific issue. However, I have said to those folk that if they want to come in early on the next round of questions, I will let them in because I know that they are anxious.

**Dr Deeny:**

Thank you, Ministers. There are all of these doctors all over the place. I am a Dr D, and thank God. My questions will be short. To return to the seriousness of this: the way I see it is that Dr B did the work independently of the trust, and then Dr C gave the report in court. Why did the doctor who was involved and did all the work have to be independent and outside the Western Trust? Why could it not have been somebody within the trust, who would have known the area well? Is the Minister aware whether there may have been nobody suitably qualified to do that work within the trust?

As a qualified doctor working in a rural area, I wonder whether the doctor who did that work was au fait and in touch with the area. Was he from the area, or from the city area? Was he or she au fait with the particular problems and difficulties of such issues as sexual abuse in small rural areas such as Donagh, where communities know each other? If there was somebody suitably qualified within the Western Trust, why did that person not do the work and make the report? Why did it need somebody independent? Did that independent person have the experience of the particular difficulties and sensitivities of small rural areas such as Donagh?

**The Minister of Health, Social Services and Public Safety:**

The prosecution would be making its case and calling witnesses accordingly. Whether the witnesses were au fait — as you put it — with this, that or the other would be a matter for the judge to determine, having listened to their evidence. A number of witnesses were called by the prosecution. They were there to represent the points, no doubt, that the prosecution barrister

wanted to make.

**Mr Holland:**

Kieran, the court accepted those doctors' reports and testimony as expert. It was for the court to determine that. I would be very uncomfortable questioning the judgement of the court in determining that it was receiving expert testimony.

**Dr Deeny:**

Why would one doctor do the work and another consultant read the report? What is the reason for that? Surely the person who did all the work should have reported to the judge.

**Mr Holland:**

As Linda said, several reports were provided from several sources.

**Mrs L Brown:**

Several reports were provided to give the judge a proper range of opinion. The judge then came to the conclusion, as all the reports had done, that the best form of disposal for him in this case was a supervision and treatment order, but he was asking Dr C if he agreed with the views expressed in Dr B's report. It seems from the transcript that he was considering all of the evidence in front of him at the time. That is my view, having read the transcript.

**The Chairperson:**

We will now move on to a question from Lord Morrow, and I will be asking for supplementary questions. There were a number of folk who tried to ask a question in the first round and did not, so I am giving them priority; Carál Ní Chuilín and Alex Easton indicated that they wanted in, and we have a list of folk after that.

**Lord Morrow:**

Minister, I would just like to ask you a question in relation to the power of the social worker to approve or disapprove residency under the supervision and treatment order. At the meeting of the Health Committee on 9 September, which is recorded in the Hansard report, the following statement was made:

“The trust carefully considered the operation and the potential to vary the supervision and treatment order and has taken advice on this issue throughout from senior counsel ... It is clear, beyond any doubt, that the judge intended that the brothers could and should return home following their disposal at court on 18 June 2010.”

On 21 September, you stated:

“The supervision and treatment order was issued to the Western Health and Social Care Trust by the court. The responsibility of the supervising order in accordance with that order is to approve or disapprove residency. Should the brothers decide to leave Lakeview and return to Donagh, or go elsewhere, the supervising officer would discuss any change of circumstances with other relevant agencies and approve or disapprove of whatever address they present, according to the evidence before the supervising officer at the time.” — [Official Report, Vol 55, No 4, p19, col 1].

The legal advice states that although the supervising officer could have approved or disapproved of an address, she did not have the power to determine where the defendant should live. Will you clarify that? On what date did the trust seek legal advice on the powers of the supervising officer? Why did the trust seek senior counsel opinion when, in one breath, it asked for that and, in the next breath, said that it was clear beyond any doubt what the judge intended for the brothers? Why did the trust need to seek legal advice on something that was beyond any doubt?

**The Minister of Health, Social Services and Public Safety:**

When a supervision and treatment order comes forward in court, the trust will ask its legal advisers for their position. As far as the supervision and treatment order is concerned, as I said in my statement, the emphasis is on treatment. The individuals about whom we are talking were not convicted at that court. The supervision and treatment order has very limited powers in that respect. It runs for two years. As regards issues of residency, it is a very broad residency definition that applies to petty sessions, courts and board areas, which are now trust areas. It does not have the power to determine the precise address. The order that was given by the court to the trust’s supervising officer was to supervise those individuals. However, it was to supervise their treatment and ensure that they received it through a proper care plan. The role of the supervising officer is to ensure that individuals receive treatment.

**Mr Holland:**

The belief that the judge had determined clearly where the brothers were to reside comes from the consideration of the transcript. Before the exchange that was referred to in the Lord Chief Justice’s letter, there was a discussion in the court between the judge and, I believe, a prosecutor in relation to the issue of residency. That was particularly when they were considering the determination of the sexual offences prevention order. It can be seen quite clearly from the transcript that the judge is, at that point, minded that the men will reside in Donagh.

As to why the trust would subsequently seek legal opinion to clarify the position of its powers,

those men's lives did not stop on the day on which the court trial finished. Situations can change, so it was important for the trust to understand what powers it had as situations may have changed, so that it could understand what authority it would have to determine residency or not subsequently.

**Lord Morrow:**

Do you have the date on which that legal advice was sought?

**Mr Holland:**

I do not.

**Lord Morrow:**

You do not.

**Ms Ní Chuilín:**

I thank both Ministers and officials for their appearance today. Minister, in response to Mrs Foster's question, you said that you will hold a case review. Will that be done through the Regulation and Quality Improvement Authority (RQIA)? How will that happen? The Minister of Justice asked Dr Michael Maguire, the Chief Inspector of Criminal Justice, to carry out a detailed investigation, primarily into the way in which such cases are managed. Some good remedial actions will be taken, even in preparation for what Dr Michael Maguire will report on. How will that case review be carried out? Will the Health Minister and the Minister of Justice support the families' call for an independent review of the whole case by a QC? I want to put it on record that Sinn Féin certainly supports the families in that regard.

We need to know, for the record, exactly what a case review will be, what shape it will take and how it will correspond with the review that the Minister of Justice has instructed the Criminal Justice Inspectorate to carry out. Will any recommendations from both sets of investigations be made without prejudice to any potential cases or to an independent public inquiry that the families request?

**The Minister of Health, Social Services and Public Safety:**

I understand that the review that the Minister of Justice has ordered is a broader review. I have followed the same steps that I followed after the Omagh fire. The first stage is for the director of

social services from the board to carry out a case review and to report quickly. That will be case-specific. That person will produce a preliminary report within four weeks and a full report thereafter. Members will recall that the report on the Omagh fire raised other issues and questions. We then moved to the next stage, whereby Henry Toner QC conducted an inquiry into the whole Omagh case, produced a very good report and made a series of recommendations, all of which we implemented. This is a serious issue. I will work through the same step-by-step process in this case, and the case review will then inform us as to the next stage.

**Ms Ní Chuilín:**

Will you support the families' call for an independent public inquiry?

**The Minister of Health, Social Services and Public Safety:**

I will have to wait to see the case review, which will come forward quickly. I wanted something to come forward within a matter of weeks.

**Ms Ní Chuilín:**

Will you meet the families as part of that?

**The Minister of Health, Social Services and Public Safety:**

That issue has not been raised with me. The first thing I do is get a case review, and that is by the director of social services' expertise who will provide that case review. That will determine whether there are more questions and issues. After the McElhill tragedy, the next stage that I followed was to commission a barrister, Henry Toner, to carry out the public inquiry. That is my step-by-step plan for this case.

**Ms Ní Chuilín:**

You are not ruling out supporting a public inquiry?

**The Minister of Health, Social Services and Public Safety:**

I am not ruling anything out. At this stage, the case review will inform us of all the questions, many of which have been asked this morning. We will go through all that to make sure that social services and the wider health and social care family have discharged their responsibilities properly. We will then take the next steps.

**Ms Ní Chuilín:**

Will the Health Committee and the Justice Committee hear the outcome of that case review?

**The Minister of Health, Social Services and Public Safety:**

Yes, of course.

**Mr Easton:**

Do you find it very unusual that the Lord Chief Justice took time to write to the Health Committee and the Justice Committee to clarify the line of events? As Lord Morrow said, the trust was clear beyond any doubt that it should place a SOPO and an STO on the men. Yet, when the trust came to the Health Committee, it gave a clear indication, from what I have read, that it was led by the judge. However, the letter says that the judge based his evidence on the evidence that the trust was giving.

I highlight in particular the issue about Dr C. You said that he represented the trust, yet he gave evidence for Dr B on behalf of the prosecution. The judge asked Dr C where the men should reside, and Dr C said, "No your Honour". Did Dr C represent the trust when he said that they should reside in Donagh or did he represent the defence? There are clear lines crossing over and confusion of who actually is representing what. One cannot represent the prosecution and the trust at the same time, so who was Dr C representing?

**The Minister of Health, Social Services and Public Safety:**

A proper court case was carried out, properly supervised by a judge, and a series of experts and witnesses was brought forward. I do not think it appropriate for me to comment on the basis of the evidence. The judge was satisfied that the evidence that he got was proper. As the Minister of Justice said, he has no evidence to the contrary that there were any issues around that.

I thought that the Lord Chief Justice's letter was helpful in this respect: it shows that the judge made the decision based on the evidence. It is for the judge to determine the validity of the evidence. Based on the evidence, the judge determined that the home should continue to be the residence of the brothers after sentencing. The residency was the issue that was exercising the views within the local community. I thought that the letter was helpful in clarifying that. Clearly, it was based on the evidence.

**Mr Easton:**

At the points where the judge asked about where the brothers should reside, Dr C said “no” to anywhere but Donagh. Was that the view of Dr B, as expressed in his report?

**The Minister of Health, Social Services and Public Safety:**

You have to look at the copy of the redacted transcript from the court. You can read that and decide whether the judge was taking the evidence as he properly should — I have no doubt that he was — and coming to a proper conclusion.

**Mr Easton:**

We do not really know whether Dr C’s views on where the brothers should live were the same as those of Dr B.

**The Minister of Health, Social Services and Public Safety:**

As far as the residency is concerned, this was a discussion under supervision and treatment. That relates to the issue of residency, as I have explained, very broadly to petty session, district or board area, now a trust area. It does not have the power to determine a precise address.

For this individual case, you have to go through all the reports of all the experts to understand the particular circumstances of the two individuals whom we are talking about, and how their treatment could best be carried out. As I understand it, the only option available to the judge was the supervision and treatment order.

With respect to some of the questions that are being asked, we really need the judge here to explain why he took the evidence he took and came to the conclusions that he came to.

**Mr Easton:**

Did all the other statutory agencies involved agree with this decision? The PSNI, the social worker, the four doctors who have been mentioned — did they all agree that this was the best place for the brothers to reside?

**The Minister of Health, Social Services and Public Safety:**

I have not got evidence. This is the evidence that the court took. Each of those witnesses gave evidence, and the court made a decision. Did they agree with the court’s decision? I do not

know; I cannot answer that question.

What I am about is ensuring that the individuals concerned get the care and treatment that the judge requires under the supervision and treatment order.

**Mr O’Dowd:**

We have before us the judgement delivered by the court on 18 June. I have studied this document on a number of occasions and asked various parties questions in relation to it. It is a 37-paragraph ruling by the judge. I have yet to establish where in this ruling the judge states that the brothers have to return to Donagh. In paragraph 27, he states, in relation to the brother who stood trial and was sentenced:

“... as your home, and probable residence after release ...”.

How does the trust, or anyone else, interpret that to mean that the judge stated that the brothers had to return home? In the Lord Chief Justice’s letter, it states that the “judge determined” that the brothers should return home. However, I cannot find where that is determined in the judgement.

**Mr Holland:**

I will answer that. The point was that the judge had it within his power, if there were grounds to determine that they did not return home, to use the sexual offences prevention order. He considered that matter and chose not to. He chose not to because he had been provided with evidence by the local area public protection panel that those men did not pose a significant risk to the community. Had he wished to exclude them from a particular address, he had the opportunity to do so through the sexual offences prevention order. On the basis of the evidence provided to him, he clearly concluded that he did not have grounds to do so.

The most that he could specify under the supervision and treatment order was that they would reside within an area, as the Minister has said. I have to be absolutely clear: a supervision and treatment order is not a punishment. The focus of the supervision and treatment order, having determined that those men were not fit to be found guilty and be punished in the normal way, was to ensure that they could be treated under the terms of the mental health legislation. Having done that, he asked about their social circumstances and where that treatment could take place.

I understand that people are looking at a particular line of the transcript. There were several

exchanges between the judge and other people in the court. It was an iterative process in which the judge considered a variety of options. Indeed, at one point, the judge said that they would be like “fish out of water” if they had to live somewhere else. That was the judge speaking, not a doctor or anyone else. The point is that the judge could have determined that they did not live in Donagh. He chose not to, based on evidence. Then, in relation to the supervision and treatment order, his concern was to make sure that they could be treated. He took evidence from a number of professionals who ascertained that first, they could be treated, and secondly, they could be treated in the community. There was no authority to prevent them from going home.

**Mr O’Dowd:**

The other side of that coin is that the judge, in his ruling — the two brothers did not go through a court proceedings on criminal charges, or whatever you want to call it — outlined four options that could have been available to him; hospital order, guardianship order, supervision order or discharge. He outlined why he did not use any of those. He did not state anywhere in this ruling why he did not place a sanction on them that they could not return to Donagh. It is an interpretation, but we will read the full transcript.

**Mr Holland:**

In the transcript he discusses in great detail restrictions that he felt were appropriate as part of the sexual offences prevention order.

**Mr O’Dowd:**

OK. We will read the transcript when we come to that part.

He also goes on to state in paragraph 35 of his ruling, which relates to the supervision and treatment order:

“I am obliged to explain to you the effect of these orders —“

— he is speaking to the two brothers at this stage —

“The order will last for 2 years ... There will be a requirement that you shall submit during this period to treatment ... There will be a requirement that you reside at an address approved by your supervising officer.”

He specifically states that in the ruling, but you are telling this Committee that the supervising officer could remove approval but no sanction could be taken against the brothers once that approval was removed. Is that basically —

**Mr Holland:**

First, I am not a lawyer. This is clearly a very complex issue.

**Mr O'Dowd:**

You have taken legal advice.

**Mr Holland:**

Yes, we have taken legal advice. The legal advice that we have received, and, indeed, that was provided to the trust, was that yes, the social worker, as the supervising officer, could approve or disapprove the address. If, for example, someone chooses to live at an address other than that which is approved, the supervising officer has no power to enforce their approval or disapproval. You cannot force them to move back to the address at which you think that they should be living or away from an address at which you think that they should not be living.

That is in contrast to the other power that is, or was, available in this case to determine residency, which is in the sexual offences prevention order. Failure to comply with that is a criminal offence.

**Mr O'Dowd:**

OK. I just want to tease this out a wee bit further.

**The Chairperson:**

This will save time later on, given the line of questioning you are going down.

**Mr O'Dowd:**

I do not want to personalise the issue towards any individual in the trust. The trust did have the power to go back to court. The circumstances did change, and the brothers returned home for treatment. The Health Minister said earlier that they returned home for treatment because the two sisters lived in the home. I hope and expect that the treatment was much more than just returning them to the family home and expecting that the family would look after them. I assume that there was a management plan in place to look after the brothers. The two brothers returned home, and circumstances changed in the village around the concerns raised that the brothers had returned home, and the media and public pressure, which, I suspect, the brothers would have picked up on.

Was that the best residence for those brothers to receive medical treatment — not family care — medical treatment? Secondly, why did the trust not decide to go back to court or to unapprove the address? If the brothers had disagreed with that, the trust could have gone back to court to challenge or to seek to amend the order.

**Mr Holland:**

On the first point, I am sure that both Committees appreciate that there are areas that we will not discuss because of reasons of confidentiality. However, I can say that a very comprehensive care and treatment plan was developed and has been in operation, and it certainly includes far more than the brothers receiving familial support. It is active treatment. I am sure that you understand why I will not discuss that in detail.

**Mr O'Dowd:**

I understand.

**Mr Holland:**

Therefore, it was certainly not simply a case of their going home to be looked after by their sisters. This was active medical treatment to be provided under the terms of the supervision and treatment order.

In terms of circumstances changing, the legal advice that we have received, and I understand that it mirrors the legal advice to the trust, is that the only change of circumstance that a court could take into account in changing the terms of the supervision and treatment order would relate to treatment. Therefore, although everyone concerned is truly sympathetic to the position of the community in Donagh and understands how difficult it must have been to see these men return to its midst, a variation to the supervision and treatment order would have had to be on the basis of a change of circumstances, either in terms of their amenability to treatment or a different treatment being more appropriate. The fact that there was public concern would not, in itself, constitute reason to change the terms of the supervision and treatment order. Likewise, to be absolutely clear, the SOPO could not be changed on that basis either. The only basis for that to be changed would have been a change in the risk that the brothers posed to the community.

**Mr O'Dowd:**

I have one last point. It may seem strange to put it this way in the circumstances, but surely the

emotional well-being of the two brothers, in that residence where they would be under so much public pressure, would affect their treatment. Surely it could be argued that they would be treated better elsewhere, out of the media and public spotlight.

**Mr Holland:**

I am not a qualified psychiatrist specialising in learning disabilities, and I think that answering your question requires clinical competence. I think that the fact of the matter is that, if the brothers chose to stay at that address, the only legal option that I could see to preclude them from doing so would be if it were determined that they posed a risk to the community.

**Mr O’Dowd:**

Well, we will disagree on that point.

**Mr Holland:**

No, Mr O’Dowd, it is not my job to do anything other than to reflect the current law. In the Minister’s opening statement, he clearly expressed a view regarding possible political remedies to this situation.

**Mr O’Dowd:**

That is the difficulty. The reason why we have so many lawyers is that there are different interpretations of the law. Also, the questions that lawyers are asked also present you with the answers in some circumstances. Our job is to ensure that the right questions, or all questions, are asked.

**The Minister of Health, Social Services and Public Safety:**

Surely that is also the responsibility of the judge. It was a proper bona fide judicial process that went on and —

**Mr O’Dowd:**

Yes, and paragraph 35 of his judgement states:

“There will be a requirement that you reside at an address approved by your supervising officer”.

**The Minister of Health, Social Services and Public Safety:**

Based on the evidence, the judge determined. That is quite clear in the Lord Chief Justice’s letter,

not just in the trust's evidence. If you think that the judge was misled in any way by the trust, perhaps you should go and talk to him about it.

**The Chairperson:**

We are in the centre of the main issue in this whole case. I allowed Mr O'Dowd to go on a bit longer than normal because I think that that will save time later. Several other folk want to come in on the back of his comments. Remember that we are dealing now simply with Lord Morrow's second question. I am looking for a member to raise a third question on an issue that has not been dealt with to date. The next member in this sequence is Conall McDevitt.

**Mr McDevitt:**

It is a bit difficult to question a Minister about legislation that he has not read, but article 5 of schedule 2A of the 1986 Order deals with the optional requirements for residence. Specifically, what guidance would social workers apply when formulating a view as to what advice to offer to the court with regard to the suitability or otherwise of a supervision and treatment order in Northern Ireland?

**Mr Holland:**

The social worker did not do that. That was the role of the clinicians.

**Mr McDevitt:**

OK. A central government circular No SWSG4/98 provides detailed guidance to social workers on the appropriateness or not of supervision and treatment orders. I presume that that central government guidance would apply in Northern Ireland.

**Mr Holland:**

I am not aware of that.

**Mr McDevitt:**

OK. Perhaps you could answer the question. It is quite an interesting piece of guidance, and it makes the point that the law does not require a written report from a social work department social worker, although guidance suggests that it is good practice that the report should normally be prepared, which could be, although we do not know for a fact, the report to which you referred earlier, Mrs Brown.

**Mrs L Brown:**

I can clarify that. It was quite clear on the social work report: it is a social history report of the family.

**Mr McDevitt:**

Therefore, even though central government circular No SWSG4/98 —

**Mr Holland:**

Sorry. Are you referring to central government as in Westminster?

**Mr McDevitt:**

Yes, I am.

**Mr Holland:**

Mental health legislation is a devolved matter.

**Mr McDevitt:**

I understand that it is a devolved matter. The reason that I have the information is because it is provided through a devolved Administration. Not yours, because you have not put it in the public domain, but the Scottish devolved Administration have. I am curious to see whether, in this region, we apply the same standard that would be applied elsewhere in the UK. The Minister comes to the House frequently to remind us of the constitutional status of this part of Ireland.

However, there is a really important point here. The guidance states:

“Consideration of this option is only likely when the court is already aware that the offender has mental health problems and requests advice from the psychiatric and social work services about how to deal with the offender. The assessment of the offender’s suitability by a social worker should consider:

- the risk which the offender may pose (together with the medical specialist);
- whether the offender is likely to comply with the conditions of the order;
- the satisfactoriness of the home surroundings;
- whether a condition of residence (or residence in a hospital) may be necessary”.

If, in Northern Ireland, we are still operating at a stage where central government circulars issued in 1998 have not found their way to be considered by regional authorities or do not have any effect here, what guidance does a social worker operate under when he or she is participating in a

trial or in a hearings process with a view to having a recommendation emerge of a special treatment order?

**Mr Holland:**

I think that to try to apply guidance that has been developed for legislation in another jurisdiction to this jurisdiction would be inherently difficult.

**Mr McDevitt:**

It is identical legislation, Mr Holland. I have looked at both pieces of legislation, and they are identical.

**Mr Holland:**

My understanding is —

**Mrs L Brown:**

We have different legislation here.

**Mr McDevitt:**

I can make this available to you if you like. You can commission it. From my reading of the relevant pieces of legislation here and in Scotland, they are, for all intents and purposes, the same in relation to special supervision and treatment orders. This is guidance.

**Mr Holland:**

Mr McDevitt, the judge took evidence from witnesses whom he deemed to be expert medical witnesses. On that basis, he determined that a supervision and treatment order was the appropriate disposal in this case.

**Mr McDevitt:**

Therefore, what you can tell us today is that the judge took evidence from officers of the trust, and on the basis of that evidence the judge ordered a supervision and treatment order. You can tell us that that supervision and treatment did include, under article 5 of schedule 2A of the 1986 Order, a residency requirement. That residency requirement did authorise the supervising officer to approve or disapprove the residency of the McDermott brothers.

**Mr Holland:**

All those points were made explicit in the Minister's opening statement.

**Mr McDevitt:**

OK. My point is this: what guidelines are available to social workers in Northern Ireland during a hearing process, after a hearing process or when they are behaving as supervising orders to allow them to come to an informed view as to the appropriateness of an address that they may approve or disapprove? Specifically, there are quite clear criteria elsewhere in these islands that the satisfactoriness of the home surroundings needs to be considered. Would that not apply also here?

**Mr Holland:**

Yes, it would.

**Mr McDevitt:**

OK. Could you, perhaps, help us to understand how the McDermott brothers' home residence could have been considered a satisfactory residence, given all that was happening in County Fermanagh from 18 June onwards?

**Mr Holland:**

Because the evidence that had been put before the court by the medical experts was —

**Mr McDevitt:**

Because —

**Mr Holland:**

Let me finish. The evidence was that the treatment that was required under the supervision and treatment order could be provided while the brothers resided in that setting —

**Mr McDevitt:**

I understand the role —

**Mr Holland:**

— unless there was some new evidence.

**Mr McDevitt:**

I understand the role that clinical practitioners play in that. I am not asking you a question about the clinical practitioners; I am asking you about the social worker's advice. Would a social worker normally consider a residence such as the McDermotts' residence in Donagh to be satisfactory in the context in which that residence was coming into the public domain and the concerns that were made public? I understand from the victims to whom I have spoken that the concerns of the residents were being expressed by the victims throughout the trial process. In light of all that was happening during the hearings process and all the contextual background of the case, how would a social worker come to the view that that was a satisfactory residence?

**Mr Holland:**

I am not going to discuss the detail of the report that the social worker conducted on the social circumstances of the two brothers in that household. A variety of factors will have been considered. I come back to the point: should they have chosen to try to have the brothers reside elsewhere? Unless the brothers were prepared to do so voluntarily, they could not have enforced such a movement.

**Mr McDevitt:**

The crux of the issue is whether or not officers behaved in a way that ensured that they used all the powers available to them to explore alternatives to the simple return of the brothers to their regular residence in Donagh. We have been able to unearth guidance that suggests that there would be grounds on which you would seek to make them go elsewhere. I take your point that you have seen your counsel advice. That is great; I am not a lawyer, but the law does not seem to be unidirectional in this regard. It seems that it you could read it in several different ways.

What I am not hearing from you is what specific published guidance that we could scrutinise would officials of the trust have been drawing on to come to the conclusion that they came to about residency?

**Mr Holland:**

There is a range of guidance that governs social work practice in relation to the mental health legislation.

**Mr McDevitt:**

I mean in relation specifically to supervision and treatment orders, Mr Holland.

**Mr Holland:**

That is part of the mental health legislation.

**Mr McDevitt:**

I am asking you what guidance in relation to —

**Mr Holland:**

There is a range of guidance available. If the Committees would find it useful, we will subsequently arrange to have that guidance shared with you.

**The Chairperson:**

Thank you. I will set the scene for the rest of the questions: the third main question will be allocated to Tommy Gallagher. Mr McNarry, Sue Ramsey, Kieran Deeny, and possibly Raymond McCartney will ask supplementary questions to the current question. Remember that this is a questioning of both Departments. I think that Mr Ford is feeling quite lonely there, as most of the questions are going to the one side. Do any of the folk whom I named want to come in with a supplementary question now? We are still on the issue of the role of the social worker

**Mr McCartney:**

I have a question in relation to the legal advice. Was the legal advice given orally after written questions were submitted, or was there a written reply to the trust?

**Mr Holland:**

Do you mean the written advice to us or to the trust?

**Mr McCartney:**

To the trust.

**Mrs L Brown:**

The legal advice was given to the trust.

**Mr McCartney:**

Verbally?

**Mrs L Brown:**

No, it was written.

**Mr McCartney:**

Were questions submitted prior to that, or was there a conversation?

**Mrs L Brown:**

The trust engaged with its lawyers on the matter, and there is written advice to the trust.

**Mr McCartney:**

Minister, in relation to the case review of the McElhill case, which led to the inquiry by Mr Toner, I think that you said, was there a criticism at the time that it was only within your Department? In this case, might your Department make a recommendation that this should be all-embracing, which may touch on aspects of the Department of Justice, or would that be beyond the remit of the case review?

**The Minister of Health, Social Services and Public Safety:**

As I said, it is specific to this case, and I want a response quickly. It would be wrong for me to prejudge what will come out of that, and it could very well go beyond.

**Mrs O'Neill:**

On the back of Raymond's point, although the Toner report was welcome and made a number of excellent recommendations, one of the criticisms was that it concerned only the health aspect. Would the Minister of Justice support a joint inquiry, if we get to that stage, to look at both the health aspects and the justice aspects of dealing with sexual offences cases?

**The Minister of Justice:**

The issue is how much is it a matter of a joint inquiry or of two inquiries, which might need to proceed in parallel and linking across to each other. I am certainly open to any suggestion of linkages between them. At this stage, my concern was to ensure that, in addition to work that is being done by the Courts and Tribunals Service to tidy up the administrative errors, I brought in

Dr Maguire to verify independently what is being done there. I noted that, in the past, he has worked with the Regulation and Quality Improvement Authority (RQIA), for example, on other issues. If that is seen as a useful joint approach, we are certainly open to that. However, at this stage, our approach is to ensure that we deal with our clerical errors and that we get public confidence through bringing in the independent role of Dr Maguire.

**The Chairperson:**

Has everyone who wants to ask a question on Lord Morrow's main point about the role of the social worker had an opportunity to do so? I am conscious that three members have not been able to get into the discussion at all. We will move on to Tommy Gallagher's main question. We are in danger of running over time. The issue that Tommy wants to raise is totally different to the two main points that have been discussed already.

**Mr Gallagher:**

I believe that they are closely related, Chairperson, but they are important points. Thank you all for your contributions. On Tuesday, the Minister said in the House that he would not allow any Health Service staff to be hung out to dry on this issue. I want to make it very clear that I am not on for simply hanging somebody out to dry. However, the case presents serious challenges for health professionals, politicians and, indeed, others. To find the best way forward on such a controversial and potent matter, we need to clarify everything. Since the decision was made, nobody who has been involved in the case can claim that it has been handled very well. The more clarification that we have, the better the position that we will all be in to ensure that such matters are dealt with much in a much better fashion in future.

I want to ask about the health professionals, particularly those who represent the Western Trust. Everyone now realises the process that was in place. The judge made a decision. Prior to that decision, there were opportunities, perhaps, to inform it — certainly, to put serious issues on the table. Once the decision was made, it was, in my view, too late.

With regard to the health professionals who represented the Western Trust in this case — this has relevance to all health professionals who have to appear in court — did the Western Trust have in place clear guidance and protocols for its representatives who appeared in court? They were not distanced from it in the same way, perhaps, as people who watched the court proceedings. The difference is that the trust had to deal with the outworkings of that decision,

after which serious questions have arisen.

If health professionals go to court to represent the Health Service, they need policies and guidance to help them. Otherwise —

**The Chairperson:**

Tommy, is there a question?

**Mr Gallagher:**

Yes, there is a question. Otherwise, they will agree with experts from other backgrounds who give evidence. Can the Minister or his advisers tell us whether the Western Trust had guidance in place for the health professionals who were going into court? I ask that because their duty there was to present the full picture in relation to the impact of that decision on the community. The time and place to make that point was prior to the decision being arrived at.

**The Chairperson:**

Tommy, I must hurry you.

**Mr Gallagher:**

I want a simple answer on whether those individuals who went into court were acting in accordance with the Western Trust's guidance and policies on those matters. If they were, there is a problem, because they did not represent the full picture prior to the decision, and the guidance needs to be improved. Or else, perhaps there was no guidance at all. Which of all of those is the correct position?

**The Minister of Health, Social Services and Public Safety:**

When you give evidence in court, you give evidence honestly according to the questions that you are asked. That is what the experts, whoever they are, would have been doing based on their knowledge. If you are asking about a wider consideration, such as the community view, as I said in my opening statement, my view is that there should be some provision to allow the local community to have a view. That does not currently exist. I am aware that, in south Belfast, for example, individuals who are guilty of sex offences can be residing in the local community, and the community has no knowledge whatsoever. That also applies in Donagh and other parts of Northern Ireland. Therefore, the question is how far those opinions of local communities should

be taken into account. As I understand it, the judge cannot do that at the moment. As far as employees of any trust and people who go in front of a court are concerned, they are required to give their evidence honestly and to answer honestly the questions that are provided to them. The judge is there to ensure that they do that and to listen.

**Mr Gallagher:**

The main point is that either there is guidance for representatives of the Health Service when they go to court or there is not. Which is it?

**The Minister of Health, Social Services and Public Safety:**

I am not aware of guidance, but I will make enquiries for the benefit of Mr Gallagher and communicate with him. I am not aware of guidance from the trusts on how witnesses should provide evidence in courts.

**Mr Holland:**

Witnesses will provide evidence in accordance with their professional competence. They will then be asked questions by a judge, and they will answer them, as the Minister said, honestly. No guidance could supersede those basic principles.

**Mr Gallagher:**

Clearly, there is a very widespread view that there was an opportunity to give guidance about where the brothers should live. That opportunity fell to the trust, and it just agreed with Dr B's report, and, when the judge asked one of the representatives, he or she agreed. I am asking the question about criteria because there is a bigger issue, and I think that there is a responsibility on the Health Service to reflect that when matters of this kind are under consideration for decision.

**The Chairperson:**

That was a statement rather than a question.

**Mr Holland:**

At an earlier point in the transcript, we read that the judge considered the issue of residency and that the evidence that he considered was the risk that the brothers might have posed. That is evidence that is generated by a multidisciplinary arrangement involving the police, the Probation Board and others. It is not for the trust to do that work alone or, indeed, even to be in the lead in

that work.

**The Chairperson:**

I will use my own supplementary question on that: was it the trust's view that the most appropriate place for the McDermott brothers to live was in the family home in Donagh?

**Mr Holland:**

It was the trust's view that those men could be treated at home. After that, the court did not have any authority to stipulate that they be treated elsewhere because the community did not want to have them there.

**Mr McDevitt:**

I have just been reading through the redacted court transcript, and I am grateful that you provided us with that. I wish to draw attention to Dr C's sworn evidence on pages 7 and 8. The judge asked Dr C to confirm that Dr B was known to him. Dr C answered yes, and then the judge asked:

“And he has prepared a report which you have had sight of?”

Dr C said:

“We haven't discussed this case, I have only seen the report this morning.”

Does the Minister think that it is appropriate for two senior medical advisers to arrive in court and for one of them to seek to represent the views of the other on the basis of not having spoken to the other and having had sight of the report only that morning?

**The Minister of Health, Social Services and Public Safety:**

I am sure that the Minister of Justice will have a view —

**Mr McDevitt:**

Those people were acting on behalf of the trust.

**The Minister of Health, Social Services and Public Safety:**

Those are people providing evidence in court, in front of a judge, so it is for the judge to make that determination. I am not here, and I do not think that anybody is here, to retry the case by running through the evidence that was presented in court and then questioning that evidence and the way in which it was presented. That is a matter for the court and the judge.

**Mr McDevitt:**

In your opening remarks, you pointed to the fact that, as a constituency MLA, you would take an interest in specific cases involving vulnerable children and adults. I entirely agree with you; we share a constituency. As a constituency MLA, do you think that it is reassuring to read in a court transcript that two clinical witnesses who were critical to the decision to apply a supervision and treatment order — of course, that gave rise to the residency order, which we still have not got to the bottom of — had not spoken to each other and that the person giving evidence orally, in accordance with schedule 2A of the Mental Health (Northern Ireland) Order 1986, had not seen the report until that morning?

**The Minister of Health, Social Services and Public Safety:**

You are questioning the basis on which judges listen to evidence.

**Mr McDevitt:**

No, I am asking you whether, as a constituency MLA — if you are not willing to answer me as Minister, that is fine, although a bit sad — you think that that is reassuring news.

**The Minister of Health, Social Services and Public Safety:**

It is for the judge to decide what evidence he listens to and considers. This was a court case. Evidence was provided, and, no doubt, there were interrogations. It is not for me to rerun the court case or to question the evidence and how the judge came to his determination.

**Mr McDevitt:**

Finally, it is, of course, for you, Minister, to set the standards at which social workers, trust workers and clinicians operate in this region. You are the ultimate policymaker in that regard in this region. It is a matter for you, I would have thought, that clinical excellence and good practice should be at the heart of everything that we do. I am sure that I could find plenty of occasions on which you have affirmed that on the public record. Do you think that this case is an example of best practice in the Health Service?

**The Minister of Health, Social Services and Public Safety:**

This is an example of clinical expertise being provided in the form of witnesses in a court case in front of a judge.

**Mr McDevitt:**

They were witnesses who had not spoken to each other.

**The Minister of Health, Social Services and Public Safety:**

It was a matter for the judge to decide on the basis of the evidence that was presented to him.

**Mr Givan:**

Pontius Pilate.

**The Chairperson:**

It is almost 1.30 pm. There is one more supplementary question on this issue from Michelle O'Neill. The next substantive, and totally different, question will be from Kieran Deeny. The difficulty is that both Ministers have to go to the Executive at 2.30 pm, and we have Committee meetings at 2.00 pm. We need to decide very quickly where the joint meeting of the Committees is going on this issue. We may be able to get to the end of questions to the Ministers, but I do not think that we will get anywhere near to making a decision.

**Mrs O'Neill:**

I was going to ask the Health Minister whether he thinks that it is an acceptable level of preparedness for an official from his Department to go into court to answer questions on a case that —

**The Chairperson:**

I think that that is the same question. Kieran, you have one question, which is on a totally different issue.

**Dr Deeny:**

My question is to do with consultation after the brothers were allowed back to Donagh. I am well aware that there was a meeting after they were allowed back into the Donagh area and that, even at that stage, there was all sorts of public concern. I shall read three lines from paragraph 3 of the Lord Chief Justice's letter, which states that, on behalf of the Western Health and Social Care Trust, Dr C:

“outlined the extensive research and exchanges that the Trust had undertaken with various organisations, groups and

medical professionals.”

Minister McGimpsey, did the various organisations and groups include, for example, the public representatives of the area — MLAs and councillors — and primary healthcare professionals, because both those groups would have been well in touch with the mood and feelings of the local people? My understanding is that it did not. This week, I spoke to an MLA who lives in Donagh and has been an MLA and a councillor there for some time. He said that he was certain that he was not aware of that at all and that the first that they heard of it was when the brothers were back in the area. Who was part of that extensive research? Could we have a list of the various organisations, groups and medical professionals who were consulted and details of the extensive research and exchanges that, according to the Lord Chief Justice’s letter, have taken place?

**The Minister of Health, Social Services and Public Safety:**

Again, this was evidence that was presented before the court. It is a matter for the court to decide whether that is proper evidence or not. As far as consultation with MLAs is concerned —

**Dr Deeny:**

The trust is saying that.

**The Minister of Health, Social Services and Public Safety:**

Yes; but the trust gave that as evidence to the court according to the requirements of the court. As far as consultation with MLAs is concerned, clinicians do not discuss individual treatments with MLAs.

**Dr Deeny:**

I am not talking about treatments. I am talking the response in the community, for example, with local representatives. Dr C, on behalf of the trust, talked about “various organisations, groups and medical professionals”. Should the Health Committee and the Justice Committee not know who they were? Is that knowledge for the judge only?

**The Minister of Health, Social Services and Public Safety:**

The judge acts on behalf of all of us. Evidence was presented during the court case, those were the credentials presented, and the judge accepted them. If you wish to challenge them, I have no doubt that I could ask the individual witnesses to provide you with the answers on questions of concern. However, the judge accepted the evidence, and, therefore, I accept it. I do not question

it.

**Dr Deeny:**

Should these two Committees not be made aware of which organisations were involved in the extensive consultation? Representatives who live in the area have told me that they knew nothing about this until the individuals were back in the area. That caused great disarray, concern and anguish in the community. John O'Dowd talked about treating people in the proper environment. With that in mind, does it not make sense to take on board local representatives' views of what situation may arise if that happens? It seems that no local people — I am not sure about GPs or other primary healthcare professionals — knew that this was happening until after the event.

**The Minister of Health, Social Services and Public Safety:**

As I said in my statement, there is an issue around community consultation and communities being aware of individuals who commit such acts and crimes being placed in the community. As I understand it, that is still not within provisions; that requires legislation. Individuals go to court to give evidence, and the judge makes his decision accordingly. If you want to query the evidence, I will help with that.

**Dr Deeny:**

That is what I am asking you, Minister.

**The Minister of Health, Social Services and Public Safety:**

I will, if you wish, enquire of those individuals as to what the consultations to which they referred actually entailed. However, they will not talk about individuals' treatments or individual cases on a widespread basis. Those matters are confidential.

**Dr Deeny:**

I am not talking about individuals.

**The Minister of Health, Social Services and Public Safety:**

You are talking about individuals.

**The Chairperson:**

It is important that we do not try to reassess evidence that was given to the courts.

**Dr Deeny:**

Can it be shown to us that the consultation with the “various organisations, groups and medical professionals” actually took place, through the Western Trust or not?. We are not asking for names.

**Mr Holland:**

Dr Deeny, are you quoting from the transcript of the trial?

**Dr Deeny:**

I have quoted from the Lord Chief Justice’s letter. It says that Dr C:

“outlined the extensive research and exchanges that the Trust had undertaken with various organisations, groups and medical professionals.”

We should be reassured that that consultation took place, prior to the decision to allow the two brothers to go back to Donagh.

**Mr Holland:**

Dr Deeny, I assume that that consultation would have been on the basis of risk and the viability of treatment for these brothers. There would have been no remit for a medical witness to consult public representatives about an individual’s treatment. The evidence that was given was twofold: on the one hand, do these men have a learning disability that renders them incapable of entering a plea; and, having determined that, can they be treated? I am sure that, as a medical practitioner, you would be concerned if, when a doctor is ascertaining whether someone can be treated or not, he or she had to include public representatives in that consultation.

**Dr Deeny:**

I take your point. You mentioned medical professionals. Had you left it at that, I would understand it.

**Mr Holland:**

What about confidentiality? It could include, for example, the police service.

**Dr Deeny:**

I am well aware of confidentiality. However, the letter mentions various organisations and

groups and that is why I would like to know that.

**The Chairperson:**

We need to establish where we are going. We are over time, and there are still four members who have not asked questions. We have the transcript before us. Members may value an opportunity to study that in detail.

One suggestion is that we call it a day. Folk waiting to ask a question could do so immediately at our next meeting, and we could take the opportunity to read the material and ask urgent written questions which still have not been covered. We could have responses to those in time for the next Committee meeting. Alternatively, we can keep going, and postpone the two Committee meetings that are due to be held at 2.00 pm. That will cause all sorts of procedural difficulties.

I think that we need to sit down and study the transcript. Conall is a faster reader than most of us, and he has had a chance to pick out a question or two. I am sure that others would like the chance to do the same. Are members interested in coming back either next Thursday, or on Monday or Tuesday, and holding another joint meeting of the Committees? Are they content that they have had all that they need? Do they want to go ahead regardless of how long it takes? I am in the hands of the members.

**Lord Morrow:**

As you have stated, Mr Chairman, the Ministers will not be available because they have other business and the Executive to attend to at 2.30 pm. I believe that, without the Ministers available, we will limp along. We are trying to bring this matter to a conclusion. That is not to say that we should hurry to do it, but the only way that we can satisfactorily do it is with the Ministers, who have placed themselves at our disposal, present. I feel that we cannot continue if we do not have them in attendance.

**Mr McNarry:**

I concur with Lord Morrow. A further meeting, even if it is only for an hour, is necessary, so that we are taken to the point of where we are going with this. I know that you have that in mind. It is important that we reach a stage where, as two Committees, we can focus on where we want to end up.

**The Chairperson:**

There are still issues such as what plans there are should the brothers discharge themselves from Lakeview. There are issues like that, and also the consultation with victims and survivors in Donagh during the trial. We still need to tease out those sorts of issues.

Are members content that we adjourn and come back as a joint Committee? If so, when? The obvious slot is this time next week, at 11.30 am. We would definitely clear up the business during that meeting. Alternatively, do members want to meet earlier than that, say Monday or Tuesday?

**Mr O'Dowd:**

I suggest that we adjourn for 15 minutes to allow colleagues to discuss the way forward, then we come back as a joint meeting, just for 15 minutes, to take an informed view as to the way forward. There are a number of things that I would like to discuss with my colleagues.

**The Chairperson:**

Where does that leave the Justice Committee meeting at 2.00 pm?

**Mr O'Dowd:**

If we had agreement, we could postpone the Justice Committee meeting for 15 minutes. If possible, both Health and Justice Committees could postpone for 15 minutes.

**The Chairperson:**

I have consulted with the Health Committee Clerk, and we can do that until 2.15pm.

**Lord Morrow:**

If it is of assistance, the Justice Committee can move back until 2.30 pm or 3.00 pm.

**The Chairperson:**

What about the Ministers? Can we discharge the Ministers at this stage?

**Mr O'Dowd:**

I am not necessarily suggesting that the Ministers have to return at this stage.

**The Chairperson:**

So we are happy enough to let them go, because they have important business later today.

**Mr McNarry:**

Will we require the Ministers again?

**The Chairperson:**

Yes, if we need to bring them back, we will ask them to return.

**Mr McNarry:**

So that is predicated on their timing.

**A Member:**

Their availability is crucial.

**Mr McNarry:**

So we are coming back next Thursday, anyhow.

**Mr Givan:**

There are issues such as the fact that the brothers were declared unfit for trial, which is an issue that I also wanted to take up.

**The Chairperson:**

We need to be careful. We are not a court of appeal. We are not here —

**Mr Givan:**

No, that question is about the general policy.

**The Chairperson:**

We are not here to review the judge's decision. We cannot; that is totally outside any of our remits.

**Mr Givan:**

No, I am talking about future cases.

**The Chairperson:**

OK: future cases only.

**Mr Givan:**

If the Ministers are coming back — not Minister Ford — but, if Minister McGimpsey could actually bother to get briefed this time and give us the facts and not wash his hands of his duties and responsibilities, in the way that he has throughout this meeting —

**Mr McNarry:**

Might we establish some protocols for when we do come back so that the choice of language used by members to Ministers would be reconsidered after what we heard today?

**The Chairperson:**

I do not think that Erskine May would have ruled that what Mr Givan said was inappropriate, but normally Committees —

**Mr McNarry:**

It is a question of practising what I preach; I do not stoop to what Mr Givan has stooped to today. There is a different way of scrutinising, as far as I am concerned, and yours is bloody awful.

**Mr McDevitt:**

I agree with Mr O'Dowd's proposal.

**The Chairperson:**

We seem to have agreement. We are adjourned until 1.55 pm.

**The Chairperson:**

We will now try to move things along.

**Mrs O'Neill:**

This morning, we had round-table discussions — two and a half hours of questions — with the

two Ministers. We have had numerous weeks of Committee discussions. The only purpose that we serve at this stage is to throw up further unanswered questions. It is possible that the entire process hurts victims even more.

I propose to the joint meeting of the two Committees that the best way forward is to support the victims' call for a full, independent, barrister-led investigation, which should report speedily, within a time frame of a number of weeks, to both Committees. At that stage, we could call both Ministers and their departmental officials back to ask further questions. As things stand, we would be of the view that we are only calling up more questions that are left unanswered.

**The Chairperson:**

That is the proposal. I will just test the water. How do you feel about it, Tommy? What do you feel is the best way forward?

**Mr Gallagher:**

I have questions about a public inquiry while we are not much nearer to the truth about what went on. For one thing, such public inquiries are extremely expensive. I would like to hear Michelle's views on the likelihood that an inquiry would bring us any nearer to the truth.

**Ms Ní Chuilín:**

It would be barrister-led.

**Mr Gallagher:**

OK. I would like to be clear about our position. Will we just adjourn the exercise that we embarked on today, or will we finish it in another session or two? Will a public inquiry mean that we stop now? If the decision is made to go to a public inquiry, does that end this exercise in mid-flow, so to speak?

**Mrs O'Neill:**

I will clarify: my proposal is to support the Donagh victims' call for a full, barrister-led public inquiry. That inquiry should look at the health aspects of the case and how the Department of Health, Social Services and Public Safety and the judiciary dealt with it. That would be the best way forward. We could sit here all day today and all day tomorrow and ask questions of officials, the answers to which will only beg more questions. I do not know that that serves the victims'

best interests.

**The Chairperson:**

I will ask Lord Morrow to come in wearing his DUP hat, followed by David McNarry, before I throw the discussion open to other members.

**Lord Morrow:**

I think that the proposal is premature. This Committee has more work to do. It is important that we are allowed to get on with that work and exhaust our investigations. We have not done so yet. It is true that more questions are being thrown up. I do not underestimate the impact that that might have on victims; I accept that. However, at this time, I think that the proposal is premature. This Committee should be allowed to finish its work. That is the DUP line at this stage.

**Mr McNarry:**

My party shares the concerns that have been raised about the victims. We have also picked up on the victims' comments in the media that imply that too much politics are being played. We must be careful about that. Having said that, and taking that into account, I also think that the proposal is premature. We have heard from the Health Minister that his Department will carry out a case review. We need to know more about that and its timescale.

As regards the Department of Justice, we are aware that Dr Maguire, the Chief Inspector of Criminal Justice, is carrying out an investigation. Therefore, two sets of work will be ongoing on the issue. I would like to see that work fulfilled and then return to them. My anxiety is that we will end up with one Department's case review and another Department's investigation by the Chief Inspector of Criminal Justice, but no convergence. Perhaps, down the line, there will need to be a marrying of those. Otherwise, all that we will have will be two separate reports. They need to marry.

Initially, therefore, I support the continuation of our work, seeing the fulfilment of the review and inquiry and hearing their outcomes.

**Dr Deeny:**

I also believe that the victims come first. I agree that, if they are calling for a barrister-led public inquiry, we should support that call. I still believe that there is room for at least one more

meeting with the Ministers, such as we had this morning, to see whether there is anything more that we can learn from the case. Not only must we make sure that this does not happen again, but we should learn from what has happened. Things happened that should not have happened. We know, and it was mentioned at lunchtime, that this issue is not confined to this part of the world; it is a global issue. I suggest that, as two Committees, we should have a research team look into how sex offenders are dealt with in other countries. We should try to combine the two to learn from what has happened in this very tragic case and put in place plans and operations to make sure that it does not happen again.

**Mr McDevitt:**

Everyone on the Committee will support the victims' desire to see a process of inquiry get under way. I argue that what we are at here, at Committee level, is a process of inquiry. There are a few potential downsides to a barrister-led investigation. One is that it requires co-operation; it has no statutory footing, and it cannot enforce or require anyone to provide it with papers or people. In fact, we have more power, sitting as a joint Committee, than would a barrister-led investigation in getting to the bottom of this. That would concern me, because a lot of what we heard today, in my opinion, revolves around the trust's interpretation of the legal advice that was made available as to how they would interpret a residence order.

We probably need to go through a step or two more before we will know whether, as an Assembly body, we can get to the bottom of this, or whether we might need to recommend another type of inquiry, even a formal inquiry under the 2005 Act, which, of course, would have all the statutory support that it would need and would have a quasi-judicial position. I think that we need to spend another meeting or so at this. In the next item of business, Chairperson, I will have a series of specific questions, and I will outline the sort of information that we should be seeking in order to be able to take our own process of inquiry to the next stage.

**Lord Morrow:**

May I just say, by way of tidying up my own comments, that this joint Committee should call for a joint review of how sexual offences cases are being dealt with and managed, by both the Health and Justice Departments. If the Committee went forward on that, it would show a consensus.

**Mr Girvan:**

This morning's process threw up more questions for me. A number of pieces of information or

documents were mentioned that we have not even had sight of and were supposed to have had sight of. Until we have had an opportunity to look at those, there is a necessity for this joint Committee to continue its investigations. It is imperative that we come to a conclusion, but we must take the time to ensure that we come up with the right way forward. The only way that we can do that is by having all the information and the answers to the questions that were asked.

**The Chairperson:**

This morning, two or three members asked particularly pertinent questions and revealed totally new information. I accept that that, inevitably, because of the high public profile that this Committee meeting has had, causes concern to the victims. However, I wonder whether there are other issues that we have yet to dig up and reveal. Therefore, although we have to pay a price for that, in that it continues to highlight the issue to the folk of Donagh, are we not doing them a service by finding out new material?

The two proposals are not mutually exclusive; there is nothing to stop this Committee supporting the residents' demands. I am not saying whether I am in favour or against that, but we could do that and still continue with the inquiry.

Thirdly, is this based on consultations that we have had with the victims? Have members have been able to get through to the Donagh representatives on this matter this morning to get their view. I would like to hear an answer to that.

Finally, as someone has already said, I have not even had a chance to go beyond the first page of the transcript. Conall is a faster reader than I am, and he was able to dig up one quite interesting point immediately from one quick glance at it. Do we not owe it to the residents to get a chance to go through this carefully and ask questions? I am particularly interested in the contact with the victims.

**Mrs O'Neill:**

We are still of the view that a full inquiry is required to look at the health and judicial aspects of the case. However, in the interest of making sure that we have exhausted every avenue with the departmental officials, we are happy to wait and have a further meeting. We will come back to the issue of a full joint independent inquiry.

**The Chairperson:**

If, at any stage, any member feels that what we are discussing is causing undue distress to the community, I am quite happy to take a point of procedure and stop that line of questioning. We do not want to add to the hurt that Donagh has already suffered. One or two members strayed slightly into the edges of what Erskine May would find acceptable, but nothing was said this morning that would have been ruled out of order on the Floor of the House. The Ministers and their officials take that on the chin, as the community would expect them to.

With Michelle O'Neill having made that point, we have to decide how we take the matter forward. One option is to have another meeting this time next week, which seems to suit people because there is a very good turnout. There is also a series of issues that have not been dealt with. We could ask written questions about those of the Department and demand urgent answers by next Thursday, or we could simply allow members to ask those questions at the next meeting. I am certain, in reading through the additional material, that you will come up with new questions, but I am also conscious of the fact that four members did not get a chance to ask questions at all today. That is weighing on my shoulders quite a bit because they are probably feeling some angst about that.

How do you want to take this forward? Does, for instance, it suit members to come back here next Thursday at 11.30 am? I presume that the room is free. We need to meet here because the numbers are so large. Do we want to reserve our firepower until then or submit written questions to the officials immediately so that we have the answers before the next meeting?

**Mr McDevitt:**

I think that we should invite the Ministers back to continue the questioning. That is the legitimate thing to do. A couple of things emerged from today for which we could usefully ask in advance of next week, if that is possible. Whether or not we receive it, we should certainly ask for the legal advice that the trust received because so many of the answers come back to that specific interpretation. We should go through the process of asking for that.

We should also ask for copies of all relevant guidelines that any officer of the trust would have operated to in preparing for, during and subsequent to the hearings. I do not know how colleagues feel, but there is a point at which we may need our own advice on certain aspects of the Mental Health (Northern Ireland) Order 1986 that came up today. I am sensitive to the fact

that we could end up engaging in a debate about interpretation. We cannot properly have that debate unless we are properly advised as a Committee.

**The Chairperson:**

There is another piece of advice that we require. Linda Brown promised us the document about the roles of the social worker and the expert witnesses to the court. I assume that that is winging its way towards us as well. That will have to be looked at. The first two suggestions do not cause any difficulties. I assume that we are quite happy to ask for that material.

**Lord Morrow:**

Is all legal advice not privileged?

**The Chairperson:**

We can ask for it, but whether we will get it is a different issue.

**Mr Girvan:**

Dr Deeny asked for details of the consultees in relation to the piece of evidence that was presented this morning. If available, the timing of the consultation might also be helpful.

**The Chairperson:**

We may well be told that we cannot have some of that information because we are querying evidence that was given to the court and the judge's decision. However, there is no harm in asking for that on behalf of the residents, but do not be disappointed if we do not get a positive response.

**Mr O'Dowd:**

Could we also enquire about the basis on which the transcript from the court case was redacted? The main redaction seems to be of names, which I understand, but it appears that other elements were redacted as well. I wonder what legislation was used to make those decisions. In one sentence, the name of a trust employee is given, whereas the name of that employee's manager is redacted.

**Lord Morrow:**

The doctors' names have been given letters, so there is a Dr B and Dr C, and so forth.

**The Chairperson:**

It could be another mistake, of course. It could be error number 72. It is entirely in order to ask for that, and that is the sort of information that will clear the decks to some extent for our next Committee meeting. The only remaining issue is whether we should ask any specific questions that we would normally ask from the Floor of the Chamber, or do we just wait until we come back next week. I definitely want this put to bed next week; we cannot have a third evidence session. Therefore, next week will be the last meeting, and, at 12.30 pm, we will definitely cut it. We are getting two bites of the cherry, and I think that we have already asked the vast bulk of questions that could be asked.

**Lord Morrow:**

There are quite a few questions still hanging out there. As Mr Girvan said, as a result of what has been said today, some new questions will have to be asked. However, I agree with you that we should be able to deliver by next week's meeting.

**Mr Gallagher:**

We will have a statement on Monday.

**The Chairperson:**

Does the Minister just make that statement and sit down, or will there be an opportunity to ask questions on it?

**The Committee Clerk:**

Sorry, Jim, I do not know.

**The Chairperson:**

If he does it that way, can he make it a personal statement?

**Ms Ní Chuilín:**

If it is a personal statement, it could be a one-sentence statement with no questions.

**The Chairperson:**

I think that he will, undoubtedly, do that.

**The Committee Clerk:**

If it would be helpful, we can seek clarification of the nature of the statement and make sure that members are advised this afternoon. I assume that the Business Office will know, so we can clarify that now.

**Ms Ní Chuilín:**

If we want to look at the possibility of a statutory inquiry into this, will we also have an influence on the powers and papers?

**The Chairperson:**

After we get all of that information and hear evidence from witnesses, we will sit down and work out where we go from there.

**Ms Ní Chuilín:**

*[Inaudible.]* in preparation for choices that we may or may not make.

**The Chairperson:**

This is an important issue. Will you repeat what you said, because that is quite a major request?

**Ms Ní Chuilín:**

In the event that we conclude next week, can we have the Standing Order and the options that are available to these Committees should we decide to take this further? Michelle made a proposal on behalf of our party, which is aimed at supporting the victims and survivors in Donagh. If Conall McDevitt is correct — I am not saying that he is — it is worth pursuing his suggestion as an option for us to discuss at the end of our next joint session.

**The Chairperson:**

During the discussion on where we take the issue, we can accept your proposal that this joint Committee support the inquiry demanded by the residents. That is entirely in order, and it will be discussed.

**Ms Ní Chuilín:**

Absolutely, but if it means that the inquiry will have a statutory element, so that people will have

to answer questions that they would not otherwise have had to answer, in the absence of a public inquiry, I think —

**The Chairperson:**

I understand where you are coming from, but remember that 20 October is coming, and both Committees have an awful lot of important issues to deal with. If we get bogged down in what you suggest, it will set a dangerous precedent and leave a lot of work for us in the Assembly.

**Mr McDevitt:**

I think that it is important that we explore the inquiry options. As I see it, there are three basic options. One is an independent, barrister-led investigation. This Standing Committee could probably commission that, but the problem is that that would not have any statutory footing, and such an investigator could find himself or herself up against some lack of co-operation. The other option would be a Committee-led inquiry. Under Standing Orders, there are provisions for the Committees to conduct inquiries. I think that what Carál is asking for — and I support her — is that, without going into a huge amount of detail, we should know the options. Then, the next level up, in my opinion, would probably be a public inquiry under the 2005 Act, which is, for example, what may be currently being debated in relation to institutional abuse. That would probably be an Executive-led inquiry through OFMDFM. It is a matter of understanding what the options could be.

**The Chairperson:**

If you do that once, and the same thing happens again in some other constituency, you know what will happen.

**Mr Gallagher:**

If no one has asked for it already, can we, for next week's meeting, have clarification on Dr B and Dr C? I thought that someone at the end of the table indicated that Dr B could not attend the court and that Dr C substituted. That seems to be a strange arrangement given that one of them was coming at the case for the prosecution and the other for the trust. Is that what we heard today?

**Ms Ní Chuilín:**

Yes.

**Mr Gallagher:**

I do not know how the situation arose of one expert being able to substitute for another expert when they were coming from two different places.

**Mr McNarry:**

The judge accepted that evidence.

**Mr Gallagher:**

It is not the evidence, it is just the arrangement that I am talking about, David.

**The Chairperson:**

We can ask for clarification on the arrangements, but we cannot question how the judge conducted the taking of evidence.

**Mr Gallagher:**

Yes, absolutely. David is right about that.

**Dr Deeny:**

Would it be worthwhile for one member to make contact this week with some of the representatives of the victims to find out how they feel? Perhaps Tommy could do that because he lives closest, and the issue relates to his constituency.

**Ms Ní Chuilín:**

Our party has been doing that.

**Dr Deeny:**

We are up to date.

**Ms Ní Chuilín:**

I would like a copy of the Hansard report of today's meeting well in advance of next week's meeting.

**The Committee Clerk:**

I will speak to Hansard staff, but I know that the turnaround time is three days, excluding Mondays and Tuesdays.

**Ms Ní Chuilín:**

I know that Monday and Tuesday will make it tight for Hansard, but I am just asking to have the report early if possible.

**The Committee Clerk:**

We will speak to Hansard staff after the meeting and aim to get the report as soon as possible.

**The Chairperson:**

At least by e-mail, so that we can have a look at it.

**Mr O'Dowd:**

I do not know how we explore this. It goes back to the fact that the judge accepted the evidence. If I am in court and bring in a defence witness, the judge will not say that my guy is not up to it and that I should not bring him in. It is up to you who you bring to court to give evidence on your behalf, and it also up to the prosecution to bring in whomever it wishes to give evidence against someone. It is not up to the judge to decide what evidence is valid. The judge can certainly take heed of the evidence that is given, but it is up to the prosecutor or the defence to decide whether the person who is giving evidence on their behalf is the right person to do the job. It would not be the first time that a court case has been adjourned to allow an expert witness to attend at a future date.

**The Chairperson:**

We can ask that question, but I suspect that I know what the answer will be. We can try. Are there any other last points? We agree that that the next meeting will take place at 11.30 am in this room next Thursday.

**Mr McNarry:**

If we are going to solicit some more information, the one thing that intrigues me is how the brothers were deemed mentally competent to volunteer themselves.

**The Chairperson:**

I have to say that —

**Mr McNarry:**

It intrigues me because they were deemed unfit.

**Ms Ní Chuilín:**

Unfit to stand trial.

**The Chairperson:**

I asked that question, and I was told that there was no way that I would get an answer, but you can try.

**Mr McNarry:**

Even if we get an answer that is not an answer —

**The Chairperson:**

The personal and private data and private report on them is entirely something that we as public representatives are not allowed to see.

**Mr McNarry:**

I want to make my point clear. Were the courts involved at any stage when the decision was being taken, bearing in mind that the judge had four options? Were the courts involved at any stage in sanctioning, if that is the right word, the decision that those men would be moved because they had volunteered to do so? They could not be compelled, as the law states very clearly.

**Lord Morrow:**

They cannot be compelled to stay where they are.

**Mr McNarry:**

No, they cannot. That is the ongoing problem. Where do they go?

**The Chairperson:**

The Committee has formally agreed to hold a further meeting next Thursday at 11.30 am to request further information. I take it as read that we will invite the Ministers and their officials again, so we need to liaise with them. I understand that some MLAs have already made contact with the victims' group, and, in the meantime, Tommy Gallagher will make contact with them.

**Mr McDevitt:**

We are in touch with the victims and have been for some time.

**The Chairperson:**

Yes, I am conscious, due to the nature of the area, which two parties have the lead role there.

**Lord Morrow:**

The Minister of Justice has confirmed that he will make himself available if there is a meeting next week.

**The Chairperson:**

I presume that we have not yet had a chance to speak to the Department of Health, Social Services and Public Safety.

**The Committee Clerk:**

No, he was on his way to a meeting.

**The Chairperson:**

Are members happy to adjourn until next week and go on to our respective Committees to start the substantive work of today?

*Members indicated assent.*