Committee for Justice

Report on the Justice Bill (NIA 1/10) – Volume 1

Together with the Minutes of Proceedings and Minutes of Evidence
Relating to the Report

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Report: NIA 41/10/11R Committee for Justice

Session 2010/2011

First Report

Membership and Powers

The Committee for Justice is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 46.

The Committee has power to:

- Consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- Consider relevant subordinate legislation and take the Committee stage of primary legislation;
- Call for persons and papers;
- Initiate inquires and make reports; and
- Consider and advise on any matters brought to the Committee by the Minister of Justice.

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The membership of the Committee since 13 April 2010 has been as follows:

- Lord Morrow (Chairman)
- Mr Raymond McCartney (Deputy Chairman)
- Lord Browne3
- Mr Thomas Buchanan4
- Lord Empey5
- Mr Paul Givan2
- Mr Alban Maginness
- Mr Conall McDevitt1
- Mr David McNarry

- Ms Carál Ní Chuilín
- Mr John O'Dowd

1. With effect from 24 May 2010 Mr Conall McDevitt replaced Mrs Dolores Kelly.
With effect from 11th June 2010 the Rt. Hon Jeffrey Donaldson resigned as an MLA and hence ceased to be a Member of the Committee

2. With effect from 28th June 2010 Mr Paul Givan replaced the Rt. Hon Jeffrey Donaldson as a Member of the Committee.
With effect from 25th June 2010 Mr Alastair Ross resigned as a Member of the Committee.
With effect from 21st July 2010 Mr Jonathan Bell resigned as a Member of the Committee.

3. With effect from 13th September 2010 Lord Browne was appointed as a Member of the Committee.

4. With effect from 13th September 2010 Mr Thomas Buchanan was appointed as a Member of the Committee.

5. With effect from 8th November 2010 Lord Empey replaced Mr Tom Elliott.

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List of abbreviations and acronyms used in the report

ALB	Arm's length body
AONISC	Amalgamation of Official Northern Ireland Supporters Clubs
BIRW	British Irish Rights Watch
CAL Committee	Assembly Committee for Culture, Arts and Leisure
CDRP	Crime and Disorder Reduction Partnership
CFO	Court Funds Office
CJINI	Criminal Justice Inspection Northern Ireland
Cllr.	Councillor
CPLC	Community and Police Liaison Committee
CSP	Community Safety Partnership
DCAL	Department of Culture, Arts and Leisure
DFP	Department of Finance and Personnel
DoJ	Department of Justice
DPCSP	District Policing and Community Safety Partnership
DPP	District Policing Partnership
ECHR	European Convention on Human Rights or European Court of Human Rights
EU	European Union
FPN	Fixed Penalty Notice
GAA	Gaelic Athletic Association
HMT	Her Majesty's Treasury
IDeA	Improvement and Development Agency for Local Government
IFA	Irish Football Association
IRFU	Irish Rugby Football Union
LFA	Litigation Funding Agreement
MLA	Member of the Legislative Assembly
NIACRO	Northern Ireland Association for the Care and Resettlement of Offenders
NICF	Northern Ireland Consolidated Fund
NICTS	Northern Ireland Courts and Tribunals Service
NIHRC	Northern Ireland Human Rights Commission
NILGA	Northern Ireland Local Government Association
PACE	Police and Criminal Evidence Act 1984
PACT	Police Partners and Community Together
PBNI	Probation Board for Northern Ireland
PCSP	Policing and Community Safety Partnership
PND	Penalty Notice for Disorder
PPS	Public Prosecution Service
PSNI	Police Service of Northern Ireland
RDCO	Recovery of Defence Costs Order
RMO	Responsible/Resident Medical Officer
SOLACE	Society of Local Authority Chief Executives

WSN Women's Support Network

Executive Summary

1. This report sets out the Committee for Justice's consideration of the Justice Bill.

2. The Bill consisted of 108 clauses and 7 Schedules and covered a diverse range of policy areas including sports provisions, policing and community safety partnerships, new services to victims and witnesses, new alternatives to prosecution and changes to legal aid legislation.

3. The Committee sought a wide range of views as part of its deliberations on the Justice Bill and requested evidence from interested organisations and individuals as well as from the Department of Justice. The Attorney General for Northern Ireland also attended committee to discuss issues in relation to clause 34 which imposes a statutory duty on public bodies to consider community safety implications in exercising their duties. The Committee specifically sought the views of the Committee for Culture, Arts and Leisure on the sports provisions given the remit of that Committee.

4. Written responses were received from 69 individuals/organisations and the Committee held 16 oral evidence sessions and an evidence event in the Long Gallery in Parliament Buildings to which representatives from 21 organisations attended.

Delegated powers of the Bill

5. The Committee sought advice from the Examiner of Statutory Rules in relation to the delegated powers within the Bill to make subordinate legislation. The Examiner advised that the Bill contained a number of delegated powers which were generally subject to an appropriate level of Assembly scrutiny but he drew attention to four provisions which the Committee explored further during the course of the Committee Stage of the Bill.

Key issues

6. The introduction of the Justice Bill was welcomed by the Committee. The Committee was broadly supportive of the Bill and agreed the majority of the clauses as drafted. However, there are a number of provisions which the Committee wishes to see amended or removed from the Bill entirely.

Part 1: Victims and Witnesses

7. The Committee is supportive of Part 1: Victims and Witnesses which contains two policies – the offender levy and improvements to the special measures provisions – to assist victims and witnesses in the criminal justice system. The Committee has not recommended any amendments to this part of the Bill.

Part 2: Live Links

8. The Committee also supports Part 2: Live Links which expands the use of live link facilities in courts to include physical disability and provide for defendants or patients who have a psychiatric illness. Live links will also be available for a wider range of appeals, for sentence hearings in a county court as well as bail hearings in the High Court. The Committee has not recommended

any amendments to this part of the Bill and supports the amendment proposed by the Department to set out what happens when a live link breaks down.

Part 3: Policing and Community Safety Partnerships

9. In relation to Part 3: Policing and Community Safety Partnerships (PCSPs) which integrates the roles of Community Safety Partnerships (CSPs) and District Policing Partnerships (DPPs) to create a single partnership for each district council, the Committee supports the broad principle but has a number of concerns, particularly with regard to clause 34. The Committee recommends three amendments and supports two amendments proposed by the Department. The Committee intends to oppose one clause in this section.

10. The Committee recommends amendments to ensure the PCSPs undertake meaningful consultation under clause 21, to allow for the designation of a small number of organisations to always be present on a PCSP by way of an affirmative procedure Rule at paragraph 7 of Schedules 1 and 2 and, at paragraph 10 of Schedules 1 and 2, to appoint the chair and vice chair of the PCSP in the same manner as the appointment of the Policing Committee chair and vice chair under paragraph 12 of Schedules 1 and 2.

11. The Committee also supports amendments proposed by the Department to give councils the scope to pay expenses to all members of PCSPs who do not receive them from their own organisation at Schedules 1 and 2 paragraph 4 and to clarify the means of funding of PCSPs at paragraph 17 of Schedules 1 and 2.

12. In relation to clause 34 the Committee has serious reservations about the implications of the statutory duty that it would place on public bodies to consider community safety implications in exercising their duties. The Attorney General, when he appeared at committee to discuss this clause, articulated his concerns around the wide scope of the clause and the corresponding potential for legal challenges which could potentially be very costly. The Committee shares these concerns and also has concerns about the implementation costs and additional administration that would arise as a result of this provision.

13. The Department attempted to address the concerns of the Committee by proposing several amendments. Unfortunately the timescale for completion of the Committee stage of the Bill prevented a satisfactory conclusion to these discussions. The Committee agreed that, if the clause, even if amended, still creates a statutory duty on public bodies, and this is not sufficiently qualified, then it would not be acceptable and it will oppose clause 34 of the Bill.

Part 4: Sport

14. Part 4: Sport creates a new package of powers in the area of sports and spectator law designed to promote good behaviour amongst sports fans in Northern Ireland and applies specifically to football, GAA sports and rugby union by way of the concept of "regulated matches". This part raised a number of fundamental issues and concerns and the Committee recommends a series of amendments, intends to oppose three clauses, and supports the Minister's decision not to move one other clause.

15. The key areas of concern for the Committee relate to the throwing of missiles, chanting, and alcohol clauses and centres around the vagueness of some of the definitions used in the clauses; whether some of the provisions would be enforceable; the creation of further criminal offences despite a lack of evidence for the need for them; and the fact that legislation and self-regulation by the Sporting Bodies is already in place to deal with the situations.

16. The Committee is recommending amendments to provide greater clarity and focus better on those items likely to cause injury in clause 37 which covers the throwing of missiles and to include 'sectarianism' explicitly in clause 38 which covers chanting and clause 49 which covers Banning Orders: "violence" and "disorder". The Committee welcomes the Department's agreement to take these forward.

17. The Committee also supports amendments proposed by the Department in light of concerns expressed by the Committee and others to reduce the time period around which the powers would apply to regulated matches in clause 36; to remove entirely the offence of being drunk in a vehicle and restrict the offence of consuming alcohol on a specified vehicle only for journeys to a designated match in clause 44; and to ensure that the provisions only apply to matches at designated grounds as set out in Schedule 3.

18. In relation to clause 41 – Being drunk at a regulated match, clause 42 – Possession of drink containers etc and clause 43 – Possession of Alcohol, the Committee remains unconvinced of the necessity for these provisions. While in no way condoning bad behaviour at sporting grounds, the Committee does not believe that the Department has presented a strong enough case to justify the need for further criminal offences, given the legislation and powers that are already in place. The Committee is also of the view, from the evidence received, that these offences if brought in are unlikely to be enforceable and will be impractical. The Committee does not wish to make "legislation for legislations sake" and believes that the current law already in place together with self-regulation by the relevant sporting bodies is the better approach to take. The Committee for Culture, Arts and Leisure reached a similar conclusion in respect of these clauses, questioning the necessity on the basis of existing legislation and regulation by sports governing bodies. The Committee for Justice intends to oppose clauses 41, 42, and 43 of the Bill.

19. The Committee supports the Minister's decision not to move clause 45 of the Bill, which relates to the sale of tickets by unauthorised persons, on the grounds that the sale of tickets can be controlled through self-regulation by the IFA.

Part 5: Treatment of Offenders

20. The Committee supports Part 5: Treatment of Offenders which provides a series of changes or "tidy-up" improvements to sentencing powers which address problems caused by gaps or inconsistencies in existing laws (it does not create new sentences per se). The Committee has not recommended any amendments to this part of the Bill.

Part 6: Alternatives to Prosecution

21. Part 6: Alternatives to Prosecution provides for two new diversionary disposals – penalty notices and conditional cautions – aimed at dealing effectively with minor offences outside the court room. They may be offered to offenders as an alternative to prosecution in suitable cases but offenders will retain the right to ask to have their case heard at court instead. The Committee supports these provisions and recommends that the Order bringing the code of practice on the application of conditional cautions into operation should be subject to draft affirmative procedure rather than negative resolution. The Committee welcomes the Department's agreement to take this forward.

Part 7: Legal Aid

22. Part 7: Legal Aid etc allows rules/regulations to be made to introduce a new means test for the grant of criminal legal aid in Northern Ireland and to make amendments to Legal Aid. These include powers to enable the courts to make recovery of defence costs orders; repeal of a

provision which prevents the Northern Ireland Legal Services Commission from establishing or funding services under a Litigation Funding Agreement; and a number of miscellaneous amendments to legal aid legislation, mainly relating to the scope of civil legal services, to ensure that access to justice is maintained. The Committee recommends one amendment to Part 7 which the Department has agreed to take forward.

23. In relation to clause 85, which allows for the introduction of a means test for criminal legal aid, the Minister made it clear to the Committee that any proposals for a fixed means test would require close scrutiny prior to any possible implementation and therefore the option of introducing a fixed means test for criminal legal aid should be kept open through the provision of this enabling clause.

24. The Committee is content to provide for an enabling clause in the Bill but given the impact on access to justice that the introduction of a fixed means test for criminal legal aid could potentially have, it wished to ensure that any Rules arising from this power would be subject to draft affirmative procedure rather than negative resolution.

25. Given the strongly held views of the Committee in relation to this matter the Department responded by proposing a draft amendment to provide for affirmative procedure when the Rules in clause 85 are being considered for the first time.

26. The Committee accepted that the proposed amendment from the Department provided for full and rigorous scrutiny of the principle and procedures for the introduction of a fixed means test for criminal legal aid and therefore satisfied its requirements.

Part 8: Miscellaneous

27. Part 8: Miscellaneous provides for improvements to a range of miscellaneous powers available to courts along with several other business improvement matters. The Committee raised two issues in relation to this section and recommends two amendments.

28. In relation to clauses 95 and 99, the Committee considered why rules made by the Magistrates' Court Rules Committee (and the County Court Rules Committee) are not subject to Assembly procedures. The Committee sought the Minister's views on changing the position so that Magistrates' Court Rules and County Court Rules would be subject to negative resolution procedure and the feasibility of taking this forward by way of amendments to the Justice Bill.

29. The Minister indicated his support to change the position but outlined that, for a number of reasons, it is unlikely that the necessary provision can be included in this Bill. The Committee welcomes the Minister's commitment to bring forward the necessary provision in the next available Bill and is content with this position.

30. In response to a recommendation from the Committee on the need for clarification of the wording of clauses 96 and 97 regarding a person nominated by the Attorney General for membership of the Crown Court Rules Committee and the Court of Judicature Rules Committee, the Department proposed to amend the Bill to specify that the Attorney's nominee shall be a practising member of the Bar or a practising solicitor. The Committee welcomes the Department's agreement to take these amendments forward.

31. The Committee agreed that it was content with these proposed amendments.

Part 9: Supplementary

32. Part 9: Supplementary provides supplementary, incidental, consequential and transitional provisions. The Committee had no comments to make in relation to this part of the Bill.

Introduction

33. The Justice Bill was referred to the Committee for Justice for consideration in accordance with Standing Order 33(1) on completion of the Second Stage of the Bill on 2 November 2010.

34. The Minister for Justice (the Minister) made the following statement under section 9 of the Northern Ireland Act 1998:

'In my view the Justice Bill would be within the legislative competence of the Northern Ireland Assembly'.

35. The Bill proposes; to tackle delay by providing new and speedier ways of delivering justice; improving efficiency through the removal of many low level cases from the court system; tackling the problem of criminal legal aid expenditure by allowing for the introduction of means testing and ensuring that the resources that are available are targeted at the most deserving cases. Regarding victims and witnesses the Bill proposes; to create a victims of crime fund through a levy to be imposed on offenders to generate additional resources for the provision of victim support services; special measures for the giving of evidence by vulnerable and intimidated witnesses will be expanded; and widening video link powers to include for example psychiatric hospitals. Regarding community safety and public order, the Bill proposes; to tackle problems with behaviour, violence and occasional sectarianism at major sporting events; alongside the sharpening up of the enforcement of sex offender law.

36. During the period covered by this report, the Committee considered the Bill and related issues at 16 meetings. The relevant extracts from the Minutes of Proceedings for these meetings are included at Appendix 1.

37. The Committee had before it the Justice Bill (NIA 1/10) and the Explanatory and Financial Memorandum that accompanied the Bill.

38. Prior to the introduction of the Bill, the Committee undertook extensive pre-legislative scrutiny of the proposed policy content of the planned Bill. This included consideration of the Department's proposals on Special Measures, Sex Offender Notification, Court Boundaries, PPS Commencement Proceedings, Alternatives to Prosecution, Local Partnership Working on Policing and Community Safety, Offender Levy, Sports Law, Reform of Legal Aid, and Solicitors' Rights of Audience. Some of the policy areas considered by the Committee at this stage were not included in the final version of the Bill.

39. The Department reflected the views of the Committee expressed during the pre-legislative stage on a number of matters in the final content of the Bill. For example, in response to concerns raised by Committee members regarding the rates of the offender levy, the Department provided for a two-tier rate for custodial sentences, to reflect the greater harm caused to victims by those convicted of serious and violent offences.

40. In anticipation of referral of the Bill to the Committee after Second Stage, the Committee inserted advertisements on 20 October 2010 in the Belfast Telegraph, Irish News and News Letter seeking written evidence on the Bill. While not normal practice to seek evidence before committee stage commences the size of the Bill – 108 clauses and 7 Schedules – and the very tight timescale within which to complete the Committee Stage necessitated this approach.

41. A total of 69 organisations/individuals responded to the request for written evidence and a copy of the submissions received by the Committee are included at Appendix 3.

42. The Committee was first briefed by officials on the principles and final content of the Justice Bill on 21 October 2010.

43. The Committee took oral evidence from 16 organisations and heard from a further 21 organisations at a stakeholder evidence event in relation to the Policing and Community Safety Partnership clauses. The Minutes of Evidence are included at Appendix 2. The Committee also discussed one of the clauses with the Attorney General of Northern Ireland.

44. The Committee sought advice from the Examiner of Statutory Rules in relation to the range of powers within the Bill to make subordinate legislation.

45. The Examiner considered that most of the delegated powers are subject to the appropriate level of Assembly scrutiny. However, he was of the view that a number of the powers should be subject to draft affirmative procedure in order to afford the Assembly a higher level of scrutiny. These powers are covered in detail in the key issues section of the report.

46. The Committee began its formal clause-by-clause scrutiny of the Bill on 20 January 2011 and concluded this on 8 February 2011.

47. At its meeting on 25 November 2010 the Committee agreed a motion to extend the Committee Stage of the Bill to 11 February 2011. The motion to extend was supported by the Assembly on 6 December 2010.

48. At its meeting on 10 February 2011 the Committee agreed its report on the Bill and ordered that it should be printed.

Key Issues

49. During its consideration of the individual clauses of the Bill the Committee identified a number of key issues on which further information and clarification was sought from the Department. The Committee also considered a number of possible amendments to the Justice Bill.

Part 1 – Victims and witnesses

- The provision of a reparation element in relation to the offender levy
- The application of the offender levy to fixed penalty traffic fines
- Double sanction
- Diverting those suffering from mental health illness away from the Criminal Justice System

Clause 1 - The provision of a reparation element in relation to the Offender Levy

50. A number of organisations welcomed the principle of reparation provided for by the introduction of an offender levy. The need for offenders to be made aware of the reason behind the imposition of the levy so that they understood that the levy is a mechanism for holding them

accountable for the harm that their actions cause to victims and witnesses of crime was also raised.

51. In response the Department highlighted that a levy will be imposed and announced by a judge formally and there will also be publicity when the scheme is introduced which will explain to the public at large, as well as offenders, that it is being introduced and what it is going to do.

52. The Committee discussed a proposal from a Member to strengthen the reparation element of clause 1 to provide the offender with the option of paying the levy or undertaking a limited amount of community service work. The point was made that the offender levy, as it was currently presented in the Bill, may not have the proper focus on reparation and, if the aim of introducing the offender levy was to get people to recognise they had done something wrong, then the clause needed to be strengthened in this way. There was the possibility that as the provision currently stood people would simply see it as an addition to a fine and it would not help in the process of offenders accepting that what they did was wrong.

53. Concerns were raised regarding the practicality of adopting this proposal for the small amount of money the levy involved, whether it would increase the costs of administration, the fact it would reduce the amount of money generated to support victims and the likelihood of complicating court proceedings. How the proposal would be applied to someone sentenced to imprisonment and how the victim could be part of the process was also discussed.

54. The Committee agreed it was content with the clause as drafted.

Clause 5 - The application of the Offender Levy to fixed penalty traffic fines

55. The Committee considered whether the offender levy should apply to certain road traffic offences, particularly fixed penalty traffic fines. Some Members felt that its application in this regard undermined the issue of reparation and victims and, while it should apply when someone had been hurt as a result of a road traffic accident, for other offences it could be seen as a revenue-raising power rather than helping to support victims. Others were of the view that it was important to send a message that all crime impacts on society.

56. The Department clarified that all the offences to which the offender levy would apply were offences that would lead to a person having their driving licence endorsed in court. It would not apply to non-endorsable offences such as parking tickets. The Department also confirmed that victims of car crime would be able to access the fund created from the offender levy.

57. In response to concerns raised that the levy would be imposed outside the judicial system the Department highlighted that the fixed penalty notice itself was imposed outside the judicial system as well and the person always had the option of refusing the fixed penalty notice and levy and having the matter dealt with by the court.

58. A majority of Members agreed that the offender levy should apply to fixed penalty traffic fines.

Clause 6 - Double Sanction

59. The issue of whether imposing a levy in addition to a custodial sentence created a double sanction was raised.

60. The Committee noted the Department's response that the law already provides for certain circumstances in which a custodial penalty is combined with other sanctions such as a fine or a compensation order.

Clause 12 - Diverting those suffering from mental health illness away from the Criminal Justice System

61. Although on the face of it clause 12 appeared to support people with mental health issues the Committee questioned whether it would actually make it easier for them to be drawn into the criminal justice system.

62. The Department confirmed that that was not the intention of the provisions which are supportive and come about as a result of pronouncements of the European Court of Human Rights on situations involving the vulnerable accused and how they have been treated. The Committee accepted the Department's explanation.

Part 2 – Live Links

- A requirement that a trained mental health advocate should automatically be allowed to provide assistance at a psychiatric hospital
- A requirement for the appellant to give written consent to the use of live links at preliminary hearings of appeals to the county court
- Provision for when a live link breaks down
- The need for a pilot study of the provisions to provide live links in cases where the accused is vulnerable

Clause 14 - A requirement that a trained mental health advocate should automatically be allowed to provide assistance at a psychiatric hospital

63. The Committee considered whether there should be a statutory requirement for a trained mental health advocate to be present during live links involving mentally disordered offenders.

64. The Department outlined that arrangements will be in place for assistance to be provided at a live link. This will include the patient's nurse, with their personal Consultant Psychiatrist (RMO) also being on site which will be an enhancement as RMOs do not typically accompany a patient to court. Shannon Clinic's advocacy service will also be available.

65. The Department indicated that to put a requirement for an advocate into the Bill could create a statutory requirement for advocates in all live links proceedings, given that clause 14 inserts text into the definitional section of live links law more generally which then applies to live links at all preliminary and sentencing hearings. There were also issues about the definition of "advocate". The Department undertook to ensure that a letter of guidance issued to RMOs regarding support in live links and to monitor the impact of clauses 12 and 14 as they are rolled out.

66. The Committee noted the arrangements that will be in place to provide assistance and was content subject to the Department fulfilling its undertaking that a letter of guidance would issue to RMOs regarding support during live links involving mentally disordered offenders.

Clause 16 - A requirement for the appellant to give written consent to the use of live links at preliminary hearings of appeals to the county court

67. The Committee considered a proposal from a Member that clause 16 should be amended to insert a requirement for the appellant to give written consent to a live link as advocated by the Human Rights Commission. The point was made that a preliminary hearing could last several days or in some cases weeks.

68. In response the Department clarified that this provision related to preliminary hearings for appeals to the County Court and not to the appeal hearing itself where a person would have a right to appear. The Department stated that a preliminary hearing could be on a straightforward issue that required to be dealt with in advance of the trial and feasibly could last a matter of minutes. The provision sits with other provisions on preliminary hearings where there is a right to make representations by the appellant or defendant in terms of the live link hearing but not to object.

69. A majority of Members agreed not to support the proposal.

Clause 16 - Provision for when a live link breaks down

70. The Department advised the Committee in a letter dated 20 January 2011 that it was proposing to make an amendment to set out what will happen if the live link breaks down. The amendment replicates what is provided for in parallel live link legislation for preliminary hearings so that there is a limit on the length of time a person can be remanded before the matter is brought back before the court. In normal circumstances a remand can be up to 28 days however where a clause 16(8) situation arises the limit in other scenarios is for a maximum 8 day remand and the proposed amendment would replicate this.

71. The Committee agreed with the Department's view that this amendment was valuable in terms of achieving consistency with other live links legislation and in providing a guarantee to appellants in ensuring that any rearranged hearing is held promptly. The Committee agreed that it was content with the proposed amendment.

Clause 19 - The need for a pilot study of the provisions to provide live links in cases where the accused is vulnerable

72. The Committee questioned whether there was a need for a pilot study of the provisions to provide live links in cases where the accused is vulnerable.

73. The Department highlighted that, in operational terms, the measures have been available since the early part of 2009. The technology and procedures around the use of live links, for evidence purposes, are therefore well established between the courts and practitioners and are already used in Youth Courts. As the reforms proposed seek to enhance rather than revise the existing scheme the Department believed that they can be incorporated into current practice without the need for a pilot study.

74. The Committee accepted the Department's rationale that a pilot study was not required.

Part 3 – Policing and Community Safety Partnerships

- Establishment of PCSPs and DPCSPs

- Requirement for meaningful consultation
- Definition of anti-social behaviour
- Statutory duty on public bodies
- Payment of expenses
- Designated organisations
- Chair and Vice Chair
- Finance

Clause 20 – Establishment of PCSPs and DPCSPs

75. When discussing the establishment of PCSPs and DPCSPs a number of Members indicated that there were concerns regarding the complexity of the Belfast model, how it would integrate with existing structures such as the West Belfast Community Safety Forum and PACT groups and the additional administrative and resource burden that it may place on Belfast City Council.

76. The Department suggested that the issues could be addressed when the guidance on the operation of the functions of the Partnerships is drawn up. Discussions were on-going to resolve the difficulties.

Clause 21 - Requirement for meaningful consultation

77. The Committee supported the view of Include Youth that it would be useful to strengthen clause 21 (1) (d) which requires a PCSP "to make arrangements for obtaining the views of the public about matters concerning the policing of the district and enhancing community safety in the district" by adding in the words "and fully considering" after "obtaining" to ensure genuine and meaningful consultation.

78. The Department indicated that it was willing to bring forward an amendment in relation to this matter and provided a draft which the Committee agreed it was content to support.

Clause 21 – Definition of anti-social behaviour

79. The Committee sought clarification of the definition of anti-social behaviour and requests were made for the Department and other criminal justice agencies to make a concerted effort to provide a much clearer definition.

80. The Department subsequently drew the attention of the Committee to the definition of anti-social behaviour contained within the Anti-social Behaviour (NI) Order 2004 which is behaving: '.... in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household [as the offender].'

Clause 34 – Statutory Duty on Public Bodies

81. While noting that there was support for this provision from many CSPs, DPPs, NILGA, the Policing Board and the PSNI, some of whom wished to see it strengthened, the Committee had serious reservations about the implications of the statutory duty that it would place on public bodies.

82. The Committee shared the concerns articulated by the Attorney General for NI when he attended Committee to discuss the matter. These centred around the wide scope of the clause and the corresponding potential for legal challenges, which could potentially be very costly. It was the Attorney General's view that the current provision is likely to give rise to a great deal of problems and claims without necessarily generating positive outcomes in improved policy making or thinking by the various public bodies.

83. The cost of implementing any requirements arising from this statutory duty and the associated additional administration was also of concern to the Committee, particularly given the current difficult financial climate.

84. The Committee wanted, and indeed expected, public bodies to do all that can reasonably be expected in relation to community safety. However, whether it was appropriate to place a statutory duty on them and whether they were ready for it was questionable. The Committee also had concerns about the language used in the clause which appeared to combine the actuality of a reduction in levels of crime and anti-social behaviour with perceptions of them which could give rise to a situation in which there was an actual reduction in crime, established by empirical methods of assessment, but the local community's perception might be that there had not been a reduction.

85. In response the Department stated that it regarded this clause as important to the future Partnerships. The intent was not to create a bureaucratic structure however there will be an obligation on organisations to demonstrate they are complying with the statutory duty.

86. In an attempt to address the concerns of the Committee, the Department provided draft amendments to clause 34 to:

i. remove the wider, more general, requirement for a body to '...do all that it reasonably can to enhance community safety'.

ii. limit the number of bodies impacted by the clause to those who will be prescribed by the Department through regulations.

iii. a strengthening of the requirement for consultation with other Departments prior to the issue of guidance on the clause – this aims to ensure the practical implications for Departments are addressed and that they have adequate opportunity to feed into the guidance. This guidance will, amongst other things, address how the duty may be fulfilled in the most proportionate way for an organisation in the delivery of its functions.

87. The Committee considered the draft amendment and questioned whether it addressed the concerns outlined by the Attorney General. Before reaching a decision in relation to the proposed amendment and the clause the Department advised that it was providing a different amendment.

88. The new amendment required the Department to secure the approval of the Attorney General before issuing any guidance as to how a public body should comply with the duty. When appearing before the Committee to discuss this amendment the officials advised that the Attorney General had seen it and thought that it should be taken a step further in two respects. The first was so that the duty of the public body was to the guidance which he has approval of and the second, to ensure that there is no wasteful litigation, was that the guidance will lay-out the extent to which failure by a public body to meet the guidance could be dealt with. The Department was therefore in the process of considering changing the amendment.

89. The Committee agreed that, if the clause, even as amended, still creates a statutory duty on public bodies and this is not sufficiently qualified, then it would not be acceptable. In the absence of a satisfactory amendment from the Department the Committee agreed to reject the clause in its entirety.

Schedules 1 and 2 Paragraph 4 – Payment of Expenses

90. In light of concerns raised by the Committee and stakeholders the Department advised the Committee that it proposed to introduce an amendment that would provide the councils scope to pay expenses to all members who do not receive them from their own organisation.

91. The Committee agreed that it was content with this proposed amendment.

Schedules 1 and 2 Paragraph 7 – Designated Organisations

92. Committee members questioned the Department on why, as a general principle, a small number of organisations should not be designated to give the partnership integrity and prevent the partnership, for whatever reason, accidently excluding an organisation. There was strong support during the Committee oral evidence event for this approach. The Committee was minded to include the Probation Board as one of the specified organisations.

93. In response, the Department advised that there was not a strong argument for saying that it would be inappropriate to designate a certain relatively small number of organisations who should always be present on a PCSP. However, the Department pointed out that it was taking the decision out of the hands of the local partnership, the elected members in the locality, and the independents appointed to that partnership. The consultation process on the principal of PCSPs and DCPSPs had indicated that a partnership of more than 30 people would not work because it was simply too big to be operationally effective enough in the locality.

94. Taking account of the views expressed, the Department provided a draft amendment that reflected the desire of the Committee and other stakeholders to see certain organisations designated. The proposed amendment would allow the joint committee, which comprises departmental officials and Policing Board representatives, to designate certain organisations without those organisations appearing on the face of the Bill.

95. The Committee considered the draft amendment but preferred instead the option of taking this forward by requiring the Department to produce a regulation, which would then come before the Assembly listing the proposed designated organisations for approval. This would place the decision-making in the hands of the Assembly which the Committee believed was the most appropriate place for it. The Committee agreed that an amendment on this basis should be drafted for consideration. In designating a small number of key organisations the Committee did not believe that it would seriously restrict the flexibility of the PCSPs as the likelihood was the designated organisations would be invited anyway. However it would ensure a consistent level of skills and expertise across the PCSPs and ensure that a locality could not take the view that they are not relevant and leave them out for whatever reason.

96. In response the Department offered two possible amendments. The first met the Committee's desire for a list of specified organisations for inclusion on every PCSP to be made by affirmative resolution. The second, which was the Department's preferred option, required the Joint Committee to issue a list of organisations which the PCSPs must actively and seriously consider for inclusion before designating organisations to be represented on the partnership. The Department hoped that this amendment addressed the Committee's concerns but would protect

what it viewed as the necessary flexibility of the new partnerships to designate those organisations that are best placed to meet identified local issues.

97. The Committee was still of the view that there was a limited number of organisations that should be designated to participate in all the PCSPs and, to ensure that the list was approved by the Assembly, the mechanism to designate organisations should be by way of a regulation. The Committee agreed that Schedules 1 and 2, paragraph 7 should be amended accordingly.

Schedules 1 and 2 Paragraph 10 – Chair and vice-chair

98. The Committee considered a proposal from a Member that the chair of the PCSP should always be an elected member and should be appointed in the same manner as the chair of the policing committee — that is by the council using the same procedures that currently exist — which is that the office is held in turn by each of the four largest parties represented on the council immediately after the last local general election.

99. It was suggested that democratic accountability is key and therefore an elected member should be the Chair. This would also create better buy-in by the Council and put a greater responsibility on the elected member to make the case for and press the Council to support and contribute towards the PCSPs. If an elected member is not the chair there is a danger that Councils will not engage sufficiently and will not provide appropriate funding as there is no requirement or incentive for them to do so given that there is a minority of elected members on the PCSPs.

100. The Minister indicated that he does not believe that the statutory exclusion of independent members would be acceptable to the public at large – nor to the many current independent members of DPPs in particular. In his view it is not necessary to ensure the success of the PCSPs, and may be seen to impede the discretion of the new Partnerships to manage their affairs to best effect, which is one of his key principles in establishing them.

101. The Committee noted that independent members were not being excluded from the vice-chair post and agreed to amend Schedules 1 and 2, Paragraph 10 as outlined above.

Schedules 1 and 2 Paragraph 17 – Finance

102. The Department advised the Committee that as the scrutiny of the Bill had progressed, the need to clarify the means of funding for PCSPs has arisen. The Department was therefore proposing to amend Schedules 1 and 2 to ensure that the Department and the Policing Board's commitment to funding the PCSPs is conveyed and to include further detail on the actual mechanism for funding PCSPs – the Department intends to allow provision of a grant in advance of spend, rather than retrospectively.

103. The Committee agreed that it was content with the proposed amendments.

Part 4 – Sport

- The time period around which powers would be applied to regulated matches
- Definition of a missile
- Addressing sectarianism in sport
- Going onto the playing area
- Laser Pens

- Being drunk at a regulated match
- Possession of drink containers etc
- Possession of alcohol
- Offences in connection with alcohol on vehicles
- Sale of tickets by unauthorised persons
- Designation of Stands

Clause 36 – The time period around which powers would be applied to regulated matches

104. The Committee considered the issue of the time period that would apply to regulated matches and questioned the Department on whether the proposed period of two hours before and one hour after a match was excessively long.

105. The Department indicated that, in light of concerns raised in relation to this issue, it proposed to make an amendment to reduce the period during which the powers would apply to regulated matches by half, to one hour before the match and thirty minutes afterwards.

106. The Committee agreed that it was content with the proposed amendment.

Clause 37 – Definition of a missile

107. The Committee had concerns that the wording used in clause 37 "to throw anything" was too wide and vague and could cover incidences when items such as a scarf or a cap were thrown. The Committee also queried whether the current law already in place was adequate to address any problems regarding throwing of missiles.

108. The Department explained that currently it is illegal to throw something onto the pitch if it constitutes an assault or attempted assault, but, in order to show that, it has to be shown that there was an intention to hit someone and cause injury. This new provision will provide the means to deal with behaviour that is dangerous and is not currently covered by the law. The Department conceded that technically a person could be arrested for throwing a scarf under the new provision, however a reasonableness test applies to all criminal law and in practice it would be very unlikely that a prosecution would take place.

109. The Committee supported the provision on the basis that it enhanced the current law and afforded extra protection to players, officials and spectators but asked the Department to consider including the word "missile" in the text of the clause to properly reflect what it was trying to achieve.

110. The Department advised on 28 January 2011 that, given the views of the Committee, it would introduce an amendment to clause 37 to provide greater clarity around missile throwing at regulated matches and focus more on those items likely to cause injury.

111. The Committee agreed that it was content with this proposed amendment.

Clause 38 and Clause 49 – Addressing sectarianism in sport

112. Whilst the Committee noted the Department's assurances that sectarianism was included under the more general definition in clause 38 it believed that, to send out the right message, it should be explicitly covered and was of the view that this would not be difficult to achieve.

113. In light of the views expressed by the Committee, the Department indicated that it was willing to explore the possibility of including sectarianism overtly in the clause. Subsequently the Department advised the Committee it proposed to introduce an amendment to add sectarianism to this provision and to the Banning Orders: "violence" and "disorder" provision.

114. The Committee welcomed the proposed amendments.

Clause 39 – Going onto the playing area

115. The Committee discussed concerns that had been raised regarding how this provision would be enforced and whether it was necessary to create a criminal offence or could pitch invasions be better dealt with by self-regulation by the relevant sporting bodies, particularly where there is a tradition of pitch invasions at the end of certain matches.

116. In response the Department indicated that the safety at sports grounds legislation has meant that fences and railings around pitches have been taken away and it is now very easy to get onto the pitch. The intention of this provision is to set a clear standard that, unless authorised to do so, people should not go onto the pitch. The relevant authorities can authorise an incursion if they wish to. The Department highlighted that all three of the sporting associations were in favour of the provision.

117. The Committee accepted the need for this provision as drafted.

Clause 40 – Laser Pens

118. The inclusion of laser pens within clause 40 (possession of fireworks, flares etc) had been requested by a number of respondents in evidence and the Committee asked the Department to explore this further.

119. Having looked at the matter the Department advised the Committee that the inclusion of laser pens in law is quite complex and laser pen control is a cross-cutting issue sitting in a wider health and safety context. The Minister of Justice does recognise the problems that these pens can cause and will take the issue forward with relevant Departments to achieve a future resolution of the matter. To include it in this provision at this stage would however be difficult. The Minister also gave a commitment that he will ensure that the importance of controlling such devices at sports grounds in particular is recognised.

120. The Committee was content with the explanation provided for not including laser pens in the legislation at this stage and welcomed the commitment made by the Minister to take the matter forward outside of the Justice Bill.

Clause 41 – Being drunk at a regulated match

121. While the Committee did not disagree with the objective of clause 41 it was very strongly of the view that the clause was unnecessary for two reasons. The first is that adequate legislation is already in place and enough powers are already available to deal with the situation. Also all three sporting organisations had confirmed that procedures are already in place to refuse entry or remove persons from their respective grounds if they behaved in a drunken and/or disorderly way.

122. The second reason is that the provision is unlikely to be enforceable. The fact is that the PSNI are in attendance at very few sporting matches and therefore reliance would be placed on stewards and volunteers to provide the evidence. Also the Public Prosecution Service, in written evidence, indicated that clause 41 does not include a definition of drunkenness. Accordingly an assessment of a defendant's condition is likely to be open to challenge on a number of grounds, including that such assessment is subjective and wrong, and it could be difficult in certain circumstances to satisfy the test for prosecution or prove the commission of an offence to the requisite criminal standard, namely beyond reasonable doubt.

123. In response to these views the Department stated that the provision was intended to clarify the law as there was doubt about whether a sports ground is a public place and whether the provisions that relate to drunkenness in a public place would apply. The Department believed that the clause was required as the current law may not be sufficient to deal with someone drunk in a sports ground. In response to a question, the Department stated that it was not aware of a particular example where a charge had been refused because the issue of whether the law applied inside a sports ground had been successfully contested.

124. The Committee did not accept the Department's arguments regarding the need for this provision and agreed to reject the clause in its entirety.

Clause 42 – Possession of drink containers, etc.

125. The Committee had strong reservations about this clause and whether it was necessary. Having discussed it with the Department the Committee is of the view that it would be very difficult to enforce and impractical to work.

126. The provision aims to prevent drinks containers being thrown or used as a weapon, with the resultant damage and injury that can be caused, by creating a criminal offence to be in possession of a bottle, can etc. The Department confirmed that other items such as flasks, baby's bottles etc that would not be considered as likely to normally be discarded could be allowed in at the discretion of the club. Views were expressed by the Committee that those items could do as much damage if thrown, if not more, than plastic drinks bottles.

127. The Department also confirmed that it is aware that in many instances, for safety reasons, sports clubs already remove drinks containers from spectators entering the ground but clause 42 is designed to provide the authority of the criminal law as an important supporting power. It offered to provide further guidance to clubs to make very clear what should be allowed in and what should not.

128. The Committee is of the view that self-regulation by the sporting organisations in this area is preferable to creating more criminal offences and agreed to reject the clause in its entirety.

Clause 43 – Possession of alcohol

129. Again, the Committee had serious reservations about the necessity for this clause for any of the sports. No evidence had been presented to the Committee to suggest that this issue was causing a significant difficulty or seriously disrupting the many sporting events that thousands of sports fans attend on a regular basis and which are ably managed by the sporting organisations themselves.

130. The Committee noted that Ulster Rugby had made strong representations about the application of this clause to rugby at Ravenhill stating that there was no evidence of disorder problems and alcohol consumption did not cause a problem in their sport.

131. The Department stated that it was its intention to take the legislative power and to move ahead with consultation to apply it to football. However, it would not be in any rush to apply it to either rugby or GAA. The clauses were drafted to allow varying application to different sports.

132. In response to the concerns of Ulster Rugby the Department proposed to amend the commencement of clause 43 to be subject to affirmative procedure and require full Assembly consent.

133. The Committee was concerned that varying the application of the provision to the different sports could be discriminatory. The punishment of 3 months imprisonment for possession of alcohol also seemed unfair given that the fine for being drunk is only £1,000.

134. The Committee was of the view that this provision is unnecessary at this point in time as the evidence has not been produced to show there is a problem that needs to be addressed. The provision would however have implications for the future financial viability of Ulster Rugby and, in relation to rugby and GAA, is inconsistent with legislation elsewhere in the UK and Europe.

135. The Committee does not support the creation of criminal offences where a need has not been justified and wishes to avoid creating "legislation for legislation's sake", particularly when self-regulation by the relevant sporting bodies is preferable and satisfactory.

136. The Committee agreed to reject the clause in its entirety.

Clause 44 – Offences in connection with alcohol on vehicles

137. The Committee raised concerns about the restrictions provided for in the provision when travelling home from a match and had questioned the logic of this. The Committee also questioned the need for the offence of being drunk in a vehicle.

138. The Department highlighted that there is a divergence of views between the sports on alcohol on vehicles. The IFA and the AONISC have suggested that the offence of having alcohol on vehicles going to and from a match should be dropped. However the GAA would welcome the offence for people travelling to matches.

139. In response to the Committee's concerns and taking account of the views of the sporting organisations, the Department proposes to amend clause 44 to remove entirely the offence of being drunk in a vehicle and to restrict the clause to only provide for an offence of consuming alcohol on a specified vehicle for journeys to a designated match. There would be no restrictions on the way home.

140. Whilst noting the views of the PPS regarding difficulties in proving the commission of an offence to the requisite criminal standard, on balance the Committee agreed that the proposed amendments to clause 44 largely addressed the concerns raised and should be supported.

Clause 45 – Sale of tickets by unauthorised persons

141. This provision only applies to football and the Committee noted that a question had been posed regarding whether this provision was about ticket touting or whether it was about ensuring segregation of rival supporters.

142. The Department informed the Committee that the IFA and AONISC had made representations that controls on the sale of tickets and segregation of rival fans can be addressed adequately by initiatives developed by the IFA in conjunction with Member clubs. The

IFA intends to review the way tickets are distributed and sold for domestic games with a view to implementing new regulations for the start of the 2011/12 season to ensure that clubs can control and account for any tickets sold on their behalf.

143. In light of the IFA's suggestion that they can control the sale of tickets appropriately through self-regulation the Department advised that it intended to withdraw the ticket touting provisions.

144. The Committee was content with the proposed approach being adopted and agreed to support the removal of clause 45 from the Bill.

Schedule 3 – Designation of Stands

145. The Department advised the Committee that, at the request of the GAA, it intended to remove sports grounds at which there is a stand requiring a safety certificate thereby ensuring that the provisions only apply to matches at designated grounds.

146. The Committee agreed that this was a sensible approach which would avoid the legislation applying to matches with relatively low or minimal attendances and welcomed the proposed amendment.

Part 6 – Alternatives to prosecution

- General principle of penalty notices
- Guidance and training for police officers in relation to fixed penalty notices
- Code of practice

General principle of penalty notices

147. The Committee noted that some respondents, in their evidence, had expressed disappointment that fixed penalties were being proposed as an alternative to prosecution and had outlined their preference for the use of other non-monetary diversionary options.

148. The need for alternatives to divert people away from the criminal justice system and address the root cause of the offending behaviour had been highlighted, and views had been expressed that these provisions should be held back until the current on-going strategic reviews of Youth Justice and the Prison Service and the development of the Reducing Offending Strategy had been completed.

149. Some Members indicated that they wished to see a community service option made available as an alternative to the payment of a fine.

150. In response, the Department stated that the major concern about offering a community service option is the cost of doing so. Officials indicated that the cost of supervised activity orders, where a probation officer is involved in setting up the opportunity, making sure the arrangements are made and checking that the person has turned up and completed their allotted number of hours is in the region of £1,000 a case. To introduce a community service option in these types of cases could be very expensive. The benefits of introducing penalty notices for minor offences included reducing police, prosecution and court time and a possible reduction in delay in the justice system.

151. The Department also highlighted that there are already a range of existing diversionary measures – based around restorative interventions, warnings and cautions – which act as alternatives to prosecution. It was also of the view that these new provisions are compatible with the development of a wider strategy on reducing offending.

152. The Committee agreed that it supported the general principle of penalty notices as provided for in this part of the Bill.

Clause 69 - Guidance and Training for police officers in relation to fixed penalty notices

153. The Committee sought assurances from the Department that appropriate guidance and training would be available for police officers given these provisions enhance their discretionary powers.

154. The Department confirmed that it would produce clear guidance on the issuing of fixed penalty notices and indicated that the PSNI will undertake staff training before the provisions are implemented. The Department also advised that in terms of internal monitoring, supervisory officers will check and verify all penalty notices issued and operational experience will also be subject to external reviews by inspectors from Criminal Justice Inspection NI.

155. The Committee was content with this response.

Clause 82 – Code of practice

156. Clause 82 requires the Department of Justice to prepare a code of practice in relation to conditional cautions. A number of respondents to the Committee consultation highlighted the importance of an effective code of practice in order to ensure integrity and effectiveness of the application of conditional cautions. The code of practice (or any amending code) must be laid before the Assembly in draft, after which the Department may make an order to bring the code into operation.

157. The Examiner of Statutory Rules drew the attention of the Committee to the fact that this provision is modelled on section 25 of the Criminal Justice Act 2003 for England and Wales, with the exception that in England and Wales, an order under the Criminal Justice Act bringing a code of practice into operation is subject to draft affirmative procedure. An order under the corresponding provision of this Bill is however subject to negative resolution.

158. The Examiner of Statutory Rules was of the opinion that the provision for England and Wales seems to work better in terms of scrutiny and terms of procedure generally: presumably the Department would lay both the draft code of practice and draft order at the same time for approval, and that seems to make sense.

159. The Committee agreed with the view of the Examiner of Statutory Rules and wrote to the Minister of Justice requesting that he bring forward an amendment so that the order making power provided in clause 82 would be subject to the draft affirmative procedure rather than the current negative procedure.

160. The Department responded indicating that the Minister will amend the Bill to make the powers within clause 82 subject to draft affirmative procedure.

161. The Committee welcomed the proposed amendment.

Part 7 – Legal Aid, etc.

- Eligibility for criminal legal aid
- Assembly scrutiny of clauses 85 and 89
- Litigation Funding Agreements

Clause 85 – Eligibility for criminal legal aid

162. The proposed introduction of a fixed means test for criminal legal aid, which this clause would allow for, attracted a range of responses, many of which outlined concerns. Views expressed included the need for the levels of eligibility to be set appropriately to ensure effective representation for those who appear before the Courts, the need for the interests of justice test to take precedence over means testing, and clarification of the likely costs of the administrative arrangements as the potential for savings may outweigh the likely delays and increased administration.

163. The Committee received a briefing on the results of research commissioned by the Department into the impact of introducing a new means test for criminal legal aid. The research indicated that any significant savings could only be achieved by reductions in the eligibility rate of 10% or more. The Minister made it clear to the Committee that any proposals for a fixed means test would require very close scrutiny prior to any possible implementation. However, given the current Legal Aid bill and difficult financial situation, he believes it is worth exploring further. The option of introducing a fixed means test for criminal legal aid should therefore be kept open through the provision of the enabling cause.

164. The Committee was content to provide for an enabling clause in the Bill but given the impact on access to justice that the introduction of a fixed means test for criminal legal aid could potentially have, it wished to ensure that any Rules arising from this power would be subject to rigorous scrutiny and debate. This matter is dealt with in the following paragraphs.

Clauses 85 and 89 – Assembly scrutiny

165. In relation to clause 85 (2) the Committee agreed that this is a particularly important power that merits thorough Assembly scrutiny, especially as it relates to applications for legal aid in criminal proceedings and it should be subject to draft affirmative procedure rather than negative resolution.

166. In relation to clause 89 (2) and (4) the first regulations made under new Article 27A are subject to draft affirmative procedure but subsequent regulations are subject to negative resolution. The Committee noted that this formulation no doubt followed a precedent enacted at Westminster (probably as a pragmatic compromise in the interests of parliamentary time there) and agreed with the view of the Examiner of Statutory Rules that it would be more logical and satisfactory that all regulations made under new Article 27A should be subject to the draft affirmative procedure.

167. The Committee wrote to the Minister of Justice requesting that he amend clauses 85 (2), 89 (2) and 89 (4) so that the powers contained in them would be subject to the draft affirmative procedure.

168. The Department responded to the Committee indicating that the Minister had concerns about the proposed recommendations.

169. The Department outlined that currently legal aid regulations cover a myriad of situations and the insertion of an affirmative procedure at this stage and in one specific context could have wider knock-on effects. The Department stated that every adjustment, no matter how minor, e.g. a change in state benefit regulations which necessitated a change to the legal aid Rules or Regulations, would require debate on the floor of the Assembly. Consideration would also need to be given to all other legal aid procedures and the structure of the regulations themselves would need to be unpicked and rewritten.

170. Given the structure of the legal aid regulations system, and the time available, the Minister was not minded to make the proposed amendments. He did however undertake to consider the recommendations with a view to assessing Assembly control procedures around legal aid regulations more generally.

171. The Committee strongly believed that these powers, particularly in relation to a fixed means test for criminal legal aid, should be subject to the higher level of scrutiny that would be provided by the draft affirmative procedure and agreed that, in the absence of amendments from the Department, it would request that appropriate amendments be drafted for consideration.

172. Given the strongly held views of the Committee in relation to this matter the Minister asked officials to look again at finding a solution. The Department responded by proposing a draft amendment to provide for affirmative procedure when the Rules in clause 85 are being considered for the first time.

173. The effect of this would be that both of these new and key powers would be subject to full public and Committee consultation followed by an Assembly debate the first time they were brought forward. While this would, in the interim, leave any future adjustments to be made by the negative resolution process the Minister recognises the concerns of the Committee and will make this a key aspect of his wider review of legal aid rule making. Proposals for such a review will be brought to the Committee and the review will be concluded before any substantive proposals emerge to amend Rules 85 or 89 by negative resolution.

174. The Committee accepted that the proposed amendment from the Department provided for full and rigorous scrutiny of the principle and procedures for the introduction of a fixed means test for criminal legal aid and therefore satisfied its requirements. The Committee also welcomed the commitment by the Minister to undertake a wider review of legal aid rule making.

175. The Committee agreed that the Rules in clause 85 and clause 89 should be subject to affirmative procedure when being considered for the first time.

Clause 90 – Litigation Funding Agreements

176. The Committee noted that the Legal Services Commission is in discussions with the Bar Council and the Law Society in relation to the development of an alternative funding arrangement for handling money damage claims.

177. The Committee was therefore of the view that it is appropriate to take the option provided for in clause 90 to provide Litigation Funding Agreements in the future if that is identified as the preferred route either by itself or in conjunction with other methods of funding money damage cases.

Part 8 – Miscellaneous

- Assembly scrutiny of Magistrates' Court Rules
- Rules Committee Membership

Clauses 95 and 99 – Assembly scrutiny of Magistrates' Court Rules

178. The Committee considered the advice provided by the Examiner of Statutory Rules in relation to the background and reasons why rules made by the Magistrates' Court Rules Committee (and the County Court Rules Committee) are not subject to Assembly procedures unlike rules made by other Court Rules Committees.

179. The Committee noted that the difference in scrutiny accorded to different court rules probably had more to do with historical origins than logic or principle and a change in the position to make Magistrates' Court Rules and County Court Rules subject to negative resolution would not be unduly complicated, requiring amendment in primary legislation.

180. As such a change appeared to be logical and consistent with the level of scrutiny of other Court Rules, the Committee wrote to the Minister of Justice seeking his views on changing the position so that Magistrates' Court Rules and County Court Rules would be subject to negative resolution procedure and the feasibility of taking this forward by way of amendments to the Justice Bill.

181. The Minister agreed that it would be preferable for the same level of scrutiny to be applied to all court rules. However, he highlighted that the proposal does have implications for rules dealing with excepted matters for which the Lord Chancellor continues to exercise responsibility.

182. The Minister indicated that he had asked for the matter to be raised with officials in the Ministry of Justice with a view to bringing forward the necessary changes. While it is unlikely that the necessary provision can be included in this Bill he gave an undertaking that the changes will be brought forward in the next available Bill after consultations are complete.

183. In the interim he assured the Committee that, notwithstanding the absence of legislative provision, Magistrates' Courts and County Court rules have in practice complied with the conventions applicable to Rules subject to negative resolution procedure. The Secretariat to the Rules Committee is also mindful that Departmental Committees may consider any rule dealing with a transferred matter whether or not it is subject to Assembly procedure and will ensure the Justice Committee is consulted through the Rules forward work programme.

184. The Committee is content with the assurances provided regarding consultation and welcomes the Minister's commitment to bring forward the necessary provision in the next available Bill.

Clauses 96 and 97 – Rules Committee Membership

185. In response to comments from the Committee on the need for clarification in relation to the wording of clauses 96 and 97 regarding a person nominated by the Attorney General for membership of the Crown Court Rules Committee and the Court of Judicature Rules Committee, the Department proposed to amend the Bill to specify that the Attorney General's nominee shall be a practising member of the Bar or a practising solicitor. The amendments would ensure that the necessary qualifications of the Attorney's nominee(s) on the Rules Committees were specified in similar manner to those of the other members.

186. The Committee agreed that it was content with these proposed amendments.

Consideration of the Bill by the Committee

187. In response to a call for evidence, the Committee received 69 written submissions, took oral evidence from 16 organisations and heard from a further 21 organisations at a stakeholder evidence event in relation to the Policing and Community Safety Partnership clauses.

188. Those who provided evidence to the Committee welcomed the introduction of the Bill. There was however a wide range of views expressed on its contents and there were issues within it which raised concerns. The Committee explored these with the Department both in writing and during the oral evidence sessions.

Part 1 – Chapter 1: The Offender Levy

189. This Chapter contains the power for a financial levy to be imposed by the court on conviction or attached to any voluntarily accepted non-court imposed penalty.

190. There were several issues raised on this Chapter of the Bill. These included the general principle of an offender levy; administration of the levy; ability of offenders to pay; deductions from prisoners' earnings; use of victim impact statements; offender levy on penalties such as road traffic offences; and the amount of the offender levy.

General Principle of introduction of an offender levy

191. Organisations such as Victim Support Northern Ireland, the Probation Board for Northern Ireland (PBNI) and the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) welcome the principle of reparation.

192. Some respondents however highlighted that offenders must be made aware of the reason behind the imposition of the levy in order that the offender understands that the levy is a mechanism for holding them accountable for the harm their actions cause to the victims and witnesses of crimes.

193. British Irish Rights Watch (BIRW) opposes the levy as it imposes a financial sanction in addition to a penal sanction which it considers to be a contravention of Rule 57 of the United Nations Standard Minimum Rules for the Treatment of Prisoners and Rule 2 of the European Prison Rules 2006. BIRW stated that the deprivation of liberty is the punishment for a crime and that punishment should not be exacerbated by any further deprivation.

Administration of the levy

194. Some organisations expressed concerns in relation to the administrative costs of the scheme which could outweigh the potential benefits and the need for the scheme to be administered efficiently and effectively was emphasised. Victim Support stated that the funds created must be an additional source of funding to support initiatives that protect the victim from further harm and underlined that the funds must be ring fenced for this purpose.

195. The Committee sought further information from the Department on the anticipated cost of administering the offender levy and the use of the funds collected.

196. The Department stated that it would maintain the principle of using levy revenue exclusively to support services meeting victims' needs. It proposes that the revenue from the levy is ring-fenced through an administrative arrangement with the Department of Finance and

Personnel (DFP) and used for the sole purpose of resourcing the dedicated victims of crime fund. Confirmation of the arrangements is awaited and, in the interim, implementation of the levy will not commence until DFP has reached agreement on the way forward.

197. Regarding the administration of the levy, the Department advised that implementation of the levy would incur one-off capital costs of around £100,000 with the day to day administration cost largely absorbed within existing administrative processes. Around 5% of disposals will not map onto existing administration arrangements and the Department therefore proposes to phase implementation over 3 years. The combined effect of phased implementation and the lead-in time to imposition on qualifying disposals means that levy revenue will build steadily, achieving a significant revenue return by year 3 and reaching its fullest potential – a maximum of £500k per year – in years 4 to 5 of its operation.

198. The Department also confirmed that the Victims of Crime Fund would pay for projects that support victims and witnesses during their engagement with the justice process, as well as small local initiatives working with victims in the community. The Fund would be managed centrally by the Department of Justice, within existing departmental financial management structures, without incurring any additional running costs. The Fund would also be clearly separated from other funding streams, which would provide transparency and accountability on the movement of money into and out of the Fund. The Department will be required to report regularly to DFP and Treasury on its operation, and will publish data on revenue, spend and projects supported.

199. The Committee noted the assurances provided by the Department regarding the use of the funds for victims projects and that administration costs were not excessive.

Ability of offenders to pay

200. A number of respondents, including the Women's Support Network (WSN), Women's Aid Federation Northern Ireland and Include Youth, expressed concerns regarding the ability of offenders to pay. The Bar Council indicated that at the heart of the offender levy scheme must be the ability of the convicted person to pay any of the amounts sought yet those who are responsible for causing the greatest impact on victims arising from their crime are those least likely to be able to pay either fines or levies. Extern expressed concerns that, as many offenders have limited financial resources, such a levy may lead a person into further crime rather than enabling rehabilitation.

201. The Northern Ireland Human Rights Commission (NIHRC), while welcoming the provision in clause 1 (9) regarding the ability of the court to reduce the levy and/or fine in certain circumstances, sought assurances that the court should have effective mechanisms to assess an offender's means prior to sentencing. Concerns were also expressed by several respondents that the provisions for remitting the levy within clause 4 (3) will not resolve the wider issue of the number of fine defaulters going through the criminal justice system.

202. In response to the issues raised, the Department of Justice advised that provision has been made which will allow the courts to consider the issue of means in relation to the levy. The amount of the levy may be reduced (to nil if necessary) by the court in circumstances where a victim compensation order has been given, and it has been determined that the offender does not have the ability to pay both the compensation order and the levy. This is to ensure priority is afforded to securing the payment of compensation awarded by the court to the direct victim of the offence. Where the ability to pay both the compensation order and the levy is not an issue, then the levy will not be reduced.

203. Additionally, in circumstances where it is assessed by the court that the offender does not have the means to pay both a court fine and the levy, it will be the court fine and not the levy which may be reduced to an appropriate level. Whilst some may perceive this as potentially diminishing the penalty for the offence, it is a reflection of current practice in relation to the imposition of court fines. When a fine or other financial order is imposed at court, there is already statutory provision for the court to consider the offender's means and to reduce the fine if necessary to a level which it is assessed the offender is capable of paying.

204. As with other monetary orders imposed by the court, if the offender is unable to pay in full by the due date, he/she will be able to make an application to the court for an extension of time in which to pay, or to agree payments by instalment. This means that those who may have particular difficulties are given the appropriate assistance to help them make payment.

205. The levy is a comparatively modest amount in most cases and, with the existing arrangements in place to assist offenders to make payment, the Department believes that the levy amount is unlikely to place significant hardship on an offender. Also a court cannot set a default period of imprisonment for non-payment of the levy. The higher levy rates of £25 and £50 are attached to immediate custody disposals, where the Bill makes separate provision for the collection of the levy through deductions from prisoners' earnings.

Deductions from prisoners' earnings

206. BIRW states that the proposal to deduct the levy from a prisoner's earnings contradicts European Prison Rule 26.10 which provides for an 'equitable system of remuneration' and that to work without payment offends Article 4 of the European Convention on Human Rights in addition to undermining the rehabilitative nature of gainful employment whilst in custody. Further there is no proposal for a means test or consideration of the financial status of juvenile offenders.

207. The NIHRC also states that the proposal that prisoner earnings should be deducted to meet the costs of the levy should be considered in the context of the human rights standards that govern prison regimes.

208. NIHRC, like BIRW, refers to European Prison Rules highlighting that the European Prison Rules state (rule 105.5) that "In the case of sentenced prisoners, part of their remuneration or savings from this may be used for reparative purposes if ordered by a court or if the prisoner concerned consents". Reference is also made (Rule 103.7) to a "programme of restorative justice" which envisages a broader incorporation of restorative principles than a mere financial penalty. The NIHRC considers that it is also important to view the proposal within the wider context of Rule 26 which states that prison work should never be used as a punishment (European Prison Rules, 26.1); prisoners may also be encouraged to save part of their earnings (26.12); sufficient work of a useful nature should be provided (26.2); prisoners should be able to spend at least part of their earnings on approved articles, and to allocate a part of their earnings to families (26.11). These concepts are also referred to in the Basic Principles for the Treatment of Prisoners (8) and Standard Minimum Rules for the Treatment of Prisoners (76.2).

209. The NIHRC concludes that the proposal to deduct the levy from prisoners' earnings needs careful consideration as the amount earned by prisoners may vary considerably, for example due to the availability of work in particular prison establishments. The negative impact that weekly deductions may have upon vulnerable prisoners and on staff/prisoner relations may require further risk assessment.

210. The Prisoner Ombudsman suggested that when determining the rate at which the offender levy can be deducted from a prisoner's earnings, various factors should be taken into account,

namely that prisoner earnings have not increased in 8 years; prisoners who have no family to supplement their prisoner earnings find it difficult to make their earnings cover those basic needs which are not provided for by the prison; and prisoners should continue to be encouraged to work and motivated to do so and the level of any levy taken off their earnings should not act as a discouragement to work.

211. The Department advised that Rule 26.10 is that dual work will be provided for prisoners and there should be adequate remuneration for any work that is undertaken. It is a matter for each member state to set the earnings levels. That is something that the Northern Ireland Prison Service has done with the basic, standard and enhanced regime providing the opportunity to earn £6, £11, and £20 per week respectively.

212. Provision has been made to deduct the levy by instalment from earnings at a consistent rate across all the regime levels (potentially £1.00 per week). The Department considers that this would be both proportionate and would provide no disincentive to prisoners to progress to higher regime levels. In doing so, they increase their earnings capacity enabling them to afford to buy non-essential items in prison without requiring financial help from families and, if they choose, to pass money to their families or save towards their resettlement.

Use of Victim Impact Statements

213. The NIHRC states that in cases where a victim impact statement is introduced this may have the potential to influence the court in its consideration of a levy. The Commission wished to see the introduction of a clear protocol regulating the use of Victim Impact Statements as is the case in England, Wales and Scotland.

Offender levy on certain penalties such as road traffic offences

214. The Bar Council noted that the levy can be applied in respect of certain penalties in the Road Traffic Offenders (NI) Order 1996 and asked whether in principle it is right for someone who breaks a speed limit to be obliged to contribute to this levy in circumstances where it could not be said that there was any victim of such an offence.

215. In response, the Department of Justice holds the view that attaching the levy to the proposed road traffic offences (those attracting licence endorsement such as driving at excess speed, using a mobile phone whilst driving and parking at a pedestrian crossing), which have the potential to lead to more serious accidents and fatalities, is appropriate and that no offence which causes concern to the public is 'victimless'.

Amount of the offender levy

216. In response to concerns raised by the Committee during the policy consultation stage, the Department of Justice introduced in the Bill a two-tier rate on immediate custody sentences, which reflects the greater harm caused to victims by those who commit more serious and violent offences. £50 will apply to those who are serving sentences of more than two years, and £25 will apply to those who are serving sentences of two years or less.

Part 1 - Chapter 2: Vulnerable and Intimidated Witnesses

217. This Chapter amends the Criminal Justice (Northern Ireland) Order 1999 to introduce improvements to the special measures provisions and deal with some procedural changes.

218. There were several issues raised on this Chapter of the Bill including the general principle of enhancing special measures; the need for balance; special provisions relating to sexual offences; presence of supporters; definition of the role and qualifications of an intermediary; and mental health and the criminal justice system.

General Principle of enhancing special measures

219. There was widespread support among the respondents, including the Police Service of Northern Ireland (PSNI), BIRW, Victim Support NI and Extern for any enhancement of the current provisions for special measures.

220. Victim Support did however highlight its concerns that the prevailing measures are not being deployed to their fullest extent and questioned if new legislation will therefore be effective. This view was also raised by a Committee Member who referred to a 2006 report commissioned by the Home Office that looked at how the provisions were implemented in England and Wales. In many cases it was found that the measures were not being implemented properly, prompting the question of whether extra legislation is needed or whether existing legislation needs to be properly enforced. Victim Support NI indicated that awareness is the key point to improve delivery and the proposals in the Bill, with the intention of giving somebody the opportunity to give better evidence, should improve the process of justice.

221. The Department of Justice highlighted that it has established a Vulnerable and Intimidated Witness sub-group of the Victim and Witness Task Force to address concerns that eligible witnesses were not being considered for special measures assistance and other operational issues which were raised during the evaluation of the effectiveness of special measures.

Need for balance

222. The Bar Council states that whilst there is a general recognition that certain witnesses require special facilities to enable them to give their evidence most effectively, practitioners have guarded jealously the oral tradition of the criminal trial process and have striven to ensure the fairness of a trial is never compromised by impediments being put in the way of a witness's evidence being effectively tested. It is imperative that the Courts continue to play an important role in ensuring the new provisions are applied in a way that will meet the needs for justice in a particular case.

223. Similar concerns were expressed by a Committee Member during the oral evidence stage regarding the importance of balance and assurances were sought that, in the special measures provisions, the balance has not been pushed too much in the direction of the prosecution and away from the defence.

224. In response, the Department of Justice states that the purpose of the special measures provisions, which have been in place for 10 years now, is to get the best and most accurate evidence. It is not about favouring the prosecution over the defence but about allowing a witness, who may have been through very difficult circumstances, to give the best and most accurate account of what happened to them. That is what underlies the special measures provisions and the new guidance that is issuing on special measures is called 'Achieving Best Evidence'.

Special provisions relating to sexual offences

225. WSN and Women's Aid note that clause 9 enables adult complainants of sexual offences to automatic entitlement of video recorded evidence in chief; however this does not apply for

proceedings taking place in a Magistrates Court. Both organisations believe that this clause fails to recognise that, in domestic violence cases, there is often an element of sexual violence involved and that women seeking non molestation orders in Magistrates Courts may have been subjected to sexual violence by respondents. WSN and Women's Aid Federation NI wish to see the special provisions in clause 9 extended to cases of non molestation orders in Magistrates courts.

226. In response, the Department of Justice advised that adult complainants, who are called as witnesses in sexual offence proceedings, are automatically eligible to be considered for special measures assistance. However, as part of its commitment to reduce the rate of victim withdrawal of complaints in sexual offences cases (or in a sexual offence and other offence), the Department wishes to go a step further and provide greater certainty to adult complainants in sexual offence cases, which include rape, buggery, indecent assault and incest, that they will be able to give their evidence in chief by way of a video recorded statement.

227. Clause 9 therefore makes provisions in favour of admitting the video recorded statement of adult complainants in respect of sexual offences tried in the Crown Court, when an application to do so is made and the court is satisfied that the requirement would be likely to maximise the quality of the complainant's evidence. The provision applies to the Crown Court as, due to the serious nature of these offences, they tend to be heard in that court tier. If a case is heard in the Magistrates court, a special measures application can still be made. There is just not the presumption in the legislation in favour of granting it.

228. In relation to requests that this provision should apply to proceedings relating to breaches of non-molestation orders in Magistrates courts, the Department advised that victims who have experienced domestic violence can be considered as eligible for consideration for special measures assistance by virtue of Article 5 of the 1999 Order (witnesses eligible for assistance on the grounds of fear or distress about testifying).

Evidence by Live Link - Presence of supporter

229. With reference to presence of supporters for those providing evidence by Live Link, MindWise recommends that the person who supported the vulnerable person in the police station is best placed to offer further support to the person when giving evidence by video link and that the advocacy role should be someone from the trained mental health field.

230. MindWise recommends that the services of a trained advocate (not Counsel/Barrister) be called upon to support the person (now to give evidence by intermediary). If that person required the help of an appropriate adult during the investigative stage of the enquiry this is considered to be good evidence that the services of an advocate as intermediary are required.

231. The Law Society suggests that appropriate guidance be provided to supporters to ensure they are fully aware of their role and that such guidance should safeguard against the possibility of the content of the witness's statement being improperly influenced.

232. In response the Department of Justice outlined that these issues would be covered in the guidance document, 'Achieving Best Evidence', which is due to be published in early 2011. The guidance will set out standards for supporters in the Live Link room. These will include the role of the supporter; who can act as a supporter (generally speaking, it can be anyone known to the witness who is not a party to the proceedings and has no detailed knowledge of the evidence in the case); what skills they require; and standards for conduct. Standards for conduct include how they should act whilst in the Live Link room and contact with the witness. For example they

must remain visible to the courtroom when the witness is giving evidence and they must not prompt or influence the witness in any way.

233. The Department also highlighted that the clause provides that the court determines who the supporter is, whilst taking the views of the witness into account. As with other special measures directions, the court has the power to discharge or vary the direction.

Definition of the role and qualifications of an intermediary

234. Concern was expressed by respondents that there is no definition of 'intermediary' and there is insufficient detail regarding the characteristics and role of intermediaries and what level of expertise and experience will be required. The Law Society suggests that it should be made clear that an intermediary's duties to support a defendant extend to assist the accused to understand the proceedings and to facilitate consultation and communications with his/her legal team.

235. Regarding the definition of 'intermediary', the Department considers that Article 21BA(4), of the Criminal Evidence (Northern Ireland) Order 1999, which outlines the intermediary's function, provides an adequate definition of an intermediary. The Department considers that it would not be practical to specify who can act as an intermediary in the legislation as they can come from such a wide background of roles and occupations. The aim is to keep it as flexible as possible to tailor services specifically to victims. The legislation attempts to provide the courts with enough latitude to provide an intermediary where necessary and not tie its hands by stating specifically who the intermediary should be.

236. The Department confirmed that guidance would issue when the intermediary service for the vulnerable accused goes live.

237. In relation to expertise and training of intermediaries, which the Committee pressed the Department on during oral evidence, the Department advised that it is planned that intermediaries will come from a wide background of roles and occupations, including social workers, psychologists, speech and language therapists, occupational therapists, those in the medical profession and teachers. Intermediaries will have to apply to become a "Registered Intermediary" and, if successful at interview, will then be expected to undergo an accreditation and assessment process to provide them with the necessary knowledge and skills to meet the required standards for the role. The court will have a list of people who have been trained and qualified from which it can pick those who have the skills or expertise required in any specific case.

238. The accreditation and assessment course will prepare prospective intermediaries to understand their role in the criminal justice system. They will learn about relevant criminal law and procedures, and about stakeholders and participants with whom they will be working to enable them to operate effectively and credibly. The course currently costs £2,000 per person and this is a cost which the Department plans to meet. The overall cost of the training will however be dependent on how many people apply to be registered as intermediaries and who are successful at interview.

Mental health and the criminal justice system

239. The Law Society cited the Bradley report in England and Wales and the Criminal Justice Inspection Northern Ireland report 'Not a Marginal Issue: Mental Health and the Criminal Justice System in NI' which emphasised the importance of diverting those with mental illness away from

criminal prosecution and stated that the proposals within this clause would appear to be contrary to this emphasis.

240. The Law Society is aware that when similar proposals were put forward for England and Wales, these were subjected to scrutiny by the Houses of Parliament Joint Committee on Human Rights and that the Committee raised significant concerns that the proposal may result in the criminal prosecution of the mentally unfit. The Law Society emphasises that in considering this proposal, sufficient regard must be had to Article 6 of the European Convention of Human Rights which states that an accused must be able to effectively participate in his/her trial. This includes understanding the nature of the trial process and the significance of any penalty imposed. The Law Society highlights that the assistance of an intermediary is unlikely to overcome such a lack of understanding. The Law Society states that the Joint Committee on Human Rights recommended the Government consider asking the Crown Prosecution Service and the Judicial Studies Board to consider issuing guidance, making clear the scope of the right to effective participation in criminal proceedings and highlighting circumstances where the use of an intermediary would be appropriate and highlighted that the Justice Committee may wish to make a similar recommendation.

241. During oral evidence the Department of Justice outlined that it would be a decision of the court, based on the evidence provided, whether examination through an intermediary was allowed. The Department acknowledged that there has been some concern that this provision may result in the criminal prosecution of the mentally unfit. However, it should be noted that the assistance of an intermediary is applied for by the accused's legal representative not the Public Prosecution Service.

242. While the Department believed some progress had been made in recent years to assist defendants in their understanding of the proceedings in which they are being tried, it considered that more could be done, and that there is therefore merit in extending the intermediaries special measures provision to vulnerable defendants who would benefit from an intermediary to assist them when giving evidence, to ensure that they receive a fair trial.

Part 2 – Live Links

243. This part of the Bill expands the use of Live Links facilities in courts to include physical disability and provide for defendants or patients who have a psychiatric illness. Live Links will also be available for a wider range of appeals, for sentencing hearings in a county court as well as bail hearing in the High Court.

244. The main issues raised in relation to Part 2 of the Bill regarded the general principle of the use of Live Links and also their use for vulnerable accused.

General principle of the use of Live Links

245. Most respondents regarded the use of Live Links as a valuable tool to enable all to have access to justice. The Bar Council and the Law Society were however cautious about the use of Live Links as they are not convinced that the objective of giving 'best possible evidence' is achieved by such measures.

246. The Northern Ireland Human Rights Commission (NIHRC) states that the European Convention principle (from Article 6) that court hearings should be "public" creates a strong presumption that, in particular, the defendant in a criminal case should have the right to be physically present in the courtroom for all elements of the process. The NIHRC has in the past (in relation to the draft Criminal Justice Order of 2008) objected to the use of Live Links for

sentencing and appeal hearings, particularly in the latter case where there was no requirement for the appellant's consent. This Bill extends the use of Live Links.

247. On further consideration and having regard to the recent Criminal Justice Inspection Report on prisoner escort and court custody, the Commission is, however, persuaded that in the circumstances addressed by the Bill, the use of Live Links ought not to amount to a significant intrusion on the Article 6 right and has a potential to reduce the delays, inconvenience and costs of prisoner transport and court custody, overcoming the issue of segregation of male and female prisoners in transit, and, to a small extent, reducing escape risk. The NIHRC positively welcomes clauses 11, 14 and 19 as working in the interests of vulnerable groups, but would prefer that clause 16 (Live Links at preliminary hearing on appeals to the county court) be amended to insert a requirement for the appellant's consent.

248. MindWise supports the provision for the use of Live Links for those accused under 18 years whose level of intellectual ability or social functioning compromises his/her ability to give evidence in court, or as an adult of 18 years if he/she suffers from a mental disorder with a significant mental health impairment assuming the same assistance is afforded when giving evidence by video link as when attending in person.

249. MindWise stated that an advocate in supporting vulnerable people should be present to ensure the level of understanding takes place regarding administering and accepting the oath and the giving of evidence via a TV link. MindWise recommended that if a person required the help of an appropriate adult during the investigative stage of the enquiry this is considered good evidence that the services of an advocate as intermediary are required and the services of a trained MindWise advocate should be the default intermediary in relation to Shannon Clinic.

250. The Bar Council stated that it should be remembered that the purpose of the special measures and Live Link provisions is to ensure that 'vulnerable' witnesses give their best possible evidence in criminal proceedings and that it is not necessarily the case that this is achieved by the use of video evidence or Live Link evidence. It is generally recognised that witnesses make a bigger impact on juries when they give evidence live in court. The Bar Council considers that there is the risk that the over use or automatic use of special measures could result in a dilution of the effect of such evidence and not necessarily serve the interests of justice.

251. The Law Society advised that a number of practitioners consider that defendants find it difficult to understand and participate in proceedings and communicating with clients can be problematic, particularly when it comes to taking instructions. The Law Society noted that it is proposed that persons remanded to hospital or who are subject to a hospital order may be able to appear via Live Link. The Law Society cautioned against the burden of prisoner movement being given primacy over a defendant's right to a fair trial.

252. In response, the Department of Justice advised that the Live Link package contains a series of procedural protections and controls to ensure a fair trial and access to justice for all defendants whereby appellants can make application or representations; where consent is required; and where the court must be satisfied that a Live Link is in the interests of justice. Legal representatives can consult with their clients, via Live Link or telephone, in private booths situated in the courthouse. These facilities are available to legal representatives prior to the court hearing (and afterwards) and facilitate consultation during the hearing at the courts discretion.

253. The Department confirmed that provision will be made for an intermediary to provide assistance at a psychiatric hospital when an application is made by a patient who is appearing via a Live Link. The Live Link package contains a series of procedural protections and controls to ensure a fair trial and access to justice for vulnerable defendants. Use of the facilities will be subject to judicial consideration prior to any decision on the use of a Live Link. The patient's

Responsible Medical Officer (RMO) will also be available to provide advice on their fitness to participate in proceedings. The Department also indicated that these provisions were developed in conjunction with relevant health authorities.

Live Link direction for vulnerable accused

254. Include Youth advised that the experiences of young people in using video link technology have highlighted issues in relation to limiting full access and participation to the judicial process. In respect of clause 19 (5), Include Youth supports the use of Live Links for accused under the age of 18 and aged over 18 where their ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by their level of intellectual ability or social functioning, and where the use of live link would enable more effective participation. Include Youth recommended that this provision be piloted to assess effectiveness.

Part 3 – Policing And Community Safety Partnerships

255. Part 3 of the Bill creates new Policing and Community Safety Partnership (PCSP) structures.

256. It is proposed that there will be one PCSP in each Council area with the exception of Belfast where it is proposed that there will be a principal PCSP and four DPCSPs. clauses 20 to 35 and Schedules 1 and 2 of the Bill detail the Department's proposals for the new structures and how they will operate.

257. Many of the submissions on this part of the Bill were from District Policing Partnerships (DPPs) and Community Safety Partnerships (CSPs) as well as affiliated organisations such as the Northern Ireland Local Government Association (NILGA), Community Safety Managers and from independent members of CSPs. There were also issues raised by organisations in the wider Voluntary and Community sector as well as from the PSNI, the Probation Board and the Policing Board. Given the large number of organisations that responded on the PCSPs an evidence event was held on 16 December 2010 in the Long Gallery of Parliament Buildings. Representatives of 21 organisations attended and gave evidence on the relevant clauses and schedules of the Bill.

General principle of the establishment of PCSPs and DPCSPs

258. The majority of organisations that commented on the proposed partnerships welcomed the amalgamation of the District Policing Partnerships (DPPs) and the Community Safety Partnerships (CSPs) in principle. These respondents pointed out that the integration of DPPs and CSPs would streamline the work and would enable a more joined up approach with better communication and increased cost effectiveness.

259. However some organisations did voice concerns about the proposals. The Superintendents' Association of Northern Ireland believes that the concept of amalgamating DPPs and CSPs to form a body tasked with delivering an effective partnership on policing matters to the community is ill-founded. It is of the view that a partnership body should be specifically set up to deliver effective solutions to policing and community problems and that the PCSPs as proposed in the Bill will not achieve that aim.

260. NIACRO's opinion is that, in the absence of the implementation of the Review of Public Administration, the current Community Safety Partnerships remain the best option to discuss issues of community engagement, planning and safety.

261. Concerns were also expressed that amalgamating the functions of the District Policing Partnerships (DPPs) and the Community Safety Partnerships (CSPs) would allow policing issues

to dominate the agenda at the expense of wider community safety issues. NIACRO and Include Youth both felt that the introduction of PCSPs will further cement community safety into the criminal justice system and reinforce, in the eyes of the community, the view that community safety is a policing issue rather than a community and partnership issue. Include Youth also felt that combining policing issues with community engagement poses the very real danger that 'anti-social' behaviour is considered to be the responsibility of the police and not of the community.

262. Some Councils including Belfast City Council and Dungannon and South Tyrone Borough Council indicated that Councils are the third strand and need to be involved as a partner with the Department of Justice and the Policing Board rather than being a stakeholder consultee when it comes to planning how the partnerships will operate and how the structure will link with communities.

263. In response to these concerns the Department of Justice pointed out that the provisions will create new local partnerships in the policing and community field and that the partnerships will integrate all the functions of existing CSPs and DPPs in a single partnership for each district council.

264. In the Department's view the great advantage of a single partnership is that it would have the responsibility for the full range of functions and would ensure a holistic approach to identifying local concerns, prioritising issues, working out how problems can be tackled, agreeing who is to take the lead and who is to support, committing resources and expertise, ensuring the delivery of solutions and evaluating the success or otherwise of specific projects. A fully coherent body of such work, centred on the production and delivery of a unified partnership plan, ought to enable the new partnership to be effective in securing safer communities.

265. NILGA raised concerns over the governance and accountability relationship between the PCSPs and councils, pointing out that, while it welcomes the streamlining of the administrative process through the establishment of the Joint Committee, it felt that the proposed model does not take account of the role of councils in supporting PCSPs.

266. Extern was concerned about how it and other organisations supporting community safety in Northern Ireland will be represented on the partnerships.

267. Some respondents felt that the Department should take this opportunity to remodel this new partnership to develop the current functions and roles of both partnerships to help create a new culture, identity and remit. They considered that the functions of the new PCSPs should be remodelled to avoid silos within the partnership and to embrace a new culture in monitoring policing and enhancing community safety collectively. Others considered that there is an opportunity to reflect on the Patten Report and look at a community planning model in which the wider public safety organisations are brought in.

268. In response, the Department of Justice considers that it is taking the current arrangements closer to an integrated model, particularly one envisaged by Patten, but also by others, in the years since the DPPs and CSPs were established and indicates that this is not necessarily the final word on local partnership working in this field. There will always be opportunities and times when this could change and when there will be further innovation.

Name of the PCSPs and DPCSPs

269. The majority of Community Safety Partnerships (CSPs) and some other organisations expressed the view that the proposed name, "Policing and Community Safety Partnership",

should be changed. The issues raised on this matter were voiced by a representative of Strabane CSP during the oral evidence event when he outlined that the title chosen by the Department of Justice was not one of the titles they had consulted on and that the title could give the impression that the police are the dominant partner in the new partnerships. For these reasons the CSPs who responded urged the Justice Committee to re-examine the proposed title.

Recruitment

270. In relation to recruitment to the partnership, most District Policing Partnerships (DPPs), Community Safety Partnerships (CSPs) and Councils hold the view that the costs of the recruitment of independent members by the Policing Board are too high and estimate the costs across Northern Ireland to be at least £600,000.

271. Some Councils suggest that they should be allowed to nominate and appoint independent members which would significantly reduce costs. The majority of the CSPs recommended that the potential cost savings of Councils undertaking the recruitment of the independent members should be examined.

272. The Policing Board stated that it is working to reduce the costs of recruiting independent members but welcomes proposals for councils to recruit independent members.

273. The Department was of the view that it is important that the present role of the Policing Board in appointing independent members be carried over and is aware that discussions have taken place between the Policing Board and Councils.

Expenses and allowances

274. With regard to expenses for members of the partnerships, the majority of Community Safety Partnerships (CSPs) and District Policing Partnerships (DPPs) are of the view that expenses should be set at a central level through the code of practice, as in the case of the DPP, to ensure equality through council areas and among members of the partnership, and to allow councils to recoup the potential costs. The majority of the CSPs, DPPs and Councils also stated that the amount of total expenses should not affect the overall delivery of frontline services and should provide cost savings in comparison to the current models, and recommended that the Justice Committee investigate cost savings of expenses compared to the current arrangements.

275. Coleraine DPP believed that the independent members should receive a nominal allowance to attract the calibre of person for such an appointment and encourage input into the partnership.

276. Newtownabbey, Coleraine and Moyle District DPPs noted that the payment of allowances to members of the Northern Ireland Policing Board by virtue of Schedule 1 paragraph 12 of the Police 2000 Act has not been repealed and that this raises issues of equality between members of the Northern Ireland Policing Board and members of District Policing Partnerships and consequently the PCSPs. Belfast CSP, DPP and City Council feel that the withdrawal of allowances to independent members will result in a reduced uptake and therefore impact on the input of the community sector. Strabane DPP also indicated that consideration should be given to the provision of a members' allowance and that the proposed structures will involve a significantly increased workload from that of current structures, and that activity from dissidents and others would have a detrimental impact on the take-up from the independent sector.

Designation

277. In relation to organisations designated to participate in a PCSP, the majority of CSPs stated that given the multi-agency nature of the partnership and the success of Crime and Disorder Reduction Partnerships (CDRPs) in England and Wales, named agencies should be included in the legislation, as in the Crime and Disorder Act. The majority of the CSPs recommended that the Justice Committee look to name agencies in order to place an obligation on them to reduce crime and disorder.

278. The Probation Board for Northern Ireland (PBNI) indicated that it wished to be specifically named in the Bill as one of the designated organisations. The Probation Board stated that having it identified as a designated organisation within the Bill would bring a consistent level of experience and skills to the offender management role of each PCSP/DPCSP and allow for better coordination across the sector in pursuing the objective of reducing offending/reoffending.

279. Include Youth was also of the view that the categories and sectors of organisations need to be made explicit in this section.

280. A number of DPPs raised issues regarding designation of agencies. Giving the PCSP powers to appoint and revoke will increase the bureaucracy and training requirements for the PCSP. Moyle DPP sought further information on how organisations will be designated and what contribution they will be required to make. Newtownabbey Borough Council considers that such designations should be made by the council, having regard to functions that are delivered through partnership arrangements with other statutory and community bodies, such as those involved in good relations, neighbourhood renewal and Peace III. It considers that this would allow for a more joined-up, corporate approach to achieving the aims of the legislation and associated council objectives, particularly in anticipation of future developments in community planning.

281. While the Department had received a number of representations from the Probation Board and many others stating that they should be included and designated it had avoided designating organisations as small local groups, which might usefully contribute to the area, could be useful on the partnership. The Department accepted there was strength in both positions and, noting there may be a consensus that perhaps three or four organisations should be designated, undertook to consider further. Rather than being prescriptive, the Department thought that it was best to be flexible. It is up to the Partnership to determine who should be designated and they have a statutory duty to follow section 75 in the same way as the partnership.

282. Committee Members questioned the Department on why, as a general principle, if the right type of organisation such as the Probation Board, has been identified, it should not be named as a designated organisation across all Partnerships, in the same way that the Bill specifies 9 or 10 elected members. Committee Members also highlighted that the downside of not naming specific organisations meant that, for whatever reason, a locality could just take the view that they are not relevant and should not be there.

283. The Department's response was that designation was taking the decision out of the hands of the local Partnership, the elected members in the locality, and the independents appointed to that Partnership. Therefore the Department formed the view that, on balance, allowing districts the flexibility to make those decisions seems to be the best way to do it. The Department also reiterated that involvement can be not only through being designated as an organisation, but community and voluntary groups can be involved in the work of the partnership and the Voluntary and Community Sector are mentioned specifically. It may well be that some independent members come with a background in a certain field, and there is the provision that each partnership could set up smaller groups working on specific themes and areas where it is more appropriate to co-opt some of the smaller organisations on to the specific work group in

that area or on that themed basis. Therefore, there are still lots of opportunities for community and voluntary organisations to be involved.

Chair and Vice Chair

284. Regarding appointment of a chairperson and vice-chairperson of a PCSP, the majority of CSPs and DPPs noted that Schedule 1 paragraph 10 means that these offices can only be held by elected members or independents respectively, which they consider could devalue the role of the agencies on the PCSP and further limit their perceived role on the partnership. Strabane, Derry and Limavady DPPs and Limavady Borough Council felt that the exclusion of 'designated members' from holding office is contrary to the spirit of partnership working and shared responsibility and negates the inclusive nature of the partnership. Ballymoney CSP shares this view, highlighting research by the Improvement and Development Agency for Local Government (IDeA) in England which found that the most effective chairs of the CDRPs came from the voluntary, statutory and community partners. The majority of the CSPs recommended that the Justice Committee re-examine the chair and vice-chair positions.

285. In contrast Lisburn City Council noted at Schedule 1 (10) that in the first 12 months of the new PCSP the Chair of the Policing Committee will be the Chair of the PCSP but that this will change after the first year. Lisburn Council is of the view that if the chair was not an elected member then democratic accountability would be diminished.

286. The Policing Board also felt that the position of chair should be held by an elected member of the council and that there should be a single chair for the complete organisation. This was based on the rationale that councillors are elected, have a mandate and therefore are accountable. As regards the policing function, the Board felt that it would be a much better arrangement to have a single chair, a single entity, for continuity purposes if nothing else. NILGA also felt that, in respect of democratic accountability and the role of the policing committee, the chairperson should be an elected member.

287. Regarding the current practice in CSPs for holding the positions of chairperson and vice-chairperson, Limavady CSP stated that any member excluding an elected member would hold the chair in the interests of partnership working. Councillors felt that the council was facilitating the CSP therefore they would enable other organisations to hold the post. Craigavon CSP and DPP have the same chair which they regard as allowing both bodies to work cohesively together and they do not see the added value of this legislation.

288. In response, the Department's position is that there is particular value in having the same chairperson and vice-chairperson of a policing committee as the partnership as a whole and that this would maintain the unity of the partnership and ensure the connection between the functions of the policing committee and the functions of the partnership as a whole. As that is the case, it would not be possible for a member of a delivery agency to be the chairperson of a policing committee, and therefore, they would not be the chairperson of the overall partnership.

289. After consideration of this issue the Committee adopted a proposal to amend the Bill to ensure that the chair of the PSCP should always be an elected member and asked the Department to bring forward such an amendment. In response, the Minister of Justice wrote to the Committee indicating that he was not minded to make such an amendment as he "does not believe that the statutory exclusion of independent Members would be acceptable to the public at large — nor to the many current independent members of DPPs in particular". After consideration of the Minister's view the Committee agreed to propose its own amendment to the Bill which would ensure that an elected Member would always be the Chair of the PCSP. The Committee agreed to adopt this amendment.

Quorum

290. With regard to the procedures on quorum, Strabane, Derry and Limavady DPPs pointed out that a quorum is defined in terms of the PCSP and that to ensure representation, consideration should be given to stipulating the ratio between the Policing Committee members and designated members. Strabane District Council recommends that the quorum is broken down and it should stipulate the numbers of independent and political members required to make a quorum. In relation to voting, Strabane, Derry and Limavady DPPs also suggested that Schedule 1, paragraph 13(2) should be reconsidered and suggested that the chairman should seek "consensus of agreement" rather than a vote on every question raised within the PCSP. Votes should be taken only on items of particular significance. Strabane District Council suggests that this should be reworded as follows: "Every question at a public policing committee meeting shall be determined by a majority of votes of the members of present..." The Council agrees that a more formal approach is required when holding policing committee meetings in public but that normal private meetings do not require a majority vote for every question raised.

Finance

291. The vast majority of all the CSPs, District Policing Partnerships (DPPs) and a number of Councils and the Policing Board raised the issue of the financing of the new structures. As funding for NIPB and Community Safety Units comes from the Department, streamlining for funding and accountability should be feasible. Respondents consider that the proposed arrangements are bureaucratic and unnecessary. The removal of the existing 25% contribution from local government may reduce the degree of ownership the Council has to the Partnership and how it is embedded locally.

292. In response, the Department noted that the legislation states that the Department "may" pay a contribution towards councils' expenses in setting up Partnerships. It is not the Department's intention to draw funding from Partnerships.

293. The Policing Board recommends that the Department of Justice fund a single way for the organisation, which should come through the Policing Board. The rationale being that it would save on the confusion that people have articulated. There would be one point of contact and one point of appeal. The Policing Board could build up the trust and the true partnership working that people want to be underpinned by these structures.

294. In response the Department stated it did not know what overall funding will be coming from the Budget just yet and what the ramifications of that are. However, it noted that if the budget is left aside for the time being, the money available through the Policing Board and the Department, through the Community Safety Unit, will go towards the new partnership. The Department will not require the council to contribute and is not stipulating that they must contribute 25%, as the Board has stipulated for the District Policing Partnerships (DPPs). It can be quite administratively burdensome if every invoice has to be split.

295. In relation to the financial structures, the vast majority of CSPs and several councils indicated that Schedule 1, paragraph 17 needs to be amended to reflect that the two bodies 'should' rather than 'may' provide a grant. The majority of the CSPs recommend that the Justice Committee amend paragraph 17 to the above wording.

296. The Department agreed to amend paragraph 17 as suggested in order to ensure that the Department and the Policing Board's commitment to funding the PCSPs is conveyed. The Department subsequently brought forward such an amendment which was accepted by the Committee.

297. The Department, in its proposed amendment to Schedules 1 and 2, paragraph 17 provide further detail on the actual mechanism for funding of PCSPs, in that the intention is to allow provision of a grant in advance of spend, rather than retrospectively. The Committee agreed this amendment.

Complexity of the Belfast Model

298. Belfast City Council is of the view that the proposal to establish one Policing and Community Safety Partnership and four District Police and Community Safety Partnerships in the Belfast area, as well as associated policing committees for each, is complex, will increase the administrative burden already on staff in trying to manage and facilitate all of those structures and could reduce the ability to deliver front line services. Belfast City Council also feels that it would place a burden on elected members and independent members to sit on both the police and community safety committee and the policing committee itself, as well as on other statutory agencies. It is vital that the new structures connect with existing structures because, to make a difference, communities must be involved in identifying the problems and trying to solve them.

299. The Committee questioned what seemed to be a very complicated structure and requested clarification of what consideration had been given as to how the PCSP and DPCSPs will integrate with other existing structures such as the West Belfast Community Safety Forum, PACT; area partnership boards; and neighbourhood structures. The need for clarity regarding how the various organisations would interact was emphasised.

300. Clarity was sought by the PSNI on the definition of 'police district' as the legislation appears to offer two definitions which may create inconsistency with the PSNI definition of a District Command. A number of other respondents also sought assurances that the legislation, guidance and codes of practice enable flexibility in the future if, for example, the Chief Constable were to bring about a change to the number of police districts in Belfast.

301. On the issue of complexity, the Department of Justice noted that the proposed model for Belfast in many ways reflects the fact that, at present, there is a principal DPP and DPP subgroups, yet there is a single CSP. However, the model that has been taken with the District Policing Partnerships (DPPs) also reflects the fact that Belfast is a big city with different issues in different areas. The Department has noted what the council has said and, in the preparation of the codes of practice will continue the engagement that is already on-going. The Department highlighted that creating a single partnership out of the functions of the District Policing Partnerships (DPPs) and the CSPs is one step towards greater clarity. The new single partnership does not clear the field of any possible relationship complexities but does simplify the situation while not wiping out the role that CPLCs and PACT groups have and will continue to have.

302. The Committee regarded that the Department must issue clear guidance and illustrations on how the organisations working in related fields might interact in order to provide clarity.

Balance between policing and community safety functions

303. A number of respondents expressed concern that the functions are too similar to the Police (Northern Ireland) Act 2000; too police oriented; lacking in emphasis on community safety and delivery to the community; neglecting multi-agency working; and implying that the role of the police is to be monitored rather than to work in partnership. One council considered that the functions of the new PCSPs should be remodelled to avoid silos within the partnership and to embrace a new culture in monitoring policing and enhancing community safety collectively. A view was held that monitoring and supporting relationships between policing, community representatives and all agencies that deliver community safety outcomes, whether they be

community, voluntary, private or public, must be the agenda, actions, outputs and outcomes of all of those partnerships. The majority of the CSPs wanted the proposed functions re-examined.

304. In response, the Department of Justice states that the point of creating the partnership is to find the best way to deliver those services to the public and to make it easier for the public to get the community safety and policing services that they need. The Department emphasises that the policing committee is a very important part of the partnership and it has a particular role, which is to monitor the police and it is important that it is maintained. However, in creating the partnership it wants both to work together. It is the Department's view that the community, in general, does not make a distinction between police and community safety issues. They simply want a solution to problems. The idea of the partnership is to enable those solutions to be identified, action to be taken and how it has worked to be evaluated.

305. The Department referred to the code of practice that will be established and stated that if clarity is needed about particular approaches and how they will work together, it will aim to provide that.

306. Include Youth believes clause 21 is crucial, in recognising that young people are partners in making communities safer. It welcomes and applauds the notion of genuine and meaningful participation with the public and with communities in general. However, the organisation has concerns that clause 21(1) and particularly (c), (d) and (e) have limitations and suggests the addition of the following words to clause 21(1)(d): "fully considering", after "to make arrangements for obtaining" to make 21(1)(d) read: "to make arrangements for obtaining and fully considering the views of the public about matters concerning the policing of the district and enhancing community safety in the district".

307. Include Youth also raised the issue of anti-social behaviour in clause 21(3). The clause places a level of responsibility on PCSPs and DPCSPs to reduce actual and perceived levels of crime and antisocial behaviour. Include Youth has fundamental difficulties with what it describes as a vague definition of behaviour and asks that the term "antisocial behaviour" be removed from the Justice Bill until there is a definition that is clear.

308. In response, the Department of Justice states that they have used the definition of antisocial behaviour that is in use currently in the Anti-social Behaviour (NI) Order 2004. The Department did not feel it necessary to amend this definition but felt that it could be addressed in other forums, not least through the community safety strategy, which is out for consultation. The Committee were satisfied with this response.

Functions of the Policing Committee

309. Several councils raised issues around the functions of the Policing Committee and state that clause 21 (2) and clause 22 (2) should not be restricted to the policing committee but rather apply to the whole partnership. The ability of a partnership to be formed when there are functions which pertain to only one part of the model i.e. the policing committee was questioned.

310. Belfast City Council indicated that it understands why the separation of the PCSPs and the policing committees is being put forward, however, it believes that there is a risk that a culture of distinctiveness could build up in the new structures. The council therefore called for clear guidance on how the PCSPs and DPCSPs can work in an integrated fashion, have a shared culture and establish clear communication lines with one another.

311. In contrast it is the view of the PSNI that if the functions in sub-paragraphs 1 (d) and (e) of clauses 21 and 22 (which are primarily focused on police accountability) are conducted by the full PCSP or DPCSP, rather than the policing committee, then these functions may prevail at the expense of practical and constructive co-operation on community safety issues.

312. In response, the Department states that it would not be appropriate for officers or officials of other statutory bodies on the main partnership to be responsible for monitoring the work of the Police Commander. It indicates that the predominant view from stakeholders has been that any future partnership arrangements must maintain the special policing accountability arrangements that are in place in Northern Ireland and ensure that the line of accountability for this monitoring directly links back to the Policing Board.

313. The Department indicates that in developing a model for a single partnership it has been required to work within an existing statutory framework established by the Police (NI) Act 2000 and Police (NI) Act 2003. The Policing Board has a statutory duty to assess the level of public satisfaction with the performance of the police. The current DPP framework assists the Board in fulfilling this statutory duty, consequently it is proposed that these functions are fulfilled by the Policing Committee reporting to the Board. The Policing Committee will report on the delivery and outcome of these functions to the Policing Board and the Chair of the Policing Committee will be an Elected Member of the partnership.

Powers of the new structures

314. A number of councils requested clarity around the legal status and powers of the new body and how these powers will fall between the partnership and local councils.

315. Some councils regard clause 21(1)(e) as not clear in its intent. In addition, it is considered that the delivery methodology of the PCSP is unclear. The wording implies that the PCSP will tackle community safety issues primarily through provision of funds to persons to undertake community safety activities. In line with Crime and Disorder Reduction Partnerships operating in England and Wales, it is preferable that the PCSP not only develop actions plan but take the lead in tackling complex community safety issues, supplemented by third sector involvement to ensure that outcomes are achieved. Regarding the amendment proposed by some councils to clause 21 (h), the Department did not consider that the term 'persons' as used in the Bill precludes organisations and therefore is not necessary.

316. Amendments were proposed by a council to clause 21 (g) for clarity, to read "to quantifiably measure the performance of the partnership in terms of reducing crime and enhancing community safety in the district".

317. One council recommends that at clause 21 (4) the relationship between the PCSP and the Council is clarified in this Bill and not the Code of Practice. The funding arrangements should also be clarified in legislation.

318. The Department clarified that the proposed structures mirror the current structure of DPPs as regards the statutory organisation of a body. The structures proposed, will be statutory bodies, but not a body corporate. The partnerships will not be able to enter into contracts themselves, but the council will be able to enter into contracts on their behalf, which is currently the relationship between councils and the DPPs.

Code of practice and accountability

319. BIRW expressed concerns over the level of accountability, stating that the functions of both the Police and Community Safety Partnership and the District Police and Community Safety Partnership legislated for at clause 22(3), 23(3) and clause 34(3) seem to provide some level of enhanced accountability but BIRW is not convinced this goes far enough. For example both bodies are "to provide views to a relevant district commander and to the Policing Board on any matter concerning the policing of the district." The provision of views cannot be considered an effective mechanism of accountability for a police service and BIRW fears the potential for the PSNI to avoid scrutiny, shielded by the weakness of the proposed model.

320. A number of CSPs, DPPs and Councils commented that accountability is with three bodies, namely the Joint Committee, Policing Board and the Council, with potential requests from the Department of Justice and given that the process was to simplify lines of accountability, this legislation may led to conflicting targets and requests. Clarity was also sought on the level of accountability and oversight that will rest with Councils if it was considered that a PCSP was underperforming. The majority of the CSPs that responded believed that the lines of accountability needed to be re-examined with the aim of simplifying them.

321. The majority of the CSPs that responded also noted that many of the proposed provisions refer to practices which are currently taking place within the DPP model under the Police Act. They therefore proposed that robust evaluations of these practices are carried out in order to establish whether there is merit in including them within this current piece of legislation. In addition they expressed the view that this clause provides clear insight into the role of the policing committee, however little is mentioned in relation to the practices which the overall partnership will have to adhere to. The view was expressed that many of the codes of practice are very traditional, and the legislation provides a key opportunity to look at alternative and more innovative ways of community engagement. A cost-saving analysis should also be carried out.

322. The Policing Board welcomed the legislation and pointed out that the District Policing Partnerships (DPPs) have been subject to periodic review by the Policing Board. A very comprehensive review was undertaken a short time after the DPPs were formed and as a result of the review, a number of changes to the code of practice were implemented. The Policing Board also carries out a consultative exercise annually and assesses annually the effectiveness of the DPP functions against that.

323. The Committee during the oral evidence session also questioned, whether the Department had evaluated current practice and how it would ensure imperfections would not be carried forward in this legislation.

324. In response, the Department of Justice indicated that it is required, with the Policing Board, acting together in a joint committee, to issue a code of practice for the PCSPs and DPCSPs. The code will be developed afresh and will be informed by the experience of DPPs and CSPs to date. Crucially it will inform the new partnership about the exercise of its functions and ensure a degree of consistency.

325. The Department states that it was aware of inadequacies in the current procedures that have developed through time. They have served a purpose, but there are some aspects that merit change. It has had some preliminary discussion with the Policing Board, Councils and others on the effectiveness of current procedures and will continue those discussions when drawing up guidance on the code of practice.

Reporting mechanism

326. In relation to clause 24 (5) a number of CSPs, DPPs and Councils felt that the practice of providing an annual report to the policing committee in order to consult with the district commander seems inappropriate, given that, it would be assumed, the area commander will be a member of the overall partnership. Therefore it would be more appropriate, in line with policing structures, for the police representative to carry out this consultation with said commander. Several respondents also related this issue to clauses 27 and 30. The majority of the CSPs recommended that clause 24 (5) be removed. The Department indicated that this provision forms part of the current arrangements for DPPs and therefore the Department is reluctant to remove this provision.

327. The Department of Justice noted that clauses 24 to 32 detail the statutory reporting requirements and mechanisms which must be operated by PCSPs and DPCSPs and advised that there is a desire to simplify and create a single line of accountability. The Department states that the reporting mechanisms set out in the clauses reflect the fact that there are three different authorities with an interest in the work of the partnership. The Department wants to preserve the responsibility of all three authorities. It does not mean that there would be three separate reports of a different nature going to three separate authorities, but rather that a report needs to be provided to the Department, the Policing Board and the council, all of which have an interest in the success of the partnership and what it is achieving.

328. The Department has indicated its intention to work with the Policing Board to consider how the framework could be supported by less onerous requirements. The Department indicated that the reporting mechanisms captured within clauses 24 to 32 do essentially mirror the existing reporting provisions for DPPs. It also acknowledged that a familiar comment from stakeholders was that the current reporting mechanisms in place for District Policing Partnerships (DPPs) were overly complicated and labour intensive.

Consultation

329. Extern states that it was not clear what clause 33 means or what it will look like when it is implemented. Extern is concerned that clause 33 suggests that consultation could be approved by the Policing Board but not approved by the PCSP. This would create governance and coherence issues and, potentially, conflict and sought assurance that that is not what it means.

330. Coleraine CSP believes that the consultation requirements should include more than policing and should encompass all aspects of community safety, which would reflect the spirit of the single partnership and avoid consultation duplication. Additionally, the establishment of bodies could duplicate various roles in the council, including community development.

331. Strabane District Council sought assurance that the policing committee is not required to undertake consultations which involve operational policing matters and to this end recommends that clause 33(1) be amended to include "on any matter affecting the community policing of the district" to ensure that the roles of the PCSP locally are safeguarded, the council recommends that clause 33(3) be amended to include "to consult in relation to community policing matters".

332. In response, the Department of Justice stated that there appears to have been a misunderstanding about what clause 33 says, explaining that its focus is on facilitating the police to consult the public. There would be a lot of consultation with the public, the policing committee and the overall partnership so, wanted to avoid consultation fatigue the Department saw that as being as minimal as possible. In particular, clause 33(2) relates to where it appears, to the Board's mind, that the partnership has not made sufficient arrangements for the police to consult a local community. Clause 33 reflects a provision that is currently relevant to the DPPs.

Statutory Duty to consider community safety implications

333. The Policing Board, the vast majority of CSPs and a majority of DPPs and NILGA fully support clause 34 and view this provision as key to developing policy for the new partnerships and providing the opportunity for placing policing and community safety at the centre of local service delivery enabling more effective working together and outcomes for local communities. The Policing Board also supports views expressed that the clause should go further and mirror some of the legislation in England and Wales, particularly the Crime and Disorder Act.

334. The PSNI also considers it important and wholly appropriate that other public bodies are required to exercise a duty to consider community safety implications in exercising their duties. For some time it has appeared to the Police that monitoring and accountability mechanisms are disproportionately skewed towards the PSNI and away from other delivery partners.

335. Include Youth indicated its support pointing out that any consequences of having the statutory duty are fully justified and recommending that the core bodies should be named and consideration should be given to how the legislation will be enforced.

336. NILGA states that the inclusion of this clause provides an opportunity to build broad-based responsibilities for community safety and contribute to the delivery of a shared community safety agenda. The duty should ensure that community safety issues are made central to all policy development by government and public authorities and are not limited to these public bodies directly involved in the PCSPs. NILGA believes that this clause has the potential to make a real difference to the lives of the people of NI by providing a framework to design public services around the needs of individuals.

337. Strabane, Derry and Limavady District Policing Partnerships (DPPs) point out that there are significant resource implications for all public bodies to have "due regard to the likely effect of the exercise of those functions on crime and anti-social behaviour in that community, and the need to do all that it reasonably can to enhance community safety." This brings with it a requirement to "community safety proof" all policies and procedures. It is suggested that the PCSP should be consulted within this suggested policy development process, so that the effectiveness of this structure is not diluted by mainstreaming. This policy aspect would be more effective if initiated in the context of community planning. Strabane and Lisburn Councils also noted that this is a significant clause which will have resource implications for all public bodies.

338. Some Departments have concerns about the implications and requirements that might arise for them and related organisations and the Executive has indicated that it will revisit this clause following the Committee's consideration of it. The Committee too voiced concerns about the impact of clause 34 and discussed the issue with the Attorney General who expressed significant reservations and the potential for the clause to create vast expense in relation to legal challenges to public bodies. The Attorney General also noted that the language used in the clause, for example the reference to 'perceived', was ambiguous and considered that the clause is likely to give rise to a great deal of problems without necessarily generating positive outcomes in improving policy making by public bodies. The Attorney General suggested that if clause 34 was to be included in the Bill, it should be ensured that the duty can be made justiciable only by for example the Minister or the Minister and/or the Attorney General, comparable to the Contempt of Court Act.

339. The Department noted that there appeared to be a lot of support for the clause during the oral evidence session which was welcome as the Department regards it as an important part of the Bill that adds a lot of benefit to the partnerships. The Department believes that this provision will be an extremely useful tool for the future partnerships. A provision of this sort was a desire

of the majority of stakeholders, notably the PSNI and the Policing Board who had hoped the provision might be further reaching.

340. The Department acknowledged that concerns do however exist within some of the Departments regarding this provision. In summary these related to the perceived wide scope of the clause and the corresponding potential for legal challenges, the potential costs both in relation to any legal challenge and in implementing the requirement within Departments and Arms length Bodies and the associated administrative burden. The Department is committed to working closely with the Executive and the Justice Committee to secure inclusion of the clause.

341. The Department indicated that the intent is not to create a bureaucratic construct in which people have to fill in lots of forms to demonstrate how they are complying. However, if the duty is there, organisations will have to demonstrate that they have complied with it. Departments and the other bodies listed will have that obligation.

342. The Department also clarified that the bodies to which clause 34 will apply are listed (in Schedule 2 to the Commissioner for Complaints (NI) Order 1996) which is very extensive and stated that it is difficult to anticipate any Body that is not included in that Schedule. The Department stated that it anticipated that, for an organisation that takes into account issues such as community safety and its policies, that could have beneficial consequences and returns, such as saving money in the long run. One practical example would be the Housing Executive taking into account such policies when designing estates, buildings or facilities. The reduction in crime and antisocial behaviour would pay for any additional features that it may have to design.

343. The Department emphasised that it is committed to and has a statutory obligation to consult with all NI Departments to produce statutory guidance on the operation of clause 34 and will not commence the provision until the Executive is content. The current position is that there is agreement in principle from the Departments on the intention of the clause but concerns regarding the implementation of it.

344. The Department explained that in crafting this requirement it looked at legislation in England, Wales, Scotland and the Republic of Ireland and those countries have not had significant legal challenges. While not suggesting that that means that there will not be any challenges here, it has not been their experience. Alert to that possibility, in drawing up the guidance, the Department wants to work with other Executive Departments and their advisers to see how that could be minimised and feels that it is still a worthwhile feature.

345. The Committee raised the issue of community impact assessments and whether this clause would be a suitable mechanism to introduce such assessments given it could be assumed that CSPs would have significant input into community impact assessments.

346. In response, the Department confirmed that significant work has been undertaken on plans for community impact assessments as recommended in the Criminal Justice Inspection report but that in order to undertake widespread consultation and develop workable proposals, inclusion in this Bill would be premature. The Department advised that it plans to bring forward proposals on community impact assessments in June 2011 and confirmed that this is a Ministerial priority. The Committee welcomed this commitment.

347. With regard to naming the appropriate public bodies the Department indicated that the Crime and Disorder Act 1998 is specific about the kinds of organisation which, it is assumed, will naturally have a contribution to make to community safety in a locality. The difference between what has been done in England and Wales and what is proposed here is that the Department has endeavoured to capture all public authorities so as not to limit the duty placed on public authorities. It may well be that there are all sorts of public authorities who can usefully make a

contribution to community safety in one district in particular circumstances, and this applies the duty to that authority at the outset.

Functions of Joint Committee and Policing Board

348. Within the proposed structure BIRW notes the establishment of a joint committee of representatives from the Policing Board and the Department of Justice which will assist the Department and the Policing Board to work more closely together in setting high level strategic objectives providing coherent, cohesive strategic direction to the Partnership. As long as this joint committee is a mechanism to hold the PSNI to account, and the rationale of the community policing policy is the achievement of greater police accountability and confidence in policing in Northern Ireland, then this is a welcome move.

349. The Policing Board supports the establishment in legislation of a Joint Committee as a model for operating joint governance arrangements between the Department of Justice and the Board. Its support is on the understanding that the establishment of a Joint Committee will not affect the statutory duties that the Board currently has. The Policing Board also welcomes the recognition of the importance of maintaining the accountability of policing arrangements in the proposed model.

350. Belfast City Council welcomes the setting up of a joint committee and any attempt to ensure that there is joint working between the Department of Justice and the Policing Board around the new partnership arrangements. However, what is specified in clause 35 refers solely to the monitoring roles and separates the monitoring roles of the joint committee and the Policing Board. If it is necessary to separate them in that way, it is fundamental that the wider role of the joint committee is defined in the legislation.

351. For example, the legislation should set strategic direction for the partnerships and how they operate, streamline how they operate and ensure that there is no duplication. Furthermore, we should look jointly at the funding arrangements for the partnerships and take on board the views of the partnership structures and make decisions on those where there is a need for change. There is a need for clarity on the role of the joint committee and the role of councils, particularly if it is the role of the joint committee to set strategic direction. There should be input from councils to enable them to have a say in the strategic direction of the partnerships.

352. Belfast CSP, DPP and City Council, are concerned that the proposed model will not, in practice, lead to a more streamlined process of reporting or accountability. Strabane, Derry and Limavady District Policing Partnerships (DPPs) state that the legislation provides for the Joint Committee to assess public satisfaction and effectiveness of the overall PCSP; while the Policing Board will assess the public satisfaction and effectiveness of the Policing Committee. This duplication of roles will lead to confusion for all stakeholders and streamlining should be considered. Strabane District Council suggests in relation to clause 35(1) (b) that the tripartite reporting structure is rather bureaucratic and that this prioritisation of functions of the PCSP shall create an unhelpful degree of hierarchy within the partnership.

353. Strabane Council also notes that clause 35(2) outlines that the NIPB shall assess public satisfaction with the policing committee and assess their effectiveness and queries what powers the NIPB would have if the Policing Committee was proven to be lacking in public satisfaction or in effectiveness and how would this be related into the joint committee. Clarity at the outset would be welcome in order to ensure that this power has sanctions and that Councils can comment fully on its implications.

354. Craigavon CSP highlights the need for a robust, independent assessment of the levels of public satisfaction to get a clear picture of the performance of both the policing committee and the PCSPs.

355. A number of Community Safety Partnerships (CSPs), District Policing Partnerships (DPPs) and Councils commented that accountability is with three bodies, namely the Joint Committee, Policing Board and the Council, with potential requests from the Department of Justice and that this is a concern given that the process was to simplify lines of accountability and this legislation may led to conflicting targets and requests.

356. During the oral evidence session Larne Borough Council raised concern about the accountability of the four bodies — the joint committee, the council, the Northern Ireland Policing Board and the Department of Justice — in the new proposed PCSP model given that the process was to simplify the lines of accountability, not to add more bureaucracy. Again the view was expressed that the legislation may lead to conflicting targets and requests in the future and lines of accountability needed to be simplified.

357. Regarding indemnities and insurance, Strabane, Derry and Limavady DPPs and Strabane District Council seek clarification on the relationship between the council and PCSP in particular in relation to funding allocations. It would be difficult for a council to justify indemnifying persons or organisations such as the PCSP over which it has no control or responsibility. In the absence of clarity, Strabane District Council is opposed to Schedules 1 and 2, paragraph 15, 16 (1) – (4).

358. In response, the Department highlighted that the provisions within the Bill in relation to indemnities and insurance are carried over from existing provisions for DPPs.

Sub-committees

359. Antrim CSP, DPP and Borough Council felt that, in the absence of information in the Bill on the relationship between the main PCSP and the policing committee, there is a danger that if two different subgroups were set up, communities would not get the best level of service. They consider that there is confusion on lines of accountability and a lack of information on agreed priorities between the Department of Justice and the Policing Board, and that having two separate sets of potentially conflicting objectives could result in perverse outcomes for communities. Antrim CSP, DPP and Borough Council proposed that establishing geographically-based or issue-based groups should be within the remit of the overall body of the PCSP so that a joined-up approach to problem solving at a local level is taken, which will deliver the best for local communities.

360. In response, the Department confirmed that Schedule 1, paragraph 14 addresses these concerns and highlights that the PCSP may constitute other committees, smaller groups, subgroups and offshoots from the partnership.

361. Ballymoney CSP sought assurances that given that the policing committee would be responsible for inviting other organisations to sit on the policing and community safety partnership that there would be equality of representation in the overall partnership.

362. Regarding the role of the policing committee vis-à-vis the partnership as a whole, the Department advised that the legislation refers to the appointment of subcommittees by the policing committee, which may or may not be something that they would want to do.

363. The Department highlighted that those subcommittees would be purely responsible for the restricted functions that the policing committee would look at, and not the roles of the whole

partnership. Again, it is connected to the issue of the policing committee sitting within the partnership and what the point or role of that is.

364. The Department again emphasised that the policing committee would not be working in isolation. The whole partnership encompasses the policing committee, and any subcommittee that the policing committee would set up would, by its very nature, be encompassed within the whole partnership which is why the policing committees should do it.

365. The Department indicated that the provisions allow each PCSP (and DPCSP) to set up other committees to look at specific issues and neighbourhoods and deliver specific projects. These would be made up of five or more members of the Partnership and would in addition be able to co-opt people who are not members of the other committee or the PCSP. There would be no maximum size. The ability to set up these committees provides PCSPs and DPCPS with the flexibility to bring on board additional delivery partners as and when required.

Part 4 - Sport

366. This part of the Bill creates new offences to promote good behaviour by fans of association football, Gaelic games and rugby. The offences are unauthorised pitch incursion; offensive chanting; missile throwing; the possession of alcohol, bottles, flares or fireworks and being drunk at regular matches; and the possession of alcohol on hired buses en route to and from regulated matches. It also introduces football banning orders and bans ticket touting for the purpose of helping to prevent violence and disorder at football matches. A court will be able to make a banning order prohibiting a person from attending certain football matches for a set period. It will be a criminal offence to fail to comply with a football banning order.

367. Chapter 1 and Schedule 3 set out the definitions for regulated matches and the period of a regular match. Chapter 2 deals with the new offences, Chapter 3 deals with alcohol on vehicles travelling to a regulated match, Chapter 4 creates the offence of ticket touting and Chapter 5 deals with banning orders.

368. Given that sport falls within the remit of the Committee for Culture, Arts and Leisure, the Committee for Justice specifically sought the views and comments of that Committee on this part of the Bill.

369. There was broad support among respondents for the intention of the sports provisions and it was recognised that the aim of the Bill is to improve safety arrangements at sports grounds to promote a spectator friendly environment. This aim was welcomed by Sport NI, the major sporting organisations and Belfast City Council. However, there were a large number of issues raised in relation to specific clauses. They included general comments on the provisions; equality issues; legislation versus self regulation; regulated matches; definition of missiles; chanting; pitch incursions; laser pens; drunkenness at matches; drink containers; alcohol at matches; application of legislation that applies in England and Wales; alcohol on vehicles; ticket touts; banning orders; enforcement; and a requirement to include a definition of Ulster GAA.

General provisions of the clauses relating to sport

370. Ulster GAA broadly supports the spirit of the proposed legislation to deal with disorder associated with travelling to and from, attending and behaviour at sporting events. However, it raised a number of overarching issues – clarification must be provided on which measures apply to GAA events, the commencement orders for introduction should not be relied on solely to create exemptions, it should be confirmed that venue operators are in overall control of their events and the Safety of Sports Grounds legislation does not currently demand the presence of

PSNI officers at all fixtures and the legislation should take account of the similar measures which were applied to British sport, in particular football and rugby fixtures played at the same venue but with differing arrangements applying.

371. The Irish Football Association (IFA) fully supported the proposals, viewing them as essential elements of enforcement and helpful in creating a safer environment for football supporters. The Association did however have issues in relation to banning orders and around the time period for the possession of alcohol in any area of the ground from where the match may be directly viewed.

372. The Amalgamation of Official Northern Ireland Supporters Clubs (AONISC) broadly welcomes the proposal to introduce specific legislation on spectator controls to NI. It believes that it is important that the legislation is in line with the rest of the UK and it could act as an effective deterrent and encourage people to behave in a responsible fashion. However the AONISC has concerns with fundamental aspects of the proposals, in particular that elements are unnecessary, superfluous and could have severe ramifications for the future of football social clubs and viewing lounges.

373. Ulster Rugby has no particular objections to the clauses that deal with missile throwing and chanting, but has serious objections to the inclusion of Ravenhill in clause 43. The Ulster Rugby Supporters Club (URSC) was of the same view in relation to clause 43.

374. The Department highlighted that it had very much taken its lead on this part of the Bill from the Northern Ireland Assembly debate on 11 September 2007 in which the Assembly, in response to a Private Members' Motion, called on the responsible department to introduce legislation to address racism, sectarianism and violence at sports events, having widened the original motion beyond football alone. Allied to this is the desire of the Department of Culture, Arts and Leisure to improve spectator control and crowd safety across the three main spectator sports in Northern Ireland. The package provides essential criminal law measures to complement the Safety of Sports Grounds (Northern Ireland) Order 2006 which principally affects Association Football, Gaelic Games and Rugby Union. The sports law proposals are therefore a package that helps sports authorities make improvements in safety terms and in response to an identified need at a strategic level.

375. The Department acknowledged that local sports bodies have already made great strides in improving their sporting events and atmosphere, but indicated that other jurisdictions have used crowd safety and sports law packages to great effect, increasing individual and family attendances. The sports law package is designed to support all of the work already undertaken and to help sport move even further forward.

Equality issues

376. Some respondents consider that the proposals within the legislation are discriminatory, in that Chapters 4 and 5, which cover ticket touts and banning orders in relation to regulated matches are focussed on football and given that the Minister of Justice has indicated that the other sports will be dealt with differently to football in relation to clause 43.

377. AONISC is also concerned that the emphasis of the proposals are directed towards football and asserts that many of the offences outlined are not exclusive to football and may also be relevant to Rugby and GAA. It points out that according to a DCAL 2004 survey 85% of fans attending Northern Ireland international matches and 78% of fans attending Irish League matches were male and protestant. It is essential to ensure that this section of the community is not unfairly discriminated against by this legislation.

378. The Department disagreed with the analysis that, by having a number of provisions apply solely to football, they were unfairly targeted at Protestant working class males.

379. The Department also disagreed that the Bill is anti-football or even anti-sport. As is the case with the offences and penalties aspects of the Bill as a whole, the powers are directed at those who break the law whatever their background. The Bill is designed to deliver improved community safety and public protection to everyone in Northern Ireland irrespective of their background. It will be the people who offend – and who choose to so offend – that will be affected by these powers, not because they are one religion or class or another.

Legislation versus self regulation

380. The Public Prosecution Service (PPS) indicated that while the policy intent behind the provisions relating to content is clear, there may be difficulty in certain circumstances in satisfying the test for prosecution or in proving the commission of an offence to the requisite criminal standard, namely beyond reasonable doubt. The PPS stated that confidence in the administration of justice is liable to be undermined where difficulties of proof lead to under-usage of the offence or a disproportionate number of acquittals.

381. During the oral evidence sessions, the Committee questioned whether the sports provisions within the Bill may represent legislation for legislation's sake. Issues discussed with the witnesses and the Department included whether there was already legislation in place to deal with the situations; the fact the Bill was creating criminal offences to deal with safety issues; and the reliance on stewards and volunteers for evidence and whether the offences would be enforceable. The question was also asked as to whether legislation was being used to deal with a minority who are causing harm to the majority and could an alternative to legislation and the creation of more criminal offences be more education, information and self-regulation.

382. The Committee explored the alternative of placing more emphasis on self regulation and strengthening the sports individual codes of conduct.

383. The PSNI confirmed that the vast majority of sporting events and fans do not pose any problems. The PSNI's ideal preference was self-regulation. Many clubs deal effectively with the issues daily at a law level within the management of the sports events and the PSNI stated self-regulation of such management has improved markedly and measurably over the past 10 years. The PSNI however highlighted that the effect of any legislation is not just to enforce but to deter and they welcomed the proposals, which would be useful in the small number of occasions when needed. They said the powers would be used discretely, sensibly and proportionately and in their view dealt with some gaps in the current law. They indicated that just because the powers are enacted on the statute book did not mean they would be used. When pressed by the Committee on the necessity of the provisions they did acknowledge that no police officer would turn down additional powers.

384. The Department stated that the sport clauses are about sending a positive message that our sports grounds are places where people can be safe, bring their families and be able to have fun, and be assured of basic standards of decent behaviour. The provisions sit alongside what the sports themselves are doing to make sport more family friendly and encourage people to come out and support their local clubs.

385. It is the Department's view that there are limits to the existing law which this section of the Bill is trying to address. One example is the current law on alcohol on vehicles, which is about the consumption of alcohol. This new provision however is saying that alcohol should not be

brought on to vehicles at all. The new provision regarding throwing missiles will also strengthen current law on such offences.

386. The Department indicated that it was of the view that the three sports concerned were generally content with most of the proposals provided there were certain adaptations to suit their circumstances and that certain aspects do not apply. The Committee clarified that the IFA had asked for legislation but neither the GAA nor Ulster Rugby had actively done so.

Regulated matches

387. Three issues were raised with regard to regulated matches.

388. Concerns were raised by several respondents that the time period to be applied in relation to regulated matches of two hours before and ending one hour afterwards is too long. Cllr Ken Robinson MLA highlighted that the majority of spectators arrive in the period beginning 30 minutes before kick-off for major games with the majority leaving immediately after the final whistle, reducing the need for a one hour time period afterwards. The IFA also viewed the proposed time period as lengthy.

389. The second issue relates to what is a designated match.

390. NIHRC states that the principle of proportionality must be considered. As long as there is an evidence base justifying the application of the special measure to particular types of events the European Court of Human Rights principles of proportionately and non-discrimination should be satisfied.

391. Ulster GAA believes that the requirements about how a game becomes regulated need to be examined and that paragraph 6(b) of Schedule 3 takes the scope of the legislation too far. Ulster GAA points out that the safety of sports ground legislation identifies two types of designation. First, grounds are designated, which normally applies to the main county grounds that it uses, the grounds used by the two top leagues in Irish Football Association competitions, the ground used by Derry City and that used by the Ulster Branch of the IRFU. Secondly, stands can be designated which includes those in grounds that are used almost entirely by clubs. The scope of paragraph 6(b) would bring designated stands within legislation even though the games being played there would not be part of any planning by the Ulster GAA or by the safety advisory groups that would be set up under the safety of sports grounds legislation. Ulster GAA believes that the inclusion of paragraph 6(b) in the definition of regulated games poses a serious problem, is superfluous and impossible to enforce.

392. Sport NI also states that some matches played at the venues covered by the sports provisions can often host junior/youth or other matches with low or minimal attendances. It may not therefore always be appropriate to apply the legislative provisions as proposed for such fixtures.

393. The third issue was raised by the PPS in relation to the provisions of Schedule 3 which appear to extend jurisdiction for prosecution of offences committed at certain gaelic games and rugby taking place extraterritorially i.e anywhere outside Northern Ireland. If this is the intended impact of the provisions the PPS recommends that it be expressly stated in the body of legislation that certain offences are extraterritorial.

394. The PPS indicated that investigation and prosecution of offences committed outside the United Kingdom, whether during cross-border or international sporting occasions, may give rise to difficulty, particularly in gathering the necessary evidential proofs.

395. In response the Department highlighted that clause 36 sets the framework for the sports and matches across which the new provisions would operate. Clause 36 and Schedule 3, which have to be read together, define the concept of regulated matches and outline which powers will apply to which matches. For football, regulated matches are generally defined in terms of teams playing in certain competitions; whereas for Gaelic Games and Ulster Rugby, the definitions are based on sports grounds.

396. During oral evidence the Department indicated that consideration could be given to substitute other periods of time. The Department also undertook to give further consideration to the concerns about the designation not just of grounds but of stands and how broadly that would apply to matches.

Definition of missiles

397. While the provision for the throwing of missiles was generally welcomed, particularly by Sport NI who considered it to be an essential component relating to safety at sports grounds, some respondents wished to see a clearer definition of "missile".

398. The CAL Committee supported the clause subject to the definition of the word 'missile' and also expected that sufficient court discretion would be exercised in determining fines in a proportionate manner which would differentiate, for example, between someone throwing a coin with malicious intent and someone throwing a snowball.

399. Justice Committee Members also questioned the use of the wording "to throw anything" and whether existing legislation already covers offences of throwing missiles onto a pitch.

400. The Department clarified that it is illegal to throw something onto the pitch if it constitutes an assault or an attempted assault, but, in order to show that, it has to be shown that there was an intention to hit someone and cause injury. Simply randomly throwing something that lands on the pitch is not illegal. The message that the Department is trying to get across with this provision is that, when people are in a sports stadium, they should not throw anything.

Chanting

401. While there was widespread support for the intentions of the legislation with regard to chanting, several respondents sought clarity on the term 'indecent' and a question was raised regarding political opinion not being included.

402. The inclusion of the word "sectarian" had been raised by the Committee during pre-legislative discussions with the Department and the CAL Committee also recommended this.

403. The NIHRC states that any restriction criminalising particular speech or expression requires justification under Article 10(2) of the ECHR which sets out permitted limitations on freedom of speech. This allows restrictions and penalties only when they are clearly prescribed by law (legal certainty) and are 'necessary in a democratic society' for one of a number of legitimate aims, including protecting the reputation or rights of others. In order for a restriction to be deemed 'necessary in a democratic society' the state must demonstrate that there is pressing social need for the measure and that the restriction is proportionate to addressing that need. The Commission advises that the inclusion of a measure to sanction chanting containing sectarian and other discriminatory expression on interrelated grounds is consistent with human rights standards.

404. The Commission does not regard defining sectarianism in Northern Ireland as a complex matter and draws attention to the well developed body of international standards from which definition can be drawn.

405. The Committee also discussed whether there was a need for the clause as offensive chanting is already an offence if it incites hatred or causes offence.

406. In response, the Department highlights that clause 38 makes it an offence to engage in indecent, threatening, abusive or insulting chanting and considers that chanting that is sectarian is already covered – by reference to race, nationality, religion and the other Section 75 categories. It is also aware that to date there has been no definition in law of "sectarian" and there had been concerns about how successfully it could be defined in law – other than by use of the Section 75 list. However, given the views expressed by the Committee, the Department undertook to look again at this clause, with a view to including "sectarian".

407. With regard to the term "indecent" the Department believes that interpretation is best left to match officials, police and ultimately the courts. The Department did not wish the chanting offence to limit a person's fun at sporting events. Friendly "banter" could continue - however if it were to stray into the offensive arena it will certainly be caught by the offence. Again it will be for match organisers to step in or ultimately for the police and courts to act.

408. The Department acknowledged that offensive chanting is already an offence if it incites hatred, however showing that it does is sometimes difficult. The purpose of this new provision is to promote a standard of behaviour.

Pitch incursions

409. While Sport NI and the IFA fully support the provisions relating to going onto the playing area, some respondents were concerned that the provisions would create an offence where pitch incursions occur on celebratory occasions and are often a long standing tradition. Several respondents highlighted that existing sports ground regulations already cover pitch incursions.

410. The CAL Committee recommends the inclusion of the phrase "controlled celebratory occasions" as pitch invasions are acceptable in some sports. The CAL Committee was concerned that the phrase "which shall be for that person to prove" places too much onus on the individual and recommends that this phrase is removed from the clause.

411. Both Ulster GAA and the CAL Committee recommends that the phrase "lawful excuse" is clarified and in particular questions if this covers emergency evacuation procedures.

412. The Department states that the offence provided for in clause 39 is needed primarily for safety reasons. With most perimeter fences to be taken down under new DCAL ground safety rules allowing safe, emergency spill-off from terraces, new risks are presented. Pitch incursion – even for good-humoured reasons – can cause problems that all three sports recognise. It can mask some who might have less humorous intent and referees and players need protecting too. It can also damage pitches, affect commercial contracts and lead to injuries and civil claims. More seriously, it can also provoke trouble between rival fans.

413. The Department emphasised that the provision will only apply to unauthorised pitch incursions, and the situations when pitch incursion is authorised will be for match organisers to make clear as part of their ground rules.

Laser Pens

414. Several respondents, including the CAL Committee, recommended that laser pens are included among those prohibited items under clause 40.

415. In response the Department highlighted that existing legislation already covers anyone with illegally made/sold laser pens to ensure that they are in breach of the law.

416. During the oral evidence session the Department stated that laser pens that are legal may be a nuisance, but do not cause injury. Illegally made or sold pens are the problem, and it is already an offence to possess illegally made pens. In its view match organisers could ban fans from bringing any sort of laser pen into a match under the terms and conditions of buying a ticket and they could eject fans who do so. So far individual sports have not flagged up this issue as a major problem. The Department indicated it was willing to keep the matter under review.

Drunkenness at matches

417. The requirement for legislation in this area was questioned as each of the sporting organisations confirmed that procedures were already in place to refuse entry or remove persons from their respective grounds if they behaved in a drunken and/or disorderly way and there are existing laws already.

418. Views were also expressed by some respondents that the definition of "drunk" needed to be more explicit and questions were raised by the Committee regarding how the application of this provision would work in practice.

419. The PPS states there may be difficulty in certain circumstances in satisfying the test for prosecution or in proving the commission of an offence to the requisite criminal standard, namely beyond reasonable doubt. The proposed offence in clause 41 of being drunk at a regulated match does not include a definition of drunkenness for the purposes of the offence. Accordingly, an assessment of a defendant's condition is likely to be open to challenge on a number of grounds, including that such assessment is subjective and wrong, and that the alleged symptoms observed are attributable to other explanations such as tiredness, medication and/or drugs.

420. The Department indicated that the same sort of tests will be used as those that are used for ordinary drunkenness offences. The offence of "being drunk in a public place" was put into legislation in 1980. For this offence whether a person is drunk is for the police, and ultimately, if a case were prosecuted, the courts, to decide – "drunk" is not defined in that legislation. The Department is of the view that it is best to remain consistent with this approach and with other legislation. Defining "drunk" might only limit its meaning with undesirable effect. The Court would draw on the evidence of people who were nearby, stewards and the police, if they were there. The legislation supports existing procedures and codes of conduct.

Possession of Drink containers

421. This provision raised concerns in relation to its necessity and its enforceability, and both the Committee for Justice and the CAL Committee queried the need for this provision.

422. Sport NI is aware that bottles have been used as missiles and weapons at some soccer matches in Northern Ireland in recent years and considers that guidance is required to clarify the term "article capable of causing injury" and whether it refers to plastic bottles with / without the cap removed and plastic receptacles such as cartons.

423. Several respondents stated that this provision needs to be more explicit to allow for the taking into grounds of reusable containers which may contain a substance that cannot necessarily be bought within the ground, such as a child's drink cup or baby's bottle. Inflexibility within legislation could result in needless prosecution, or difficulty in obtaining entry for families.

424. Ulster GAA believes this issue is best addressed under the general application of the safety certificate provided by the local authority and within the responsibility of the event controller in the organising of the games and under its ground regulations.

425. In response the Department highlighted that the offence is focused on drink containers which could cause injury that are routinely either discarded when empty or normally returned to the supplier. Drink cans or bottles are what is intended. The Department is aware that in many instances, for safety reasons, sports clubs already remove drinks containers from spectators entering the ground. Clause 42 is designed to provide the authority of the criminal law as an important supporting power. Spectators could then be told that it is in fact a criminal offence to bring such containers in.

426. The Department considers the level of detail used to describe a "drink container" as essential for the practical working of the provisions. It is important that it clearly defines which items people will or will not be allowed to bring to sporting events.

Alcohol at matches

427. This provision also raised concerns about the need for it and again the question of whether the issues it pertained to could be better achieved through regulation by the Sports Governing bodies arose.

428. The AONISC contends that clause 41, "Being drunk at a regulated match", is more than sufficient to deal with any drunkenness at matches and believes that the Bill has the potential to criminalise a person for having a single drink — a person who is not drunk — which is excessive, given that there will be powers to deal with persons should they become drunk.

429. Sport NI considers that care should be exercised in the implementation of this provision and it should be applied on the basis of associated risk to spectators who attend fixtures and the reputation of that sport.

430. It was noted that the Minister of Justice has already indicated he is minded to implement the legislation at different levels across the three main sports. This approach was supported by Sport NI who regarding that provisions relating to the possession and sale of alcohol should be applied on the basis of associated risk to spectators who attend fixtures.

431. Sport NI considers it appropriate for this provision to be implemented at 'designated' venues where soccer is played given persons in possession of alcohol at some football matches have behaved in a disorderly and alcohol related anti social manner in recent years. However, it would not be appropriate to implement this provision in relation to the 'designated' venue where rugby or Gaelic sports are played unless there were to be deterioration in alcohol related spectator behaviour.

432. Cllr Ken Robinson MLA however believes that such a differential approach, which the Department has indicated it is minded to adopt, would raise equality issues. Cllr Robinson also proposed that the clause should be expanded to include the Odyssey Arena and other sporting occasions held at venues with large numbers such as race courses.

433. Ulster Rugby strongly opposes the inclusion of matches played at Ravenhill in clause 43 and is concerned about relying solely on a commencement order to create an exemption. Ulster Rugby notes that the intention of the sports clauses is to complement the safety in sports ground legislation, however believes this provision goes far beyond the scope of that legislation and is disproportionate when applied to Ulster Rugby. It urges the Committee to remove it completely from clause 43 for the following reasons:

- there is no history of disorder problems at Ravenhill
- it is inconsistent with legislation elsewhere in the UK and Europe where such legislation applies only to soccer
- it will have grave implications for the future financial viability of Ulster Rugby
- if clause 43 were to apply to Ulster Rugby, Ravenhill would be the only rugby ground in the major competitions of the Magners League and Heineken Cup which are played across England, Ireland, Scotland, Wales, Italy and France where restrictions around the consumption of alcohol are in place
- it could affect obligations to tournament sponsors
- it is inconsistent with the plans for the redevelopment of Ravenhill which were produced in conjunction with Sport NI and with prior consultation with DCAL, and rely heavily on the provision of better food and beverage facilities within the grounds, and the supply of food and beverage to people in their seats
- major rugby matches at Ravenhill create a boost for tourism in Belfast and beyond. The limitations on being able to enjoy a sociable drink whilst watching their team at Ravenhill may make the notion of a weekend in Belfast, based around rugby, a less attractive proposition for opposition supporters and particularly those who expect to be able to enjoy a sociable drink whilst watching the game because they can do so at any other rugby match they attend.

434. The URSC, who represents the views of fans who attend Ravenhill on match nights, and several individual rugby fans, also stressed that this legislation is irrelevant given the non existence of crowd trouble at Ravenhill over the past 10 years and reiterated many of the points made by Ulster Rugby.

435. Ulster GAA suggests that, in relation to the possession of alcohol in sports grounds application of the legislation that applies in England and Wales is worth considering when it comes to being more specific about the level of application for different sports rather than using commencement orders. The GAA considers that it is probably best placed, having used Croke Park to manage other fixtures including soccer and rugby, to know that the governing bodies in control of the fixtures should have a level of autonomy and be able to look at the profile of their spectators and the categorisation of fixtures from a risk assessment point of view. Ulster GAA asks for that control to be afforded to governing bodies and it wishes to have more autonomy to control the possession of alcohol at matches rather than there being blanket legislation.

436. Ulster GAA stated that the commencement orders for introduction of clause 43 should not be relied on solely to create exemptions. It indicated that, in taking some of those matters forward, different sports might need entirely different requirements placed on them and believes that regulation is better dealt with by safety advisory groups rather than specific legislation.

437. In response, the Department states that clause 43 creates the offence of possession of alcohol in view of the pitch (excluding rooms to which the general public are not admitted) during set times and highlighted that over-consumption at any of the sports could lead to anti-social behaviour.

438. It's view has been that it is therefore important to provide a consistent framework within which these proposals could be applied to each sport without penalising the well-behaved. The Bill therefore allows for sport flexibility and provides a model (within clause 43 and clause 107 on commencement) that would allow the application of the powers to individual sports to be considered and consulted upon and commenced at different times.

439. The Department proposed to take the powers relating to alcohol, but not to commence them without further consultation with the Committee and the sports bodies. That was the case for all three sports. The Department acknowledged the concerns of Ulster Rugby and agreed that there may not be a need for the provisions in relation to rugby at the moment. However it believed that the powers should be there so that if the need arises, they could, in principle, be introduced very quickly.

440. The Department indicated that it had received feedback that the situation arising from the legislation in England and Wales which resulted in different rules applying for different sports that are played in the same stadium – the no alcohol rules apply at soccer matches but spectators are permitted to consume alcohol in view of the pitch at rugby matches – can lead to confusion among fans.

Alcohol on vehicles

441. The CAL Committee supported this provision subject to clarification around some of the issues raised in written and oral evidence and clarification of the treatment of cross border events. Both Sport NI and the IFA also supported it.

442. Ulster GAA welcomes any measures that stop situations in which buses arrive at grounds and the supporters on them cause a public disorder or a difficulty. It highlights some difficulties that will occur given that only two thirds of the association will be affected by the legislation. As a governing body, Ulster GAA has responsibility for Cavan, Donegal and Monaghan. A cross-jurisdictional partnership with the relevant authorities is important and clarity is sought on the operational function of any cross jurisdictional co-operation on the policing of such matters. Ulster GAA also noted that the reverse operational application to transport operating outside Northern Ireland travelling to regulated matches is not specifically referred to in the legislation.

443. AONISC however has concerns about alcohol being banned on buses travelling to designated football matches, especially international matches involving the Northern Ireland national team as these matches tend not to be contentious and the period of time spent travelling is quite often relatively short. AONISC is of the view that banning the consumption of alcohol on transport to football games will not eliminate the potential for drunken behaviour in or around football matches. The introduction of a ban on drinking alcohol on any transport to a football match will not stop individual fans from drinking for prolonged periods in bars or public houses in the vicinity of the football ground. Indeed, there is the distinct possibility that fans drinking in bars close to any sporting venue have a greater potential to become drunk than any fan arriving by some form of transport. AONISC believes that legislation already exists to deal adequately with unlawful consumption of alcohol in private-hire transport and that the banning of alcohol whilst travelling to matches is unreasonable in a Northern Ireland context. It would urge a rethink of this clause and the introduction of provisions that are commensurate to the nature of Northern Ireland.

444. The PPS cites the proposed offence in clause 44 as an example of difficulty in proving the commission of an offence to the requisite criminal standard, namely beyond reasonable doubt. Clause 44 requires the prosecution to establish that the operator of a hired vehicle knowingly permitted alcohol to be carried in his vehicle. In the absence of an admission from the operator, the amount of alcohol carried may allow a court to conclude that the operator may have

knowingly permitted alcohol to be carried in the vehicle. This, however, may be more difficult to prove where the amounts of alcohol are small and easily secreted.

445. The PSNI highlighted that this was one of the clauses that perfectly illustrates the fact that it will have more of a deterrent value than an enforcement value and it would be applied with common sense.

446. Cllr Ken Robinson MLA suggests that, while Translink have their own by-laws covering alcohol on trains, it would perhaps be helpful to expand this clause to cover trains as well. Cllr Robinson also suggests that this provision may cause similar difficulties to clause 41 in terms of identifying "drunk".

447. The Department indicated that existing legislation only bans consumption in vehicles. This clause covers possession in vehicles and is about addressing gaps in the existing legislation and building on the existing offence of consuming alcohol on public service vehicles – the new provision tightens things up in terms of making it an offence to possess alcohol on hired buses. The Department's view is that this will also provide additional authority to transport providers and drivers to refuse to take passengers who are intending or are actually consuming alcohol. These are powers that were welcomed by football authorities and GAA – which already have their own codes in place to control spectator travel and drink.

448. Match buses have been linked to disorder en route and at grounds, so the Department thinks it is right to ban possession on hired buses going specifically to matches as well as on the way home. The Department clarified that trains are specifically not included in the provisions as the offences are already covered by rail transport by-laws and the conditions of liquor licences on relevant train services.

Ticket Touts

449. There was support for this provision from Sport NI and the IFA.

450. The AONISC welcomes the proposal in general terms as a means of deterring criminality and promoting public confidence however indicates that if this part of the Bill is about segregation it should be called segregation and not ticket touting and highlighted that segregation only occurs at matches between the bigger teams. The AONISC expressed concerns that the provisions would criminalise fans who buy or sell tickets for friends and suggested it would make more sense to target the matches that are perceived as high risk and put in place arrangements to deal with those rather than cover all games.

451. In response the Department indicated that clause 45 creates an offence of ticket touting at regulated football matches. The Department indicated that the clause was driven by safety concerns and the need to segregate fans. So far, the few matches where segregation has been necessary have been football matches and the clause only applies to those. The Department indicated that ticket touting powers are included, not for reasons of commercial exploitation – distasteful as that may be - but based on issues of public safety both inside and outside grounds.

452. The Department does recognise that the occasions when ticket touting might occur will be limited, in all likelihood to international games or major finals. The provisions are intended to be preventative and as an aid to match organisers and the police.

453. The Department confirmed that the proposed legislation refers to ticket touting being unauthorised and persons being unauthorised. The Department expects that the terms and conditions under which tickets are sold will say that, if someone is passing tickets on to a family

member or an acquaintance or buying them on behalf of identified people, that is fine. The requirement for written authorisation can simply be on the back of the ticket or in the terms and conditions that are published that apply to ticketing. The Department intends to issue some guidance to help the clubs to frame those clauses.

Banning Orders

454. Support for the Banning Orders Provisions came from Sport NI, the PSNI, the IFA and the AONISC, but some issues were raised during the oral evidence. The Committee also questioned whether sports grounds are such dangerous places that banning orders have to be introduced.

455. The CAL Committee agreed that banning orders should be extended to include all categories of matches, not just regulated matches and also to other jurisdictions.

456. The IFA strongly supports the notion of a fully reciprocal system of banning orders throughout the UK and believes a 'stand alone' two tier system is illogical given the high migration of football fans from Northern Ireland to Great Britain. The IFA also highlights that creating a banning order only upon conviction and not fully utilising the 'civil or administrative' process again puts Northern Ireland out of step with the rest of the UK and strongly urges the Committee to review this change. The IFA's grounds for supporting this alternative option is based upon lengthy discussions in England and Wales and especially Scotland where this method has been used to good effect to exclude trouble makers from matches.

457. Cllr Ken Robinson MLA states that any legislation should be capable of dealing with those convicted of misdemeanours around a sporting event, no matter what the event is, by providing for banning orders from similar occasions rather than just focusing on football.

458. The AONISC supports the introduction of banning orders for football supporters where individuals have been engaged in a violent act. It also believes that banning orders should not be restricted to football.

459. The AONISC supports the Department's assertion that making individuals who intend to travel abroad to a football fixture, surrender their passports would be ineffective in Northern Ireland, given that all citizens have the potential to hold dual nationality with the Republic of Ireland. The AONISC favours the method advocated of making the individual have to present themselves to a police station at the time of the match, rather than surrendering their passport.

460. The PSNI noted that the provisions within the Bill differ from the detail contained within the Department's original consultation on the legislative proposals, in that the Bill provides for creation of a banning order only upon conviction, whereas in the original consultation, it was stated that a banning order could be created on application without a prior conviction. The PSNI however remains content with the position taken on the basis that it is a proportionate initial response considering the relative absence of serious football-related disorder experienced elsewhere.

461. The Department confirmed that the intention had been for banning orders to apply beyond Northern Ireland; to be retrospective; and to have a civil application route. However, legal advice had raised concerns that football banning orders requiring a person to report to an NI police station at the time of a match outside NI could be extra-territorial and beyond the scope of the Assembly. The Department was exploring the legislative competence issue and if there was the potential to bring back a provision in relation to a reciprocal system of banning orders throughout the UK the Department would do so.

462. In terms of the civil route the Department had a concern that the imposition of a banning order following what could be lawful conduct, and the potential for remand into custody, would be too wide in the absence of a criminal charge. Retrospective aspects of football banning orders - that they could be imposed following conviction of offences committed before the commencement of the provisions - may contravene Article 7 (no punishment without law) of the European Convention.

463. In relation to views expressed regarding why the provisions were needed, and why the provisions did not apply to other sporting events apart from football the Department stated that football has unfortunately been the sport that has experienced major crowd incidents in recent years and the intention is that these powers will assist in preventing similar incidents in the future. The Department fully acknowledges and welcomes the improvements in behaviour of Northern Ireland team fans. However, the proposals are about addressing and preventing the sort of trouble that has been known to arise - albeit amongst a minority of fans.

464. The Department highlighted that the only thing that would be banned is attendance at regulated matches and expected that the orders would apply to a relatively small number of people. In imposing a banning order, courts will be required by general law to take account of a person's human rights, such as the right to enjoyment and the right to a private life — the usual rights under the ECHR.

Enforcement

465. During the oral evidence sessions the Committee raised issues regarding enforcement. Concerns were expressed regarding who is going to enforce the legislation, particularly as the PSNI is not present at the majority of the matches that will fall within the sporting provisions, and what evidence there was to suggest stewards would do it. Views were expressed that there was no point in introducing legislation if it cannot be enforced.

466. Respondents also expressed concerns that the proposals would be unworkable unless there is adequate stewarding at a match. Even with adequate stewarding concerns were raised as to the role of a steward in enforcing legislation and whether appropriate and robust evidence could be procured.

467. The PPS indicated that while the policy intent behind the sporting provisions is clear , there may be difficulty in certain circumstances in satisfying the test for prosecution or in proving the commission of an offence to the requisite criminal standard, namely beyond reasonable doubt.

468. The PSNI indicated that if they are not present at a match, they are reliant on evidence being presented by third parties who were present. The PSNI have been trying to push to a position in which a lot of these matches are self-regulated, quite successfully over the past years, but if evidence is presented, whether through video footage taken on site or evidence from stewards or marshals, the PSNI will consult with the PPS and decide what meets evidential standard and what does not.

469. The PSNI acknowledged that there could be difficulties if an act takes place when the police are not there and indicated that some of the offences will require a different approach and prior consultation with the PPS. They also highlighted that it would not stop the responsibility on clubs to self-regulate and on occasions ban people from their grounds.

470. In response, the Department states that clause 55 would give police powers of ground entry and personal search but with most games self-stewarded there needed to be clarity of roles and discretion in application. The Department confirms that responsibility for safety at

sports grounds rests with the organisers of games and owners of venues. It will be for match organisers to manage events with the PSNI available should they be required. Match organisers can request their presence if required though police will retain the power to act if it becomes necessary. The package however gives match organisers the strength of the criminal law behind them as an important backstop and preventative tool.

471. The Department indicated that in many ways, it is no different from any other legislation or from situations that occur every day. For instance, there can be trouble in shopping centres, amusement arcades and nightclubs, and, in those instances, there are many situations in which stewards or security guards are the first line of defence.

472. The Department stressed the wider package, which includes issues around safety and the concept of good safety management, and good behaviour fitting in with that and creating the kind of safe, welcoming and comfortable environment for sporting grounds. The Department views the provisions as a useful deterrent and a tool to encourage an acceptable standard of behaviour.

A requirement to include a definition of Ulster GAA

473. Ulster GAA is concerned that, in setting out the definitions of regulated matches, the Association that they represent and that controls Gaelic games is not defined in Schedule 3, and this may create a potential loophole in the future.

474. The Department pointed out that other organisations such as the IFA and IRFU are defined in Schedule 3 because it mentions these bodies specifically. The Bill however refers to gaelic games not the GAA, therefore there is no need to include a definition. The Department undertook to ensure that the current wording of Schedule 3 fully covered Ulster GAA and in due course confirmed that this was the case.

Part 5 – Treatment of Offenders

475. This part of the Bill makes various amendments to existing legislation.

476. There was broad support for the provisions within this part of the Bill, with the Bar Council recognising that the provisions are "tidy up" improvements, not new sentences in themselves, addressing gaps and inconsistencies in existing laws and the PSNI stating that the proposals will provide more robust sentencing options.

477. Comments were made in both written and oral evidence on a number of issues including the increases in penalties for certain knife offences and for common assault; the extension of the maximum period for deferment of sentences; breach of licence conditions by sex offenders; and supervised activity orders.

Increases in penalties in respect of common assault and knife crime

478. Extern and the PSNI support the increase in maximum penalties in respect of common assault and knife crime.

479. Extern is of the view that the increases denote the seriousness of such illegal behaviour.

480. The PSNI states that while it is of some reassurance that the number of knife related incidents in Northern Ireland schools remains relatively low the proposal for an increase in

penalties for knife offences in schools will both act as a deterrent and demonstrate the commitment of the devolved administration to ensure that schools remain a safe environment.

481. The Department highlighted that the provision in clause 56 to increase the maximum penalty for common assault to six months imprisonment was developed at the request of District Judges, who reported that the existing maximum penalty of three months imprisonment was not sufficient to deal with the wide range of cases tried under common assault. The proposal was also supported by the Minister of Health as it would have the benefit of increasing the sentencing powers available to the courts when dealing with cases relating to health care workers assaulted in the course of their duties.

482. The Department also indicated that clause 57 amends an inaccurate sub-section reference in Article 90 of the Criminal Justice (NI) Order 2008 to ensure the full and consistent application of the 2008 package of maximum sentences for offences involving knives, offensive weapons, etc,.

483. In response to questions by the Committee during oral evidence the Department confirmed that the increase in penalties relating to knife crime would apply to juveniles and adults.

Deferment period of sentences

484. Extern considers that the extension of the deferment period must be seen as giving the offender a more realistic opportunity to show change, improvement and evidence of sustaining such. Extern also recognises that the offender would have the opportunity to comply with required programmes but may require some level of support to maximise effectiveness and positive outcomes.

485. The Department states that clause 58 increases the period for which sentences can be deferred from six months to twelve months. This power will allow courts to better monitor improvements in behaviour ahead of sentencing. The increase to 12 months was requested by District Judges who felt that the longer period would offer them a better timeframe for assessing the behaviour of some offenders ahead of sentence. The Department's view is that the extra time will create real prospects for offenders to show good behaviour; indicate an ability to stay out of trouble; and demonstrate a change before informed sentencing takes place. The Department did not envisage an increased level of support would need to be delivered as a result of extending the deferment period.

Breach of licence conditions by sex offenders

486. The Probation Board NI (PBNI) welcomes clause 59(11) (a) as a means of overcoming problems, associated with petty sessions boundaries, in respect of warrant applications for offenders residing in Northern Ireland. In relation to warrant applications required outside of office hours, PBNI would ask that the single jurisdiction boundary also applies to warrant applications before Lay Magistrates. In addition, it would be beneficial to extend clause 59 (11) (a) to custody Probation Orders and Probation Orders respectively.

487. The PBNI also points out that the provision does not deal with the bigger issue, of territoriality in respect of Article 26 Orders, as per the Criminal Justice (NI) Order 1996. As the law stands at present Article 26 Orders are limited to the territory of Northern Ireland. Therefore if an offender leaves Northern Ireland and travels / moves to England, Scotland or Wales, the Article 26 Order is not enforceable. Furthermore sex offenders, in such circumstances, cannot be compelled to return to Northern Ireland. Given the potential public protection concerns that

could arise in such instances, PBNI recommends that legislative change is made to extend the provision of Article 26 Orders, to the jurisdiction of England and Wales; and Scotland.

488. In response to the issues raised by the Probation Board, the Department stated that creating a single jurisdiction for warrant applications, custody probation and probation orders had not been considered for the Bill but will be considered as part of a wider review of jurisdictional boundaries for future legislation. Extending the territoriality and enforcement of Article 26 licences beyond Northern Ireland could not be created by way of a NI Justice Bill and would require amendment to UK legislation.

489. The Department recognises that wider powers would be useful beyond this jurisdiction and will raise with the Ministry of Justice and the Home Office the question of whether those changes can be accommodated in future legislation for England and Wales. The Department is also prepared to look at whether the provisions on warrants could be extended to custody orders and probation orders as well and will consider it for future legislation.

490. The Committee welcomed the commitments given by the Department on these matters and will monitor progress in this area.

491. The Department also highlighted that it is working separately on an EU decision on mutual recognition which will be helpful in enforcing things in other European countries, including the Republic of Ireland.

Supervised activity orders

492. In its oral evidence to Committee, PBNI stated that in respect of supervised activity orders it has made preparations to pilot disposal and can see the benefits of those orders, such as the direct benefit to the community through community service work and reserving prison for those who pose the greatest risk to the public.

493. The NIHRC indicated that it has previously drawn attention to the lack of an alternative to custody for fine defaulters in Northern Ireland and that it is disappointing that seemingly minor amendments to commencing the supervised activity order scheme (legislated for in the Criminal Justice (NI) Order 2008), are now part of a wide-ranging Justice Bill, the outworking of which may lead to further delay in the introduction of an alternative disposal.

494. In respect of clause 63(2)(c), the Commission raises concerns that the circumstances in which the Court would consider committal more appropriate than a supervised activity order should not rest simply on the availability of a supervised activity order in a particular locality. A fine defaulter living in one area of Northern Ireland could be committed to prison for fine defaulting whereas another living in an area covered by such a scheme could benefit from a non-custodial disposal. The Commission sought clarification as to when supervised activity orders will be piloted; what geographical area will be covered; and how long the pilot is envisaged to run prior to evaluation.

495. The Department indicated that clause 63 is a technical adjustment to allow fines imposed abroad to be mapped onto NI supervised activity order powers. The clause ensures that supervised activity orders, when introduced, are available to magistrates' courts in respect of anyone who has had a financial penalty imposed elsewhere in the EU, who then returns or moves to Northern Ireland without having paid the fine, and in respect of whom the penalty is transferred to Northern Ireland.

496. The Department's view is that it is important to have the opportunity to run a short pilot on supervised activity orders for a number of months to see how they work in practice and how linkages between the Court and the Probation Service work.

497. During oral evidence the Committee sought further clarification regarding the proposed pilot project. In response the Department indicated that it would look at supervised activity orders and a possible pilot project in the context of a wider fine default strategy.

Part 6: Alternatives to prosecution

498. This part provides for two new diversionary disposals – penalty notices and conditional cautions – aimed at dealing effectively with minor offences outside the court room. They may be offered to offenders as an alternative to prosecution in suitable cases but offenders will retain the right to ask to have their case heard at court instead.

499. Penalty notices are introduced for first-time or non-habitual offenders committing a prescribed offence. Paying the notice within 28 days discharges his liability for that offence. They are issued by the police, without a direction from the PPS. There are 7 eligible offences which are listed in Schedule 4. Offences will attract either £40 or £80 penalties. Where recipients take no action within 28 days of the issue of the penalty, its value is uplifted by 50%, registered as a court fine and enforced through existing court fine default arrangements.

500. The PPS is currently able to direct the issue of an unconditional caution (by police or departmental officials) as a disposal in suitable cases. The conditional caution provisions will enable prosecutors to attach rehabilitative and reparative conditions to a caution with which the offender must comply or face reconsideration of prosecution for the original offence. This disposal is intended to be used for individuals who might willingly avail of the opportunity to begin addressing any issues underpinning their offending behaviour in order to minimise their risk of re-offending. Rehabilitative conditions would include for example attendance at relevant programmes, whilst reparative conditions may include an oral or written apology to a victim or other reparative activity to make good the harm caused.

501. There were a number of issues raised on this Part of the Bill in both written and oral evidence including the general principle of alternatives to prosecution; operation of the penalty offences system; recommendation of diversionary measures rather than fines; restriction of application to over 18s; protection of an individual's rights; requirement for safeguards and guidance for police officers; conditional cautions; consideration of victims; provision for vulnerable offenders and young people; and Assembly scrutiny of delegated powers.

General principle of alternatives to prosecution

502. There was a general welcome for the introduction of alternatives to prosecution as a means of freeing up police officers and court officials; as a cost effective measure and as a means of promoting restorative interventions involving the victim and the community.

503. The Prisoner Ombudsman for Northern Ireland strongly supports the new proposals. She knows through her work that often the needs of victims are not best addressed through an offender receiving a prison sentence and often the length of the sentence means that it is impossible for the Prison Service to do any meaningful work with the prisoner. The opportunities for this are further reduced if a prisoner is on remand.

504. Some interested parties expressed disappointment that fixed penalties were being proposed as an alternative to prosecution and outlined their preference for the use of other non-monetary

diversionary options. In many cases this was based on the premise that those unable to afford to pay a fixed penalty would inevitably end up in the criminal justice system on default without any consideration of the sometimes complex needs that underpinned their offending behaviour.

505. In response, the Department of Justice indicated that fines remain the most commonly used disposal at court, accounting for around two thirds of all sentences imposed in any year. The proposed fixed penalty therefore does not represent an additional application of a financial penalty but rather an alternative to the court fine which would otherwise be imposed in those cases. The fixed penalty amounts of £40 and £80 are pitched slightly lower than the average court fine which a first-time or non-habitual offender is likely to receive for one of the seven eligible offences proposed. An individual retains the right to opt to have the offence considered at a court hearing at which their means can be taken into consideration in setting the appropriate court fine level or agreeing payment by instalment.

506. During pre-legislative consultation on these proposals, the Committee recommended an extension to the arrangements for dealing with first-time petty shoplifting to provide that a fixed penalty could be issued in a case of petty shoplifting where the individual agreed to replace goods which had been eaten or inadvertently spoiled and not just where goods were recovered in a re-saleable condition.

507. The Department accepts the value in this suggestion and proposes to supplement the provision in the administrative guidance to police accordingly. This will provide police officers with additional discretion to issue fixed penalty notices in cases of first-time petty shoplifting where the offender and the retailer are in agreement to the cost of spoiled or consumed goods under £100 being reimbursed.

508. The Committee welcomes the action being taken by the Department in response to its views.

Operation of the penalty offences system

509. The PSNI outlined its understanding of the proposed system and the differing manner in which various offences will be handled. It is concerned that this differing approach may add unnecessary bureaucracy and suggests that an alternative, simpler process could be based on the use of a Penalty Notice for up to two offences in a rolling twelve month period. For example, an individual can have one issued for criminal damage and a further one for theft within a rolling year. However any second or subsequent Penalty Notice for the same offence would only be issued in cases where another non-court disposal is deemed inappropriate.

510. It is the PSNI's view that penalty notices will best contribute to effective justice as one of a range of available measures which includes Discretion, Informed Warnings, Cautions and Prosecutions and which form part of an escalating process to address offending.

Recommendation of diversionary measures rather than fines

511. Several respondents recommended increased emphasis on alternatives to divert people from the criminal justice system and address the root cause of the offending.

512. Include Youth recommends the use of effective diversionary alternatives for young people and is sceptical as to whether the approach favoured within the Bill, of using fines and conditional cautions, is the best method to keep young people out of the criminal justice system and to keep them from re-offending.

513. Include Youth highlights that the current proposals will not assist someone whose offending behaviour is occurring within a context of mental health problems, drug and alcohol abuse, homelessness, dealing with past experiences of abuse and a chaotic and unstable social background.

514. A holistic early intervention and diversionary approach will not only be more cost effective but will also actually deliver the desired outcome. Following the oral evidence session, Include Youth wrote again to the Committee and stated it was now of the opinion that the proposals about the use of fixed penalty notices and conditional cautions should be removed from the legislation and held back until the findings of the Youth Justice Review, the development of the Reducing Offending Strategy and the Prison Review can be assessed.

515. NIACRO accepts that penalty notices and conditional cautions for minor offences may reduce police, prosecution service and court caseload. They may also reduce delay in the justice system but NIACRO disputes that they will reduce re-offending.

516. NIACRO supports focussed interventions which can assist those involved in low level offending in remaining out of the criminal justice system. It proposes a system of assessment of offenders at the first point of contact, when they are apprehended or being charged with a low level offence. Instead of immediately being issued with a penalty, the individual should be offered a referral to an appropriate service. In offering a diversion as the first alternative to prosecution, the causes of offending behaviour can be addressed. NIACRO believes its proposals could result in the same cost reductions as is being suggested can be achieved by these proposals.

517. NIACRO acknowledges the DOJ proposals include a rehabilitative element via conditional cautions and commends the Department for seeking alternatives to prosecution. However it is concerned the proposals focus almost exclusively on fines and conditional cautions neither of which deal with the causes of offending behaviour. NIACRO recommends the introduction of a proper diversionary based system, rather than reliance on fine based solutions and conditional cautions, as alternatives to prosecution.

518. The WSN and Women's Aid welcome the focus on developing alternatives to prosecution. However both are concerned that Part 6 of the Bill relating to alternatives to prosecution focuses mainly on financial penalties which will not address the causes of offending behaviour. They believe that financial penalties are not a suitable alternative for all offenders, particularly female offenders given that the recently published "Strategy to Manage Women Offenders and those Vulnerable to Offending Behaviour" acknowledges that poverty is one of the prime motivators for women becoming involved in offending behaviour. They also have concerns that conditional cautions will continue to bring people into the Criminal Justice System and support the view that interventions should take place to divert low level offenders away from the criminal justice system and address the causes of offending behaviour.

519. The NIHRC has consistently stated its preference for a strengthening of alternative or diversionary measures that address the root causes of re-offending, rather than recourse to additional penalties for minor offences that have the potential to escalate to fine default and potential imprisonment, particularly for low income groups. In considering the imposition of a fine as an appropriate response, the high levels of poverty that exist in Northern Ireland must be acknowledged along with the potential difficulties that this may present in relation to fine default.

520. The Department highlights that there are already a range of existing diversionary measures – based around restorative interventions, warnings and cautions - which act as alternatives to prosecution. The fixed penalty provisions increase the range of options available for responding

proportionately to isolated and uncontested incidences of minor offending by mainly first-time offenders. The seven eligible offences which have been identified would usually, on conviction in the Magistrates' Court, result in a court fine of £100 or less.

521. In response to questions from the Committee, the Department provided a list of existing alternatives to prosecution. These include verbal warning; road traffic fixed penalties; driver improvement scheme; police discretion; juvenile and adult informal warnings; juvenile restorative caution; adult caution; youth conference order; and community based restorative justice disposal (authorised by PPS).

Restriction of application to over 18s

522. MindWise notes that the penalty notice is for people over 18 years and suggests this should read 'people who have attained the age of 18 years'. The term over 18 years suggests this is aimed at those people aged 19 years and above. The age of adulthood is 18 years with a child being under 18 years. Include Youth welcomes the restriction of fixed penalty notices to over 18 year olds. However, it is concerned that police officers may mistakenly think that a youth may be over 18 years old when they are not.

523. Some respondents to the Department's consultation commented that officers must be assured of an individual's identity and age before considering the issue of a fixed penalty.

524. The Department confirmed that police undertake checks to ascertain the age of an alleged offender. This is a fundamental requirement and guidance to police will clearly state that a fixed penalty may not be issued by an officer unless the age and identity of the alleged offender has been confirmed. The Department explained that in the event of the police issuing a fixed penalty notice in error to an individual under 18 years old, then that ticket would be declared void as the issue of the penalty would be unlawful. The Department also provided in writing to the Committee information on the checks undertaken by the police to ascertain the age of an alleged offender.

Protection of an individual's rights

525. The Human Rights and Professional Standards Committee of the NI Policing Board expressed concern that the potential out workings of the new diversionary proposals are consistent with Human Rights standards, Equality obligations and the PSNI Code of Ethics.

526. The Bar Council emphasises the need to ensure that power to issue fixed penalties notices is exercised responsibly by police officers. The issuing of a notice is effectively an invitation to an individual to accept responsibility for a criminal offence; it remains important that the individual is fully advised as to the consequences of acceptance. In particular there is a risk that this could have a potentially disproportionate impact on younger and vulnerable males and in this respect the guidelines issued by the Department to the PSNI will be important. There is also a danger that the "easy fix" of the penalty notice results in the penalisation of behaviour that would have previously attracted only verbal censure without resort by police to a formal response.

527. The Law Society considers that it is important to note that penalty notices effectively operate outside of the justice system. The Committee may wish to consider the judgement of the Court of Appeal in England & Wales in R v Hamer (2010) EWCA Crim 2053, in particular, the Court's comments; "the delivery of justice implies the admission or determination of guilt and not the mere issuing of a notice of a penalty based on reasonable suspicion. It is correct to describe Fixed Penalty Notices (FPNs) and Penalty Notices for Disorder (PNDs) as punishment for suspected offending, or a deterrent, as they plainly do deter. However, it seems to us to cause

confusion, and may well have caused confusion in the present case, by the assumption that the issue of such a notice is some form of "swift, simple and effective justice" which is not in the ordinary sense of these terms."

528. In the Law Society's view, this is an important observation to be conscious of when considering this proposal and in light of it, appropriate safeguards must be put in place. Government must ensure that fixed penalty notices are only issued when a police officer has a genuine reasoned belief that a person has committed a penalty offence.

529. The Law Society states that police officers should be properly trained and the exercise of their powers should be audited. It is of fundamental importance that persons are informed of their right to be tried for the alleged offence. The penalty notice should inform the recipient of their right to seek independent legal advice. The Society notes the provisions of PACE will not apply when a suspect is having a fixed notice served upon them. It is considered that any comments from the suspect at this time should not be considered as evidence of guilt.

530. In relation to conditional cautions the Law Society notes that they will only be given where an offender signs a document admitting to the offences committed. Again the Society considers that sufficient safeguards must be put in place to ensure that any admission by an offender is made in the full knowledge of the case before him and the consequences. Government must avoid a situation in which an offender admits a crime he is not guilty of, simply to avoid prosecution. The Code of Practice referred to at clause 82 must provide appropriate safeguards and alleged offenders should be advised to discuss their options with their solicitor.

531. Include Youth stated that the use of Fixed Penalty Notices (FPNs) is a form of summary justice and as such removes the right to due process. There is a concern that overzealous application of FPNs could result in large numbers of young people being brought into the criminal justice system, through their inability to pay. It is also concerned that an individual may agree to a fine even though guilt has not been totally established, simply to have the matter dealt with quickly. This could be particularly true of a young person who may want to choose the immediate easiest option at a moment in time, but is not completely informed about the consequences of failing to pay.

532. MindWise stated that the associated instructions that accompany the penalty notice needs to be in a format that is understandable to all recipients.

533. It is the Department's view that the rights of individuals, including vulnerable individuals, are properly observed in the provisions in the Bill. In relation to the Fixed Penalty Notice, the individual will have a period of 28 days after issue in which to pay or to reject a fixed penalty notice and request a court hearing instead. This will be explained by the issuing officer and will be fully detailed in writing on the penalty notice itself. The individual can seek the advice of a legal representative before exercising their options.

534. The Department also highlighted that there are two additional safeguards built into the process which provide that the individual can make a declaration to the court to set aside the registration of the penalty on default (in circumstances where he or she is not the recipient of the penalty notice or had already requested a court hearing within the 28 day period) or the court can do so, of its own volition, in the interests of justice. The latter provision enables the court to deal with any case where an individual has a legitimate reason for not complying with the requirements within 28 days. The Department believes that this adequately protects the individual's right to a fair trial under Article 6 of the ECHR.

Requirement for safeguards and guidance for police officers

535. The Law Society states that police officers should be properly trained and the exercise of their powers should be audited. The Bar Council and Extern state that guidelines issued by the Department to the PSNI will be important and should be clear. Include Youth is of the view that the development of the Guidance will be critical in the outworking of the use of fixed penalty notices and would welcome the inclusion of guidance specifically for dealing with 18-21 year olds.

536. In its written submission BIRW states that there is a need for a safeguard for individual civil liberties in the form of a mechanism to challenge the validity of either the penalty notice or the conditional cautions as these both enhance the discretionary powers of the police officer. It is important that if these proposals are implemented both their effectiveness and integrity of application are regularly assessed and monitored.

537. The NIHRC states in its submission that this provision creates a power for the police to dispose of certain prescribed offences without a direction from the PPS, through a FPN. There is a potentially problematic degree of discretion available to the police in responding to a range of offences such as being drunk; breach of the peace; disorderly behaviour; obstructing police; indecent behaviour; criminal damage and petty shoplifting. This proposal removes the separation of functions of investigation, prosecution and adjudication, so a robust mechanism would have to be in place to ensure effective police training and oversight of the use of the proposed new powers. The seriousness, or otherwise, of such offences is open to interpretation, and runs the risk of being susceptible to subjective decision-making by police officers.

538. The Commission is of the view that net widening through an 'over-enthusiastic' application of the Penalty Notice may run the risk of minor offending behaviour that may previously have been disregarded or dealt with informally by police officers, escalating to the use of a penalty. Clear guidance to police officers must be put in place to ensure that responses are proportionate, reasonable and fully accountable.

539. In response, the Department indicated it will produce clear guidance on the issuing of fixed penalty notices by the police and the PSNI has committed to undertaking staff training before implementing fixed penalty provisions. In terms of internal monitoring, supervisory officers will check and verify all penalty notices issued and operational experience will also be subject to external reviews by Inspectors from Criminal Justice Inspection NI.

Conditional cautions

540. Extern and the Prisoner Ombudsman for Northern Ireland believe that the system of conditional cautions can provide a more effective means of providing reparation as they will include measures to address underlying offending behaviour. They can also helpfully promote restorative justice interventions involving the victim and the community.

541. The NIHRC states in its submission that decisions in relation to this disposal are prosecution-led, unlike the issuing of Penalty Notices which are police-led. This disposal appears to conform better to restorative justice principles, in that it enables prosecutors to attach rehabilitative and reparative conditions to a caution. However, the Commission understands that a conditional caution will be included on an individuals' criminal record. Experience in England and Wales demonstrates that compensation to the victim is the most commonly applied condition to cautions (in 64% of cases). Again, the issue of cost neutrality has been raised by way of explaining the high use of compensation rather than referral to rehabilitation programmes. Such high use of a condition that involves financial compensation raises similar concerns in relation to the ability of some low-income groups to meet the compensation payment. If such a disposal were to be introduced in Northern Ireland, conditions other than a financial penalty should be considered where appropriate.

542. Whilst the Probation Board welcomes the clauses covering Conditional Cautions, it states that more detail on budgetary and personnel commitments will be required in order to properly cost this development in the Justice procedure.

543. The Department indicated that the conditional caution is aimed more specifically at assisting individuals to address matters underpinning their offending behaviour and minimise their risk of re-offending. This is achieved through a combination of rehabilitative conditions, which challenge inappropriate behaviour and support individuals in tackling substance misuse or other factors contributing to offending, and reparative conditions which seek, where appropriate, to repair the harm caused to victims.

544. The Department believes their introduction will bolster the range of options for considering the diversion of suitable cases of minor offending from prosecution. Their introduction is however only one element in the development of a cross-cutting Reducing Offending Strategy which will encompass broader objectives dealing with prevention, diversion, sentencing and reducing recidivism.

Conditional Cautions - Consideration of victim

545. Victim Support states the proposal in the Bill to have restorative conditions imposed as part of the new diversionary disposals may provide a benefit to an individual victim and perhaps also to a local community. However it is essential that an identified victim is provided with an opportunity to comment on action being proposed in relation to an offender, particularly where the victim's participation is integral to the proposal. Only the victim is in a position to advise if a proposed reparative condition would serve the purpose as opposed to 'pouring salt on the wound'. For example, a victim of criminal damage may not want to have the person responsible approach their home. They may be fearful of reprisals and may not wish the offender to be provided with their name and address. For these and other reasons it is essential that the police consult with any victim before such reparative conditions are imposed to take fully into account the wishes of the victim. In addition, appropriate support needs to be provided to the victim to ensure that they are fully informed of their options and can thus make an informed choice.

546. The Department confirmed that this matter will be covered in the Code of Practice.

Conditional Cautions - Provision for vulnerable offenders and young people

547. A number of respondents expressed the view that vulnerable offenders, who required specific support during the investigative process, should be similarly supported during the cautioning process to ensure full comprehension of its requirements and the consequences of non-compliance. The Department confirms that these matters which will be covered in the Code of Practice.

548. MindWise states that the development of a cautioning system that included conditions helping rehabilitation or reparation is a welcome expansion of the caution process; however care is needed with regards to those offenders who admit offences and have a mental health difficulty. As part of the cautioning process an 'advocate' trained in supporting vulnerable people should be present, and ensure the same level of understanding takes place regarding the administering and accepting of a caution as occurs in the initial investigation stage. MindWise recommends that its suggestion be incorporated into the statutory codes namely, that the services of a trained Advocate be called upon to support the person (now to be cautioned) if that person required the assistance of an appropriate adult during the investigative stage of the enquiry.

549. If a person is interviewed and is deemed to need an appropriate Adult under PACE during questioning and admission, then this confirms the person requires support. It recommends the service of an advocate is called upon to attend with the person when cautioned so that there is clarity of understanding of all the criteria laid out in the caution, and any conditions that follow. This is of particular importance as breach of the caution conditions carries a power of arrest for failure to comply. In respect of conditional cautions the Department must prepare a Code of Practice.

550. Women's Support Network (WSN) and Women's Aid state that clause 77(4) of the Bill provides a requirement that an authorised person explains the effect of the conditional caution to the offender and to warn the offender of consequences in instances of failure of non compliance. Both organisations are concerned that the caution could be given when an offender is in distress or is experiencing mental health problems, domestic violence or addiction issues. WSN and Women's Aid urged the Committee to ensure that cognisance is taken with respect to persons with mental health and other complex needs to ensure they understand the implications of the conditional caution. WSN and Women's Aid also recommends training for authorised persons i.e. police officers or persons authorised by the Director of Public Prosecutions on complex needs such as mental health issues, domestic violence and addiction issues and ensuring that women are diverted to appropriate support services.

551. NIACRO and Include Youth express concerns that conditional cautions and youth conference plans, while attempting to deal with causes of crime, can also result in barriers to an individual's chance of employment and/or provide the entry to the criminal justice system that leads to further offending.

552. NIACRO states that, as the proposed Justice Bill places further expectations on conditional cautions which means that a person who fails to comply without reasonable excuse (clause 79 (1)) can be arrested without a warrant, there is a very real chance vulnerable people may fall through the cracks and be arrested without knowing or understanding why.

553. WSN and Women's Aid note that there is no definition of what constitutes reasonable grounds contained within clause 80, nor does it define what constitutes a reasonable excuse. WSN and Women's Aid seeks assurances that those accused of non compliance of conditions are afforded every opportunity to provide a reasonable explanation and to have that explanation verified. WSN and Women's Aid recommends the Bill is amended to include this safeguard.

554. In response to the views expressed that vulnerable offenders, who required specific support during the investigative process, should be similarly supported during the cautioning process to ensure full comprehension of its requirements and the consequences of non-compliance the Department indicated this will be covered in the Code of Practice.

555. The Department also stated that in relation to clauses 79 and 80 decisions about whether an individual has failed to comply with conditions without reasonable excuse will be made taking account of all available information and in accordance with guidance set out in the Code of Practice. The power of arrest will only be exercised in circumstances where such action is necessary to allow such a determination to be made. It is intended that offenders are assisted as far as possible in achieving their rehabilitative or reparative objectives and that is why there are provisions at clause 78 which allow conditions to be varied in recognition of changing circumstances or unforeseen consequences.

Conditional Cautions – Code of Practice

556. The Law Society states that it is proposed that a conditional caution will only be given where an offender signs a document admitting to the offences committed. The Society considers that sufficient safeguards must be put in place to ensure that any admission by an offender is made in the full knowledge of the case before him and the consequences. A situation must be avoided in which an offender admits a crime he is not guilty of, simply to avoid prosecution. The Code of Practice referred to at clause 82 must provide appropriate safeguards. Alleged offenders should be advised to discuss their options with their solicitor.

557. The Department advised that in relation to conditional cautions, the offender will have made a PACE-compliant admission of the offence before the disposal is administered. The caution, its conditions and the consequences of non-compliance will be fully explained by the issuing officer, in the presence of an appropriate adult where this is required, and provided in writing. The individual can seek the advice of a legal representative before exercising their options.

Assembly Scrutiny of Delegated Powers in Clause 82

558. The Assembly Examiner of Statutory Rules, in his scrutiny of the delegated powers contained in the Justice Bill, highlighted that clause 103(3) requires the Department of Justice, in relation to clause 82(5), to prepare a Code of Practice in relation to conditional cautions and lay it (or any amending code) before the Assembly in draft, after which the Department may make an order to bring the code into operation.

559. The Examiner noted the provision is closely modelled on section 25 of the Criminal Justice Act 2003 for England and Wales with one crucial difference – an order bringing a code of practice into operation under section 25(5) of the 2003 Act is subject to draft affirmative procedure whereas an order under clause 82(5) of the Justice Bill is subject only to negative resolution. In terms of scrutiny and procedure generally - the Department could lay the draft code of practice and draft order at the same time - the Examiner is of the opinion that the draft affirmative procedure is more appropriate in this instance.

Part 7: Legal Aid, etc.

560. This part allows rules/regulations to be made to introduce a new means test for the granting of criminal legal aid in Northern Ireland and to make amendments to Legal Aid. These include powers to enable the courts to make recovery of defence costs orders; repeal of a provision which prevents the Northern Ireland Legal Services Commission from establishing or funding services under a Litigation Funding Agreement; and a number of miscellaneous amendments to legal aid legislation, mainly relating to the scope of civil legal services, to ensure that access to justice is maintained.

561. There were several issues raised in relation to Part 7 of the Bill. These included the general provisions of the Part; a fixed means test for criminal legal aid; orders to recover defence costs of legal aid; non molestation orders and legal aid; Assembly scrutiny of delegated powers; and Litigation Funding Agreements.

General provisions of Part 7

562. The Bar Council highlights the potential tension or conflict, on the one hand between the need to reduce costs and on the other the requirement to do business better and improve access to the justice system. The Bill provides for a new means test for criminal legal aid and for recovery of defence cost orders in appropriate cases. It is the Bar Council's view that in drafting the Regulations it will be imperative that those who appear before the Criminal Courts and who

are charged with serious crime are afforded proper representation and that the most vulnerable in our society have access to Legal Services. The balance will need to be struck in such a way as to ensure effective representation for those who appear before the Courts. The Regulations will also need to have regard for the entirety of the potential financial implications for those brought before the Courts and should not be judged in isolation.

563. The Law Society notes that the Bill will create new administration and questions has this been costed and have funds been set aside to deliver it. There will be a legal aid impact, new cases, new offences; a need for new legal aid defence certificates and an inevitable rise in legal aid spend. The Law Society questions whether that is provided for in the estimates and funds to meet these costs.

A fixed means test for criminal legal aid

564. BIRW does not support these proposed provisions to reform criminal legal aid that implies that defendants who are financially able to contribute to their defence costs should be required to do so. It opposes the principle because defendants have no control over whether or not they face prosecution and it should therefore be the State that bears the cost of prosecution. This is particularly so where a defendant is acquitted, as they should not be expected to pay for being prosecuted for a crime of which they are innocent. BIRW goes on to state that if these proposals are pursued the following safeguards are required:

- The mechanism devised for means testing does not result in the infringement of the defendant's human rights to be properly represented. A defendant may choose to represent him/herself, although not adequately able to do so, risking their right to a fair trial.
- When making the decision as to whether someone is financially eligible for legal aid, significant consideration must be given to the monthly expenditure of the defendant.
- Consideration of the major negative financial implications on the defendant's dependents.

565. BIRW recommends that if the amendment to Article 31 of the Legal Aid, Advice and Assistance (NI) Order 1981 at clause 85(2) is adopted, it is important that the prescribed financial eligibility is not too strict and can be applied with discretion.

566. Extern agrees that it seems realistic to review the means-test element which permits the granting of legal aid. However any review would need to consider Extern's experience that the offenders it deals with are almost wholly dependent on state benefits; face a range of personal, structural and legislative barriers to employability; have no assets; have low levels of numeracy, and literacy generally and limited money management skills.

567. The WSN and NIACRO voiced concern that the provisions within clause 85 have the potential to limit a person's access to a fair hearing. WSN state that access to a fair hearing is protected by Article 6 of the European Convention on Human Rights. Article 6 (1) sets out that "in determination of civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." Furthermore Article 6 (3) (c) provides that where a person is facing a criminal charge, they have a minimum right to free legal assistance if they do not have the means to pay for it themselves. WSN wishes to highlight the importance of ensuring the right of access to a fair hearing, particularly for those going through the criminal justice system and ensuring the State complies with its obligations under Article 6 of the European Convention on Human Rights (ECHR).

568. NIACRO also states that the interests of justice test must have precedence over means testing. Reform of the system should not be driven by the need to reduce costs.

569. The Bar Council fully accepts that there is a need to reduce the Legal Aid bill from £104 million to £79 million; however it has a number of issues with the proposed change to the means test for eligibility for criminal legal aid. Firstly, it is the strongly held view of the Bar Council that the decision to grant legal aid should remain a judicial function. The court and judges are best placed to judge what is in the interests of justice. Secondly, with regard to the level at which the financial eligibility test will be set, the Bar understands that the legislation is closely modelled on the English and Welsh systems and its introduction in this jurisdiction with the same financial threshold means that it will have serious consequences for legal representation. The Bar expressed the view that it cannot be right that a schoolteacher, for example, or someone with a reasonably good standard of living who earns more than £22,500 a year, would be denied legal aid if they were faced with a serious criminal charge. The Bar also questions whether the levels will be different for different courts. Will the test for someone who is facing a minor charge in a Magistrate's Court be very different from that for someone who is facing, for example, a murder charge or a serious fraud charge in the Crown Court?

570. The third issue that the Bar points out is that the new test will require a high level of administration and that will result in very significant administrative costs. Finally the Bar is concerned that the new test will result in delay as people are entitled to say that they are not ready for trial because their legal aid application has not yet been considered.

571. The Law Society also emphasised the need for proper analysis of the likely cost of the schemes, and the importance of putting into place effective administrative arrangements to ensure that the introduction of a fixed means test for criminal legal aid does not create delay in the criminal justice system. The Society considers the levels of eligibility must be set appropriately and an individual's right to a fair trial must remain paramount.

572. The Law Society believes that reform of the means test is so closely intertwined with a review of the interests of justice test that it is inappropriate to consider reform of one without considering the consequences for the other. It is the Law Society's view that means testing should first commence in the Magistrates Court and be the subject of a pilot scheme before it is fully introduced across all courts. Early review arrangements should also be put in place.

573. The Law Society highlights that introducing prescribed financial limits to assess financial eligibility for criminal legal aid is likely to exclude all but the poorest citizens in Northern Ireland and believes that it is incumbent to consider the particular circumstances of Northern Ireland. The Society hopes that lessons learnt from the post-implementation review conducted in England and Wales are reflected in any arrangements put in place for Northern Ireland.

574. The Society also believes that it is crucial that arrangements put in place for means testing do not infringe Article 6 (3) of the ECHR, nor lead to breaches of the "equality of arms" safeguards under the convention. The Society has concerns that there will be an increasing number of persons being either unrepresented or inadequately representing themselves at court. There is also the possibility of pressure being applied on some defendants to plead guilty to dispose of the proceedings as quickly as possible in order to avoid financial burden of contesting the charges.

575. The Law Society seeks clarification on the administrative arrangements for the means test as it is not convinced that the potential for savings will outweigh the likely delays and increased administration which will result. Where a decision is awaited on initial eligibility, the Society anticipates that there will be the potential for delays and adjournments will be sought. It also considers that as a result of an increasing number of unrepresented defendants appearing in the

courts, there is the potential for significant additional judicial time having to be expended in dealing with those cases.

576. The Department outlined that clause 85 contains a new power to introduce a fixed means test for criminal legal aid. There is already a means test for criminal legal aid. If a judge considers that a defendant has insufficient means that will satisfy the means test. The power in clause 85 would allow the Department to set a specific income or assets limit to rule someone ineligible for legal aid.

577. The Department advised the Committee that consideration was being given to introducing a fixed means test for criminal legal as every part of the legal aid budget was being reviewed in an effort to reduce the Legal Aid bill to within the available budget.

578. The Department emphasised that, at this stage, it was looking at introducing an enabling power rather than the means test itself and believes that it is worthwhile to have the enabling power in place. It acknowledged that the points made by the Law Society and the Bar needed careful analysis but if a way to address a lot of the concerns satisfactorily is found the Department may wish to proceed to make further, more detailed proposals.

579. The Department pointed out that the final outcome of any proposal would be subject to subordinate legislation, which would be subject to a full equality impact assessment and scrutiny by the Justice Committee under negative resolution.

580. In response to questions from the Committee during oral evidence the Department clarified that if a fixed means test is put in place an applicant whose income is above the upper threshold would not be eligible for criminal legal aid and the judge will have no choice but to find that the means test has not been met even if, in the interests of justice, the judge felt otherwise. An applicant whose income is below the lower threshold would be granted legal aid if they were also able to pass the interests of justice test.

581. The Department also indicated, in response to a request for clarification on the legal implications of Article 6 of the ECHR, that its legal advisers had proofed the provisions and it was content that they are consistent with Article 6. The Department also indicated that the Attorney General had advised the Minister that the Bill is within competence.

582. On 20 January 2011 the Department briefed the Committee on the results of research commissioned into the impact of introducing a new means test for criminal legal aid. The research indicated that any significant savings could only be achieved by reductions in the eligibility rate of 10% or more. The Department ruled out the introduction of several of the options considered in the research as the impact would be too great but wished to consider some further sub-options and undertake more work on the cost assumptions.

Orders to recover costs of legal aid

583. Whilst recognising the financial constraints, Extern asserts the importance of the rights of individuals to justice and the importance of recovery of defence costs orders (RDCOs) being realistic and monitored. Extern has no evidence from its experience in delivering services that would indicate that this proposal would have a negative impact on any individual.

584. The Law Society states that the defendant's right to a fair trial must be paramount. The Society understands that these orders will initially apply only in respect of defendants at the Magistrates Court and welcomes this. The Society recommends that the application of the

recovery of defence costs orders be closely scrutinised before their extension to the Crown Court.

585. The Department stated that this provision gives effect to the policy aspiration that resources should be targeted at those who need them most and that those who can afford to pay for their own defence should do so.

586. The introduction of RDCOs will allow the courts to recover costs from legally aided defendants where the court considers that the defendant has sufficient funds to pay for all, or a proportion of, the costs of his defence. The power would operate at the end of a trial, at which stage a judge could make such an order. The intent is that it would be used only in cases that are very clear — where the defendant very clearly has the money to pay for his own defence.

587. The clause provides an enabling power to introduce statutory rules to govern the operation of RDCOs. Initially, RDCOs would be restricted to grants of legal aid under the 1981 Order for cases in the Crown Court, though it may be extended to grants under the Criminal Appeal (Northern Ireland) Act 1980 for cases in the Court of Appeal at a later date.

588. In response to a request for clarification from the Committee during the oral evidence session regarding who would indicate an order to recover costs, the Department stated that the reasons for an order would be acquired by going to a court, so the reasons for seeking the order would be specified in the request. The Judge could initiate it at the end of the trial but the Department anticipates that, in most cases, the Legal Services Commission will do so as it is the body that will recover the cost and the money will then go back into the legal aid fund.

Assembly Scrutiny of Delegated Powers in Clauses 85 and 89

589. The Examiner of Statutory Rules in his scrutiny of the delegated powers contained in the Justice Bill highlighted that clause 85 (2) substitutes a new Article 31 of the Legal aid, Advice and Assistance (Northern Ireland) Order 1981 for the existing Article 31. The new Article 31 (1) and (2) contain new provisions enabling the Department of Justice to make rules, subject to negative resolution, for the determination by a court of the question of whether a person has insufficient means in respect of an application for legal aid in criminal proceedings. This is a new and distinct power (grafted onto the rather limited existing rule-making power in Article 36 of the 1981 Order).

590. It was the opinion of the Examiner that this is a particularly important power that merits thorough Assembly scrutiny, particularly as it relates to applications for legal aid in criminal proceedings and is an issue the Committee may wish to raise with the Department with a view to amending the clause to make the power subject to draft affirmative procedure.

591. Both the Law Society and the Bar Council are also of the view that the introduction of a fixed means test for criminal legal aid could have a major impact, particularly around access to justice, and should therefore be subject to the highest level of scrutiny possible.

592. The Examiner also indicated that clause 89(2) inserts a new Article 27A in the Access to Justice (Northern Ireland) Order 2003 in respect of financial eligibility for a grant of representation in criminal proceedings and clause 89(4) amends Article 46 of the Access to Justice Order to provide that the first regulations made under new Article 27A are subject to draft affirmative procedure, whereas subsequent regulations made under that Article are subject to negative resolution.

593. The Examiner stated that this formulation no doubt followed a precedent enacted in Westminster (probably as a pragmatic compromise in the interests of more limited parliamentary time there) and was of the view that it would be more logical and satisfactory that all regulations made under new Article 27A should be subject to the draft affirmative procedure. The Examiner suggested this was an issue that the Committee may wish to raise with the Department with a view to amending the clause to make all regulations subject to draft affirmative procedure.

Litigation Funding Agreements

594. In its written submission the Bar Council stated that its initial reaction to the proposal to permit the Legal Services Commission to provide services under Litigation Funding Agreements (LFAs) is that difficulties associated with LFAs e.g. risk of "cherry picking" cases with only the most difficult cases using the scheme, major issues in catastrophic/high value cases – is it appropriate that seriously injured persons use a proportion of their damages, perhaps required to provide care in the future, to fund other cases – etc may not have been fully thought out and that potential serious difficulties have not been identified. If these difficulties can be identified and overcome and the proposals lead to a greater availability of funds for money damage cases the Bar would certainly not be opposed to it. The Bar intended to continue to work with the Legal Services Commission on this issue.

595. In its oral evidence the Bar Council suggested that LFAs which would allow third parties – essentially insurance companies – to finance money damage cases would very much restrict access and the effect of that would be to prevent access to justice for victims who have claims that are entirely justified and for which they are entitled to compensation.

596. While not totally opposed to LFAs the Bar believes they need careful scrutiny and warn about what it could lead to in a small jurisdiction and whether we could get to the situation that exists in England and Wales where the costs of litigation became phenomenal. The Bar also questions whether the difficulties and practicalities of delivering LFAs are fully appreciated and whether, if the cost is so little at the moment, there is any need for it but does recognise that there are significant administrative costs involved.

597. The Law Society states that the removal of the prohibition on the NI Legal Services Commission funding legal services under litigation finding agreements is to be welcomed. The Commission consulted on a proposed Funding Code in June 2009. This code sets out the criteria for the determination of public funding for civil legal services. If implemented, the proposed criteria would have unduly restricted access to legal aid for those in need with legitimate claims for personal injury. This proposal would have jeopardised access to justice for vulnerable persons who had suffered the negligent actions of others. The Commission has listened to the Society's concerns and has been in discussion with the Society in relation to the development of alternative funding arrangements that could guarantee access to justice for those in need. The availability of litigation funding agreements should be of assistance in resolving this issue.

598. During oral evidence the Law Society confirmed that it was more accepting of LFAs than the position outlined by the Bar Council. The Law Society stated that there is a need to consider the administrative costs of civil claims in which money damages are pursued within the Legal Services Commission and is broadly in support of the principle of exploring alternatives to the current arrangements. The Law Society does not have an objection to this clause as it stands.

599. Extern supports the setting up of a Litigation Funding Agreement.

600. The Department outlined that clause 90 repeals Article 41 of the 2003 Order. Article 41 of the 2003 Order places a restriction on the NI Legal Services Commission from maintaining or

establishing LFAs. This was because Government at the time did not propose to meet the costs of establishing or underwriting LFAs. However, the Commission has argued that Article 41 restricts its ability to consider fully the range of alternatives to the current funding of money damage cases. Current proposals to replace the merits test for civil legal aid with a "Funding Code" based on the England and Wales' model has the potential to reduce the number of people who can access legal aid for money damage cases. The repeal is necessary to allow the Legal Services Commission to put money into what is called a litigation funding agreement.

601. The Department highlighted that if Article 41 is repealed it does not automatically follow that LFAs will be introduced in NI or that they will be publicly administered. It indicated that the Legal Services Commission has been in discussion with the Law Society and the Bar Council in relation to the development of an alternative funding arrangement for handling money damages claims, which could provide an evidence base for the introduction of a statutory arrangement. Those discussions have identified a range of options and identified the key impediments to be resolved. Further meetings are scheduled to bring the discussions to a conclusion.

602. The Department stated that it will wish to consider closely the findings of the Review of Access to Justice in NI which will examine a range of options with regard to funding money damage cases. The Department also highlighted that it is not a case of having either money damages in legal aid or the LFA. There may well be other ways of doing this as well.

Non-molestation Orders and legal aid

603. The WSN, NIACRO and Women's Aid highlighted that in Northern Ireland, some women fleeing domestic violence situations and seeking legal remedies such as non molestation orders or occupation orders may have to meet financial eligibility criteria. However in England and Wales, women in domestic violence situations may not have to meet financial eligibility criteria in seeking such remedies. WSN believes that women suffering from domestic violence should not have to incur financial costs in order to keep themselves safe. WSN believes that this Justice Bill provides an ideal opportunity to remedy this situation and they support Women's Aid Federation's call for the amendment of current civil legal aid rules to ensure women in domestic violence situations have automatic right of access to justice. WSN believes that the Justice Bill could be amended to include an enabling power to amend civil legal aid rules and recommends the insertion of a clause which makes provision for an enabling power to address this issue.

604. In response, the Department pointed out that the Justice Bill does not contain any legal aid clauses on domestic violence. However, together with the Legal Services Commission it was examining the viability of introducing a waiver similar to that which operates in such cases in England and Wales.

605. The Department outlined that it was considering whether it can use an existing power to authorise the Commission to waive income and capital limits for non-molestation proceedings, rather than seek to make an amendment to regulations at this stage. While the income and capital limits would be waived the requirement to make a financial contribution would remain and the extent of the contribution would be dependent on the applicant's means.

606. On 22 December 2010, the Minister of Justice informed the Committee of his decision to make changes to civil legal aid to remove the income and capital limits attached to applications for those seeking to secure Non-Molestation Orders made in the Magistrates Court. The Minister pointed out that this will allow persons access to legal aid who in the past would not have been eligible for funding due to their financial status. As in England and Wales, a contribution from disposable income and capital would be required. The Minister also indicated that he would use his power under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 to authorise

the Legal Services Commission to disapply the current threshold for applications of those seeking to secure Non-Molestation Orders therefore an amendment to the Justice Bill was not necessary.

607. The Committee very much welcomed the action being taken by the Minister of Justice to address this issue.

Part 8: Miscellaneous

608. This part of the Bill contains miscellaneous provisions.

609. There were several issues raised on this Part of the Bill in both written and oral evidence. These included publication of material relating to legal proceedings; Assembly scrutiny of Magistrates' Court Rules; membership of Crown Court and Court of Judicature Rules Committees; witness summons; and criminal conviction certificates.

Publication of material relating to legal proceedings

610. Extern is of the view that the disclosure of information pertaining to family proceedings is rightly restricted. Any alteration to allow courts to set out special times when disclosure might be allowed seems appropriate if robust rule setting is implemented and the safety of all is maintained.

611. The Law Society is not opposed to the proposed rule making powers relating to the publication of material relating to legal proceedings, however, it would highlight that at the core of such rules must be the overriding principle that the interests of children are paramount.

612. In response, the Department advised that clause 95 creates the power to allow court rules to be made to specify the circumstances in which information on family proceedings concerning children can be shared without the need for the express permission of the court. For example, it will allow a parent to discuss a case about a child with an elected representative or with a professional adviser such as the Children's Commissioner. At present, such a conversation could potentially be a criminal offence or a contempt of court. The purpose of clause 95 is to make it easier for information on family proceedings concerning children to be shared in certain circumstances. Clause 95 is an enabling power only, and any court rules that are made will be subject to full public consultation to ensure that they are in the best interests of children in Northern Ireland.

Assembly Scrutiny of Magistrates' Court Rules

613. The Committee noted that clauses 95 and 99 contain provision in respect of Magistrates' Courts Rules.

614. In response to questions from the Committee, the Department clarified that the family proceedings rules that will apply in the High Court and the County Court will be subject to negative resolution. However, the rules that will apply in the Magistrates Court will be made in accordance with the Magistrates' Courts rules procedures and are not subject to any formal scrutiny in the Assembly. The Department did indicate that the Committee would be fully consulted on the proposed rules.

615. The Committee sought further information on the background and rationale for the Magistrates' Court Rules not being subject to any Assembly procedure and for the rule-making power to be vested in the Rules Committee.

616. The Assembly Examiner of Statutory Rules outlined that Rules of the Court of Judicature (High Court and Court of Appeal in civil proceedings), Criminal Appeal Rules (Court of Appeal in criminal proceedings), Crown Court Rules (Crown Court — criminal proceedings) and Family Proceedings Rules (High Court and county courts — most family proceedings) are subject to negative resolution. County Court Rules (county courts — general civil proceedings) and Magistrates' Courts Rules (magistrates' courts — general criminal and civil proceedings) are subject to no Assembly procedure (although they can of course be scrutinised by the Committee for Justice).

617. The Examiner expressed the view that this difference in the scrutiny accorded (or not accorded) to different court rules probably has more to do with historical origins rather than logic or principle. By way of comparison — in contrast to the position in England and Wales, in Scotland court rules seem, in general, to be subject to no procedure in the Scottish Parliament, again probably for historical reasons and perhaps also for constitutional reasons peculiar to Scotland arising from the central role of Scotland's most senior judge, the Lord President of the Court of Session/Lord Justice General — as the Lord President is styled (since 1836 at least, when the two judicial offices were merged) in relation to the High Court of Justiciary, the superior jurisdiction in criminal proceedings in Scotland. But court rules in Scotland are made as Scottish Statutory Instruments and are scrutinised as such (as regards technical scrutiny) by the Subordinate Legislation Committee of the Scottish Parliament.

618. The Examiner pointed out that any change in the position in Northern Ireland to make County Court Rules and Magistrates' Courts Rules subject to negative resolution would require amendments (in primary legislation) of the relevant provisions of the County Courts (Northern Ireland) Order 1980 and the Magistrates' Courts (Northern Ireland) Order 1981. In his opinion, from the brief historical and comparative survey, such a change would seem to be perfectly logical and consistent. Accordingly, it would not seem to be subject to any major objection in principle; nor would it seem to be unduly complicated and was an issue the Committee may wish to explore further with the Department of Justice, whether in terms of this Bill or for the future.

Membership of Crown Court and Court of Judicature Rules Committees

619. The Bar Council welcomed the expansion of members of the Crown Court Rules Committee and the Court of Judicature Rules Committee which will add to the value and expertise provided by these Committees.

620. The Law Society has no objection to the proposal to include within the membership of the Crown Court Rules Committee, a public prosecutor nominated by the Director of the Public Prosecution Service for Northern Ireland.

621. Extern is of the view that the nomination of a person bringing added knowledge and expertise to the Crown Court Rules Committee seems appropriate.

622. The Committee sought clarification of the status of the person nominated by the Attorney General as the terminology appeared to be less specific than the manner used to specify other members.

623. The Department advised that clauses 96 and 97 make adjustments to the membership of the Crown Court Rules Committee and the Court of Judicature Rules Committee and are designed to enhance the expertise that is available to those committees. The committees make the rules that govern the practice and procedure that should be followed in the Crown Court and the High Court respectively. Membership of those committees is prescribed in statute and

includes the Lord Chief Justice, certain members of the judiciary and solicitor and barrister representatives.

624. The Department undertook to consider further the wording relating to 'a person nominated by the Attorney General'.

Witness summons

625. The Bar Council welcomes the provisions of clause 99, which provides for appropriate third party summonses and disclosure in the Magistrates Court on a par with the Crown Court.

626. MindWise recommends that when the witness is a juvenile and vulnerable by virtue of age or a vulnerable person by reason of mental health regardless of age they should be supported and assisted by a trained advocate.

627. The Department indicated that clause 99 contains a provision that will expand the powers of Magistrate's Courts in criminal proceedings to allow them to issue a witness summons to direct a third party to appear and produce any item of evidence where the court is satisfied that that person is able to provide material evidence. At present, the powers of the Magistrate's Court are limited to occasions when such an item would be admissible in evidence.

628. This amendment will bring the powers of the Magistrate's Court into line with those of the Crown Court and as a result, the Department hopes that more cases that are capable of being dealt with by the Magistrate's Court will remain there rather than defendants choosing to be tried in the Crown Court to avail themselves of its wider third-party disclosure powers.

629. In response to the concerns expressed by MindWise, the Department highlighted that any young or vulnerable witness attending court is already eligible for help through special measures. The changes within the Bill will be procedural changes to allow better access to material held by third parties – the same assistance would be available to a witness under what is called a third party summons, just as it would be under any other type of summons. The Committee was content with this explanation.

Criminal conviction certificates

630. NIACRO understands that if any employer or voluntary organisation requests an Access NI Standard or Enhanced Disclosure certificate, they are duty bound to comply with the Access NI Code of Practice in handling and assessing information safely and fairly. For Basic Disclosure certificates, while the employer is entitled to have sight of the information, they are not subject to the Code. NIACRO suggests that the proposed change to legislation at clause 100 does little to alter this process. Employers will continue to have access to basic disclosure information regarding an applicant, without being subject to regulation. NIACRO believes that there is a very real danger that employers will choose not to follow Access NI Code of Practice (as they are not duty bound to do so with basic disclosure information) and use the information to openly discriminate against a candidate who has a conviction.

631. NIACRO has a great deal of evidence that employers discriminate against people with a conviction. Employers are more likely to request disclosure information when it is not appropriate to do so and if they are provided with this, use it to discriminate. NIACRO wants legislators to deal with the wider issues surrounding an employer's right to request criminal conviction information and wishes to see legislation that both protects the public and allows people with a conviction to seek suitable employment.

632. Extern sees value in the issuing of a basic disclosure provided the employer is named in the application.

633. The Department clarified that clause 100 enables AccessNI to issue a copy of a criminal conviction certificate to an employer when the application is for employment purposes. At the moment, AccessNI is authorised to issue only one copy of the certificate, which normally goes to the applicant but can go to the employer. Very often, both want a copy, so the clause will allow two copies to be issued at the same time by AccessNI. It makes things more convenient and speeds up the process. The change will mean that Northern Ireland will be the only jurisdiction in the United Kingdom to provide that service.

Part 9: Supplementary Provisions

634. This part of the Bill contains the supplementary provisions including powers to make regulations.

635. The Committee did not receive or raise any comments in relation to this part of the Bill.

New Provisions to be introduced into the Bill by the Department of Justice

636. At a relatively late stage during the Committee Stage of the Justice Bill, the Department advised the Committee of its intention to introduce a number of new provisions into the Bill by way of amendments at Consideration Stage. These included provisions in relation to assets recovery law, sex offender notification, funds in court legislation and solicitors' rights of audience.

637. In the limited time available the Committee received written and oral evidence from the Department on the proposed new provisions and, briefly considered their merits. In relation to the proposed provisions on solicitors' rights of audience the Committee also received written evidence from the Law Society and the Bar Council and took oral evidence from the Law Society.

Assets recovery law

638. The Department proposes a new provision to be inserted into Part 8 of the Bill. This is necessary following amendments to the Proceeds of Crime Act 2002 (POCA) and the Administration of Justice (Northern Ireland) Act 1954 by the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010. Following devolution there is no longer authority for the proceeds from criminal confiscation orders imposed under POCA to be paid to the Home Office. Instead, the receipts of criminal confiscation orders are now remitted to the Northern Ireland Consolidated Fund (NICF).

639. The Department of Finance and Personnel (DFP) is engaged with Her Majesty's Treasury (HMT) to agree arrangements whereby the Department of Justice may draw upon the proceeds of criminal confiscation receipts to the NICF up to a limit, in line with limits agreed for England, Wales and Scotland. Primary legislation is required to give the Department of Justice the authority to make payments from funds remitted to the NICF. The Department of Justice was notified in December 2010 by DFP that primary legislation was required and therefore the provision was not included in the Bill as drafted for introduction to the Assembly.

640. The proposed new provision will give the Department the power, with the consent of DFP, to allocate the proceeds of criminal assets remitted to the NICF by Northern Ireland Courts to

prevent crime and reduce the fear of crime and to support the recovery of criminal assets. Allocation of receipts will bring additional funding to the Department.

641. The Department proposes the insertion of a new clause to give the Department the power to allocate criminal assets up to a limit to be agreed by DFP and HMT. This new clause would be inserted after clause 94. A textual amendment would also be required at clause 107.

642. The Committee welcomed these new provisions, noting that this would provide a new funding stream for the Department, and agreed to support their inclusion.

643. The text of the proposed amendments is:

After clause 94 insert -

'Power of Department of Justice to make payments in relation to prevention of crime, etc

'94A. - (1) The Department of Justice may, with the consent of the Department of Finance and Personnel, make such payments or grants to such persons as the Department of Justice considers appropriate in connection with measures intended to -

(a) prevent crime or reduce the fear of crime; or

(b) support the recovery of criminal assets and proceeds of crime.

(2) A grant under subsection (1) may be made on such conditions as the Department of Justice may, with the consent of the Department of Finance and Personnel, determine.'

Clause 107, page 62, line 7, at end add 'or (Power of Department of Justice to make payments in relation to prevention of crime, etc)'

Sex offender notification

644. The Department proposed a new provision to be inserted into Part 5 of the Bill which deals with treatment of offenders. Prior to the introduction of the Justice Bill, a legal challenge to the Sexual Offences Act 2003 resulted in a Supreme Court ruling that the indefinite notification requirements attached to sex offenders who have been sentenced to 30 months or more imprisonment were incompatible with Article 8 of the European Convention on Human Rights (ECHR). As a result all UK jurisdictions are under an obligation to remedy the legislative incompatibility as it applies to their own jurisdiction.

645. The Department briefed the Committee on a legislative amendment which would provide for a review mechanism which could be accessed by sex offenders who have completed 15 years of notification. The provisions of the amendment will allow an offender to apply to the police seeking a review of the notification requirements after a period of 15 years (8 years if under 18 at the time of conviction) from the date the offender is released from prison following sentence for the relevant offence.

646. A new clause to be inserted after clause 59 will deal with the review of indefinite notification requirements for sexual offences. A new Schedule will also be inserted after Schedule 3 of the Bill.

647. The Committee considered the proposed new clause and attendant Schedule. The Committee noted that these provisions are required due to a Supreme Court ruling and that

other jurisdictions must make similar provisions. Given the necessity for them, the Committee will support the inclusion of the new clause and Schedule as drafted by the Department.

648. The text of the proposed amendments are:

After clause 59 insert -

Sexual offences: review of indefinite notification requirements

.-(1) The Sexual Offences Act 2003 (c.42) is amended as follows.

(2) In section 82 (the notification period) at the end insert -

"(7) Schedule 3A (which provides for the review and discharge of indefinite notification requirements) has effect."

(3) After Schedule 3 insert the following Schedule -

"SCHEDULE 3A
REVIEW OF INDEFINITE NOTIFICATION REQUIREMENTS

Introductory

1.- (1) This Schedule applies to a person who, on or after the date on which section (Sexual offences: review of indefinite notification requirements) of the Justice Act (Northern Ireland) 2011 comes into operation, is subject to the notification requirements for an indefinite period.

(2) A person to whom this Schedule applies is referred to in this Schedule as "an offender".

(3) In this Schedule -

"sexual harm" means physical or psychological harm caused by an offender doing anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom;

"the notification requirements" means the notification requirements of Part 2 of this Act;

"relevant event", in relation to an offender, is a conviction, finding or notification order which made the offender subject to the notification requirements for an indefinite period.

Initial review: applications

2. -(1) Except as provided by sub-paragraph (2), an offender may, at any time after the end of the initial review period, apply to the Chief Constable to discharge the offender from the notification requirements.

(2) Sub-paragraph (1) does not apply at any time when—

(a) the offender is also subject to a sexual offences prevention order; or

(b) the offender is also subject to the notification requirements for a fixed period which has not expired.

(3) Subject to sub-paragraph (4), the initial review period is -

(a) in the case of an offender under the age of 18 at the date of the relevant event, 8 years beginning with the date of initial notification;

(b) in the case of any other offender, 15 years beginning with the date of initial notification.

(4) In calculating the initial review period-

(a) in a case where an offender is subject to the notification requirements for an indefinite period as a result of two or more relevant events, the calculation to be made by reference to the later or latest of those events;

(b) in any case, there is to be disregarded any period during which the offender is, in connection with a relevant event -

(i) remanded in, or committed to, custody by an order of a court;

(ii) in custody serving a sentence of imprisonment or detention; or

(iii) detained in a hospital.

(5) The date of initial notification is -

(a) in the case of an offender who is subject to the notification requirements for an indefinite period by virtue of section 81, the date by which the offender was required to give notification under section 2(1) of the Sex Offenders Act 1997;

(b) in the case of any other offender, the date by which the offender is required to give notification under section 83(1) (or would be so required but for the fact that the offender falls within an exception in section 83 (2) or (4) of that section).

(6) An application under this paragraph must be in writing and must include -

(a) the name, address and date of birth of the offender;

(b) the name and address of the offender at the date of each relevant event (if different);

(c) the date of each relevant event, and (where a relevant event is a conviction or finding) the court by or before which, the conviction or finding occurred,

(d) any information which the offender wishes to be taken into account by the Chief Constable in determining the application.

(7) The Chief Constable may, before determining any application, request information from any body or person which the Chief Constable considers appropriate.

Initial review: determination of application

3. - (1) On an application under paragraph 2 the Chief Constable shall discharge the notification requirements unless the Chief Constable is satisfied, on the balance of probabilities, that the offender poses a risk of sexual harm to the public, or any particular members of the public, in the United Kingdom.

(2) In deciding whether that is the case, the Chief Constable must take into account—

(a) the seriousness of the offence or offences—

(i) of which the offender was convicted,

(ii) of which the offender was found not guilty by reason of insanity,

(iii) in respect of which the offender was found to be under a disability and to have done the act charged, or

(iv) in respect of which (being relevant offences within the meaning of section 99) the notification order was made, which made the offender subject to the notification requirements for an indefinite period;

(b) the period of time which has elapsed since the offender committed the offence or offences;

(c) whether the offender has committed any offence under section 3 of the Sex Offenders Act 1997 or under section 91 of this Act;

(e) the age of the offender at the time of the decision;

(f) the age of the offender at the time any offence referred to in paragraph (a) was committed;

(g) the age of any person who was a victim of any such offence (where applicable) and the difference in age between the victim and the offender at the time any such offence was committed;

(h) any convictions or findings made by a court in respect of the offender for any other offence listed in Schedule 3;

(i) any caution which the offender has received for an offence which is listed in Schedule 3;

(j) whether any criminal proceedings for any offences listed in Schedule 3 have been instituted against the offender but have not concluded;

(k) any assessment of the risk posed by the offender which has been made by any of the agencies mentioned in Article 49(1) of the Criminal Justice (Northern Ireland) Order 2008 (risk assessment and management);

(l) any other information relating to the risk of sexual harm posed by the offender to the public, or any particular members of the public, in the United Kingdom;

(m) any information presented by or on behalf of the offender which demonstrates that the offender does not pose a risk of sexual harm to the public, or any particular members of the public, in the United Kingdom; and

(n) any other matter which the Chief Constable considers to be appropriate.

(3) The functions of the Chief Constable under this paragraph may not be delegated by the Chief Constable except to a police officer not below the rank of superintendent.

Initial review: notice of decision

4. - (1) The Chief Constable must, within 12 weeks of the date on which an application under paragraph 2 is received, comply with this paragraph.

(2) If the Chief Constable discharges the notification requirements -

(a) the Chief Constable must serve notice of that fact on the offender, and

(b) the offender ceases to be subject to the notification requirements on the date of service of the notice.

(3) If the Chief Constable decides not to discharge the notification requirements -

(a) the Chief Constable must serve notice of that decision on the offender; and

(b) the notice must -

(i) state the reasons for the decision; and

(ii) inform the offender of the effect of paragraphs 5 and 6.

Initial review: application to Crown Court

5. - (1) Where -

(a) the Chief Constable fails to comply with paragraph 4 within the period specified in paragraph 4(1), or

(b) the Chief Constable serves a notice under paragraph 4(3), the offender may apply to the Crown Court for an order discharging the offender from the notification requirements.

(2) An application under this paragraph must be made within the period of 21 days beginning -

(a) in the case of an application under sub-paragraph (1)(a), on the expiry of the period mentioned in paragraph 4(1);

(b) in the case of an application under sub-paragraph (1)(b), on the date of service of the notice under paragraph 4(3).

(3) Paragraph 3 applies in relation to an application under this paragraph as it applies to an application under paragraph 2, but as if references to the Chief Constable were references to the Crown Court.

(4) The Chief Constable and the offender may appear or be represented at any hearing in respect of an application under this paragraph.

(5) Where an application under this paragraph is determined, the appropriate officer of the Crown Court must send a copy of the order made by the Crown Court to the offender and the Chief Constable.

Further reviews

6. -(1) Where a notice is served on an offender under paragraph 4(3) or 5(5), the offender may, at any time after the end of a further review period, apply to the Chief Constable to discharge the offender from the notification requirements.

(2) A further review period is the period of 5 years beginning on the date of service of a notice (or the last notice) served on the offender under paragraph 4(3) or 5(5).

(3) Paragraphs 2(6) and (7), 3, 4 and 5 apply with appropriate modifications to an application under this paragraph as they apply to an application under paragraph 2(1); and a reference in this Schedule to a provision of paragraph 4 or 5 includes a reference to that provision as applied by this sub-paragraph.

Discharge in Scotland

7. - (1) An offender who is, under corresponding legislation, discharged from the notification requirements by a court, person or body in Scotland is, by virtue of the discharge, also discharged from the notification requirements as they apply in Northern Ireland.

(2) In subsection (1) "corresponding legislation" means legislation which makes provision corresponding to that made by this Schedule for a an offender who is subject to the notification requirements as they apply in Scotland for an indefinite period to be discharged from those notification requirements.

Funds in court legislation

649. The Department proposed an amendment to the Bill to make provisions relating to funds in court - specifically to allow a court to give the Accountant General a specific power to deduct (with the approval of the court) certain fees, charged by stockbrokers in relation to the management and investment of funds held in court, from those funds.

650. The Department worked with the Attorney General in developing these provisions and resolution of some issues meant that the provisions were not able to be included in the Bill as drafted for introduction to the Assembly.

651. In certain circumstances the County Court or High Court may order that monies are paid into court to be placed under that court's protective jurisdiction, for instance where a minor has been awarded money in damages or where a person is deemed to no longer have sufficient mental capacity to manage his/her financial affairs. Where such funds are ordered to be paid into court, the money is paid over to the Accountant General of the Court of Judicature who, under the Judicature (Northern Ireland) Act 1978 ('the 1978 Act'), has responsibility for managing and investing such funds in court in Northern Ireland.

652. The Director of the Northern Ireland Courts and Tribunals Service acts as Accountant General and his functions are exercised by the Court Funds Office (CFO) which is an office within NICTS. The CFO manages funds in court until they are paid out (e.g. when a minor reaches the age of 18). There is approximately £260million of funds held in court on behalf of 14,000 clients.

653. As part of the management of funds in court, and in order to provide an appropriate level of return, the funds may be invested (with judicial approval) in various ways prescribed in the 1978 Act, including being placed in deposit accounts, short and long term investment accounts and investment in certain designated securities such as equities or government bonds. For investment in securities, the CFO retains the services of a stockbroker to provide advice as regards the most appropriate investments for all new funds and to review existing investments.

Where the stockbroker makes investment recommendations, these are presented to the court and the court makes an appropriate order directing the investment of the funds.

654. The stockbrokers charge an annual management fee for their services. Until recently these fees were deducted directly from the funds of those clients whose funds were subject to management by the brokers. Legal advice however now suggests that there is a doubt as to whether it is permissible to deduct stockbroker management charges directly from funds in court without an express legislative power to do so.

655. In order to obtain legal clarity, the High Court will be invited to make a declaration on this issue. Should the High Court find that there is sufficient authority to deduct the fees directly from the funds of CFO clients, it is anticipated that the CFO will revert to such practice. However should the High Court rule that there is no current authority, then an amendment to the 1978 Act would be required to authorise deduction of stockbrokers' fees. The Department considers that it is prudent to use the Justice Bill to put such legislative provisions in place prior to the outcome of the High Court application.

656. The Committee was advised by the Department that should the High Court rule that previous deductions were unlawful, then NICTS may be obliged to consider reimbursing those clients. Approximately £2.5million was deducted from clients between 1996 and 2010, attributable to over 4,000 clients.

657. The amendment would amend section 81 of the Judicature (Northern Ireland) Act 1978 to create a specific power to allow the court to order the payment from court funds of any fees or expenses incurred in connection with or for the purposes of investing those funds, however the court shall not make such an order unless considered necessary.

658. The Committee expressed significant concerns about the budgetary implications for the Department should the High Court rule that previous deductions were unlawful. The Committee also noted that the Department had not consulted on the new provision.

659. The Committee agreed that the principle of using a stockbroker to provide advice on the most appropriate investments and to review existing investments is of benefit to clients and that the cost should be met by those who avail of those services rather than from the public purse. The Committee is therefore content to support the proposed amendment.

660. The proposed amendment is:

Funds in court: investment fees or expenses [j8178]

*- (1) Section 81 of the Judicature (Northern Ireland) Act 1978 (c. 23) (investment of funds in court) is amended as follows.

(2) The existing provision becomes subsection (1) of that section.

(3) After that subsection insert-

"(2) If the High Court or (as the case may be) the county court so orders, the power of the Accountant General under subsection (1)(a)(iii) or (iv) to invest a sum of money in the Court of Judicature or the county court in securities includes the power to pay out of that sum any fees or expenses which are -

(a) incurred in connection with, or for the purposes of, investing that sum; and

(b) of an amount or at a rate approved by the High Court or (as the case may be) the county court.

(3) A court shall not make an order under subsection (2) unless the court considers it necessary and proportionate in all the circumstances to do so.

(4) The High Court or (as the case may be) the county court may, on an application made to it, order that all or part of any sum paid by way of fees or expenses under subsection (2) be refunded where it appears to the court to be in the interests of justice to do so."

Consequential amendments

The Judicature (Northern Ireland) Act 1978 (c. 23)

In section 82(1) (rules as to funds in court)-

(a) in paragraphs (c) and (d) for "81(b)(ii)" substitute "81(1)(b)(ii)"; and

(b) in paragraph (k) for "81(a)(iv)" substitute "81(1)(a)(iv)".

Solicitors' rights of audience

661. The Department proposed new provisions relating to solicitors' rights of audience to be inserted into Part 8 of the Bill. Resolution of some issues meant that the provisions were not able to be included in the Bill as drafted for introduction to the Assembly.

662. Presently, solicitors in Northern Ireland enjoy unlimited rights of audience in the Crown Court, County Courts, Magistrates' Courts and Tribunals. There are however restrictions on solicitors appearing in the High Court and the Court of Appeal where effectively they may only appear in an insolvency matter in chambers or where counsel is unavailable.

663. In light of recommendations in the Bain Report on the Regulation of Legal Services in Northern Ireland (November 2006), the Department proposes to extend solicitors' rights of audience in the High Court and Court of Appeal with the aim of giving the public a wider choice in legal representation and enhancing the provision of legal services in Northern Ireland.

664. The proposed new clauses contain provision to create a system of authorisation by the Law Society for solicitors wishing to exercise rights of audience in the High Court and Court of Appeal and require the Law Society to make regulations setting the education, training or experience requirements which a solicitor must meet before authorisation can be granted. The clauses contain a range of safeguards to ensure that competition of advocacy services is maintained and conflicts of interest prevented. Again, the Law Society is required to make regulations setting out the detail of the advice which a solicitor must provide to their client.

665. The Minister had previously indicated to the Committee his intention to bring forth new provisions on solicitors' rights of audience. The Committee did not however receive the detail of the precise content and text of the proposed new clauses until 28 January 2011 and, given the Committee Stage of the Bill was due to end on 11 February, had a very limited opportunity to consider the detailed proposals.

666. The Law Society also commented on the insufficiency of time given to consider the text of the proposed new clauses. The Law Society has been pressing for the introduction of solicitors' rights of audience in the Higher Courts for some time and fully supports the policy and the

principle behind these provisions. However it did express a number of concerns in correspondence and in oral evidence to the Committee regarding the clauses as drafted. The Society sought clarity on terms used in the clauses; regarded some provisions as unnecessary as they duplicate existing practice; questioned the requirement to consult with the Attorney General; and expressed significant concerns in relation to the provisions which will engage the Department of Justice in the regulation of the profession which the Law Society regards as a significant departure and wholly inappropriate.

667. The Bar Council submitted written evidence which the Committee did not receive in time to give proper consideration to but did note that the Bar had strong reservations about the introduction of these provisions.

668. While content with the general principle of affording the public a wider choice of legal representation, the Committee did not have sufficient time to reach a view on the detail of each proposed new clause.

669. The proposed amendment is:

New Clause

After clause 91 insert -

PART 8
SOLICITORS' RIGHTS OF AUDIENCE

Authorisation of Society conferring additional rights of audience

*.- (1) The Solicitors (Northern Ireland) Order 1976 (NI 12) is amended as follows.

(2) In Article 6 (regulations as to the education, training, etc. of persons seeking admission or having been admitted as solicitors) after paragraph (1) insert -

"(1A) The Society shall make regulations with respect to the education, training or experience to be undergone by solicitors seeking authorisation under Article 9A."

(3) After Article 9 insert -

Authorisation of Society conferring additional rights of audience

9A. - (1) A person who is qualified to act as a solicitor may apply to the Society for an authorisation under this Article.

(2) An application under paragraph (1) -

(a) shall be made in such manner as may be prescribed;

(b) shall be accompanied by such information as the Society may reasonably require for the purpose of determining the application; and

(c) shall be accompanied by such fee (if any) as may be prescribed.

(3) At any time after receiving the application and before determining it the Society may require the applicant to provide it with further information.

(4) The Society shall grant an authorisation under this Article if it appears to the Society, from the information furnished by the applicant and any other information it may have, that the applicant has complied with the requirements applicable to him by virtue of regulations under Article 6(1A).

(5) An authorisation granted to a person under this Article ceases to have effect if, and for so long as, that person is not qualified to act as a solicitor.

(6) The Society may by regulations provide that any person who has completed such education, training or experience as may be prescribed, before such date as may be prescribed shall be taken to hold an authorisation granted under this Article."

(4) In Article 10 (practising certificates and register of practising solicitors) after paragraph (2C) insert -

"(2D) Every entry in the register shall include details of any authorisation granted under Article 9A to the solicitor to whom the entry relates."

New Clause

After clause 91 insert –

Rights of audience of solicitors

* - (1) In section 106 of the Judicature (Northern Ireland) Act 1978 (rights of audience in the High Court and Court of Appeal) after subsection (3) insert -

"(3A) A solicitor who holds an authorisation under Article 9A of the Solicitors (Northern Ireland) Order 1976) shall have the same right of audience in any proceedings in the High Court or Court of Appeal as counsel in those courts and any such right is in addition to any right of audience which a solicitor would have apart from this subsection."

(2) After Article 40 of the Solicitors (Northern Ireland) Order 1976 (NI 12) insert -

Duty to advise client as to representation in court

40A. - (1) Paragraph (2) applies where -

(a) it appears to a solicitor that a client requires, or is likely to require, legal representation in any proceedings in the High Court or the Court of Appeal;

(b) either—

(i) that solicitor is minded to arrange for another solicitor who is an authorised solicitor to provide that representation; or

(ii) that solicitor is an authorised solicitor and is minded to provide that representation; and

(c) in representing that client in the High Court or Court of Appeal, a solicitor would need to exercise the right of audience conferred by section 106(3A) of the Judicature (Northern Ireland) Act 1978.

(2) The solicitor shall advise the client in writing -

(a) of the advantages and disadvantages of representation by an authorised solicitor and by counsel, respectively; and

(b) that the decision as to whether an authorised solicitor or counsel is to represent the client is entirely that of the client.

(3) The Society shall make regulations with respect to the giving of advice under paragraph (2).

(4) A solicitor shall -

(a) in advising a client under paragraph (2), act in the best interest of the client; and

(b) give effect to any decision of the client referred to in paragraph (2)(b).

(5) For the purposes of this Article compliance with paragraph (2) in relation to any proceedings in a court in any cause or matter is to be taken to be compliance with that paragraph in relation to any other proceedings in that court in the same cause or matter.

(6) If a solicitor contravenes this Article, any person may make a complaint in respect of the contravention to the Tribunal.

(7) In this Article and Article 40B "authorised solicitor" means a solicitor who holds an authorisation under Article 9A.

Duty to inform court as to compliance with Article 40A(2)

40B. - (1) Where -

(a) a solicitor has complied with Article 40A(2) in relation to the representation of a client in any proceedings in the High Court or Court of Appeal;

(b) that client is to be represented in those proceedings by an authorised solicitor; and

(c) in representing that client in those proceedings the authorised solicitor would need to exercise the right of audience conferred by section 106(3A) of the Judicature (Northern Ireland) Act 1978, the solicitor shall inform the High Court or (as the case may be) the Court of Appeal of the fact mentioned in sub-paragraph (a) in such manner and before such time as rules of court may require.

(2) For the purposes of this Article compliance with paragraph (1) in relation to any proceedings in a court in any cause or matter is to be taken to be compliance with that paragraph in relation to any other proceedings in that court in the same cause or matter.

(3) If a solicitor contravenes paragraph (1), any person may make a complaint in respect of the contravention to the Tribunal."

(3) In Article 50 of the County Courts (Northern Ireland) Order 1980 (NI 3) (rights of audience) in paragraph (1)(c) omit the words ", but not a solicitor retained as an advocate by a solicitor so acting".

New clause

After clause 91 insert -

Consequential and supplementary provisions

*.- (1) In Article 75 (regulations) of the Solicitors (Northern Ireland) Order 1976 (NI 12) after paragraph (2) insert -

"(2A) Regulations under Article 6(1A), 9A(6) or 40A(3) also require the concurrence of the Department of Justice, given after consultation with the Attorney General.

(2B) The Department of Justice shall not grant its concurrence to any regulations under Article 6(1A) or 9A(6) unless regulations have been made under Article 40A(3) and are in operation."

(2) The Department may by order make such amendments to -

(a) the Criminal Appeal (Northern Ireland) Act 1980;

(b) the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981;

(c) the Access to Justice (Northern Ireland) Order 2003;

(d) section 184 of the Extradition Act 2003, as appear to the Department to be necessary or expedient in consequence of, or for giving full effect to, the provisions of this Part.'

Schedule 7, page 87, at end insert—

PART 4
SOLICITORS' RIGHTS OF AUDIENCE

Short Title	Extent of repeal
The County Courts (Northern Ireland) Order 1980 (NI 3).	In Article 50(1) (c), the words ", but not a solicitor retained as an advocate by a solicitor so acting".

Clause by Clause Consideration of the Bill

670. The Committee conducted its clause-by-clause scrutiny of the Bill on 20 January, 1 February, 3 February and 8 February 2011 – see Minutes of Evidence in Appendix 2. The Committee recommended a number of amendments which are outlined below.

Part 1 – Victims and Witnesses

Clause 1 – Offender levy imposed by court

671. The Committee agreed that it was content with clause 1 as drafted.

Clause 2 – Enforcement and treatment of offender levy imposed by court

672. The Committee agreed that it was content with clause 2 as drafted.

Clause 3 – Deduction of offender levy imposed by court from prisoner's earnings

673. The Committee agreed that it was content with clause 3 as drafted.

Clause 4 – Offender levy imposed by court: other supplementary provisions

674. The Committee agreed that it was content with clause 4 as drafted.

Clause 5 – Offender levy on certain penalties

675. The Committee agreed that it was content with clause 5 as drafted.

Clause 6 – Amount of the offender levy

676. The Committee agreed that it was content with clause 6 as drafted.

Clause 7 – Eligibility for special measures: age of child witnesses

677. The Committee agreed that it was content with clause 7 as drafted.

Clause 8 – Special measures: directions for child witnesses

678. The Committee agreed that it was content with clause 8 as drafted.

Clause 9 – Special provisions relating to sexual offences

679. The Committee agreed that it was content with clause 9 as drafted.

Clause 10 – Evidence by live link: presence of supporter

680. The Committee agreed that it was content with clause 10 as drafted.

Clause 11 – Video recorded evidence in chief: supplementary testimony

681. The Committee agreed that it was content with clause 11 as drafted.

Clause 12 – Examination of accused through intermediary

682. The Committee agreed that it was content with clause 12 as drafted.

Clause 13 – Age of child complainant

683. The Committee agreed that it was content with clause 13 as drafted.

Part 2 – Live Links

Clause 14 – Live links for patients detained in hospital

684. The Committee agreed that it was content with clause 14 as drafted.

Clause 15 – Live links at preliminary hearings in the High Court

685. The Committee agreed that it was content with clause 15 as drafted.

Clause 16 – Live links at preliminary hearing on appeals to the county court

686. The Committee agreed that it was content with clause 16 subject to the amendment proposed by the Department to set out what happens when a live link breaks down as follows:

Insert at end of clause 16, page 12, line 5 –

"(8A) If the court proceeds with the hearing under paragraph (8) it shall not remand the appellant in custody for a period exceeding 8 days commencing on the day following that on which it remands him".

Clause 17 – Live link in sentencing hearing on appeals to the county court

687. The Committee agreed that it was content with clause 17 as drafted.

Clause 18 – Live links in the Court of Appeal

688. The Committee agreed that it was content with clause 18 as drafted.

Clause 19 – Live link direction for vulnerable accused

689. The Committee agreed that it was content with clause 19 as drafted.

Clause 20 – Establishment of PCSPs and DPCSPs

690. The Committee agreed that it was content with clause 20 as drafted.

Clause 21 – Functions of PCSP

691. The Committee agreed that it was content with clause 21 subject to the amendment recommended by the Committee and agreed by the Department to include reference to the full consideration of the views of the public as follows:

Insert at end of clause 21, page 17, line 26 -

'to consider fully any views so obtained'

Clause 22 – Functions of DPCSP

692. The Committee agreed that it was content with clause 22 subject to the amendment recommended by the Committee and agreed by the Department to include reference to the full consideration of the views of the public as follows:

Insert at end of clause 22, page 18, line 21 -

'and to consider fully any views so obtained'

Clause 23 – Code of practice for PCSPs and DPCSPs

693. The Committee agreed that it was content with clause 23 as drafted.

Clause 24 – Annual report by PCSP to council

694. The Committee agreed that it was content with clause 24 as drafted.

Clause 25 – Annual report by Belfast PCSP to council

695. The Committee agreed that it was content with clause 25 as drafted.

Clause 26 – Annual report by DPCSPs to principal PCSP

696. The Committee agreed that it was content with clause 26 as drafted.

Clause 27 – Reports by PCSP to joint committee

697. The Committee agreed that it was content with clause 27 as drafted.

Clause 28 – Reports by Belfast PCSP to joint committee

698. The Committee agreed that it was content with clause 28 as drafted.

Clause 29 – Reports by DPCSP to principal PCSP

699. The Committee agreed that it was content with clause 29 as drafted.

Clause 30 – Reports by policing committees to Policing Board

700. The Committee agreed that it was content with clause 30 as drafted.

Clause 31 – Reports by policing committee of Belfast PCSP to Policing Board

701. The Committee agreed that it was content with clause 31 as drafted.

Clause 32 – Reports by policing committee of DPCSP to policing committee of principal PCSP

702. The Committee agreed that it was content with clause 32 as drafted.

Clause 33 – Other community policing arrangements

703. The Committee agreed that it was content with clause 33 as drafted.

Clause 34 – Duty on public bodies to consider community safety implications in exercising duties

704. The Committee agreed that it was not content with clause 34 and would oppose the question that clause 34 stand part of the Bill.

Clause 35 – Functions of joint committee and Policing Board

705. The Committee agreed that it was content with clause 35 as drafted.

Clause 36 – Regulated matches

706. The Committee agreed that it was content with clause 36 subject to the amendment proposed by the Department in response to concerns raised by the Committee to reduce the time period around which powers would be applied to regulated matches from "two hours before/one hour after" to "one hour before/thirty minutes after" as follows:

Clause 36 , page 25, line 26, leave out paragraph (c)

Clause 36, page 25, line 32, leave out from 'two hours before' to end of line and insert 'one hour before the start of the match or (if earlier) one hour'

Clause 36, page 25, line 34, leave out 'one hour' and insert '30 minutes'

Clause 36, page 25, line 38, leave out 'two hours' and insert 'one hour'

Clause 36, page 25, line 39, leave out 'one hour' and insert '30 minutes'.

Clause 37 – Throwing of missiles

707. The Committee agreed that it was content with clause 37 subject to the amendment recommended by the Committee and agreed by the Department to provide greater clarity around missile throwing and focus more on those items likely to cause injury as follows:

Clause 37, page 26, line 8, leave out 'anything' and insert 'any object to which this subsection applies'

Clause 37, page 26, line 13, at end insert –

'(1A) Subsection (1) applies to any object which, if thrown as mentioned in that subsection, would be likely to cause injury to any person who may be struck by the object.'

Clause 38 – Chanting

708. The Committee agreed that it was content with clause 38 subject to the amendment recommended by the Committee and agreed by the Department to include sectarianism as follows:

Clause 38, page 26, line 22, leave out 'an' and insert 'a sectarian or'

Clause 38, page 26, line 25, leave out 'religious belief'

Clause 38, page 26, line 26, at end insert –

'(3A) For the purposes of this section chanting is of a sectarian nature if it consists of or includes matter which is threatening, abusive or insulting to a person by reason of that person's religious belief or political opinion or against an individual as a member of such a group.'

Clause 39 – Going onto the playing area

709. The Committee agreed that it was content with clause 39 as drafted.

Clause 40 – Possession of fireworks, flares, etc.

710. The Committee agreed that it was content with clause 40 as drafted.

Clause 41 – Being drunk at a regulated match

711. The Committee agreed that it was not content with clause 41 and would oppose the question that clause 41 stand part of the Bill.

Clause 42 – Possession of drink containers, etc.

712. The Committee agreed that it was not content with clause 42 and would oppose the question that clause 42 stand part of the Bill.

Clause 43 – Possession of alcohol

713. The Committee agreed that it was not content with clause 43 and would oppose the question that clause 43 stand part of the Bill.

Clause 44 – Offences in connection with alcohol on vehicles

714. The Committee agreed that it was content with clause 44 subject to the amendments proposed by the Department in response to concerns raised by the Committee to remove the offence of being drunk on specified vehicles entirely and remove restrictions on alcohol on vehicles travelling away from a game as follows:

Clause 44, page 28, line 32, leave out 'or from'

Clause 44, page 29, line 6, leave out subsection (5)

Clause 44, page 29, line 15, leave out paragraph (c).

Clause 45 – Sales of tickets by unauthorised persons

715. The Committee agreed that it was not content with clause 45 and would oppose the question that clause 45 stand part of the Bill.

Clause 46 – Banning orders: making on conviction

716. The Committee agreed that it was content with clause 46 as drafted.

Clause 47 – Banning orders: content

717. The Committee agreed that it was content with clause 47 as drafted.

Clause 48 – Banning orders: supplementary

718. The Committee agreed that it was content with clause 48 as drafted.

Clause 49 – Banning orders: "violence" and "disorder"

719. The Committee agreed that it was content with clause 49 subject to the amendment proposed by the Committee and agreed by the Department to include sectarianism as follows:

Clause 49, page 33, line 6, after 'up' insert 'sectarian hatred or'

Clause 49, page 33, line 8, leave out 'religious belief'

Clause 49, page 33, line 14, leave out subsection (3) and insert –

'(3) For the purposes of this section sectarian hatred is hatred against a group of persons defined by reference to religious belief or political opinion'.

Clause 50 – Banning orders: duration

720. The Committee agreed that it was content with clause 50 as drafted.

Clause 51 – Banning orders: additional requirements

721. The Committee agreed that it was content with clause 51 as drafted.

Clause 52 – Termination of banning orders

722. The Committee agreed that it was content with clause 52 as drafted.

Clause 53 – Information about banning orders

723. The Committee agreed that it was content with clause 53 as drafted.

Clause 54 – Failure to comply with banning order

724. The Committee agreed that it was content with clause 54 as drafted.

Clause 55 – Powers of enforcement

725. The Committee agreed that it was content with clause 55 as drafted.

Clause 56 – Increase in maximum terms of imprisonment for common assault or battery

726. The Committee agreed that it was content with clause 56 as drafted.

Clause 57 – Penalty for certain knife offences

727. The Committee agreed that it was content with clause 57 as drafted.

Clause 58 – Extension of maximum period of deferment of sentence

728. The Committee agreed that it was content with clause 58 as drafted.

Clause 59 – Breach of licence conditions by sex offenders

729. The Committee agreed that it was content with clause 59 as drafted.

Clause 60 – Sexual offences: closure orders

730. The Committee agreed that it was content with clause 60 as drafted.

Clause 61 – Financial reporting orders

731. The Committee agreed that it was content with clause 61 as drafted.

Clause 62 – Dangerous offenders: serious and specified offences

732. The Committee agreed that it was content with clause 62 as drafted.

Clause 63 – Supervised activity order in respect of certain financial penalties

733. The Committee agreed that it was content with clause 63 as drafted.

Clause 64 – Penalty offences and penalties

734. The Committee agreed that it was content with clause 64 as drafted.

Clause 65 – Penalty notices

735. The Committee agreed that it was content with clause 65 as drafted.

Clause 66 – Form of penalty notice

736. The Committee agreed that it was content with clause 66 as drafted.

Clause 67 – Effect of penalty notice

737. The Committee agreed that it was content with clause 67 as drafted.

Clause 68 – General restriction on prosecution

738. The Committee agreed that it was content with clause 68 as drafted.

Clause 69 - Guidance

739. The Committee agreed that it was content with clause 69 as drafted.

Clause 70 – Payment of penalty

740. The Committee agreed that it was content with clause 70 as drafted.

Clause 71 – Registration certificates

741. The Committee agreed that it was content with clause 71 as drafted.

Clause 72 – Registration of penalty

742. The Committee agreed that it was content with clause 72 as drafted.

Clause 73 – Challenge to notice

743. The Committee agreed that it was content with clause 73 as drafted.

Clause 74 – Setting aside of sum enforceable under section 72

744. The Committee agreed that it was content with clause 74 as drafted.

Clause 75 – Interpretation of this Chapter

745. The Committee agreed that it was content with clause 75 as drafted.

Clause 76 – Conditional cautions

746. The Committee agreed that it was content with clause 76 as drafted.

Clause 77 – The five requirements

747. The Committee agreed that it was content with clause 77 as drafted.

Clause 78 – Variation of conditions

748. The Committee agreed that it was content with clause 78 as drafted.

Clause 79 – Failure to comply with conditions

749. The Committee agreed that it was content with clause 79 as drafted.

Clause 80 – Arrest for failure to comply

750. The Committee agreed that it was content with clause 80 as drafted.

Clause 81 – Application of PACE conditions

751. The Committee agreed that it was content with clause 81 as drafted.

Clause 82 – Code of practice

752. The Committee agreed that it was content with clause 82 subject to the amendment to clause 103 recommended by the Committee and agreed by the Department to provide that the order which brings the Code of Practice into operation must be laid before the Assembly and approved by affirmative resolution.

Clause 83 – Powers of Probation Board

753. The Committee agreed that it was content with clause 83 as drafted.

Clause 84 – Interpretation of this Chapter

754. The Committee agreed that it was content with clause 84 as drafted.

Clause 85 – Eligibility for criminal legal aid

755. The Committee agreed that it was content with clause 85 subject to the amendment proposed by the Department in response to concerns raised by the Committee to provide for an affirmative procedure when the rules in this clause are being considered for the first time as follows:

Clause 85, page 49, line 34, at end insert-

'(4) In Article 36 (rules as to legal aid in criminal cases for paragraph (4) substitute-

"(4) Except as provided by paragraph (5), rules under this Article are subject to negative resolution.

(5) The rules to which paragraph (6) applies shall not be made unless a draft of the rules has been laid before and approved by a resolution of the Assembly.

(6) This paragraph applies to the first rules under this Article which are-

(a) made after the coming into operation of section 85 of the Justice Act (Northern Ireland) 2011;

and

(b) contain any provision made by virtue of Article 31, as substituted by that section".'

Clause 86 – Order to recover costs of legal aid

756. The Committee agreed that it was content with clause 86 as drafted.

Clause 87 – Eligibility of persons in receipt of guarantee credit

757. The Committee agreed that it was content with clause 87 as drafted.

Clause 88 – Legal aid for certain bail applications

758. The Committee agreed that it was content with clause 88 as drafted.

Clause 89 – Financial eligibility for grant of right to representation

759. The Committee agreed that it was content with clause 89 as drafted.

Clause 90 – Litigation funding agreements

760. The Committee agreed that it was content with clause 90 as drafted.

Clause 91 – Civil legal services: scope

761. The Committee agreed that it was content with clause 91 as drafted.

Clause 92 – Bail: compassionate grounds

762. The Committee agreed that it was content with clause 92 as drafted.

Clause 93 – Bail: repeat application

763. The Committee agreed that it was content with clause 93 as drafted.

Clause 94 – Possession of offensive weapon with intent to commit an offence

764. The Committee agreed that it was content with clause 94 as drafted.

Clause 95 – Publication of material relating to legal proceedings

765. The Committee agreed that it was content with clause 95 as drafted.

Clause 96 – Membership of Crown Court Rules Committee

766. The Committee agreed that it was content with clause 96 subject to the amendment recommended by the Committee and agreed by the Department to specify that the Attorney General's nominee shall be a practicing member of the Bar or a practising solicitor as follows:

Clause 96, page 54, line 39, after 'Committee' insert 'in paragraph (g) for "one other" substitute "a"'

Clause 96, page 55, line 1, leave out 'person' and insert 'practising member of the Bar of Northern Ireland or a practising solicitor'.

Clause 97 – Membership of Court of Judicature Rules Committee

767. The Committee agreed that it was content with clause 97 subject to the amendment recommended by the Committee and agreed by the Department to specify that the Attorney General's nominee shall be a practising member of the Bar or a practising solicitor as follows:

Clause 97, page 55, line 5, after 'Committee' insert 'in paragraph (d) for "one other" substitute "a" '

Clause 97, page 55, line 7, leave out 'person' and insert 'practicing member of the Bar of Northern Ireland or a practising solicitor'

Clause 97, page 55, line 12, leave out 'person' and insert 'barrister or solicitor'.

Clause 98 – Appeals from Crown Court: Proceeds of Crime Act 2002

768. The Committee agreed that it was content with clause 98 as drafted.

Clause 99 – Witness summons in magistrates' court

769. The Committee agreed that it was content with clause 99 as drafted.

Clause 100 – Criminal conviction certificates to be given to employers

770. The Committee agreed that it was content with clause 100 as drafted.

Clause 101 – Accounts of the Law Commission

771. The Committee agreed that it was content with clause 101 as drafted.

Clause 102 – Supplementary, incidental, consequential and transitional provision, etc.

772. The Committee agreed that it was content with clause 102 as drafted.

Clause 103 – Regulations and orders

773. The Committee agreed that it was content with clause 103 subject to the amendment recommended by the Committee and agreed by the Department to provide that the Order in clause 82 which brings the Code of Practice into operation must be laid before the Assembly and approved by affirmative resolution as follows:

Clause 103, page 61, line 18, leave out 'and' and insert 'to'

Clause 103, page 61, line 23, at end insert –

'3(A) No order may be made –

(a) under section 82 (5)

unless a draft of the order has been laid before and approved by a resolution of the Assembly.'

Clause 104 – Interpretation

774. The Committee agreed that it was content with clause 104 as drafted.

Clause 105 – Transitional provisions and savings

775. The Committee agreed that it was content with clause 105 as drafted.

Clause 106 – Minor and consequential amendments and repeals

776. The Committee agreed that it w as content with clause 106 as drafted.

Clause 107 – Commencement

777. The Committee agreed that it was content with clause 107 as drafted.

Clause 108 – Short title

778. The Committee agreed that it was content with clause 108 as drafted.

Schedule 1 – Policing and Community Safety Partnerships

Schedule 1, Paragraphs 1 to 3

779. The Committee agreed that it was content with Schedule 1, Paragraphs 1 to 3 as drafted.

Schedule 1, Paragraph 4

780. The Committee agreed that it was content with Schedule 1, Paragraph 4 subject to the amendment proposed by the Department in response to concerns raised by the Committee to give the councils scope to pay expenses to all members of PCSPs who do not receive them from their own organisation as follows:

Schedule 1, page 70, line 19, at end insert –

'Expenses

16A. The council may pay to members of a PCSP such expenses as the council may determine.'

Schedule 1, Paragraphs 5 and 6

781. The Committee agreed that it was content with Schedule 1, Paragraphs 5 and 6 as drafted.

Schedule 1, Paragraph 7

782. The Committee agreed that it was content with Schedule 1, Paragraph 7 subject to the following Committee amendment that allows for a list of specified organisations for inclusion on every PCSP to be made by affirmative resolution:

Schedule 1, page 66, line 4, at end insert—

'(2A) The Department may by order designate organisations for the purposes of this paragraph.

(2B) No order may be made under sub-paragraph (2A) unless—

(a) the Department has consulted each PCSP; and

(b) a draft of the order has been laid before and approved by a resolution of the Assembly.'

Schedule 1, page 66, line 5, after 'PCSP' insert 'or by an order under sub-paragraph (2A)'.

Schedule 1, Paragraphs 8 and 9

783. The Committee agreed that it was content with Schedule 1, Paragraphs 8 and 9 as drafted.

Schedule 1, Paragraph 10

784. The Committee agreed that it was content with Schedule 1, Paragraph 10 subject to the following Committee amendment that provides for the appointment of the Chairs and Vice Chairs of the PCSPs in the same manner as the appointment of the Chair and Vice Chair of the Policing Committee:

Schedule 1, page 68, line 4, leave out sub-paragraphs 10 (4) and (5) and insert:-

'10.—(4) At any time thereafter, there shall be—

(a) a chair appointed by the council from among the political members; and

(b) a vice-chair elected by the independent members from among such members.

(5) In appointing to the office of chair, the council shall ensure that, so far as is practicable—

(a) a person is appointed to that office for a term of 12 months at a time or, where that period is shorter than 18 months, for a period ending with the reconstitution date next following that person's appointment;

(b) that office is held in turn by each of the four largest parties represented on the council immediately after the last local general election.'

Schedule 1, Paragraphs 11 to 16

785. The Committee agreed that it was content with Schedule 1, Paragraphs 11 to 16 as drafted.

Schedule 1, Paragraph 17

786. The Committee agreed that it was content with Schedule 1, Paragraph 17 subject to the following amendment proposed by the Department to clarify the means of funding for PCSPs as follows:

Schedule 1, page 70, line 21, leave out paragraph 17 and insert -

'17.—(1)The Department and the Policing Board shall for each financial year make to the council grants of such amounts as the joint committee may determine for defraying or contributing towards the expenses of the council in that year in connection with PCSPs.

(2) A grant made by the Department or the Policing Board under this paragraph—

(a) shall be paid at such time, or in instalments of such amounts and at such times, and

(b) shall be made on such conditions,

as the joint committee may determine.

(3) A time determined under sub-paragraph (2)(a) may fall within or after the financial year concerned.'

Schedule 1, Paragraphs 18 to 21

787. The Committee agreed that it was content with Schedule 1, Paragraphs 18 to 21 as drafted.

Schedule 2 – District Policing and Community Safety Partnerships

Schedule 2, Paragraphs 1 to 3

788. The Committee agreed that it was content with Schedule 2, Paragraphs 1 to 3 as drafted.

Schedule 2, Paragraph 4

789. The Committee agreed that it was content with Schedule 2, Paragraph 4 subject to the amendment proposed by the Department in response to concerns raised by the Committee to give the councils scope to pay expenses to all members of PCSPs who do not receive them from their own organisation as follows:

Schedule 2, page 79, line 21, at end insert –

'Expenses

16A. The council may pay to members of a DPCSP such expenses as the council may determine'.

Schedule 2, Paragraphs 5 and 6

790. The Committee agreed that it was content with Schedule 2, Paragraphs 5 and 6 as drafted.

Schedule 2, Paragraph 7

791. The Committee agreed that it was content with Schedule 2, Paragraph 7 subject to the following Committee amendment that allows for a list of specified organisations for inclusion on every PCSP to be made by affirmative resolution:

Schedule 2, page 74, line 36, at end insert—

'(2A) The Department may by order designate organisations for the purposes of this paragraph.

(2B) No order may be made under sub-paragraph (2A) unless—

(a) the Department has consulted each DPCSP; and

(b) a draft of the order has been laid before and approved by a resolution of the Assembly.'

Schedule 2, page 74, line 37, after 'DPCSP' insert 'or by an order under sub-paragraph (2A)'

Schedule 2, Paragraphs 8 and 9

792. The Committee agreed that it was content with Schedule 2, Paragraphs 8 and 9 as drafted.

Schedule 2, Paragraph 10

793. The Committee agreed that it was content with Schedule 2, Paragraph 10 subject to the following Committee amendment that provides for the appointment of the Chair and Vice Chair of the DPCSPs in the same manner as the appointment of the Chair and Vice Chair of the Policing Committee:

Schedule 2, page 76, line 35, leave out sub-paragraphs 10 (4) and (5) and insert:-

'10.—(4) At any time thereafter, there shall be—

(a) a chair appointed by the council from among the political members; and

(b) a vice-chair elected by the independent members from among such members.

(5) In appointing to the office of chair, the council shall ensure that, so far as is practicable—

(a) a person is appointed to that office for a term of 12 months at a time or, where that period is shorter than 18 months, for a period ending with the reconstitution date next following that person's appointment;

(b) that office is held in turn by each of the four largest parties represented on the council immediately after the last local general election.'

Schedule 2, Paragraphs 11 to 16

794. The Committee agreed that it was content with Schedule 2, Paragraphs 11 to 16 as drafted.

Schedule 2, Paragraph 17

795. The Committee agreed that it was content with Schedule 2, Paragraph 17 subject to the following amendment proposed by the Department to clarify the means of funding for DPCSPs as follows:

Schedule 2, page 79, line 23, leave out paragraph 17 and insert—

'17.—(1) The Department and the Policing Board shall for each financial year make to the council grants of such amounts as the joint committee may determine for defraying or contributing towards the expenses of the council in that year in connection with DPCSPs.

(2) A grant made by the Department or the Policing Board under this paragraph—

(a) shall be paid at such time, or in instalments of such amounts and at such times, and

(b) shall be made on such conditions,

as the joint committee may determine.

(3) A time determined under sub-paragraph (2)(a) may fall within or after the financial year concerned.'

Schedule 2, Paragraphs 18 and 19

796. The Committee agreed that it was content with Schedule 2, Paragraphs 18 and 19 as drafted.

Schedule 3 – Regulated matches

797. The Committee agreed that it was content with Schedule 3 subject to the amendment proposed by the Department in response to concerns raised by the Committee so that the provisions only apply to matches played at designated grounds as follows:

Schedule 3, page 81, line 7, leave out from 'or' to end of line 9

Schedule 3, page 81, line 19, leave out from 'or' to end of line 21.

Schedule 4 – Penalty offences and penalties

798. The Committee agreed that it was content with Schedule 4 as drafted.

Schedule 5 – Transitional and saving provisions

799. The Committee agreed that it was content with Schedule 5 as drafted.

Schedule 6 – Minor and consequential amendments

800. The Committee agreed that it was content with Schedule 6 as drafted.

Schedule 7 - Repeals

801. The Committee agreed that it was content with Schedule 7 as drafted.

Long title

802. The Committee agreed the Long Title of the Bill.

Appendix 1

Minutes of Proceedings of the Committee Relating to the Report

Appendix 1 - Minutes of Proceedings

- 21 October 2010
- 18 November 2010
- 25 November 2010
- 2 December 2010
- 9 December 2010
- 16 December 2010
- 11 January 2011
- 13 January 2011
- 18 January 2011
- 20 January 2011
- 25 January 2011
- 27 January 2011
- 1 February 2011
- 3 February 2011
- 8 February 2011
- 10 February 2011

Thursday 21 October 2010
Senate Chamber, Parliament Buildings

Present: Lord Morrow MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Lord Browne MLA
Mr Tom Elliott MLA
Mr Paul Givan MLA
Mr Alban Maginness MLA
Mr Conall McDevitt MLA
Mr John O'Dowd MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Vincent Gribbin (Assistant Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)
Mr Kevin Marks (Clerical Officer)

Apologies: Mr Thomas Buchanan MLA
Ms Carál Ní Chuilín MLA

2.05 pm The meeting commenced in public session.

4. Briefing by Departmental officials on the Justice Bill

2.21pm Gareth Johnston, Deputy Director of Justice Strategy Division, Tom Haire, Head of Criminal Law Branch and Bill Manager for the Justice Bill, John Halliday, Criminal Legal Aid Policy Advisor and Laurene McAlpine, Head of Civil Policy and Legislation Division joined the meeting.

The officials briefed the Committee on the principles and content of the Justice Bill and outlined a number of proposals that had not been included in the Bill and some proposals that had adjusted prior to its introduction.

A question and answer session followed which covered issues such as legislative competence, the proposals to confer rights of audience on solicitor advocates in the higher courts which was not included in the Bill, the sports provisions and fixed penalty notices.

2.29pm Mr Elliott left the meeting.

The evidence session was recorded by Hansard.

The Chairman thanked the officials for the briefing and they left the meeting.

5. Proposals for Committee Stage of the Justice Bill

The Committee considered proposals for its handling of the Committee Stage of the Justice (Northern Ireland) Bill.

Agreed: The Committee agreed a list of key stakeholders and a letter that would issue immediately seeking evidence on the Justice Bill with a closing date for submissions of 17 November 2010.

Agreed: The Committee agreed a format for oral evidence sessions on the Justice Bill.

Agreed: The Committee agreed that the proposed visit to the Young Offenders Centre at Hydebank should go ahead as planned and scrutiny of the Bill should begin on 18 November.

Thursday 18 November 2010
Room 29, Parliament Buildings

Present: Lord Morrow MLA (Chairman)
Lord Browne MLA
Mr Thomas Buchanan MLA
Sir Reg Empey MLA
Mr Paul Givan MLA
Mr Alban Maginness MLA
Mr Conall McDevitt MLA
Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Mr Vincent Gribbin (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)
Mr Kevin Marks (Clerical Officer)

Apologies: Mr Raymond McCartney MLA (Deputy Chairman)

2.03pm The meeting commenced in public session.

4. The Justice Bill – Oral evidence sessions

The Committee considered proposals for which organisations will be called to give oral evidence sessions on the Justice Bill on 25 November and 2 December 2010.

Agreed: The Committee agreed the proposed arrangements for oral evidence sessions.

Agreed: The Committee agreed to provide relevant information on the Sports clauses to the Committee for Culture, Arts and Leisure and to grant the extension requested.

Briefing by Department of Justice Officials on Clauses 36 to 55 and Schedule 3 of the Justice Bill

2.38pm Gareth Johnston, Deputy Director of Justice Strategy Division, Tom Haire, Justice Bill Manager, David Mercer, Criminal Law Branch and Ciaran Mee, an official from the Department of Culture, Arts and Leisure joined the meeting.

The officials briefed the Committee on the intent and content of clauses 36 to 55 and Schedule 3 of the Sports Bill relating to Sports Law and answered questions from Members on the throwing of missiles; the sale of tickets by unauthorised persons; drinking and being drunk at regulated matches; and banning orders.

The Chairman thanked the officials for the briefing.

The evidence session was recorded by Hansard.

Briefing by Sport NI on the Justice Bill

3.10pm Nick Harkness, Director of Participation and Facilities, and Paul Scott, Manager of the Facilities Unit joined the meeting.

The representatives briefed the Committee on SportNI's comments on the Sports Law clauses of the Justice Bill and answered questions from Members on issues such as the rationale and necessity for the sport law clauses; the impact of similar legislation in England and Wales; the definition of an offensive weapon; and the controlled sale and consumption of alcohol at regulated matches.

The Chairman thanked the representatives for the briefing.

The evidence session was recorded by Hansard.

Briefing by Ulster Rugby and Ulster Rugby Supporters Club on the Justice Bill

3.43pm Lindsey Irwin, Senior Manager, External Relations, Ulster Rugby, Ian Cambell, Chair of Ulster Rugby Supporters Club, Robin Cole, Senior Manager, External Relations, Ulster Rugby, and Joe Eagleson, Past Honorary Secretary, IRFU Ulster Branch joined the meeting.

The representatives briefed the Committee on Ulster Rugby and Ulster Rugby Supporters Club's comments on the Sports Law clauses, and in particular clause 43, of the Justice Bill and answered questions from Members on issues such as an exemption from the sale of alcohol

clauses; the comparisons with England and Wales legislation; and the current arrangements for dealing with disruption at Rugby grounds.

The Chairman thanked the representatives for the briefing.

The evidence session was recorded by Hansard.

Briefing by Ulster GAA on the Justice Bill

4.13pm Danny Murphy, Provincial Director, Ryan Feeney, Head of Public Affairs and Stephen McGeehan, Head of Operations joined the meeting.

The representatives briefed the Committee on Ulster GAA's comments on the Sports Law clauses of the Justice Bill and answered questions from Members on issues such as what constitutes a regulated match; the requirements arising from the Safety of Sports Grounds legislation; and the ability to enforce the legislation.

4.23 pm Mr McDevitt left the meeting

The Chairman thanked the representatives for the briefing.

The evidence session was recorded by Hansard.

Briefing by Irish Football Association (IFA) on the Justice Bill

4.43pm Patrick Nelson, Chief Executive, Terry Pateman, Vice President, Hugh Wade, Director and Stephen Grange, National Security Officer joined the meeting.

The representatives briefed the Committee on the Irish Football Association's comments on the Sports Law clauses of the Justice Bill and answered questions from Members on issues such as the stewarding of matches; the necessity of the sports legislation; and the role of the legislation in altering the behavior of individuals attending matches.

The Chairman thanked the representatives for the briefing.

The evidence session was recorded by Hansard.

Briefing by the Amalgamation of Official Northern Ireland Supporters Clubs (AONISC) on the Justice Bill

5.15pm Gary McAlister and Chris Andrews, from the Northern Ireland Supporters Clubs joined the meeting.

The representatives briefed the Committee on AONISC's comments on the Sports Law clauses of the Justice Bill and answered questions from Members on issues such as the necessity of the legislation; the consumption of alcohol in viewing facilities; the possession of alcohol on private hire transport; and ticket touting.

The Chairman thanked the representatives for the briefing.

The evidence session was recorded by Hansard.

Response by Department of Justice officials on the issues raised by the sporting organisations

5.45pm Gareth Johnston, Deputy Director of Justice Strategy Division, Tom Haire, Justice Bill Manager, David Mercer, Criminal Law Branch and Ciaran Mee, an official from the Department of Culture, Arts and Leisure returned to the table.

The Departmental officials responded to the issues raised by the sporting organisations on the sports clauses.

6.02 pm Mr McNarry left the meeting

The Chairman thanked the officials for the briefing and they left the meeting.

The evidence session was recorded by Hansard.

Agreed: The Committee agreed to discuss the written and oral evidence on the sports clauses at the meeting on 2 December.

Thursday 25 November 2010
Senate Chamber, Parliament Buildings

Present: Lord Morrow MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Lord Browne MLA
Mr Thomas Buchanan MLA
Sir Reg Empey MLA
Mr Paul Givan MLA
Mr Alban Maginness MLA
Mr Conall McDevitt MLA
Mr David McNarry MLA
Mr John O'Dowd MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Mr Vincent Gribbin (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)
Mr Kevin Marks (Clerical Officer)

Apologies: Ms Carál Ní Chuilín MLA

2.04pm The meeting commenced in public session.

5. The Justice Bill – Oral Evidence Sessions

The Committee noted the tight timescale for the Committee Stage of the Justice Bill and considered a proposal for an extension of time.

Agreed: The Committee agreed a motion, extending the Committee Stage of the Justice Bill (NIA Bill 1/10) until Friday 11 February 2010, for a Plenary Session in the near future.

2.50 pm Mr Maginness left the meeting.

The Committee noted the large number of submissions from District Policing Partnerships, Community Safety Partnerships and Local Councils in relation to the Policing and Community Safety Partnerships (PCSPs) aspect of the Justice Bill and considered options for the handling of oral sessions on this issue.

Agreed: The Committee agreed that the date for taking oral evidence on the PCSPs should be 16 December with the oral evidence sessions on Alternatives to Justice and the Treatment of Offenders moved to 9 December.

Agreed: The Committee agreed to hold a formal evidence event in the Long Gallery on 16 December 2010 on the PCSPs Clauses, to which all relevant organisations would be invited to attend.

Briefing by Departmental Officials on clauses 1 to 19 of the Justice Bill

2.50pm Gareth Johnston, Deputy Director of Justice Strategy Division, Tom Haire, Justice Bill Manager, Janice Smiley, Head of Criminal Policy Unit and Chris Mathews, Head of Sentencing Delivery and European Unit, joined the meeting.

The officials briefed the Committee on the intent and content of clauses 1 to 19 of the Justice Bill on Special Measures for Vulnerable and Intimidated Witnesses and Live Links and answered questions from Members on the compliance of the Offender Levy with European Union legislation.

The Chairman thanked the officials for the briefing.

The evidence session was recorded by Hansard.

Briefing by Victim Support NI

3.18pm Susan Reid, Chief Executive and Geraldine Hanna, Operations Manager joined the meeting.

The representatives briefed the Committee on Victim Support NI's views on the Special Measures for Vulnerable and Intimidated Witnesses clauses of the Justice Bill and answered questions from Members on issues such as how to ensure that victims and witnesses give the best evidence possible and the use of the Offender Levy for additional funding for victims services.

The Chairman thanked the representatives for the briefing.

The evidence session was recorded by Hansard.

Briefing by MindWise

3.40pm Bill Halliday, Chief Executive, Anne Doherty, Deputy Chief Executive, Stanley Booth, Appropriate Adult Scheme Manager and Laura McKay, Appropriate Adult Scheme Deputy Manager joined the meeting.

The representatives briefed the Committee on MindWise's views on the Special Measures for Vulnerable and Intimidated Witnesses clauses and Live Links clausesof the Justice Bill and answered questions from Members on issues such as the treatment of vulnerable adults in police custody; the role and training of Intermediaries and the ability of employers to make reasonable adjustments to employ those convicted of specific offences.

The Chairman thanked the representatives for the briefing.

The evidence session was recorded by Hansard.

Response by Department of Justice officials on the issues raised by the organisations

4.11pm Gareth Johnston, Deputy Director of Justice Strategy Division, Tom Haire, Justice Bill Manager, Janice Smiley, Head of Criminal Policy Unit and Chris Mathews, Head of Sentencing Delivery and European Unit returned to the table.

The Departmental officials responded to the issues raised by the organisations on the Special Measures for Vulnerable and Intimidated Witnesses and Live Links clauses.

The Chairman thanked the officials for the briefing and they left the meeting.

The evidence session was recorded by Hansard.

Agreed: The Committee agreed to discuss the written and oral evidence on the Special Measures for Vulnerable and Intimidated Witnesses and Live Links clauses at the meeting on 9 December 2010.

Thursday 2 December 2010
Senate Chamber, Parliament Buildings

Present: Lord Morrow MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Lord Browne MLA
Mr Thomas Buchanan MLA
Sir Reg Empey MLA
Mr Paul Givan MLA
Mr Alban Maginness MLA
Mr Conall McDevitt MLA
Mr David McNarry MLA
Mr John O'Dowd MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)
Mr Kevin Marks (Clerical Officer)

2.06pm The meeting commenced in public session.

5. The Justice Bill – Oral Evidence Sessions

Briefing by Department of Justice Officials on Part 7 - Legal Aid etc, Part 8 - Miscellaneous and Part 9 - Supplementary Provisions of the Justice Bill

2.57pm Gareth Johnston, Deputy Director of Justice Strategy Division, Robert Crawford, Head of Public Legal Services Division, Geraldine Fee, Head of Criminal Policy and Legislation Division and Laurene McAlpine, Head of Civil Policy and Legislation Division joined the meeting.

The Departmental officials briefed the Committee on the Legal Aid, Miscellaneous and Supplementary Provisions clauses of the Bill and the intent of the clauses and answered questions from Members.

The Chairman thanked the officials for the briefing.

The evidence session was recorded by Hansard.

Briefing by the General Council of the Bar of Northern Ireland

3.22pm Adrian Colton QC, Chairman of the Bar Council, Dermot Fee QC Member of the Bar Council and Brendan Garland, Chief Executive joined the meeting.

The representatives briefed the Committee on the Bar Council's view on the Legal Aid, Miscellaneous and Supplementary Provisions Clauses of the Bill and answered questions from Members on issues such as achieving a balance between the need to reduce costs of Legal Aid and maintain access to justice; the proposed means test for criminal legal aid; recovery of defense cost orders; and litigation funding agreements.

The Chairman thanked the representatives for the briefing.

The evidence session was recorded by Hansard.

3.50 pm Mr Thomas Buchanan left the meeting.

Briefing by Women's Aid Federation Northern Ireland

3.50pm Gillian Clifford, Regional Policy and Information Coordinator for Women's Aid Federation NI, Patricia Lyness, Management Coordinator for Belfast and Lisburn Women's Aid, Noelle Collins, Team Leader, Belfast and Lisburn Women's Aid, Sonya Lutton, Deputy Helpline Manager joined the meeting.

The representatives briefed the Committee on Women's Aid Federation's views on the Legal Aid clauses of the Justice Bill and answered questions from Members on issues such as the potential adverse impact of non-eligibility for legal aid on victims of domestic violence, particularly in relation to non-molestation orders, and a proposal for automatic entitlement to access legal aid for victims of domestic violence.

The Chairman thanked the representatives for the briefing.

The evidence session was recorded by Hansard.

Briefing by the Law Society of Northern Ireland

4.10pm Brian Speers, President of the Law Society, Norville Connolly, Senior Vice President and Alan Hunter, Chief Executive joined the meeting.

The representatives briefed the Committee on the Law Society's views on the Legal Aid, Miscellaneous and Supplementary Provisions clauses of the Justice Bill and the need for the solicitor advocacy clauses to be reintroduced into the Bill and answered Members questions on issues such as the proposed means test for criminal legal aid; the training and accreditation requirements for Solicitor Advocates; and the need for an impact assessment in relation to the Legal Aid clauses.

The Chairman thanked the representatives for the briefing.

The evidence session was recorded by Hansard.

4.11 pm Mr David McNarry left the meeting.

4.18 pm Mr John O'Dowd left the meeting.

Response by Department of Justice officials on the issues raised by the organisations

4.42pm Gareth Johnston, Deputy Director of Justice Strategy Division, Robert Crawford, Head of Public Legal Services Division, Geraldine Fee, Head of Criminal Policy and Legislation Division and Laurene McAlpine, Head of Civil Policy and Legislation Division returned to the table.

The Departmental officials responded to the issues raised by the organisations on the the Legal Aid, Miscellaneous and Supplementary Provisions clauses of the Justice Bill and agreed to provide further information in relation to the number of Legal Aid claimants involved in personal injury cases.

The Chairman thanked the officials for the briefing and they left the meeting.

The Committee discussed the position in relation to Clause 85 and Court Rules Committees.

Agreed: The Committee agreed to consider previous information provided by the Department of Justice on the Court Rules Committees and request advice from the Examiner of Statutory Rules on the matter.

The evidence session was recorded by Hansard.

6. The Justice Bill - consideration of Clauses 36 to 55 and Schedule 3 on Sport

The Committee discussed the evidence received and the issues raised in relation to the Sports Clauses of the Justice Bill at its meeting on 18 November 2010 and noted a letter from the Minister of Justice to Ulster Rugby regarding flexibility for implementing the sports provisions within the Bill.

Agreed: The Committee agreed to give further consideration to the issues raised during the clause by clause scrutiny of the Bill which was scheduled to begin in the New Year.

The evidence session was recorded by Hansard.

Thursday 9 December 2010
Senate Chamber, Parliament Buildings

Present: Lord Morrow MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Lord Browne MLA
Mr Thomas Buchanan MLA
Sir Reg Empey MLA
Mr Paul Givan MLA
Mr Alban Maginness MLA
Mr Conall McDevitt MLA
Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Mr Vincent Gribbin (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)
Mr Kevin Marks (Clerical Officer)

2.03 pm The meeting commenced in public session.

5. The Justice Bill – Oral Evidence Sessions

Briefing by Department of Justice Officials on Parts 5 and 6 and Schedule 4 of the Justice Bill relating to the Treatment of Offenders and Alternatives to Prosecution.

3.22pm Gareth Johnston, Deputy Director of Justice Strategy Division, Tom Haire, Justice Bill Manager, Janice Smiley, Head of Criminal Policy Unit and Paul Black, Criminal Policy Unit joined the meeting.

The Departmental officials briefed the Committee on Parts 5 and 6 and Schedule 4 of the Justice Bill relating to the Treatment of Offenders and Alternatives to Prosecution and the intent of the clauses and answered questions from Members.

The Chairman thanked the officials for the briefing.

The evidence session was recorded by Hansard.

Briefing by the Probation Board for Northern Ireland

3.43pm Brian McCaughey, Director, Hugh Hamill, Assistant Director and Louise Cooper, Head of Business Planning and Development, the Probation Board joined the meeting.

The representatives briefed the Committee on the Probation Board views on the Treatment of Offenders and Alternatives to Prosecution Clauses of the Bill and answered questions from Members on issues such as the management of fine defaulters the budgetary commitments required in relation to conditional cautions, and Clause 59 relating to breach of license conditions by sex offenders.

3.54pm Mr Buchanan left the meeting.

4.01pm Sir Reg Empey joined the meeting.

The Chairman thanked the representatives for the briefing.

The evidence session was recorded by Hansard.

Briefing by NIACRO

4.12pm David Weir, Director of Family Services and Pat Conway, Director of Adult Services, NIACRO joined the meeting.

The representatives briefed the Committee on NIACRO's views on the Alternatives to Prosecution Clauses of the Justice Bill and answered questions from Members on issues such as alternatives to fixed penalty notices, the need to divert people away from the Criminal Justice System to alternative services, and the fact that monetary penalties do not address the cases of offending behavior and would not reduce re-offending rates.

4.42pm Mr Maginness rejoined the meeting.

The Chairman thanked the representatives for the briefing.

The evidence session was recorded by Hansard.

Briefing by Include Youth

4.43pm Koulla Yiasouma, Director, Edel Quinn, Policy Manger and Paula Rogers, Policy Coordinator joined the meeting.

The representatives briefed the Committee on Include Youth's views on the Alternatives to Prosecution Clauses of the Justice Bill and the Equality Impact Assessment on the Bill and answered Members questions. Issues covered the impact of fixed penalty notices on young people; the possibility of using the Bill to remove ASBOS; and why alternatives to prosecution proposals were included before the outcome of the Youth Justice Review and Reducing Offending Behaviour were known

4.53pm Sir Reg Empey left the meeting.

The Chairman thanked the representatives for the briefing.

The evidence session was recorded by Hansard.

Response by Department of Justice officials on the issues raised by the organisations

5.17pm Gareth Johnston, Deputy Director of Justice Strategy Division, Tom Haire, Justice Bill Manager, Janice Smiley, Head of Criminal Policy Unit and Paul Black, Criminal Policy Unit returned to the table.

The Departmental officials responded to the issues raised by the organisations on the the Treatment of Offenders and Alternatives to Prosecution clauses of the Justice Bill and agreed to provide the Committee with further information.

5.22pm Mr Givan rejoined the meeting.

The Chairman thanked the officials for the briefing and they left the meeting.

The evidence session was recorded by Hansard.

Thursday 16 December 2010
Room 29, Parliament Buildings

Present: Lord Morrow MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Lord Browne MLA
Mr Thomas Buchanan MLA
Mr Paul Givan MLA
Mr Alban Maginness MLA
Mr Conall McDevitt MLA
Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Mr Vincent Gribbin (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)
Mr Kevin Marks (Clerical Officer)

2.35pm The meeting resumed in the Long Gallery in public session.

8. The Justice Bill – Oral Evidence Sessions

The Chairman welcomed the witnesses to the meeting and outlined the structure of the evidence session.

Briefing by Department of Justice Officials on Part 3 and Schedules 1 and 2 of the Justice Bill relating to Policing and Community Safety Partnerships.

2.41pm David Hughes, Head of Policing Policy & Strategy Division, Gareth Johnston, Deputy Director of Justice Strategy Division, Nichola Creagh, Policing Policy and Strategy Division and Dan Mulholland, Policing Policy and Strategy Division joined the meeting.

The Departmental officials briefed the Committee on Part 3 and Schedules 1 and 2 of the Justice Bill relating to Policing and Community Safety Partnerships and the intent of the clauses and answered questions from Members.

Lord Browne declared his interest as a member of Belfast City Council.

2.53pm Sir Reg Empey joined the meeting.

The Chairman thanked the officials for the briefing.

The Chairman invited the witnesses to outline issues in relation to Part 3 and Schedules 1 and 2 of the Justice Bill relating to Policing and Community Safety Partnership.

Clause 20 – Establishment of PCSPs and DPCSPs

Derek Hussey, Strabane Community Safety Partnership, Suzanne Wylie, Belfast City Council, Sarah Wilson, Craigavon Community Safety Partnership, Claire Linney, Dungannon and South Tyrone Borough Council and Jeff Barr, Strabane District Policing Partnership raised a number of issues regarding Clause 20 of the Bill.

Clauses 21 and 22 – Functions of PCSP and DPCSP

Koulla Yiasouma, Include Youth, Suzanne Wylie, Belfast City Council, Liz Cuddy, Extern, Ms Bridget McCaughan, Limavady Borough Council and Derek Hussey, Strabane Community Safety Partnership raised a number of issues regarding Clauses 21 and 22 of the Bill.

Clause 23 – Code of practice for PCSPs and DPCSPs

Sarah Wilson, Craigavon CSP and Rosaleen Moore, Northern Ireland Policing Board raised a number of issues regarding Clause 23 of the Bill.

Clauses 24, 27 and 30 – Accountability and Reporting

Wendy Carson, Larne Borough Council, Helen Richmond, Northern Ireland Local Government Association, Jeff Barr, Strabane District Policing Partnership and Rosaleen Moore, Northern Ireland Policing Board raised a number of issues regarding Clauses 24, 27 and 30 of the Bill.

Clause 30 – Reports by policing committees to Policing Board

Jeff Barr, Strabane District Policing Partnership raised a number of issues regarding Clause 30 of the Bill.

Clause 33 –Other community policing arrangements

Liz Cuddy, Extern, Derek Hussey, Strabane Community Safety Partnership and Ian Creswell, Coleraine Community Safety Partnership raised a number of issues regarding Clause 33 of the Bill.

Clause 34 –Duty on public bodies to consider community safety implications in exercising duties

Jack Beattie, Northern Ireland Local Government Association, Bridgeen Butler, Moyle Community Safety Partnership, Mary McKee, Northern Ireland Policing Board, Derek Hussey, Strabane Community Safety Partnership, Sarah Wilson, Craigavon Community Safety Partnership, Koulla Yiasouma, Include Youth and Jeff Barr, Strabane District Policing Partnership raised a number of issues regarding Clause 34 of the Bill.

Clause 35 – Functions of joint committee and Policing Board

Suzanne Wylie, Belfast City Council, Rosaleen Moore, Northern Ireland Policing Board, Sarah Wilson, Craigavon CSP, Jeff Barr, Strabane DPP and Helen Richmond, Northern Ireland Local Government Association raised a number of issues regarding Clause 35 of the Bill.

Schedule 1 and 2 – Policing and Community Safety Partnerships and District Policing and Community Safety Partnerships

Paragraph 4 - Independent Members

Michael McCrory, Magherafelt CSP and DPP, Maura Hickey, Coleraine DPP, Amanda Stewart, Northern Ireland Policing Board, Mary McKee, Northern Ireland Policing Board, Jeff Barr, Strabane District Policing Partnership, Sarah Wilson, Craigavon CSP, Helen Richmond, Northern Ireland Local Government Association, raised a number of issues regarding Paragraph 4 in Schedules 1 and 2 of the Bill.

3.54pm Mr Buchanan left the meeting.

Paragraph 7 – Representatives of Designated Organisations

Philip McKeown, Moyle DPP, Paul Doran, Probation Board, Cathy Watson, Ballymoney CSP, Campbell Dixon, Newtownabbey Borough Council, Koulla Yiasouma, Include Youth and Derek Hussey, Strabane Community Safety Partnership raised a number of issues regarding Paragraph 7 in Schedules 1 and 2 of the Bill.

Paragraph 10 - Chair and Vice Chair

Cathy Watson, Ballymoney CSP, Rosaleen Moore, Northern Ireland Policing Board Bridget McCaughan, Limavady Borough Council, Jeff Barr, Strabane District Policing Partnership, Helen Richmond, Northern Ireland Local Government Association and Sarah Wilson, Craigavon CSP raised a number of issues regarding Paragraph 10 in Schedules 1 and 2 of the Bill.

Paragraph 13 – Policing Committee: Procedures

Alison Allen, Antrim CSP, DPP and Borough Council and Cathy Watson, Ballymoney CSP raised a number of issues regarding Paragraph 13 in Schedules 1 and 2 of the Bill.

Paragraph 17 - Finance

Suzanne Wylie, Belfast City Council, Jeff Barr, Strabane District Policing Partnership, Mary McKee, Northern Ireland Policing Board, Sarah Wilson, Craigavon CSP, Helen Richmond, Northern Ireland Local Government Association, Derek Hussey, Strabane Community Safety Partnership, Michael McCrory, Magherafelt CSP and DPP and Olwen Lyner, NIACRO raised a number of issues regarding Paragraph 17 in Schedules 1 and 2 of the Bill.

The Chairman thanked the representatives for their evidence.

Response by Department of Justice officials on the issues raised by the organisations

4.34pm David Hughes, Gareth Johnston, Nichola Creagh and Dan Mulholland returned to the table.

The Departmental officials responded to the issues raised by the organisations on the Policing and Community Safety Partnerships clauses of the Justice Bill, answered questions from Members and agreed to provide the Committee with further information on a range of matters.

The Chairman thanked the officials for the briefing and they left the meeting.

The evidence session was recorded by Hansard.

Tuesday 11 January 2011
Room 144, Parliament Buildings

Present: Lord Morrow MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Lord Browne MLA
Mr Paul Givan MLA
Mr Alban Maginness MLA
Mr Conall McDevitt MLA
Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Vincent Gribbin (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)
Mr Kevin Marks (Clerical Officer)

Apologies: Sir Reg Empey MLA

1.35pm The meeting commenced in public session.

5. The Justice Bill – Oral evidence session by the PSNI

2.40pm Assistant Chief Constable Will Kerr, Chief Superintendent Stephen Martin, Superintendent Chris Noble and Superintendent Alastair Wallace joined the meeting.

The PSNI representatives briefed the Committee on the clauses of the Bill and answered questions from Members on issues such as the necessity of aspects of the legislation and how it would be enforced; the impact of the legislation relating to fine defaulters; and the resource implications of the Bill for the PSNI.

2.57pm Ms Ní Chuilín joined the meeting.

3.30pm Mr Maginness joined the meeting.

The Chairman thanked the PSNI officials for the briefing and they left the meeting.

The evidence session was recorded by Hansard.

Response by Department of Justice officials on the issues raised by the PSNI

3.35pm Gareth Johnston, Head of Justice Strategy Division, David Hughes, Deputy Director of Policing Policy and Strategy, Janice Smiley, Head of Criminal Policy Unit and Tom Haire, Justice Bill Manager joined the meeting.

3.55pm Mr Girvan left the meeting.

3.59pm Mr Maginness left the meeting.

The Departmental officials responded to the issues raised by the PSNI on the Justice Bill.

The Chairman thanked the officials for the briefing and David Hughes left the meeting.

The evidence session was recorded by Hansard.

Briefing on the Justice Bill Equality Impact Assessment

Gareth Johnston, Head of Justice Strategy Division, Janice Smiley, Head of Criminal Policy Unit and Tom Haire, Justice Bill Manager briefed the Committee on the Justice Bill Equality Impact Assessment and answered questions from Members on the process followed for the consultation, the timing of it and the issues highlighted in responses received.

4.11pm Mr Girvan rejoined the meeting.

4.12pm Mr O'Dowd left the meeting.

4.13pm Mr McNarry rejoined the meeting.

4.20pm Mr McDevitt left the meeting.

The Chairman thanked the officials for the briefing and they left the meeting.

The evidence session was recorded by Hansard.

Thursday 13 January 2011
Room 29, Parliament Buildings

Present: Lord Morrow MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Lord Browne MLA
Mr Thomas Buchanan MLA
Sir Reg Empey MLA
Mr Paul Givan MLA
Mr Alban Maginness MLA
Mr Conall McDevitt MLA
Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Mr Vincent Gribbin (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)
Mr Kevin Marks (Clerical Officer)

2.02pm The meeting commenced in public session.

5. The Justice Bill – Oral evidence session by the NI Human Rights Commission

3.10pm Professor Monica McWilliams, Chief Commissioner, Ciarán Ó Maoláin, Head of Legal Services, Policy and Research, and Ann Jemphrey, Policy Worker joined the meeting

The Chief Commissioner and her Officials briefed the Committee on the clauses of the Justice Bill and answered questions from Members on issues such as a definition of sectarianism, the offender levy and fixed penalty notices.

3.40pm Mr McNarry left the meeting.

The Chairman thanked the Chief Commissioner and her officials for the briefing.

The evidence session was recorded by Hansard.

Response by Department of Justice officials on the issues raised by the NI Human Rights Commission

3.45pm Gareth Johnston, Head of Justice Strategy Division, Janice Smiley, Head of Criminal Policy Unit, Tom Haire, Justice Bill Manager and Chris Matthews, Head of Sentencing Delivery and European Unit joined the meeting.

The Departmental officials responded to the issues raised by the NI Human Rights Commission on the Justice Bill.

3.49pm Mr Givan joined the meeting.

The Chairman thanked the officials for the briefing and they left the table.

The evidence session was recorded by Hansard.

6. Justice Bill: Advice from the Examiner of Statutory Rules on the Delegated Powers Memorandum

The Committee considered advice received from Assembly Examiner of Statutory Rules on the delegated powers contained in the Justice Bill and in particular Clause 2 (4) and (5), Clause 82 (5), Clause 85 (2) and Clause 89 (2), and why some Court Rules are not subject to any Assembly procedure. The Committee also noted information provided on the background and reasons why rules made by the Magistrate's Court Rules Committee and the County Court Rules Committee are not subject to Assembly procedures.

Agreed: The Committee agreed to write to the Minister of Justice outlining that it was minded to amend Clause 82 (5), 85 (2) and 89 (2) to make the powers contained in them subject to the draft affirmative procedure and seeking his views and commitments to do this. His views on possible changes to the position in relation to Court Rules should also be requested.

7. Clause by Clause consideration of the Justice Bill

4.06pm Gareth Johnston, Janice Smiley, Tom Haire and Chris Mathews returned to the table to provide further information and clarification, if necessary on Clauses 1 to 19 of the Justice Bill.

The Committee reviewed the evidence provided on clauses 1 to 19 of the Bill and sought further information and clarification from the departmental officials on clauses 2, 4, 7, 8, 11, 12, 13, 16 and 19.

Agreed: The Committee agreed to undertake formal consideration of clauses 1-19 at the meeting scheduled for 20 January 2011 and to continue its consideration of the Bill at the meeting scheduled for 18 January 2011.

4.53pm Mr Givan left the meeting.

The Chairman thanked the officials for the briefing as they left the table.

The evidence session was recorded by Hansard.

Tuesday 18 January 2011
Room 29, Parliament Buildings

Present: Lord Morrow MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Lord Browne MLA
Mr Thomas Buchanan MLA
Mr Paul Givan MLA
Mr Alban Maginness MLA
Mr Conall McDevitt MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Vincent Gribbin (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)
Mr Kevin Marks (Clerical Officer)

3.08pm The meeting commenced in public session.

4. The Justice Bill – Attendance of the Attorney General for Northern Ireland on Clause 34 of the Justice Bill

3.15pm The Attorney General for Northern Ireland, John Larkin QC and Claire Duffy, Head of Division in the Attorney General's office joined the meeting.

The Attorney General outlined his views on clause 34 of the Justice Bill and the legal liability created across a wide range of public bodies. Issues covered included the likelihood of legal action against public bodies as a result of the current wording of the clause and options for amending the clause.

3.35pm Mr O'Dowd joined the meeting.

The Chairman thanked the Attorney General and his official for the briefing and they left the meeting.

The Committee considered whether it would be helpful to receive the views of the Attorney General on other clauses in the Justice Bill and noted that the Assembly Legal Advisors were available to provide advice on any legal issue that arose.

Agreed: The Committee agreed that Members would consider whether there were any further clauses upon which the views of the Attorney General would be helpful and return to the matter at the next meeting.

The evidence session was recorded by Hansard.

5. Informal Clause by Clause consideration of the Justice Bill - Part 3 – Policing and Community Safety Partnerships

3.46pm Gareth Johnston, Head of Justice Strategy Division, David Hughes, Deputy Director of Policing Policy & Strategy, Nicola Creagh, Policing Policy and Strategy Division and Dan Mulholland, Policing Policy and Strategy Division joined the meeting to provide further information and clarification, if necessary on Clauses 20 to 35 of the Justice Bill.

Lord Browne declared his interest as a member of Belfast City Council.

The Committee reviewed the evidence provided on clauses 20 to 35 of the Bill and sought further information and clarification from the departmental officials on clauses 20, 21, 22, 23, 24, 33, 34 and 35.

The officials agreed to consider issues raised in relation to Clause 21 further and report back to the Committee.

3.59pm Mr Buchannan joined the meeting.

4.00pm Mr McDevitt joined the meeting.

4.29pm Mr Givan left the meeting.

4.29pm Mr Maginness left the meeting.

The Chairman thanked the officials for the briefing and they left the meeting.

The evidence session was recorded by Hansard.

Thursday 20 January 2011
Room 29, Parliament Buildings

Present: Lord Morrow MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Lord Browne MLA
Mr Thomas Buchanan MLA
Mr Paul Givan MLA
Mr Alban Maginness MLA
Mr Conall McDevitt MLA
Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Mr Vincent Gribbin (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)
Mr Kevin Marks (Clerical Officer)

Apologies: Lord Empey MLA

2.05pm The meeting commenced in public session.

6. Justice Bill - Formal Clause by Clause Consideration – Parts 1 and 2 – Victims and Witnesses and Live Links

The Committee commenced its formal clause-by-clause consideration of the Justice Bill.

3.38pm Gareth Johnston, Head of Justice Strategy Division, Tom Haire, Justice Bill Manager and Janice Smiley, Head of Criminal Policy Unit joined the meeting.

The Committee considered Clauses 1 – 6 relating to the Offender Levy. The Committee discussed a proposal to strengthen Clause 1 to provide a reparation element with the offender having the option of paying the levy or undertaking a limited amount of community service work. The point was made that if the aim of introducing the Offender Levy was to get people to recognise they had done something wrong then the clause needed to be changed in this way. Concerns were raised regarding whether adopting this proposal was practical and if it would further increase the administration costs associated with the Offender Levy.

Clause 1 – Offender levy imposed by court

Question: That the Committee is content with the clause as drafted.

The Committee divided: Ayes 5; Noes 3; Abstain 0

AYES NOES

Lord Browne Mr Raymond McCartney
Mr Thomas Buchannan Ms Carál Ní Chuilín
Mr Paul Givan Mr John O'Dowd
Mr Alban Maginness
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Agreed: That the Committee is content with Clause 1 as drafted.

Clause 2 – Enforcement and treatment of offender levy imposed by court

The Committee considered Clause 2 as drafted.

Question: That the Committee is content with Clause 2 as drafted.

The Committee divided: Ayes 5; Noes 0; Abstain 3

AYES Abstain

Lord Browne Mr Raymond McCartney
Mr Thomas Buchannan Ms Carál Ní Chuilín
Mr Paul Givan Mr John O'Dowd
Mr Alban Maginness
Mr Conall McDevitt

Lord Morrow did not participate in the vote

Agreed: That the Committee is content with Clause 2 as drafted.

Clause 3 – Deduction of offender levy imposed by court from prisoner's earnings

The Committee considered Clause 3 as drafted.

Question: That the Committee is content with Clause 3 as drafted.

The Committee divided: Ayes 5; Noes 0; Abstain 3

AYES Abstain

Lord Browne Mr Raymond McCartney
Mr Thomas Buchannan Ms Carál Ní Chuilín
Mr Paul Givan Mr John O'Dowd
Mr Alban Maginness
Mr Conall McDevitt

Lord Morrow did not participate in the vote

Agreed: That the Committee is content with Clause 3 as drafted.

Clause 4 – Offender levy imposed by court: other supplementary provisions

The Committee considered Clause 4 as drafted.

Question: That the Committee is content with Clause 4 as drafted.

The Committee divided: Ayes 5; Noes 0; Abstain 3

AYES Abstain

Lord Browne Mr Raymond McCartney
Mr Thomas Buchannan Ms Carál Ní Chuilín
Mr Paul Givan Mr John O'Dowd
Mr Alban Maginness
Mr Conall McDevitt

Lord Morrow did not participate in the vote

Agreed: That the Committee is content with Clause 4 as drafted.

Clause 5 – Offender levy on certain penalties

The Committee considered Clause 5 as drafted. The Committee considered whether the application of the offender levy applying to fixed penalty traffic fines was warranted. Departmental officials clarified that the levy would be applied to criminal offences which would include fixed penalty speeding tickets but would not include parking tickets.

Question: That the Committee is content with Clause 5 as drafted.

The Committee divided: Ayes 5; Noes 3

AYES NOES

Lord Browne Mr Raymond McCartney
Mr Thomas Buchannan Ms Carál Ní Chuilín
Mr Paul Givan Mr John O'Dowd
Mr Alban Maginness
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Agreed: That the Committee is content with Clause 5 as drafted.

3.53pm Alban Maginness left the meeting.

Clause 6 – Amount of the offender levy

The Committee considered Clause 6 as drafted.

The Committee divided: Ayes 4; Noes 0; Abstain 3

AYES Abstain

Lord Browne Mr Raymond McCartney
Mr Thomas Buchannan Ms Carál Ní Chuilín
Mr Paul Givan Mr John O'Dowd
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Agreed: That the Committee is content with Clause 6 as drafted.

Schedule 5 paragraph 1 – Offender levy

The Committee considered Schedule 5 paragraph 1 as drafted.

The Committee divided: Ayes 4; Noes 0; Abstain 3

AYES Abstain

Lord Browne Mr Raymond McCartney
Mr Thomas Buchannan Ms Carál Ní Chuilín
Mr Paul Givan Mr John O'Dowd
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Agreed: That the Committee is content with Schedule 5 paragraph 1 as drafted.

The Committee considered Clauses 7 to 13 relating to vulnerable and intimidated witnesses

Clause 7 – Eligibility for special measures: age of child witnesses

The Committee considered Clause 7 as drafted.

Question: "That the Committee is content with Clause 7 put and agreed to."

Clause 8 – Special Measures directions for child witnesses

The Committee considered Clause 8 as drafted.

Question: "That the Committee is content with Clause 8 put and agreed to."

Clause 9 – Special provisions relating to sexual offences

The Committee considered Clause 9 as drafted.

Question: "That the Committee is content with Clause 9 put and agreed to".

Clause 10 – Evidence by live link: presence of supporter

The Committee considered Clause 10 as drafted.

Question: "That the Committee is content with Clause 10 put and agreed to."

Clause 11 – Video recorded evidence in chief: supplementary testimony

The Committee considered Clause 11 as drafted.

Question: "That the Committee is content with Clause 11 put and agreed to."

Clause 12 – Examination of accused through intermediary

The Committee considered Clause 12 as drafted.

Question: "That the Committee is content with Clause 12 put and agreed to."

Clause 13 – Age of child complainant

The Committee considered Clause 13 as drafted.

Question: "That the Committee is content with Clause 13 put and agreed to."

The Committee considered clauses 14 to 19 relating to Live Links

Clause 14 - Live links for patients detained in hospital - parked

The Committee discussed a proposal that a trained mental health advocate should be automatically be allowed to provide assistance at a psychiatric hospital rather than an application having to be made by a patient as envisaged in the clause as drafted

Agreed: The Committee agreed to return to this clause once further information has been provided by the Department.

Clause 15 – Live links at preliminary hearing in the High Court

The Committee considered Clause 15 as drafted.

Question: "That the Committee is content with Clause 15 put and agreed to."

Clause 16 – Live links at preliminary hearing on appeals to the county court

The Committee considered a proposed amendment to Clause 16 from the Department to set out what happens when a live link breaks down. The Department viewed the amendment as being valuable in terms of ensuring consistency with other live links legislation and in providing a guarantee to appellants in ensuring that any rearranged hearing in held promptly.

The Committee also discussed a proposal to insert a requirement into the clause for the written consent of the appellant.

"Question: That the Committee is content with the proposed Department of Justice amendment to insert at end of Clause 16, page 12, line 5 –

"(8A) If the court proceeds with the hearing under paragraph (8) it shall not remand the appellant in custody for a period exceeding 8 days commencing on the day following that on which it remands him."

Put and agreed to."

Mr John O'Dowd proposed an amendment to the clause to require the appellant's consent

The Committee divided: Ayes 3; Noes 4; Abstain 1

AYES NOES Abstain

Mr Raymond McCartney Lord Browne Mr Conall McDevitt
Ms Carál Ní Chuilín Lord Morrow
Mr John O'Dowd Mr Thomas Buchannan
Mr Paul Givan

Agreed: That the proposal falls.

Clause 17 – Live link in sentencing hearing on appeals to the county court

The Committee considered Clause 17 as drafted.

Question: "That the Committee is content with Clause 17 put and agreed to."

Clause 18 – Live links in the Court of Appeal

The Committee considered Clause 18 as drafted.

Question: "That the Committee is content with Clause 18 put and agreed to."

Clause 19 – Live link direction for vulnerable accused

The Committee considered Clause 19 as drafted.

Question: "That the Committee is content with Clause 19 put and agreed to."

Schedule 5 paragraph 2 – Vulnerable and intimidated witnesses

The Committee considered Schedule 5 paragraph 2 as drafted.

Question: "That the Committee is content with Schedule 5 paragraph 2 put and agreed to."

The Chairman thanked the officials and they left the meeting.

The Clause by Clause consideration was recorded by Hansard.

7. Justice Bill - Continuation of Informal Clause by Clause consideration

4.18pm Gareth Johnston, Head of Justice Strategy Division and David Hughes, Head of Policing Policy and Strategy Division joined the meeting to provide further information and clarification, if necessary on Schedules 1 and 2 of the Justice Bill.

The Committee reviewed the evidence provided on Schedules 1 and 2 of the Bill and sought further information and clarification from the departmental officials on paragraphs 4, 7, 8 10, 13, 14 and 17.

The Chairman thanked the officials and they left the meeting.

The clause-by-clause consideration was recorded by Hansard

The Committee considered the work schedule for its continued scrutiny of the Justice Bill.

Agreed: The Committee agreed to postpone the briefings scheduled for 27 January by the Law Society and the Bar Council on the proposals for Remuneration of Defence Counsel in Crown Court Cases and the briefing by department officials on proposals for assignment of counsel.

Tuesday 25 January 2011
Room 21, Parliament Buildings

Present: Lord Morrow MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Lord Browne MLA
Mr Thomas Buchanan MLA
Mr Paul Givan MLA
Mr Alban Maginness MLA
Mr Conall McDevitt MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Vincent Gribbin (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)

3.05pm The meeting commenced in public session.

3.46pm The meeting was suspended to enable members to vote in the plenary session.

4.03pm The meeting resumed.

4.07pm Mr Givan left the meeting.

4.09pm Mr Buchanan joined the meeting.

4.20pm Mr Maginness left the meeting.

6. Continuation of Informal Clause by Clause Consideration – Section 4 and Schedule 3 – Sport

4.30pm Gareth Johnston, Head of Justice Strategy Division and Tom Haire, Justice Bill Manager joined the meeting to provide further information and clarification, if necessary, on Clauses 36 to 55 and Schedule 3 of the Justice Bill.

The Committee reviewed the evidence provided on clauses 36 to 55 and Schedule 3 of the Justice Bill and sought further information and clarification from the departmental officials on clauses 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46 and Schedule 3.

The Department officials advised the Committee that the Minister of Justice intended to propose amendments to the Bill in relation to clauses 36, 38, 44, 49 and Schedule 3 and to remove Clause 45 from the Bill. The draft amendments would be provided to the Committee as soon as possible.

4.31pm Mr O'Dowd rejoined the meeting.

5.07pm Mr Givan rejoined the meeting.

5.15pm Ms Ní Chuilín left the meeting.

The officials agreed to consider the issues raised in relation to Clause 37, further and report back to the Committee.

The Chairman thanked the officials for the briefing and they left the meeting.

The evidence session was recorded by Hansard.

Thursday 27 January 2011
Senate Chamber, Parliament Buildings

Present: Lord Morrow MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Lord Browne MLA
Lord Empey MLA
Mr Paul Givan MLA
Mr Alban Maginness MLA
Mr Conall McDevitt MLA
Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Mr Vincent Gribbin (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)
Mr Kevin Marks (Clerical Officer)

2.10 pm The meeting commenced in public session.

4. Justice Bill - Clause by Clause Consideration Part 3 – Policing and Community Safety Partnerships and Schedules 1 and 2

The Committee continued its clause-by-clause consideration of the Justice Bill covering Clauses 20-35 and Schedules 1 and 2 relating to Policing and Community Safety Partnerships.

2.15 pm David Hughes, Head of Policing Policy and Strategy Division, Gareth Johnston, Head of Justice Strategy Division, Dan Mulholland, Policing Policy and Strategy Division and Nichola Creagh, Policing Policy & Strategy Division joined the meeting.

Some members indicated that they were not a position to formally decide on clauses 20 – 35 and Schedules 1 and 2 as there was an issue in relation to the Belfast DPCSP which they wished to explore further.

Agreed: The Committee agreed to reach its informal view on the clauses.

2.23 pm Lord Browne joined the meeting.

2.24 pm Mr McDevitt joined the meeting.

Clause 20: Establishment of PCSPs and DPCSPs

The Committee indicated that it was content with clause 20 as drafted.

Lord Browne declared his interest as a member of Belfast City Council.

The Committee divided: Ayes 4; Noes 0; Abstain 5

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr Alban Maginness MLA Mr David McNarry MLA
Mr Conall McDevitt MLA Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

Clause 21: Functions of PCSP

The Committee considered an amendment requested by Include Youth to 21 (1)(d) to insert

2.50 pm Mr Maginness left the meeting.

Agreed: The Committee agreed that clause 21 should be amended to "and fully considering" after "to make arrangements for obtaining".

The Committee considered an amendment requested by Strabane, Derry and Limavady DPPs to 21 (1)(h) to replace "persons" with "organisations" but was of the view that the clause as drafted in relation to this issue was adequate.

The Committee divided: Ayes 3; Noes 0; Abstain 5

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr Conall McDevitt MLA Mr David McNarry MLA

Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

Clause 22: Functions of DPCSP

The Committee indicated that it was content with clause 22 as drafted.

The Committee divided: Ayes 3; Noes 0; Abstain 5

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr Conall McDevitt MLA Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

Clause 23: Code of practice for PCSPs and DPCSPs

The Committee indicated that it was content with clause 23 as drafted.

The Committee divided: Ayes 3; Noes 0; Abstain 5

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr Conall McDevitt MLA Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

Clauses 24 to 26 - Annual Reports

The Committee indicated that it was content with clauses 24 to 26 as drafted.

The Committee divided: Ayes 3; Noes 0; Abstain 5

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr Conall McDevitt MLA Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

Clauses 27 to 29 - Other reports by PCSPs and DPCSPs

The Committee indicated that it was content with clauses 27 to 29 as drafted.

The Committee divided: Ayes 3; Noes 0; Abstain 5

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr Conall McDevitt MLA Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

Clauses 30 to 32 – Policing Committee Reports

The Committee indicated that it was content with clauses 30 to 32 as drafted.

The Committee divided: Ayes 3; Noes 0; Abstain 5

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr Conall McDevitt MLA Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

Clause 33: Other community policing arrangements

The Committee indicated that it was content with clause 33 as drafted.

The Committee divided: Ayes 3; Noes 0; Abstain 5

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr Conall McDevitt MLA Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

Clause 34: Duty on public bodies to consider community safety implications in exercising duties

The Committee discussed this clause in detail and the likely implications of the creation of a new public duty on public bodies. Issues covered included whether public bodies were ready and whether they fully understood the requirements and implications. The Committee also noted the options proposed by the Attorney General during his oral evidence to the Committee and considered a proposed amendment by the Department of Justice to address concerns regarding on the wide scope of the clause and the potential for legal action.

3.02 pm Mr Maginness rejoined the meeting.

3.28 pm Mr Maginness left the meeting.

Agreed: The Committee agreed to consider to this clause further at a future meeting.

3.32 pm Mr McNarry left the meeting.

Clause 35: Functions of joint committee and Policing Board

The Committee indicated that it was content with clause 35 as drafted.

The Committee divided: Ayes 3; Noes 0; Abstain 4

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr Conall McDevitt MLA Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

Schedule 1 paragraphs 1 to 3 – Interpretation, Composition and Political Members

The Committee indicated that it was content with paragraphs 1 to 3 as drafted.

The Committee divided: Ayes 3; Noes 0; Abstain 4

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr Conall McDevitt MLA Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

Schedule 1 paragraph 4 - Independent members

The Committee considered a proposed amendment to paragraph 4 from the Department of Justice providing for the payment of expenses to all members of Policing and Community Safety Partnerships which aimed to give the councils the scope to pay expenses to all members who do not receive them from their own organisation.

The Committee indicated that it was content with paragraph 4 as amended.

The Committee divided: Ayes 3; Noes 0; Abstain 4

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr Conall McDevitt MLA Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

Schedule 1 paragraphs 5 and 6 – Independent members

The Committee indicated that it was content with paragraphs 5 and 6 as drafted.

The Committee divided: Ayes 3; Noes 0; Abstain 4

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr Conall McDevitt MLA Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

Schedule 1 paragraph 7 - Representatives of designated organisations

The Committee discussed the advantages and disadvantages of designing certain organisations which would be represented on all PCSPs and which organisations should be included. The Committee considered a proposed amendment from the Department of Justice to enable the designation of certain organisations without this appearing on the face of the Bill.

The Committee also discussed the possibility of enabling the designation of certain organisations by way of a regulation.

3.42 pm Mr Mc Narry rejoined the meeting.

Agreed: The Committee agreed that an amendment should be drafted to provide for organisations to be designated so that they are represented on all PCSPs by way of a regulation.

4.00 pm Ms Ní Chuilín left the meeting.

Schedule 1 paragraph 8 - Removal of members

The Committee indicated that it was content with paragraph 8 as drafted.

The Committee divided: Ayes 3; Noes 0; Abstain 5

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr Conall McDevitt MLA Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

4.12 pm Ms Ní Chuilín rejoined the meeting.

Schedule 1 paragraph 9 – Disqualification

The Committee indicated that it was content with paragraph 9 as drafted.

The Committee divided: Ayes 3; Noes 0; Abstain 5

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr Conall McDevitt MLA Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

Schedule 1 paragraph 10 - Chair and vice-chair

The Committee discussed a proposal by Mr Givan for an amendment to ensure that the Chair of the PCSP will be an elected member.

Agreed: The Committee agreed that an amendment should be drafted as outlined.

Departmental officials undertook to provide a draft amendment for consideration.

Schedule 1 paragraph 11 - Procedure of PCSP

The Committee indicated that it was content with paragraph 11 as drafted.

The Committee divided: Ayes 3; Noes 0; Abstain 5

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr Conall McDevitt MLA Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

Schedule 1 paragraphs 12 and 13 - Policing committee: constitution and procedure

The Committee indicated that it was content with paragraphs 12 and 13 as drafted.

The Committee divided: Ayes 3; Noes 0; Abstain 5

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr Conall McDevitt MLA Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

Schedule 1 paragraph 14 to 16 - Other committees, Indemnities and Insurance against accidents

The Committee indicated that it was content with paragraphs 14 to 16 as drafted.

The Committee divided: Ayes 3; Noes 0; Abstain 5

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr Conall McDevitt MLA Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

4.28 pm Mr McDevitt left the meeting.

Schedule 1 paragraph 17 - Finance

The Committee considered a proposed amendment by the Department to replace the word "may" with "shall" relating to the granting of finances to the Council for the funding of the PCSPs to ensure that the Department and the Policing Board's commitment to funding the PCSPs is conveyed, and to include further detail on the actual mechanisms for funding PCSPs.

The Committee indicated that it was content with paragraph 17 as amended.

The Committee divided: Ayes 2; Noes 0; Abstain 5

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

Schedule 1 Paragraphs 18 and 19 - Validity of proceedings, Disclosure of pecuniary interests, family connections, etc.

The Committee indicated that it was content with paragraphs 18 and 19 as drafted.

The Committee divided: Ayes 2; Noes 0; Abstain 5

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

4.35 pm Mr McDevitt rejoined the meeting.

Schedule 1 paragraphs 20 and 21 - Joint PCSPs and Belfast PCSP

The Committee indicated that it was content with paragraphs 20 and 21 as drafted.

The Committee divided: Ayes 3; Noes 0; Abstain 5

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr Conall McDevitt MLA Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

Schedule 2

The Committee indicated that the decisions made in relation to Schedule 1 should apply to Schedule 2.

The Committee divided: Ayes 3; Noes 0; Abstain 5

AYES ABSTAIN

Lord Browne MLA Mr Raymond McCartney MLA
Mr Paul Givan MLA Lord Empey MLA
Mr Conall McDevitt MLA Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

Lord Morrow did not participate in the vote.

The Chairman thanked the officials and they left the meeting.

The clause-by-clause consideration was recorded by Hansard

4.40 pm The meeting was suspended.

5.14 pm The meeting resumed.

Present: Lord Morrow MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Lord Browne MLA
Lord Empey MLA
Mr Conall McDevitt MLA
Mr John O'Dowd MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk) Mr Vincent Gribbin (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)
Mr Kevin Marks (Clerical Officer)

5. Justice Bill - Continuation of Clause by Clause consideration

Gareth Johnston, Head of Justice Strategy Division, Tom Haire, Justice Bill Manager and Amanda Patterson, Head of Public Protection joined the meeting at 5.46pm to provide further information and clarification, if necessary on Part 5 – Treatment of Offenders.

The Committee reviewed the evidence provided on Part 5 – Treatment of Offenders, and sought further information and clarification from the departmental officials on clauses 58, 59 and 63.

The Departmental officials briefed the Committee on a new clause that the Minister of Justice proposed to introduce at Consideration Stage and answered questions. The new clause related to improvements to sex offender notification requirements.

The Chairman thanked Amanda Patterson and she left the meeting.

Geraldine Fee Head of Criminal Policy and Legislation Division, NICTS and Billy Stevenson, Head of Organised Crime unit joined the meeting at 6.11 pm to provide further information and

clarification, if necessary, on Part 8 - Miscellaneous, Part 9 – Supplementary Provisions and Schedules 6 and 7.

The Committee reviewed the evidence provided on Parts 8 and 9 and Schedules 6 and 7 and sought further information and clarification on clauses 96 and 97.

6.22 pm Mr Givan left the meeting.

6.28 pm Ms Ní Chuilín left the meeting.

The Departmental officials briefed the Committee on a new clause that the Minister of Justice proposed to introduce at Consideration Stage and answered questions. The clause made provision to allow the Department to have access to and to allocate the proceeds of criminal assets currently remitted to the NI Consolidated Fund.

The clause-by-clause consideration was recorded by Hansard

The Committee considered the work schedule for its continued scrutiny of the Justice Bill.

Tuesday 1 February 2011
Room 21, Parliament Buildings

Present: Lord Morrow MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Lord Browne MLA
Mr Paul Givan MLA
Mr Alban Maginness MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Vincent Gribbin (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)

Apologies: Lord Empey MLA
Mr David McNarry MLA

3.05pm The meeting commenced in public session.

3.35pm The meeting was suspended to enable members to vote in the plenary session.

3.53pm The meeting resumed.

5. Formal Clause by Clause Consideration of Part 4 and Schedule 3 of the Justice Bill – Sports Provisions

The Committee continued its clause-by-clause consideration of the Justice Bill covering Clauses 36 to 55 and Schedule 3 relating to Sport.

4.30pm Gareth Johnston, Head of Justice Strategy Division, Tom Haire, Justice Bill Manager and David Mercer, Criminal Law Branch joined the meeting to provide further information and clarification if necessary.

Clause 36 – Regulated Matches

The Committee considered a proposed amendment to clause 36 from the Department of Justice to reduce the time period around which powers would be applied to regulated matches from "two hours before/one hour after" to "one hour before/thirty matches ".

"Question: "That the Committee is content with Clause 36 as amended as follows:

Clause 36, page 25, line 26, leave out paragraph (c)

Clause 36, page 25, line 32, leave out from 'two hours before' to end of line and insert 'one hour before the start of the match or (if earlier) one hour'

Clause 36, page 25, line 34, leave out 'one hour' and insert '30 minutes'

Clause 36, page 25, line 38, leave out 'two hours' and insert 'one hour'

Clause 36, page 25, line 39, leave out 'one hour' and insert '30 minutes'

Clause 37 – Throwing of missiles

The Committee considered a proposed amendment to Clause 37 from the Department of Justice. The proposed amendment aimed to meet the Committee's concerns about the lack of a definition of a "missile" by focusing more on those items likely to cause injury.

Question: "That the Committee is content with Clause 37 as amended as follows:

Clause 37, page 26, line 8, leave out 'anything' and insert 'any object to which this subsection applies'

Clause 37, page 26, line 13, at end insert:

'(1A) Subsection (1) applies to any object which, if thrown as mentioned in that subsection, would be likely to cause injury to any person who may be struck by the object.'

Clause 38 – Chanting

The Committee considered a proposed amendment to Clause 38 from the Department of Justice to include sectarianism as had been requested by Committee Members.

"Question: That the Committee is content with Clause 38 as amended as follows:

Clause 38, page 26, line 22, leave out 'an' and insert 'a sectarian or'

Clause 38, page 26, line 25, leave out 'religious belief'

Clause 38, page 26, line 26, at end insert:

'(3A) For the purposes of this section chanting is of a sectarian nature if it consists of or includes matter which is threatening, abusive or insulting to a person by reason of that person's religious belief or political opinion or against an individual as a member of such a group.'

Clause 39 – Going onto the playing area

The Committee discussed a proposal to amend the clause to deal with an incursion to cause injury rather than just exuberance. The Department officials indicated that the intention of the clause was to avoid people rushing onto the pitch which in itself creates a danger of injury. They confirmed that the clause does provide for authorised pitch invasions.

"Question: That the Committee is content with Clause 39 put and agreed to".

The Committee divided: Ayes 5; Noes 0; Abstain 3

AYES ABSTAIN

Lord Browne Mr Raymond McCartney
Mr Thomas Buchanan Ms Carál Ní Chuilín
Mr Paul Givan Mr John O'Dowd
Mr Alban Maginness
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Clause 40 – Possession of fireworks, flares etc

The Committee considered correspondence from the Department of Justice regarding the inclusion of "laser pens" within clause 40. The Committee noted that there were difficulties with including laser pens in the legislation but that the Minister of Justice would ensure that the importance of controlling such devices at sports grounds is recognised and will take the issue forward with relevant departments.

The Committee considered Clause 40 as drafted.

"Question: That the Committee is content with Clause 40 put and agreed to".

Clause 41 – Being drunk at a regulated match

The Committee discussed clause 41. While the Committee did not disagree with the objective of the clause it believed it was unnecessary as there was already adequate legislation in place and the provision was likely to be unenforceable.

"Question: That the Committee is not content with Clause 41 put and agreed to".

Clause 42 – Possession of drink containers, etc.

The Committee discussed Clause 42 and expressed strong reservations regarding whether it was necessary. The Committee was of the view that it would be difficult to enforce and impractical to work.

"Question: That the Committee is not content with Clause 42 put and agreed to".

Clause 43 – Possession of alcohol

The Committee considered a proposal from the Department of Justice to amend the commencement of this clause to be subject to affirmative procedure and require full Assembly consent (this amendment would be achieved by changing the commencement provisions in clause 103).

The Committee was of the view that this clause created unnecessary criminal offences and self-regulation by the relevant bodies was preferable.

"Question: That the Committee is not content with Clause 43 put and agreed to".

Clauses 44 – Offences in connection with alcohol on vehicles

The Committee considered a proposal from the Department of Justice to amend clause 44 to remove the offence of being drunk on specified vehicles entirely and remove the restrictions on alcohol on vehicles travelling away from a game.

"Question: That the Committee is content with Clause 44 as amended as follows".

Clause 44, page 28, line 32, leave out 'or from'

Clause 44, page 29, line 6, leave out subsection (5)

Clause 44, page 29, line 15, leave out paragraph (c)

The Committee divided: Ayes 5; Noes 0; Abstain 3

AYES ABSTAIN

Lord Browne Mr Raymond McCartney
Mr Thomas Buchanan Ms Carál Ní Chuilín
Mr Paul Givan Mr John O'Dowd
Mr Alban Maginness
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Clause 45 – Sale of tickets by unauthorised persons

The Committee considered a proposal from the Department of Justice to withdraw clause 45 in favour of self regulation by the sports bodies and supported this approach.

"Question: That the Committee is not content with Clause 45 put and agreed to".

Clauses 46 – 48 Banning Orders

The Committee considered Clauses 46 to 48 as drafted.

"Question: That the Committee is content with Clauses 46 to 48 put and agreed to".

The Committee divided: Ayes 5; Noes 0; Abstain 3

AYES ABSTAIN

Lord Browne Mr Raymond McCartney
Mr Thomas Buchanan Ms Carál Ní Chuilín
Mr Paul Givan Mr John O'Dowd
Mr Alban Maginness
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Clauses 49 – Banning orders: "violence" and "disorder"

The Committee considered a proposed amendment to Clause 49 from the Department of Justice to include sectarianism more explicitly in the provisions.

"Question: That the Committee is content with Clause 49 as amended as follows:

Clause 49, page 33, line 6 after 'up' insert 'sectarian hatred or'

Clause 49, page 33, line 8, leave out 'religious belief'

Clause 49, page 33, line 14, leave out subsection (3) and insert:

'(3) For the purposes of this section sectarian hatred is hatred against a group of persons defined by reference to religious belief or political opinion.'

The Committee divided: Ayes 5; Noes 0; Abstain 3

AYES ABSTAIN

Lord Browne Mr Raymond McCartney
Mr Thomas Buchanan Ms Carál Ní Chuilín
Mr Paul Givan Mr John O'Dowd
Mr Alban Maginness
Mr Conall McDevitt

Lord Morrow did not participate in the vote

Clauses 50 to 55 Banning Orders

The Committee considered Clauses 50 to 55 as drafted.

"Question: That the Committee is content with Clauses 50 to 55 put and agreed to".

The Committee divided: Ayes 5; Noes 0; Abstain 3

AYES ABSTAIN

Lord Browne Mr Raymond McCartney
Mr Thomas Buchanan Ms Carál Ní Chuilín

Mr Paul Givan Mr John O'Dowd
Mr Alban Maginness
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Schedule 3 – Regulated Matches

The Committee considered an amendment, proposed by the Department of Justice, to

Schedule 3 paragraph 8 to remove sports grounds at which there is a stand requiring a safety certificate thereby ensuring that the provisions only apply to matches at designated grounds.

The Committee considered Schedule 3 as amended.

"Question: That the Committee is content with Schedule 3 as amended as follows:

Schedule 3, page 81, line 7, leave out from 'or' to end of line 9

Schedule 3, page 81, line 19, leave out from 'or' to end of line 21

The Chairman thanked David Mercer and he left the meeting.

The clause-by-clause consideration was recorded by Hansard

6. Justice Bill: Continuation of Informal Clause by Clause Consideration of the Justice Bill - Parts 6 and 7

5.40 pm Janice Smiley, Head of Criminal Policy Unit and Paul Black, Criminal Policy Unit joined the meeting to provide further information and clarification, if necessary, on Part 6 of the Justice Bill.

The Committee reviewed the evidence provided on Part 6 – Alternatives to Prosecution and sought further information and clarification from the departmental officials on clauses 64, 65, 67, 73, 74, 76, 77, 80, 82 and 83.

The Departmental officials advised the Committee that the Minister of Justice intended to propose an amendment to the Bill in relation to clause 82 as requested by the Committee so that the Code of Practice would be subject to affirmative resolution. The draft amendments would be provided to the Committee for consideration as soon as possible.

5.56pm Paul Givan left the meeting.

The Chairman thanked Janice Smiley and Paul Black and they left the meeting.

6.02pm Robert Crawford, Head of Public Legal Services and John Halliday, Criminal Legal Aid Policy Advisor joined the meeting to provide further information and clarification, if necessary on Part 7 - Legal Aid etc - of the Justice Bill.

The Committee reviewed the evidence provided on Part 7 - Legal Aid etc and sought further information and clarification from the departmental officials on clauses 85, 89 and 90.

The Committee considered correspondence from the Minister of Justice regarding the Committee's recommendation that the legal aid regulations in Clauses 85 and 89 should be subject to draft affirmative procedure. The Minister outlined concerns regarding the proposal and indicated that he was not minded to make such an amendment.

Agreed: The Committee agreed request that draft amendments be prepared so that the legal aid regulations in clauses 85(2) and 89(2) would be subject to draft affirmative procedure.

The Chairman thanked the officials for the briefing and they left the meeting.

The evidence session was recorded by Hansard.

Thursday 3 February 2011
The Senate Chamber, Parliament Buildings

Present: Lord Morrow MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Lord Browne MLA
Mr Thomas Buchanan MLA
Lord Empey MLA
Mr Paul Givan MLA
Mr Alban Maginness MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Vincent Gribbin (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)
Mr Kevin Marks (Clerical Officer)

Apologies: Mr Conall McDevitt MLA
Mr David McNarry MLA

2.07pm The meeting commenced in public session.

5. Justice Bill: Consideration of proposed new clauses relating to Amendment to funds in court legislation and solicitors rights of audience.

The Committee noted a request from the Bar Council seeking an opportunity to brief the Committee on solicitor's rights of audience

2.18 pm Gareth Johnston, Head of Justice Strategy Division, Geraldine Fee, Head of Criminal Policy and Legislation Division, Michael Kelly and Richard Ronaldson, NICTS joined the meeting.

The Departmental officials briefed the Committee on provisions in relation to funds in courts which the Department hoped to introduce as amendments at consideration stage. A question and answer session followed covering the detail of the amendment; the current legislation dealing with funds; the reasons for the amendment; the status of the proposed court action; and the availability of funding to cover possible reimbursement costs.

Agreed: The Committee agreed to request the views of the Bar Council in writing. If any further clarification is required this can be obtained when representatives of the Bar attend next Thursday on Crown Court Renumeration

The Chairman thanked Michael Kelly and Richard Ronaldson for the briefing and they left the meeting.

2.50pm Robert Crawford, Head of Public Legal Services Division and Maria Dougan joined the meeting.

The Departmental officials outlined the proposed amendments on solicitors' rights of audience and answered questions from Members on such issues as the role of the Department and the Attorney General in Regulations on the education and training for Solicitor Advocates; the requirement to advise clients in writing of the advantages and disadvantages of representation by an authorised solicitor; and the policy of extending solicitors' rights of audience generally.

3.06pm Mr Buchanan joined the meeting.

The Chairman thanked the officials for the briefing and they left the meeting.

3.30pm Alan Hunter, Chief Executive of the Law Society and Peter Campbell, Chairman of the Higher Rights of Audience Committee joined the meeting.

Mr Hunter and Mr Campbell outlined the Law Society's key issues regarding the proposed solicitors' rights of audience amendments and answered questions from Members on a range of issues including the necessity of some of the proposals; perceived conflict of interest; and in regulation to give effect to education, training etc.

Alban Maginness placed on record a declaration of interest in relation to his occupation as a barrister.

4.11pm Mr Givan joined the meeting.

The Chairman thanked the Law Society representatives for the briefing and they left the meeting.

4.23pm Gareth Johnston, Head of Justice Strategy Division, Geraldine Fee, Head of Criminal Policy and Legislation Division, Robert Crawford, Head of Public Legal Services Division, and Maria Dougan joined the meeting.

The Departmental officials responded to the points made by the Law Society and answered further questions from Members.

The Chairman thanked the officials for the briefing and they left the meeting.

4.43pm Mr Maginness left the meeting.

Agreed: The Committee agreed to consider the matter further at its meeting on 8 February 2011.

6. The Justice Bill Committee Stage - Formal Clause by Clause Consideration

The Committee continued its clause-by-clause consideration of Parts 5 to 9 and Schedules 4 to 7 of the Justice Bill and new amendments proposed by the Department of Justice.

4.46pm Gareth Johnston, Head of Justice Strategy Division, Tom Haire, Justice Bill Manager, and Janice Smiley, Head of Criminal Policy Unit joined the meeting. to provide further information and clarification if necessary.

4.43pm Mr McCartney left the meeting.

Clauses 56 – 63 Treatment of Offenders

The Committee considered Clauses 56 - 63 as drafted.

"Question: That the Committee is content with Clauses 56 – 63 put and agreed to".

4.47pm Mr McCartney rejoined the meeting.

Clauses 64 – 75 Penalty Notices

The Committee considered Clauses 64 - 75 as drafted.

"Question: That the Committee is content with Clause 64 - 75 put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 3

AYES ABSTAIN

Lord Browne Mr Raymond McCartney
Mr Thomas Buchanan Ms Carál Ní Chuilín
Lord Empey Mr John O'Dowd
Mr Paul Givan
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Clauses 76 – 81 Conditional Cautions

The Committee considered Clauses 76 - 81 as drafted.

"Question: That the Committee is content with Clauses 76 – 81 put and agreed to".

Clause 82 Code of Practice

The Committee considered an amendment proposed by the Department to meet the concerns of the Committee and the Assembly Examiner of Statutory Rules that the order making power at clause 82(5) should be subject to affirmative resolution. The Department's proposed amendment would provide that the order which brings the Code of Practice into operation must be laid before and approved by affirmative resolution. However this would not be by way of an amendment to clause 82 but by an amendment to clause 103.

The Committee considered Clause 82 as drafted by the Department.

"Question: That the Committee is content with Clause 82 put and agreed to".

Clause 83 – 84 Conditional Cautions

The Committee considered Clauses 82 - 84 as drafted.

"Question: That the Committee is content with Clauses 82 - 84 put and agreed to".

The Chairman thanked Janice Smiley and she left the meeting.

5.00 pm Geraldine Fee, Head of Criminal Policy and Legislation Division and Robert Crawford, Head of Public Legal Services Division joined the meeting.

5.05 pm Lord Empey left the meeting.

Clause 85 Eligibility for criminal legal aid

The Committee considered an amendment to Clause 85 which would provide for affirmative resolution when and if the Criminal legal aid Means Test is enacted for the first time but that subsequent amendments to the means test would be by negative resolution.

5.05 pm Lord Empey left the meeting.

Agreed: The Committee agreed to return to this clause at the next meeting.

Clauses 86 – 88 Legal Aid

The Committee considered Clauses 86 - 88 as drafted.

"Question: That the Committee is content with Clauses 86 - 88 put and agreed to".

Clause 89 Financial Eligibility for grant of right of representation

The Committee considered its amendment to Clause 89 to affirmative procedure for any rules under the provision

Agreed: The Committee agreed to return to this clause at the next meeting.

Clauses 90 – 91 Legal Aid

The Committee considered Clauses 90 - 91 as drafted.

"Question: That the Committee is content with Clauses 90 - 91 put and agreed to".

Clauses 92 – 94 Miscellaneous

The Committee considered Clauses 92 – 94 as drafted.

"Question: That the Committee is content with Clauses 92 - 94 put and agreed to".

Clause 95 – Publication of material relating to legal proceedings

The Committee considered Clause 95 as drafted

"Question: That the Committee is content with Clause 95 put and agreed to".

Clause 96 Membership of Crown Court Rules Committee

The Committee noted the response from the Minister of Justice outlining his agreement that magistrates' court rules should be subject to the same level of scrutiny as other Court Rules but indicating it was unlikely that the necessary provision can be included in this Bill.

The Committee considered a proposed amendment by the Department of Justice to specify that the Attorney General's nominee shall be a practising member of the Bar or a practising solicitor.

The Committee considered Clause 96 as amended by the Department.

"Question: That the Committee is content with Clause 96 as amended as follows:

Clause 96, page 54, line 39, after 'Committee)' insert 'in paragraph (g) for "one other" substitute "a" '

Clause 96, page 55, line 1, leave out 'person' and insert 'practising member of the Bar of Northern Ireland or a practising solicitor'

Put and agreed to".

Clause 97 Membership of Court of Judicature Rules Committee

The Committee considered a proposed amendment by the Department of Justice to specify that the Attorney General's nominee shall be a practising member of the Bar or a practising solicitor.

The Committee considered Clause 97 as amended by the Department.

"Question: That the Committee is content with Clause 97 as amended as follows:

Clause 97, page 55, line 5, after 'Committee)' insert 'in paragraph (d) for "one other" substitute "a" '

Clause 97, page 55, line 7, leave out 'person' and insert 'practising member of the Bar of Northern Ireland or a practising solicitor'

Clause 97, page 55, line 12, leave out 'person' and insert 'barrister or solicitor'

Put and agreed to".

Clauses 98 – 101, Miscellaneous

The Committee considered Clauses 98 – 101 as drafted.

"Question: That the Committee is content with Clauses 98 - 101 put and agreed to".

Clause 102 Supplementary, incidental consequential and transitional provision, etc

The Committee considered Clause 102 as drafted.

"Question: That the Committee is content with Clause 102 put and agreed to".

Clause 103 Regulations and Orders

The Committee considered Clause 103 as amended by the Department as a result of Clause 82

"Question: That the Committee is content with Clause 82 as amended as follows:

Clause 103, page 61, line 18, leave out 'and' and insert 'to'
Clause 103, page 61, line 23, at end insert
'(3A) No order may be made?
(a) under section 82(5);

Put and agreed to".

Clause 104 – 108 Supplementary Provisions

The Committee considered Clauses 104 – 108 as drafted.

"Question: That the Committee is content with Clauses 104-108 put and agreed to".

Schedule 5 Transitional and Saving Provisions

The Committee considered Schedule 5 as drafted.

"Question: That the Committee is content with Schedule 5 put and agreed to".

Schedule 6 -Minor and Consequential Amendments

The Committee considered Schedule 6 as drafted.

"Question: That the Committee is content with Schedule 6 put and agreed to".

Schedule 7 Repeals

The Committee considered Schedule 7 as drafted.

"Question: That the Committee is content with Schedule 7 put and agreed to".

The Chairman thanked Geraldine Fee and Robert Crawford for the briefing and they left the meeting.

5.15 pm Amanda Patterson, Head of Public Protection and Billy Stevenson, Protection and Organised Crime Branch, joined the meeting.

Clause 14 Live Links

The Committee considered further clarification by the Department of Justice that the there is support for mental health patients in giving evidence by live links. The Committee raised the issues of whether support should automatically be provided and welcomed the undertaking from the Department that it is at the discretion of the judge whether or not support to issue a letter of guidance to register medical officers to help strengthen the provision.

The Committee considered Clause 14 as drafted.

"Question: That the Committee is content with Clause 14 put and agreed to".

Clause 34 Duty on Public Bodies to consider community safety implications in exercising duties

The Committee considered correspondence from by the Department of advising that it intends to provide a further a further draft amendment to this clause. The Committee agreed to consider this at the meeting on Tuesday 8 February 2011.

Agreed: The Committee agreed to return to this clause at its meeting on Tuesday 8 February 2011.

Schedule 1 paragraph 10

The Committee considered correspondence from the Department of Justice indicating that the Minister was not minded to amend schedule 1 paragraph 10 to reflect the proposal put by Mr Paul Givan and agreed to by the Committee to ensure that an elected member would be the Chairman of the PCSPs.

Agreed: The Committee agreed to request that a draft amendment Be prepared for consideration.

New Amendments on Sex Offender Notification

The Committee considered proposals from the Department to introduce provisions in the Justice Bill to meet the Supreme Court ruling that the indefinite notification requirements attached to sex offenders who have been sentenced to 30 months or more imprisonment were incompatible with Article 6 of the ECHR.

Agreed: The Committee agreed with the inclusion of the new provisions in the Bill.

New Amendments on Asset Law Recovery

The Committee considered proposals from the Department to bring forward an amendment to the Bill to give the Department power, with the consent of DFP, to allocate the proceeds of criminal assets remitted to the NI Consolidated Fund by NI Courts to prevent crime and reduce the fear of crime and to support the recovery of criminal assets.

Agreed: The Committee agreed with the inclusion of the new provisions in the Bill.

The Committee noted a paper summarising issues raised by organisations when providing evidence on the Bill but which did not strictly relate to the content of the Bill.

Agreed: The Committee agreed to consider further at the meeting on Tuesday 8 February 2011.

The Chairman thanked the officials for the briefing and they left the meeting.

The clause-by-clause consideration was recorded by Hansard

Agreed: The Committee agreed to return to the issue on Tuesday 8 February 2011.

Tuesday 8 February 2011
Room 21, Parliament Buildings

Present: Lord Morrow MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Lord Browne MLA
Mr Thomas Buchanan MLA
Mr Paul Givan MLA
Mr David McNarry MLA
Mr Conall McDevitt MLA
Mr Alban Maginness MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Vincent Gribbin (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)

3.05pm The meeting commenced. in public session.

4. The Justice Bill - Formal Clause by Clause Consideration of Part 3 – Policing and Community Safety Partnerships - and Schedules 1 and 2

The Committee continued its clause-by-clause consideration of the Justice Bill covering Clauses 20 to 35 and Schedules 1 and 2 relating to PCSPs and DPCSPs.

3.28pm Gareth Johnston, Head of Justice Strategy Division, David Hughes, Head of Policing Policy and Strategy Division, Dan Mulholland, Policing Policy and Strategy Division and Nichola Creagh, Policing Policy and Strategy Division joined the meeting. to provide further information and clarification if necessary.

3.34 pm Mr McCartney left the meeting.

Clause 20

The Committee considered Clause 20 as drafted.

"Question: That the Committee is content with Clause 20 put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 2

AYES ABSTAIN
Lord Browne Ms Carál Ní Chuilín
Mr Alban Maginness Mr John O'Dowd
Mr David McNarry
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Clause 21

The Committee had voiced its support for an amendment to clause 21(d), as proposed by Include Youth in its written submission, to insert "and fully considering" after "to make arrangements for obtaining" to ensure meaningful consultation.

The Committee considered an amendment proposed by the Department to this effect in relation to Clauses 21 and 22.

The Committee considered Clause 21 as amended.

"Question: That the Committee is content with Clauses 21 and 22 as amended as follows:

Clause 21, page 17, line 26, at end insert 'to consider fully any views so obtained'

Clause 22, page 18, line 21, at end insert 'and to consider fully any views so obtained'

Put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 2

AYES ABSTAIN
Lord Browne Ms Carál Ní Chuilín
Mr Alban Maginness Mr John O'Dowd
Mr David McNarry
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Clauses 23 - 29

The Committee considered Clauses 23 to 29 as drafted.

"Question: That the Committee is content with Clauses 23 - 29 put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 2

AYES ABSTAIN
Lord Browne Ms Carál Ní Chuilín
Mr Alban Maginness Mr John O'Dowd
Mr David McNarry
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Clauses 30 - 33

The Committee considered Clauses 30 to 33 as drafted.

"Question: That the Committee is content with Clauses 30 to 33 put and agreed to".

The Committee divided: Ayes 3; Noes 0; Abstain 3

AYES ABSTAIN
Lord Browne Ms Carál Ní Chuilín
Mr Alban Maginness Mr John O'Dowd
Mr Conall McDevitt Mr David McNarry

Lord Morrow did not participate in the vote.

3.34 pm Mr McCartney rejoined the meeting.

Clause 34

The Committee had previously considered a proposed amendment from the Department to meet the concerns raised by Members regarding the statutory duty arising from Clause 34 and agreed to postpone its decision to allow Members more time to consider the issue.

3.40 pm Mr Givan joined the meeting.

3.51 pm Mr McNarry left the meeting.

The Department briefed the Committee on proposals for a further amendment in light of the continuing concerns of the Committee and its discussions with the Attorney General. The new amendment would require the Department to secure the approval of the Attorney General before issuing any guidance as to how a public body should comply with the duty.

The Department advised the Committee that the Attorney General was of the view the amendment should go further in two respects. The first was so that the duty of the public body was to the guidance which he has approval of and the second, to ensure that there is no wasteful litigation, was that the guidance will lay-out the extent to which failure by a public body to meet the guidance could be dealt with. The Department was still in the process of drawing up the draft amendment.

Agreed: The Committee agreed that, if the clause, even as amended still created a statutory duty on public bodies and this is not sufficiently qualified then it would not be acceptable. In the absence of a satisfactory amendment from the Department the Committee was of the view to reject the clause in its entirety.

The Committee considered Clause 34 as drafted.

"Question: That the Committee is not content with Clause 34 put and agreed to".

The Committee divided: Ayes 3; Noes 0; Abstain 4

AYES ABSTAIN
Mr Alban Maginness Lord Browne
Mr Paul Givan Mr Raymond McCartney
Ms Carál Ní Chuilín
Mr Conall McDevitt Mr John O'Dowd

Lord Morrow did not participate in the vote.

Clause 35

The Committee considered Clause 35 as drafted.

"Question: That the Committee is content with Clause 35 put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 3

AYES ABSTAIN
Lord Browne Mr Raymond McCartney
Mr Alban Maginness Ms Carál Ní Chuilín
Mr Paul Givan Mr John O'Dowd
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Schedule 1 Paragraphs 1 - 3

The Committee considered Schedule 1 paragraphs 1 - 3 as drafted.

"Question: That the Committee is content with Schedule 1 paragraphs 1- 3 put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 3

AYES ABSTAIN
Lord Browne Mr Raymond McCartney
Mr Paul Givan Ms Carál Ní Chuilín
Mr Alban Maginness Mr John O'Dowd
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Schedule 1 Paragraph 4

The Committee considered an amendment proposed by the Department providing for the payment to all members of Policing and Community Safety Partnerships which aimed to give the councils the scope to pay expenses to all members who do not receive them from their own organisation.

The Committee considered Schedule 1 paragraph 4 as amended.

"Question: That the Committee is content with Schedule 1 paragraph 4 as amended as follows:

Schedule 1, page 70, line 19, at end insert –

'Expenses

16A. The council may pay to members of a PCSP such expenses as the council may determine.'

Put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 3

AYES ABSTAIN
Lord Browne Mr Raymond McCartney
Mr Paul Givan Ms Carál Ní Chuilín
Mr Alban Maginness Mr John O'Dowd
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Schedule 1 Paragraphs 5 - 6

The Committee considered Schedule 1 paragraphs 5 - 6 as drafted.

"Question: That the Committee is content with Schedule 1 paragraphs 5- 6 put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 3

AYES ABSTAIN
Lord Browne Mr Raymond McCartney
Mr Paul Givan Ms Carál Ní Chuilín
Mr Alban Maginness Mr John O'Dowd
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

4.01 pm Mr McCartney left the meeting.

Schedule 1 Paragraph 7

The Committee considered two alternative proposals from the Department of Justice to amend schedule 1 paragraph 7. Proposal A was in line with a request from the Committee which would allow for a list of specified organisations for inclusion on every PCSP to be made by affirmative resolution. Proposal B, which was the Department's preferred option and which it believed met the Committee's concerns required the Joint Committee to issue a list of organisations which the PCSPs must actively and seriously consider for inclusion before designating organisations to be represented on the partnership, but retained the flexibility of individual PCSPs.

The Committee considered Schedule 1 paragraph 7 as amended by proposal A.

"Question: That the Committee is content with Schedule 1 paragraph 7 as amended as follows:

Schedule 1, page 66, line 4, at end insert

'(2A) The Department may by order designate organisations for the purposes of this paragraph.

(2B) No order may be made under sub-paragraph (2A) unless

(a) the Department has consulted each PCSP; and

(b) a draft of the order has been laid before and approved by a resolution of the Assembly.'

Schedule 1, page 66, line 5, after 'PCSP' insert 'or by an order under sub-paragraph (2A)'

Put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 2

AYES ABSTAIN
Lord Browne Ms Carál Ní Chuilín
Mr Paul Givan Mr John O'Dowd
Mr Alban Maginness
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Schedule 1 Paragraphs 8 and 9

The Committee considered Schedule 1 paragraphs 8 and 9 as drafted.

"Question: That the Committee is content with Schedule 1 paragraphs 8 and 9 put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 2

AYES ABSTAIN
Lord Browne Ms Carál Ní Chuilín
Mr Paul Givan Mr John O'Dowd
Mr Alban Maginness
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Schedule 1 Paragraphs 11 - 16

The Committee considered Schedule 1 paragraphs 11 - 16 as drafted.

"Question: That the Committee is content with Schedule 1 paragraphs 11 - 16 put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 2

AYES ABSTAIN
Lord Browne Ms Carál Ní Chuilín
Mr Paul Givan Mr John O'Dowd
Mr Alban Maginness
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Schedule 1 Paragraph 17

The Committee considered a proposed amendment by the Department to replace the word "may" with "shall" relating to the granting of finances to the council for funding of the PCSPs to ensure that the Department and Policing Board's commitment to funding the PCSPs is conveyed, and to include further detail on the actual mechanisms for funding PCSPs.

The Committee considered Schedule 1 paragraph 17 as amended.

"Question: That the Committee is content with Schedule 1 paragraph 17 as amended as follows:

Schedule 1, page 70, line 21, leave out paragraph 17 and insert

'17. (1) The Department and the Policing Board shall for each financial year make to the council grants of such amounts as the joint committee may determine for defraying or contributing towards the expenses of the council in that year in connection with PCSPs.

(2) A grant made by the Department or the Policing Board under this paragraph—

(a) shall be paid at such time, or in instalments of such amounts and at such times, and

(b) shall be made on such conditions, as the joint committee may determine.

(3) A time determined under sub-paragraph (2)(a) may fall within or after the financial year concerned.'

Put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 2

AYES ABSTAIN
Lord Browne Ms Carál Ní Chuilín
Mr Alban Maginness Mr John O'Dowd
Mr Paul Givan
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Schedule 1 Paragraphs 18 - 21

The Committee considered Schedule 1 paragraphs 18 - 21 as drafted.

"Question: That the Committee is content with Schedule 1 paragraphs 18 – 21 put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 2

AYES ABSTAIN
Lord Browne Ms Carál Ní Chuilín
Mr Paul Givan Mr John O'Dowd

Mr Alban Maginness
Mr Conall McDevitt

Lord Morrow did not participate in the vote

4.10 pm Mr O'Dowd left the meeting.

Schedule 2 Paragraphs 1 - 3

The Committee considered Schedule 2 paragraphs 1 - 3 as drafted.

"Question: That the Committee is content with Schedule 2 paragraphs 1 - 3 put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 1

AYES ABSTAIN
Lord Browne Ms Carál Ní Chuilín
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Schedule 2 Paragraph 4

The Committee considered an amendment proposed by the Department providing for the payment to all members of Policing and Community Safety Partnerships which aimed to give the councils the scope to pay expenses to all members who do not receive them from their own organisation.

The Committee considered Schedule 2 paragraph 4 as amended.

"Question: That the Committee is content with Schedule 2 paragraph 4 as amended as follows:

Schedule 2, page 79, line 21, at end insert –

'Expenses

16A. The council may pay to members of a DPCSP such expenses as the council may determine.

Put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 1

AYES ABSTAIN
Lord Browne Ms Carál Ní Chuilín
Mr Alban Maginness
Mr Paul Givan
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Schedule 2 Paragraphs 5 - 6

The Committee considered Schedule 2 paragraphs 5 - 6 as drafted.

"Question: That the Committee is content with Schedule 2 paragraphs 5 - 6 put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 1

AYES ABSTAIN
Lord Browne Ms Carál Ní Chuilín
Mr Alban Maginness
Mr Paul Givan
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Schedule 2 paragraph 7

The Committee considered two alternative proposals from the Department of Justice to amend schedule 2 paragraph 7. Proposal A was in line with a request from the Committee which would allow for a list of specified organisations for inclusion on every PCSP to be made by affirmative resolution. Proposal B, which was the Department's preferred option and which it believed met the Committee's concerns required the Joint Committee to issue a list of organisations which the PCSPs must actively and seriously consider for inclusion before designating organisations to be represented on the partnership, but retained the flexibility of individual PCSPs.

The Committee considered Schedule 2 paragraph 7 as amended by proposal A.

The Committee considered Schedule 2 paragraph 7 as amended.

"Question: That the Committee is content with Schedule 2 paragraph 7 as amended as follows:

Schedule 2, page 74, line 36, at end insert

'(2A) The Department may by order designate organisations for the purposes of this paragraph.

(2B) No order may be made under sub-paragraph (2A) unless

(a) the Department has consulted each DPCSP; and

(b) a draft of the order has been laid before and approved by a resolution of the Assembly.'

Schedule 2, page 74, line 37, after 'DPCSP' insert 'or by an order under sub-paragraph (2A)'

Put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 1

AYES ABSTAIN
Lord Browne Ms Carál Ní Chuilín
Mr Alban Maginness

Mr Paul Givan
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Schedule 2 paragraphs 8 and 9

The Committee considered Schedule 2 paragraphs 8 and 9 as drafted.

"Question: That the Committee is content with Schedule 2 paragraphs 8 and 9 put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 1

AYES ABSTAIN
Lord Browne Ms Carál Ní Chuilín
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Schedule 2 Paragraphs 11 - 16

The Committee considered Schedule 2 paragraphs 11 - 16 as drafted.

"Question: That the Committee is content with Schedule 2 paragraphs 11 - 16 put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 1

AYES ABSTAIN
Lord Browne Ms Carál Ní Chuilín
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Schedule 2 paragraph 17

The Committee considered a proposed amendment by the Department to replace the word "may" with "shall" relating to the granting of finances to the council for funding of the PCSPs to ensure that the Department and Policing Board's commitment to funding the PCSPs is conveyed, and to include further detail on the actual mechanisms for funding PCSPs.

The Committee considered Schedule 2 paragraph 17 as amended.

"Question: That the Committee is content with Schedule 2 paragraph 17 as amended as follows:

Schedule 2, page 79, line 23, leave out paragraph 17 and insert

'17.(1) The Department and the Policing Board shall for each financial year make to the council grants of such amounts as the joint committee may determine for defraying or contributing towards the expenses of the council in that year in connection with DPCSPs.

(2) A grant made by the Department or the Policing Board under this paragraph—

(a) shall be paid at such time, or in instalments of such amounts and at such times, and

(b) shall be made on such conditions, as the joint committee may determine.

(3) A time determined under sub-paragraph (2)(a) may fall within or after the financial year concerned.'

Put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 1

AYES ABSTAIN
Lord Browne Ms Carál Ní Chuilín
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt

Lord Morrow did not participate in the vote.

Schedule 2 Paragraphs 18 - 19

The Committee considered Schedule 2 paragraphs 18 - 19 as drafted.

"Question: That the Committee is content with Schedule 2 paragraphs 18 – 19 put and agreed to".

The Committee divided: Ayes 4; Noes 0; Abstain 1

AYES ABSTAIN
Lord Browne Ms Carál Ní Chuilín
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt

Lord Morrow did not participate in the vote

4.08pm The meeting was suspended.

4.16pm The meeting resumed.

Present: Lord Morrow MLA (Chairman)
Lord Browne MLA
Mr Alban Maginness MLA
Mr Conall McDevitt
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Vincent Gribbin (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)

The Chairman thanked David Hughes, Dan Mulholland and Nichola Creagh and they left the meeting.

5. Consideration of Clauses Part 7 - Legal Aid - Clauses 85 and 89

4.16pm Robert Crawford, Head of Public Legal Services Division and John Halliday, Criminal Legal Aid Policy Advisor joined the meeting. to provide further information and clarification if necessary.

The Committee considered a proposed amendment from the Department in relation to clause 85 on Legal Aid. Which would provide for affirmative resolution when and if the Criminal Legal Aid means test was enacted for the first time but that subsequent amendments to the means test would be by negative resolution. The Department indicated that its proposed amendment to Clause 85 would bring it in line with the provisions at Clause 89.

The Committee accepted that the proposed amendment from the Department satisfied its requirements.

4.38 pm Mr Givan joined the meeting.

4.38 pm Mr Buchanan joined the meeting.

Clause 85

The Committee considered Clause 85 as amended by the Department.

"Question: That the Committee is content with Clause 85 as amended by the Department as follows:

Clause 85, page 49, line 34, at end insert

'(4) In Article 36 (rules as to legal aid in criminal cases) for paragraph (4) substitute

"(4) Except as provided by paragraph (5), rules under this Article are subject to negative resolution.

(5) The rules to which paragraph (6) applies shall not be made unless a draft of the rules has been laid before and approved by a resolution of the Assembly.

(6) This paragraph applies to the first rules under this Article which are

(a) made after the coming into operation of section 85 of the Justice Act (Northern Ireland) 2011;

and

(b) contain any provision made by virtue of Article 31, as substituted by that section.".'

Put and agreed to".

Clause 89

The Committee considered Clause 89 as drafted.

"Question: That the Committee is content with Clause 89 as drafted put and agreed to".

The Chairman thanked Robert Crawford and John Halliday for the briefing and they left the meeting.

5. Consideration of New Provisions relating to Court Funds

4.30pm Geraldine Fee, Head of Criminal Policy and Legislation Division, Michael Kelly and Richard Ronaldson joined the meeting. to provide further information and clarification if necessary.

The Committee considered proposed provisions relating to court funds that the Department intended to introduce as amendments at consideration stage.

Agreed: The Committee agreed that the principle of using a stockbroker to provide advice on the most appropriate investments and to review existing investments is of benefit to clients and that the cost should be met by those who avail of those services rather than the public purse. It was therefore content to support the proposed amendment.

The Chairman thanked Geraldine Fee, Michael Kelly and Richard Ronaldson for the briefing and they left the meeting.

6. Consideration of New Provisions relating to Solicitors' Rights of Audience

4.42pm Robert Crawford, Head of Public Legal Services Division and Maria Dougan, NICTS joined the meeting. to provide further information and clarification if necessary.

The Committee considered proposed new provisions in relation to Solicitors Rights of Audience that the Department intended to introduce as amendments at consideration stage.

Agreed: The Committee agreed that it was content with the principle of extending solicitors' rights of audience but did not have sufficient time before the Committee Stage of the Bill ended to consider the detail of the proposed provisions.

The Chairman thanked Robert Crawford and Maria Dougan for the briefing and they left the meeting.

4 cont'd. The Justice Bill - Formal Clause by Clause Consideration of Part 3 – Policing and Community Safety Partnerships - and Schedules 1 and 2

The Committee continued its clause by clause consideration of Part 3 of the Justice Bill and Schedules 1 and 2.

Schedule 1 Paragraph 10

The Committee noted a response from the Minister indicating that he was not minded to make an amendment to ensure that the Chair of the PCSP will be an elected member.

The Committee considered a draft amendment to provide for the appointment of the Chairs and Vice Chairs of the PCSPs in the same manner as the appointment of the Chair and Vice Chair of the Policing Chair.

"Question: That the Committee is content with Schedule 1 paragraph 10 as amended as follows:

Schedule 1, page 68, line 4, leave out sub-paragraphs 10 (4) and (5) and insert:-

'10.—(4) At any time thereafter, there shall be—

(a) a chair appointed by the council from among the political members; and

(b) a vice-chair elected by the independent members from among such members.

(5) In appointing to the office of chair, the council shall ensure that, so far as is practicable—

(a) a person is appointed to that office for a term of 12 months at a time or, where that period is shorter than 18 months, for a period ending with the reconstitution date next following that person's appointment;

(b) that office is held in turn by each of the four largest parties represented on the council immediately after the last local general election.'

Put and agreed to".

Schedule 2 Paragraph 10

The Committee considered that Schedule 2 paragraph 10 should be amended to reflect the amendment made at Schedule 1 paragraph 10.

The Committee considered Schedule 2 paragraph 10 as amended.

"Question: That the Committee is content with Schedule 2 paragraph 10 as amended as follows:

Schedule 2, page 76, line 35, leave out sub-paragraphs 10 (4) and (5) and insert:-

'10.—(4) At any time thereafter, there shall be—

(a) a chair appointed by the council from among the political members; and

(b) a vice-chair elected by the independent members from among such members.

(5) In appointing to the office of chair, the council shall ensure that, so far as is practicable—

(a) a person is appointed to that office for a term of 12 months at a time or, where that period is shorter than 18 months, for a period ending with the reconstitution date next following that person's appointment;

(b)that office is held in turn by each of the four largest parties represented on the council immediately after the last local general election.'

Put and agreed to".

8. Justice Bill – Other Issues

The Committee noted a paper summarising issues raised by organisations in evidence submitted on the Justice Bill but which did not strictly relate to the content of the Bill.

9. Consideration of Draft Bill Report

The Committee noted that copies of the draft report on the Justice Bill would be circulated after the meeting

Agreed: The Committee agreed that the meeting scheduled for Thursday 10 February would commence at 1.30pm. With the first agenda item to be consideration of the draft report on the Justice Bill.

10. Bill Report draft appendices

The Committee considered a list of the contents of the appendices and submissions for inclusion in the Report on the Justice Bill.

Agreed: The Committee agreed that it is content with the contents of the appendices and submissions.

Thursday 10 February 2011
Room 29, Parliament Buildings

Present: Lord Morrow MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Lord Browne MLA
Mr Paul Givan MLA
Mr Alban Maginness MLA
Mr Conall McDevitt MLA
Mr David McNarry MLA
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Mr Vincent Gribbin (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)
Mr Kevin Marks (Clerical Officer)

Apologies: Lord Empey MLA

1.37pm The meeting commenced. in public session.

4. Consideration of the Bill Report

The Committee considered a draft Report on the Justice Bill. No amendments were proposed.

5.10pm The meeting was suspended.

5.33pm The meeting resumed.

Present: Lord Morrow MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Lord Browne MLA
Mr Paul Givan MLA
Mr Alban Maginness MLA
Mr Conall McDevitt
Ms Carál Ní Chuilín MLA
Mr John O'Dowd MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Mr Vincent Gribbin (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)
Mr Kevin Marks (Clerical Officer)

4. cont'd Consideration of the Bill Report

The Committee considered a draft Executive Summary for inclusion in the Report on the Justice Bill. No amendments were proposed.

The Committee considered 2 amendments to correct drafting errors at paragraphs 763 and 764 of the draft report.

Agreed: The Committee agreed that the amendments should be incorporated into the report.

The Committee considered the draft Report on the Justice Bill.

Title Page, Committee Membership and Powers, and Contents Page

The Committee considered the Title page, Committee Membership and Powers, and Contents page of the Report.

"Question: That the Committee is content with the Title page, Committee Membership and Powers, and Contents page as drafted put and agreed to".

Executive Summary

The Committee considered the Executive Summary of the report.

"Question: That the Committee is content with the Executive Summary (paragraphs 1 to 33) as drafted put and agreed to".

List of abbreviations and acronyms

The Committee considered the List of abbreviations and acronyms used in the report.

"Question: That the Committee is content with the List of abbreviations and acronyms as drafted put and agreed to".

Introduction

The Committee considered the Introduction section of the report.

"Question: That the Committee is content with the Introduction (paragraphs 1 to 16) as drafted put and agreed to".

Key Issues

The Committee considered the Key Issues section of the report.

"Question: That the Committee is content with the Key Issues section of the report (paragraphs 17 to 154) as drafted put and agreed to".

Consideration of the Bill by the Committee

The Committee considered the Consideration of the Bill by the Committee section of the report.

"Question: That the Committee is content with the Consideration of the Bill by the Committee section of the report (paragraphs 155 to 605) as drafted put and agreed to".

New Provisions to be introduced into the Bill by the Department

The Committee considered the New Provisions to be introduced into the Bill by the Department section of the report.

"Question: That the Committee is content with the 'New Provisions to be introduced into the Bill by the Department' section of the report (paragraphs 606 to 639) as drafted put and agreed to".

Clause by Clause consideration of the Bill

The Committee considered the Clause by Clause consideration of the Bill section of the report.

"Question: That the Committee is content with the 'Clause by Clause consideration of the Bill section of the report (paragraphs 640 to 771) as amended put and agreed to".

The Chairman advised that copies of the draft Minutes of Proceeding for the meeting on 8 February would be circulated to Members.

Agreed: The Committee agreed to contact the clerk with any amendments and was content that the Chairman then agrees an extract of the minutes to allow them to be included in the printed report.

Agreed: The Committee agreed that it was content for the Chairman to approve an extract of today's Minutes of Proceedings to allow them to be included in the printed report.

Agreed: The Committee agreed to order the Report on the Justice Bill (NIA 41/10/11R) to be printed.

Agreed: The Committee agreed that an electronic copy of the Bill Report should be sent to all organisations and individuals who provided evidence to the Committee on the Bill.

The Chairman thanked the Committee team, Hansard and all other Assembly staff who assisted the Committee during its scrutiny of the Bill.

[EXTRACT]

Appendix 2

Minutes of Evidence

Appendix 2: Minutes of Evidence

21 October 2010 Principles of the Justice Bill

- Department of Justice

18 November 2010 Sports Law

- Department of Justice and Department of Culture, Arts and Leisure
- Sport NI
- Ulster Rugby and Ulster Rugby Supporters' Club
- Ulster GAA
- Irish Football Association
- Amalgamation of Official Northern Ireland Supporters' Club

25 November 2010 Victims and Witnesses and Live Links

- Department of Justice
- Victim Support Northern Ireland
- MindWise

2 December 2010 Legal Aid, Miscellaneous and Supplementary Provisions

- Department of Justice
- Bar Council of Northern Ireland
- Women's Aid Federation Northern Ireland
- Law Society of Northern Ireland

9 December 2010 Treatment of Offenders and Alternatives to Prosecution

- Department of Justice

- Probation Board for Northern Ireland
- Northern Ireland Association for the Care and Resettlement of Offenders
- Include Youth

16 December 2010 Policing and Community Safety Partnerships

- Department of Justice
- Antrim Community Safety Partnership, Antrim District Policing Partnership and Antrim Borough Council
- Ballymoney Community Safety Partnership
- Belfast City Council
- Coleraine Community Safety Partnership
- Coleraine District Policing Partnership
- Craigavon Community Safety Partnership
- Dungannon and South Tyrone Borough Council
- Extern
- Include Youth
- Larne Borough Council
- Limavady Borough Council
- Magherafelt Community Safety Partnership
- Magherafelt District Policing Partnership
- Moyle District Policing Partnership
- Moyle Community Safety Partnership
- Newtownabbey Borough Council
- Northern Ireland Association for the Care and Resettlement of Offenders
- Northern Ireland Local Government Association
- Northern Ireland Policing Board
- Probation Board for Northern Ireland
- Strabane Community Safety Partnership
- Strabane District Policing Partnership

11 January 2011 Briefing from the Police Service of Northern Ireland and Department of Justice Response.

Briefing by the Department of Justice on the Justice Bill Equality Impact Assessment.

13 January 2011 Informal Clause-by-Clause Consideration of Parts 1 and 2 of the Justice Bill.

Briefing by the Northern Ireland Human Rights Commission and Department of Justice Response.

18 January 2011 Briefing from the Attorney General on Clause 34.

Informal Clause-by-Clause Consideration of Part 3 of the Justice Bill.

20 January 2011 Informal Clause-by-Clause Consideration of Schedules 1 and 2 of the Justice Bill.

Formal Clause-by-Clause Consideration of Parts 1 and 2 of the Justice Bill.

25 January 2011 Informal Clause-by-Clause Consideration of Part 4 and Schedule 3 of the Justice Bill.

27 January 2011 Informal Clause-by Clause Consideration of Part 5 of the Justice Bill.

Further Informal Clause-by-Clause Consideration of Part 3 and Schedules 1 and 2 of the Justice Bill.

1 February 2011 Informal Clause-by-Clause Consideration of Part 6 and Part 7 and Schedule 4 of the Justice Bill.

Formal Clause-by-Clause Consideration of Part 4 and Schedule 3 of the Justice Bill.

3 February 2011 Briefing by the Department of Justice on new provisions relating to Court Funds and Solicitors' Rights of Audience and briefing from the Law Society (NI) on Solicitors' Rights of Audience.

Formal Clause-by-Clause Consideration of Parts 5, 6, 7, 8 and 9 and Schedules 4 to 7 of the Justice Bill.

8 February 2011 Formal Clause-by-Clause Consideration of Part 3 and Schedules 1 and 2 of the Justice Bill.

21 October 2010

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Tom Elliott
Mr Paul Givan
Mr Conall McDevitt
Mr Alban Maginness
Mr John O'Dowd

Witnesses:

Mr Gareth Johnston Mr Tom Haire	Department of Justice
Mr John Halliday Ms Laurene McAlpine	Northern Ireland Courts and Tribunals Service

1. The Chairperson (Lord Morrow): I welcome to the Committee Gareth Johnston, the deputy director of the justice strategy division; Tom Haire, head of criminal law branch and Bill manager

for the Justice Bill; John Halliday, a criminal legal aid policy adviser; and Laurene McAlpine, head of civil policy and legislative division. Mr Johnston will brief the Committee, and that will be followed by members' questions.

2. Mr Gareth Johnston (Department of Justice): Thank you for the opportunity to provide the Committee with an overview of the Justice Bill as introduced to the Assembly. Having received approval from the Executive on 7 October to introduce the Bill, the Speaker's Office confirmed the legislative competence of the Assembly to deal with the Bill and approved it for introduction. The Bill was formally introduced on Monday of this week by David Ford.

3. Given Mr Ford's strong wish to see the Bill enacted within the current Assembly mandate and the tight timescale that that brings with it, I am particularly grateful that the Committee is providing us with this early opportunity to brief it on the Bill as introduced. My team has been working closely with the Committee Clerk and the staff of the Committee office in developing a work programme for the Bill. I thank Christine Darrah for the excellent support that she has been providing in that regard. I understand that the Committee took the positive step yesterday of advertising and calling for evidence on the Bill ahead of Second Stage. We are grateful that the Committee has acted so quickly in that area. In turn, we are committing to do all that we can to facilitate your programme.

4. Before I present on the Bill, I will mention the team. Many of you will know who most of us are from previous presentations to the Committee, but I am conscious that there have been changes in Committee membership. I head the justice strategy division in the Department of Justice, which is responsible for justice policy and legislation. Tom Haire is the head of my criminal law branch and manager for the Bill process. My other two colleagues, Laurene McAlpine and John Halliday, are from the Northern Ireland Courts and Tribunals Service. Laurene deals with civil policy and legislation, and John deals with criminal legal aid. Although I will present the Bill as a collective piece, I know that colleagues will want to contribute in their respective areas, and Tom will keep us all right. If there are any elements that we cannot deal with today, we will be very willing, as usual, to come back to the Committee in writing.

5. From the negotiations on the devolution of policing and justice powers, Committee members will be well aware that the delivery of a justice Bill emerged as a key goal for the new Department of Justice. It was mentioned specifically in the Hillsborough Castle Agreement and has been reflected in the addendum to the Programme for Government, which was debated and approved by the Assembly in the past couple of weeks. The Minister of Justice sees legislative reform as an important part of devolution of justice and of his overall reform programme for the justice system, which is not, by any means, limited to legislative reform. The bigger picture about it is in the Programme for Government, but legislation will continue to form an important part.

6. Consultation has been a key part of the Justice Bill. We have an equality impact assessment out for consultation, and that will close at the time that the Committee for Justice begins formally to scrutinise the Bill. Therefore, it is important that the results of that consultation will be available to the Committee as it begins that scrutiny. The Committee has been an important contributor to the development of the Bill, helping to finalise some of our policy proposals. I will give a couple of specific examples. We increased the maximum amount of the offender levy to £50 in recognition of the Committee's concern that those convicted of serious offences that cause the greatest harm to victims should pay substantially more than minor offenders. We also allowed for the widening of the circumstances in which a fixed penalty notice for shoplifting could be issued to allow for a shopkeeper to be recompensed for goods that could not be re-sellable. We did that on the basis of a point that the Committee made. Based on helpful comments that were raised in Committee and at follow-up meetings, we agreed to look again at

items such as how sectarianism might be accommodated or defined in our sports law proposals. We will come back to that point when we present in more detail on that part of the Bill.

7. Second Stage is coming up, when the broad principles of the Bill will be debated in the Assembly. It might be worth my setting the Bill in that context and looking at the overall terms of what it is intended to do. The Bill has a rather lengthy long title that reflects its various themes and purposes, but, to sum up, it developed from several needs to make changes to Northern Ireland's justice system: first, a desire in the justice system to do its business better; secondly, to deliver better and enhanced services to victims and witnesses; thirdly, the need to improve public safety and build stronger and safer communities; fourthly, a desire to reduce costs, particularly the costs of the legal aid system; and, fifthly, a desire to improve access to justice.

8. With all that as background, the Bill has three main themes: improving services and facilities for victims and witnesses, which Part 1 of the Bill covers; improving community safety arrangements and tackling some specific problem areas, such as sports law; and allowing the system to do its business better through improving the justice system and reducing costs. It also deals with a range of miscellaneous improvements and adjustments. Committee members will be aware that the Bill now has nine major Parts, 108 clauses and seven schedules. I am told that it may be the largest Bill that the Assembly has yet considered.

9. I will now move on to the detail under those three headings, the first of which deals with victims and witnesses. The headline for the Bill is the introduction of the offender levy, which is intended to make offenders more accountable for the harm that they cause by requiring them to make a financial contribution to support services for victims of crime. The levy will be imposed on adult offenders across a range of court disposals and non-court penalties. It will be set at a range of tiered rates of between £5 and £50, propionate to the disposal or penalty given, with the rate of £5 being added to a fixed penalty and £50 for those who receive longer sentences in the Crown Court. The levy will be used to fund directly a victims of crime fund, and, in full operation, it could realise £500,000 a year. The allocation of the fund will be prioritised by the victim and witness task force.

10. Alongside those provisions are new provisions for vulnerable and intimidated witnesses. Those provisions will assist witnesses through special measures to enable them to give their best possible evidence in criminal proceedings. The concept of special measures is well established and a series of them have been in place for the past 10 years. However, the Bill, amongst other things, will raise the upper age limit under which a young witness is automatically eligible for special measures from 17 years old to 18 years old; provide automatic entitlement for adult complainants of sexual offences to give video-recorded evidence in chief; and allow intermediaries to be made available to vulnerable defendants with communication difficulties to allow them to tell their story and give their evidence in court.

11. The definition of vulnerable accused persons who are able to avail themselves of video links to give evidence will be extended in the Bill to include those with physical disabilities and disorders. The Bill will also allow live-link connections between courts and psychiatric hospitals, which will reduce the need to move offenders around, some of whom may be quite dangerous.

12. Under the heading of community safety, the Bill will introduce provisions for new policing and community safety partnership arrangements that will provide a more joined-up approach with better local deliverability and accountability that is targeted on real issues of local concern. The Bill will also integrate the roles of the community safety partnerships (CSPs) and the district policing partnerships (DPPs) to create a single partnership for each council area. Those partnerships will comprise councillors, independent members and representatives of the voluntary and statutory organisations that are designated in legislation. We hope that that

restructuring will allow us to make better use of the resources that are available for partnership working and, therefore, direct more of the funding to projects and initiatives on the ground, rather than to the administrative costs of two separate classes of partnerships.

13. Also in that area, the new sports law provisions in the Bill are aimed at promoting good behaviour amongst sports fans in Northern Ireland. They will apply variously to association football, Gaelic games and rugby union, but not all in the same way, and the aim is to focus on areas where the need arises — either on the grounds of safety or to deter disorder. New offences of offensive chanting, missile throwing and unauthorised pitch incursions will be created in the Bill, together with offences for possessing alcohol or drinks containers, possessing fireworks or flares and of being drunk at a match. Finally, under the sports law heading, ticket-touting bans will be imposed for certain association football matches, and courts will have the power to impose football banning orders for certain association football matches in Northern Ireland to prevent violence and disorder.

14. A range of existing sentencing powers are also being adjusted to address problems caused by gaps or inconsistencies in the existing law. In particular, there will an increase in the maximum penalty for common assault from three months' imprisonment to six months' imprisonment. When increasing that tariff, we were particularly mindful of the assaults that we see on healthcare personnel, and of the need to provide Magistrates' Courts with stiffer penalties that can be used even if an assault is relatively minor. We are also increasing the maximum penalty for the offence of possessing a weapon — a knife on school premises, for example. The maximum penalty will be increased to four years' imprisonment, which reflects the seriousness with which knife crime is being taken. There is also an enhancement of powers aimed at sex offenders living outside the jurisdiction who breach their licence conditions.

15. We have provisions around victims and community safety. The final category is around the efficiency and effectiveness of the justice system, particularly in respect of new alternatives to prosecution powers with new diversionary disposals, wider fixed penalty notice powers and new conditional cautions. The fixed penalty notices available for first-time or non-habitual offenders can be applied by the police without direction from the Public Prosecution Service (PPS). They would be a means of discharging liability for the offence by paying a fixed penalty within 28 days. The penalty will be fixed at either £40 or £80 and will depend on the offence. The eligible offences, which are listed in the Bill, are simple drunk; breach of the peace; disorderly behaviour; obstructing police; indecent behaviour, in the sense of urination in the street, not sexual indecency; and criminal damage up to £200 pounds. There will be guidance around that. There will also be guidance around petty shoplifting, which will limit it to first-time offences up to £100 in value. It is intended that that will be a means of dealing with petty shoplifting, without stores having to produce people to attend court and the associated expenses.

16. Conditional cautions are the other element of alternatives to prosecution. They are cautions in which prosecutors attach rehabilitative or reparative conditions with which the offender must comply. If they do not, they could face reconsideration of the prosecution and the case can proceed to court.

17. There are legal-aid adjustments. I know that the Committee has been briefed on the policy behind those. They aim to improve legal aid legislation so that those who can afford to pay for their own defence do so. They also fill small gaps in existing laws. The major introduction would be a rule-making power for a means test for the granting of criminal legal aid. That means that we could, in the future, bring in rules on means-testing and on recovering costs for legal-aided defendants who are convicted.

18. There is also the power to remove the restriction on the Northern Ireland Legal Services Commission from establishing or funding services under litigation funding agreements. That is in civil law. If the Committee wants us to say something more about that, we can do so.

19. I have spoken about what is included in the Bill. I should, perhaps, say something about a few areas that we previously discussed with the Committee but that have not found their way into the Bill. I recognise that you will be interested in those and in a few other areas that have been adjusted since last we briefed you. At the start of our proposals, we said that we were presenting something of a menu of proposals and that it might well be that it would not be possible to legislate on all of them this time around. That has proved to be the case in a few instances, partly because of time constraints, partly because of the scope of an already very large Bill, and also partly because of some issues about legislative competence that have arisen as we considered the detail of the provisions.

20. We indicated at an early stage that it would be unlikely to prove possible to bring forward powers to reform court boundaries, and I think that our analysis on that has proved correct. The sheer scale of the drafting of those provisions could have resulted in a Bill in their own right. It is still our intention to consider a reform of court boundaries at a later date. There would be advantages there, but we had to prioritise other things for the current Bill.

21. We have not brought forward our proposals for public prosecutors to be able to issue summonses or for a new public prosecutor fine. In the case of the former, we are looking at it again in the context of a wider Criminal Justice Board-led case initiation reform programme to improve the speed of justice. So, we have not lost sight of the issue. For the latter — the public prosecutor fines and alternatives to prosecution — given the time available, we have had to prioritise the fixed penalty notices and the conditional cautions. That is not to say that we would not come back to prosecutorial fines in the next piece of legislation.

22. We have also removed our previous proposals for court funds powers and the conferring of rights of audience on solicitor advocates in the higher courts. We are continuing to work with the Attorney General to address some concerns he has around Assembly competence in those areas. If we can address those, we would propose to bring provisions back as amendments at Consideration Stage. We will flag that to the Committee as soon as we can.

23. We had also discussed with the Committee cross-border powers around sex offenders, but there has been a recent Supreme Court of the United Kingdom judgement, I think it was, or the House of Lords, as it used to be, which has impacted on the proposals that we hope to bring. We are pursuing that with the other jurisdictions to see how we can do something about cross-border sex offender powers that is in keeping with that new House of Lords judgement.

24. There are also a few smaller issues. Largely for technical reasons, we have removed our proposals on the Upper Tribunal for judicial review, on the power of inspection of property in criminal cases and the proposal for certain judicial salaries to be charged to the Consolidated Fund.

25. I will talk now about where we have changed proposals. As I mentioned about the offender levy, we have created the two-tier rate on immediate custody sentences. That was in response to concerns from the Committee. In response to issues that were raised at consultation about remission of the levy in certain circumstances, when, for example, a person was going to have genuine difficulty in affording it and its imposition would create more problems, we have introduced a power to remit the levy in limited circumstances.

26. On treatment of offenders, we have extended our public protection sentence powers, the extended custodial sentences and the indeterminate custodial sentence to cover hijacking, so

that someone who was convicted of hijacking could receive one of those public protection sentences.

27. We have removed a couple of offences from the original list for fixed penalty notices that we covered with the Committee. It still includes all those that I mentioned earlier, but we have removed selling alcohol to a minor and buying alcohol for a minor. The reason for that is that the Department for Social Development (DSD) has got a wider strategy around alcohol sales that will be coming in the Licensing and Registration of Clubs (Amendment) Bill, and we did not want to create something that went against the intentions and purposes of that Bill. In any event, our proposals would have covered only a handful of cases each year.

28. We have been conscious of points that were raised during the consultation and by the Committee on sports law provisions. We have removed the alcohol restrictions on private viewing facilities as we were told they would adversely impact on the sports concerned. We have also removed a provision that would have allowed football banning orders to apply retrospectively, on the grounds that that would have been contrary to constitutional law, and a provision that would have applied football banning orders to matches outside Northern Ireland. We have also removed the civil procedure route through which a football banning order could be imposed without a criminal conviction. There were various views on that. However, they can still be imposed by courts after a football-related criminal conviction, and we had always expected that those would be the majority of cases.

29. Members will note clause 34. It places a duty on public bodies to consider the crime, antisocial behaviour and community safety implications of exercising their duties and to have regard to any guidance issued by the Department of Justice.

30. As a result of the Bill, the Department will have a statutory obligation to consult the other Northern Ireland Departments in the preparation of that guidance. It is important to underpin the new policing and community safety partnerships with that statutory basis for co-operation. The Executive agreed to the inclusion of that clause but with the caveat that the position would be brought back to them after the Committee's consideration. They wanted to give it further consideration and ensure that any consequences of having that statutory duty were fully justified. Therefore, we will particularly welcome the Committee's views on clause 34 as it scrutinises the Bill.

31. I mentioned that there are a number of amendments that we envisage that we may wish to bring to Consideration Stage and to the Committee's attention. As always with a large Bill, there are aspects that are not quite finally settled when it is published, and Consideration Stage provides the opportunity to introduce those, which I will flag. First are the provisions on solicitor advocates and court funds, on which we will try to secure some amendments that deal with the concerns about legislative competence. Second are the sex offender powers that I mentioned and which would require registered offenders from other jurisdictions to report to the PSNI.

32. Third is the element that we removed from the sports law provisions, which was about football banning orders for fans travelling to matches outside Northern Ireland. We think that there is a reason for having it, but drafting it in a way that met legislative competence requirements was a bit difficult. We are continuing to explore that, and we hope to bring back a provision as an amendment. There is also the possibility that we may come back with an amendment extending the use of live video links, and the Committee will have noted what I have said about clause 34 and further Executive consideration. We will give the Committee as early notice as possible if there are any proposals for amendments.

33. I am sorry that I have spoken at even greater length than I normally do in front of the Committee, but this is a substantial Bill, and I wanted to ensure that we summed it up

accurately. We are very pleased, and the Minister is particularly pleased, to be in a position to present the Bill to the Committee six months after devolution of justice. We are conscious of the specific commitment in the Hillsborough Castle Agreement, and we believe that the Bill contributes across a wide range of the agreement's undertakings.

34. It improves our diversionary alternatives to prosecution, and it improves our services to victims and witnesses. It provides for more efficient justice systems and improves and targets our legal aid provision. It should have both strategic significance and operational importance for the justice system in Northern Ireland. It may not resolve all of the issues that the justice system is facing, and it does not try to, but we hope that it is a significant step in the right direction. The Minister is very aware of the important role that the Committee will play in the Bill, and we are pleased to present it for your consideration.

35. The Chairperson: Thank you, Mr Johnston.

36. Why did it take so long to discover that there was a lack of competency in relation to the issues that you talked about?

37. Mr Johnston: We would have taken our own legal advice on those issues, but, on issues of competence, it is the Attorney General who has the final responsibility to provide advice to the Minister. The Attorney General's office has raised a number of issues. I do not think that they are all insuperable issues, but it will take a little more time to work through some of those with the Attorney General's office.

38. The Chairperson: Do you accept that the Bill lacks ambition?

39. Mr Johnston: With respect, I do not accept that, because it needs to be seen in the bigger context of what the Department is doing, including the various areas that are highlighted in the Programme for Government.

40. Since devolution, the Minister has implemented a number of fundamental reforms, including the review of public legal services, the review of prisons and the review of youth justice, which is just being launched. We are taking a fundamental look again at mental health and mental capacity provisions through the new legislation that we are working on with the Department of Health, Social Services and Public Safety. We will also be briefing the Committee shortly on our new focus on reducing offending and tackling its root causes.

41. Legislative reform can only play a part in that bigger programme. We hope that we are setting off on the right foot, and we are already starting to look at the next piece of justice legislation. I realise that the current Bill has its limitations, but I hope that it is a step in the right direction. I also hope that, when seen in the context of the wider work that is going on, it will demonstrate that there has been a fairly fundamental shift in the reform of the justice system since devolution.

42. The Chairperson: The whole Bill lacks quality. It is a rushed step to get something done, and, at the end of the day, the greater part of the Bill has been lifted straight from legislation in England and Wales. It lacks a local touch.

43. Mr Johnston: There are certainly provisions in the Bill that have been used elsewhere, and we have been able to learn from the experience elsewhere. For example, it is fair to say that England and Wales went far too far in their use of fixed penalties. They started to use them in a lot of cases in which it was not suitable to use them, for example, in more serious crimes. We decided that fixed penalty powers are a good idea but that we will start by using them for a

relatively small number of minor offences. If they work, and we are confident that they will, we can always return to them and increase the number of offences that they can be used for.

44. There are other provisions, for example, those on policing and community safety partnerships, that have very much been formed in the context of Northern Ireland, and the current proposals in that area have been very much shaped by local consultation. For example, Paul Goggins had originally proposed setting up crime reduction partnerships based on his experiences in England. However, there was a widespread feeling that that proposal was not suitable for Northern Ireland and that it did not pay sufficient respect to the important role that the district policing partnerships play here.

45. I do not deny that we looked for inspiration elsewhere, and we will continue to look at best practice elsewhere. I hope that there is some indication that we have shaped the Bill to the specific needs of Northern Ireland. That is one of the Minister's commitments as we move forward.

46. The Chairperson: You talk continually about the next Bill, which tells me that you are more focused on what will be in that Bill and less focused on what is in this Bill. It tells me that the current Bill was a rushed piece of work that was done just to get something done; it did not matter what was in it, as long as you had something to throw out to the public to say, "Look, here is what we have done". You missed all the big issues.

47. Mr Johnston: There are important provisions in the Bill that will make a real impact on the justice system. For example, the fixed penalty notice powers are something that the Chief Constable called for vociferously. They will save the bureaucracy involved in producing prosecution files in a couple of thousand of cases each year and are very much aimed at getting police officers back into contact with communities on the front line. There is a proposal to create a victims of crime fund, which could realise £500,000 a year and could be used to fund important moves forward such as the introduction of independent sexual violence advisers who can travel through the justice system with those who have been victims of rape or serious sexual offences. Those are the proposals under the headings of victims and community safety.

48. Again, for a very long time, there have been calls for Northern Ireland to have good sports law provisions, and there has been a sense that we are very behind the times in that regard. The provisions are important and will add value. I am not saying that they are the final answer, but I would encourage the Committee to see that significant steps forward have been made in what we are putting forward today.

49. The Chairperson: There was a clear indication that the issue of solicitor advocacy would be included in the Bill. We are now told that it will not be, and you have told us the reasons for that, yet you still hold out hope that it could, in fact, be included at Consideration Stage. How hopeful are you about that? Is a carrot being dangled in front of us? Is it a case of "Live, horse, and you will get grass"?

50. Ms Laurene McAlpine (Northern Ireland Courts and Tribunals Service): Perhaps I can help the Committee on that point. We had a draft provision to confer rights of audience in the High Court and the Court of Appeal on solicitors who have been authorised by the Law Society. There was a concern, however, that the clause did not sufficiently guard against potential conflicts of interest. For example, if a solicitor is also a solicitor advocate or works in the same firm as a solicitor advocate, it would not necessarily be in his interest to advise a client about alternative counsel. We are working to develop that clause, and we are optimistic that it will be possible to put in place sufficient safeguards that will allow the provision to be within the competence of the Assembly and not in any way in conflict with the European directive on the provision of services.

51. The Chairperson: I suspect that the answer that we will eventually get will be no, the issue cannot be dealt with in the current Bill, but there is a possibility that it could be included in the new Bill, which may be the real Bill, whenever it comes. That Bill may arrive four years or one year into the new mandate, but it will be in the new mandate. It has to be said that there is considerable disappointment that that issue was not flagged up long before the Bill got to this stage.

52. Mr McDevitt: I will pick up where the Chairperson left off. What does article 25 of the EU services directive say? I do not mean literally; I mean in general terms.

53. Ms McAlpine: Article 25 of the directive requires member states to ensure that there is no conflict of interest in the way multidisciplinary partnerships provide services. As I explained, the potential conflict of interest is that, if a solicitor is also a solicitor advocate or works with other solicitor advocates, naturally it is not in that solicitor's interests to point to the alternative availability of counsel for advocacy services. We need to guard against that. The clause that we originally drafted was not considered sufficiently robust in that regard, but we think that it will be possible to devise a mechanism to overcome any concerns about conflict of interest and to propose a clause during the passage of the Bill.

54. Mr McDevitt: Solicitor advocates operate in other parts of these islands. What is the statutory basis for their role? What law allows them to perform that role?

55. Ms McAlpine: As you rightly say, solicitors in, for example, the Republic of Ireland have rights of audience in courts during proceedings. Solicitors in England and Wales who have a higher court qualification have rights of audience in the higher courts, and there are similar arrangements for solicitor advocates in Scotland. We might want to talk to our colleagues in those jurisdictions about whether they have encountered similar concerns over this conflict of interest.

56. Mr McDevitt: I am not aware of any challenges under article 25 of the EU services directive. I wonder whether any of the officials are aware of any such challenges to existing law elsewhere on these islands.

57. Ms McAlpine: No, I am not aware of any. We will want to talk to colleagues in other jurisdictions to see if they have some sort of refinement or nicety around their procedures that might assist us, but it is not my impression that there have been any.

58. Mr McDevitt: It would be reasonable to assume that there is probably ample precedent in law elsewhere that could be drawn on and which could inform the drafting of a suitably competent clause for this Bill. We could then be shown the clause at further stages.

59. Ms McAlpine: Yes; I am optimistic that we will be in a position to propose a clause during the Bill's passage that will confer rights of audience on solicitor advocates.

60. Mr McDevitt: Is that a commitment, Ms McAlpine?

61. Ms McAlpine: The matter is not in my gift. It is matter for the Minister, and he will want to take into account any advice given by the Attorney General on the issue.

62. Mr McCartney: My point is on the general principle under discussion. I assume that, if the Attorney General were to suggest that any clause is in breach of EU law, it would be taken out of the Bill. How is that process resolved generally? How do we test that?

63. Mr Johnston: The Department and the Attorney General's office are certainly having a discussion on those issues, and that discussion is informed by our lawyers in the Departmental Solicitor's Office (DSO), who have looked at the competence issues and prepared an initial brief. It is not the case that we propose a provision and it comes back to us with a note to say that it is not competent and must be taken out of the Bill. There is an ongoing process; an iterative process, if you like.

64. Mr McCartney: How long would that process take for this particular issue and in general? How long does it take to determine whether something is or is not in breach of European law?

65. Mr Johnston: It is a difficult question to answer because, in a sense, it takes as long as it takes. We have been communicating with the Attorney General's office on some of the issues in this case for a month and a half, and we will continue that communication.

66. Mr McDevitt: You mentioned that you were hopeful that we would be able to see a new draft of a clause that would allow us to extend the scope of banning orders to outside Northern Ireland. What was the specific obstacle that you encountered?

67. Mr Johnston: It was about territoriality, which is not easy to say without your teeth in. There was a concern that we were creating provisions that would, in effect, have application outside the jurisdiction. Again, we are looking to see whether there are ways to phrase that to get round those problems of territoriality.

68. Mr McDevitt: There would be other precedents in criminal law.

69. Mr Johnston: Yes, the Scots certainly have similar legislation, and we will be in communication with them to see whether any similar issues arose.

70. The Chairperson: Do England, Scotland and Wales not have similar provisions?

71. Mr Johnston: Yes, they have similar provisions. We have some information on those provisions, and, as I said, we are in communication with the Attorney General's office to see whether we can arrive at something that would be passable.

72. Mr McDevitt: The Chairman covered this point well — he certainly speaks for me, and I presume for all of us — when he said that a lot of the Bill involves transferring stuff that has gone on elsewhere to our statute books. However, the one bit of our sporting mix that is unique is sectarianism, which, tragically, is occasionally present. You said that you are hopeful that you can bring forward some proposals during the passage of the Bill.

73. Mr Johnston: I said that I recognised that it was an issue that the Committee wanted to explore again. The last time we talked to the Committee about sports law, Mr McNarry asked how we could make sure that sectarianism was covered in, for example, offensive chanting. Tom might want to say something more about that. At the minute, we are looking at a range of section 75 categories and expressing it in that way because of concerns about whether the word "sectarianism" could be defined if it were included in the Bill. That is, if you like, our way of defining sectarianism. However, we are very willing to have a discussion with the Committee about that.

74. Mr Tom Haire (Department of Justice): The definition in the Bill covers the section 75 groups. The issue was whether it actually mentions or addresses sectarianism, and our view is that the definition does catch it. We have agreed to look at it again with the Committee to see if there is some way of strengthening it by referring to "sectarianism", for example, if that is possible.

75. Mr McDevitt: Mr McNarry raised that issue, and, from memory, Mr O'Dowd and I expressed opinions on it for two reasons. First, we wanted to make the Bill a local Bill that recognises our local uniqueness. Secondly, there are undoubtedly contexts, scenarios and occasions when you would probably only be able to define an incident, event or utterance as sectarian. Those may not technically fall within the scope of section 75, but, within our social norms, they would obviously and evidently be sectarian. Not to include that in the legislation would be a significant missed opportunity and would mean that we are selling ourselves quite short.

76. Mr A Maginness: I welcome the provisions for fixed penalty notices in the Bill. That is a good development, which I support. If a person were to receive a fixed penalty notice, would that be regarded as a criminal conviction? That is important, because having a criminal conviction, even for a fixed penalty notice, affects people adversely. I would like clarity on that issue, but I underline my view that fixed penalty notices are a good step forward.

77. I want clarification on one aspect on the Bill, although I really should know this as it has been touched on before. One of the provisions in Part 7 of the Bill, which deals with legal aid, will remove the restriction on the Northern Ireland Legal Services Commission establishing or funding services under litigation funding agreements. My understanding is that the purpose of that provision is to free up the commission to develop alternative forms of funding for legal aid.

78. Mr John Halliday (Department of Justice): Yes, that is correct.

79. Mr A Maginness: In what way will that provision do that? What is the general effect of it?

80. Mr Halliday: There was some discussion as to whether the prohibition in the Access to Justice (Northern Ireland) Order 2003 was actually an impediment. Certain people thought that it was not an impediment and did not need to be removed. However, the Legal Services Commission asked for it to be removed, and, on that basis, we inserted the clause to do so.

81. Mr A Maginness: Is the commission happy with that?

82. Mr Halliday: It is.

83. Mr A Maginness: Is the Law Society also happy with that?

84. Mr Halliday: Yes; as far as I know. That should enable a fund to be established — [Inaudible due to technical difficulties.] As you know, most civil cases are successful, and the idea is that a small payment will be made into the fund from each successful case so that other cases can be funded.

85. Mr A Maginness: So, it is a much more flexible approach to legal aid funding.

86. Mr Halliday: It is, and it will remove the cost to the public purse.

87. Mr Johnston: In answer to the first part of Mr Maginness's question; it is not proposed that fixed penalty notices will form part of an individual's criminal record, but an administrative record of them will be kept. They are intended for use against first-time, non-habitual offenders, and, hopefully, if someone misbehaves and receives one, it will serve as a warning to them and give them a direct short, sharp shock. It will also give the police an opportunity to engage with them on what happened. If the penalty does not have that effect, the next time around, the police will have ready access to the information that that person received a fixed penalty notice in the past and will be able to consider other disposals.

88. Mr McCartney: Thank you for the presentation. We welcome the fact that we are at this point, and we look forward to taking the Bill through its Committee Stage. We will seek clarity on a number of issues, but we will do that as we proceed with scrutiny of the Bill rather than ask you about them today.

89. Mr O'Dowd: I have previously raised concerns about the sports regulations and whether this is law for law's sake. Clause 42 goes into a lot of detail about what constitutes a drinks container; I think it covers everything. Clause 41 is entitled "Being drunk at a regulated match". Is there a legal definition of being drunk? Who decides whether someone is drunk?

90. Mr Johnston: It falls under the same procedure used to assess whether someone is guilty of the offence of being drunk and disorderly or simple drunk; it is based on the evidence of any witnesses and any police officer who was involved in the arrest. It is similar to the law elsewhere.

91. Mr Haire: That is very much the case; it is down to the police's interpretation.

92. The Chairperson: I thank Mr Johnston and his team for coming here today. The Bill has started its long journey, and I suspect that we will see the team again before it reaches its destination. I suspect there will be a few meetings between now and January or February.

18 November 2010

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Lord Browne
Mr Thomas Buchanan
Sir Reg Empey
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt
Mr David McNarry
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Mr Tom Haire Mr Gareth Johnston Mr David Mercer	Department of Justice
Mr Ciarán Mee	Department of Culture, Arts and Leisure
Mr Nick Harkness Mr Paul Scott	Sport Northern Ireland
Mr Iain Campbell	Ulster Rugby Supporters' Club
Ms Lyndsey Irwin	Ulster Rugby
Mr Robin Cole Mr Joe Eagleson	Irish Rugby Football Union Ulster Branch
Mr Ryan Feeney Mr Stephen McGeehan Mr Danny Murphy	Ulster GAA

Mr Stephen Grange Mr Patrick Nelson Mr Terry Pateman Mr Hugh Wade	Irish Football Association
Mr Chris Andrews Mr Gary McAllister	Amalgamation of Official Northern Ireland Supporters' Clubs

93. The Chairperson (Lord Morrow): I welcome Gareth Johnston, deputy director of the justice strategy division in the Department of Justice (DOJ); Tom Haire, Justice Bill manager in the Department; David Mercer from the Department's criminal law branch; and Ciarán Mee from the Department of Culture, Arts and Leisure (DCAL).

94. The briefing will consist of two parts. The officials will outline in 10 minutes the clauses on regulated matches, conduct at regulated matches and alcohol on vehicles travelling to regulated matches, and that will be followed by five minutes in which members can seek clarification on any points raised. I remind members that questions on and discussions about the issues will come later. The purpose of this briefing is to set out what the legislation says and its intent. As members will see, I am surrounded by clocks. The Committee Clerk will tell me when there are two minutes to go, and people may then be given a 10-second warning. That is the way it will be conducted. I ask everyone to keep that in mind and we might find that it works all right. It will not work all right if we do not do that.

95. Mr Gareth Johnston (Department of Justice): Thank you, Chairperson. In light of your injunction, I will try to introduce things in one minute and allow my colleagues to speak on the substance of the Justice Bill. This is the first of our briefing sessions on the substance and detail of the Bill; we have previously briefed the Committee on the policy contained in it. We welcome the opportunity to speak to the Committee. I assure the Committee that our Minister, David Ford, is very keen to hear its views on all the issues and to take account of those views in moving forward.

96. In dealing with sports law in the Bill, we have had considerable support from colleagues in DCAL. Mr Ciarán Mee from the Department is here and will speak in a moment. I know that our Minister would want to record his thanks to the Minister of Culture, Arts and Leisure and his officials for their valuable consultation and co-operation.

97. We will deal with clauses 36 to 44 first, and then, as the Chairperson said, we will take some questions and comments. Following that, we will deal with clauses 45 to 55.

98. There may have been some apprehension outside the Committee that these clauses will provide a package of measures that will be introduced in its entirety for every sport in every little respect after April 2011. I can assure the Committee that that is not the intention. Rather, the legislation will provide a framework that needs to be applied in appropriate ways at appropriate times.

99. The package has the potential to introduce things incrementally and to disapply certain aspects, particularly those that relate to alcohol. We have given, and will give again today, assurances that, for example, the commencement of the alcohol provisions and any application or disapplication of them will be subject to further discussion with the sports bodies and the Committee. I assure the Committee at the outset that there is flexibility there, especially in relation to alcohol, and we recognise that the needs may be different for different sports.

100. Throughout the package, we are looking to provide the backing of criminal law to the important work that match organisers are already undertaking, particularly on the back of

DCAL's safety of sports grounds legislation and policy, on which the sports provisions in the Justice Bill are very much built. I will now ask Mr Mee to say a few words.

101. Mr Ciarán Mee (Department of Culture, Arts and Leisure): Thank you, Gareth. I thank the Committee for allowing DCAL to be present at this hearing today. Gareth has indicated that the proposals on sport in the Justice Bill are intended to ally, as far as possible, with DCAL's safety of sports grounds policy. To help the Committee, I will briefly explain what that policy is and how the related safety legislation operates.

102. The main purpose of DCAL's safe sports grounds initiative is to help the owners of larger sports venues, mainly those at which football, rugby and Gaelic games are played, to put their events on a more sustainable footing by making them safer and more attractive for the public as a whole. The Department recognised that, for various reasons, public safety standards at larger sports grounds in Northern Ireland had not kept pace with developments nationally and internationally. As a result, fans and supporters who attended games were exposed to ever greater safety risks. For many ground owners, the situation had reached crisis point, with regular attendances falling drastically in many cases. That was largely due to public concerns about the state of grounds and the apparent absence of adequate safety control measures and guarantees.

103. The safe sports grounds initiative represents the Department's response to those issues. It recognises that venue owners need assistance from government to help them to address the problem and that the public need an assurance that they will be safe and secure when attending games. Under the initiative, assistance to venue owners takes many forms. It involved and still involves substantial long-term financial support provided via Sport Northern Ireland, which is responsible for the distribution of public funding to sport. Since the initiative was launched, Sport NI has rolled out a number of safety funding programmes for ground owners.

104. To date, almost £15 million has been invested by Sport Northern Ireland under a range of programmes to help clubs to comply with the safety legislation: the Safety of Sports Grounds (Northern Ireland) Order 2006. That came into full operation at the beginning of this year, and it is intended to provide the necessary public assurances on safety. It introduces a safety certification scheme for larger sports grounds and stands that is administered and enforced by district councils. In essence, it allows councils, in conjunction with ground owners, to determine the number of spectators that venues can safely admit into grounds and the safety terms and conditions of admission.

105. I must stress that not all sports grounds automatically fall within the framework of the safety certification scheme or the safe sports grounds policy. Consistent with all aspects of our approach, certification is risk-based and is, therefore, aimed at grounds that are capable of housing large crowds of people. Facilities that require certification are identified by two methods: grounds designation and stand regulation. Briefly, grounds that are considered for designation — those that require a council safety certificate — are those with a capacity in excess of 5,000. At present, 30 grounds in Northern Ireland have been designated by DCAL in that way: 15 football grounds; 14 GAA grounds; and 1 rugby ground.

106. Stands that are considered for regulation are those with a capacity of 500 or more, and stand regulation is entirely the responsibility of district councils. The Department's long-term expectation is that, with adequate assistance and support and the implementation of safety legislation, attending matches at major sports grounds will, over time, become a more attractive prospect for the wider public. It will enable clubs and match organisers to assure visitors that they and their families will be safer and more comfortable at grounds.

107. Furthermore, the structures now being put in place through certification also encourage emergency services, such as police, fire and rescue and so on, to work constructively with

ground owners in a way that allows owners more control over their events. Although there remains a role for the police, for example, in emergencies, the general thrust is to help match organisers be more self-reliant and to minimise the requirement for policing.

108. Given those objectives, we have generally encouraged the Department of Justice in developing the sports law measures in the Justice Bill to ally them, wherever possible, with the safe sports grounds initiative and related legislation. That is why, for example, it was proposed that, in the case of Gaelic and rugby, the justice provisions should apply to the larger venues and stands that are subject to certification.

109. The Chairperson: You have two minutes left.

110. Mr Mee: It is thought that those are likely to pose the greatest safety risks in relation to crowd numbers. I will finish there.

111. Mr Johnston: If Tom could just say something quickly about the regulated matches that are covered, we will then take questions and come back to the detail.

112. Mr Tom Haire (Department of Justice): One thing that came out of various representations was the need for an explanation of how the regulated matches construct works. Clause 36 and schedule 3, which have to be read together, define the concept of regulated matches and outline which powers will apply to which matches. With the Committee's permission, I will try to summarise them quickly.

113. The offences in clauses 37 to 43 — missile throwing, pitch incursion, firework possession, drunkenness, possession of containers and alcohol consumption on the terraces and in sight of the pitch, for want of a better description — will apply to the three sports for matches played in Northern Ireland. In association football, they will apply to Northern Ireland representative teams, the two top Irish Football Association (IFA) leagues and the two top Football Association of Ireland (FAI) leagues, because of Derry City and whichever league they play in. For Gaelic games, which include Gaelic football, International Rules, hurling and camogie, they will apply to games played in Northern Ireland in grounds under the safety certificate scheme, which requires a grounds or stand certificate. Rugby Union games will have the same basic structure as Gaelic games.

114. The Chairperson: You have 10 seconds.

115. Mr Haire: For rugby, that affects only Ravenhill.

116. The Chairperson: Thank you, gentlemen. We have five minutes for questions if members wish to ask anything.

117. Mr O'Dowd: Thank you for your presentation. As you can see, the Chairperson was not joking when he mentioned the timings.

118. Clause 37 makes it an offence to throw something onto the pitch. Is it currently legal to throw something onto the pitch?

119. Mr Johnston: It is illegal if it constitutes an assault or an attempted assault, but, in order to show that, it has to be shown that there was an intention to hit someone and cause injury. Simply randomly throwing something that lands on a pitch is not illegal. The message that we are trying to get across is that, when people are in a sports stadium, they should not throw anything.

120. The Chairperson: Would a toilet roll with ball bearings in it count?

121. Mr Johnston: Yes, those would be included.

122. Mr Givan: You have applied the ticket touting provision to football only. Why are GAA and rugby not mentioned? Your point is that the matter is solely related to safety, but I am not aware of any safety concerns at football matches, certainly not in the recent past. Where is the evidence to base it solely on safety? Why are there safety concerns about football but not about GAA and rugby?

123. Mr Johnston: There are safety concerns with all sports, but ticket touting is an issue because of the need for segregation of fans. Segregation is needed in only a small number of matches, but, where fans need to be segregated, ticket touting is an important part of that segregation. Another risk with ticket touting is that people will end up outside a match looking to buy tickets. That happened with one of the Poland matches, and that can create a real problem. We are not talking about a huge number of matches, but, for matches in which segregation of fans is important and in which a buffer zone might be needed, the ticket touting provision should go alongside that.

124. The Chairperson: That is straying slightly into the next category.

125. Mr McNarry: To keep me right, are we discussing regulated matches, which is what I was talking about? What was the level of consultation with the three principal sports bodies?

126. Mr Johnston: All three responded to our policy consultation, and I think that I am right in saying that there have also been discussions and meetings with them.

127. Mr McNarry: Is there an outcome to that?

128. Mr Johnston: Yes, written responses were given to each of the consultations. If the Committee wants, I can provide some of the detail on that.

129. Mr McNarry: That would be useful. Can you define what constitutes drinking in private viewing facilities? You are saying that you are permitting it.

130. Mr David Mercer (Department of Justice): It is to do with the parts of the ground to which the public are not normally given access, such as executive boxes and the registered clubs in, for instance, a football club.

131. Mr McNarry: Is it all right to drink in those?

132. Mr Mercer: Yes. The advice that we had was that it might be disproportionate, given the particular circumstances surrounding those areas, to apply that offence to them.

133. Mr McNarry: Under the legislation, whether in a private viewing facility or anywhere else, how is it determined that someone is drunk, and who determines that?

134. Mr Johnston: The same sorts of tests will be used as those that are used for ordinary drunkenness offences. You would look at their behaviour and the smell of drink.

135. The Chairperson: We have one minute left on this.

136. Mr McNarry: Who determines whether a person is drunk?

137. Mr Mercer: Ultimately, if a case were prosecuted, the court would determine that. The court would draw on the evidence of people who were nearby, stewards and the police, if they were there.

138. Mr McDevitt: Are we on clause 38 or still on clause 37?

139. The Chairperson: We are discussing regulated matches.

140. Mr McDevitt: Clause 38, which is on chanting, falls under that. Why is political opinion not included in clause 38(3)(b)?

141. Mr Johnston: The concern was that that would end up banning legitimate statements of political protest, and we did not want to do that. Having said that, I know that there is an ongoing question of how sectarianism is covered in the Bill, and we are willing to take the Committee's views on that.

142. The Chairperson: That is all the time that we have for questions. I know that some members intimated that they wanted to ask a question. That will not be possible, but those members will be given priority in the next round of questions. That is the only possible way to play this.

143. In the next 10 minutes, the officials will deal with the clauses on ticket touting, banning orders and enforcement, after which there will be 5 minutes for clarification. I invite the officials to brief the Committee on chapters 4 to 6.

144. Mr Mercer: I shall start with chapter 4, which consists of one clause, clause 45. It is fairly straightforward. It makes it an offence to sell or pass on a ticket for certain football matches — those defined as a regulated match — unless authorised to do so by the match organiser. That targets only the potential risks to safety and order when fans need to be segregated, and that point has been made already. We will wish to engage with football organisations to offer guidance on how sales can be administered with minimum fuss within the terms of the offence.

145. Mr Haire: I will say a few words about banning orders. Chapter 5 talks solely about banning orders. You will not find a reference to football banning orders in it. In effect, that is caused by clause 36, which applies this to football matches only, but banning orders are mentioned without a specific reference to football. Under clause 46, banning orders can only be imposed in conjunction with a criminal conviction where the offence involved the person engaging in violence or disorder; if the offence occurred at a regulated match, either entering or leaving it; if the offence occurred while travelling to a regulated match, even if an individual did not attend it or intend to attend it, or if the journey was broken, including by an overnight stay; and where the court believed that the offence was motivated by the regulated match. Therefore, it is very closely tied in around the regulated match and behaviour at a regulated match.

146. Violence and disorder are defined in clause 49. It relates to violence and disorder against persons or property; stirring up hatred; abusive or insulting words; and displaying anything in writing that is threatening, abusive or insulting.

147. Clause 47 deals with what a banning order consists of. It prohibits a person from entering any premises for the purpose of attending a regulated match. The person must report to a police station within five days of the order being made. If any of their core personal details change, they must notify the police of those changes within seven days.

148. Clause 50 determines that a banning order is normally between three and five years, but, in instances in which it is in conjunction with a prison sentence, it is between six and 10 years.

149. Clause 54 determines that failure to comply is an offence that can attract a six-month sentence or a fine of up to £5,000.

150. Clauses 46, 47, 48 and 53 place a number of requirements on the court in imposing a banning order. They must give reasons if they do not impose one, and they must explain in ordinary language the effect that the order will have on the person. Furthermore, they must give a copy of the order to the person and send a copy to the Chief Constable and any prescribed person. Our view is that that prescribed person will primarily be the football authorities, for example. They will also send it to the police station to which the person has been advised to report.

151. In respect of the variation or termination of a banning order, a court can impose additional requirements. The person or the prosecution can apply for variation. Once two thirds of the period of the order have passed, the person can apply to have it terminated. If that fails, no further application can be made within six months.

152. Chapter 6 is not specifically on banning orders, but there are some provisions on powers of enforcement. They provide the police with the power to enter a ground during a regulated match, as in clause 36, to enforce any provision of the sports law package. It also provides police with the power of search. The intention is to provide the police with their own powers to police the sports, should they require or need to exercise them. Members will know that police do not routinely police games that are, in fact, privately organised matches, and we do not envisage that changing. It will be for match organisers to steward and manage events, and they will have the ability to call on the police, as appropriate. There may be occasions when police need to act quickly and on their own initiative, but the powers of enforcement are such that criminal law backs up what Gareth described at the outset.

153. Mr Johnston: I am conscious that we have skipped over some of the detail on alcohol, chanting and pitch incursion. However, if I draw to a close here, we will have five minutes extra for questions. Members might want to bring up those issues at that stage.

154. The Chairperson: Thank you for that.

155. Lord Browne: Am I right in saying that offensive chanting is already an offence if it incites hatred or causes offence? If it is, it is already covered, and it would not be necessary to have it covered here.

156. Mr Johnston: It can be an offence if it incites hatred, but showing that it incites hatred is sometimes quite difficult.

157. We are saying that, for those 90 minutes that someone is in the football stadium, they should not chant offensive or indecent things. We are trying to promote a standard of behaviour.

158. Lord Browne: Clause 45 refers to ticket touts. Am I right in saying that it applies only to tickets for football matches? That seems a bit unusual. There is not much evidence of touting occurring in Northern Ireland football matches; it applies more to high-price tickets, such as for rugby matches and so on.

159. Mr Johnston: The issue is not so much about tickets being sold. I realise that there are concerns about tickets, not just for sports events but for concerts and all sorts of things, being

sold at way above cost price, but maybe that is not something for criminal law to intervene in. The concern is very much driven by safety concerns and the need to segregate fans. So far, the few matches where segregation has been necessary have been football matches.

160. Mr Buchanan: This point may well have been covered, but, if I have a ticket for a match but fall ill and then pass the ticket on to a friend, or if I buy tickets for friends, is such activity classed as ticket touting or is it quite legitimate?

161. Mr Johnston: That would all be legitimate. The proposed legislation talks about ticket touting being unauthorised and persons being unauthorised. We expect that the terms and conditions under which tickets are sold will say that, if someone is passing tickets on to a family member or an acquaintance or buying them on behalf of identified people, that is fine. We propose to issue some guidance to help the clubs to frame those clauses.

162. Mr O'Dowd: The legislation states that, if someone is involved in violence or disorder, a banning order can be imposed on them so that they are not allowed to go to matches. Sexual offences are the only other offences that I can think of for which a banning order is placed upon someone to restrict their movement. Surely our sports grounds are not such dangerous places that we have to introduce banning orders that equate to what happens to someone who is involved in a sexual offence? In fact, these go further than the powers that were available to a judge in a recent high-profile case.

163. Mr Johnston: The only thing that would be banned is attendance at regulated matches. We expect that the orders would apply to a relatively small number of people. Based on the numbers in England and Wales, only 20 or 30 people in Northern Ireland might be in possession of a banning order at any one time. However, we are conscious of the potential of a small number of people or even of one person to create real problems at a match and to do real violence. We are not talking here about people who maybe got a bit carried away and did something stupid at a match: we are talking about people whom evidence has shown to be a substantial danger when attending sports matches. In imposing a banning order, courts will be required by general law to take account of someone's human rights, such as the right to enjoyment and the right to a private life — the usual rights under the European Convention on Human Rights (ECHR). There should be a balance there. We expect that they will apply to only a small number of very troublesome and quite dangerous people.

164. Mr McNarry: Gareth, you gave an interpretation of who you are talking about. However, it is not quite clear to me who you are talking about and who outside might have the same interpretation as you, so I would like some greater detail on that. As regards banning orders, chanting, ticket touting and so on, I do not think that anyone has a problem with tightening up measures to address loutish behaviour on or off the pitch. Is it envisaged that, because of these new laws that you wish to introduce, more police resources will be required to oversee the legislation?

165. Mr Johnston: There will be some implication for police in that we are proposing that the police would administer the banning order regime. That means that, if someone is subject to a banning order, they will be required to report to a police station within the hours that regulated matches are taking place. However, because of the numbers that we foresee being given banning orders, we do not see that as being a major drain on resources; we see that as being containable.

166. Mr McNarry: The chanting element surely involves large numbers of people.

167. Mr Johnston: Yes, but we are not really looking for the police to play more of a role at matches than they do currently. In many ways, the law will allow match organisers and stewards

to tell people that they are acting illegally and warn them that, if they do not stop it, they will be reported to the police. It will be dealt with in that way rather than by drawing the police in. We are not trying to get the police more involved in sports matches than they are currently.

168. Mr McNarry: How will you enforce it?

169. Mr Johnston: The sports organisations and the stewards currently have an important role in enforcing safety at matches. In many ways, we see the new offences as giving weight to that role, but always with the match organisers being the first line, if you like, where there is bad behaviour.

170. The Chairperson: If there is to be more police involvement, who will pick up the bill? Will it be the match organisers?

171. Mr Johnston: There is potential for the police to charge where there is major police involvement in a match. There have been a small number of examples of that, although we have been talking about the top end.

172. Mr Mee: DCAL expects that good management of safety and clubs' compliance with the terms and conditions of their safety certificate should minimise the need for police involvement and, therefore, for police charging. That is part of the aim.

173. The Chairperson: That will minimise but not eradicate the need for police involvement. Are you saying that a bill will still need to be picked up for policing?

174. Mr Johnston: Again, we do not expect that to be any more than it is currently, and we do not expect it to apply to matches other than those to which it applies currently. We are talking about the biggest and most problematic matches.

175. Ms Ní Chuilín: The clause on ticket touting refers to making tickets available for sale. At the time of the last all-Ireland final, I got loads of e-mail requests from people asking me whether I knew of any tickets going, and people were looking for tickets on eBay. That is a perfectly natural thing. Is that, effectively, ticket touting? If someone were to ask a person whether tickets are available for a match, would they be viewed as soliciting tickets? Some of this seems a bit ridiculous if you read it literally. The same principle applies to concert tickets, although that is not covered in this legislation.

176. Mr Johnston: Again, it comes down to who is considered to be an unauthorised person. Some thought has been given to the sale of tickets on eBay, and, if the sports organisations are happy for tickets to be sold on eBay, there would be the potential for something to be crafted in the terms and conditions. A requirement that tickets be sold at cost price might be included in the terms and conditions. We can have more conversations with the sports organisations on that and issue guidance.

177. The Chairperson: We are stopping there. Thank you for your presentation. You are retiring to the Public Gallery, and you will come back again to deal with some of the issues that you raised in your presentation.

178. I welcome the representatives from Sport NI: Nick Harkness, director of participation and facilities and Paul Scott, manager of the facilities unit. I invite them to outline the issues that they wish to raise regarding the sports laws in the Bill. You will have no more than 10 minutes, and after that there will be a question-and-answer session, which will last for 20 minutes.

179. Mr Nick Harkness (Sport Northern Ireland): Thank you, Mr Chairman, for the invitation to give evidence on the Justice Bill. We believe that the Bill is an important element of upgrading safety arrangements at larger sporting grounds in Northern Ireland and of promoting a spectator-friendly environment at those venues. The evidence session is particularly timely, given the provisions contained in Part 4, which complement the provisions of the Safety of Sports Grounds (Northern Ireland) Order 2006, as has been summarised for the Committee by the DCAL representative. The provisions will be of particular assistance to the ground operators of designated venues, enabling them to upgrade safety arrangements and provide spectator-friendly environments.

180. We have provided a written submission on the Bill, which I do not intend to go over line by line. I would prefer to introduce Paul Scott, who will present our main comments on the Bill. Paul is a full-time employee of Sport Northern Ireland. To some extent, he is our resident expert in this field. At the moment, he is employed to provide advice to DCAL and ground operators on the Safety of Sports Grounds (Northern Ireland) Order 2006. In 1997, before he took up employment at Sport Northern Ireland, Paul was the author of a report reviewing legislative controls at sports grounds in Northern Ireland, which was commissioned by the then Health and Safety Agency. One finding of that report was the call for the introduction of public order legislation for sports grounds in Northern Ireland. I will pass over to Paul.

181. Mr Paul Scott (Sport Northern Ireland): Sport Northern Ireland is a non-departmental public body of the Department of Culture, Arts and Leisure, and it is charged with the development of sport in Northern Ireland. As technical manager of Sport Northern Ireland, I have responsibility for overseeing the implementation of the Safety at Sports Grounds (Northern Ireland) Order 2006. As we have heard, that places a duty on the operators of larger venues — venues with a capacity in excess of 5,000 — and the operators of smaller venues with a stand with a capacity of 500 or more to obtain a safety certificate from the respective district council. The safety certificate will state the safe capacity of the venue and parts of the venue, but it will also include terms and conditions as to how the venue should be operated and around the structural arrangements at that venue.

182. Sport Northern Ireland has been tasked with overseeing and monitoring the implementation of that legislation, and we provide technical and administrative advice to DCAL, district councils, venue operators, the police and other emergency services, governing bodies of the respective sports and so on. In Northern Ireland, 30 sports grounds have been designated: 15 soccer grounds, 14 GAA grounds and one rugby venue.

183. Sport Northern Ireland is broadly supportive of the majority of clauses in Part 4. Rather than repeat the information in our written response, I will highlight a few observations.

184. It should be noted that some matches played at the venues referred to in paragraphs 6 and 8 of schedule 3 often host junior, youth or low-level matches with low or minimal attendances. Therefore, it may not always be appropriate to apply the legislative provisions as detailed in Part 4 to such fixtures. However, consultation with the governing bodies is ongoing, and I am sure that a resolution can be obtained.

185. We are generally supportive of clause 42, which deals with the possession of drinks containers. We are aware that bottles, including those that contain soft drinks, are, unfortunately, used as missiles and weapons at some fixtures. However, some guidance is required, because the term used is "article capable of causing injury". Does that refer to a plastic bottle, with or without the cap removed, which may be brought in to a game by a child or a minor? We need to think that through.

186. We believe that the possession of alcohol provision should be applied on the basis of associated risk to spectators who attend fixtures and to the reputation of the sport. We see the legislation, particularly the provisions relating to the throwing of missiles, invading the field during play and the possession of fireworks, as essential in assisting venue owners to comply with the terms and conditions of the safety certificate. Although we should not blindly follow what happens in GB, when legislation of that nature came in there, coupled with the effect of the safety of sports grounds legislation, attendance rose by 87%, particularly that of ladies, families, young persons and persons with a disability. There are numerous success stories.

187. The Chairperson: You did not take the full 20 minutes allocated, but that leaves more time for questioning.

188. Mr McNarry: I recognise the good work done by Paul and Nick and the people whom they represent in addressing safety at stadiums and the spillover of people outside them. I am, therefore, perturbed that we are having to deal with legislation. Does the fact that some people — I might be in this category — believe that there is a pressing need for new legislation point to a failure so far by everybody involved in sport?

189. These are not major issues, and this is not major legislation. However, I fear that the legislation is picking on sport, which is what we are talking about, and one sport in particular. From your experience, because I know that you have great experience in this, are we using the law to deal with a minority who are, as usual, causing harm to a majority? Could an alternative to the legislation be people such as you providing more education and information? I know that you do that very well. Why do some people deem those laws to be necessary, given that they are only going to affect the real sports fan? I do not care about which game that fan turns up to; the fact is that the legislation is only going to affect them. It seems that the legislation is a bit picky and that it has been drafted only because we have not addressed those issues. I believe that most of those issues are being addressed. There are obvious, clear issues that people can address.

190. Mr Harkness: The issue of addressing and improving safety at our sports grounds is twofold. First, it is about making the infrastructure safer by looking at the design, taking away barriers and creating opportunities for people to move more freely. Secondly, it is about improving safety standards by changing behaviours. The intention of the legislation is not to catch people doing wrong but to incentivise people to change their behaviours. It mirrors the work to open up facilities to allow movement through them.

191. Mr Scott: Again, numerous initiatives have been tried by governing bodies and by others. Unfortunately, those initiatives had limited success here and in other parts of the world. We again draw on the good practice of Great Britain, where a similar package acted as a deterrent to those who might have misbehaved at games. As I said, that had a positive impact, and I can see one sport in particular benefitting greatly from those measures.

192. Compare the number of people in Northern Ireland with the number of people in Great Britain: based on the numbers attending matches in Great Britain, there should be between 23,000 and 24,000 people at Irish League matches on a Saturday, but there is not. I fully accept that there are the glamour matches in Great Britain involving Manchester United and so on. However, if we take the Premiership games out of the picture, there should still be between 13,500 and 14,000 people at our games. Most people at football games behave themselves and are there for the best of reasons. However, a small minority unfortunately tarnish the game and other games.

193. We really need to be speaking to the people who we could reasonably expect to be on the terraces but are not. We see that as being allied with the other initiatives. Ciarán Mee mentioned

funding and the safety at sports grounds issues, which are important factors in turning the ship around, attracting people to the terraces and trying to get ladies and families back. Unfortunately, UEFA has tried, FIFA has tried and the IFA has done a lot of good work, as have the other governing bodies —

194. Mr McNarry: I hope that you are not suggesting that, if passed, the legislation will lead to 14,000 people going to football matches. For different reasons, you have been telling me for years that that will happen, but I have not seen it yet. The standard of play is not good enough for people to go, and I know that there are reasons for that.

195. This is small beer. It involves a small number of people but will hit spectators of all sports. People might be put off going to sporting events because they are not sure what might constitute a criminal activity. If I go to a match and shout, "Come on, Glentoran", is that chanting?

196. Mr Scott: That is not offensive chanting, at least not to most people.

197. Mr McNarry: It might be to the Linfield people. [Laughter.]

198. The Chairperson: It depends where you say it.

199. Mr McNarry: Wallace will not take offence.

200. Lord Browne: I might.

201. Mr Scott: I see it as a positive measure; it has certainly proved to be positive elsewhere. I have not seen any evidence of success from other initiatives.

202. Mr McNarry: It will be in the Hansard report that you said that once the legislation is passed we will have 14,000 people at most Irish League games. We will hold you to that.

203. The Chairperson: In your submission, you comment on clause 43 and state that:

"Spectators at matches in Ravenhill Rugby Football Grounds have been drinking socially on viewing decks at fixtures for many years".

It goes on to say that:

"Alcohol is generally not available at larger" —

I thought that it said "lager" —

"Gaelic fixtures. However, if proposals to upgrade facilities at Casement Park proceed, the sale of alcohol in controlled circumstances may be permitted by the GAA."

204. Are you saying that the clause should not apply to Casement Park and Ravenhill?

205. Mr Scott: Any decision will be risk-based. There are places that have track records of either good behaviour or bad behaviour. Whether or not we apply restrictions on alcohol will be dependent on the risk.

206. The Chairperson: That complicates the situation slightly. You mentioned bad behaviour. I heard recently that Northern Ireland fans were the best behaved fans in Europe.

207. Mr Scott: Northern Ireland fans have won an award. A lot of good work has been done by the Amalgamation of Official Northern Ireland Supporters' Clubs. However, it must also be said that many of the worst instances of disorder at sporting events in the British Isles have been at matches in Northern Ireland.

208. Mr McNarry: But not recently.

209. Mr Scott: Unfortunately, yes. A match between Linfield and Glentoran had to be stopped for five or 10 minutes some months ago because of disorder between people in the north and west stands. In 2006, there was the riot at The Oval. There were issues at the game between Northern Ireland and Poland, and players have been struck by fireworks. That is what we want to get out of football to get Mr Middle Northern Ireland back on the terraces.

210. The Chairperson: You mentioned fireworks. Another missile has been introduced in recent years; lasers.

211. Mr Scott: The laser pen.

212. The Chairperson: Will lasers be banned? Are they acceptable weapons?

213. Mr Scott: They can be used as weapons, although they are not specifically named in the Bill.

214. The Chairperson: Should they be named?

215. Mr Scott: That would certainly be worth looking at. There are laser pens, but many are only category 1 or category 2 pens, which do not cause injury. It is only when there are category 3B or category 4 pens that there is a danger. Most laser pens, although annoying, do not present a risk.

216. The Chairperson: There was serious rioting in Ardoyne in the summer, and we all distinctly witnessed those lasers being used on the police. The police spoke out in public about their concern about the effect of those. Surely those devices can be brought into stadia.

217. Mr Scott: As I understand it, the types of appliance that were used in those incidents were not the little pen-sized objects but solid-state lasers, which can be bought on the Internet. They present a risk to persons at sporting events or elsewhere.

218. Mr McDevitt: I presume that you strongly take the opinion that our objective should be to make all sporting occasions safe and welcoming to all in our society?

219. Mr Scott: Indeed.

220. Mr McDevitt: What barriers still exist that prevent sporting occasions from being safe and welcoming to all in our society?

221. Mr Scott: Poor facilities and perceived poor behaviour.

222. Mr McDevitt: In your professional experience, how do you characterise that behaviour? What is poor about it and what makes it unwelcoming or unsafe?

223. Mr Scott: It is often about perception. Most matches pass off peacefully, but, at some of the more high-profile matches, there can be incidents of violence, certainly antisocial behaviour, chanting and the use of abusive language.

224. Mr McDevitt: Do you believe that clause 38 offers adequate provision to deal with all types of language that could isolate people or make them feel unwelcome at a venue?

225. Mr Scott: Although many of the preceding provisions have been very successful, efforts to apprehend persons who are engaged in chanting have not been so successful. However, the legislation sends out a message and creates a deterrent. The sports organisations and most people in Northern Ireland will echo the need to at least make an attempt. It might be slightly more cumbersome to deliver it as effectively as we hope to.

226. Mr McDevitt: Obviously, we have made massive progress in the past decade or so in tackling sectarianism in sport here. In your opinion, is that still a lingering issue?

227. Mr Scott: Among a minority of people.

228. The Chairperson: You talked of all the bad behaviour at soccer matches. Very often, that behaviour does not start in the stand but down on the pitch. Has there been any bad behaviour at GAA matches or rugby matches?

229. Mr Scott: There have been some incidents where players or officials have been subject to untoward behaviour.

230. Mr McNarry: In those instances, for how long have the matches been stopped?

231. Mr Scott: Generally, the match is stopped.

232. Mr McNarry: I see. It does not happen only at soccer matches, then.

233. The Chairperson: Mr McNarry said that it does not happen only at soccer matches. Do you agree?

234. Mr Scott: The majority of the major issues have been at soccer matches. Unfortunately, bad behaviour is not confined to soccer.

235. Mr O'Dowd: You have outlined many instances of misbehaviour, whether it is among GAA players, soccer fans or rugby fans. If I clock or thump somebody, regardless of whether I am inside or outside a sports ground, I am committing an offence. We do not need legislation. Throwing fireworks at a goalie is an offence. Riotous behaviour is an offence. If there is a brawl between two players and one tells the police that that boy hit him on the pitch, it is an offence.

236. Mr Scott: Unfortunately, a lot of proof is required to show that someone who throws a missile onto the pitch is intending to hit and, in turn, hurt someone. Therefore, there is a problem, because a person can throw a missile and probably evade the law. That will, rightly, be reported in the press, and the other fans will see that. That can incite others. For example, at the end of an Irish Cup semi-final in Lurgan, the supporters of one team came onto the pitch at the end. That caused the gentlemen from the other side to come onto the pitch, and it took extensive work by stewards and the PSNI to resolve the issue.

237. The people who came onto the pitch and caused others to do so were not committing an offence. So, this would send a loud and clear message to spectators that, if they come onto the

pitch and throw a missile, they have committed an offence and will make themselves liable to the authorities.

238. Mr O'Dowd: When fans on the winning side go onto the pitch at the end of a match, the atmosphere is great. It is different when fans go onto the pitch in a provocative manner to seek trouble or when, through their actions, they provoke trouble. That is an offence.

239. Mr Scott: Again, it is about how the law is interpreted and enforced. Even running onto the pitch in celebration can raise issues. I have worked with the authorities at Croke Park, and they are very concerned. You should have seen the helicopter shots of Jones Road and the crushing that was taking place. Although there are different reasons for invasion, it is a practice that I think all the governing bodies would like to see reduced.

240. Mr O'Dowd: I accept that there are safety concerns, but this legislation is not necessarily about safety concerns; it is about criminal offences, many of which, I would argue, are already covered by law. This legislation is unnecessary. In fact, it may never be enforced. To pick up on Mr McNarry's point, it relies on stewards being prepared to give evidence in court against people who may, in the most extreme cases, be very violent.

241. Mr Scott: First, the PSNI is likely to be present at the bigger matches, as it is at the moment. Secondly, most of the big venues in Northern Ireland now have CCTV that has been funded through programmes that Sport Northern Ireland has implemented. If we do not bring in this legislation, it will be harder for stewards and the people who administer our larger fixtures to ensure that they proceed in a safe and secure manner.

242. Mr Harkness: The legislation has the potential to change behaviours. It is not about catching people. It is about changing behaviours and attitudes.

243. The Chairperson: Given some of the things that have been said here, do we need new legislation? Would existing legislation not be adequate after a bit of tweaking and tightening up?

244. Mr Scott: It has proved not to be. It took this type of legislation to bring about the sea change in GB. Take the great riot at The Oval in 2006; not one person could be prosecuted afterwards.

245. The Chairperson: There was another great riot at a lesser match; I think that I am right in saying that it was between Newry and Carrick.

246. Mr Scott: It was between Newry City and Larne.

247. The Chairperson: Is that who it was? I think that maybe five or six players were sent off. The whole thing ended up in an absolute fracas.

248. Mr Scott: It did.

249. The Chairperson: What happened there?

250. Mr Scott: I think that one player was questioned. I cannot recall exactly. I would need to speak to my friends at the IFA to confirm that. However, to the best of my knowledge, that incident solely involved playing staff and officials.

251. The Chairperson: Would there be any cause to introduce new rules to our games? I am thinking of rugby, in particular. In recent years, the sport introduced the sin bin. Players are sent

to it for a period, perhaps 10 minutes, during the match and then are allowed back onto the pitch. No such thing exists in soccer, does it?

252. Mr Scott: No; it is either a yellow card or a red card.

253. The Chairperson: If you get a red card, you are sent off, and that is it. However, in rugby, there is an in-between measure that can sometimes take the heat out of a situation.

254. Mr Scott: It is hoped that the yellow card does that in football, but it has not always been successful. This Bill and the safety of sports grounds legislation focus on spectator safety.

255. The Chairperson: They focus on spectator safety, but sometimes the players are at risk.

256. Mr Scott: They can be, yes.

257. Mr McNarry: Chairperson, your point about the sin bin is relevant. The sin bin defuses the situation. I love watching international rugby, and, to me, it is all part of it, in a sense, when they have a great bash on the pitch and someone is sent to the sin bin. That cools it all down, and everybody knows that that player is likely to come back in 10 minutes. The yellow card means that if a player gets one more card, he is sent off. If he gets a red card, he has had it.

258. The Chairperson: You are not saying that you go to a match just for a good bash-up, are you? [Laughter.]

259. Mr McDevitt: You get that here every day.

260. Mr McNarry: I am just trying to recall some of my playing activity at these things.

261. Those incidents appear on national television. Thank goodness that, when there is crowd trouble, the responsibility of the media is such that it does not show a lot of the trouble unless it gets really hyper.

262. I think that there is nearly a consensus evolving here of common sense needing to come in as opposed to legislation. I am just not convinced that this legislation will be good for sport, because I think that it will hammer and hamper the sports. There are enough responsible people in sport who are learning the lessons of the past. When I said that trouble had not happened for a long time, I meant at international matches. I was not referring to Linfield and Glentoran.

263. Mr A Maginness: With regard to Mr McNarry's point, I do not think that a consensus is developing at the moment. It would be premature to say that it is.

264. Mr Scott referred to a match at which a riot took place. Was the reason that people were not prosecuted that there was a lack of evidence or that the law was weak?

265. My final point probably sounds like a silly point, but is a sports ground or a stadium a public place in law?

266. Mr Scott: It is private property.

267. PSNI officers told me that the reason no prosecutions were made after the match is that no one would make a complaint. Even the people who were on the ground and being repeatedly kicked on the head would not make a complaint.

268. I must point out that we have consulted extensively with the three governing bodies, and they believe that this is a good thing for sport. Evidence from elsewhere will point to the fact that this is a good thing for sport. If we carry on the way we are, we will just continue in our downward spiral.

269. Mr A Maginness: Does the fact that, in law, a stadium is not a public place affect the way in which police and others can obtain evidence or intervene?

270. Mr Scott: No. The police can intervene on any private land if there has been a breach of the law or if there is a danger that there might be.

271. Mr A Maginness: Can you have a riot, in the technical, legal sense, in a stadium if it is privately owned?

272. Mr Scott: There are certainly criminal offences being committed, and the suite of various offences associated with assault would apply. So, in theory, therefore, you would be liable. My understanding is that, in the event of an assault, a complaint has to be made.

273. Mr A Maginness: The sin bin was mentioned. We are discussing the law as it applies to citizens at large. We cannot change the rules that apply to a sport. They are internal to a sporting body.

274. The Chairperson: That is fair enough.

275. Sir Reg Empey: I want to ask about possession of drinks containers. I can understand why you want to minimise the risk of containers, such as a tin of Coke or whatever, being used as a weapon. However, we want to encourage families to come to matches. Would you accept that, whenever you see youngsters at a game, you see them with a drink?

276. Mr Scott: Absolutely. That is why we said that we need to think this through thoroughly.

277. Sir Reg Empey: In addition, nowadays, people carry bottles of water around with them all the time. People can, of course, use their ingenuity when it comes to what they put in some of those containers, but, at the end of the day, we must be careful that we do not tip the balance to the point where we end up putting people off coming to matches. I understand the rationale behind encouraging more people to go to matches and making them more family-friendly. However, my concern is that youngsters being brought to matches will not be able to have a drink. Do you accept that concern?

278. Mr Scott: Absolutely. In our response, we said that that provision really needs to be thought through. Children could arrive with a plastic bottle of Coca-Cola or something like that.

279. Sir Reg Empey: I want to go back to the issue of viewing galleries. There is a tension there, because many clubs have put in facilities to encourage corporate entertainment. I assume that the argument that some clubs would make is that, yes, drink is available, but it is served in controlled conditions to persons known to them. However, that will create two classes of people. At some rugby matches, those standing on the terraces run in and out of the bar to get pints of beer, so how will a balance be struck? Some clubs will argue strongly that the sale of alcohol is an important part of their revenue streams. Although we do not want to be killjoys, there is a concern that the provision will create two distinct classes of person: those who can afford to go to a hospitality suite and those who cannot. Where will the balance be in that?

280. Mr Scott: Again, it will be risk-based. Those who go to hospitality suites are not generally the people who are associated with disorder. The minority who do engage in disorder are, unfortunately, almost exclusively on the viewing decks. Those in corporate boxes are limited as to what they can do.

281. The Chairperson: We have to stop there; we have run marginally over the time allocated for this session. I thank Mr Harkness and Mr Scott for their briefing and for taking members' questions. I understand that they will be staying with us in the Public Gallery.

282. We now move on to take evidence from representatives of Ulster Rugby, the Irish Rugby Football Union (IRFU) Ulster Branch and the Ulster Rugby Supporters' Club. I welcome to the meeting Ms Lyndsey Irwin, the senior manager of external relations at Ulster Rugby; Mr Iain Campbell, the chairman of the Ulster Rugby Supporters' Club; Mr Robin Cole, the senior manager of external relations in the IRFU Ulster Branch; and Mr Joe Eagleson, the past honorary secretary of the IRFU Ulster Branch. I ask the witnesses to brief the Committee on the sports clauses in the Justice Bill for no more than 10 minutes. Committee members will then have 20 minutes in which to ask questions.

283. Ms Lyndsey Irwin (Ulster Rugby): I thank the Chairperson and Committee members for the opportunity to present our thoughts on the Justice Bill.

284. The Committee will note that our written submission centres on one clause, clause 43, which relates to the possession of alcohol during the time period of a regulated match. We oppose the inclusion of Ulster Rugby in that clause. At Ulster Rugby, we are justifiably proud of the warm welcome that our supporters and the supporters of opposition teams can expect at Ravenhill. We pride ourselves on the safe, family-friendly atmosphere at our matches, with supporters of both teams enjoying the action side by side. Supporters are from a wide age range, and the ability to enjoy a sociable drink while watching a match is very much part and parcel of the rugby experience. Therefore, we urge the Committee to reconsider the inclusion of Ulster Rugby in clause 43.

285. Clause 43 is inconsistent with legislation elsewhere in the UK and Europe, where the offence of being in possession of alcohol while in view of the pitch does not relate to rugby. Ulster participates in two tournaments that are played across England, Ireland, Scotland, Wales, France and Italy. If this legislation were to come into effect, Ravenhill would be the only rugby ground across those countries at which supporters could not enjoy a drink while watching the game; we would be very much out on a limb.

286. There is no evidence to support the inclusion of Ulster Rugby in clause 43. We have had no previous disorder problems or alcohol-related disorder problems at games. We take our responsibilities as both a governing body of sport and an event organiser extremely seriously. We have approximately 100 professionally trained stewards on duty at each game. Our games, which have average attendances of between 8,000 and 12,000 people depending on our opposition and the tournament, require support from only four to six police officers, who are concerned largely with traffic matters.

287. Clause 43 would have very grave implications for the future financial viability of Ulster Rugby. If it were to come into effect, it would likely impact on our ticket sales. As most of our matches are broadcast live on television, we may find that some supporters would choose to stay at home where they can enjoy a beer in front of the TV. Our sponsorship from our drinks partner and our income from our food and beverage franchisees would certainly take a direct hit. You will probably be aware that, in the longer term, we intend to redevelop Ravenhill, if we are successful with funding and planning applications. If clause 43 were to come into effect, it would be very difficult for us to increase spend per capita in our ground. As we have fairly limited

facilities, supporters at Ravenhill spend, on average, less than £1 after they buy their ticket. In the English Premiership, that figure is closer to £10. If our stadium redevelopment goes ahead, that is an area in which we will really look to increase revenue. It is largely based on the provision of food and beverage in the ground and to people in their seats.

288. We may also find that we will have difficulty in attracting other rugby events. In February 2011, we will host Ireland A against Scotland A. If our stadium is redeveloped, we would like to host the Magners League Grand Final. We can only do that if Ulster is not in it, as that final has to be played at a neutral venue. However, the fact that we are unable to offer a full match-day experience to supporters of visiting teams is likely to be a detractor.

289. I have, more or less, summarised our written submission. Given that I have been so brief and that this is a joint delegation, I will pass over to Iain Campbell, the chairman of our official supporters' club.

290. Mr Iain Campbell (Ulster Rugby Supporters' Club): Thank you, Lyndsey, and thank you to the Chairperson and Committee members for this opportunity. I have submitted written evidence in the form of a short letter, and I will stress a number of points that are made in that. One of the supporters' club's aims is to advance public education, appreciation and understanding of the game of rugby. Indeed, I believe that we are availing ourselves of that opportunity here today.

291. I appear before you as a fan on the terrace. The written submission describes the experience of match nights at Ravenhill, where it is normal practice for fans of both sides to meet to enjoy the ambience of the evening and offer hospitality. The bonhomie always continues throughout the game and afterwards, regardless of the result. Indeed, it is common to see opposing fans standing side by side on the terrace, enjoying a drink and exchanging banter at each other's expense as the match unfolds. Safety and comfort is not a concern for our fans, but the proposals in clause 43 definitely are.

292. Match nights at Ravenhill have assumed a carnival air with the recent addition of the food village and pre-match and post-match entertainment. It is common to see fans, young and old — families, schoolchildren and youth clubs — mingling on concourses prior to the match and enjoying a wide range of food and drink. We pride ourselves on our Ulster hospitality and humour and consider ourselves to be in the vanguard of the promotion of all that is good about our city, country and sport. We also take great pride in the behaviour of all fans at Ravenhill, where respect for the visiting team is the order of the day, as evidenced in generous applause for displays of skill and silence for kicks at goal by either side. Indeed, in reference to what was said earlier, the only people at Ravenhill who, at times, feel discomfort are the referee or perhaps the visiting backs when they are underneath a high ball.

293. All our members know from personal experience of match nights over the past 10 years of professional rugby that crowd trouble at Ravenhill is non-existent. I stress that attendance has increased dramatically in recent years, which contrasts with the concern about falling crowd numbers that was voiced in an earlier submission to the Committee.

294. In my written submission, I have listed examples of discrimination and of how we as rugby fans and citizens of Northern Ireland would suffer as a result of clause 43. From our widespread travels as supporters, we know that the restrictions on hospitality that we are talking about are not imposed elsewhere. I have given the examples of Murrayfield Stadium in Scotland, the Liberty Stadium in Wales and stadiums in England. From our experience of travelling to support Ulster in rugby matches in Paris, Toulouse and Biarritz, we know that no restriction on the sale and consumption of alcohol applies there.

295. In response to the contention that the legislation would make attendance at Ravenhill more attractive, I say that clause 43 would have quite the opposite effect. Bearing in mind all the foregoing, we are at a total loss as to why legislators see any requirement —

296. The Chairperson: You have two minutes in which to conclude, Mr Campbell.

297. Mr I Campbell: We are at a total loss as to why legislators see any requirement to include rugby in the scope of this portion of the proposed legislation. We cannot state strongly enough how misguided we consider the proposals to be. It is our fervent hope that common sense will prevail and that the Committee will see fit to exclude Ravenhill from this clause.

298. The Chairperson: Thank you very much for your presentation.

299. Mr McNarry said earlier that one of the good things about rugby is seeing a whole blatter on the pitch.

300. Mr McNarry: Hang on a minute. [Laughter.] You pay your money.

301. The Chairperson: You are saying that you do not witness any of that at Ravenhill.

302. Mr Joe Eagleson (IRFU Ulster Branch): I will speak on that, if I may.

303. Rugby is a contact sport. Therefore, there will be contact on the field. That contact must be made within the laws of the game, which some of your colleagues referred to. In rugby, our referees and touch judges or assistant referees enforce those laws as fairly as they can on the field. If those laws are broken on the field, action is taken immediately, and there has been talk about yellow and red cards and the sin bin. If laws are broken to a great extent, action is taken immediately after the match by the controlling bodies of the competition and the governing body. We are well satisfied with how that action takes place.

304. The Chairperson: During another discussion in Committee, I tried to draw a parallel between cricket, which is not mentioned, and rugby. I know that those two games are entirely different, but it was the only comparison that I could think of, and you understandably highlighted that in your presentation. Do you feel that crowd behaviour at cricket games is on a par with crowd behaviour at rugby matches?

305. Mr Eagleson: I have already spoken strongly for rugby. I will leave cricket to speak for itself. However, like you, my perception is that crowds at both games may be on a par with each other. I read the evidence that departmental officials gave the Committee on 3 June, in which they talked about the perception that cricket is not a problem. To me, that implies that they perceive that rugby is a problem. However, neither the governing body nor our official supporters see it as a problem.

306. The Chairperson: In the evidence that departmental officials gave today, it did not come out strongly that rugby was a problem.

307. Mr Eagleson: It did not come out that it was a problem?

308. The Chairperson: Yes.

309. Mr Eagleson: No, it did not.

310. Mr McNarry: My problem with all of this is that, because soccer is being punished unduly, we are looking at the other sports. I have enjoyed times at Ravenhill, and you have perfected a unique atmosphere. Well done on that; it is a family environment. I do not know enough about GAA, but I am sure that that atmosphere also prevails at its sporting events. Somehow, people think that it cannot, does not or will not at soccer games, and that is part of the problem. From where are spectators able to get a container of drink at Ravenhill?

311. Ms L Irwin: We have private hospitality and a marquee bar — a beer tent.

312. Mr McNarry: That earns revenue for Ravenhill. You will lose money if the ban comes in. Without going into great detail, is that quite a money earner for you?

313. Ms L Irwin: It is substantial at present, but, if and when we have a redeveloped stadium, we will look to really increase the spend per capita, which will largely centre on food and beverages. Over the next couple of years, if our stadium is redeveloped, our aspiration is to make a total of £1 million a season in per capita spend.

314. Mr McNarry: In those circumstances, would that facility be considered to be private viewing, which has now been given an exemption?

315. Ms L Irwin: That money is totally separate from our income from corporate hospitality. I do not mind saying that our income from corporate hospitality is around £600,000. That centres largely on the new stand, which we built last year.

316. Mr McNarry: I know many people who go to Ravenhill on a Friday and who go to a soccer match or, I am sure, a GAA match on a Saturday or a Sunday. They feel that, as a supporter of soccer, they can go to Ravenhill and enjoy that hospitality but that, when they go to soccer games, they are viewed as some other kind of supporter and are unable to avail themselves of such hospitality. I hope that you will not say that that is their lookout or responsibility. Is it right that there should be a difference between the two sports when, in fact, that difference affects the one supporter?

317. Mr Eagleson: No, it cannot be right.

318. Mr McNarry: Do you think, therefore, that, for the law to be equal, it will deny you rather than let soccer supporters embrace the facilities that you have?

319. Mr Eagleson: That is the logical conclusion to that, unless rugby football is excluded from clause 43. As sports people, we want everyone to be able to enjoy a safe and welcoming environment for their sports. As our colleagues from Sport NI pointed out, there are two aspects to that. There is the physical environment, and there is the behavioural aspect. We have invested and continue to invest heavily in the physical environment and all of the safety factors around that, but we also invest heavily in the behavioural aspects through our stewarding arrangements and so on and the disciplines of our sport.

320. Mr McNarry: Irish League soccer has got a particularly bad press today and in the Bill. It appears that there is little argument about the behavioural patterns of people who attend international soccer matches. Those behavioural patterns seem to be similar to those of people who attend representative rugby matches. I do not want to put you in a difficult position, but do you feel that a better comparison to make would be to compare the sports as they are played at international level? That would show how they contribute to attracting guests from other parts of the world or other parts of Ireland.

321. Mr Eagleson: It is important that we have people coming from other parts of Ireland, the rest of the UK and the rest of Europe and that they have the same experience regardless of the international sport that they have come to support. The rest of it has to lie with each sport.

322. Mr McDevitt: To be clear, the relevant clauses do not make it illegal to drink at a game; they make it illegal to drink while in view of a game. In other words, they make it illegal to drink in your seat or on the terraces. During Irish Rugby's hugely successful sojourn at Croke Park, what rules applied? Did the traditional GAA rules that ban you from drinking in your seat apply, or did the IRFU allow spectators to bring their drinks to their seats?

323. Mr Eagleson: The traditional rules of the GAA applied.

324. Mr McDevitt: Did that have any impact on your income?

325. Mr Eagleson: There was a feel-good factor from moving to Croke Park, and there was no difficulty in the sale of tickets.

326. Mr McDevitt: It was a hugely successful move.

327. Mr Eagleson: In the Aviva Stadium, spectators are allowed to bring alcohol to their seats.

328. Mr McDevitt: And, of course, you cannot shift the tickets. [Laughter.]

329. Mr Eagleson: With or without touting.

330. Mr McDevitt: There is a serious point. I want to be very supportive and encouraging of the efforts made by Ulster Rugby. However, the specific provision in the Bill does not make it illegal to drink; it just makes it illegal to drink in your place. I am conscious of the Croke Park experience, where people are not allowed to bring their drinks to their seats, yet the move there was hugely successful.

331. Coming back to Ms Irwin's point about the redeveloped Ravenhill, which we all look forward to being a venue for great international games, it is not likely that the issue of drinking will be the barrier to its success. Do you not agree that a bigger barrier would be poor facilities generally?

332. Ms L Irwin: We still feel that it is a significant issue. I went to two matches at Croke Park. However, if I did not work at Ravenhill, I would be an Ulster Rugby season ticket holder and would go to games every other week. It is important to bear in mind that I might have gone to Croke Park for a game in November or February each year, but, as a more regular attender at Ravenhill, I might prefer to enjoy a drink in my seat at my regular venue.

333. Mr McDevitt: The argument that you are presenting is that being able to have a drink in your seat is part of the culture, experience and, as such, the brand at Ravenhill.

334. Ms L Irwin: Yes, and it is a very positive one.

335. Mr McDevitt: Mr Scott, who gave evidence before you, talked about the importance of weighing up the circumstances and assessing the risk. He was saying that you should try to come to a mature judgement about allowing such behaviour and what the implications would be. What sort of risk assessments do you carry out at the moment? How did you come to the view that it is quite OK to stand on the terrace and enjoy a beer while watching the game?

336. Mr Eagleson: Mr Scott referred to the Safety of Sports Grounds (Northern Ireland) Order 2006. We are fully compliant with that, but for each individual event or match that is held at Ravenhill, we carry out a risk assessment. For example, there will be different arrangements for the Schools' Cup final on 17 March, which predominantly involves schoolchildren and attracts one of the biggest crowds of the year, than there will be for a Magners League or Heineken Cup game. There will not be sale of alcohol at the Schools' Cup final.

337. Mr A Maginness: I want to understand the situation in England and Wales. Are spectators able to drink on the terraces at soccer matches there?

338. Ms L Irwin: It might be easiest to look at it in the context of shared grounds.

339. Mr A Maginness: Cardiff is a shared ground.

340. Ms L Irwin: Yes, and the Madejski Stadium just outside London is another example. If you go to watch Reading Football Club play on a Saturday afternoon, you are not allowed to have a drink in view of the pitch. However, if you go to the same venue on a Sunday afternoon to watch London Irish, you can take your drink to your seat.

341. Mr A Maginness: The law in England and Wales has allowed that to happen. Theoretically, if we were to follow their example, we could have a difference in the law here as well. I have not made up my mind on this issue, I am just trying to work through it. I assume that the English position is based on the experience of rugby fans' behaviour at matches, and they have been given a by-ball. Has there been any difference in rugby fans' behaviour subsequent to the position being changed in England?

342. Ms L Irwin: Not that I am aware of.

343. The Chairperson: Your sponsors are Magners and Heineken. What impact, if any, would clause 43 have on that sponsorship?

344. Ms L Irwin: Heineken is our drinks sponsor. Heineken pays us for the right to pour Heineken and no other lager in the ground. We participate in two tournaments that are named after alcohol brands: the Magners League and the Heineken Cup. Those reinforce rugby's link with being able to enjoy a sociable drink. We have certain obligations to stock those brands in our bars at Ravenhill. For example, 25% of the tap and fridge space has to be Magners on a Magners League night.

345. Clause 43 would not prevent us from participating in those competitions, but it would endanger the substantial sponsorship fee that we receive from Heineken each year. Similarly, if the Magners League were hosting its grand final between, say, Leinster and the Ospreys, and was looking for a neutral venue, a redeveloped Ravenhill could fit the bill, and it would be a considerable earner for Ulster Rugby. However, Magners, the title sponsor of the competition, will have a limited time frame in which to sell its product, and the fact that we cannot offer the full match day experience may rule us out of being selected as the venue.

346. Mr Givan: The purpose of the clause is to try to ensure good behaviour, and I am hearing that there is good behaviour. What are your processes for dealing with an individual who behaves badly? Do you remove that individual? Do you ban that individual from matches? What do you do voluntarily to deal with the rare occasion on which behaviour is a problem?

347. Mr Eagleson: The stewarding arrangements would deal with that. If it were felt necessary to take the individual out of the ground, either for the safety of that individual or any other

spectator, that individual would be removed from the ground. We have never had to ban an individual for a period, but the governing body has the power to ban individuals from grounds.

348. Mr Givan: Such a strong connection between sport and alcohol irks me slightly. Sport is about healthy living but, then, a connection is made with alcohol. However, this legislation is not about that; it is about good behaviour. Your point that there is good behaviour is key.

349. The officials have said that they are not bringing in ticket touting measures for rugby because they do not need it for safety reasons. How much of an issue is ticket touting for rugby from a commercial point of view?

350. Ms L Irwin: I cannot speak on behalf of the IRFU, but it is definitely not an issue for Ulster Rugby.

351. Mr Eagleson: If ticket touting is identified, the IRFU has a process to deal with it. Each ticket can be traced back to its source and action is then taken.

352. Mr Robin Cole (IRFU Ulster Branch): The union enforces it rigorously. I found that out last year, when an individual in my club put a ticket on eBay and, within 12 hours, the union was on his back.

353. Mr O'Dowd: Thank you for the presentation. In the past year, how many people have been arrested in your grounds for disorderly behaviour?

354. Mr Eagleson: None.

355. Mr O'Dowd: Does that include referees? [Laughter.] I asked the question because I suspected that that was going to be the answer. To clarify: I have not made up my mind on any of the aspects of the legislation. I do not want legislation to be introduced just for the sake of it.

356. There is a concern about the consumption of alcohol in public. If there were a code such as that which exists in the IRFU, which serves alcohol responsibly and people can enjoy it responsibly, why would we ban it? To date, I have not heard any evidence as to why we would. That is more of a statement than a question.

357. Do stewards ever have to eject people from your grounds?

358. Mr Eagleson: It is not a problem.

359. Ms L Irwin: There are clauses in the Bill to deal with missile throwing and chanting. Those are not problems that we encounter, but we do not object to those clauses as we do to the clause about possession of alcohol because they do not have the same ability to impact on us and affect us financially. That is why we zeroed in on clause 43.

360. Mr O'Dowd: Joe mentioned that, if an individual has a record of misbehaving, the IRFU can ban them from the ground. Is that an indefinite ban?

361. Mr Eagleson: It is a private ground; therefore, we can take that action.

362. Ms L Irwin: That would be part of our ground regulations.

363. Mr Eagleson: Obviously, we have to monitor that.

364. Mr O'Dowd: I understand. Thank you.

365. The Chairperson: We are stopping there. I thank the rugby delegation for their briefing. You are welcome to stay on in the Public Gallery if you wish. You are your own bosses in that sense.

366. We will move on to the next presentation, which is from the representatives of Ulster GAA. Papers are included in members' packs. I welcome Danny Murphy, provincial director; Ryan Feeney, head of public affairs; and Stephen McGeehan, head of operations. Gentlemen, you are very welcome. You will have 10 minutes for your presentation, after which, there will be 20 minutes for questions and answers.

367. Mr Danny Murphy (Ulster GAA): Mr Chairman, I thank you and the Committee for affording us the opportunity to be here. We submitted our response and attached our ground regulations. From reading that, you will see that we are already applying many of the Bill's provisions under our regulations. However, we have concerns about some aspects of the Bill. We believe that the requirements about how a game becomes regulated need to be examined. We also believe that paragraph 6(b) of schedule 3 takes the scope of the legislation too far.

368. The safety of sports grounds legislation identifies two types of designation. First, grounds are designated, which normally applies to the main county grounds that we use, the grounds used by the two top leagues in Irish Football Association competitions, the ground used by Derry City and that used by the Ulster Branch of the IRFU. Secondly, stands can be designated, which includes those in grounds that are used almost entirely by clubs. The scope of that aspect of the Bill would bring designated stands within the legislation, even though the games being played there would not be part of any planning by us or by the safety advisory groups that would be set up under the safety of sports grounds legislation. We believe that paragraph 6(b) of schedule 3 being included in the definition of regulated games poses a serious problem.

369. We also believe that regulated games should be within the ambit of the safety advisory group, because all the relevant bodies sit on that group. They alone should determine when a game is regulated and, therefore, whether this legislation applies to a game. Stephen McGeehan and I went over to look at the operation of Vicarage Road, where two different games were played on the same weekend. Watford FC play there on Saturdays and are regulated and Harlequins, the rugby club, play there on a Sunday but are not regulated. Therefore, the rules about consuming alcohol while viewing the pitch are entirely different at the same venue on consecutive days. In taking this matter forward, we should look at best practice rather than taking a forceful view.

370. We have five specific points to make. Clarification must be provided to identify which measures apply to GAA events and which do not. As drafted, the Bill is confusing and could lead to errors in interpretation. We assume that paragraphs 7 and 8 of schedule 3apply to the GAA and that any clause that refers to those paragraphs applies to us. However, that may be an entirely wrong understanding.

371. The commencement orders for introduction should not be relied on solely to create exemptions. We believe that, in taking some of those matters forward, different sports might need entirely different requirements placed on them. That is why we believe that regulation is better dealt with by safety advisory groups rather than specific legislation.

372. The Bill needs to confirm that venue operators are in overall control of their events and that the safety of sports grounds legislation does not currently demand the presence of the PSNI at all fixtures. Therefore, it is conceivable that some cases may arise where circumstances outlined in the Bill are enacted by a sporting body or members of the public and not by the PSNI. The Bill

needs to take account of similar measures that have applied to British sport, particularly to association football fixtures and to rugby fixtures in England where, in the same venue, different arrangements apply depending on the sport being played.

373. We are concerned that, in setting out the definitions of regulated matches, the association that we represent and that controls Gaelic games is not defined. We would not want to be looking at a potential loophole some time in the future. The fact that we, as a governing body, are not defined, means, as we interpret it, that we are not covered by it.

374. Mr Stephen McGeehan (Ulster GAA): There are definitions of UEFA, FIFA and other sporting organisations such as the Irish Football Association and the Ulster Branch of Irish Rugby, but there is no equivalent reference to the Ulster Council of the Gaelic Athletic Association.

375. Mr D Murphy: I will make a couple of final comments. We are concerned that the word "chanting" has been added to cover a paragraph when, in all the consultative documents, the exact term that was used was "offensive chanting". Chanting may not necessarily be offensive.

376. We have precluded spectators from going onto the playing area for quite some time. Again, we believe that the relevant provisions need to be re-examined. If someone goes onto the playing area against the ground regulations, he or she is breaking the ground regulations and can be removed from the ground. If someone goes onto the playing area to celebrate after a game, it may not necessarily be something that we would want to prosecute them for. We would not want someone to have a criminal record for simply having spontaneous enjoyment. We need to look at those aspects.

377. We have absolutely no difficulty with the part of the legislation that deals with the possession of fireworks and flares. Stephen will talk about people using alcohol at a game and in transit to and from games.

378. Mr McGeehan: As responsible event promoters and as a governing body of sport, the Ulster GAA has significant experience from managing crowds of 67,000 right down to the 3,000 or 4,000 people who attended club fixtures last weekend. There is no doubt that the irresponsible consumption of alcohol is an issue for the governing bodies of all sports, particularly at games. As Danny mentioned, our ground regulations refer to and deal with that specifically. We welcome any controls that assist us as a governing body to address those matters. However, as was mentioned, we feel that that is best done under the general application of the safety certificate provided by the local authority and within the responsibility of the event controller in the organising of our games.

379. The Chairperson: You have two minutes, Mr McGeehan.

380. Mr McGeehan: In relation to the possession of alcohol in our grounds, we suggest to the Committee that application of the legislation that applies in England and Wales is worth considering when it comes to being more specific about the level of application for different sports. The GAA is probably best placed, having used Croke Park to manage other fixtures including soccer and rugby, to know that the governing bodies in control of the fixtures should have a level of autonomy and be able to look at the profile of their spectators and the categorisation of fixtures from a risk assessment point of view. We ask for that control to be afforded to governing bodies.

381. As Danny mentioned, we very much welcome any measures that stop situations in which buses arrive at grounds and the supporters on them cause a public disorder or a difficulty, not just in our own grounds, which is our primary responsibility, but in the towns and cities in which games are played. We support wholeheartedly those suggestions.

382. There will be some difficulties for us as a governing body, given that only two thirds of our association will be affected by the legislation. As a governing body, we have responsibility for Cavan, Donegal and Monaghan, so we feel that a cross-jurisdictional partnership with the relevant authorities is important.

383. Finally, the legislation is akin to living next door to someone who makes too much noise at night but having a noise abatement served on you as well as that person. A lot of the legislation applies specifically to other sports. The working out of the legislation needs to ensure that the GAA is not, as Danny said, entrapped by provisions that are not intended to deal with issues that exist within our games.

384. Sir Reg Empey: Danny mentioned that the inclusion of stands that hold 500 or more meant that that provision applied right down to your club level. I missed the rest of your point: what was it?

385. Mr D Murphy: Most of the safety of sports grounds legislation applies to designated grounds, which have been agreed by the Assembly. However, the legislation refers to designated stands, which means that stands with a capacity of over 500 have to be approved within the same process by the local authority and others, to show their compliance with the legislation.

386. Our point is that having a stand that allows 540 to sit in it should not mean that every game played at that level becomes regulated, as the legislation would require. That would have significant consequences and could lead to an under-10 game with 30 people present being regulated. The implications of that for an organisation would be enormous.

387. The most recent year for which we have complete figures is 2009, during which almost 22,000 games were played in our jurisdiction. Therefore, it would be impossible to ensure that the same regulations applied at every ground in every one of those games. The legislation is attempting to deal with the designated grounds rather than the designated stands. Paragraph 6(b) of schedule 3, which covers designated stands, is superfluous and should not exist.

388. Sir Reg Empey: Are you suggesting the elimination of any reference to stands or are you suggesting a higher threshold?

389. Mr D Murphy: I am simply saying that the reference to a designated ground is all that is required and that the reference to a stand in paragraph 6(b) of schedule 3 is superfluous. It does not solve anything for anyone and creates a problem. Its enforceability is impossible.

390. Mr McNarry: You are welcome. Stephen, you said that we should look at the profile of spectators. Can you expand on that? What did you mean?

391. Mr McGeehan: As most members will be aware, under the safety of sports grounds legislation, there is an ongoing process by which local authorities issue each of the venue operators in the grounds with safety certificates. As part of the issuing of those safety certificates, games are categorised as low risk, medium risk or high risk. The Gaelic Athletic Association has a profile of families, males and females attending our games, and we believe that the research that exists on that should be taken into consideration when dealing with issues of alleged disorder. Therefore, the process should be rolled out in a way that takes account of grounds that have been designated and, in turn, provided with a safety certificate. That gives the venue promoter more opportunity to manage the events responsibly.

392. Mr McNarry: Do your sports attract bad conduct in the forms that we are looking at: missile throwing, chanting, pitch incursion, firework possession, drunkenness and possession of containers?

393. Mr D Murphy: No. I do not know whether our response paper has been circulated to the members. It states that, under the ground regulations that apply to all of our games, that behaviour is prohibited and results in entry being refused or spectators being removed from the ground. I do not recognise that type of behaviour.

394. Mr McNarry: That does not prevent it from occurring.

395. Mr D Murphy: We try to ensure that it does not occur.

396. Mr McNarry: That is great, but I need to know more about how you achieve that. We heard from the departmental officials that the PSNI will administer the law against people who offend. One does not know who will offend and who will not, so there has to be a police presence. Would the presence of the police at your games to see that the law is being observed properly concern your stewards?

397. Mr D Murphy: I will make two points in response to that question. First, all of our games are subject to pre-event planning between us and the PSNI, and the PSNI has a direct involvement in overseeing the games, so that does not present an issue. Secondly, this legislation and the safety of sports grounds legislation, which is the core legislation, do not require police to be present at games. A regulated game is a regulated game. There is nothing requiring a police person to be present.

398. That brings us to chapter 6, which deals with enforcement. That will create a significant issue for the PSNI and for the courts, because we cannot find any provision for the evidence to be procured. If police officers are not present when someone commits an offence that is set out the Justice Bill, how will the police bring forth a prosecution? Do they have the authority to use ground regulations, such as using CCTV as evidence, or would they take statements from as many people as they want to? Given that some of our games can have 30,000 people at them, that could become quite a prolonged job. You make a critical point: you can have all the rules in the world, but, if you cannot enforce them, they are not worth having.

399. Mr McNarry: My point is precisely that. It is about enforcement, and, if the legislation is passed, equal ability should be available to enforce it at any venue. I compliment you on how you regulate the running of your affairs, and I have always done so. My concern is that, because of the manner in which your organisation presents its sports, there is, perhaps, a view that you can look after yourself.

400. That is not to put your organisation outside the law. However, in my view, other sports are being picked on — you may feel that your sport is being picked on as well — and there is a question mark over their ability to deal with situations. Therefore, there will undoubtedly be a police presence at their venues to look into these new laws and to enforce them. Indeed, there already is a police presence. My concern is enforcement, and, as a Committee, we need to look at that fully.

401. I just want reassurance that your organisation does not consider itself outside, above or exempt from the law in the very fine manner in which it runs its matches and deals with spectators and so on. I have a problem with what I have seen on my television screen of what goes on on your pitches — what happens on other pitches has been referred to — and that is a matter of education. Can the PSNI gain access to one of your pitches to assert the law in the event of public disorder?

402. Mr D Murphy: As far as I am concerned, nothing that we have done or plan to do would prohibit the application of the law; quite the reverse.

403. Mr McNarry: So, there is a police presence at your matches.

404. Mr D Murphy: Yes; police are already present at our major games.

405. Mr McNarry: That is good.

406. Mr D Murphy: Before any requirement was placed on us, we carried out pre-event planning with the police and others. We go to great lengths to ensure our compliance with the law. We are discussing the Justice Bill here, but we believe that, in many ways, the safety of sports grounds legislation is the core legislation. The clauses in the Justice Bill that deal with sport cover the essential areas that need to be examined. However, they need to be brought forward as a requirement to be placed on a sport as distinct from a broad spectrum attack on all sport. As far as we are concerned, people who break the law have to amenable to the law. However, it is pointless creating offences if enforcement will be particularly difficult. That is one of the reasons why our response refers specifically to enforcement.

407. Mr McNarry: The response is exactly as I hoped it would be: pointed and well made.

408. The Chairperson: Do you have discretion to ban players or spectators from your grounds?

409. Mr D Murphy: Under our association's constitution and rules, we have the authority to prevent from entering the ground anyone who breaks the law. We also have the right to expel such people from the association altogether.

410. The Chairperson: Have you done that often?

411. Mr D Murphy: We have dealt with it when required. Most incidents can be dealt with through a lesser penalty such as a period of suspension or prohibition from certain privileges — it depends on the level. However, we do expel people from the association, and we will do so if the need arises.

412. The Chairperson: Your submission states that the consumption of alcohol is not permitted within grounds and that spectators are not permitted to bring alcohol into the stadium.

413. Mr D Murphy: That is correct. I have been event controller for the Ulster Council since 1992, and, in that time, we have always applied that standard regulation. During high season in the summer, we are often roundly criticised in the letters column of newspapers for removing alcohol from people en route to a game. We put up steward barriers on the approaches to grounds and remove alcohol.

414. The Chairperson: What about sponsors? Do you, for instance, have sponsorship from drinks companies?

415. Mr D Murphy: We have one drinks sponsor in hurling, namely Guinness, which sponsors the hurling championships. Outside of that, we are not directly involved with any other alcohol company.

416. The Chairperson: Are there any conditions to that sponsorship by Guinness that specify that its product must be available?

417. Mr D Murphy: Absolutely not. We believe that that would be a restraint on trade.

418. The Chairperson: Your submission also says that:

"Under no circumstances is it permitted to throw any object onto the pitch."

419. What would happen to an individual who took the liberty to do that?

420. Mr D Murphy: We have gone as far as having people arrested. If someone can be identified, either from CCTV, by the stewards in the precinct or by any other means, we will take appropriate action. In the past, people have been arrested.

421. The Chairperson: Have you any reason to believe that player behaviour on the pitch — perhaps "misbehaviour" is the word — can encourage misbehaviour in the stands?

422. Mr D Murphy: That is not specifically a matter for the Justice Bill. However, again, we deal very clearly with any indiscipline. We apply substantial penalties to the individuals involved and to the units that they represent. In other words, if they represent a club, the club would be dealt with; if they represent a county, the county would be dealt with. As far as we are concerned, we have a good disciplinary policy and code that is rigorously applied by the association. It is not specific to the Bill. However, if you want me to respond to the question of whether bad behaviour in one place contributes to bad behaviour somewhere else, the answer is probably yes.

423. Mr O'Dowd: As a party, we have not made up our minds as to where we will go with certain clauses in the Bill, particularly those around sport. However, I share the concern that we are making law for law's sake.

424. When it comes to your regulation and governance of matches, does the 2006 safety of sports grounds legislation provide adequate infrastructural safety for grounds and adequate spectator and participant safety at grounds?

425. Mr D Murphy: The short answer is yes. The safety of sports grounds legislation was much-needed legislation. It was passed in February 2006 at Westminster in London, but it became operable only on 1 January 2010. Therefore, the legislation is very much a work in progress. A number of matters have been resolved: grounds are now designated, capacities have been established and, in most cases, safety certificates have been issued. Consequently, the legislation is at a starting point from which it can be properly applied.

426. Outstanding matters still need to be addressed. There is a requirement for some further development to comply with the new legal requirements. I do not want to start getting technical, but the S factor — safety management — needs to be brought on board. The safety management side and the physical capacity side are of equal importance. To meet the S factor, more supervisors need to be trained and more people who do my job need to be trained. Otherwise, we will find that we will get to the stage where, given the legal responsibilities being placed on people running matches, nobody will want to run them. Therefore, the S factor needs to be addressed. Some work has been done, but there is a lot more to be done.

427. Mr McGeehan: It is important to say that, although we are in times of austerity and public finances are being scrutinised for value for money, the application of the safety of sports grounds legislation is only as good as the physical condition of the grounds to which it applies. For everyone involved in public services, there is undoubtedly a responsibility to try to ensure that finances are made available to try to improve the condition of those grounds, otherwise, in antiquated facilities, fulfilling aspirations such as asking spectators and supporters to behave better will be a challenge.

428. Mr O'Dowd: Danny, you said that the Order only came into being here on 1 January 2010.

429. Mr D Murphy: The legislation was passed in Westminster in February 2006. It was the direct rule Minister Mr Hanson who brought it through. The legislation finally came into effect on 1 January 2010. Safety certificates have been issued to grounds over the past eight weeks. Capacities have been established, and work is ongoing on the safety management side.

430. If a ground that holds 10,000 has an S factor of six, its capacity becomes 6,000. So, there are ramifications. How well you manage your ground will have implications for your capacity. Therefore, there is still work to be done.

431. Mr O'Dowd: My final point is about the training of stewards and staff within grounds to ensure the safety of spectators. In a majority of cases, if not in all cases, stewards are volunteers. Under the legislation, part of the role of the steward will be that of a police officer. For instance, if somebody throws an object — a scarf or a top, for example — in the ground, a steward will have responsibility for witnessing a criminal offence.

432. Mr D Murphy: That is possible. However, the bottom line is that we have our own regulations — they are listed in our submission — and the issue is how we apply them. That is why it is important that we take account of the complete management structure. If someone is perceived to be breaking, or attempting to break, one of the ground regulations, the steward's duty will be to prevent that. So, the person in question will be approached and advised that he or she is in breach of regulations. If that does not happen, the decision-making power passes to the supervisor at the next level. We do not have all the right people qualified to deal with the legal issues, as you correctly pointed out.

433. The legal issues go back to what we said about enforcement. We raised the issue. If the PSNI is not present at a game — the law states that it does not necessarily have to be present — it could be very difficult to present evidence and use CCTV footage to bring forward a prosecution.

434. The Chairperson: Thank you very much for the briefing and for taking questions, gentlemen. You are welcome to stay in the Public Gallery, because the departmental officials will be coming back to answer questions on what has been said. Thank you very much for coming.

435. Mr D Murphy: Thank you very much.

436. The Chairperson: The next briefing is from the Irish Football Association. I welcome Patrick Nelson, who is the chairman, Terry Pateman, who is the vice-president, Hugh Wade, who is the director, and Stephen Grange, who is the national security officer. You are all very welcome. You have 10 minutes to make your presentation, and we have set aside 20 minutes for questions afterwards.

437. Mr Patrick Nelson (Irish Football Association): You introduced me as the chairman; I am the chief executive.

438. The Chairperson: I beg your pardon.

439. Mr Nelson: Thank you very much for the opportunity to give evidence to the Committee. The road to our being here started 130 years ago today. There was a meeting in the Queen's Hotel in Belfast of representatives of a number of clubs that were playing what was called Scottish rules football. They resolved to create an Irish football association. That was on 18 November 1880. So, 130 years on, we are here in front of this fairly august Committee. I am sure that they never thought that would happen.

440. The Chairperson: It has been a long struggle for you over the years.

441. Mr McNarry: Were you playing then, or were you just a reserve? [Laughter.]

442. Mr Nelson: Thanks again for the opportunity to give evidence. We will make a very short presentation. We sent a written submission to the Northern Ireland Office in November 2009, when the original consultation on the legislation took place. We provided a short supplementary letter to the Committee yesterday.

443. We believe that the Justice Bill, as it pertains to sport and football in particular, is part of a package of measures that will make football safer for spectators in Northern Ireland. That package includes the safety of sports grounds legislation, facility development and the training of stewards, and work on those issues has been ongoing for a while now.

444. Our original submission and the recent ones were broadly supportive of the proposed legislation. We note a number of changes to the original documentation from last year, in particular, the removal of reciprocal banning orders with Great Britain. We are not sure whether that makes sense, particularly given the prevalence of what we might call football tourism between Northern Ireland and GB, in that many of our supporters sometimes choose to spend a proportion of their money following clubs in England or Scotland. Consequently, if they receive a banning order over there, it would make sense for them to be banned here, and vice versa. We think that it is an omission to not have use of a civil banning order route, where police can make a summary application to magistrates to exclude troublemakers from games without a criminal conviction. That is an opportunity that may be missed.

445. We note the restrictions on consumption of alcohol, and we broadly support those, with the proviso that corporate hospitality and membership activities cannot be adversely affected. In particular, we ask the Committee to consider closely whether the timings for the regulated period in clause 43 — two hours before and one hour after a regulated game — might be a little excessive in the circumstances.

446. As I said, this is a fairly short presentation, because we put most of our information in the original submission that we provided some time back. We again thank the Committee for the invitation to be here today, and we look forward to working with colleagues across all Departments to continue creating a safer environment for sports and football supporters throughout Northern Ireland.

447. The Chairperson: Thank you very much, Mr Nelson.

448. Do you think that the legislation is necessary?

449. Mr Nelson: I think that it is helpful. However, it is difficult for us to judge the degree of necessity. It is helpful, because it will go towards creating a safer environment for football supporters. We note that it relates to, in particular, games in the Premiership and the Championship in Northern Ireland and does not stretch throughout the football pyramid. It is for the more significant and senior games.

450. The Chairperson: On a few occasions, Irish League matches have been in the headlines for the wrong reasons. Will the legislation help to eradicate that?

451. Mr Nelson: Can you give me an example?

452. The Chairperson: The one that springs to mind is the infamous game between Newry City and Larne that ended up in a bit of a fracas. Much of that started on the pitch, of course.

453. Mr Nelson: Realistically, that was more of an on-pitch issue, and we deal with that sort of thing through our internal disciplinary procedures. That is what we did in that case. The legislation is not aimed at that sort of issue; rather, it is aimed at ensuring that supporters watching such games are not drawn into antisocial behaviour. We, therefore, support it from that point of view.

454. The Chairperson: You were not here for the officials' presentation at the start of the session. They cited some games that had to be stopped, in particular, the Glentoran game. Will the legislation help to deal with those sorts of scenarios?

455. Mr Nelson: Again, that probably predates my being here. Someone else may be able to comment on that.

456. Mr Stephen Grange (Irish Football Association): The Bill sets down clear guidelines on what is acceptable behaviour in football grounds and what is not. In the past, some of the difficulties that we have had have included dealing with pitch incursions, racist abuse and sectarian abuse of players. From our perspective, the Bill sets out clearly that that behaviour is not acceptable and that it is not a matter of determining or believing the extent of it; it sets out clear markers about what is acceptable. The big challenge is getting families and other people back to football by making them feel that it is a safe environment. The Bill sets out, for the first time, clear guidelines for spectators on how they should behave when they come to events. From that point of view, we find it helpful.

457. The Chairperson: Is stewarding at matches done purely by volunteers?

458. Mr Grange: No, there is a mixture of stewarding. We bring in professional stewards who are trained to Security Industry Authority (SIA) standards to do certain aspects inside the ground. As you point out quite properly, some of the other stewarding is provided by volunteer stewards. We also have club stewards who have undergone training to deal with certain matters but not with conflict or with separation of supporters. We bring in other trained stewards to do that. So, there is a mixture of types of stewards, each of which is regulated to do certain tasks.

459. The Chairperson: You obviously have the power to ban players and spectators who make a nuisance of themselves for whatever reason. How often have you exercised that power?

460. Mr Grange: We do not do that on behalf of clubs. I will let Hugh, who is a club chairman, speak, because it is the responsibility of clubs to deal with that.

461. Mr Hugh Wade (Irish Football Association): As well as being a director of the IFA, I am also chairman of the Premiership Management Committee and of Coleraine Football Club. At Coleraine's last home game, three spectators encroached on the playing area after we scored a goal. They were identified by the police, and we also had them on CCTV. We have written to those people and banned them from the Showgrounds.

462. The Chairperson: Have you banned them for life or for a certain period?

463. Mr Wade: We have banned them until the end of this season, and the ban will be reviewed then. We want a safe environment for all attending in order to increase attendance and to encourage more families and more females to attend our games. My understanding is that the Bill will not affect corporate hospitality at football grounds, on which we rely heavily to raise

funds on match days. We invite sponsors and businesses to our club for hospitality, and we have executive club members who can view the match from our viewing lounge and have a drink if they wish.

464. The Chairperson: If a player felt that he had been tackled with vengeance on the field, could he take action under existing legislation?

465. Mr Terry Pateman (Irish Football Association): Yes, that is correct. There have been a number of cases in which players have taken another player to court.

466. The Chairperson: Not often, but occasionally.

467. Mr Pateman: Very occasionally. There is probably one case currently in the courts.

468. Mr McNarry: You are welcome, gentlemen. You represent what is my national sport, and, therefore, you come here with massive responsibilities. From my reading of the legislation, it is your sport that is under the closest scrutiny and, perhaps, under the cosh. We have been told today that the legislation could put gates up to 14,000 spectators at games. That begs the question: why could that not have happened without the legislation? The Bill contains only tweaking bits of legislation. You have said that you want to increase the numbers of families that attend and that the legislation is probably a method of doing that. There is a gap. What on earth has been done to realise that ambition long before the requirement for legislation? I am not sure that we need this legislation.

469. The legislation seems to portray a type of visitor to soccer matches — not a fan, I would add. That seems to be the root cause of part of the legislation being directed at your sport. It seems that the blame for conduct such as missile throwing, chanting, pitch incursion, firework possession, drunkenness and possession of containers is being levelled at your sport. The legislation seems to set out that the offenders in any of those categories will be at your sport — or our sport, if you like. I know that you have been doing things to address that, which is commendable. Where will that end up? Could the efforts that you will tell us about result in people like me asking for certain aspects of the legislation to be reconsidered?

470. Mr Grange: There are a number of issues there. This legislation does not stand alone. It comes on the back of other legislation on safety at sports grounds. There is a major thrust to change the attitude at sports grounds, particularly football grounds, from security to safety. We want to move away from having fences and so on. Under safety of sports grounds regulations, we are obliged to open up grounds so that people have access and can evacuate freely. Responsibilities and difficulties come with that.

471. All the things that have been talked about, such as fireworks and drinking, are based on experience and reality. The sad thing is that we have had to cope with those matters in football over the past five years. Without the legislation, that has proved difficult not only for us in stewarding and managing games but for the police in determining what offences are taking place. We think that the legislation sets down very clear guidelines for the police and our stewards to act on and markers for behaviour. It is based on experience as, sadly, we have had difficulty with spectators.

472. Mr McNarry: Are you saying that a greater police presence and enforcement against those misdemeanours is what is needed to propel this to where we all want to be?

473. Mr Grange: No. The vast majority of people who come to football matches behave properly. The legislation is designed to deal with those who do not behave. There are issues around that that will have to be addressed. Opening up our grounds and shifting the focus from security to

safety brings responsibilities. The legislation sets down a clear marker to those people who do not want to behave that there are enforcement policies and actions that can be brought to bear. We hope that we do not have to use those. We hope that people will realise that certain behaviour is not acceptable and that they will not be able to behave like that. This legislation comes on the back of two other pieces of legislation relating to grounds and stewarding. In fact, enforcement is probably coming before the grounds are ready to deal with it. That shortfall is being taken up through stewarding at the moment.

474. Mr McNarry: What will happen overnight that will mean that those typecast people are not there anymore?

475. Mr Grange: The experience with the legislation in England, Wales and Scotland has been that change does not happen overnight but that the legislation does change behaviour. It has brought about significant improvement in behaviour, especially in Scotland. We looked at how Scotland dealt with the situation, and that has been a major factor in our support for the legislation.

476. Mr Nelson: My experience as the chief executive of a small football league club in England bears that out. We only ever need to ban a very small number of people from the ground for that to act as a deterrent to other potential troublemakers. As a number of people have said, sometimes your worst supporters are your best supporters.

477. They are the ones who follow their club through defeat and victory, and to games that are 300 miles away on a Tuesday at 7.45 pm. For them, the pain of being excluded from games is huge. So, this sort of legislation does act as a good deterrent.

478. Mr McNarry: If it is your view that the legislation will be good for your sport, I have to listen to you as you are the experts. I am sure that we all agree that there is a distinct difference emerging from today's discussions between the work that has clearly been done with international games and the subsequent attraction for the whole country as opposed to what happens at games such as those cited by the Chairman. We have to bank that one.

479. Do you believe that, as a result of the legislation, a burden of extra costs will have to be met by local clubs?

480. Mr Nelson: I am not sure that I would entirely agree that there would be a burden of extra costs. The legislation, if implemented in anything like its current format, will serve as a deterrent. The long-term effect will hopefully be that our grounds will become safer and more welcoming environments for Carling Premiership games and Championship games.

481. To go back to Stephen's point: the legislation is part of a package. Steward training is important as are facilities and the state of grounds. Many of you will know that we are working with your colleagues in DCAL on packages for improving grounds. We have made some improvements already. For example, anyone who has been to Solitude lately will have seen two new stands, new floodlights and a new third generation pitch, which was launched just this week. That is probably a much more welcoming environment than Solitude would ever have been in the past. So, the legislation really should be seen as part of an overall package to make football grounds much more family-friendly and safe.

482. Mr McNarry: I do not want you to miss the point, which is that the legislation is directed at a specific type of spectator. That type of spectator is described in the legislation and is described as being most likely to go to one of your matches. To deter such a person or to enforce the regulations will require extra police. That is why I asked whether you think that your clubs will have to take on a cost burden.

483. Mr Grange: Our experience shows that to be the exception rather than the rule. We are saying that the legislation will bring clarity on what is acceptable behaviour. The vast majority of people will comply with the regulations. Where we identify a high-risk game or where bad behaviour has previously been reported, we will look to address that. However, I do not think that extra police will go to every game each week to watch to see whether someone is involved in offensive chanting or behaves in a certain way. That would certainly not be our expectation.

484. The Chairperson: Is the consumption of alcohol permitted in Irish League grounds?

485. Mr Grange: It is under certain circumstances. It depends on the provision of a club under the registration of clubs and whether they have viewing lounges. Therefore, each club would be different. The policy would certainly be that there is no consumption of alcohol during the game or in the periods just before or after. That seems to work across the board. Those provisions are in other legislation.

486. Mr Wade: I mentioned corporate hospitality. A number of Premier League clubs depend on corporate hospitality on match days for their sponsors and businesses. That is where they get some extra revenue. Their viewing lounges, as I said, are where they have their executive members, and that also results in extra revenue on match days. It is the same for the Milk Cup finals. When those games are played at Ballymena Showgrounds or Coleraine Showgrounds, there is corporate hospitality.

487. Mr McNarry: They all drink milk, aye? [Laughter.]

488. Mr Wade: The players do.

489. Mr McNarry: David McClarty does not.

490. The Chairperson: Mr O'Dowd? Sorry, Mr Maginness, do you have a supplementary question?

491. Mr A Maginness: I suppose that it does follow, but, if you want to bring Mr O'Dowd in, that is fine.

492. Mr O'Dowd: I am easy, go ahead.

493. Mr Maginness: No, please.

494. Mr McNarry: Do not fight, now, lads. Red card. [Laughter.]

495. Mr O'Dowd: We do not need to be regulated here.

496. Thank you for your presentation. As Mr McNarry said, the suspicion is that the legislation is directed at soccer. We have heard from the other two codes, GAA and rugby, which have different concerns. I may be exaggerating, but I think that you have overwhelmingly welcomed the legislation. From my perspective of where the legislation is going, I have concerns, but I have not come to a conclusion in my head.

497. Throughout your presentation, you continually said that the Bill would affect only a minority of people. Hugh has given us an example from Coleraine, where they take no nonsense, in which three people who went onto the pitch were banned until the end of the season. Why then do you need this legislation?

498. Mr Grange: That is perhaps a very good example. The difficulty that Hugh has is that those fans are banned only from Coleraine Football Club. Coleraine FC could be playing in Ballymena next week and those fans could turn up there and be a nuisance. They may then be banned from Ballymena United FC, but they could turn up in the next place.

499. Mr O'Dowd: Sometimes, in law, self-regulation is encouraged. If Coleraine were to write to Ballymena to explain that those three characters were causing problems, that would give Ballymena the right not to allow them in. That could be done through your club mechanisms.

500. I am concerned that we are bringing in legislation that not only covers people inside sports grounds but outside sports grounds, too. Clause 46(4)(a)(iii) states:

"where it appears to the court from all the circumstances that the offence was motivated (wholly or partly) by a regulated match."

501. That covers someone from when they leave their front door to go to a match until they go back home through their front door. The legislation is very draconian.

502. Mr Grange: Indeed, but the legislation has obviously been brought in in that way because of experience. Regrettably, we have had incidents of serious disorder in Belfast city centre that are directly related to behaviour before and after football matches. The legislation is broad so as to be able to deal with that.

503. I share some of your concerns, but it will be a matter of taking cases to court. It will not be for the Irish Football Association or the PSNI to impose a ban. Cases will have to go to court. My view is that magistrates would take a very serious view and that cases would have to be made very strongly for them to implement the banning order.

504. Mr O'Dowd: I know that, but the Chairperson highlighted a case this morning in which people ended up in court.

505. The Chairperson: That was a dummy one. [Laughter.]

506. Mr O'Dowd: I appreciate that, as a governing body, you are very strict on misbehaviour. On the other hand, as legislators, we have to ensure that we have the balance right in the legislation that we introduce.

507. Is it fair to say that the vast majority of Irish league games pass off without any incidents in the stands?

508. Mr Wade: Yes.

509. Mr O'Dowd: Is it fair to say that you implement your codes very robustly?

510. Mr Grange: Yes, within the constraints in which we have to do that.

511. We do not sit in isolation in this. We work very closely with supporters and get feedback and complaints from them about the behaviour of other supporters. Those are genuine concerns, and we have an obligation to find a way of addressing them. The legislation was presented to us, and we were asked whether we felt that it was the right avenue to go down. Based on the experiences of England and Scotland, we felt that we were the ones who were out of step. A lot of the problems seem to have been eradicated in Scotland, whose situation we see as probably being closer to ours. We hope that the legislation will do likewise for us.

512. Mr A Maginness: I want to say first —

513. The Chairperson: Let me just say that we are into the two-minute section.

514. Mr McNarry: Extra time. [Laughter.]

515. Mr A Maginness: Do I not get extra time?

516. The Chairperson: If you behave yourself you might.

517. Mr A Maginness: I welcome the IFA's efforts over the years to try to make football a friendlier and more family-orientated sport, and, in particular, its efforts to try to "de-sectarianise" the game. That is very important and very helpful.

518. Essentially, you are saying, "We have experienced problems, and we welcome this legislation. We may not welcome every dot and comma, but we welcome the legislation in general, because it is helpful in changing people's behaviour." That is the essence of what you are telling us. Irrespective of any other sport, you are talking about your experience as sports people.

519. Mr Pateman: We are talking from our point of view. I can remember, as a five- or six-year-old, going to Solitude or The Oval.

520. Mr A Maginness: I can, too.

521. Mr Pateman: It did not matter who you were when you went through the turnstile; everyone was welcome. The crowds were bigger, and we did not have legislation. Society has changed so much in the intervening years that quite often you have to re-educate people. This legislation will help to re-educate from the top down: it will educate us, the clubs, and the supporters. Over the years, we will get to what we desire, which is to have each ground open to everyone so that anyone can walk in and enjoy a football match.

522. I have been making observations at our grounds over the past couple of years. There has been a visible change, because we know that legislation is coming and because of the safe sports grounds initiative, which has put an emphasis on stewarding in the grounds.

523. The number of police involved has dramatically decreased. It is now unusual to find a policeman at a football match. That is wonderful, because, five or 10 years ago, a police vehicle sat at the door, no matter what the match, even the most insignificant game. We do not have that now. Police numbers have also come down at high-risk matches because legislation has started to come in. That is making us all think and work. Therefore, that helps us.

524. Mr A Maginness: Will this legislation reinforce good behaviour?

525. Mr Pateman: I believe that it will.

526. Mr A Maginness: Does clause 43, which relates to drinking, give you sufficient scope to retain corporate hospitality?

527. Mr Grange: Obviously, we would seek clarity and certainty about that.

528. Mr A Maginness: That would be very important.

529. Mr Wade: It would be. I am not too sure whether it means that you can offer corporate hospitality as the game is played.

530. Mr Pateman: Corporate hospitality is very important, even for one match, because, when a company puts on an event, it helps to pay for that match.

531. Mr A Maginness: Clause 43(1)(a) seems to say that there can be corporate hospitality if there is:

"a room to which the general public are not admitted".

532. However, you can still directly view the match from such a room. I would have thought that that would permit corporate hospitality.

533. Mr Grange: That is what we believe. We hope that the legality of writing the clause in a certain way addresses that.

534. Mr A Maginness: We should ask the departmental officials to clarify whether that is the intention of the law.

535. Mr Grange: Our understanding is that, where alcohol is sold, its sale must be closely regulated and controlled.

536. The Chairperson: You said that there was an issue around the Milk Cup.

537. Mr Wade: No, there was not an issue around the Milk Cup. I said that the Milk Cup has corporate hospitality on finals night in Coleraine Showgrounds or Ballymena Showgrounds. That is the same for Premier League clubs. I was only making a comparison.

538. Mr Nelson: Just to be clear: the Milk Cup does not fit into the regulated games environment. Regulated games are Premier League and Championship games. The Milk Cup, as a youth tournament, does not fit into that environment, so it does not fit into this legislation.

539. The Chairperson: Gentlemen, thank you very much for coming and for briefing us. You are welcome to retire to the Public Gallery if you wish. Officials will come back to brief us later, and we will try to put to them some of the issues that you have raised. You can hear how they will deal with them.

540. Mr Nelson: Thank you.

541. The Chairperson: The next briefing is from representatives of the Amalgamation of Official Northern Ireland Supporters' Clubs. I welcome Gary McAllister and Chris Andrews, who are spokespersons for the amalgamation.

542. Mr Gary McAllister (Amalgamation of Official Northern Ireland Supporters' Clubs): Thank you for the opportunity to address the Committee this afternoon. We represent the Amalgamation of Official Northern Ireland Supporters' Clubs, which is made up of 72 supporters' clubs from across Northern Ireland. We also have member clubs from other parts of the world, which are run by expats.

543. Our organisation was established in 1998 when a group of supporters' clubs decided to form an umbrella organisation to work together in the interests of supporters. Our work, particularly our work as part of the Football For All project, has been recognised widely,

specifically through the award of the European Football Supporters' Award, which was established by Brussels city council after the Heysel disaster. Brussels city council presented us with the award at Windsor Park in 2006. We are very proud that we pipped the German supporters, whose country hosted the World Cup finals that year, to the award. The Germans were runners-up.

544. Our organisation engaged fully in the consultation on the legislation. We submitted a document to the Northern Ireland Office. We met the Justice Minister, Mr Ford, and his officials on 1 July. We followed that up with a meeting with officials from the Department on 8 July. After the publication of the draft legislation, we submitted our views in writing. We have written to the Committee and to all 108 MLAs.

545. I will speak generally about our overarching view of the legislation and then hand over to my colleague Chris Andrews, who is a committee member of our organisation, and he will speak in more detail about our concerns.

546. Generally, we welcome the proposals from the Department of Justice to introduce specific legislation on spectator controls in Northern Ireland. It is important that the legislation that covers spectating at sports events in Northern Ireland is in line with legislation in the rest of the UK. The proposed legislation could also act as an effective deterrent and encourage people to behave in a responsible fashion, which can only promote a safe and welcoming atmosphere for those attending all sports, particularly football matches.

547. We appreciate that the consultation document, originally produced by the Northern Ireland Office and taken on by the Department of Justice, acknowledged that incidents of crowd trouble at sporting events in Northern Ireland are rare. We emphasise that disorder involving Northern Ireland football fans at football matches is an exceptional occurrence. That was acknowledged by the Minister in writing during the week.

548. Notwithstanding that, we have identified three elements of the Justice Bill on which we want to make the thoughts of football fans known to the Committee. Those three areas relate to the consumption of alcohol in viewing facilities in football grounds; the offences related to the possession of alcohol on private-service vehicles and private-hire transport; and ticket touting.

549. We work with supporters' organisations from England, Scotland, Wales and further afield. We are part of Football Supporters Europe, which is a network of fans from more than 50 countries. From our experience of dealing with other supporters' organisations, we know that there is a shared view that partnership works, that fans have a contribution to make to any process and that valuing fans is a way of moving forward. The legislation does not achieve that, because it potentially criminalises all fans not just those who are badly behaved.

550. Bringing in the legislation would demonise football fans and the sport of football, which would be contrary to the view expressed in one of the earlier submissions that it would encourage greater numbers to attend. If there is a view that football is not a good or friendly sport, it is not likely to encourage more people to attend games. I now hand over to my colleague Chris Andrews, who will speak in more detail on some of the issues.

551. Mr Chris Andrews (Amalgamation of Official Northern Ireland Supporters' Clubs): I will pick up on some of the points that Gary made. As football fans, we believe that any proposed Justice Bill should reflect the needs and realities of Northern Ireland. We believe that the Bill, as it stands, is more or less the application to Northern Ireland of legislation that was enacted to combat the endemic hooliganism and widespread violence that were prevalent in top-flight football in England and Wales during the 80s and 90s. The Bill's provisions reflect the contents of

the Football Spectators Act 1989, the Football (Offences) Act 1991 and the Football (Disorder) Act 2000, which were passed at Westminster.

552. I will reinforce what Gary said. We feel that aspects of the Bill are draconian and stereotype football fans. We are concerned about clause 43, "Possession of alcohol", which makes it an offence to be in possession of alcohol at any time during the period of a regulated match. The IFA representatives covered that issue in their presentation, so we will not labour the point. However, we share the IFA's serious concerns that the Bill, as drafted, could prohibit the sale of alcohol in viewing lounges at football clubs in Northern Ireland, not only during matches, but two hours before and one hour after.

553. We reiterate that such facilities are vital income generators for many football teams across Northern Ireland, and, in many cases, the sale of alcohol before, during and after matches is a major element of match day revenue. We believe that the creation of such an offence is unnecessary and that the legislation could have a detrimental effect on the future of viewing lounges and social clubs. We would welcome clarification from the Department of Justice on what is covered and what is meant by that clause.

554. The amalgamation contends that social clubs and viewing lounges at football clubs offer fans the opportunity to socialise in a controlled environment and that they do not have any history of serious disorder or violence that would necessitate the creation of offences such as those that have been outlined. We would like to know the rationale behind the creation of the proposed offence and would like a detailed outline, citing evidence, of why such measures are necessary.

555. I want to pick up on the points that were made by the officials from the Department of Justice. If, as we understand it, the intention of the Bill is to exempt private viewing facilities, the amalgamation wish to ask why viewing lounges should have to be restricted to members only, given that such facilities have no history of serious disorder or violence. We also contend that clause 41, "Being drunk at a regulated match", is more than sufficient to deal with any drunkenness at matches. Why is there a need for further offences relating to drunkenness or consumption of alcohol when we already have provisions relating to drunkenness? We believe that the Bill has the potential to criminalise a person for having a single drink — a person who is not drunk — which is excessive, given that there will be powers to deal with persons should they become drunk.

556. The Chairperson: You have two minutes to wind up.

557. Mr Andrews: We would like to talk about chapter 3, "Alcohol on vehicles travelling to regulated match". It will become an offence for anyone going to a regulated match to have alcohol in their possession. It will also be an offence for people to be drunk in a vehicle going to a regulated match. The Justice Bill will also give the PSNI the authority to stop and search any motor vehicle to which chapter 3 applies, if they have reasonable grounds to believe that an offence has been or is being committed. We believe that provisions already exist that deal adequately with unlawful consumption of alcohol in private-hire transport. Under regulations made in 1990, it is already an offence for anyone to consume alcohol in a vehicle, and the conviction for such an offence already carries a maximum fine of £1,000. We contend that it seems excessive and unnecessary to introduce a specific offence relating to special transport to and from football matches.

558. I will move on to ticket touting. We disagree with the departmental officials' interpretation of clause 45. Under clause 45(1), it is an offence for an unauthorised person to sell or dispose of a ticket. That person is unauthorised unless he or she has written authority from the match organiser to dispose of that ticket. Therefore, the act of selling or moving that ticket on to

another person will be an offence. If this aspect of the Bill is about segregation, let us call it segregation, not ticket touting. How does criminalising one supporter for buying and selling tickets for his friends tackle the issue of segregation? Indeed, many grounds in Northern Ireland where football is played do not have provision to segregate fans, and fans freely mix. Segregation occurs only at matches between the bigger teams. It would make more sense to target the matches that are perceived as high-risk and put in place provisions to deal with those rather than to cover all games.

559. In recent correspondence with the amalgamation, the Justice Minister said:

"They may be rare, but I do believe there will be occasions where efforts to segregate fans are essential to address the potential for disorder. I believe that we need to provide for such occasions and that the powers will be an important preventative tool to assist us in doing so."

560. The legislation, as it stands, does not provide for powers that will be used on rare occasions only. It creates an offence that applies to all football matches for which tickets are sold. Under clause 36(1)(c) —

561. The Chairperson: I will have to stop you there.

562. Mr Andrews: I will be two seconds. Under clause 36(1)(c), the offences also apply to all IFA Championship matches, which involve clubs such as Dundela, which do not produce tickets. Dundela versus Banbridge Town will never be an all-ticket match, so it is ludicrous to apply that offence to that game.

563. The Chairperson: Thank you very much. You did very well.

564. Mr McNarry: I concur with the tribute that Alban gave to the IFA, and I am sure that he will agree that that should be shared with the supporters and the supporters' organisation for its efforts. I am a sports fan, and I enjoy nearly all sports. It seems that the decent soccer fan is in danger of being typecast as someone who goes to a match not to cheer on his or her team or to enjoy the game but to be a missile-throwing, chanting pitch invader who will throw fireworks and is likely to be drunk.

565. Sir Reg Empey: Speak for yourself. [Laughter.]

566. Mr McNarry: Such a person is presented as a great multitasker, but that is not the correct image. That is what is wrong with this Bill — it paints that image. I would like that image to be removed. It has to be removed. I understand the ideas around drink and that the Bill seeks to deal with overindulgence in drink. That is where rugby escapes in that rugby supporters enjoy a drink but you rarely see someone legless at a rugby match. Is there a risk that the provisions in the legislation could be rendered meaningless if fans can drink in pubs beside or near the ground two hours before kick-off and one hour after the end of the match? That begs the question: if that can and does happen and is regulated by law anyhow, what is the point?

567. My final question, which is about transport, has not been raised so far, so we might get somewhere on it. You are the best people to answer it. Is the clause on specific provision for football fans travelling to and from matches included because there is a history of serious or major problems in Northern Ireland that have been caused by fans travelling to and from matches?

568. Mr G McAllister: The proposed legislation is using a sledgehammer to crack a nut, and it is legislation for the sake of it. Your point is quite right. Preventing people from drinking on a bus

does not mean that they will not come to Belfast, Coleraine, Portadown or Ballymena three hours before a match and get drunk. Is it not better to allow people to enjoy a drink responsibly in a responsible environment in a stadium or a ground, or should we be driving people underground, where they will drink more excessively? We need to educate people on the acceptable amount of alcohol to drink. As someone who has travelled all over Europe and other parts of the world to support Northern Ireland, I sometimes see fans who have drunk more than they should sensibly have drunk. That is not good for them, because it puts their safety and health at risk.

569. I support better education and encouraging younger fans in particular to be aware of their responsibilities. We should not criminalise a young lad who has maybe decided to have more to drink than he should have and has become overly drunk. We need to educate people, not criminalise and demonise them.

570. Mr Andrews: If there are problems linked to football fans travelling to and from matches, and it is believed that the consumption of alcohol during that travel is a problem, we should use the existing provisions, namely, the laws that make it illegal to drink on a bus. We should enforce that. Why is there a need to create the specific offence of possession of alcohol when travelling to and from a regulated match? What does that add to the existing law?

571. Mr McNarry: Do hire laws have anything to do with that? Is it different for private hire?

572. Mr Andrews: That law, as it stands, is for private hire. Other by-laws affect public transport such as trains and Citybus and Ulsterbus vehicles.

573. Mr McNarry: You mentioned trains. We omitted to talk about trains. Across the water, that is the natural means of travel for a lot of spectators. Has anything happened in the recent past to suggest that there is a lot of trouble on buses or trains?

574. Mr Andrews: In my experience, the buses turn up and the guys disembark. They go the ground, watch the game then get on the bus and go home. It is as simple as that. I am not aware of any great issue of people causing trouble on buses.

575. It will now become an offence to be drunk on a bus. Therefore, if someone has a couple of beers in a viewing lounge or a social club, they could risk being accused of being drunk on the return journey.

576. Mr McNarry: The police would have to get on the bus to identify somebody who is drunk.

577. Mr Andrews: As it stands, the Bill gives the police the powers to stop a coach if they have reasonable grounds to suspect that somebody is in possession of alcohol or that somebody is drunk.

578. The provision on the possession of alcohol is problematic. For example, if a bus stops off on a long journey and somebody decides to go to the off-licence to grab a few bottles of wine to drink when they get home, possession of that wine on that bus, whether or not the person is drinking the wine, is an offence because they are travelling from a regulated match. Or, for example, if someone goes to a match in Scotland and purchases two bottles of malt whisky for a Christmas present, that person is still travelling from a regulated match and is committing an offence.

579. The Chairperson: More so if the person is wearing the scarf.

580. Mr A Maginness: Thank you very much for your presentation. Obviously, you are very concerned about the effect of the legislation on your enjoyment of matches. However, it is clear from the IFA's comments that it feels that the legislation could be helpful to remedy certain problems and bring about better behaviour at matches. The sport's governing body said that. However, you are saying something different.

581. Mr Andrews: I do not think that we are poles apart. Let us get things into perspective: incidences of football disorder and football violence in Northern Ireland are, thankfully, still low. Although we heard in previous presentations about various misdemeanours from years ago, some of which were quite major, those are not an everyday occurrence.

582. It is all too easy to suggest that, because England and Wales has had similar legislation for years, football violence and football disorder has been eliminated across the water. That is simply not the case. There have been a number of high-profile incidents this season and last season. For example, in September 2010, 11 people were arrested at a QPR versus Millwall game, and bottles were thrown onto the pitch at a Manchester City versus Blackburn match. There was trouble at the Manchester United versus Manchester City games last year, with a total of 40 arrests across the two games and incidents of coin-throwing and bottle-throwing. At Burnley versus Blackburn, the police had to baton-charge fans, and 40 fans were questioned. On the same weekend that fans invaded the pitch at a Sheffield Wednesday game, Luton fans invaded the pitch and threw missiles at York City fans during a play-off semi final. Legislation already exists there and there are still incidents like that. The incident at the Larne versus Newry cup match, which has been referred to continually during this evidence session, did not involve any fans; it was solely players.

583. Mr A Maginness: That is factually correct, Chairman. I recall the incident.

584. Mr G McAllister: The answer is in better stewarding, supported by legislation. Legislation alone will not address any problems. I have attended Windsor Park for 20 years as a Northern Ireland supporter. In that time, I know of only two incidents in which people behaved in a way that I felt was deserving of being removed from the ground. One was during a high-profile Poland game last year, when someone stuck the linesman with a coin and, at another game, someone threw a bottle, which did not reach the pitch. We have self-policing fans, and other fans brought the person to the attention of the stewards and had them removed from the stadium.

585. Rather than demonising all fans, we have always tried to work with the police and the IFA. We also do work with the Home Office in London, particularly concerning our away games. We are happy to play a role and be fully supportive of encouraging good behaviour and cracking down on people who misbehave. To do that, fans have to be part of the process. It has to be a partnership, with stewarding being supported by police and legislation. The active participation of fans and supporting them is the way forward, not simply legislation.

586. Mr A Maginness: Do you understand the point that I am making about the difference between you and the IFA? You say that there is not such a big difference, but there is a significant difference between what the witnesses from the IFA said and what you are saying.

587. I welcome your support for the proposals to create an offence that will cover offensive chanting, missile throwing and unauthorised pitch incursions.

588. Mr Andrews: We wholeheartedly welcome those proposals.

589. Mr A Maginness: Are they important?

590. Mr Andrews: Absolutely.

591. Sir Reg Empey: Further to Alban's point and to go back to the evidence that we received from representatives of the game: the aim is clearly to create an atmosphere to encourage more people to attend, particularly from a family-friendly point of view. What could be done to achieve that objective? You are core supporters and have been loyal supporters of different clubs and Northern Ireland for many years. It is surely in your interests and those of the clubs to get more people through the turnstiles. How could that be achieved other than by the proposals that are before us?

592. Mr Andrews: As we said, the key is working in partnership. It is evident that the mainland has moved away from criminalisation and creating offences to deal with football disorder. There are partnerships with fans and clubs, and the onus on fan safety is on the clubs. In the top flight in the UK, 43% of games are police-free. We have campaigned for a long time for more rigorous and safer stewarding.

593. Sir Reg Empey: In a previous evidence session, I think that it was Mr Scott who claimed that there has been an increase in supporter participation in games of some 87%.

594. Mr Andrews: Yes. The were two Acts in GB in 1989 and 1991, which coincided with the creation of the Premier League, the Sky television deal, the influx of foreign players, the holding of the Euro 96 tournament in England and the general influence of the media in promoting football as a fashionable sport to go to and participate in.

595. Sir Reg Empey: I presume that facilities —

596. Mr Andrews: Facilities improved as well. There was major investment in the wake of the Hillsborough disaster.

597. Sir Reg Empey: So, you do not link, as Sport Northern Ireland perhaps does, the creation of the legislation to a potential improvement in attendances? You see it as being —

598. Mr Andrews: It is merely one factor that is part of a suite of activities to help to increase attendances.

599. Mr G McAllister: We developed a relationship with the Football Supporters' Federation in England. In years gone by, for example, when England played World Cup games in other countries, you would have seen images of England fans fighting and rioting with the police. I am sure that you would acknowledge, however, that such incidents now occur very much less frequently. I am not aware of any reports of bad behaviour or disorder involving England fans during the last World Cup. Their fans also opted for self-policing, with people going among fans to try to quell any boisterous behaviour. Police intervention has become a last resort.

600. On the UK mainland, there has been a move away from a harsh approach through policing, and fans are now more involved. We feel that we should learn that lesson in Northern Ireland, and, through our partnerships with the IFA and the authorities, we are keen to do that. We have no difficulty with a law to deal with people who are clearly badly behaved and need to be punished, but the emphasis needs to be on balance. Let us not demonise all fans. Rather than tar everyone with the same brush, let us have something in place that allows us to deal those who need to be dealt with.

601. Mr O'Dowd: I am sorry that I missed the start of your presentation. When I came in, you were talking about the current legislation that relates to policing games and how it should be

enacted. As you heard me say, I am concerned that we may be adopting legislation for the sake of it, because taking the legislation to its extreme shows soccer fans as very dangerous people who should be avoided at all costs. In fact, you are not even allowed to be in possession of a drinks container.

602. Mr G McAllister: I am surprised that you allowed us in here today.

603. Mr McNarry: We have two likely characters with us.

604. Mr O'Dowd: It is about the enforcing current legislation. At the end of your presentation, you commented on the clause that refers to "Being drunk at a regulated match", which may cover the rest of it. Is alcohol currently allowed in stands during matches?

605. Mr Andrews: No.

606. Mr O'Dowd: Therefore, that clause could cover the rest of the concerns about the Bill.

607. Mr Andrews: That is our belief.

608. Mr O'Dowd: You referred to a piece of legislation on the conveyance of alcohol to and from matches in public-hire coaches.

609. Mr Andrews: An amendment made in 1990 to the public service vehicle regulations states:

"while a public service vehicle is standing, plying or carrying passengers for hire a passenger shall not...consume alcohol."

610. Sir Reg Empey: It does not say "do not possess".

611. Mr O'Dowd: That gets round the issue of people bringing back two bottles of malt whisky. That is grand. Everything else has been covered, thank you.

612. The Chairperson: No other members wish to ask a question. Gentlemen, thank you for your briefing and for taking our questions. You are welcome to retire to the Public Gallery. We will be asking the departmental officials to come back so that we can hear what they have to say about what they have heard.

613. We welcome back departmental officials Gareth Johnston, Tom Haire and David Mercer. Gentlemen, you have heard all the presentations, and quite a number of issues were raised. We have tried as best we could to note them. As we go through them, members will make their own comments. We will go though each issue in the order in which we picked them up, which should enable us to get through them quicker. I do not intend to go through them too quickly, because it is important that we do it properly.

614. Mr Johnston, I shall direct all my remarks to you, and you can distribute them to whichever official you wish. One issue that was raised was whether lasers should be included in clause 40.

615. Mr Johnston: As I understand it, laser pens that are legal do not cause injury. They may be a nuisance, but they do not cause injury. Illegally made or sold pens are the problem, and it is already an offence to possess illegally made pens. Match organisers could ban fans from bringing any sort of laser pen into a match under the terms and conditions of buying a ticket. They could eject fans who do so or they could confiscate pens from fans on the way into a match if that were part of the terms and conditions of admittance. However, we are conscious of using the

criminal law only where it is really necessary. So far, individual sports have not flagged that to us as a major problem. Having said that, we are happy to keep it under review. However, it is not something that is directly covered by the Bill at present.

616. The Chairperson: Before we move on, does any member wish to comment on that?

617. Sir Reg Empey: Just briefly. I accept that there is a difference between the types of pens. However, if a player is running with the ball at the goalmouth and someone shines a laser in their eyes, it will have an impact. It may not leave the player with a permanent injury, but it could ignite crowd reaction and tension among spectators.

618. Mr Johnston: The question is whether that should be a criminal offence or whether it should be dealt with by the stewards under the terms and conditions of ticketing. That is the line that we have taken, but we are happy to continue to speak to the various sports about it.

619. The Chairperson: You will have heard it said that much of the legislation is not about safety but about introducing more criminal offences. Is the legislation purely for legislation's sake?

620. Mr Johnston: There has been pressure for some years now to introduce this type of provision in Northern Ireland. I am conscious that we have "Northern Irelandised" it, but England and Wales have had football offences provisions for 19 years now. They have also had alcohol provisions for football since 1985, and we have heard some positive impacts to which that has contributed. However, it has not been the only factor. In 2007, an Assembly motion called for an extension of the Football (Offences) Act to Northern Ireland. We see that as an important corollary of the safety at sports grounds legislation. That legislation has been leading to the removal of barriers, which secure safety. Therefore, the new way of securing safety is through law and through everybody understanding what constitutes acceptable behaviour. There are limits to what the existing law can do in sports grounds, and we have had that illustrated today with the examples of the many instances of missile throwing. That is not be covered by existing law, nor is the offence of chanting, and there are other examples. For example, the law on alcohol in vehicles is about the consumption of alcohol, but we are looking to say that alcohol should not be brought onto vehicles at all. Therefore, there are limits to the existing law, and we are trying to address those.

621. The Chairperson: You heard what has been said here today. Are you prepared to take it on board and to do something about it?

622. Mr Johnston: I am certainly prepared to take on board the points that have been made. There are specific points that we want to take away. One example is that of the GAA's concerns about the designation not just of grounds but of stands and the concerns about how broadly that would go. The issue has only recently come up, but it has been consulted on and published, and colleagues in DCAL are happy to talk to the GAA about it to see whether we can find a way through it. There are certainly points that we will look at and come back to the Committee on.

623. The Chairperson: How will the clauses be good for sport generally? How will you ensure that they will not reduce attendances, particularly given what was said today by those who represent rugby?

624. Mr Johnston: The clauses are about sending a positive message. Concerns were raised today that they are about demonising people, but that is not the intention. Concerns were also raised that the Department is not recognising all that the sports have done, and if I have not expressed that enough, I regret it. The sports have taken tremendous steps to address safety issues, to tackle hate crime through recent campaigns and to enforce messages of acceptable standards of behaviour, which was all really valuable. The legislation is, in part, about sending a

positive message that our sports grounds are places where people can be safe, bring their families and be able to have fun and a bit of banter, yet be assured of basic standards of decent behaviour. I see the provisions sitting alongside what the sports are doing to make sport more family friendly and encourage people to come out and support their local clubs, rather than sitting at home and watching them on television.

625. Mr O'Dowd: Have there been any discussions with the different clubs on self-regulation, strengthening their own codes of conduct and working closer together? The Coleraine three, who were given their marching orders for invading the pitch, can still go to watch Coleraine when they are playing Ballymena. Should we not look at self-regulation first, and, if that does not work, move to more extreme measures and bring in the legislation on banning orders and so on?

626. Mr Johnston: The Department has had discussions with all the groups that were represented here today, and it also had the benefit of their responses to the consultation. As we heard from the IFA, the football groups have supported many of the measures. Indeed, they specifically called for some of those measures and they called for a couple of things today that are not in the Bill. Those who represent football and the others sports are concerned about particular things, be they alcohol and rugby or circumstances of pitch incursions during GAA matches, and we can look at those. However, there has been a general welcome from those two sports. Those who represent rugby said that they do not object to applying the provisions on missile throwing and pitch incursion even though they do not have problems in those areas, as that would send out the wrong signals. Likewise, those who represent the GAA raised a number of practical points, but have not attacked the base purposes and assumptions in the provisions. There was consultation and the message that came back was positive overall, even if some tweaks are needed.

627. Mr O'Dowd: In a sense, the sports bodies are in silos and look after the sporting end, whereas, as politicians, we have to look after the broader issue of the use of legislation. Gareth, you said that you do not wish to bring in criminal legislation for the sake of it, but I am concerned that some of the provisions are being introduced for that very reason.

628. My original question was about self-regulation and the codes. There seems to be a pursuit of self-regulation in many of those issues that will lead to people being convicted of criminal offences. For example, I have serious concerns about the introduction of banning orders and the impact that that will have on human rights. If people are involved in violent activity, they should be brought before the courts and prosecuted. There is more openness around self-regulation. The sporting organisations will not openly criticise the Department of Justice and the Department of Culture, Arts and Leisure. That is not their role in life. They will look after the sporting element, but, as politicians, we have to look after the effective use of legislation. If I am going through this legislation line by line, I am not going through another piece of legislation line by line, and I want to ensure that my time and everyone else's is being used wisely.

629. Mr Mee: The sports have codes of conduct, and some of them have had them for some time. We depend a lot on what the sporting bodies tell us and ask us. The IFA introduced a code of conduct nine or 10 years ago. At the same time that it introduced that, it asked for legislation in this area, and it has continued to do so. The Assembly has suggested legislation in that area. Among a number of them, there is a sense that the sporting codes are not always enough because incidents still happen, and they often ask for legislation to support their codes in some instances. They want to apply those in law.

630. The Chairperson: Have the GAA or the rugby authorities been asking for the legislation?

631. Mr Mee: To be fair: they have never asked for it directly. Although I cannot speak for them, from the consultations that we have engaged in with the Department of Justice, we see that the

general view of those sports has been that they are happy with most of it, provided there are certain adaptations to suit their circumstances and that certain aspects of it do or do not apply to them.

632. The Chairperson: I asked that because you gave the impression that, to some extent, you were led by them and that you took great cognisance of their views.

633. Mr Mee: Yes.

634. The Chairperson: But, they did not request the legislation.

635. Mr Mee: No.

636. Mr McNarry: It is interesting that it might have taken sport to nudge John O'Dowd and I closer on at least one view.

637. Mr O'Dowd: May I change my mind?

638. Mr McNarry: That is progress, but we will not dine out on it yet.

639. Mr O'Dowd: No, not yet.

640. The Chairperson: One swallow does make a summer.

641. Mr McNarry: I am very interested to hear your comments. Have you any others? [Laughter.]

642. We have had nearly four hours of listening and, I emphasise, learning. It has been good. I am not convinced that I can take a hard-and-fast decision or even anything approaching it tonight. There is a lot to digest and take on board, and I need time to reflect. I congratulate everybody who is still awake, and I thank them for their excellent contributions.

643. Mr Johnston is not convincing me that there is any real movement. I need to find that out, and I do not think that we will find that out tonight. When might we find out from the officials whether the Minister is not only up for considering changes but for advising us on the territory in which he might make changes? If he is not, we might as well know that, and then we, as a Committee and individuals, can get on with how we will tackle the Bill.

644. The Chairperson: I suspect that we will not know for a while. The process that we have started today will go on for some time.

645. Mr McNarry: I was referring this particular section of it.

646. The Chairperson: The Committee does not need to make any decisions on any aspect of that today, and we will not do so. The organisations that took the time out to present their case to the Committee and take our questions are listening to the response from the departmental officials. It is only proper and right that they should be given the opportunity to make a written submission on the aftermath of their evidence.

647. Mr McNarry: I welcome that. At least that is progress.

648. Mr A Maginness: May we make general points now?

649. The Chairperson: I am dealing specifically with this issue. As we go through, members can come in at the appropriate time to raise their concerns about an issue.

650. Mr Givan: I have a point about the need for the legislation. If the Assembly passes the legislation, who is going to enforce it? Who will be placed under an onus to do that job? If stewards at matches have not been doing that until now, what is the evidence to suggest that they will do it once it has been legislated for?

651. Mr Johnston: Ciarán may want to say something about that as well. The hope is that stewarding has come on so much in recent years. The hope is that if stewarding is being done in a way that complies with the safety legislation that has been enacted, there should not be much more that needs to be done to address any of the needs from the legislation.

652. Mr Mee: The new safety legislation requires certain standards in stewarding. As you heard, some of the sports use professional stewards because they are required to have appropriate quotas of properly trained stewards.

653. Further education colleges and so on provide courses for stewards, so there is a new approach on the safety side towards the professionalisation of stewarding. We think that that will help with the enforcement of this. Some of the sports representatives talked about the fact that effective enforcement comes partly from good event management by the organisers and between the police and the clubs. We want the match organisers to rely on the police only when they absolutely need to.

654. Mr Givan: If someone in a stand heard someone else engaging in offensive chanting but a steward did not do anything about that, would the steward have to respond if the person who heard the chanting then said, "That individual just said something that should not have been said."

655. Mr Mee: The steward would have to make a judgement call in that circumstance. However, stewards should certainly be looking out for issues that have the potential to trigger wider crowd problems. If the issue is offensive chanting, the stewards and clubs should certainly be aware of it.

656. Mr Givan: I am concerned about how we are going to police this if it is brought in.

657. The Chairperson: Mr Johnston, will you comment on the clause that deals with the possession of drink containers? How will that work in practice?

658. Mr Johnston: The clause refers to containers that are capable of causing injury. As I understand it, the practice applied in England and Wales and at non-sporting events in, for example, the Odyssey, is that plastic bottles of water or Coke are handed over with no tops on them. So, if someone gets carried away and decides to throw a bottle, the liquid would spill out and the bottle would hopefully not do anyone too much harm should it hit them. Furthermore, all cups will be either plastic or paper.

659. We think that the practices applied elsewhere can be carried on and used at matches here and that they should fit within that definition of drinks containers, which bans only the ones that are capable of causing injury. We are very happy to look at whether we can provide some guidance to clubs to assist with that. There is certainly no problem with a child coming to a ground with a carton of juice or a plastic bottle of Coke with no top on it.

660. Sir Reg Empey: Unless it is frozen.

661. Mr Johnston: I had not thought about that. It may be that there is a little bit of a need for slightly different practices. However, we think that we can cope with that. People will still be able to enjoy soft drinks and everything else at matches.

662. The Chairperson: Mr Johnston, you are losing me here. Are you saying that people are going to be asked to take the tops off any bottles before they go into the ground?

663. Mr Johnston: That is what happens elsewhere and in the likes of the Odyssey. If someone buys a plastic bottle of Coke, it will be handed over to them with no top on it.

664. The Chairperson: What would happen if I came to the ground with a bottle of Coke?

665. Mr Johnston: You would be asked to take the top off.

666. The Chairperson: They will ask me to do that? Right. I will hand over the top, say, "Have a nice day", and go on ahead with my bottle.

667. Mr Johnston: You will hand over the top. Yes.

668. Sir Reg Empey: They will take the top off even if you do not want the drink at that time.

669. Ms Ní Chuilín: People can buy a soft drink in the grounds.

670. Mr Johnston: The top would be taken off.

671. Ms Ní Chuilín: They would take the top off? Would they pour the drink into a plastic cup?

672. Mr Johnston: They would either take the top off or pour the drink into a plastic cup.

673. Mr Givan: If a bottle is unopened and has its top on, would that not ensure that there is no alcohol in it?

674. Mr Johnston: A plastic bottle was sitting over there. It is gone now.

675. Ms Ní Chuilín: It has been removed for your safety.

676. Mr Johnston: A 500 ml plastic bottle that is filled with water weighs 0·5 kg. I believe, from what I learned in physics, that I am correct in saying that. That is a fair weight with which to bump somebody. So, some precautions are needed. Taking the tops off bottles should mean that they are not dangerous.

677. Mr O'Dowd: It does not say that in the legislation. [Laughter.] Clause 42(2)(a) refers to:

"a bottle, can or other portable container (including such an article when crushed or broken) which -

(i) is for holding any drink, and

(ii) is of a kind which, when empty, is normally discarded or returned to, or left to be recovered by, the supplier".

678. Mr Johnston: Clause 42(2) states that:

"This subsection applies to any article capable of causing injury".

That is the key point. Our contention is that a plastic bottle that has no top on it is not capable of causing significant injury.

679. Mr O'Dowd: That is a wee bit like the definition of when someone is drunk, which is not defined by law.

680. Mr Johnston: It is the usual problem. If, in primary legislation, you start to say that you can have this, but you cannot have that, the result is that you will leave something out that causes problems further down the line.

681. The Chairperson: Right. Let us move on.

682. Ulster Rugby requested that it is not included under clause 43. Let us hear your comments on that.

683. Mr Johnston: I welcome the fact that that was our only disagreement with Ulster Rugby. That was acknowledged. We recognise that it is an ongoing issue for the IRFU and for supporters. We will approach them, if we have not done so already, about a further meeting specifically on that point. We are happy to discuss it further.

684. The background to the inclusion of rugby was the safety at sports grounds policy and legislation. That was why rugby was brought under those provisions in Northern Ireland. I am conscious that the legislation will be with us, quite possibly, for 20 years or 30 years. We are providing not only for the safety of current supporters, but for the safety of supporters in the future.

685. We have proposed to take the powers relating to alcohol, but not to commence them without further consultation with the Committee and the sports bodies. That is the case for all three sports. Today, we heard from the football body about its concerns over the periods during which alcohol would be banned: the two hours before and the hour after a game. Again, we are quite happy to talk more to the football body about that.

686. If we are saying that we would not commence powers now in respect of rugby, or if there is no immediate intention to do so, I guess that the Committee would question why we would take the powers at all. We would do so for two reasons. First, is to look to the future. What is the case now may not be the case in 20 years' time. Standards of behaviour now may not necessarily be standards of behaviour in 20 years' time. Across the water, that has been seen in cricket.

687. Secondly, it is to encourage fans and supporters to continue to show good behaviour. If they continue to drink and behave responsibly, there is no need to introduce further legislation. If they do not, however, there is the possibility that more restrictive legislation could be introduced. If the powers were commenced, there is flexibility with the times during which the alcohol ban would apply. The key point is that we need to put legislation in place that looks to the future. That is why we want to take that provision even if there is no immediate intention to apply it to rugby.

688. The Chairperson: In looking 20 years ahead, you are taking a fairly long-term approach. There is always provision to amend legislation.

689. Mr Johnston: Indeed. However, the message that it sends is important. That message is that we are introducing the provisions on alcohol in response to need. There may not be a need for those provisions in rugby at the moment, but, if that need arises, they could, in principle, be introduced very quickly.

690. The Chairperson: Are you agreeing that the legislation could be amended?

691. Mr Johnston: Yes; we could amend the legislation.

692. Sir Reg Empey: What about drugs? We may as well include those.

693. Ms Ní Chuilín: Steady on, Reg.

694. Mr A Maginness: Do the provisions include corporate hospitality?

695. Mr Johnston: We have exempted private viewing facilities. Corporate hospitality in rooms to which the public do not have access will not be covered; that is on the statute book.

696. Mr A Maginness: The point was also made that, in England and Wales, different rules can apply for different sports that are played in the same stadium. The no alcohol rule applies at soccer matches, but spectators are permitted to consume alcohol in view of the pitch at rugby matches. How is that drafted? Could you draft something similar here?

697. Mr Johnston: That is down to the fact that the legislation in England and Wales covers only football; other sports are not covered. I received feedback that that leads to confusion among fans. If they are there on a Saturday, they can drink; if they are there on a Sunday, they cannot, or vice versa.

698. Mr A Maginness: So, it is football specific in England and Wales.

699. Mr Johnston: Yes.

700. Mr A Maginness: Is there no law that covers rugby?

701. Mr Johnston: The ordinary drunkenness laws and so on cover rugby, but there is no specific provision.

702. The Chairperson: The IFA sought clarification on the position regarding alcohol in corporate facilities at football games. I might be taking that issue out of sequence slightly, but perhaps you will comment on it.

703. Mr Johnston: Private viewing facilities are exempted from the legislation. A corporate box, for example, to which the general public do not have access, is not covered by the legislation.

704. The Chairperson: Schedule 3 on page 80, namely regulated matches, makes no reference to Ulster GAA.

705. Mr Johnston: Yes. We worked with the draftsman on that point. However, we are happy to revisit it with the draftsman to ensure that it is completely covered.

706. Mr Mercer: The other organisations, the IFA and the IRFU, are defined in schedule 3 only because it goes on to mention those bodies specifically. The Bill refers to Gaelic games but not

the GAA, so there was no need to include a definition of the GAA. That is the explanation, but we will look at that again.

707. The Chairperson: You will revisit that.

708. Mr Johnston: Yes. Following that, I would be happy to write to the GAA and copy that to the Committee if that would be helpful.

709. The Chairperson: Will you comment on the view that Ulster GAA governance bodies should have more autonomy to control the possession of alcohol at matches rather than there being blanket legislation?

710. Mr Johnston: That comes down to the general points that we have made about the part of the legislation that deals with alcohol. We will consult the bodies on exactly how the provisions are commenced and how they will be applied in the period before we come forward with a commencement Order.

711. Sir Reg Empey: I am concerned that we are losing the run of ourselves. A lot of this is well-intentioned, and, clearly, there is a problem that has to be addressed; we understand that. It is like planning. We have lots of planning laws, but they are not enforced. You will need armies of people to enforce a lot of this. That is my worry. It is not entirely clear who those people will be. There will be stewarding, and I think that we are in favour of that. I have always supported that. However, that will, in many instances, translate into a situation in which the PSNI will almost have the role of standing in front of a court and saying, "It was him." I have concerns about the enforcement issues. We need to look at that, because there is no point in introducing legislation, if it is going to be flouted or if it cannot be enforced. I am not entirely clear on that, but it is something that we will have to look at generally as we go through this exercise, and we must not simply confine it to sport.

712. The Chairperson: Yes. I suspect that we could say that about most legislation. It is down to enforcement. Are we getting into a situation in which we will have a maze of legislation that is unenforceable?

713. Sir Reg Empey: That is my worry.

714. Mr Johnston: In many ways, it is no different from any other legislation or from situations that occur every day. For instance, there can be trouble in shopping centres, amusement arcades and nightclubs, and, in those instances, there are many situations in which stewards or security guards are the first line of defence. The GAA representatives raised concerns about instances in which they will need to liaise with and give evidence to police, if there is going to be a prosecution. When we talk about enforcing the sports legislation, I am not sure that we are talking about situations that are completely alien. If you had asked me the same question 10 years to 15 years ago, I might well have had concerns about the sports, how effective the stewarding was and whether they were in a position to provide that first line of defence. The advances that Ciarán outlined give me more confidence that this would be enforced to the extent that it needs to be enforced by the criminal law, bearing in mind that the match organisers and stewards are always the first level.

715. Mr Mee: It is important that we do not see that in isolation. The IFA and a number of others talked about the wider package, which includes issues around safety and the concept of good safety management and good behaviour fitting in with that and creating the kind of safe, welcoming and comfortable environment that this is partly intended to deliver. I stress that the issues should not be looked at in isolation.

716. Sir Reg Empey: I think that that is a fair comment.

717. The Chairperson: We have a fairly lengthy agenda after this, so I am going to speed the meeting up a bit, because we are going to have to be more precise and a wee bit swift.

718. Mr Johnston: I would like to make one point in response to something that Mr McNarry said, though he will not have a chance to hear it. There was a concern about whether we are being responsive enough and whether we are taking on board the things that we are hearing. If I have given any other impression, I will be getting the sharp end of my Minister's tongue when I go back, because his concern was very much that the Committee be assured that we will take the concerns into consideration. The fact that there will no longer be provisions for alcohol in private viewing facilities is a change. We have said that we will look again at the issues around sectarianism and how that is defined. I referred to the GAA designations. The flexibilities about alcohol and the way in which the parts of the Bill that relate to alcohol will be introduced are rather different from the stricter position on which we consulted. We are going to look again at the points that the IFA raised about banning orders in relation to Scottish matches and civil banning orders.

719. I hope that I am giving an impression that there are points that we are continuing to hear and are taking back. We will be bringing amendments. If there are other matters that, having considered the issues that have been heard today, the Committee wants to bring to us, we will be happy to take those specific proposals and come back with specific responses.

720. The Chairperson: The IFA representatives said that the timings for the possession of alcohol are somewhat excessive.

721. Mr Johnston: The proposal is that it be prohibited for two hours before and one hour after a match. We have put in the Bill the opportunity to substitute other periods. That was done in response to concerns that we heard at consultation stage.

722. The Chairperson: You heard it said that clause 49 is sufficient to deal with drunken individuals and that there is no need for any further clauses.

723. Mr Johnston: The problem is that that deals only with people once they are drunk. Part of the aim, I guess, of the legislation is to stop people getting drunk in the first place.

724. The Chairperson: Are you saying that it is also to stop them getting more drunk?

725. Mr Johnston: Indeed.

726. The Chairperson: What need is there for more legislation to deal with alcohol on transport? Why not just use the existing legislation?

727. Mr Johnston: Again, it is about what the existing legislation covers. It bans consumption in vehicles, but only consumption. We are proposing to cover possession and to put some responsibility on the owners of the vehicles, who, after all, are making a profit. We feel that there should be some responsibility on them not to permit drink to be brought on board. It is about addressing gaps in the existing legislation.

728. Mr Haire: It is an issue across the three sports. I am not saying that it applies to them all, but, for example, the GAA has said that alcohol on transport is an issue for it. We are trying to provide a package that will deal with different circumstances.

729. Mr Mee: When we talked to them in the past, some of the sports raised the issue of people buying alcohol on the way to a match and arriving with it at that match. If, perhaps, they cannot gain admission with it, that can lead to problems at the turnstiles.

730. Mr Johnston: It may be that on such occasions, those persons do not go into the match, but go off and drink it and cause trouble when everyone else comes out. We hope that it is not a very big restriction on people's liberty. People can still nip down to the off-licence, buy as much as they want and go home. People who want to buy a couple of bottles of whisky as Christmas presents can still do so at home rather than when they are in Glasgow watching a match.

731. Mr O'Dowd: It is actually an economic policy, then, with the aim of driving up sales in the North rather than anywhere else. It is nothing to do with how much people want to drink; it is to do with legislation for legislation's sake. I cannot see the PSNI setting up a flying squad to zoom up and down the motorways following buses to see whether someone is drinking.

732. Mr Johnston: There has been concern expressed by —

733. Mr O'Dowd: To save having a dispute or an argument, could you present the Committee with papers that show how many arrests and detentions have arisen from drink being taken on public hire buses that are going to and from matches?

734. Mr Johnston: I will certainly speak to the police to see whether we can get some information on that.

735. Mr O'Dowd: As this piece of legislation is deemed urgent, I am sure that you have done research and have received background information.

736. Mr Johnston: I will have a look and see what we can get or produce.

737. The Chairperson: The removal of the reciprocal system of banning orders throughout the UK, which the IFA strongly supports, is disappointing.

738. Mr Johnston: There was a legislative competence concern, as we have seen with other subjects, around whether it was possible for the Assembly to make legislation that has extraterritorial effect. That is a point that we are addressing with the Attorney General's office. If there is the potential to bring that provision back, we certainly will. In legislating for that, it may be that we need to look more broadly than the current Bill. However, we are addressing the issue and our desire is to make that provision.

739. The Chairperson: Mr Johnston, the more that I heard from the organisations that presented their cases today, and the more that I listen to you, it strikes me that this legislation seems to have been lifted directly from England and Wales and has very little to do with the situation in Northern Ireland.

740. Mr Johnston: Of course, the legislation in England and Wales covers only football, and we have taken it more broadly than that. We have heard the pros and cons of that —

741. The Chairperson: Wait. Football matches in England get crowds upwards of 70,000. We are not dealing with those sorts of crowds here.

742. Mr Johnston: But, we are dealing with situations of crowd trouble. We have seen in the past that a small number of people have caused problems. We feel that we need to regulate that.

743. The Chairperson: Yes, but your legislation deals with wide-scale hooliganism that is likely to breakout. Maybe I am totally wrong or am living somewhere else, but I suspect that there is not going to be a massive surge in hooliganism at rugby or IFA matches on Saturdays. I accept that there are incidents, but, by and large, that is not happening.

744. Mr Johnston: A lot of criminal law is not about dealing with things that happen every day of the week but about dealing with excesses of bad behaviour.

745. The Chairperson: Something that will not happen, is that what you are saying?

746. Mr Johnston: No, it is about dealing with excesses of bad behaviour and having the means to do so. It is also about the message that is sent out. When whatever is enacted is enacted, we, the sports bodies and Sport NI will probably need to think further about communications and about what messages we are sending. We need to try to make sure that those messages amplify the positive work that is going on elsewhere, rather than act against it.

747. Mr Mee: Some of the research that we have done on other policies and strategies, particularly our soccer strategy, suggests that a lot of people are not attending games because of the perception that there is a lot of hooligan behaviour out there. That behaviour may not be on the scale that it has been in GB in the past, but it takes only one ugly incident to cause a lot of disproportionate damage; for example, the international game between Northern Ireland and Poland or some of the incidents that Sport NI mentioned. That is the particular concern that was fed to us by the IFA and others.

748. The Chairperson: I hear what you are saying. However, I honestly think that you are trying to put legislation in place for something that we think might happen 20 years or 30 years down the road. I am not sure whether that is the right approach.

749. Mr Johnston: I made those comments in respect of rugby. However, we have heard examples today of relatively recent problems in other sports. Those problems are not caused by the majority of fans, but are problems that we need the right legislation in place to deal with.

750. The Chairperson: We will move on to the issue of ticket touting. Ulster GAA raised the issue of whether the enforcement clauses for ticket touting could actually be applied.

751. Mr Johnston: The phrase in the legislation is "authorised in writing". Ulster GAA's concern was about passing tickets on to friends or buying half a dozen tickets for your friends and then getting the money back from them. The amalgamation made a comment about the requirement in the legislation being for written authorisation, but that can simply be written authorisation on the back of the ticket or in the terms and conditions that are published that apply to ticketing. So, it is not that you need to get an individual letter saying that you are allowed to do that.

752. The Chairperson: An issue was raised that some football matches that fall under the legislation will not be ticketed matches; therefore, the ticket touting clauses cannot apply even though they probably should.

753. Mr Johnston: There is a clause hidden away somewhere that makes clear that it is only for ticketed matches.

754. Mr Haire: It applies only to regulated games, but, obviously, it can apply only to ticketed games.

755. Mr Johnston: Our expectation is that, if a game is not ticketed, it does not have to become ticketed because of the ticket touting legislation.

756. The Chairperson: Thank you for coming here today. We will definitely be talking to you again. If anyone in the Public Gallery who made a presentation to us has any issues that they want to come back to the Committee on in writing, please feel at liberty to do so, and we will give you a fair hearing. I thank all those who have attended here today.

757. Mr Johnston: I thank the Committee for its patience this afternoon. As departmental officials, we have also valued hearing the views of the various bodies. We have spoken to them before, and we have had written consultations from them, but sometimes views develop. Therefore, it was useful to have this afternoon's session.

758. The Chairperson: Thank you very much.

25 November 2010

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Thomas Buchanan
Sir Reg Empey
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt
Mr David McNarry
Mr John O'Dowd

Witnesses:

Mr Tom Haire Mr Gareth Johnston Mr Chris Matthews Ms Janice Smiley	Department of Justice
Ms Geraldine Hanna Ms Susan Reid	Victim Support Northern Ireland
Mr Stanley Booth Ms Anne Doherty Mr Bill Halliday Ms Laura McKay	MindWise
Mr Paul Leighton Ms Mandy Morrison Dame Anne Owers	Prison Review Team

759. The Chairperson (Lord Morrow): Departmental officials will outline the victims and witnesses and live links Parts of the Bill and their intent. Before the Committee are Gareth Johnston, deputy director of the justice strategy division; Tom Haire, the Justice Bill manager; Janice Smiley, head of the criminal policy unit; and Chris Matthews, head of sentencing delivery and the European unit. You are all very welcome.

760. The officials will have 10 minutes to outline the clauses on the offender levy, and there will be five minutes for Committee members to seek clarification on any points. I remind members that questions and the discussion of issues will come later. The point of this briefing is to set out what the legislation says and its intent. I invite the officials to brief the Committee on the offender levy aspect of the Bill. Will it be you, Mr Johnston?

761. Mr Gareth Johnston (Department of Justice): No, I will let someone else to speak this week. Janice Smiley will take this briefing.

762. Ms Janice Smiley (Department of Justice): The Committee received a briefing on 3 June as the consultation had concluded, and I received a broad welcome for the proposals. We are now at the stage when those provisions have been included in the Justice Bill, and this is an opportunity to talk a little bit about some of the issues that have been raised and how the proposals have been developed and shaped.

763. The provision for the offender levy is set out in Part 1, Chapter 1 of the Bill and comprises six clauses. As some of the issues are interrelated, I will take the Committee through them thematically, rather than going through the clauses chronologically.

764. I will give a summary. The levy will be mandatorily imposed, but the amount can be reduced or omitted in limited circumstances. It will apply to adult offenders only — those aged 18 or over — and it will be imposed across a wide range of specified court disposals and non-court based fixed penalties. It will be applied on an escalating rate of between £5 and £50, increasing in line with the severity of the disposal. It will be collected and enforced by the courts in the same manner as a court fine, except when a period of custody has been given, in which case the levy will be deducted from prisoner earnings.

765. Clause 1 sets out the sentences and clause 5 sets out the fixed penalties to which the levy will be applied. As the Committee will see, those include immediate and suspended custody; community sentences; court fines; endorsable fixed penalties for road traffic offences, which are serious but low-level traffic offences that result in a drivers' licence being endorsed with penalty points; conditional offers of fixed penalties for those offences detected by speed cameras; and fixed penalties for low-level disorder type offences, as provided for in Part 6 of the Bill. Clause 5 also makes provision for the attachment of a levy at a future date to fixed penalties that are issued by other Departments for criminal offences. Any attachment to those penalties will follow consultations with the Departments involved and would be subject to affirmative resolution in the Assembly.

766. The only aspect that attracted attention on the scope of the sentences and the proposed penalties was the fact that the levy will be attached to fixed penalty notices for road traffic offences, which some view as victimless crimes. However, our view is that those offences, which include driving at excess speed, using a mobile phone whilst driving and parking at pedestrian crossing, have the potential to lead to more serious accidents and fatalities, and that no crime of that nature is victimless.

767. Views were also expressed about the ability of some offenders to pay the levy in addition to other monthly penalties. We recognise that courts have some discretion to reduce the value of a court fine in recognition of an offender's ability to pay, and clause 1 of the Bill makes similar provision for the offender levy in limited circumstances. We propose that those would be situations in which a compensation order has also been awarded by the court, and the court determines that the offender cannot afford to pay the compensation order and the levy. That will ensure that priority is given to the payment of compensation to the direct victim of the offence. Provision has also been made so that the court can reduce a court fine only in situations in which the offender has insufficient means to pay the court fine and the levy.

768. The levy will be applied at a rate that will increase in line with the severity of the disposal. The rates are set out in clause 6. When more than one court sentence is imposed at the same time, the levy will be applied to the sentence that attracts the highest rate.

769. In considering the levy rate, the Committee will remember that it expressed the view that there could be an insufficient differential between £5 for a traffic offence and our proposal for £30 for a custodial offence. Although our purpose is not to place a value judgement on the degree of harm caused in individual cases, clause 6 now provides for a two-tier rate, which will reflect the greater harm caused to victims by those who commit more serious and violent offences. So, £50 will apply to those who are serving sentences of more than two years, and £25 will apply to those who are serving sentences of two years or less.

770. Clause 2 provides for the levy to be collected by the courts in the same way as a court fine, except when immediate custody has been imposed. That has led to some people raising an issue about the potential for the application of a levy to lead to an increase in people imprisoned for fine default. Our view is that the introduction of the levy will not significantly impact on current fine default levels. Our projection is that 93% of levies imposed in any given year will be on disposals that have an existing monetary element, whether that is a court fine, a compensation award or another non-court based penalty. When an individual defaults on the payment of the relatively small amount of the levy, they will be also defaulting on the other monetary order, which is the trigger for enforcement action. So, in those circumstances, the levy itself will not be the cause of any significant additional burden on enforcement procedures.

771. The potential for defaulting is further minimised by the arrangements that we have made for collection from prisoners when a levy has been imposed when someone is sentenced. I will give more detail on that in a moment.

772. We will be carefully considering the timetable for the introduction of the remaining 5% of eligible disposals, but there are improvements to be made on the planned fine and default reform, which seek to improve early payment rates and provide an alternative to custodial default. We will look to time their introduction in conjunction with those coming forward.

773. As I mentioned, clause 3 provides for the levy to be deducted from a prisoner's earnings. The rates of deductions will be agreed with the prison authorities, but I suspect that it will be in the region of £1 a week. It is proposed that the deductions will be applied at the same rate across all three prison regime levels to help maintain prisoner motivation to progress to enhanced status. That is something that the Prison Service thought was particularly important in ensuring that any deduction would not diminish the ability to operate the prisoner earning scheme effectively. That will still enable prisoners to pay for phone calls and buy non-essential items in prison without requiring financial help from families. It will mean that they can still pass money to their families or save towards their resettlement.

774. We propose that the revenue from the levy is ring-fenced through an administrative arrangement with the Department of Finance and Personnel (DFP) and used for the sole purpose of resourcing the dedicated victims of crime fund. DFP is consulting with Treasury officials on the detail of a very similar administrative arrangement that the Ministry of Justice has agreed with HM Treasury on the victim surcharge in England and Wales. We await confirmation of the arrangements and, in the interim, have assured the Finance Minister that implementation of the levy will not commence until DFP has reached agreement on the way forward.

775. The victims of crime fund, in full operation across all of the planned disposals, will provide up to £500,000 a year. That will be used to meet the needs of victims and witnesses during their engagement with the justice system and to assist local groups in the community that work with victims.

776. The proportion of funding that is being provided to groups that are working with victims in the community will be routed through the policing and community safety partnerships infrastructure within the existing administrative costs. The remainder will be allocated according to strategic priorities that are agreed with the victim and witness task force, which is a multi-agency group that comprises representatives of all of the criminal justice agencies, Victim Support Northern Ireland and the National Society for the Prevention of Cruelty to Children (NSPCC). That will cover the entire spectrum of victim service policy areas, including general victims' issues, hate crime, sexual violence, domestic violence, families affected by homicide and other vulnerable victims' groups.

777. The fund will be managed centrally by the Department of Justice (DOJ) within our existing departmental financial management structure and resources. That will be clearly separated from our other funding stream to provide transparency and accountability in the movement of money in and out of the fund. The Department will report regularly to DFP and the Treasury on the fund and its operation, which will include published data on receipts, expenditure and the range of projects that are supported each year.

778. A number of sources have sought assurance that the levy revenue will not replace existing provision but will provide an additional funding stream. We recognise that there will be obvious pressures on all funding over the next four years, and we cannot rule out that some victims' services may come under pressure in the same way as some other business areas. However, we maintain the principle of using levy revenue exclusively to support victims' needs. The introduction of the levy will require a one-off capital cost of £100,000 for administration, which we will meet by reprioritising our existing baselines.

779. As I mentioned, 93% of our disposals to which the levy will be attached have an existing financial penalty. The levy will piggyback on those arrangements without additional administrative costs.

780. For the victims of crime fund, as I outlined, we will utilise existing financial management structures rather than developing stand-alone arrangements, which would incur significant administrative costs in development and maintenance. Therefore, the costs will not outweigh the value to be derived from the levy revenue of up to £500,000 a year that we expect to receive. That should make a significant impact on services to victims in the justice sector and in the community.

781. The Chairperson: Thank you very much. We have five minutes if any member wishes to seek clarification on any issue. You mentioned five fines. Is that in one court? What would happen if the same person had five fines in five different courts?

782. Ms Smiley: Fines will be taken independently. Therefore, if a fine is imposed in one hearing, and fines are imposed in subsequent hearings, they will each be treated as separate leviable amounts.

783. The Chairperson: Is there any possibility that pressure would be put on an innocent person to plead guilty? I am thinking of the incident from just one week ago.

784. Ms Smiley: Do you mean for fixed penalties rather than court fines?

785. The Chairperson: Yes.

786. Ms Smiley: The fixed penalty is an offer that an individual can choose to contest in court. An individual who feels that an offence has not been committed, or that there were extenuating circumstances for the offence, will have the opportunity to contest that in court. The

documentation that comes with the fixed penalty sets out clearly the opportunities for them to consider immediately or within 28 days whether they wish to pay the penalty or to proceed to contest it in court.

787. Mr McDevitt: These clauses have prompted some debate about the concept of victimless crime. You also brought that up. Is that specified anywhere? Is there a consensus or a widely accepted description of what is a victimless crime?

788. Ms Smiley: The road traffic offences that we looked at included those that were endorseable and those that were non-endorseable. Therefore, we looked at offences that attract penalty points, which is the more serious end of the type of road traffic offence that can be dealt with by way of a fixed penalty.

789. Mr McDevitt: Is the concept of the victimless crime written down anywhere? Do you have any source of reference for what is a victimless crime?

790. Ms Smiley: I do not think that there is anything in statute.

791. Mr Johnston: I do not think that it is a concept that we would necessarily want to encourage, because we take the view that all crime has an impact on the community regardless of whether or not you can identify a specific victim.

792. Mr McCartney: Have the departmental officials received the submissions that the Committee received, or will they receive them? Will they respond to some of the questions?

793. The Committee Clerk: Yes.

794. Lord Browne: Can you flesh out the position regarding the deduction from prisoners' earnings, in compliance with rule 26 of the European prison rules?

795. Ms Smiley: Rule 26.10 is that dual work will be provided for prisoners, and there should be adequate remuneration for any work that is undertaken. It is a matter for each member state to set the earnings levels. That is something that the Northern Ireland Prison Service has done across the basic, standard and enhanced regime. Therefore, it provides for a prisoner on a basic regime to earn £6 a week, those on a standard regime earn £11 a week and those on an enhanced regime earn £20 a week. We are proposing a standard deduction across all those levels so that there is no disincentive to the individual to not be motivated to comply with the regime. It will increase earnings potential in regard to the ability to purchase items, without impacting on prisoners' families and enabling them to save money towards their eventual release.

796. The Chairperson: The next chapter and Part relates to clauses on special measures for vulnerable and intimidated witnesses and live links. There will be five minutes at the end to allow members to seek clarification on any points. I invite the officials to deal with that aspect of the Bill.

797. Mr Chris Matthews (Department of Justice): Thank you and good afternoon. I am going to cover special measures and my colleague Tom will cover live links. Clauses 7 to 13 deal with vulnerable and intimidated witnesses. Specifically, they provide for a series of amendments and enhancements to the framework of special measures created by the Criminal Evidence (Northern Ireland) Order 1999. The clauses seek to expand, enhance and improve the support we provide to vulnerable witnesses by building on what is in place.

798. Clause 7 will amend the 1999 Order to ensure that more young witnesses are eligible for special measures. The clause will increase the scope of eligibility for special measures by raising the age of entitlement from those under 17 to those under 18. Those changes will bring the age of eligibility into line with the age at which a person is considered to be a young defendant. They reflect the fact that witnesses aged 17 can experience anxiety during court proceedings and they are in line with the definition of a child contained in the UN Convention on the Rights of the Child.

799. Clause 8 makes provision for the court to take the views of young witnesses into account when applying the primary rule. It also removes a category of young witnesses who are in need of special protection. The primary rule obliges the court to make a special measures direction for all young witnesses to give their evidence by video recording and to give any further evidence by live link. However, the rule is disapplied in circumstances in which special measures would, in the view of the court, be contrary to the interests of justice, or would not maximise the quality of the witness's evidence.

800. Research has indicated that some young witnesses, especially in the upper age ranges, want to have a say in how they give evidence. Therefore, clause 8 will require the court to give effect to the young witness's wishes in the application of the primary rule. The witness can ask for the rule to be disapplied in whole or in part, and, when the rule is not being applied, the evidence must be given in court from behind a screen. Safeguards are built into the provision. The court must be content that the quality of the evidence will not be diminished and, further, the requirement does not apply when the court believes that complying would not be likely to maximise the quality of the evidence. In making its decision, the court must have regard to the age and maturity of the witness; their ability to understand the consequences of their decision; the relationship between the witness and the accused; their social, cultural and ethnic background; and the nature of the proceedings.

801. Clause 8 will also remove a category of young witnesses who require special protection. A young witness in need of special protection is one who is involved in proceedings relating to sexual violence or an offence of violence; for example, assault or false imprisonment. For a witness in that category, the primary rule applies without exception. However, in practice, that may actually cause harm. In some cases, witnesses who are victims of sexual assault can have the assault video recorded by the perpetrator, and then young witnesses may find the process of having their evidence recorded uncomfortable or distressing. The Bill will therefore remove that category of witness and, in so doing, place all young witnesses on the same footing.

802. Clause 9 will create a rebuttable presumption that, when requested, adult complainants in sexual offence cases can give their evidence in chief by video recording. Under that provision, victims of sexual offences will, if they wish, be able to specify when making an application for special measures that they want to give their evidence by video recording. Subject to certain limitations, the judge will be obliged to give effect to that wish. The limitations are that giving evidence in that way should not, in the opinion of the court, be contrary to the interests of justice or not be likely to maximise the quality of evidence being given.

803. Clause 10 will place on a statutory footing the power to allow for the presence of a supporter of a witness giving evidence by live links. Currently, the court may do that by virtue of its existing powers; however, following the review that led to the provisions, we feel that it is now better to place the power in legislation. The court will be able to specify who the supporter is when making a direction. Although the final decision is for the court to make, the witness's wishes must be taken into account.

804. Clause 11 will provide for greater flexibility in giving additional evidence in chief after the admission of a video-recorded statement. Currently, no further evidence in chief can be heard on

matters that, in the view of the court, have been dealt with already in recorded testimony. That amendment will provide the court with greater discretion to admit further evidence once video evidence has been admitted. Under that provision, and with the permission of the court, witnesses may be asked further questions to enhance or expand on issues already dealt with or to examine matters that have come to light since the evidence was given. That will give greater flexibility to improve the quality of information available in the court.

805. Clause 12 will create a wholly new provision in the 1999 Order that allows for examination of the accused through an intermediary. Under that clause, and on application by the accused, the court will be able to give a direction that any examination must be conducted through an intermediary when it considers that the accused may require assistance to understand the questions being put to them and that the court may require assistance in understanding the answers given. The purpose of that provision is to provide additional support to the accused to ensure that there is a fair trial.

806. In some cases, the person accused of a crime may not properly be able to understand the proceedings against them. The measure is intended to assist them to participate fully and effectively in the trial. Examination of the accused in this way must take place in the presence of the judge and legal representatives on both sides, and both must be able to communicate with the intermediary. Further, both the jury and any co-accused must be able to see and hear the examination.

807. If the intermediary makes a statement that they know to be false or do not believe to be true, they will be guilty of perjury and liable for up to seven years in prison. Clause 12 will also provide powers for the court to discharge fully or vary a direction when it appears to the court that that is necessary to ensure a fair trial.

808. Clause 13 amends the 1999 Order to extend the scope of protection for young complainants and other child witnesses from cross-examination by the accused. In practice, that will mean that for certain sexual offences, the accused is prohibited from cross-examining in person any complainant or witness who is under the age of 18.

809. Mr Tom Haire (Department of Justice): Thank you, Chris. Briefly, there are six, at times lengthy, clauses on live links that insert additional provisions into live link laws. Despite their length, most of them are simply mapping equivalent and existing provisions on to some additional types of hearings, some of which, to be honest, are quire rare.

810. The purpose of the Criminal Justice (Northern Ireland) Order 2008 was to try to consolidate as much of our live links law as possible into one piece of statute. We subsequently identified a number of gaps. The Bill has two purposes: to further consolidate that package —

811. The Chairperson: You have two minutes, Tom.

812. Mr Haire: At the same time, we want to widen it into a couple of important areas. Clauses 15, 16, 17 and 18 will map in preliminary and sentencing appeals to the County Court as well as some additional types of hearings at the Court of Appeal. Clause 15 will replace the current inherent power of the High Court to deal with preliminary hearings by live links, mostly bail hearings, to put that on to a statutory footing with the regime that comes with the law.

813. We are mapping two additional areas in clause 14, which has a more positive and important change as it allows live links for preliminary or sentencing hearings for patients detained under Part III of the Mental Health (Northern Ireland) Order 1986. Part III patients are basically on remand in hospital or in detention in a hospital by way of that Order. Clause 19 will replace the existing law around the vulnerable accused to include physical disabilities and disorders. At the

moment, it simply covers what one might describe as mental disorder. It puts vulnerable accused on the same footing as vulnerable witnesses.

814. That was slightly out of sequence, but those are the powers under the live links section.

815. The Chairperson: Well done. Thank you very much. Members, we will now ask any questions for clarification.

816. Mr McDevitt: Clause 12 refers to the appointment of intermediaries. How will the concept of assistance be defined and who will define it? Who will define whether someone is deemed to need assistance, and what makes someone eligible for assistance?

817. Mr Matthews: It depends whether the person is over the age of 18.

818. Mr McDevitt: Take an adult, first.

819. Mr Matthews: If someone is 18 years of age, they can apply to use an intermediary if they suffer from a mental disorder, as defined in the Mental Health (Northern Ireland) Order 1986, or if they have a significant impairment of intelligence and social functioning and, for that reason, cannot participate in the trial.

820. Mr McDevitt: OK. How would it work for a child?

821. Mr Matthews: The conditions are that the accused's ability to participate effectively is compromised by their level of intellectual ability of social functioning.

822. Mr McDevitt: Would that need to be independently certified? How would the courts be satisfied of that?

823. Mr Matthews: The defence would apply and the court would make a decision on the basis of evidence given to them. The final decision is for the court.

824. Sir Reg Empey: I apologise; I had to go and get some notes. I have a brief question on the concern around the potential increase in the number of people in prison for fine default. Has the Department any figures in mind for what way that will go?

825. Mr Johnston: A lot of effort is certainly being put into reducing those numbers. In particular, a fine collection scheme has been jointly launched by the police and the Court Service. That has led to a 30% reduction in the number of arrest warrants issued for people who have not paid fines by reminding people about fines and emphasising the different ways to pay. We are considering what more can be done in the longer term to address fine default. However, we are hopeful that the fine collection scheme will start to feed through into prisoner numbers. It has not as yet, because it has been in operation for only a short time.

826. Sir Reg Empey: Could you remind us how many of the 4,000-odd prisoners in jail at the moment you reckon are in for fine default?

827. Mr Johnston: At any one time, only 20 to 25 of the prisoner population are fine defaulters. However, the more relevant figure is the number of receptions for fine default. Perhaps my colleague can point you to those numbers.

828. Mr Haire: It is around 1,500.

829. Sir Reg Empey: I cannot hear what you are saying.

830. Mr Haire: Sorry, it is around 1,500 or 1,600 a year.

831. Mr Johnston: I will try to come back to the Committee later this afternoon with a more precise number.

832. The Chairperson: I think that the member is a wee bit stunned by that figure.

833. As no one else has intimated that they want to speak, we will stop there. Thank you very much. Perhaps you will remain in the Public Gallery, because issues may arise on which we will want to hear your views.

834. The next session is with representatives of Victim Support Northern Ireland. A briefing paper has been provided to members. I welcome to the meeting Susan Reid, chief executive of Victim Support NI, and Geraldine Hanna, operations manager. Ladies, I invite you to outline the issues that you wish to raise on the clauses on victims. You have 10 minutes in which to do so, and there will then be 20 minutes for a question-and-answer session.

835. Mr O'Dowd: Sorry, I would like some clarification. Perhaps I picked this up wrong, but I thought that we would have an opportunity to question the officials for 20 minutes at the end of the session.

836. The Chairperson: They are coming back to the table at the end of the meeting after we have heard all the presentations. You will get your chance.

837. Mr O'Dowd: I knew that you were a fair man.

838. Mr McNarry: Do you think that Hansard will leave that bit out? [Laughter.]

839. Ms Susan Reid (Victim Support Northern Ireland): Thank you very much for the opportunity to address some of the issues and points that Victim Support NI wants to make on the Bill.

840. We welcome the first Justice Bill in Northern Ireland as a historic occasion and look forward to future legislation. However, on that point, we want to raise the fact that, in our 30-odd years as a local charity, we have observed good practice without legislation, but, equally, we have observed legislation that is not being put into practice. Although some of my comments may stray into issues of practice, I very much join the two issues when it comes to the interests of victims and witnesses.

841. The most common complaint raised by victims of crime is about how they are treated by the system and the difficulty that they have in getting information about their circumstances as cases proceed.

842. I want to say a few words to give some context. If we accept the findings of the annual crime survey, we can take it that 48% of crime is reported. Therefore, the number of crimes a year could more properly be reflected as some 227,000 rather than the 109,000 that are reported. A further point in that theme is that, if we take the sum of all the organisations in the system, we can see that no one agency counts the number of victims and witnesses. Therefore, it is an absolute impossibility to properly and scientifically track the end-to-end experience of people in the system. One organisation counts crimes, while another counts cases. Not only is it not possible to ascertain the number of citizens who are directly affected by crime, but it is

impossible to analyse the figures and ascertain how many have learning disabilities, physical disabilities or other difficulties that should be taken into account in the justice process.

843. As I said, we are the only independent local charity that deals with all crime categories across the board, from burglary and theft to manslaughter, domestic violence, sexual assault and rape. I will give you an indication of the scale of our operation; in 2009, we dealt with and supported some 10,000 victims and witnesses, and a further 25,000 people were supported through telephone and written contact. We spend £2 million. Given the scale of spending in the criminal justice system, that is, as I am sure you will agree, the crumbs off the table. I hope that you appreciate that, with 200 volunteers and 60 staff, we represent good value for money in the system.

844. This afternoon, we want to touch on three key themes that we picked up on in the Bill; the offender levy, special measures and alternatives to prosecution. On the offender levy, we are hopeful that the proposal will create significant funds that are not consumed by the cost of acquiring the same. As has already been mentioned, we urge that the funds be ring-fenced for services that directly benefit victims and witnesses. We would clarify that slightly and urge that initiatives be considered that protect the victim from further harm caused by the criminal justice system and that meet the needs that the system cannot provide for. We also urge that consideration be given to investment in gathering evidence on the actual experience of victims and witnesses in a way that cannot be dismissed by the different professional groupings that work in the system. In particular, we urge that there be support for all witnesses — all child witnesses, all prosecution witnesses, all defence witnesses and all those who have to take part in the process in the Coroner's Court.

845. We absolutely welcome the expansion of special measures and the introduction of the intermediary scheme. However, we note that it is an issue of automatic eligibility for, not of automatic right to, special measures. We would simply but pointedly underline the fact that the interests of justice are surely best served by the provision of best evidence. Therefore, consideration should lie on the side of ensuring that people are enabled to give their best evidence and are not paralysed with nerves and anxiety due to other issues.

846. We want to highlight another of our concerns about special measures. As I said earlier, provision in legislation is one thing, but access to that provision is another. We are concerned about the identification and offering of those benefits. I will quote briefly from a case study. A 33-year-old victim of domestic abuse was dissuaded from using special measures — by a legal professional, I should add — with the comment, "Sure it is not that bad for you: imagine if it had been a stranger who did that to you." By the way, the victim had been called to court several times previously. Two years later, her estranged husband pleaded guilty. She then received a legal bill for some £5,000.

847. I must also say that we were somewhat disappointed to note the withdrawal of the clause on special measures provision for those who have suffered through the threat of knife crime or the use of firearms and offensive weapons. We are somewhat puzzled by that because of the correlation between people having had a direct threat made to their life or, at least, to their well-being and what we would have thought was an obvious link to their anxiety at potentially facing their offender in the courtroom.

848. We also have concerns and issues with the stage in the process at which special measures are considered. I link that point to the point about lack of information on victims and witnesses and the difficulty that the system, therefore, seems to have in identifying which people would benefit from special measures. Our observation is that, even at the court stage, there are issues with access to special measures. We would take you a step back in the process to decision-making at the Public Prosecution Service (PPS) and question whether due consideration is given

at that stage and, indeed, whether that might, unfortunately, influence whether or not some cases proceed.

849. As regards alternatives to prosecution, our overall banner heading is: please do not over-promise to victims. Do not tell a person harmed by crime that they have a choice about whether or not the case proceeds to the PPS when that is patently not a real choice for them. Instead, it must be ensured that there is follow-through on what is being promised to ensure that it happens. The feedback that we have received from some victims is that, having taken part in the process in the small village that is Northern Ireland, they are all too aware that promises were not fulfilled and that action was not seen through. However, on a positive note, we hope that a successful delivery of alternatives to prosecution might do something to address delay in the system by reducing the number of cases going through it.

850. My final point, which has been raised by the Victims' Commissioner in England and Wales, is that, under common law, the victim stands to one side to allow the state to act on their behalf. I do not think that any of us of want a system where it is up to the victim to take, literally or metaphorically, the law into their own hands. The victim's standing to one side has implications and causes confusion about the victim's role, which I am sure members hear about in their consistency offices day in and day out. It is somewhat disingenuous, therefore, to keep repeating the phrase that victims are at the heart of the system. I am not sure that they can ever be at the heart of the system of common law. The state has a duty of care to the victim to ensure that there is due process of law, to address issues around the treatment of the offender and the prevention of further harm, to ameliorate the harm done to a person — that is possibly outwith the criminal justice system — and to ensure that the criminal justice system itself does not do further harm.

851. Mr McDevitt: Do you believe that there is such a thing as a victimless crime?

852. Ms Reid: I am not sure that I do. I was thinking about that earlier when you raised the point. The shortest answer that I can give is that, even if it only raises the fear of crime, it has an impact on people's lives. So, no, I do not think that there is such a thing. However, I see why it is used as an easy definition.

853. The Chairperson: Your paper states that:

"We consider that procedures to ensure that the needs of the victims and witness concerned are paramount need to be introduced."

854. Will you elaborate on that?

855. Ms Reid: Will you point out exactly where that is in the paper?

856. The Chairperson: It is the last sentence of the paragraph about special measures in the paper that you submitted.

857. Ms Reid: Chair, I beg your pardon for not picking up on that question the first time.

858. We are trying to communicate that the witness must be given an opportunity to give their best evidence. We are also trying to allude to the need for a broader principle to be applied in the implementation of special measures, as they are defined. Some people will be genuinely paralysed with terror, because the court process is very formal and intimidating, which, indeed, it should be, as it is such a serious process. We are, therefore, arguing for the establishment of a principle that should be adhered to in the decision-making process about access to special

measures in order to give a person the opportunity to give the best account of their experience and of what has happened to them. In particular, as Mr McDevitt alluded to earlier, there are issues about detecting and picking up on cognitive difficulties, speech difficulties and so on and about ensuring that the individuals concerned are truly informed, that they understand the process they are entering into and engaging with and that they are able to give a proper account of their experience.

859. The Chairperson: I wish to take you through one of your remarks. You said that it is a terrifying experience — those may not have been your exact words, but that is how it came across — and you said that it should be. Why should it be?

860. Ms Reid: I probably need to qualify that. I do not mean to suggest that the process should be terrifying. Rather, I am suggesting that it should be a solemn and very serious process. Ultimately, it has the potential to take somebody's liberty away, and that cannot be dismissed or taken lightly. Therefore, a balance must be struck between the need to ensure the rights of the accused and to ensure that there is due process and the need to ensure that the person who has been harmed by crime has an opportunity to give their best account and evidence and is not further traumatised by the process of being cross-examined in a hostile way.

861. The Chairperson: Are you satisfied that those rights have been addressed in the legislation?

862. Ms Reid: The point that I was trying to make was that the legislation creates a facility. The key is how that facility will be delivered: it is about whether people will be identified at the appropriate stage, whether appropriate information will be given to victims to enable them to do that and, indeed, whether they will be dissuaded from taking up the opportunity to use special measures. Those are all key factors that we observe in our day-to-day support of witnesses through the system.

863. Mr O'Dowd: Thank you for your evidence. I want to touch on the issue of whether we need new legislation. Research given to the Committee refers to a British Home Office report of 2006 that looked at legislation in England and Wales. It identified a number of problems, not in the legislation but in how it is delivered. It mentions vulnerable and intimidated witnesses (VIWs) and states that:

"Early identification by the police and the CPS is vital but the police continued to have difficulty in identifying VIWs...The police are usually the first agency to provide VIWs with information about the measures available to them and ascertaining their views. They often did not flag up the vulnerability of witnesses to other agencies".

864. The paper lists a number of areas in which agencies are not working together. Indeed, the CPS sometimes waits until the day of the court appearance to apply for vulnerable witness status, which includes the use of video links and so on. So, is it a case of using the current legislation properly, or do we need additional legislation?

865. Ms Reid: Thank you for summarising the point that I was trying to make. Do we need more legislation? My honest and frank answer is that I am not sure. From my experience of working in direct support of victims and witnesses, I suspect that it is an issue of culture, practice and awareness. I would underline awareness as being the key point. I do not believe that there is any malice in many instances. It is more about ignorance in the sense of unawareness, not picking things up or confusion about what the process should be.

866. Mr O'Dowd: To pick up on a point that you talked to the Chairperson about, it is about getting the balance right. We are about delivering justice. Some vulnerable victims of crime have suffered as a result of horrific offences. However, as you say, the state takes on the

responsibility to prosecute, and the state can abuse the law for one reason or another, sometimes not out of malice but through pure bad practice. As a member of the Justice Committee, I want to be sure in my own mind that the balance in the legislation is right and that the rights of the victim are protected and also the rights of the accused, who is not a perpetrator until found guilty and who may be innocent. Have you any concerns about the balance in the legislation?

867. Ms Reid: I do not have concerns about the balance in the legislation. I see very few rights per se for victims of crime. I would again underline the point that the proposals, as they stand, with the intention of giving somebody the opportunity to give better evidence, should surely improve the process of justice as well. I cannot see how that should in any way make it a more risky process for the accused or produce any risk for the alleged offender.

868. Mr McCartney: In your presentation, you made the point that the levy should not be used to cover current provision but rather should be seen as an additional source of funding. How do we protect ourselves from it being used as revenue rather than an additional source of funding?

869. Ms Reid: It is a very difficult point. I have a responsibility to try to maintain the service that we have been providing to people who have been harmed by crime. We do not know what our funding position will be, so, in the future, I could well be making the argument for putting some of that offender levy towards maintaining services. For example, we currently assist in 50% of all the criminal injury scheme applications in Northern Ireland, and there is no legal bill to the victim for the service that we provide. So, in future, I could be making a case for that.

870. As regards how we can make it happen, it is about further definition of the criteria and of the objective of those funds, and that was why I stressed two themes in my presentation. The first is the issue of supporting victims and, if possible, ameliorating any potential secondary victimisation, as we would see it, that has occurred because somebody has engaged with the criminal justice system. The second is that the needs of people who have suffered physical or psychological injuries through crime will not be met by the criminal justice system but by other services, of which we are one. We see the need for counselling and other services that we could direct people to through our contact with them.

871. Mr Buchanan: Thank you for your presentation. As someone who works with victims every day, what do you see as being the biggest obstacles that you face? Do you think that the proposals in the Bill are robust enough to ensure that the rights of victims and witnesses are fully protected?

872. Ms Reid: There is a model of psychology called the "just world theory", and the theory is that we all like to believe that good things happen to good people and bad things happen to bad people. The spin-out is that, when a random, bad thing happens to you, not only do other people move very quickly to try to blame you in the belief that you must have done something silly or stupid to bring this on yourself, but you blame yourself. That leads to a number of major issues for us. Our main problem is with getting the information to allow us to reach out to people and offer help to them. We respect and recognise the need for data protection, but that is a fundamental problem for us in offering the service. If we were to let the service become totally based on self-referrals, we would be letting self-blame and shame get between us and the person whom we might want to help.

873. As regards other barriers, that leads to a pattern where, to be blunt, the system does not really pay a lot of attention to the needs of victims and witnesses, and that is probably a function of common law, which I have alluded to. Because, in essence, victims stand to one side, they become evidence in the process, to put it rather bluntly and frankly. We find that a lot of the needs that we identify for victims and witnesses, such as those involving health and social care

and other support, are potentially outside the criminal justice system. Within the criminal justice system, it is, as Mr O'Dowd mentioned, about getting the balance right in a system that is ostensibly focused on the rights of the accused or alleged offender. The system tends to focus on avoiding reoffending, which is right and good, and making sure that the rights of the offender are dealt with, which is right and good, but, in all of that, the tendency is to take attention away from what the person who has been harmed by crime needs.

874. We hear, day in and day out, about how victims were treated. It is a theme of culture and attitude. We hear about how they were not spoken to, how they were spoken to rudely and abruptly and how they were patently ignored. We hear about how nobody engaged with them, how nobody told them what was happening and how, when they tried to find out what was happening, nobody wanted to know. Those are the commons themes that come up day in and day out.

875. The Bill is a step in the right direction — that is the fair and honest answer that I can give. I do not think that it will solve all the issues. In fact, it probably takes a small step towards amending some of them. There has been a lot of progress over the past five or so years, and that must be acknowledged. However, I was trying to make a point about gathering evidence. If I were to present to you today a collated scientific presentation of the daily experience of victims, I think that you would be quite shocked.

876. The Chairperson: Right, we will stop there. Thank you very much for the presentation and for taking questions. You are welcome to stay in the Public Gallery, as the officials will be coming back to the table to deal with some of the issues raised.

877. We are moving on to the next witness session with MindWise. The witnesses will outline key issues regarding the clauses on victims, witnesses and live links. I welcome Bill Halliday, the chief executive, Anne Doherty, the deputy chief executive, Stanley Booth, the appropriate adult scheme manager, and Laura McKay, the appropriate adult scheme deputy manager. You are all very welcome. You have 10 minutes to give a briefing, after which there will be a 20-minute question-and-answer session.

878. Mr Bill Halliday (MindWise): I thank the Committee for the opportunity to appear before it this afternoon to give some oral evidence to back up the written evidence that we have submitted. We have nine key points that we want to make to the Committee. Mr Stanley Booth will make those points in a moment. I will set them in a wider context.

879. As one of the leading mental health charities in Northern Ireland, we deal, in particular, with severe mental illness on a daily basis and with very vulnerable individuals. That is one of the frameworks within which we are presenting our evidence today. In addition, we manage the first and only appropriate adult scheme in Northern Ireland, and many of the points in our submission relate directly to the experience that we have gained while managing the scheme.

880. Mr Stanley Booth (MindWise): Thank you. The team that I lead — Laura is the deputy manager — has completed somewhere in the region of 2,000 sit-in police interviews. We have sat in custody suites with detectives and police officers of all ranks while they interview people for between one and 96 hours. What I say to you is built on the experience that we have gained over the past 18 months.

881. When we submitted our paper, we made a number of points that were simply neutral observations. I do not propose to labour those points, because there is a shortage of time, but I will focus on the matters that are of particular interest to those of us in the mental health field.

882. The evidence of the accused through an intermediary is of particular interest to our organisation, because, when a young person aged 18 is in court and has a particular intellectual ability or social functioning difficulty, his or her ability to give evidence is compromised. We are particularly concerned about those people who have a mental disorder, as defined in the Mental Health (Northern Ireland) Order 1986.

883. The Department of Justice has, so far, correctly identified a difficulty with the PSNI interviewing people of that vulnerability, and hence the Police and Criminal Evidence (Northern Ireland) Order 1989 contains a requirement for an appropriate adult to be present during interviews. That is a scheme that we manage and, as I have outlined, we have done so quite successfully for the past 18 months.

884. We respectfully suggest that, if a young person with a mental health difficulty is required at court, a trained mental health advocate — not to be confused with an advocate in a court context — should attend and support him or her to give evidence or assist in giving evidence as the intermediary.

885. I respectfully suggest that the person who is required to support that young person should be similar to the appropriate adult in the provision that we have at present, because, if he or she is considered to require an appropriate adult in the custody suite, the natural progression is that we would also be best placed to provide that support in court. In the first year, we sat with 640 young people. The vast number of them said, as we were leaving the police station, "I will see you in court. Thank you very much". We had to respectfully reply that there was no provision for us to assist them in court.

886. That theme carries through to Part 2 of the Bill, which includes a clause on live link direction for vulnerable accused.

887. The natural progression of what I just said is that, if someone who suffers from a mental disorder is required to give evidence in person and they require support while doing so, that same support would naturally be required if they have to give their evidence by live video link. We respectfully suggest that the advocacy role should be someone from the trained mental health field. I respectfully suggest that none comes higher than the MindWise organisation.

888. The live link may occur in a secure location or pre-release establishment, such as a hospital venue, for example, the Shannon Clinic, as a stepping stone for release from prison. MindWise staff are currently working in advocacy in the Shannon Clinic. Naturally, we suggest that it would be a natural progression for the trained advocate at that location to provide the live link support. We recommend that a trained mental health advocate — we do not confuse the term "advocate" with "counsel" — should be the intermediary available for courts and live TV links. The Shannon clinic should feature.

889. The fact that the appropriate adult is provided during the investigative stage and is a mandatory requirement in accordance with the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (PACE) is good evidence that the services of an advocate are also required at a later stage. It seems bizarre that someone in a police custody suite who has a mental deficiency to such point that they need a party to assist them is then abandoned by that party when they find themselves facing a courtroom. Those are key points for us.

890. Part 3 concerns policing and community safety partnerships and district policing and community safety partnerships. We respectfully suggest that, as we provide the service in the custody suites and are familiar with what happens in interview rooms across the country, we should be a default organisation to be on those committees.

891. The Chairperson: You have two minutes in which to wind up, Mr Booth.

892. Mr Booth: We should also attend those meetings so that we can feed back our findings to the police.

893. I have an important point about the alternatives to prosecution part of the Bill. We are not sure whether the term "over 18" means 19 years of age. If it means over 18, including 19, it may create three systems for people who are under 17, those who are 18 and those who are 19. Those are difficult enough to comprehend, especially for young people who are mentally vulnerable and have a difficulty in knowing what justice faces them. We welcome the initiative. We point out, as we said in our paper, that a significant number of mentally disordered offenders end up in prison. A number of leading research papers show that 30% of people in prison have a mental difficulty. As a mental health charity, we are competent in the self-management process and managing people with their mental health difficulties. We want to see the MindWise recovery plan being incorporated into working with people who have a particular difficulty. Whether that be in conjunction with the Probation Board or the Youth Justice Agency matters not to us. We simply know that people need support when they face the judicial system.

894. The conditional cautions will follow the theme that I mentioned. If people are mentally vulnerable and need support in a police station or in court and are subject to a caution, an advocate, naturally, would need to be present. After all, a breach of that caution will lead to a power of arrest. If there is a power of arrest, the person who is mentally vulnerable needs to understand the conditions that are imposed on them and they need support to do so.

895. The Chairperson: I will have to stop you there, Mr Booth. Thank you very much for your presentation.

896. Mr McDevitt: You talked about the concept of an advocate. Do you mean that an advocate would be the intermediary for the purposes of the Bill?

897. Mr Booth: I do.

898. Mr McDevitt: Do you believe that the Bill, as drafted, provides an adequate level of detail about the characteristics an intermediary needs to successfully meet the needs that you identified?

899. Mr Booth: I respectfully suggest that it does not. If the legislation were to say that the role of intermediary should, by default, fall to a trained mental health worker or care worker if the defendant has a mental illness or difficulty, it would provide some support. At the moment, the Bill seems to be mute on that issue.

900. Mr McDevitt: MindWise is involved in delivering the appropriate adult scheme. Is it the sole deliverer of that scheme?

901. Mr Booth: Yes.

902. Mr McDevitt: What existed before it was put in place?

903. Mr Booth: It fell by default to social services. Social workers attended, which placed a further burden on their workloads.

904. Mr McDevitt: Did you say that you have had experience of the area for the past three years?

905. Mr Booth: No; 18 months.

906. Mr McDevitt: My apologies. Are large numbers of people coming through the criminal justice system who are in need of support as the result of a vulnerable mental health status?

907. Mr Booth: In the first 12 months, just under 1,500 people required our service, 60% of them were vulnerable by virtue of their age and the other 40% were vulnerable by virtue of a recognised and accepted mental illness.

908. The Chairperson: In your written submission, you referred to Part 8 of the Bill, part of which relates to criminal conviction certificates to be given to an employer. In your submission you state that:

"The employment of ex offenders and the safety of vulnerable groups is a balance that must be achieved to ensure employers have safeguards and ex offenders have a chance to de-criminalise their lifestyle with gainful employment."

909. You did not specifically say this, but it seems that you not in agreement with the process, because it comes as close to it as it makes no difference. Is that the case, or have I picked it up wrong?

910. Mr Booth: There should not be an automatic exclusionary device. We accept that there will always be a requirement for protective measures when people have substantial unsupervised access to children. However, it may be possible for the employer to make suitable adjustments and informed choices if they knew more about an individual's particular circumstances. That is a very difficult matter. It is beyond our capabilities and it is something that needs to be considered at length.

911. The Chairperson: So, what side of the fence are you on?

912. Mr Booth: At the moment, there needs to be a broadening of the ability of the employer to make decisions. The provision seems to be too restrictive.

913. The Chairperson: Right. In your submission you went on to say that:

"Employers need a process which is less complicated and less costly".

914. Mr Booth: An AccessNI certificate is quite bland and it simply states whether or not a person has a conviction, and an employer must make a decision on the basis of one sentence. If, for example, the résumé that is given to the court on the cover of a public prosecution file, or the report that the probation officer drafts, had one paragraph of details about the person, it would allow the employer to see that the person had been convicted, but that the circumstances were A, B, C or D. Based on those circumstances, they could make appropriate adjustments so that the problem would not occur in their organisation. The information that is currently provided is limited.

915. The Chairperson: Aye, but in your submission you go on to say that:

"We understand and agree that 'substantial and unsupervised' access to children and/or vulnerable adults will always require protective measures from those with specific convictions."

916. Mr Booth: Yes.

917. The Chairperson: I say this with respect: you seem to be jumping from one position to another, but, at the end of the day, not taking either position.

918. Mr Booth: I respectfully suggest that there are certain convictions that will always preclude someone working with children. However, when we did the annual report and looked at our appropriate adult scheme, we discovered that there are over 200 types of offences and, indeed, many types of offences that we had not heard of until we commenced that scheme. Therefore, because such a vast array of offences exists, to say that an employer must do A, B or C for certain types of offences would limit an employer's ability. I am simply saying that, if employers had more information, they may be able to make adjustments depending on the type of offence. However, that does not preclude certain people and certain offences being dealt with in a mandatory matter. Hopefully, that is a little clearer.

919. The Chairperson: But, you say finally:

"We recommend that employers be permitted to consider if suitable adjustment can be made".

920. What do you mean by suitable adjustment?

921. Mr Booth: Suitable adjustment would be possible if an employer knew the type of offence —

922. The Chairperson: Are you talking about employers' discretion?

923. Mr Booth: I suggest so.

924. The Chairperson: So, in some instances, employers should be allowed to act outside the provisions that are already there. Is that what you are saying?

925. Mr Booth: If an employer had a greater scope of information, they may, within their particular place of employment, be able to make some suitable adjustment to allow that person to gain employment. Respectfully, that is the only point that we are making.

926. The Chairperson: That, potentially, leaves somebody else vulnerable.

927. Mr Booth: Not if appropriate measures are taken by employers.

928. Mr McNarry: You are very welcome. I am conscious of the work that you do and that of Victim Support. I am very supportive of what goes on there.

929. Paint the picture of at what stage a vulnerable person in custody is formally identified as having a mental health problem.

930. Mr Booth: At this moment, a subjective test is carried out by the custody sergeant. That test is based on objective questions that are placed on the Niche police computer system, which helps steer him or her towards a certain decision. I am aware that some work may be going on around a new screening process to enhance that test and enhance the training for the police and custody sergeants. We have seen in our annual report a practical improvement in police standards of identifying vulnerable people within one year following a police care plan package.

931. Ms Laura McKay (MindWise): As an appropriate adult, I am very experienced in this. When someone comes in to a custody suite initially, the police go through a care plan with that individual to identify the different levels of difficulty. The custody sergeant then makes the

decision, if necessary, to call an appropriate adult, and tasks the forensic medical officer who will then make an assessment on the person's vulnerability.

932. Mr McNarry: In your view, is the current training that custody sergeants receive adequate?

933. Ms L McKay: They are very aware —

934. Mr McNarry: It is either adequate or it is not. They may be aware, but is the training adequate.

935. Ms L McKay: They certainly ask the most adequate of questions through a quite detailed set of specific questions. My experience is that the person is usually very willing to give that information.

936. Mr McNarry: I understand that. We need to be clear that, at the point of contact when someone arrives in custody, their rights are covered in every way, and that the training that custody sergeants receive is adequate and meets what the law demands of them. We are hearing more about how very good lawyers, shall we say, can allude to something that happened at that point of contact to their client that would seem to turn a trial or a potential offender around. I want to make sure that, from your organisation's point of view, what goes on at that point of contact is at least adequate. I hope that that is what you are telling me. If there is a different assessment, we would like to hear it.

937. You talked about the process moving on a step when that person, having been assessed as vulnerable, particularly because of a mental health circumstance, could be assisted by a trained advocate. We have do not have time to go into that, so perhaps you could expand on that in writing to us. I believe that there may be a long list of people who fit the description of a trained advocate, and we may end up having all sorts of queries and problems about that.

938. I want to be sure that the proposal to have trained advocates is not being made on the basis that there might be something wrong at the point of entry into custody and that what happens with the custody sergeant is adequate. I think you said that custody sergeants were receiving improved training, so that is being recognised. That would be useful in the case of trained advocates. If something seems to me to be working, I would not be enamoured with the idea of a trained advocate not necessarily coming in to be of benefit to the person in custody who is suffering from a mental illness, but to be there solely, in some instances, to make life awkward for the custody sergeant. That is why I want you to give me an idea of what you are talking about when you propose having trained advocates.

939. Mr Booth: It may help to know that our team is held in the highest regard by the police. We commend the police for being particularly professional in the custody field. We find that they are meticulous in their dealings with us. The police find our services so rewarding because, from their perspective, the evidence that they gather from the moment of arrival at the custody suite until charging, when the case goes to court, is almost certainly fully admissible. Throughout the process, an independent person will have been following the detainee from the moment of arrival at the custody suite until the moment when the detainee is charged. That secures the admissibility of police evidence. From that point of view, there is no doubt that we do not make the custody sergeant's life difficult.

940. Mr Halliday: In answer to the points that Mr McNarry made, it might be useful if we were to provide supplementary information about written evidence. That might help to clear up some of the issues that have been raised.

941. The Chairperson: We will leave that matter there. We have less than two minutes left, but three members have intimated that they want to say something.

942. Sir Reg Empey: I will be very brief, Chairperson. Who triggers your involvement when someone is taken into custody? Is it the sergeant?

943. Mr Booth: Yes.

944. Sir Reg Empey: OK. Does that person make a judgement as to whether the individual has a mental health incapacity?

945. Mr Booth: He does.

946. Sir Reg Empey: I can see the point of the consistency of having somebody in the court. Is there not a risk of conflict of interest/confusion being caused to the individual vis-à-vis the role of a lawyer versus the role of an advocate? Could the person be confused as to whom his or her actual advisor is in circumstances in which two individuals are giving advice, which, presumably, at some point, could be conflicting?

947. Mr Booth: We are trained to the National Open College Network standard. There is a national appropriate adult network throughout the entire United Kingdom. We are affiliated to that network and have membership of the association. One of the first parts of our training portfolio is to make it absolutely clear, on arrival, between us, the solicitor and the detained person what each person's role is in the process. We spend some time ensuring that a detained person knows that we do not have a legal agenda and that our role is not to advise legally. We stress that our role is purely one of communication. In fact, at times, we communicate between the solicitor and the client if there is any particular difficulty, or between the police and a detained person.

948. Sir Reg Empey: Do you recognise that there may be a degree of confusion for someone who is vulnerable? That person may not appreciate the fact that the legal adviser might advocate a course of action to the client, the purpose of which may not necessarily be obvious to the person who has difficulties. There is potential for conflict with the client. How is that working out in practice?

949. Mr Booth: It is working very well. One of our key functions is to clarify such confusions for the person. We go to great lengths to do that. We have the greatest regard for the legal profession. However, there have been times when our staff have spoken to someone in one-to-one consultation and discovered that that person did not understand the legal advice that the individual had been given. Staff have almost had to encourage the solicitor to give the advice again.

950. Sir Reg Empey: Thank you very much, Mr Booth. There is not much time left.

951. The Chairperson: Our time has gone. However, two members have intimated that they wish to ask questions. I will allow them to come in.

952. Mr O'Dowd: My question is on a broader point. On reading the legislation, we could be drawn to the view that it further stigmatises people with mental health difficulties. How do we ensure that the legislation does not further stigmatise those people and that we open up the discussion on that issue? I am concerned about some of the language that is used in the documentation.

953. Mr Halliday: One real difficulty is the difference between what might be a healthcare route or a criminal justice route. That is why we await with great interest developments in mental health legislation, particularly capacity legislation and how that will affect the individual. I hope that the introduction of sound capacity legislation will avoid any further discrimination or stigmatisation of an individual. However, at present, there are issues about which route an individual, who may have committed a crime, but who, clearly, is vulnerable through mental health issues, is directed down. On the ground, we are hearing that, at times, individuals are advised to make a guilty plea in order that they go through the criminal justice system, where, at present, resources might be better targeted to them than if they had gone down the health route. That raises the issue of where resources are more appropriately applied. That is a worry given the further restriction of resources that is anticipated during the next few years.

954. Mr McCartney: I have a couple of brief questions. Is that station-specific or will it apply throughout the police estate?

955. Mr Booth: It will apply throughout the entire police estate.

956. Mr McCartney: Is the protocol to call parents then you?

957. Mr Booth: Yes. We have been referred to as stand-in parents.

958. Mr McCartney: Your figure of 640 parents refers to parents who refused, which meant that you were sent in as back-up.

959. Mr Booth: Well, the parent could be the victim and, therefore, by default, cannot be present.

960. The Chairperson: Thank you for your presentation.

961. I welcome the officials, Gareth Johnston, Tom Haire, Janice Smiley and Chris Matthews, back to the table. You have heard all the presentations, and we will hear the Department's response. Mr Johnston, we will direct the questions to you, and you can distribute them to whoever you feel should answer them. Why was the clause on special measures on knife crime withdrawn?

962. Mr Johnston: A split of opinion on that resulted from the consultation. The issue is not about whether people who are involved in knife-crime trials can get special measures directions. They can do so, and we are not changing that. It is about whether eligibility for those special measures directions should be automatic. Seven respondents were supportive of the proposal, which was because of the serious nature of the proceedings. Seven respondents were not supportive, and, in general, they were concerned about the balance between the defendant's right to a fair trial and the victim's rights. They made the point that, although it might very often be the case in proceedings around knife crime that there should be a special measures direction, that is not necessarily invariably the case. They said that, therefore, it should be left to the court's discretion. That is why we came to the conclusion that special measures should be available in the usual way and that it should be for the court to prescribe them but that they should not be granted automatically.

963. Mr Matthews: The decision on that was based purely on the evidence that came back from the consultation, and we felt that the arguments against held sway over the arguments for. The principle that each case should be decided on its merits stood here.

964. The Chairperson: Is there any evidence that knife crime is increasing?

965. Mr Johnston: No, it has been relatively balanced over the past five years. The levels are lower than in England and Wales.

966. The Chairperson: Do you think that the evidence is not strong enough to include special measures on knife crime? You got a mixed message from the consultation.

967. Mr Johnston: We got a mixed message, and the important thing is to have special measures available, but not to make them automatic.

968. Mr McDevitt: I come back to the earlier question about intermediaries. As you clarified earlier, clauses 12(5) and 12(6) spell out clearly the conditions in which an intermediary will be necessary. That begs the obvious question: why would you not specify the qualifications or the characteristics of an intermediary?

969. Mr Johnston: Intermediaries will operate in different sorts of situations. Very often, it might be because there are issues with someone's mental health, but it might also be because there are issues about someone's social functioning more generally. An intermediary might be used in the case of a young person.

970. There is a range of circumstances. There will be training and accreditation schemes for intermediaries before they are appointed by the court. However, we felt that trying to specify their exact qualifications would limit discretion in an interview situation that covers a range of circumstances.

971. Mr McDevitt: That is fine, Mr Johnston, except that, in clause 12, which deals with under-18s, paragraph (5) of proposed new article 21BA specifies that an intermediary will be called in only if the witness giving oral evidence in court is compromised by the accused's level of intellectual ability or social functioning. You specify clearly that intermediaries will be available to under-18s only if there is mental or social incapacity. It is not a very wide definition.

972. Mr Johnston: No, although, at the same time, those are two different things.

973. Mr McDevitt: Why do you not specify that it should be someone with mental health or social work qualifications? As I understand it, those are the only two types of professional who would be able to support an individual in that circumstance.

974. Mr Johnston: The intention is that there will be training and accreditation for those people.

975. Mr Matthews: The reason that we tried to keep it as flexible as possible is that one of the aims of the Bridging the Gap strategy is to tailor services specifically to victims as far as we can. We have attempted to provide the courts with enough latitude to provide an intermediary where necessary. We do not tie their hands by saying specifically who that intermediary should be. The idea is that, outside the courtroom, we will have training and accreditation programmes that will give the courts a list of people who have been trained and qualified through the Department from which it can pick those who have the skills or expertise required in any specific case.

976. I am sure that you are aware that the problem is that once legislation has been written, it can cause unforeseen consequences. In this instance, we have tried to be as flexible as possible while being specific about the function of the intermediary and the conditions in which an intermediary can be brought in.

977. The Chairperson: Have you costed the training, etc? Who will do this and pay for it?

978. Mr Matthews: We will pay for it. I think that we have costed it at around £97,000, but I can write to the Committee with a more specific figure.

979. Mr McDevitt: To reverse-engineer this, I am interested in how it would connect with someone who has been through an appropriate adult scheme. For argument's sake, is everyone who had an appropriate adult with them in a police station automatically eligible to have an intermediary when their case comes to court? The legislation says nothing about that; it does not tell us how those would connect.

980. Mr Matthews: I do not think that those necessarily connect. The legislation sets out that an intermediary can be appointed only on the application of the accused. Therefore, it is possible that someone could have both. However, it is also possible that a person who did not have an appropriate adult with them would qualify to have an intermediary.

981. Mr McDevitt: Can you envisage a situation in which someone had an appropriate adult with them but is not eligible to have an intermediary?

982. Mr Matthews: That is legislatively possible, but, in individual cases, it will be for the judge to make a decision based on the interests of justice.

983. Mr McDevitt: I suppose that we will return to this in our consideration of the clause. However, it strikes me that there is a bit of disconnect, as noble as the intention may be. Officials may want to reflect on that and join up the dots. It seems that you are meeting a similar need but staying silent and, therefore, opening up the possibility that judges, in their great wisdom, will not be as fully informed as they may need to be to come to a decision on the intermediary.

984. Mr Johnston: We will certainly give that further thought. I can speak to colleagues in the Department who have been responsible for the appropriate adult legislation under PACE to see whether there is a difference in how we join up.

985. The Chairperson: Why can you not use existing trained social workers and those who are trained in mental health issues? That is not what you said.

986. Mr Matthews: It is because we envisage that the needs may go wider than mental health or social care. We are aware of similar schemes that have operated in England and Wales, and we are following the model there. I can write in more specific detail about the sort of training that is available. However, there is specific training for intermediaries in court, because it is a specialised skill. As well as understanding the basic principles of mental health, they have to understand the court, because they are interpreting the legal framework, allowing someone to understand it and interpreting what they provide to the court. The issue may be bridging the gap between the specialism and an understanding of the wider legal world.

987. The Chairperson: I find it difficult to understand, and more difficult to accept, that you are telling us that skilled social and mental health workers may not be skilled in, for instance, going to court. I can think of many who are.

988. Mr Matthews: I am not suggesting that they are not skilled; it is just that the scheme that we are proposing will accredit them. It may be that some people already have those skills, so we would simply accredit them so that the court is aware that they are accredited. So, it is not that we are saying that people do not have the skills; it is just that we would accredit them to show that they do.

989. Mr Johnston: Not every social worker or mental health worker has had a great deal of engagement with courts. We think that it is important that anyone coming into the role knows the basic principles. For example, they must know that they are not to try to impact on the evidence that someone is giving, and they must know the limits of their role as an intermediary so that they do not do anything that would interfere with the interests of justice.

990. The Chairperson: Some of them may not have had that engagement, but I suspect that many of them would.

991. Mr Johnston: Many would, but we just want to make sure. When we are talking about the interests of justice, we just want to make sure that those safeguards are in place.

992. Sir Reg Empey: I know that you are going to return to this issue, Chairman, but I am trying to understand where the Department is coming from. I can see that, if someone has social difficulties or there is social dysfunction, an intermediary with a basic qualification in mental health issues or assessment would need to be present. However, am I right in thinking that you perhaps have at the back of your mind other individuals who may know the client and have a sense of the client's background rather than a paid professional who may have skills but does not know the individual? For instance, if somebody gets into bother, perhaps a family cleric or someone who knows the circumstances and is familiar with these things could fulfil that role. Is that what you are thinking, or are you thinking of other categories of professional?

993. Mr Johnston: As we go through the Bill, we are talking about different functions and different groups of people. For example, some intermediaries would be with someone in court or when they appear via a live link to help them with communication difficulties. So, that is one thing that is covered.

994. Sir Reg Empey: The people who I am talking about might not necessarily be what we class as professionals. They could be suitable or competent persons who perhaps know and can communicate with the individual and who may have some knowledge of their background and the context in which they function. Is that what you are getting at?

995. Mr Johnston: The point that I am trying to make is that there are different groups of people. There are intermediaries who work with people who have communication difficulties. There are intermediaries who would be with people in psychiatric hospitals, say Shannon Clinic, when they give evidence to court via a live link. Then, in the live link room, there would be the supporters of someone who is giving evidence under special measures, maybe a young victim or someone who has been a witness to a serious crime. In relation to the third category, I can absolutely see how the sorts of people who you mention, or even a family member who did not have a direct link to the offence or incident, could provide that function.

996. Sir Reg Empey: The issue is that we do not want to restrict people unnecessarily, but, at the same time, we are having a wee bit of difficulty in getting our heads around the categories. It might be useful to have an example of the sort of thought processes that you worked your way through as to why being overly restrictive would not serve justice as opposed to accepting on face value what you are proposing.

997. Mr Johnston: It might be helpful if we set that out in a table, because we are talking about different clauses of the Bill and different sorts of supporters.

998. Sir Reg Empey: You must have gone through this process.

999. Mr Johnston: That would give some examples of the sort of people we are talking about.

1000. The Chairperson: Mr McNarry, did you want to ask a supplementary question on that issue?

1001. Mr McNarry: I do not want to talk at cross purposes, so maybe you will keep me right. I just want to pick up on evidence that we heard earlier about the alleged offenders —

1002. The Chairperson: You are not going to digress into other territory, are you?

1003. Mr McNarry: No, I am not. Well, I do not know; that is up to you to judge. I do not think that I am going to, but I am not a crystal ball gazer, despite what you think of me.

1004. We heard evidence about an alleged offender at the custody stage. Does the type of recognised specialist that you are trying to identify — I think you have a bit more work to do on that — stay with an individual right through the process? At what stage would they then be displaced by what you are doing? It can be said that some people, specifically people who have certain mental illnesses, are unfit to stand trial. I am conscious that what you are trying to do is of benefit to the victim as much as it is to someone who may find themselves in a certain position because of their illness. Are you happy enough that you are covering that, or are you maybe going to do some more work on it for us?

1005. Mr Johnston: We will certainly give it some more thought. The appropriate adult scheme is really about the early stages of someone's engagement with the justice system, particularly in the custody suite and in interviews, and through contact with the police. By the time we get to the court stage, under our proposals, it would not necessarily be the same person coming in to give support.

1006. Mr McNarry: My worry is about that transfer. You have already admitted one type of expert into the process, and the issue is the handover from one expert to the other. We have seen and heard how difficulties can occur when a medical expert is handing over to another medical expert. I just want to be sure that you think that that transfer will be adequate.

1007. Mr Johnston: We will give that some more thought. There can be other situations where, for example, an interpreter is involved in the process at the police station but is not the appropriate person to be involved later on. We need to give that some more thought.

1008. Mr O'Dowd: I want to talk about special provisions for vulnerable witnesses. A number of people who gave evidence to the Committee said that we need to get the balance right, particularly in emotive cases, such as those that involve sexual offences, especially against young people. The person in the dock is the accused, and public opinion may be that they are in the dock for a reason, but we are in charge of ensuring that justice is done. What assurances can you give me that, in those provisions, the balance has not been pushed too much in the direction of the prosecution and away from the defence?

1009. Mr Johnston: Those considerations have been very real for us as we have developed the proposals. We can point to some examples. The proposals on knife crime, which we discussed earlier, are a good example; the feedback has been that the balance was perhaps not quite right, and, as a consequence, we have adjusted the proposals. So, we certainly listened to the points that were made about them in the consultation process.

1010. Mr O'Dowd: OK, you have listened in those cases, and a category was removed, but I am still concerned that, in emotive cases, the balance has shifted towards the prosecution to such a degree that defendants almost have to prove themselves innocent rather than the prosecution having to prove them guilty.

1011. Mr Johnston: I would go back to the purpose of the special measures provisions. They have been in place for 10 years now, and the purpose is to get at the best and most accurate evidence. It is not about favouring the prosecution over the defence but about allowing a witness, who may have been through very difficult circumstances, to give the best and most accurate account of what happened to them. That is what underlies the special measures provisions. In fact, the new guidance that is issuing on special measures is called 'Achieving Best Evidence'.

1012. Mr O'Dowd: You said that procedures to assist vulnerable witnesses have been in place for 10 years. I referred earlier to a 2006 report commissioned by the British Home Office that looked at the way in which the provisions were implemented there. In many cases, it was found that the measures were not being implemented properly. That brings me to my question: do we need extra legislation, or do we need the legislation that is already in place to be properly enforced?

1013. Mr Johnston: We can do more to ensure that the sorts of issues that were identified in that report do not arise in Northern Ireland. The Criminal Justice Inspection looked at that issue recently when it reported on sexual offence cases, and it found that, in 16 of the 18 sample cases, special measures had been implemented properly and at the right time and that the right questions had been asked. I take some comfort from that. However, we still could have done better in two of the 18 cases. As a result of that, we have set up a subgroup of the victim and witness task force to look specifically at those sorts of administrative arrangements around special measures to see how we can do better and, to address the specific criticism, to ensure that special measures are explored at an early stage in appropriate cases and are not left to the last minute.

1014. Mr O'Dowd: I am not questioning your statistics. However, I think that some of the other statistics in that report might not be as favourable as that one.

1015. Mr Johnston: I am quoting Northern Ireland statistics. The experience in England and Wales might be different.

1016. Mr O'Dowd: Even in the CJI report, which we received evidence on recently, there were statistics. That is OK; I will go through the report again myself.

1017. Mr Johnston: The key thing is that we have now set up a group to look at those practical issues, which I do not think require changes to legislation. However, it is about how the legislation is being used day to day.

1018. Mr McCartney: I wish to make a couple of points. Is the offender levy scheme already in operation in England and Wales?

1019. Mr Johnston: Yes, it is.

1020. Mr McCartney: How long has that been in place?

1021. Ms Smiley: A victim surcharge was legislated for in 2004 but was not implemented until 2007.

1022. Mr Johnston: Having said that, they have focused on fines, so they have not yet fully rolled out the scheme to some of the other areas in which we propose to implement our scheme.

1023. Mr McCartney: How is the collection and administration of the levy operating in general? The prediction for here is that there will be a one-off capital cost and that all the other costs will be absorbed. Is that the practice at present in England and Wales?

1024. Ms Smiley: The problem in England and Wales is that a much bigger area and number of court jurisdictions need to be covered but there is no joined-up IT system. However, the Causeway system in Northern Ireland will enable all the relevant parties to see the information and to share it at the appropriate time.

1025. Mr McCartney: The prediction is that the cost will be largely absorbed within existing administrative processes. What is your definition of "largely"? Will you be back here in a couple of year's time saying that the administration costs were higher than you first believed?

1026. Ms Smiley: That is why we are saying that we will phase the implementation of a couple of the disposals. We will have other planned reforms in place that we can piggy-back on rather than spending extra money now bringing them in especially for the offender levy, because they have a much wider application. Those costs are built into the projects.

1027. Mr McCartney: As regards the use of the money, your submission states that the fund will be separated from other running costs. How will that be monitored, and who will monitor it?

1028. Mr Johnston: We propose to set up an arrangement with DFP whereby we will account for the fund separately from the ordinary budget.

1029. Lord Browne: I will be quick. In your opinion, at which point would an extension of special provisions create the outcome of protecting the witness or plaintiff from scrutiny rather than of simply assisting them to give their evidence? Where exactly is the line drawn?

1030. Mr Johnston: Special measures kick in once a case gets to the court stage, because they deal with someone giving evidence for a court trial. There are, though, wider measures to protect and address the needs of vulnerable witnesses, and the actions of police can range from general advice and assistance all the way up to, in a small number of exceptional cases, very special witness protection. Therefore, the special measures that we are legislating for in the Bill will kick in at the court stage, but other support will be available to vulnerable witnesses before that.

1031. Lord Browne: Have you given any consideration to whether the changes to the special arrangements will assist people in making false accusations against a defendant?

1032. Mr Johnston: If someone is set on making false accusations, what we do with special measures will not prevent that — I hope that it will not help either. We are trying to put people in a situation where, as I have said, they present the most accurate evidence. There is a category of people who will lie in court, and the court process must sort that out and get the truth. However, there is also a category of people who are under tremendous stress. That stress can affect their recall of events and how effectively they put forward their story in court. We are trying to help that category of people. If we help them, we will, at the end of the day, get better evidence.

1033. The Chairperson: I want to run two points past you before you leave the table. Victim Support says that the difficulties faced by victims are related to culture and attitude rather than the need for further legislation. Will you comment on that?

1034. A 'Law Society Gazette' article that is headlined "Victim surcharge IT chaos" says:

"Despite collecting an estimated £305,000 since it began, HMCS does not know how many £15 surcharges are levied or what percentage of those have been paid".

1035. No IT system can pick that up. Will you comment on that?

1036. Mr Johnston: As Janice said, the difficulty in England and Wales was that they did not have an integrated IT system. We do; we have the Causeway system, and the changes that we make will all feed into that system. Therefore, we are starting from a higher base than England and Wales, and we have the potential to address those issues so that we have an accurate handle on the collection of the levy.

1037. From the point of view of victims generally and their engagement with the justice system, we acknowledge that the Bill's content is part of a wider programme of work. A code of practice for victims is out for consultation at the moment. That is about the standards that victims can expect from the justice system. Our new focus on speeding up justice is very much based on victim-focused targets, and we are in the process of looking ahead and starting to develop our next strategy for victims and witnesses, because the five-year strategy that we have been working to is coming to an end.

1038. The overarching concern of the criminal justice system has to be justice. For example, a victim might want someone to be convicted, and that may not always happen. However, we can address the issues of how victims are treated. We can consider the information that we receive and make sure that victims get services according to their needs. Chris might want to comment on what is happening more generally, but I just want point out that a bigger programme of work on victims is ongoing, and, if the Committee wants to hear more about that, I am sure that we could give a separate briefing.

1039. The Chairperson: We will stop there; our time is up. Thank you very much for your tolerance and endurance today. I suspect that we will talk to you later.

2 December 2010

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Thomas Buchanan
Sir Reg Empey
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt
Mr David McNarry
Mr John O'Dowd

Witnesses:

Mr Robert Crawford	
Ms Geraldine Fee	Northern Ireland Courts and Tribunals Service
Ms Laurene McAlpine	
Mr Gareth Johnston	Department of Justice

Mr Adrian Colton Mr Dermot Fee Mr Brendan Garland	Bar Council of Northern Ireland
Ms Gillian Clifford Ms Noelle Collins Ms Sonya Lutton Ms Patricia Lyness	Women's Aid Federation Northern Ireland
Mr Norville Connolly Mr Alan Hunter Mr Brian Speers	Law Society of Northern Ireland

1040. The Chairperson (Lord Morrow): With us again is Gareth Johnston, deputy director of the justice strategy division in the Department of Justice. From the Northern Ireland Courts and Tribunals Service (NICTS), we have Robert Crawford, head of the public legal services division, Geraldine Fee, head of criminal policy and legislation division, and Laurene McAlpine, head of civil policy and legislation.

1041. The first briefing on the legal aid clauses will last 10 minutes, followed by five minutes for clarification on any issues that might arise. That is the procedure that we will use. Mr Johnston, will you lead off?

1042. Mr Gareth Johnston (Department of Justice): Thank you, Chairman. Today we are presenting on Parts 7, 8 and 9 of the Justice Bill, which deal with legal aid, miscellaneous matters and supplementary provisions. My colleagues here from NICTS are very much in the lead in those areas, and I will defer to them shortly and let them present the provisions to the Committee. However, there are a few provisions in the miscellaneous matters in Part 8 that fall to the Department. I will cover those briefly at the end of the short descriptive presentation, and I will also outline the provisions in Part 9. In line with the structure that the Committee has set out, I now hand over to Robert Crawford, who will discuss Part 7 of the Bill, which relates to legal aid.

1043. Mr Robert Crawford (Northern Ireland Courts and Tribunals Service): I am conscious of the time, so I propose to run through the legal aid clauses of the Bill quite quickly. Clause 85 contains a new power to introduce a fixed means test for criminal legal aid. There is already a means test for criminal legal aid. If a judge considers that a defendant has insufficient means, that will satisfy the means test. The power in clause 85 would allow us to set a fixed test; in other words, it would allow us to set a specific income or assets limit to rule someone ineligible for legal aid.

1044. Clause 85 attracted the most concern during the consultation process. The responses were mainly about the possible impact on access to justice, and I reassure the Committee that we are alive to that concern. At present, more than 95% of defendants receive legal aid in criminal cases here. In England and Wales, where there has been a means test for some time, the level is around 93%, even with a fixed means test in place. We commissioned an independent economist to look at what impact a fixed means test will have and to examine different ways of assessing that. We expect that analysis to be with us on 20 December, and, as we said in previous meetings, we will share that analysis with the Committee and place copies of it in the Assembly Library so that anyone with an interest can see exactly what it says.

1045. The final outcome of any proposal would be subject to subordinate legislation, which would be subject to scrutiny by this Committee and a full equality impact assessment (EQIA). We do not have fixed ideas on the level of the fixed means test at present. We need to look at the costs of administering such a test. It is certainly not a foregone conclusion that we will go

forward with the test after the detailed analysis has been done; the costs may prove to be such that it would not save a great deal of money.

1046. Clause 86 relates to the recovery of defence costs orders. Under this clause, we hope to bring in a power to allow for the recovery of defence costs in cases in which it is clear that a defendant has ample means to fund his own defence. That would operate at the end of a trial, at which stage a judge could make such an order. We intend that it would be used only in cases that are very clear — where the defendant very clearly has the money to pay for his own defence. We intend to bring it in for Crown Court cases first. The average cost of a Crown Court case is £9,000, so there are significant sums of money to be recovered if we decide to use it. We anticipate that, if it works, we will extend it to the Court of Appeal in future years.

1047. Clause 87 adds the guarantee credit element of the state pension scheme to the passporting benefits for the purposes of eligibility for civil legal aid. That is very much a technical thing. There are a number of passporting benefits that give automatic eligibility for legal aid. The guarantee credit element of the state pension scheme came in after those were specified in the existing legislation. It is right to add that. It is currently dealt with by ministerial guidance; we are putting it into the regulations because the opportunity is there to do that.

1048. Clause 88 deals with compassionate bail and repeat bail applications. Clauses 100 and 101 introduce new provisions for those. It is right that legal aid should be available for compassionate bail and repeat bail applications, and, again, we are taking the power under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 to make sure that that is available.

1049. In clause 85 we apply the power to make a means test to the 1981 Order. Clause 89 applies that power to the Access to Justice (Northern Ireland) Order 2003. The criminal legal aid provisions of the 2003 Order are not yet in force, and when they come into force they will largely replace the 1981 Order, hence the need for two separate provisions here.

1050. Clause 90 repeals article 41 of the 2003 Order. That repeal is necessary to allow the Legal Services Commission to put money into what is called a litigation funding agreement (LFA). Money damages is the area concerned in civil legal aid. It is not a high priority for legal aid when resources are tight, and we anticipate that when the funding code comes in, it will be a low priority for such funding. That is why an alternative approach is being explored by the Legal Services Commission with the legal profession in discussions with the Bar and the Law Society. That has not produced an agreed way forward yet, but we anticipate that, if an agreed way forward is found, there will be a need for start-up funding for such an arrangement. We need to repeal this particular article to allow that to be done. Again, it is not clear yet whether agreement can be reached and whether the funding will be proceeded with.

1051. Clause 91 makes a number of minor changes that largely extend the scope of civil legal aid. The first change is to ensure that legal aid is available for a person specified in a protection from harassment order. That ensures that the person who is protected by the order can get legal aid to argue against the variation or discharge of a restraining order made to protect him or her.

1052. The next change replaces references to the Asylum and Immigration Tribunal with new references to the First-tier Tribunal and Upper Tribunal. The functions of the first Asylum and Immigration Tribunal have transferred to the new First-tier and Upper Tribunals, so that is a straightforward change of terminology.

1053. The third technical change ensures that legal aid is available for a witness who is protected by a witness anonymity order or investigation anonymity order. That is an extension to

allow such a protected witness to contest any application by another party to have that protection order varied or discharged.

1054. Next, we have a technical change to ensure that legal aid is available in respect of an order under section 215A of the Proceeds of Crime Act 2002 relating to the sale of seized property. That is to ensure that people have the legal assistance that they require to contest such an order.

1055. Finally, we have a change to ensure that legal aid is available in respect of the variation, renewal or discharge of a foreign travel restriction order under the Counter-Terrorism Act 2008. Again, we are expanding the scope of legal aid to make sure that it is available for people to contest that order.

1056. The Chairperson: Does anyone wish to raise any point around clarification?

1057. Mr McDevitt: On a point of clarification on clause 85, did you carry out a full equality impact assessment?

1058. Mr Crawford: We have not carried out an equality impact assessment on the change that we are proposing in the Bill, because we do not have the detail that we would want to put out to anyone to seek their views. When we are preparing for subordinate legislation, we will carry out an EQIA on the proposals before we bring them to the Committee.

1059. Mr McDevitt: So, we do not know the actual impact yet?

1060. Mr Crawford: We cannot assess the impact until we have some idea of what the level is going to be set at.

1061. Mr McCartney: I have a number of questions about the process. Clause 85 contains an enabling power to make the rules.

1062. Mr Crawford: Yes, it does.

1063. Mr McCartney: The rules are then subject to subordinate legislation, which is open to scrutiny.

1064. Mr Crawford: That is right.

1065. Mr McCartney: I notice that the clause keeps referring to "his" disposable income and so on.

1066. Mr Crawford: That means his or her.

1067. Mr McCartney: But it does not say that. Does that pose any problems?

1068. Mr Crawford: That is standard legal terminology; the word "his" includes her.

1069. Mr McCartney: Who initiates the order to recover costs?

1070. Mr Crawford: The judge could initiate that at the end of the trial. Our thought is that, in most cases, the Legal Services Commission will initiate it, as it is the body that will recover the cost. That money will then go back into the legal aid fund.

1071. Mr McCartney: Will the reasons be listed for scrutiny purposes?

1072. Mr Crawford: The order to recover costs would be acquired by going to a court, so the reasons for seeking the order would be specified in the request. Any person could approach the court for an order, but we anticipate that, in most cases, the Legal Services Commission will do so.

1073. Mr McCartney: The explanatory and financial memorandum state that applicants in receipt of the guarantee credit element of state pension credit are deemed as:

"automatically meeting, in certain circumstances, the financial test for civil legal aid."

1074. It seems a wee bit contradictory to say that something is automatic but only in certain circumstances.

1075. Mr Crawford: It is a passport benefit, so a person in receipt of the benefit will automatically get legal aid. There are other circumstances that might apply to someone's legal aid application that make it ineligible; in other words, it might not be the type of case for which legal aid is available.

1076. Mr McCartney: The litigation funding agreement is an agreement by which a person can enter into that process and incur no legal costs if he or she is unsuccessful. If the person is successful, then he or she will pay.

1077. Mr Crawford: The idea is that, if someone is successful, a proportion of his or her claim will go back into the fund to support other claimants.

1078. Mr McDevitt: Will the secondary legislation that you anticipate under clause 85 be passed by negative or affirmative resolution?

1079. Mr Crawford: Negative resolution is the normal procedure for legal aid, but, again, that is still subject to Committee scrutiny.

1080. Sir Reg Empey: I picked up on Mr Crawford talking about passport benefits. Would any of the proposed changes, such as the single benefit that might come in in the next year or so, have any impact on the proposals?

1081. Mr Crawford: Where there is a change in benefits that are considered to be appropriate to use as passporting benefits, we use ministerial direction and allow those benefits to be used for passporting purposes. Under the direction given by the Minister, we then bring them into legislation when the opportunity comes up. So, the answer is yes, we want to take account of any benefit that comes into force, because, if the benefit is given on the basis that someone has need, he or she will generally need legal aid as well and would need to be eligible.

1082. Sir Reg Empey: If a universal credit comes in, a lot of other benefits may disappear. Do you feel that there is adequate provision?

1083. Mr Crawford: At the moment, we use ministerial direction. That is what is happening with the guarantee credit element; people who receive it are getting legal aid. However, at the first available opportunity, it is appropriate to bring that into the legislation.

1084. Lord Browne: Has the Department received any legal advice to indicate that the changes to legal aid in the Bill are consistent with article 6 of the European Convention on Human Rights (ECHR)?

1085. Mr Crawford: We have not sought specific legal advice about the legal aid provisions. We have our own legal advisers who proof the provisions for us, and we are content that they are consistent with article 6.

1086. Lord Browne: So, you have not sought opinion from any other source.

1087. Mr Crawford: We have not sought counsel's opinion, because we have our own internal legal advisers in my division and in the Courts and Tribunals Service generally.

1088. Mr Johnston: The Bill has gone through the Attorney General's office, which has advised the Minister that it is within competence. That includes consideration of ECHR issues, so there were no concerns raised about that part of the Bill.

1089. The Chairperson: We move on to Part 8, "Miscellaneous", and Part 9, "Supplementary Provisions". Again, the same rules will apply; we will go for a 10-minute presentation and five minutes for clarification.

1090. Ms Geraldine Fee (Northern Ireland Courts and Tribunals Service): I will be as quick as possible. As Mr Johnston has outlined, Part 8 contains a number of miscellaneous provisions that are mainly designed to enhance court powers and to make certain other improvements to how business is conducted.

1091. Clauses 92 and 93 make adjustments that are intended to open up the court tiers at which certain types of bail can be granted. Clause 92 provides Magistrate's Courts with a power to grant compassionate bail to a defendant who has previously been remanded in custody by that court. Compassionate bail is bail to a remand prisoner for a specific purpose and for a temporary period. As the Committee will have noted from the briefing paper, at present, compassionate bail can be granted only by the High Court or the Crown Court.

1092. Clause 93 allows an application for repeat bail to be made to the Crown Court where bail has been refused by a Magistrate's Court and there has not been a change in circumstances. At present, only the High Court can hear such applications. By widening the range of courts that can hear those applications, the provisions are intended to free up High Court time and to allow its resources to be used more efficiently. The provisions have the support of the judiciary. We conducted a targeted consultation with the professions and other interested groups, and no negative responses were received.

1093. Clause 95 creates the power to allow court rules to be made to specify the circumstances in which information on family proceedings concerning children can be shared without the need for the express permission of the court. For example, that will allow a parent to discuss a case about a child with an elected representative or with a professional adviser such as the Children's Commissioner. At present, such a conversation could potentially be a criminal offence or a contempt of court. The purpose of clause 95 is simply to make it easier for information on family proceedings concerning children to be shared in certain circumstances. It is important to highlight that the clause does not provide for media attendance in family courts. As indicated, clause 95 is an enabling power only, and any court rules that are made will be subject to full public consultation to ensure that they are in the best interests of children in Northern Ireland.

1094. Clauses 96 and 97 make adjustments to the membership of the Crown Court Rules Committee and the Court of Judicature Rules Committee and are designed to enhance the

expertise that is available to those committees. The committees make the rules that govern the practice and procedure that should be followed in the Crown Court and the High Court respectively. Membership of those committees is prescribed in statute and includes the Lord Chief Justice, certain members of the judiciary and solicitor and barrister representatives.

1095. Clause 96 amends the membership of the Crown Court Rules Committee to include a public prosecutor nominated by the Director of Public Prosecutions and a person nominated by the Attorney General. Clause 97 extends the membership of the Court of Judicature Rules Committee to include the Attorney General or his nominee. Members may have noted from the briefing paper that we had intended originally to amend only the Crown Court Rules Committee membership to add a public prosecutor nominated by the Director of Public Prosecutions. However, at the suggestion of the Attorney General, we looked again at the proposals and took the view that, as well as including a public prosecutor on the Crown Court Rules Committee, there is benefit in including a person nominated by the Attorney General. The Attorney General also suggested that he or his nominee should be a member of the Court of Judicature Rules Committee. Again, we considered that proposal and agreed that it would be desirable to enhance the expertise of the committee.

1096. Clause 98 is a very technical amendment to the Criminal Appeal (Northern Ireland) Act 1980. It amends the 1980 Act to ensure that the Court of Appeal deals with any appeal against a sentence imposed by the Crown Court following committal to that court for consideration of a confiscation order under section 218 of the Proceeds of Crime Act 2002. There is currently no statutory provision to allow such an appeal to be heard by the Court of Appeal, which is the normal venue for such appeals. Effectively, the clause will address a gap in the current legislation. As the Committee will be aware from the briefing paper, the clause, as currently drafted, contains a minor typographical error that was not picked up before the Bill's introduction. Therefore, we will table a small amendment to the clause at Consideration Stage to enable renumbering.

1097. Finally, clause 99 contains a provision that will expand the powers of Magistrate's Courts in criminal proceedings to allow them to issue a witness summons to direct a third party to appear and produce any item of evidence where the court is satisfied that that person is able to provide material evidence. At present, the powers of the Magistrate's Court are limited to occasions when such an item would be admissible in evidence.

1098. This amendment will bring the powers of the Magistrate's Court into line with those of the Crown Court. As a result, it is hoped that more cases that are capable of being dealt with by the Magistrate's Court will remain there rather than defendants choosing to be tried in the Crown Court to avail themselves of its wider third-party disclosure powers. Again, no objections were received to this provision in our targeted consultation and it was welcomed by the Bar Council. That finishes my section, and I will pass over to Mr Johnston.

1099. Mr Johnston: We have reached the aspects of the Bill that concern necessary things and detail rather than exciting things and headlines. Clause 94 tidies up a remaining bit of legislation on crimes with offensive weapons, including knives. It brings the available sentences into line with those for other sorts of knife crimes, following indictment and conviction, that mean up to four years imprisonment. Being armed with a dangerous or offensive weapon with intent to commit an arrestable offence is not prosecuted often, but it is a useful offence to have because it can be prosecuted in respect of having offensive weapons on private property, and the police have confirmed that they would like to keep it.

1100. Clause 100 enables AccessNI to issue a copy of a criminal conviction certificate to an employer when the application is for employment purposes. At the moment, AccessNI is authorised to issue only one copy of the certificate, which normally goes to the applicant but can

go to the employer. Very often, both want a copy, so the clause will allow two copies to be issued at the same time by AccessNI. It makes things more convenient and speeds up the process. The change will mean that Northern Ireland will be the only jurisdiction in the United Kingdom to provide that service.

1101. Clause 101 concerns the accounts that the Northern Ireland Law Commission needs to provide each year. The original provision, we feel, was over the top. The commission is an advisory, as opposed to an executive, NDPB and the money that it spends is already accounted for through the departmental accounts. Asking it to produce a full set of commercial accounts is overkill and is costing quite a bit of money. Clause 101 tidies that up. The commission will still produce a financial statement but on a simplified basis that will feed into the departmental accounts. The Northern Ireland Audit Office is content with the changes.

1102. In Part 9, there are seven clauses concerning supplementary or transitional provisions. They are about regulations and orders that can be made in respect of other aspects of the Bill, and they are about commencement provisions. They are the standard legislative provisions that appear in Bills, and if the Committee has any questions about them, I am very happy to answer them. The purpose and effect of each of the powers is set out in the regulatory powers memorandum, which the Committee has seen.

1103. Mr McDevitt: Will the subordinate legislation under clause 95 also be passed by negative resolution?

1104. Ms G Fee: Yes. That is correct.

1105. Mr McNarry: Clauses 96 and 97 mention the Crown Court Rules Committee and the Court of Judicature Rules Committee. You welcomed the inclusion of the Attorney General on those committees. The clauses mention his nominee. Will you tell me about the status of the Attorney General's nominee?

1106. Ms G Fee: It is anticipated that it would be someone from the Attorney General's office, but it is a matter for him.

1107. Mr McNarry: But, the Lord Chief Justice, members of the judiciary, barristers and solicitors and their status have been described in the Bill. I am not challenging it. It is just the looseness of the words "a person nominated". Can that not be more specific? A lot of people work in his office.

1108. Ms G Fee: We can take that back and look at it.

1109. Mr McNarry: It would tidy it up. Thank you.

1110. The Chairperson: The explanatory and financial memorandum, when referring to clause 95, says:

"This disclosure will be between specified persons and in specified circumstances."

1111. Will you elaborate on that?

1112. Ms G Fee: The detail of the rules needs be worked through, and we propose to undertake a full public consultation exercise on that in which we will consult with all the interested parties. As I said, we took the enabling power simply to allow us to bring that forward.

1113. The Chairperson: So, we will hear more about that?

1114. Ms G Fee: Yes.

1115. The Chairperson: Thank you for your presentation. Please remain in the Public Gallery. Other issues may arise later.

1116. We now have representatives of the Bar Council, who will outline key points and issues regarding Parts 7, 8 and 9, which are legal aid, miscellaneous and the supplementary provisions. I welcome Adrian Colton QC, the chairman of the Bar Council; Dermot Fee QC, a member of the Bar Council; and Brendan Garland, the chief executive. Mr Mark Mulholland is not here. You are very welcome. You will have 10 minutes in which to outline your brief, and after that we will have a question and answer session, which will last for a maximum of 20 minutes.

1117. Mr Adrian Colton (Bar Council): I thank the Committee for the invitation to address the Committee. You have already met me and Mr Garland. I asked Mr Fee to come because he has a particular interest and expertise in civil legal aid. That subject might be of interest to the Committee. I apologise for Mr Mulholland being unable to attend. He is a real barrister and is in court at the moment.

1118. The Chairperson: Somebody has to do it.

1119. Mr Colton: Indeed. Before I address Parts 7, 8 and 9, I acknowledge the significant amount of work that has clearly gone into drafting the legislation. It is a pleasure and privilege to consider legislation drafted in Northern Ireland rather than in Westminster. It is a welcome piece of legislation.

1120. On another positive note, the Bar Council particularly welcomes some features of the Bill. We very much support the adjustment of the membership to the Crown Court Rules Committee and the Court of Judicature Rules Committee, although I take on board Mr McNarry's comment that it should be clear that it is the Attorney General. Those appointments will add to the expertise of those committees. I encourage this Committee to take on board the views of those committees when it considers legislation. They can provide relevant insights into some of the matters that this Committee has to consider and I urge it to liaise with those bodies if appropriate.

1121. I also make similar comments about the Law Commission. The Bill deals with the accounts of the Law Commission, but I encourage this Committee to proactively engage with the Law Commission. It can come forward with very good, substantive law. It is not always attractive or headline grabbing material, but it has come up with some excellent reports that have, in the past, gathered dust in libraries. I urge that the Committee to take on board the advice and views of the Law Commission. It has recently completed extensive work on land law which might commend itself to this Committee, even if it is not something that will necessarily attract any media attention.

1122. Clause 99, which is about the power of a Magistrate's Court to, in essence, obtain third-party disclosure, is particularly welcome. The legislation is detailed and comprehensive, but, in effect, it will provide for fairer trials in the Magistrate's Court and we feel that those provisions are long overdue.

1123. Many of the miscellaneous provisions, which are set out in Part 8, are tidying-up matters that fill gaps in legislation. Certainly, in our view, they are unobjectionable. I do not have any particular comments to make on them, unless I am asked to do so.

1124. There are, however, two particular matters in the Bill about which we have reservations and want to raise concerns. If permitted, we would like to address those with you. The first relates to clause 85, which deals with eligibility for criminal legal aid, and the suggested change to the means test for that. The other relates to clause 90, which deals with litigation funding agreements (LFAs). Both those clauses will potentially impact significantly on access to justice. If it is acceptable to the Committee, I propose to deal with criminal legal aid and Mr Fee will deal with LFAs.

1125. On a general level, it might be worth remembering the Bill's policy objectives, which are set out in its explanatory and financial memorandum. They are to reduce costs, do business better and improve access to the justice system. It is fair to say that there is obvious tension between those laudable objectives. On one hand, to reduce costs may well be desirable for the legal aid budget. However, in certain circumstances, it is bound to impact on access to justice. What we should seek to do, and what my submission focuses on, is to ensure that we get the balance right. I have concerns about that balance with regard to those two provisions.

1126. Of course, the other declared objective of the Bill is to deliver better and enhanced services for victims. The victims who are envisaged in the legislation are, primarily, victims in criminal law. However, it is important to remember that, in the context of civil litigation, there are also people who sustain serious injuries at work or as a result of clinical negligence and so on, and they are also victims. Their rights and entitlements should also be borne in mind. It is significant that less than 1% of the legal aid fund is spent supporting those who are victims in the civil sense — those who sustain personal injuries. That should be borne in mind when considering support for people in money damages claims.

1127. I want to turn to the means test for criminal legal aid, which is dealt with in clause 85. Clearly, what drives that provision is the objective to reduce costs. The Bar fully accepts that there is a need to reduce the legal aid bill in this jurisdiction. Indeed, we have been engaged for over a year in discussions with a view to reducing the legal aid bill from £104 million to £79 million. We support that move. We are determined to ensure that legal aid fees will meet that objective. This is a different matter, however, as it will impact on people's access to justice and levels of representation.

1128. I want to raise a number of matters about the outworkings of clause. The first is that it is our strongly held view that the decision to grant legal aid should remain a judicial function: it should remain the function of the court and not of the Legal Services Commission or some other body that is appointed by the commission. The court and judges are best placed to judge what is in the interests of justice. Remember that, in the granting of legal aid, there are two tests: interests of justice and financial eligibility. That function and those decisions should remain with the judiciary. They should not be transferred to the Legal Services Commission.

1129. The second matter to consider, if there is to be a financial eligibility test, is the levels. I understand that the legislation is closely modelled on the English and Welsh systems. I am subject to correction by the Northern Ireland Courts and Tribunals Service when its representatives respond; however, it is my understanding that, currently, in England and Wales, someone whose gross income is less than £11,000 per annum, or £12,500 if they have dependants, is automatically entitled to legal aid. If someone earns between £11,000 and £20,000, or between £12,500 and £22,500 with dependants, it depends on their disposable income. Anyone who earns over £20,000, or £22,500 if they have dependants, is not eligible for criminal legal aid. If that sort of provision is introduced in this jurisdiction, it will have serious consequences indeed for legal representation. It cannot be right that a schoolteacher, for example, or someone with a reasonably good standard of living who earns more than £22,500 a year, would be denied legal aid if they were faced with a serious criminal charge. What are the levels to be? That is a very important question.

1130. The next issue is whether the levels will be different for different courts. I can well understand that the test for someone who is facing a minor charge in a Magistrate's Court would be very different from that for someone who is facing, for example, a murder charge or a serious fraud charge in the Crown Court. The Committee needs to look at that. Will there be different levels for different types of crime in different courts?

1131. Moving on from that: if there is to be a financial limit, how is that assessment to be made? It seems that there is going to be a very high level of administration if there is to be some sort of formal assessment of means. Applications will have to be made; committees will have to be set up to review those; there will have to be a right of appeal for those applications; and, certainly if the civil experience is anything to go by, that will result in very significant administrative costs. Perhaps more importantly, it will also result in delay, and I know that this Committee and others that are dealing with legislation are very anxious to speed up the criminal process and to root out avoidable delay. It seems to me that, if that type of test is introduced in the Crown Court, it will inevitably result in delay. People are entitled to say that they are not ready for trial because their legal aid application has not yet been considered. There are inherent dangers in approaching criminal legal aid in that way: it will result in further administration and could well result in delay.

1132. Most importantly, our view is that those measures carry the serious risk of injustice. I gave the example of a teacher, perhaps a vice-principal of a school who is faced with an allegation that, 20 years ago, he or she abused a child. In the current climate, that would be likely to go to trial. Is it seriously being suggested that someone in that position will not be entitled to legal aid to defend a serious charge such as that? It seems to me that such a person is bound to be in excess of the sort of —

1133. The Chairperson: Mr Colton, I will have to stop you there.

1134. Mr Colton: Have I run out of time already?

1135. The Chairperson: You have run out of time.

1136. Mr Colton: Mr Fee will deal with the LFAs. However, I could finish the point on injustice within one minute. There is a danger that people will be forced to defend themselves without legal aid. Will they be able to challenge DNA evidence, forensic evidence, or engineering evidence? Corners will be cut. I am saying that there is serious risk of injustice if this provision is passed. Hopefully, Mr Fee will now address you on LFAs.

1137. The Chairperson: Unfortunately, Mr Colton took up your time, but anyway.

1138. Mr Dermot Fee (Bar Council): I will make just a couple of short points. I will focus on the litigation funding agreements in clause 90, which allows the Legal Services Commission to enter into those agreements under the Access to Justice (Northern Ireland) Order 2003. The situation in respect of money damages cases, which have been mentioned — essentially personal injury cases — is that those are no longer a priority within the Legal Services Commission's funding of legal aid. The Committee should look very carefully at that position.

1139. At the moment, there is a legal aid budget of £104 million. The funding of personal injury cases represents between £1 million and £2 million — 1% of the overall budget. That gives access to justice to people who might be described as victims: people who are injured in industrial accidents, road traffic accidents, etc, sometimes very seriously. The problem is that, if legal aid is not available to those people for money damages cases, what is the alternative? The alternative that is being suggested is litigation funding agreements, which would allow third parties — essentially insurance companies — to finance that type of litigation. That access would

be very restricted. We think that the effect of that would be to prevent access to justice for victims who have claims that are entirely justified and for which they are entitled to compensation.

1140. The reason for the amendment is to try to allow the Legal Services Commission, to take, as I think it was put, an "alternative approach to funding". However, I am asking this Committee and anyone else who is considering this matter to look again at the question of whether money damages should be excluded from legal aid. If £104 million is spent, and if most money damages cases are successful, and if it costs only £1 million or £2 million — 1% of that overall budget — is it appropriate to use another untried way of providing assistance that may be unsuccessful? The question is whether one should look again at continuing to provide civil legal aid at a very small cost to victims of injuries. The reason why the costs are small is because most of these cases are successful. They are genuine cases.

1141. I apologise as I am running on a little bit, but we can all see the current concept of a compensation culture, which is repeated over and over again. Most of these cases are absolutely genuine, they are successful and do not cost the legal aid budget one penny. Only a small minority are unsuccessful.

1142. A system of third-party funding would open up a whole nightmare scenario, is what I was going to say. What has happened in England and Wales is that people, through insurance companies, are trying to finance and live off litigation, and one has to ask whether that is appropriate. The questions are whether, if someone is injured, they should have access to the courts; should obtain their compensation at a reasonably low cost; should be able to be funded by legal aid if they qualify under those provisions; and should be funded by legal aid at a very low cost.

1143. The Committee should also note that, because it is available to so few, there has been a 250% reduction in applications for civil legal aid over the past eight years, so it is a very small area. I suggest the Committee look at it, should it be retained. I apologise both for speaking quickly and overrunning.

1144. The Chairperson: You can talk to your colleague outside about that. [Laughter.]

1145. Mr Colton: That would be the first time.

1146. Mr McDevitt: Clause 85 was mentioned. We are talking about something that would still be subject to secondary legislation and a full EQIA. Is it not a premature debate?

1147. Mr Colton: We have to flag up the important issues. Our experience is that, once you provide the enabling legalisation, it builds up a momentum and a degree of inevitability occurs. I was anxious to flag up the issues, and I was perhaps more temperate in our written response. However, I have serious concerns about where it is going, particularly when considering the England and Wales provisions, which, it seems to me, these are largely modelled on. However, I take your point that there will be another chance to look at it.

1148. Mr McDevitt: This would be secondary legislation by negative resolution, so it would provide for a very limited degree of scrutiny, certainly by this House. What is your opinion on that?

1149. Mr Colton: I regret to say that I am not overly familiar with the significance of what you said about negative resolution and so on, but, I am opposed to it. I do not think it is a good idea. However, I would be concerned if there were to be no further scrutiny of it, because, of all the clauses, that is potentially the most significant around access to justice.

1150. The Chairperson: As a point has been raised about negative resolution, the Committee Clerk will give a 60- to 90-second brief on the subject.

1151. The Committee Clerk: Negative resolution rules would give the Assembly and this Committee the least amount of opportunity for control. There will be consultation at the draft stage, but once the rule is laid, the Committee either has to agree to adopt it in its entirety or pray against it. It cannot amend it. Other forms of statutory legislation, such as affirmative of confirmatory resolution, give more control and more chance to debate.

1152. Mr McDevitt: Mr Fee, I have a question for clarification. On the face of it, LFAs sound like a good thing because they are incentivising the legal system to pursue money damages cases that have a high chance of success and they are underwriting themselves.

1153. Mr D Fee: We are not totally opposed to them, but I think they need careful scrutiny. At the moment, article 40 of the Access to Justice (Northern Ireland) Order allows for LFAs. That is where a third party funds the plaintiff for a case, gets a benefit from it and tries to pass that on to the defendant. In some ways, they are selling the case, which can give rise to conflicts, because the person who is promoting or financing the case, essentially an insurance company or similar, has a money interest. The difficulties in England and Wales have been clear and are significant. I cannot go into them in detail at this stage, but we have to be careful about that.

1154. Article 40, in my understanding, has not yet been brought into force. Article 41 of the 2003 Order says that the Legal Services Commission could not engage in litigation funding agreements. If we abandon article 41, it will mean that the Legal Services Commission will move towards becoming a provider. It means, then, that other third parties will become a provider. One has to be careful about what that could lead to in a small jurisdiction, and whether we get the situation that exists in England and Wales, where the cost of litigation became phenomenal. There are all sorts of difficulties. Most cases are genuine and successful. I am saying that, if those very few cases that are unsuccessful cost only 1% — £1 million to £2 million — of the £104 million legal aid budget, is it not a good idea to, instead of looking for an alternative approach through LFAs, maintain the current approach, which costs very little? That is the point that the Committee should look at.

1155. Mr McCartney: I have a couple of questions about the litigation funding agreements. I am reading here about pursuing money damage cases including personal injuries. What are the other types of money damage cases? Do those include medical negligence?

1156. Mr D Fee: Clinical negligence is a money damage case. The vast majority money damages are awarded for personal injury. However, if you are suing someone for crashing into the front wall of your house, for flood damage or for any damage to property, those are money damage cases, should you avail yourself of legal aid.

1157. Mr McCartney: So, this is not an attempt to open up access? There are people who do not take up a case because of the cost if they lose.

1158. Mr D Fee: LFAs could, arguably, give greater access to people who would not qualify for legal aid, although the Legal Services Commission's approach would simply be to cater for those who would qualify for such aid. There is a possible benefit, in that the LFAs would give access to people who do not qualify. I am not saying that one should argue totally against them; I think one to be careful about what they might open up. I go back to the point that, if 90% of the cases of those who have been injured and who cannot fund their own cases are successful and cost very little, would it not be better, if at all possible, to keep the current arrangement?

1159. Mr McCartney: I understand that, but are there occasions when people do not take cases because they cannot indemnify themselves against costs, and they walk away?

1160. Mr D Fee: Yes. The legal profession in Northern Ireland is such that, over a long number of years, in a very small legal service, the Bar, and solicitors in particular, deal with clients and their families. Those solicitors will proceed with litigation in the hope that it will be successful, and charge a small amount. In England, it is all front-loaded and costs an absolute fortune. Here, people try to keep the costs down, proceed towards the case, and try to settle the case and avoid court if at all possible. Our system works quite well in that way. A clinical negligence case costs a lot of money because a lot of experts are required. The funding of such a case can be difficult for a person who does not qualify for legal aid. That is one of the major areas of concern.

1161. Mr McCartney: Adrian addressed the issue with clause 85. There is a financial aspect, but the interests of justice must also be taken into account. Someone earning £35,000 could still be eligible in the interests of justice.

1162. Mr Colton: Yes; provided that is left in the hands of judges and that it is made clear.

1163. Mr McCartney: Is that why you would argue that that decision should be left with the judiciary?

1164. Mr Colton: Yes.

1165. Sir Reg Empey: Approximately how many individual cases are taken in a year? You made the point that it was roughly 1% of the total. Do we know how many cases we are talking about?

1166. Mr D Fee: In terms of civil litigation? I am not sure that I have access to that. I am sure that it is reported. The figures from the various publications talk about percentages, so I am not sure what the actual figures are.

1167. Sir Reg Empey: Just as a matter of interest, if it does come across your desk, you could let the Clerk know what that amounts to.

1168. Mr D Fee: Is it the total number of civil cases?

1169. Sir Reg Empey: I want to know the number of individuals. Out of that 1% or 2% of the legal aid budget, approximately how many people are affected?

1170. Mr D Fee: I am not sure if that is available. The Court Service may have it. It is not in any of the publications —

1171. Sir Reg Empey: Well, if anybody has it —

1172. Mr McNarry: It must be, if you have a figure of 1%. What is it 1% of?

1173. Sir Reg Empey: You were making the point that it is significant —

1174. Mr D Fee: It is 1% of £104 million. That is a published figure.

1175. Sir Reg Empey: I just wonder how many individual citizens are involved in that.

1176. Mr D Fee: It will certainly be a significant number of cases, but I do not have the actual figures. The Legal Services Commission will have the precise number of applications in any particular year from people who qualify for legal aid and have suffered injury. The 1% is 1% of the overall cost.

1177. Mr A Maginness: Have you been in negotiations with the Legal Services Commission or, indeed, the Department about LFAs? I thought that at an earlier stage the Department indicated that both the Bar and the Law Society were in favour of the proposal. If I am wrong about that, correct me.

1178. Mr D Fee: No, I am not saying that. In fact, I hope that we made it clear that, if it does give access, we are in favour of it. The caveat that we have is whether the difficulties and practicalities of dealing with it are fully appreciated. The other issue is whether there is any need for it if the cost is so little at the moment.

1179. Mr A Maginness: It is a small number of cases. You talked about the experience in England and Wales, and you mentioned success fees. Has that in any way inflated the price of litigation?

1180. Mr D Fee: It certainly has. There is a lot of criticism; the Jackson report and so on have been critical. The legal profession in Northern Ireland has a lot of concerns about success fees. I put it that way because I am sure that there are certain lawyers who would like success fees and who see them as an opportunity. In general, the legal profession has difficulties with them and fears and concerns about them. The idea of a success fee is that you bring a case and, if you are successful, you charge maybe another 50% in fees.

1181. Mr A Maginness: So it is a premium on top of the normal fee.

1182. Mr D Fee: People then perhaps pick a case that is likely to be successful and do not take the cases that are likely to be unsuccessful. They charge extra fees, and the cost of litigation, particularly to the defendants, is significantly increased. The overall cost of litigation goes up; that has been the problem in England and Wales.

1183. The Chairperson: Thank you very much for your presentation and for coming along.

1184. We move on to a briefing from Women's Aid Federation Northern Ireland on the key points and issues regarding the miscellaneous and supplementary legal aid provisions in the Bill.

1185. I welcome the team: Gillian Clifford, regional policy and information co-ordinator for Women's Aid Federation Northern Ireland; Patricia Lyness, management co-ordinator for Belfast and Lisburn Women's Aid; Noelle Collins, team leader for Belfast and Lisburn Women's Aid; and Sonya Lutton, deputy helpline manager. Ladies, you are very welcome. You have 10 minutes in which to outline your brief. There will then be 20 minutes of questions. I know that we digressed marginally earlier, but we made up for that in our own time in the session with the lawyers. However, I suspect that, if I were not as flexible with you, you would remind me of that.

1186. Ms Patricia Lyness (Women's Aid Federation Northern Ireland): Good afternoon, Chairman and members. On behalf of Women's Aid, I thank the Committee for the opportunity and invitation to give evidence today on two issues that are of great importance to the women and children who use our services across Northern Ireland and to the wider community. We want to talk about access to legal aid for women who have experienced domestic violence, specifically the cost of legal proceedings and of obtaining a non-molestation order. We also want to highlight the treatment of women as both victims and witnesses in legal proceedings involving domestic violence and to make recommendations in that regard. We will endeavour to respond

to any of the Committee's questions or issues. The Chairperson has already introduced us, so I will skip the introductions.

1187. Women's Aid in Northern Ireland has over 35 years' experience of dealing with domestic violence and of providing and developing safety and support protection and safety services for women and their children. Domestic violence is one form of violence against women that occurs across the world. It is a crime and a violation of the most fundamental human rights: the right to live free from torture, violence and the threat of violence, and, indeed, the right to family life. Those principles are enshrined in European international human rights standards and conventions, of which the UK Government are signatories.

1188. Our work includes challenging the attitudes and beliefs that perpetuate domestic violence and promoting healthy and non-abusive relationships. Across our 10 local groups, we have 12 refuges providing a total of 300 bed spaces. In 2009-2010, over 1,000 women and almost 900 children sought refuge with Women's Aid. We also have a floating support service that supports and enables women to remain in their home, if it is safe to do so. Last year, that service dealt with almost 3,000 women and over 3,000 children. In 2009-2010, the 24-hour domestic violence helpline managed over 32,000 calls, which represents a 70% increase on the previous year.

1189. Women's Aid welcomes the Minister's victim-centric approach to the Department's ongoing review of the justice system and the proactive, positive and highly productive engagement that we have had with departmental officials, representatives from the Northern Ireland Legal Services Commission and others during the consultation process on a number of key issues.

1190. It is not our intention in this presentation to make generalisations about the conduct of the legal profession in its representation of women who have experienced domestic violence. Rather, we wish to illustrate the issues raised by the women with whom we work and the concerns that we as an organisation share. We fully acknowledge that there are numerous excellent examples of practice in the legal profession. Indeed, that has been our experience. However, we feel that best practice, particularly in family law, needs to be clearly established, identified and standardised across Northern Ireland.

1191. Non-molestation orders and access to civil legal aid have become matters of increasing concern to Women's Aid, particularly regarding the cost of obtaining such orders. Non-molestation orders come under legal aid advice and assistance legislation. The income threshold for that form of legal aid is extremely low. In 2010, a woman must have a disposable income of no more than £234 a week to receive legal aid for non-molestation order proceedings. The figure of £234 a week does not take into consideration mortgage or childcare payments. It is, however, inclusive of benefits, child maintenance payments and any income from part-time work. Through the exclusion of tax credits, a single mother working part time is brought just over the threshold of legal aid.

1192. In seeking a non-molestation order, the initial ex parte order can cost up to £400. Within two weeks, the pursuit of a full non-molestation order can cost a further £400, or considerably more, particularly if the order is contested by the respondent. Full orders are frequently contested, and, depending on the duration and complexity of the proceedings, it is not unusual for a contested order to cost in excess of £2,000. Our legal consultants have stated that, if the respondent has a criminal case pending that is linked to domestic violence, the respondent's legal representatives will frequently encourage the respondent to contest the full non-molestation order as a failure to do so may prejudice the outcome of the criminal case.

1193. For many women who are unable to access legal aid, those costs can be prohibitive and are an additional, unsustainable financial burden at a time of enormous fear and uncertainty. It is a source of particular concern to us that our legal advisers have highlighted that, in the vast

majority of cases in which women have been asked to pay for a non-molestation order, they have decided not to pursue proceedings. We are currently attempting to quantify the information from the women with whom we work, and we will be happy to submit those findings to the Department and the Committee when they become available. Solicitors have reported to us that there are cases where financial constraints have forced a woman not to pursue an order and where they have felt strongly that there has been a clear and demonstrable risk to the safety of the woman and her children as a result of not doing so.

1194. It has been suggested that an alternative approach for women may be the pursuit of an injunction against harassment. Although we note that harassment orders have a much higher threshold for legal aid — currently a disposable income of £9,937 per annum, inclusive of mortgage, rates and childcare payments — we also note that, in cases of injunction against harassment, there is a strict adherence by courts to a policy that the complainant must be able to demonstrate that two recent incidents of harassment have occurred. In that context, it is also a matter of concern that women not resident with partners cannot obtain a non-molestation order, as resident boyfriends or partners are not considered to be an associated person for the purposes of an order. We are increasingly seeing young women reporting violent behaviour from partners, and it is essential that those young women are able to report that violence and seek legal protection at the earliest opportunity. They should not be forced to wait for a subsequent incident to occur. From a humanitarian and risk-management perspective, that is a highly dangerous practice. Similarly, to be in receipt of legal aid for an injunction against harassment, the applicant must demonstrate that the merits of bringing an injunction are satisfied.

1195. Although the breach of a non-molestation order constitutes a criminal act, Women's Aid is troubled by the apparently subjective nature of interpreting the breach of an order and the inconsistent arrest policy. The PSNI is charged with determining what constitutes a breach, and we would welcome clarification on its operational policy and guidelines for arrest in cases of breach of a non-molestation order. We fully support the key recommendations in the Criminal Justice Inspection Northern Ireland report on domestic violence and abuse in respect of decisions to arrest, specifically its recommendation that supervisors should be more proactive in reviewing the approach taken in domestic violence cases, especially where decisions not to make an arrest have been made.

1196. We also note that provision exists in the legislation for costs to be awarded in non-molestation order proceedings. However, costs are seldom awarded. Through more than three decades of work, Women's Aid has observed that financial abuse is often a characteristic of domestic violence. Indeed, perpetrators often utilise the legal system and processes to further abuse by intentionally prolonging legal proceedings to create financial hardship for the victim. That is particularly problematic when the perpetrator is in receipt of legal aid and the victim is not. We understand that the awarding of costs will be an additional burden on the legal aid fund. However, the awarding of costs in those cases, or a reduction of legal aid moneys paid, might well serve to prevent vexatious litigation or behaviour that is designed to frustrate the process. It may also serve to discourage unnecessary delay.

1197. Women's Aid continues to call for an immediate amendment to the legal aid rules and for an automatic right to be given to all victims of domestic violence to access legal aid and justice free of charge. It is our strong opinion that, as a minimum requirement, Northern Ireland should be brought in to line with existing provision in England and Wales. Since April 2007, the Legal Services Commission in England and Wales has been able to waive all eligibility limits —

1198. The Chairperson: I am sorry; I have to stop you there. Your time is up. We will have to leave it there.

1199. Mr McDevitt: I want clarity on a point. Clause 85 deals with a change to article 31 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981. Is the current provision for non-molestation orders in article 31 of that Order?

1200. Ms Gillian Clifford (Women's Aid Federation Northern Ireland): I am not sure about that. Our understanding is that non-molestation orders rest with civil legal aid. That is one of our concerns. We thought that the Bill might have provided an opportunity to include provisions on legal aid.

1201. Mr McDevitt: It might be helpful to get clarification on that. Are you asking us to make positive amendments and introduce new elements to the legislation?

1202. Ms Clifford: Yes.

1203. Mr McDevitt: Your basic call is for an automatic right for all victims of domestic violence. Do you mean domestic violence or sexual assault?

1204. Ms Clifford: We want to include domestic violence and sexual violence, because women who experience domestic violence frequently experience sexual violence in that context. We would have welcomed an enabling power, and the Bill would have been an excellent opportunity to create that.

1205. Mr McDevitt: You are effectively looking for a possible new clause that will put in the Bill a power to provide free guaranteed access to justice for all people who allege that they have been a victim of sexual violence.

1206. Ms Clifford: Yes.

1207. The Chairperson: I am trying to get my head around your position on non-molestation orders. Are you more concerned with the lack of legal aid to impose those orders, or are you talking about a lack of consistency in the imposition of non-molestation orders?

1208. Ms Lyness: Cost is primarily the barrier for women who need a non-molestation order. The cost is prohibitive because of the threshold and because of all the factors that are taken into account.

1209. Ms Sonya Lutton (Women's Aid Federation Northern Ireland): A lot of women who work call the 24-hour domestic violence helpline and access other Women's Aid services. Because they work, they cannot get protection, and they do not have the same rights as those that are afforded to their counterparts in England and Wales. There are similar schemes in those jurisdictions where women can pay a contribution towards the costs of the case or can pay monthly. We looked at introducing that kind of scheme as well as at the waiving of fees.

1210. Ms Clifford: A number of solicitors have already set up payment plans to help women to do that. That is one reason why we want best practice to be explored and rolled out across Northern Ireland. We have major concerns about situations where, for example, working family tax credits will take a working single mum just over the threshold for legal aid. That affects a lot of women whom we deal with, and it is, to us, intolerable for a woman to be faced with having to balance her financial stability with her safety and security and that of her family.

1211. The Chairperson: The paper that you tabled is not definitive about that. Paragraph 7.10 says:

"However in England and Wales, women in domestic violence situations may not have to meet financial eligibility criteria".

1212. What does that mean?

1213. Ms Clifford: There is the capacity in England and Wales to —

1214. The Chairperson: Sorry to interrupt you. So, you are not saying that those women do not have to meet the criteria, rather that they may not have to.

1215. Ms Clifford: They may not have to. That is the existing position of the Legal Services Commission in England and Wales. There is capacity to take into consideration domestic violence, affordability and the income threshold and to make an adjudication based on that. However, similarly, there is a system in place there where, depending on the income threshold, a person can, if necessary, make repayments over time. However, people are entitled to legal aid and can repay based on their income.

1216. Mr McCartney: I want clarification on a number of points in your briefing document about non-molestation orders. Do you keep any figures on the amount of women who do not pursue those orders because of the legal aid aspect?

1217. Ms Lyness: That is one of the areas of work that we will be concentrating on to gather evidence and statistics.

1218. Mr McCartney: Do you have a process for doing that? There may be a lot of women who do not come forward.

1219. Ms Noelle Collins (Women's Aid Federation Northern Ireland): As part of a woman's support plan, we ask her that when we contact her. We worry about the women who call to solicitors, are quoted a price for a non-molestation order or an occupancy order, cannot afford it and return to abusive relationships.

1220. Mr McCartney: It would be good for us to have some idea of the numbers who currently take out those orders and their financial positions, particularly when we are considering clauses. It would be interesting to see whether the people who pursue them are those who have the ability to pay. If so, that would help to prove the point that you are making.

1221. Ms Clifford: It would be very helpful for us if solicitors were able to collate those figures, because not every woman who has experienced domestic violence will come to Women's Aid. It may well be that there are women who go into a solicitors' office only to be told that they cannot get legal aid. Those women will then walk away. We never encounter those women, so we are not getting the full picture.

1222. Mr McCartney: In a previous presentation, we were told that the limits were £11,000 for those without dependants and £12,500 for those with dependants. There does not seem to be anything built in to take account of the number of dependants or whether there is a mortgage involved.

1223. The Chairperson: Are you saying that when it comes to enforcement of non-molestation orders, the police are found wanting in many cases and that there is a continual inconsistency in their approach? Do you have any figures to support that, or is it an anecdotal observation?

1224. Ms Lyness: Are you talking about police action on breaches of those orders?

1225. The Chairperson: Yes, I am talking about the number of cases in which you felt that the police did not act correctly in enforcing them. Would those cases make up 50%, 20% or 10% of the total number?

1226. Ms Collins: We only have figures for the women that we have experience of. There are affected women who have never contacted Women's Aid, so we cannot put a number on them. However, we have certainly found the approach to breaches of orders to be inconsistent across the police areas.

1227. Ms Lyness: That is an area that we are looking at. The issue is also our capacity, because our main aim is to deliver services. However, those are the issues that are coming up for us, so we have to look at them within our capacity. We are also looking to the police to provide some of that information. If you consider the Criminal Justice Inspection report on domestic violence that was published yesterday, you can see that one of its recommendations was that the PSNI should consider monitoring cases in which no arrests have been made, including cases of breaches of orders. So, we need the police to help us to get robust figures. At the minute, what we are saying is anecdotal, but we have to look at how we can gather evidence to support that.

1228. The Chairperson: What is the figure for the incidence of domestic violence? Is it one incident every 21 minutes?

1229. Ms Clifford: Yes, and one crime every 53 minutes.

1230. The Chairperson: Are those the figures for Northern Ireland?

1231. Ms Lyness: Yes, there were over 9,000 crimes with a domestic motivation in 2009-2010.

1232. The Chairperson: Thank you very much for coming, ladies.

1233. The next item is a briefing by the Law Society. Again, the briefing will outline the key points and issues on the legal aid, miscellaneous and supplementary provisions clauses of the Bill and the withdrawal of the draft solicitor advocacy clauses. I welcome Brian Speers, who is president of the Law Society, Norville Connolly, who is senior vice-president, and Alan Hunter, who is the chief executive. You are very welcome. Mr Speers, I understand that you are just starting your term of office.

1234. Mr Brian Speers (Law Society of Northern Ireland): This is my one-week anniversary, which is a significant milestone.

1235. The Chairperson: We wish you well.

1236. Mr Speers: Thank you very much. I am still standing, or sitting, after one week.

1237. The Chairperson: You have 10 minutes. I said that to your other legal colleagues, but they did not pay much attention to me. [Laughter.]

1238. Mr Speers: I thank the Committee for allowing us to come along and make some observations. I will ask our chief executive to talk about the issues under review.

1239. Mr Alan Hunter (Law Society of Northern Ireland): First, I thank the Committee for inviting the society to make representations today, as the president indicated. The society has a specific interest in a number of proposals in the Bill, and I am aware that the Committee has our written

statement, so I do not propose to restate those, given the time constraints. However, I will flag a number of the issues that we highlighted in our submission.

1240. Clauses 12 and 13 relate to the examination of an accused through an intermediary and are modelled on the Coroners and Justice Act 2009 in England and Wales. Our submission voices concerns that the provisions may lead to the prosecution of the mentally unfit. We acknowledged that the Bill contains important safeguards, including that a direction is given only when the court is satisfied that it is required to ensure that the accused receives a fair trial. However, we felt it important to bring that particular matter to your attention. The relationship between the intermediary and the defendant's legal team is a further issue that we highlight.

1241. Our submission mentions the view held by criminal law practitioners — and none of us here today is a criminal law practitioner — that defendants appearing via live links find it difficult to understand and participate in the proceedings. We highlight a particular concern with respect to those who are suffering from a mental disorder, and we note that the Bill contains important safeguards. However, we think that it is important to bring that to your attention today.

1242. As regards the diversionary factors and penalty notices set out in the Bill, we have highlighted to the Committee that those, effectively, operate outside the justice system, and we raised a number of concerns about how the scheme will work. We pointed to some safeguards that we think are required, particularly relating to the conditional caution, where we highlighted the need for appropriate safeguards.

1243. There are two significant proposals on legal aid in the Bill. First, there is the criminal legal aid means test. A copy of the executive summary of our submission to the Courts and Tribunals Service was annexed to our response to the Committee. Members will have noted that the society considers it appropriate that those whose earnings are sufficient and who are found guilty of crime should not benefit from legal aid. However, the prescribed financial limits will require scrutiny. It has already been brought to your attention, and I will bring it to your attention once again, that, in England and Wales, the prescribed levels are likely to remove from the scope of criminal legal aid such diverse groups as nurses, cleaners, teachers, firefighters, civil servants, and ambulance drivers. A further factor is that defendants are likely to be suspended from their work while on trial or awaiting trial.

1244. The society welcomes the removal of the prohibition on the Legal Services Commission funding legal services under litigation funding agreements. We are working with the commission in that context. However, we are keen to ensure that access to justice for all is guaranteed.

1245. The principal issue that we would like to raise is that of rights of audience for solicitor advocates. The Committee is aware that it was the intention that the Justice Bill would contain proposals for the extension of rights of audience for solicitor advocates in the higher courts and for them to appear in cases certified for counsel in the Magistrate's Court. This proposal was withdrawn prior to the consideration of the Bill due to a decision by the Attorney General that the Bill may be in breach of article 25 of the services directive. That came as a disappointment to the society and the Minister. The society was particularly surprised about the basis for the Attorney General's opinion, and we sought our own opinion on the matter. The Committee is aware of the opinion provided by Sir Sydney Kentridge QC. He stated that he could see no basis upon which the Attorney General had based his opinion. A copy of Sir Sydney's opinion has been provided to the Department, and we await its views. We also requested sight of the Attorney General's full opinion.

1246. The society considers that the current position is most unsatisfactory, leaving, as it does, members of the public in Northern Ireland without the choice of their solicitor or another solicitor

as advocate in the higher courts. Members of the public in the South, England and Wales and Scotland all have that choice.

1247. We understand that, latterly, there have been discussions with the Minister and the Attorney General. We understand that the Minister is hopeful that clauses can be introduced to the Bill, by way of amendment, to give rights of audience to solicitors in the higher courts in accordance with the policy intention of the Minister and the Department. We are, therefore, hopeful of a satisfactory resolution.

1248. However, I invite the Committee to consider two points. First, given the short time available for passage of the Bill, particularly Committee Stage, this matter must not go by default. There must be sufficient liaison between the Committee and the Minister to ensure that, prior to completion of Committee Stage, there is a clear commitment to introduce the clauses by way of amendment. That will require the Minister to settle the clauses and consult with the Committee and the society to ensure that the clauses achieve the policy objective. We invite the Committee to ensure that, one way or the other, clauses are ready to be introduced, by way of amendment, in a timely fashion during the passage of the Bill.

1249. There is one final important point. We do not know what resource impact assessment has been carried out on the measures to be introduced by the Bill. The Bill will create new administration. Has that been costed, and have funds been set aside to deliver it? There will be a legal aid impact, new cases, new offences, a need for new legal aid defence certificates and an inevitable rise in legal aid spend. We query whether that is provided for in the estimates and funds that have been set aside to meet those costs. Those are important questions.

1250. We are happy to answer any questions.

1251. Mr McDevitt: I wish to pick up on the point about the solicitor advocate. The introduction of the clause, as originally drafted, would have been subject to regulation. A series of rules would have been formulated. How does the society feel about the nature of regulation that will be required to ensure that standards are not compromised in any way while solicitors are given rights of audience?

1252. Mr Norville Connolly (Law Society of Northern Ireland): We feel that the highest standards should be maintained. In anticipation of being granted solicitor advocacy rights, our council has already had the debate. We passed a proposal that we will have regulations to allow two major policy changes. One is that a client who has the possibility of using the solicitor advocate will be advised that there is a choice of advocate. That choice will be explained, and it will also be explained that, if a person selects an advocate, that advocate will earn higher fees as a result being so employed.

1253. Our council's second policy change is that each solicitor will keep a detailed note of the type of advice that he has given to the client. That will ensure that it is clear and transparent that advice has been given on higher fees and choice. That goes even further than what happens in England and Wales or Scotland. We want to keep the standard as high as possible.

1254. Mr McDevitt: We will be looking only at enabling legislation at this stage, of course.

1255. Mr Connolly: Yes; but we will obviously pass the regulations after that.

1256. Mr McDevitt: I note the Law Society's support for LFAs. I do not know whether you heard Mr Fee's evidence earlier. He expressed support in principle but raised concern about the law of unintended consequences. What is your opinion on that? Do you see a potential risk or downside with LFAs in that you could end up denying access to people who may have had it otherwise?

1257. Mr Brian Speers (Law Society of Northern Ireland): We are more accepting than the position that Mr Fee outlined. We see that alternatives need to be explored. Indeed, we are engaging in an exploration of alternatives that may achieve the goal of providing access to justice for predominantly civil claims in which money damages are pursued.

1258. We also see that there is a need to consider the administrative costs of that within the Legal Services Commission. At this stage, it is a matter of remaining in active discussions with the Legal Services Commission, but being broadly in support of the principle of exploring alternatives to the current arrangements.

1259. Mr McDevitt: For clarity, do you have an objection to clause 90 as it stands?

1260. Mr Speers: No. We do not.

1261. Mr Connolly responded to the point about the solicitor advocacy. I just want to add that, in order to be a solicitor advocate, a rigorous and high-quality course is offered. As Mr Connolly said, we are anxious to ensure that there is a quality of service provided. We are extremely confident that the solicitor members will be well able to meet any quality standards and that the additional training that we have set in place will address any reasonable concerns about quality of delivery of advocacy services.

1262. The Chairperson: What do you say, Mr Hunter, to those who say that the lack of access to justice, if legal aid is not available, is overplayed? I have heard it said that that is overdone.

1263. Mr Hunter: I suppose, Mr Chairman, I might say a very great deal, but I will try to be succinct.

1264. Access to justice is not an optional extra for the state. It is a foundation of the state and an emanation of it. Secondly, it is important, if there is to be equality under the law, that people have recourse to enforce their rights or to defend themselves against prosecutions or actions brought by the state whether or not they have means. Therefore, it is ultimately a key requirement of the state to ensure that people have access to the courts, whether or not they have means. Although it may not be particularly popular at any time, it underpins society, and says a good deal about the type of society and state that people want to live in and want to have their rights respected in.

1265. The Chairperson: So, you defend it to the last?

1266. Mr Hunter: Yes. Absolutely.

1267. Mr Givan: I think all of us around the table agree that access to justice is vitally important, but the level of representation is in question. The question is about how much legal representation someone should be entitled to and how much should the state pay for. Access to justice is very important. Some would say that, compared with other parts of the United Kingdom and beyond, we have a gold-plated version.

1268. What do you say to those who say that, when a client is granted legal aid, the individual members of the legal profession who represent that client ensure that the case goes on to maximise the fees that they can receive? I have heard the accusation that those in the legal profession deliberately attempt to ensure that they receive the maximum amount, once the client is deemed eligible for legal aid.

1269. Mr Speers: You have to remember that, when a solicitor engages with a client, he is obliged to do his best for the client, pursue their remedies, argue points and make representations on the client's behalf. If, in your suggestion, there is any sense that someone should do half a job, rather than all of it, we must reject that. Professional conduct rules say that we must act in the best interests of the client and pursue their interests ahead of our own. As president of the Law Society, that seems to me to be well worth emphasising at all times. That is what our members are expected to do.

1270. I know the point you are making. It is difficult without looking at individual cases, but, when legal aid is granted, there are other controls. The courts can intervene and case-manage the process, so I do not think it is a by-ball for people to exploit the system to the maximum in the way you suggest. I support what the chief executive said, namely, that the entitlement for equality of arms and to pursue rights is a very important feature of civilised democracy.

1271. The Chairperson: Mr Speers, do you accept that a much more efficient and practical way to do it is to establish an upper limit on an case, irrespective of the number of times it goes in and out of court, and that it is it, full stop? The barristers and lawyers can then win 100 times if they wish, but the legal bill would never change. Would that be an efficient way to do it?

1272. Mr Hunter: In principle, the society works on a basis of fixed standard fees in a number of areas. Certainly, much of the recent negotiations around fees have been on the basis of trying to identify a reasonable fixed fee for a particular case, but elements of a case can be unpredictable, and circumstances can arise. For example, the defence's responsibility might be how the prosecution has conducted a case, or there may be other circumstances that arise that need to be considered, so there is always a need for some exceptionality and provision to deal with those exceptional circumstances. However, yes, the society has been working on the basis of seeking to establish a set of fees that would apply to certain types of proceedings, and that has been the basis of the negotiations.

1273. Mr McCartney: I have a couple of points for clarification. Your submission states that levels of eligibility must be set appropriately. Have you put forward any suggestions or is that just a wide —

1274. Mr Hunter: Yes, it is a wide statement. We have not put forward any suggestions, but we have done some research and looked at the standards set in England. I noted in my presentation, with some alarm, the types of people who would be excluded, and I think it is important that there is proportionality in how those rules are brought forward, and that regard is given to the equality of arms. The Public Prosecution Service (PPS) will have resources and will have a series of other agencies behind it providing resources, so, it will be important that there is a proportionate and acceptable response brought forward. We will have an opportunity to discuss that in due course.

1275. I noted in particular the point about negative resolution. I support that, where these proposals are being brought forward that are going to have such a major impact, they should be by way of affirmative rather than negative resolution.

1276. Mr McCartney: The next paragraph of your statement refers to defence cost orders and says that they will be rolled-out in Magistrate's Court first. Have you been told that?

1277. Mr Hunter: That is what we understand the position to be. However, once they are in place, I suppose it is for the Department to decide as and when it will roll them out. Again, I think we are looking at the issues of proportionality and equality of arms, and the impact on people's lives generally and in the long term.

1278. Mr McCartney: What is the average cost in a Magistrate's Court compared to those in a Crown Court?

1279. Mr Hunter: I do not have that information. May I write to you and give you that detail?

1280. Mr McCartney: I sat this without prejudice: if there was a sense that people were getting legal aid who should not be, it would be more in the high profile cases, which would be in the Crown Court rather than the Magistrate's Court. Do you have an opinion on that?

1281. Mr Connolly: There are set fees for solicitors appearing in the Magistrate's Courts. For a straightforward plea, it is £290, and, if there were a contest, I think it is around £500. It does not make any difference, as the Chairman said, how many times the case is adjourned. Those have been in place only for around a year and three months, and they appear to be working quite well.

1282. Mr McCartney: The headline would not be defence costs of around £290 or £500. Rather, it would be about a big case that costs whatever amount and the fact that the individual concerned may have all sorts of property and so on.

1283. Mr Connolly: To add to what the chief executive said: the weakness is when the prosecution withholds evidence, which it does quite often. If there is a set fee, it is very difficult for the solicitor to do the preparatory work required. A huge amount of preliminary work is done prior to the case's first appearance in court. However, if there is a set fee, no payment is given for all the investigation work that is done for serious cases. There may, therefore, be miscarriages of justice, unless suitable exceptionality clauses are added to the set fees. In principle, set fees can work very well, and that is what all sides are moving towards.

1284. Mr McCartney: Where should justice standards be tested in granting legal aid? Should the responsibility remain with the judiciary or be given to the Legal Services Commission?

1285. Mr Connolly: As we said before, the difficulty is that the Legal Services Commission is driven by budgets. However, this issue, which affects everyone in the community, is about ensuring that justice is carried out regardless of budgets. We would not be happy if such decisions were taken by the commission, because it is driven by only budgets.

1286. Mr McCartney: You think that it should remain with the status quo, then?

1287. Mr Connolly: Yes.

1288. The Chairperson: We know that you feel strongly about solicitor advocacy, Mr Hunter, and that you have sought legal opinion about the issue from elsewhere. Have you had any recent correspondence from the Minister about how he feels about it of late?

1289. Mr Hunter: I have been in correspondence with departmental officials, and I understand that a meeting was held between the Attorney General, the Minister and officials. I also understand that some proposals may be coming forward for consideration. I am sure that the departmental officials can confirm whether that position is factually correct.

1290. Our concerns are two-fold. First, given how late in the day the initial objection came to everyone's attention, the issue will be resolved only if it is brought forward in a timely way to allow everyone to consider the situation properly and, therefore, ensure that the proposed new clauses are included in the Bill. Secondly, the policy objective needs to be achieved through the new model, whatever that is. Of course, we will not know whether that is achievable until we see

the proposed new clauses. That is our understanding. I may or may not be corrected about the positions that were set out in the discussions between the Department, the Minister and the Attorney General. However, that is my clear impression.

1291. The Chairperson: You say that you understand that the Department may be coming forward with some proposals. Do you reckon that you will agree with those proposals?

1292. Mr Hunter: Our difficulty is that we have absolutely no detail, even in broad-brush terms, about those proposals. I am, therefore, not in a position to comment on them. I very much wish that I was in such a position, but I am not. We need to see the proposals, so that we can comment on them as quickly as possible.

1293. The Chairperson: On 26 November, the Minister sent me a letter about the issue. In the last paragraph, he states that he has since shared the opinion — the one that you shared with him — with the Attorney General and is meeting him to discuss the solicitor advocacy issue, which he hopes to table as an amendment. Is that the sort of news that you are looking for?

1294. Mr Hunter: Yes. We hope that the Minister will table an appropriate and adequate amendment.

1295. The Chairperson: That is very diplomatic, Mr Hunter. Well done.

1296. Mr A Maginness: Clause 90 removes the prohibition on the commission funding legal services under litigation funding agreements. What is the net effect of that? It removes prohibition; therefore, it opens up alternative funding methods. Does it necessarily remove the idea or the position of funding clients directly under the current legal aid system? Do you envisage a situation in which you had a dual system: in other words, you could have litigation funding agreements and the present position?

1297. Mr Hunter: Yes. As I understand it, the clause's objective is to remove the prohibition of any public money being used to start up, run or underwrite a litigation funding agreement. However, that would not necessarily require such an agreement to be in place, nor preclude any other type of funding. I want to make another point about that to aid the Committee's consideration, which is that those types of agreements would, of course, extend beyond those who are eligible for legal aid. Therefore, those types of agreements might aid people who do not qualify for legal aid at present and who are thereby potentially occasionally unable to bring their cases forward in some circumstances.

1298. Mr A Maginness: They do not qualify for legal aid because they are outside the financial limit?

1299. Mr Hunter: Precisely.

1300. Mr A Maginness: There has been a lot criticism of the situation in England and Wales. Is there any way to avoid the problems that have arisen there, particularly with regard to success fees?

1301. Mr Hunter: I am sure that you are aware of the Jackson report, which looked at that topic. Part of the painful experience in England and Wales when legal aid for personal injury actions and money damages was removed was the enormous amount of satellite litigation around trying to work out what would be an appropriate success fee, what was reasonable and what was not. The Jackson report sets out good lessons from the experience of England and Wales, which I am

sure that we would all want to take into account in developing a suitable system for this jurisdiction.

1302. Mr A Maginness: You do not suggest that we introduce the English and Welsh systems here?

1303. Mr Hunter: At present, we have a working group with the Legal Services Commission, as does the Bar, to look at various options, of which litigation funding agreements are one. I do not think that those discussions are at the stage yet where anything has been ruled in or out. Whether this goes through is very much a precursor to any final decision.

1304. Mr A Maginness: I want to ask about the comment that was made about lawyers spinning out trials or legal processes. Is there any evidence to sustain that particular suggestion? Is it remunerative for lawyers in this jurisdiction to, as it were, spin out trials — pre-trial hearings or things of that nature, I presume. What is your experience of that?

1305. Mr Speers: I have a particular interest in the resolution of disputes. It is fair to say that there has been some encouragement from remarks that have been made by the Lord Chief Justice and the Minister that, perhaps, a focus should be on early resolution. I am simply comfortable with the fact that solicitors act in their clients' best interests. In many cases, that will be to advocate strongly, to litigate and to have adjudication on the issues. In some cases, however, it is in their clients' interests to explore more effective resolution options. Certainly, during my year as president, we will bring forward initiatives to increase resolution-type work through mediation training and through solicitors becoming involved as resolvers of disputes, which, traditionally, was often a solicitor's role as a counsellor and adviser as well as a representative and champion. There is much to be explored in looking at ways to satisfy the court and litigation process that all attempts have been made to resolve disputes before they get too far down the line.

1306. In answer to your question: there are checks and balances. It is easy to say that lawyers are spinning it out, but in reality, you often have determined and energetic clients who want particular points to be espoused. In doing that, lawyers are simply representing their clients' instructions.

1307. The Chairperson: We are marginally over our time for this session, but Sir Reg wanted to ask a question.

1308. Sir Reg Empey: Have you met and consulted your colleagues at the Bar on the legislation? I know that the situation can sometimes be complex, but I wondered whether there had been any co-operation on the matter.

1309. Mr Speers: There is generally co-operation and frequent contact. However, the Law Society's submission was compiled only by us and is not the result of any joint approach. That can be seen in the differences of emphasis this afternoon.

1310. Sir Reg Empey: I just wondered whether you had consulted or talked to the Bar. I also wondered whether you had attempted to marry your different views together. However, perhaps that is not the case.

1311. Mr Speers: Not yet.

1312. The Chairperson: Gentlemen, we must stop there. Thank you very much. If you wish to take a seat in the Public Gallery to listen to the officials, you are welcome to do so.

1313. We welcome back Gareth Johnston, Robert Crawford, Geraldine Fee and Laurene McAlpine. The officials will respond to the issues that were raised during today's briefings. I understand that Mr Johnston wants to raise a point about clause 95. Will you do that at the beginning and we will take it from there?

1314. Ms G Fee: Thank you, Mr Chairman. It was actually me who wanted to raise a point. I want to correct an answer that I gave to Mr McDevitt when he asked me about the level of scrutiny that would apply to the rules that would be made to give effect to clause 95. There are two sets of rules that will be made to give effect to clause 95. The family proceedings rules that will apply in the High Court and the County Court will be subject to negative resolution, but the rules that will apply in the Magistrate's Court will be made in accordance with the Magistrate's Courts rules procedures. Those are not subject to any formal scrutiny in the Assembly, but will be subject to the scrutiny of the Justice Committee. I had rolled those into one before, and I wanted to differentiate.

1315. Mr McDevitt: That is helpful, and I thank Ms Fee for that. I am relatively new to this game, so perhaps the Committee Clerk could tell us about the rules that are made in the Magistrate's Court? They are not subject to any formal scrutiny, yet they are scrutinised by the Committee, so what it the status?

1316. The Committee Clerk: The officials may want to help me out. My understanding is that the Committee will be consulted on what will be in the Magistrate's Court rules, but those rules will not actually be laid in the Assembly. That procedure also applies to another type of court rule.

1317. Ms G Fee: That is correct. Court rules are made for the various court tiers and most of them are subject to negative resolution. However, County Court rules and Magistrate's Court rules are not subject to any Assembly procedure, and we have liaised with the Committee Clerk and the Committee to look at how those procedures dock in to the Assembly procedures. We plan to give the Committee access to any draft rules and members could chose whether they want briefings from officials on those.

1318. Mr McDevitt: For clarification: is it correct to say that, if the Committee was unhappy with the draft rules, it would be powerless to do anything about them and that we would simply be consulted?

1319. Ms G Fee: If the Committee was unhappy, I hope that the Department would take the issues away, apprise the rules committees of those concerns and reach some form of accommodation.

1320. Mr McDevitt: Does the Minister have to approve all those rules?

1321. Ms G Fee: There are different enabling powers for different court rules and for the different tiers. In the case of the High Court and the County Court, the Minister allows the rules. In the case of the Magistrate's Courts, he is simply a consultee. The rule-making power is vested in the rules committee. It is quite complicated. We provided a submission to the Committee previously, but we can reissue that to you if it would be helpful.

1322. The Chairperson: The rules of the Magistrate's Courts and the County Court are not subject to Assembly procedures. Is that correct?

1323. Ms G Fee: Yes.

1324. The Chairperson: Why are they not?

1325. Ms G Fee: I suppose that it was a continuation of the procedure that applied pre-devolution in Westminster. They were not subject to any procedure at Westminster, so it did not follow through that the rules would be subject to Assembly procedure.

1326. The Chairperson: I may be asking a stupid question, but why not? What was the thinking behind it? What was the rationale?

1327. Ms G Fee: As I understand it, the rationale is that those are procedural and technical rules. It was thought that there would be a sufficient level of scrutiny of the rules through consultation with the Lord Chief Justice and the Minister. It was a historical issue. During the process of moving across to the devolved arrangements, it was decided to preserve the arrangements.

1328. The Chairperson: Do you think that the rules should be subject to Assembly procedure?

1329. Mr Johnston: Curiously enough, there is quite a wide range of bodies that have legislative powers to make various sorts of rules for straightforward procedural matters. I am not sure that they would come before the Committee as standard. The one body that always springs to mind is the Pharmaceutical Society, which has power to make certain rules that apply to how its members are regulated. The rules committees are just a couple of bodies on that whole list. It is just that what they are doing is about implementation. When legislation is changed and goes through the Assembly, different bodies have to implement it. The police implement it in their way, as does the Public Prosecution Service. The Courts and Tribunals Service implements legislation through those rules. In many ways, I would compare it with the method of implementation of the other criminal justice bodies.

1330. Ms G Fee: I will just add that most of the rules are technical and procedural in nature and deal with how an application should be made and what time limits will apply. Sometimes, they touch on more substantive issues, such as, in this particular instance, the sharing of information. The secretariat and the Department have been very cognisant of that, and this will be subject to a full public consultation exercise so that the views of stakeholders are taken into account. We will come back to the Committee in order that the details of the rules are considered before we even get to the point of having a draft instrument.

1331. Mr McDevitt: I take the point. There would be very good reasons for devolving power to make rules for a lot of practical procedural issues. However, this is a substantial issue. It is a question of whether one is or is not in contempt of court, so it is an important point of law. Two issues arise; I am not sure whether this is a matter for the Committee, but I will express a personal opinion. I am not sure that it is particularly consistent with the separation of powers that the Minister is not the final decision-maker in a situation in which the law is going to put someone in contempt of law or not. Following on, if the Minister is not even the decision-maker as the executive arm of the legislature and if this Committee and this institution would have no legislative role, that seems to me to be a matter worthy of further debate, to put it diplomatically, at the very least.

1332. Ms G Fee: The rules committee make the rules under the statutory powers that were conferred on them previously by the Westminster Parliament, and now, under the devolved arrangements, they will have carried through. I suppose, constitutionally, at some point, that was considered by elected representatives to be an appropriate conferral of the powers. I am not sure that I can comment at this juncture on the wider constitutional point. However, in order to enable scrutiny for the Committee, we have been liaising with the Committee Clerk to provide a forward look at all rules that will go to the rules committees. That will provide the Committee with the opportunity to say that it wants to see that information and to be consulted. In turn, that will ensure an appropriate level of engagement with the Committee in recognition of its role.

1333. Mr McDevitt: I have made my point.

1334. The Chairperson: Mr Johnston, will you respond to the issues that have been raised by the different groups?

1335. Mr Johnston: I will ask Robert to respond to the points on legal aid, which comprised the majority of points. There were also some issues on domestic violence.

1336. Mr Crawford: I will deal first with the points on means testing that were raised under section 85, which occupied quite a lot of the discussion. The resources for legal aid are limited. We spent £104 million last year and £104 million this year on a budget of £85 million. Therefore, we are, essentially, looking at every area where we might be able to save a few pounds, and that is largely the justification for introducing a financial fixed means test for criminal legal aid.

1337. We agree that all the points made by the Law Society and the Bar need very careful analysis, and I hope that my earlier presentation reassured the Committee that we will do that and will come back to the Committee with the research that will be available later this month. Furthermore, if the Committee wishes, we will give it a flavour of our plan and analysis on that issue before the consultation that will need to take place on any proposals before they come to the Committee as legislation.

1338. Therefore, we will look at all the points that have been raised. They are not, for the most part, new points. The issues on the impact on access to justice and the fact that some people may not get proper representation have all been raised, and we will consider them. However, at this stage, we are looking at introducing an enabling power rather than the detail. We still think that it is worthwhile to have the enabling power in place. If we can find a way to resolve a lot of the issues satisfactorily, we may well want to proceed to make further, more detailed proposals. However, we do not assume that we will be able to solve them satisfactorily. We will need to look at them in detail.

1339. A point was made about the litigation funding agreement. Again, I stress the point about resources. It is a very small area of legal aid funding, because it is given a low priority by the Legal Services Commission. I want to correct one point about who makes the judgement. We are changing nothing to do with the interests of justice test in criminal legal aid. That will stay with the judge, and the means test will not impact on that at all. The Legal Services Commission will not make the means test judgement in criminal legal aid cases, but it will carry out the assessment or will, perhaps, ensure that the assessment is carried out by others. The applicant will put in a lot of personal financial detail, but, ultimately, the granting of legal aid will remain with the judge and those two tests will be a matter for the judge.

1340. Sir Reg Empey: That seems to be in conflict with your earlier comments. We were quite clearly advised that it has been recommended that the judge will continue in that role and that the court will determine whether legal aid is granted. However, you are now saying that there will be an assessment.

1341. Mr Crawford: I think it is in the language. If a fixed means test is put in place, it will not be discretionary. If a person has income or assets that take him or her outside eligibility criteria, the judge will have no choice but to find that the means test has not been met. However, it is still the judge's final decision. I am not playing with words, but there would be no subjective assessment by the Legal Services Commission on a fixed means test — it would either be met or not met. The point that the legal representatives made was that, at the moment, the judge makes a subjective assessment on whether the defendant has insufficient means. That subjective assessment would go. It would not be open to the judge to say,

"This person has more funds than would make them eligible for legal aid, but I am going to ignore that."

1342. Sir Reg Empey: Are there not circumstances where a judge might feel that the interests of justice are better served by the provision of legal aid? Is the discretion of the judge being restricted?

1343. Mr Crawford: There is a limiting of the discretion of the judge in the sense that a financial means test would have to be applied and the judge would not have the discretion to waive it.

1344. Sir Reg Empey: That is significant.

1345. Mr Crawford: It is significant, and I am not taking away from what has been said. However, it does not move the subjective assessment to the Legal Services Commission.

1346. Mr McCartney: Will the interests of justice overrule the means test?

1347. Mr Crawford: No. Both tests will have to be met. That is why it is so important to find a way to get it right so that there is not a big impact on access to justice. If a financial means test rules people out, they are out and that is it, even if, in the interests of justice, the judge felt otherwise.

1348. Mr McCartney: That nearly renders the interests of justice test of no consequence.

1349. Mr Crawford: It does, because a person can still be ruled out in the interests of justice test, even if they are eligible financially. There are two separate tests, and one is not greater than the other. However, I confirm the importance of —

1350. Mr McCartney: I know what you are saying exactly. I would have assumed, wrongly, that the interests of justice test would have overruled the means test.

1351. Mr Crawford: It is not that you can get in if only one test is satisfied. The rationale behind all that is to look at whether there is a way of trimming the cost of legal aid. However, we take fully on board the concerns that have been expressed, and we want to make sure that we try to address them.

1352. Mr McDevitt: Mr Crawford, I thank you for your frankness, because this is a very important point. Given that, do you not think that, at the very least, we should be considering having this enacted by the affirmative resolution procedure rather than the negative resolution procedure? It is the sort of point that will need to be debated and considered further by legislators, even if we were to accept the clauses.

1353. Mr Crawford: It will be debated further. The difference between negative resolution procedure and affirmative resolution procedure is that, in the affirmative resolution procedure, provisions can be changed by the Assembly. It does not mean that, under negative resolution procedure, the Assembly does not debate or discuss them.

1354. Mr McDevitt: We have done a lot of procedural stuff, and the difference between the two is substantial. We do not debate regulations under negative resolution procedure unless we pray against them. So, we would debate them then, but that is only because we have prayed against them.

1355. Mr Crawford: My point is that, before we even get to that stage, we would come to the Committee with draft proposals for public consultation, and we would not go to public consultation unless the Committee is happy with them.

1356. Mr McDevitt: We may just take a Committee view on that. Surely, given the substance of this, if you are defending clause 85 as it stands, it is in your interests to defend it to be enacted by affirmative resolution so as to ensure that there is the maximum opportunity for future scrutiny in the fullest parliamentary sense.

1357. Mr Crawford: If the Committee were to recommend that, I am sure that the Department would look at it. Having come before the Committee on other matters, I, personally, do not feel that there has been any lack of scrutiny. I would get the same questioning whether negative resolution procedure or affirmative resolution procedure is adopted.

1358. I want to say a bit about the litigation funding agreement. The access to justice review is under way, and it will look at alternatives to money damages legal aid. It is not a case of having either money damages in legal aid or the litigation funding agreement. That point was picked up at the end of the Law Society's presentation. However, there may well be other areas and other ways of doing bits of that kind of work. For example, if a state agency is involved in a medical negligence case against a hospital, there may be a way of putting in a procedure that does not go near a court.

1359. The issue of criminal injuries was mentioned earlier. That system operates in such a way that there are no legal fees at all. A solicitor will ask an applicant in a criminal injury case to sign upfront that he will hand over an amount — usually 15% — of the claim. That is not a part of the scheme, but that is how the arrangement is made, because a free service is provided by Victim Support for people making criminal injuries claims.

1360. In a case where the action is against a state body, it may well be possible to put in place arrangements that do not need legal aid at all. Proper support and advice may be funded separately and at a lower cost. That is one of the areas that the access to justice review will look at. We will have an interim report on that at the end of February. Therefore, there is a point to be made there.

1361. If, however, we have a limited budget, money damages will be seen as a lower priority by the Legal Services Commission. That is a certainty because there are other areas — indeed, Women's Aid mentioned some them — that will be seen as a higher priority: those that involve safety, for example. That will be a consequence of having limited funds available.

1362. I would like to offer some reassurance on civil legal aid. In Northern Ireland, based on 2008 figures, 44% of the population are eligible under the current means test arrangements. In England and Wales, that figure is 29%, and that reflects the levels of deprivation and lower incomes in Northern Ireland.

1363. The Chairperson: But it represents only 1% of the legal aid bill.

1364. Mr Crawford: I do not have the figures in front of me to confirm that. Perhaps we could write to the Committee with a breakdown of where that funding falls.

1365. The Chairperson: That would be useful.

1366. Sir Reg Empey: I would be very interested to know how many individuals are involved on average, just to see the scale of what we are talking about, because it is very hard for us to

judge. We are told that it is between 1% and 2% of the total bill, but we do not know what that represents in terms of individuals.

1367. Mr Crawford: We should be able to provide that breakdown from the Legal Services Commission. If members have questions about that area, we are happy to take them. If not, I will move on to the issues raised by Women's Aid.

1368. The Chairperson: Do any members have any other points around the legal aid issues? I think that everyone is content.

1369. Mr Crawford: I think that the Women's Aid representatives were actually being quite careful and discreet in their presentation to you, because we have had some discussions with them about this issue, and members may recall that, during the debate on the Justice Bill on 2 November, the Minister indicated that he hoped to bring forward proposals that would be of assistance.

1370. I will give you a little bit of detail on what we think may be possible, although I must stress that we do not have the Minister's final approval yet, nor are we absolutely there yet in confirming that it will work. However, we are looking at a system whereby, for non-molestation orders and related actions, the person who is at risk would be able to access legal aid automatically right away. However, there is a question of a contribution that might come into play at a later stage. In our discussions with Women's Aid, it felt that that would largely solve the problem that it is concerned about.

1371. First, if the actual legal aid costs were ever applied, it would be done in a way that was sensitive to the needs of the individual in that the costs could be paid in stages, etc. Secondly, because legal aid rates are far lower than would be asked for outside that system, the costs would be very much lower anyway. The third point is that the contribution scale for that level of funding is actually quite low. The contributions are not massive, and I think that we would want to work with Women's Aid to ensure that we get the outcome that it wants and that we want, namely that people who are at risk are not put off applying to a court for an order by the possible high cost of legal assistance. We believe that that can possibly be done by ministerial direction. We have identified a power in the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981. We need to do a little bit more checking on that, but, if we can do it that way, I think that we would recommend to the Minister that we do that to get it in place quickly.

1372. Sir Reg Empey: Would that include what is often a feature in these cases: the need to go back to court to deal with the enforcement side? That is almost as critical.

1373. Mr Crawford: We would want to include that in the direction. A legal aid certificate would still be issued by the Legal Services Commission. In those situations, the legal aid certificate could state that legal aid would follow through to any further orders. There would be some limits, but the point that you are making is valid in that we would not want the person to have to come back with a new application every time. Women's Aid has said to us that non-molestation orders are frequently challenged and that there is a need to go further. One of the comforts of getting people into the legal aid system and getting that certificate in place at the outset is that, if an order is challenged, they know that they will be able to contest it.

1374. The Chairperson: Mr Crawford, will you be bringing the proposed amendments to this Committee?

1375. Mr Crawford: If we can do it more quickly without legislation, there would be no formal Committee procedure, but we would be quite happy to come back and brief the Committee. I am sure that the Minister would want us to come and brief the Committee on that if you would find

it helpful. I should say that the Legal Services Commission is examining this area anyway. It is under review. This idea came from the Legal Services Commission, and we have worked together on it.

1376. The Women's Aid representatives talked about inserting a clause in the Bill. What they want, which is a complete waiver and no contributions, can be achieved through subordinate legislation. It does not require primary legislation, and it could be done by amending the existing legislation. Another way of doing it, depending on the Committee's agreement, is to move the non-molestation order application into criminal legal aid. There is currently no means test, but, if we were to look at introducing one in the future, non-molestation orders could be excluded from that. That would have an instant effect, because there is a fixed means test for civil legal aid, and that is their problem.

1377. Mr McDevitt: I am trying to get to the bottom of where your mind is, Mr Crawford. It sounds to me that you are quite determined to meet these ladies' requirements. Is it the policy objective to meet the basic requirement, which is that women presenting as victims of domestic abuse would have an absolute right to free access to justice?

1378. Mr Crawford: It is not quite in those terms. Free access to justice would be available, but there might be a contribution at a later stage if someone's means were found to be fairly significant. It would still be considerably less than they would have to pay outside the legal aid system. In the longer term, the Legal Services Commission, which is the civil legal aid policy lead, will consider the issue of completely free access.

1379. Mr McDevitt: Am I hearing you right that your advice to us is that this is not the right place to try to have that debate now?

1380. Mr Crawford: It is unnecessary to put it in primary legislation anyway. There will be an opportunity to put it in subordinate legislation if there is a desire to do that. I do not want to speak for Women's Aid, but I think that it is quite happy with the proposals that we have made as an interim measure. It will also give us the opportunity to see whether they are working and whether any other changes need to be made.

1381. Mr Johnston: Women's Aid had a number of thoughts on how the system could cater better for women who are going through domestic violence proceedings. Only yesterday, the Criminal Justice Inspection report on domestic violence and abuse was published, and I am sure that the Committee will want to look at that in due course. A specific point was made regarding concerns about what constitutes a breach of a domestic violence non-molestation order and about the police taking a common approach to that across Northern Ireland.

1382. Particular reference was made to the first recommendation in the Criminal Justice Inspection report, which is about PSNI supervisors proactively monitoring the approach to domestic violence cases to ensure consistency of approach. Yesterday, the police welcomed the recommendations in the report. They said that they are currently in the process of exploring the operational outworkings of the recommendations but that they are committed to working closely with victims. If the Committee wants a fuller briefing on the report, the Department will be in a position to provide it.

1383. There was also a concern that proceedings provided opportunities for perpetrators to perhaps further the abuse, and I will mention two specific points on that. First, there is concern on the part of the organisations that represent victims of domestic and sexual violence about questioning by barristers during cross-examination in court. In the sexual violence action plan, we are committed to exploring that matter with the judiciary. There has been some initial contact, and there will be further discussions on that in the new year.

1384. Secondly, victims have been concerned that, in preliminary proceedings, which are called committal proceedings, for sex cases in particular they might be exposed to quite rigorous questioning that is then, in a sense, repeated at the trial. We are looking at reforms to the committal proceedings, and we hope to issue a consultation paper next year.

1385. In addition to the points on legal aid and on solicitor advocates, which I will come to in a moment, the representatives of the Law Society made a few comments on live links. That was really just by way of confirming that they had raised issues and were exploring them with the Department. We can certainly address with them the points made in their submission.

1386. The Law Society mentioned alternatives to prosecution, which we will discuss with the Committee next week. It flagged up the importance of putting sufficient safeguards in place to ensure that any admission by an offender is made in the full knowledge of the case before him and of the consequences. Guidance will be issued on those alternatives to prosecution — fixed penalty notices and conditional cautions — and I will make sure that those points are considered in the preparation of that guidance.

1387. Finally, I wondered whether Laurene wanted to say anything about solicitor advocates.

1388. Ms Laurene McAlpine (Northern Ireland Courts and Tribunals Service): As the Law Society indicated, we intend to bring forward fresh clauses on rights of audience for solicitors. I am fairly confident that it will be possible to bring those forward as an amendment to the Bill. We had helpful and constructive discussions with the Law Society and the Attorney General, and I think that we can devise provisions that meet the concerns but still deliver the Minister's policy.

1389. The Chairperson: I take it that all those clauses will be made available to the Committee beforehand?

1390. Mr Johnston: Yes, certainly. Our intention is that any amendments that we plan to introduce at Consideration Stage will be made available to the Committee when it starts to look at the Bill clause by clause.

1391. Mr Crawford: There was one point that I forgot to mention. Concern was expressed about delay, particularly in the Magistrates' Courts. We believe that the Magistrates' Courts legal aid rules that were made in 2009 largely removed any perverse incentive to string out a case, whether the motivation was money or whether things were just not managed efficiently. The way in which the rules are now structured provides the incentive to get matters to move ahead. So, we endorse what the legal profession said about that.

1392. There have been concerns and perceptions over the years. Those rules were made only last year, so the beneficial effect is only now becoming apparent. The complaints are still around, but we believe that those rules have largely fixed that problem.

1393. The Chairperson: I do not see anyone nodding to indicate that they have something pressing to ask. I thank you again for coming. No doubt we will meet again. Thank you.

1394. Mr Johnston: We will see you again next week.

1395. The Chairperson: Yes, I suspect that you might.

1396. Mr McDevitt: Could we do with a bit of research on the issues raised on clause 95? There seems to be a very grey area when it comes to where they start and stop. Two of the

paragraphs relate to criminal offences, not procedural issues. They relate to people potentially being found guilty of contempt.

1397. The Chairperson: Maybe we should look at that.

1398. The Committee Clerk: A paper was tabled for the Committee a while ago, and we can take bits out of that. However, in that paper, it was clear that, with at least two rules committees, there is an undertaking to come to the Committee with proposals but that neither the Committee nor the Minister can require them to do that. The committees themselves makes the rules. The rules do not come through the Assembly, and they do not go to the Minister for agreement either. So, that definitely does not happen with at least two committees. With the higher committees, it does. We can pull out that paper and provide the information for next week. I suppose that the issue then becomes whether that is satisfactory.

1399. Mr McDevitt: I do not want to delay too much, but, Ms Fee said that this would have been subject to parliamentary scrutiny at some point along the way. However, the reality is that, if these were enacted during direct rule, they would not have been subject to that scrutiny, so this would have ended up on the statute book without anyone thinking of the consequences.

1400. The Committee Clerk: I think Ms Fee's point was that somebody decided at one time that that is the way it would be set up, but I do not know whether we could trace that back. If it would be any help, I could have a discussion with the Assembly's Examiner of Statutory Rules. He has quite a lot of experience of all types of rules, and I could ask whether he has a view of how the system works and whether there is anything else that we could add to it.

1401. Mr McDevitt: It does not rest easily with me at all as it stands, so I think any advice would be welcome.

1402. The Chairperson: OK. That is agreed.

1403. We will move on to the consideration of evidence received on clauses relating to sports law. You will recall that, at our meeting last week, it was agreed that the Committee would discuss, at this weeks' meeting, the evidence taken and the issues raised about the clauses relating to sport and that the departmental officials would not be in attendance.

1404. I advise members that they have copies of papers that highlight some of the key issues that the Committee may want to discuss and reach a view on. Members also have a copy of a letter from the Minister of Justice regarding the flexibility for implementing clause 43 in relation to rugby. The letter indicates that that is not Ulster Rugby's first preference and that it would prefer to be removed from the clause altogether, but it is a possible way forward.

1405. This is the first consideration of evidence on clauses relating to sports law, and there will be further opportunities in the new year to discuss them. However, if there are clauses that the Committee clearly agrees should be amended, it is helpful for those to be identified as early as possible to enable appropriate action to be taken. Does any member wish to comment on the evidence that we heard on sports law? If so, please feel free to speak.

1406. Sir Reg Empey: We have a letter from Ulster Rugby. The good behaviour of fans at Ravenhill has been talked about. In the main, that is true, but as someone who has represented that area for a long time, I have to say that it is not the whole picture. I was speaking to the police today, and there are occasional issues that are largely connected with the social activities in the beer tent and so on where there is a certain amount of antisocial behaviour, such as people urinating in gardens in the surrounding area. There is quite a bit of disturbance in the evenings with taxis arriving and so on, so it is not a totally benign environment. Generally

speaking, I agree with the thrust of where Ulster Rugby is compared with others, but I would not want the impression given that —

1407. The Chairperson: It is not paradise.

1408. Sir Reg Empey: It is not as simple as that.

1409. I thought that the big issues in general at the meeting, which I think was a fortnight ago, were whether we felt that existing common law dealt with a number of the potential problems, as opposed to superimposing another set of offences. Take, for example, the possession of containers on the bus: if somebody was coming back from Scotland on a bus and was bringing things back from there, it could constitute an offence. This is a very important issue and a matter of grave concern to people, but there is always the risk of us being a wee bit OTT on these matters. Now, I am no expert, and you have been chairing this Committee since its inception, but I just wondered whether the clash between existing legal remedies and existing law, where the crossover relates to some of the new clauses, is an area that the Committee would want to focus on in its further consideration?

1410. The Chairperson: Some things struck me about the evidence that we took from the three major sporting organisations. The Bill seems to be trying to fix something that is not broken — or that is my perception — and there is a tendency here to go for legislation for the sake of it. I thought it ironic that the IFA, which was very up front in its attitude to the Bill, said that if such provisions have to be in it, go ahead, it can live with it and that is all right. Ulster Rugby and the GAA came at it from a different perspective.

1411. However, and I hope I do not misread the writers of the Bill, it seems to me that soccer is the one sport in focus. It may well be that provisions will be put in the Bill which, at the end of the day — and here I am thinking out loud — will be applicable to every organisation but applied to only one. Maybe members do not agree. However, the soccer officials who attended the Committee were content to live with it, no problem. The supporters' organisation was not as enthusiastic and did not see the real need for it. The more I think it over, the closer I come to the conclusion that this is legislation for the sake of it. It will not fix very much. Other members are free to comment.

1412. Lord Browne: I concur. Many of the offences contained in the Bill are already criminal offences and can be dealt with in that manner. The legislation goes too far. We can proceed with parts of it, but, as I said this morning at the Committee for Culture, Arts and Leisure, there is an offence of "being drunk"; what does that mean? It is a very loose definition. It you are drunk, and you become disorderly, there is already criminal legislation to deal with it.

1413. Sir Reg Empey: There are people who are less disorderly when they are drunk. [Laughter.]

1414. Lord Browne: I repeat myself, but offensive chanting, if it leads to a racial offence or it incites hatred, is already covered in legislation. This Bill goes too far.

1415. Mr McDevitt: There are two aspects to this. The regulations around drinking in grounds enjoyed no support from anyone. All the sporting associations felt that they could regulate that aspect and that it should not be criminalised. However, the issue of throwing missiles onto the pitch is one of genuine concern, and it is something we should think more about. I was not here for all the evidence, but I read over it.

1416. The Chairperson: Does present law not cover it?

1417. Mr McDevitt: No. If you go back to the evidence, you will see that there was a coherent and credible argument presented that was worthy of consideration. I cannot remember it exactly.

1418. Sir Reg Empey: It is that intent has to be proven.

1419. Mr McDevitt: Yes. You are absolutely right, Sir Reg. Throwing the missile is not an offence. It has to be demonstrated that the missile is thrown at someone with the intent of hitting the individual.

1420. The Chairperson: I recall a soccer match — I was not at it, but I saw it on television — where someone let off a rocket that went across the pitch. That individual was identified and dealt with. He was banned from the ground and I suspect that news of that travelled through the crowd. For instance, if someone throws a coin at a goalkeeper, and it smacks his head and splits it open, that is still an offence.

1421. Mr McDevitt: That is an offence if the coin hits the goalkeeper, and if guilt can be proven. As I understand it, the Bill would change things so that it would be an offence to throw a coin on the pitch, per se. Therefore, the act of throwing missiles onto the pitch will become an illegal act, in contrast to the law at present, whereby it is illegal to throw something that hits someone. The law as it stands means that if someone throws something and misses, that person is not committing an offence, whereas if someone throws something that hits a person, it is an offence. That is worthy of further consideration. That point came across in the evidence that we heard.

1422. As for chanting, the difference is that the Bill signals a strong intent. Putting something in legislation codifies things and means that offensive chanting is unacceptable. I heard no strong objections from the sporting bodies about that.

1423. Lord Browne: How is that going to be enforced if there are 100 people chanting? Who will be picked out of the crowd?

1424. Mr McDevitt: That is a fair point. The issue is whether the purpose of the law is to find people guilty of an offence or to deter people from behaving in a certain way. When we talk to lawyers and lecturers, they will say that the purpose of the law is both, and that the law should act as a deterrent — as a normative measure.

1425. On those two points, my instinct is that we should continue to reflect on them. The one thing that I am pretty sure of is that nobody thinks that it is particularly necessary to become normative in respect of the alcohol regulations. People feel that the law at present deals with the situation.

1426. The Chairperson: When I go to Ravenhill, which is not very often, I see people drinking in the stands. If I go to a football match, I do not see that.

1427. Mr McDevitt: That is right; those are the association rules. If you go to a GAA game, you cannot drink in the stands. You will remember what the rugby officials said when I asked them what happened when Irish rugby went to Croke Park for three years. The GAA rules applied. In other words, people were not able to bring their beer into the stands, and they were fine with that because those were the stadium rules at Croke Park. However, as you rightly point out, when you are in the terrace at Ravenhill or in the far stand — not in the main stand — you are allowed to bring beer.

1428. I wonder whether association rules are working well in that regard and whether we need to make criminal law about matters that are sorted out stadium by stadium, or association by association.

1429. The Chairperson: If it is any comfort, members do not have to make any decisions today. That does not mean that you will miss anything because we will be returning to this issue early in the new year when we will have to decide the road ahead for taking on these issues.

1430. Mr Givan: We need to be very sure that some of the provisions that we are talking about will be enforced. The provision on the possession of alcohol in a vehicle that is travelling to or from a match will be very difficult to enforce. For example, if there is alcohol on a bus carrying a group of lads, I question whether that provision would ever be enforced.

1431. The other point that I want to make is about offensive chanting. The issue is how to define what is offensive. For example, I was at the recent Northern Ireland friendly match. There is still an element of the crowd who shout an expletive every time the goalkeeper kicks the ball. I find that particularly offensive and would not bring my child to the match for that reason. I ask myself how "offensive" will be defined and how the provision will be enforced. Should that problem not be addressed without legislation? A proactive attempt should be made among supporters and organisers to stamp out that type of behaviour without the need for legislation. The chanting element should be put out, but legislation is not necessarily required to do that.

1432. The Chairperson: In most cases at rugby matches, there is usually stunned silence and respect when a player is taking a conversion. That has slipped a little, but not much.

1433. Mr McDevitt: Just a bit.

1434. Mr McCartney: In cricket, decisions never used to be questioned. Even that is changing now.

1435. The Chairperson: How do members want to proceed? Are you happy to come back in the early part of next year with your decisions firmly in your mind? The various groups may want to formulate where they stand on each issue before they come and talk to us about that.

1436. Mr McCartney: As Lord Browne said, we discussed the matter this morning at the Committee for Culture, Arts and Leisure. We have had a number of discussions. Perhaps, the Committee for Justice has more of a rationale. At times, what is missing is people's understanding of what we are trying to achieve. Earlier, we made the point that some of those provisions are lifted from English law. At the time that its legislation was introduced, England had a problem with hooliganism, particularly at soccer grounds, which needed to be tackled and has been tackled. In the main, that has been successful, notwithstanding what happened last night. The same problem does not exist here. Therefore, some of the legislation seems unnecessary.

1437. Lord Browne: Another point is that, to enforce legislation in England, it has cost clubs in the second league, which is equivalent to the former fourth division, in excess of £100,000 on CCTV, marshals and policing. We must consider how clubs will cope if all that legislation is introduced. They already suffer financially.

1438. Mr McCartney: We talked about alcohol on buses. We have all been on the way to a big game and saw buses lined up on the side of the road on unofficial pit stops. However, many supporters' clubs provide buses and enforce a strict no-alcohol policy. Therefore, it is a matter of the relationship between the supporters' club, its members and the transport company.

1439. The Chairperson: I think that that is where the issue lies. I really do. The matter very much comes down to codes of conduct and voluntary determination by clubs etc. At the few football matches that I get to on Saturdays, I hear announcements at the commencement that clubs do not and will not tolerate chanting or sectarian and racist remarks and that anyone who is identified participating in that will be removed and barred from the ground. In the main, that is working. I accept that it is not perfect.

1440. I draw your attention to the Department's submission. According to this, the clauses are about sending a positive message that sports grounds are places where people can be safe, bring their families and have fun. Nobody around the table would disagree with that. Should the creation of criminal offences in those clauses be used to send out a message of what behaviour is acceptable and what is not and to create a deterrent, as suggested by departmental officials, or would self-regulation and strengthening of individual codes of conduct for each sport be a better approach? I take the latter view. I believe in clubs enforcing their own codes of conduct. It is all very well to have a stack of legislation, but it comes down to enforcement. Without that, legislation becomes a laughing stock. We must ponder those issues.

1441. Lord Browne: Is it right that a young person should be criminalised because he has thrown a small object onto the pitch that has not caused injury to anybody? Should he get a criminal record and his opportunities for employment be affected? It might just have been a rush of blood to his head.

1442. The Chairperson: Is it right to criminalise someone who steals a dummy at £1·78?

1443. Sir Reg Empey: It was £1·79, Chairman. Get your facts correct. [Laughter.]

1444. The Chairperson: Yes. We must weigh up those issues. As I said, I suspect that the various parties will have their own deliberations privately and will determine what stance they will take on them. I suspect that, at the end of the day, common sense will prevail.

1445. Sir Reg Empey: It might be useful to get clarification on Conall's point about the throwing offence. As I recall, a specific issue that related to that was raised in evidence.

1446. The Chairperson: Therefore, if someone throws a missile, their intention must be determined: whether they intended to hit someone or miss. What happens if they were a bad shot and hit someone when they intended to miss?

1447. Sir Reg Empey: In other words, if I throw something at Alban and hit Conall, I am innocent. [Laughter.]

1448. Mr McDevitt: That happened to me in my brief footballing career.

1449. The Chairperson: We will leave that matter there, but we will return to it.

9 December 2010

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Thomas Buchanan
Sir Reg Empey

Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Mr Paul Black Mr Tom Haire Mr Gareth Johnston Ms Janice Smiley	Department of Justice
Ms Louise Cooper Mr Hugh Hamill Mr Brian McCaughey	Probation Board for Northern Ireland
Mr Pat Conway Mr David Weir	Northern Ireland Association for the Care and Resettlement of Offenders
Ms Edel Quinn Ms Paula Rogers Ms Koulla Yiasouma	Include Youth

1450. The Chairperson (Lord Morrow): Today's session will focus on Parts 5 and 6 of the Justice Bill and schedule 4, relating to the treatment of offenders and alternatives to prosecution. We were to be out of the last session by 3.00 pm and it is now 3.20 pm, so we have some time to make up. From here on in, strict timings will be enforced. I ask members to bear that in mind when they are asking questions. I welcome Mr Johnston and his team. There will be 10 minutes for each oral presentation and 20 minutes for questions — strictly, otherwise we could be here until 10.00 pm, and I suspect that no one is up for that at the moment.

1451. Members have been provided with an Assembly Research Services paper and a paper on the issues raised in other relevant written submissions on the treatment of offenders and the alternatives to prosecution.

1452. Mr Gareth Johnston (Department of Justice): I will ask Tom Haire, the head of the criminal law branch, to speak to Part 5 of the Bill, which is about treatment of offenders, and then Janice Smiley will speak to Part 6, which is about alternatives to prosecution.

1453. The Chairperson: There may have been a misunderstanding on my part; it is five minutes for presentations. I suspect you will not need more than that anyway.

1454. Mr Tom Haire (Department of Justice): I am not sure. I will give a fairly short summary of Part 5, which contains only eight clauses. It builds on and adjusts existing sentencing powers. It does not create any new offences; it just enhances the court's powers in a number of disparate areas.

1455. Clause 56 increases the penalty for common assault when dealt with summarily to six months. A penalty of two years is also available on indictment within existing law. The change brings the base sentence for common assault up to the same level as an existing offence called aggravated common assault. That offence is actually being repealed in the Bill, and it is all being amalgamated into one single same-penalty offence for common assault.

1456. Clause 57 increases the penalty for having an offensive weapon on school premises and brings it into line with our knife and offensive weapons package. It doubles the summary

conviction penalty from six months to 12 months. Again, indictment is already available and carries a sentence of four years. Together with clause 98, it puts our knife crime and offensive weapons powers into one single set of provisions.

1457. Clause 58 extends the period for which a sentence can be deferred from six to 12 months. That will provide an increased opportunity for courts to monitor and assess offenders, and will allow victims to see how offenders respond before a court passes sentence.

1458. Clause 59 improves the existing legislation on sex offender licensing. It deals with the breaching of licences when a residency requirement, which is currently in law, determines which court an offender should be brought to. The current statutory reference to where the offender resides can cause difficulties in a limited number of cases. We are improving the law to correct those anomalies, and to ensure that the correct court is available in the correct circumstances.

1459. Clause 60 is a technical amendment, which will correct the type of judge who can impose, extend or discharge a closure order. A closure order is used to close premises which have been used, for example, for certain prostitution offences under the Sexual Offences Act 2003. I should point out that that particular provision has not yet been commenced. It is a preparatory adjustment, so that the right level of judge will consider closure order applications.

1460. Clause 61 adds money laundering, bribery and a series of fraud offences to what is called financial reporting orders law. A financial reporting order requires the offender to make reports of their financial affairs to law enforcement agencies for anything up to 20 years. They can already be applied to theft, fraud and offences under the Proceeds of Crime Act 2002.

1461. Clause 62 adds hijacking to the public protection sentencing regime. Again, that was a gap in our law, and its inclusion means that a person who is convicted of hijacking can, in appropriate circumstances, receive a sentence that requires risk assessment before release.

1462. Clause 63 is an adjustment to ensure that the supervised activity order, which is an alternative to custody for fine default, is available when commenced to anyone who has had a fine imposed anywhere else in the EU, and who lives or moves to live in Northern Ireland. It is part of an EU directive requirement to ensure that there is mutual recognition of financial penalties across the EU.

1463. The Chairperson: Thank you, Mr Haire. Any member who wants to seek clarification on some of the things that Mr Haire —

1464. Mr O'Dowd: Chairperson —

1465. The Chairperson: It is not questions as such, just clarification. OK?

1466. Mr O'Dowd: That is a difficult one; you can tell me if I am right or wrong. Why must there be a special category for the possession of a knife on school premises? I would have thought that if there was an offence for carrying a knife that that would apply no matter where you are.

1467. Mr Haire: There is an existing offence for that, but it was not mapped into the sentencing powers, so we are bringing it in.

1468. Mr O'Dowd: OK.

1469. The Chairperson: I take it that everyone is well clarified. Can we move on?

1470. Ms Janice Smiley (Department of Justice): We last spoke to the Committee on 27 May about proposals for alternatives to prosecution. At that time, we indicated that the proposals were for an expansion of fixed penalties and the introduction of conditional cautions. That was to help system efficiency in dealing with minor offending by first time and non-habitual offenders in three ways: enabling offences to be dealt with proportionately at an early juncture without a full prosecution; enabling police and prosecutorial resources to be better directed to front line policing duties and prosecuting more serious offending; and utilising conditional cautions to begin addressing the sorts of behaviour that underpin the commission of offences and to minimise the risk of reoffending. Although those provide opportunities for certain uncontested cases to be dealt with soon after the commission of the offence, offenders still retain their rights to ask for the offence to be tried at court instead.

1471. Part 6 of the Bill contains 20 clauses. Clauses 64 to 75 in Chapter 1 deal with the creation of the fixed penalties that build on existing fixed penalty powers already exercised by the police when dealing with certain road traffic offences.

1472. Clause 64 and schedule 4 set out the eligible offences and identify which of them attract the £40 penalty and which the £80 penalty. Those are set out in the paper that we provided to the Committee. There are certain limitations on their use for some particular offences, and those will be set out in departmental guidance to police. They include, for example, that indecent behaviour is limited to urination in the street, that criminal damage is limited to a maximum of £200, and that retail theft is for a first offence only, up to a value of £100. We had originally proposed that a fixed penalty for retail theft would be available only when the goods were recovered in a saleable condition. The Committee will recall that it asked us to consider whether we might extend that to cover incidents where the goods were not saleable but the retailer had been compensated for their loss. I can confirm that the guidance will include that provision. An order-making power in that clause provides that any future amendments to the list of offences or the penalty rates will come back to the Committee and the Assembly for consideration.

1473. Clauses 65 and 66 create the penalty notice powers in respect of adult offenders and establish that a penalty notice must contain certain information, such as details of the offence, the penalty amount, how it can be paid and how the recipient can exercise their rights within 28 days to request a court hearing instead.

1474. Clauses 67 and 68 explain the effect of the penalty notice and set restrictions on instituting prosecution proceedings. They provide that proceedings may not be brought against the person until the 28 days have elapsed from the date of issue, unless that person has exercised their right to request, in the prescribed manner, that they be tried at court. Where no request is made or the penalty remains unpaid after that 28-day period, the penalty will be increased by 50% and registered as a court fine.

1475. Clause 69 enables the Department to issue guidance to police about the operation of fixed penalties. I have already indicated that that will include certain restrictions on particular offences. However, it will also include, for example, considering the impact of an offence on a victim and preventing issue in circumstances where an otherwise eligible offence may have been motivated by issues such as domestic violence, hate crime or behaviour of a sexual nature.

1476. Clause 70 sets out the procedures for a payment of penalty to the individual specified on the penalty notice. Clauses 71 and 72 describe the process for dealing with the registration of fixed penalties that remain unpaid 28 days after issue. That gives the Chief Constable a power to issue a registration certificate on default of the penalty sum, which enables it to be registered as a court fine. Courts are also empowered to register the sum and issue a notice of registration to the defaulter requiring payment within 21 days from the date of registration. From this point

onwards, the registered penalty sum is subject to the same enforcement procedures as any court-imposed fine.

1477. Clause 73 provides the ability for an individual who receives a notice of registration to challenge the notice. In order to do so, he or she must make a statutory declaration to the court that either they are not the person to whom the penalty notice had been issued or that they had, in fact, exercised their right to request a court hearing within the prescribed 28-day period. The clause enables the court, where appropriate, to either void the enforcement proceedings or treat the case as though that request had been made within the 28-day period.

1478. Clause 74 provides a similar power for the court to set aside, of its own volition, a registered sum that is enforced as a fine in the interests of justice. It is envisaged that that will be used in circumstances where the court has become aware that the individual is not the person to whom the penalty notice was issued or that it was not reasonable to expect that the individual who had received it could have complied with the requirements set out in the penalty notice. Clauses 73 and 74 are important safeguarding provisions and protect the rights of individuals where an offence has been dealt with by means of a non-court fixed penalty disposal. Clause 75 simply explains the meaning of the terms that have been used in Chapter 1.

1479. I turn now to Chapter 2. Clauses 76 to 84 deal with the creation of a new conditional caution disposal, which can be directed by a public prosecutor for suitable offences committed by adult offenders. This may be used in some instances for first-time offending. However, it is perhaps more suitable for individuals who have already shown some history of minor offending that suggests an ongoing pattern of offending that might best be tackled by compliance with conditions.

1480. Clause 76 makes provision for the conditional caution to be given by an authorised person — either a police officer or, where it is a departmental prosecution, a person authorised by the Director of Public Prosecutions. It specifies that the conditions attached to the caution, with which the offender must comply, should have a rehabilitative or reparative objective. Rehabilitative conditions may include, for example, participating in a programme dealing with substance misuse or with other offending behaviour aspects of a chaotic lifestyle. Reparative conditions might provide the opportunity for a course of action to be agreed between a victim and offender as to how the harm caused to the victim can be repaired.

1481. Members of the Committee will remember that they raised the question of the role that restorative justice interventions might play, and this is one of the examples where we might see that being deployed. There could also be short-term restrictive elements applied to either type of condition. For example, a prohibition might be placed on entering certain premises or areas if the prosecutor considered that that would help to achieve the objectives of the conditions.

1482. Clause 77 sets out the five requirements that must be satisfied before the initial caution is given. In summary, these are: that there is sufficient evidence to sustain a prosecution against the individual for the offence; that there has been an admission of the offence to an authorised person; that the effects of the initial caution and the consequences of failure to comply have been explained to the offender; and that the offender signs a document detailing the offence, their admission, the conditions being attached and their consent to the disposal.

1483. Clause 78 creates a power for the public prosecutor, with the consent of the offender, to vary the conditions that have been imposed by modifying, adding or removing a condition. That is to provide a bit of flexibility around adjusting circumstances that might arise after the initial caution is given to help achieve the objectives. Clause 79 makes provision for criminal proceedings to be brought where there is a failure to comply with a condition without reasonable excuse.

1484. Clause 80 provides a power of arrest without warrant where a police officer has reasonable grounds to believe that an offender has, without reasonable excuse, failed to comply with conditions attached to the initial caution. It will not always be necessary to effect an arrest to ascertain whether a breach has been made without reasonable excuse, but the power has been created for circumstances where that might be a necessary course of action. The code of practice included in the Bill will provide clear guidance on the exercise of that power of arrest.

1485. Clause 80 also makes provision for the handling of cases where the arrest power has been exercised, providing that the individual can be charged with the original offence, bailed pending a decision on charging, or released without charge or bail either with or without any variation of conditions. Clause 81 ensures the relevant provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 apply to any person arrested under clause 80.

1486. Clause 82 requires the Department to produce a code of practice and provides an indication of a range of issues that it should incorporate. These include the circumstances, procedures and places in which a conditional caution may be given and by whom, the conditions that may be attached and the period that they will have effect. It will also include information on the monitoring of conditions and the exercise of the power of arrest and consequential procedures. The code will be published in draft form for consultation and cannot be published or amended without the consent of the Attorney General. It will be laid in the Assembly and brought into operation by Order.

1487. Clause 83 enables the Probation Board for Northern Ireland (PBNI) to assist public prosecutors in determining whether a conditional caution should be given and to provide assistance in the supervision and rehabilitation of persons to whom conditional cautions are given. It is more of a permissive provision than an obligatory statutory requirement and enables the Public Prosecution Service to draw on the expertise of PBNI in relation to the consideration of individual cases. Clause 84 provides interpretation for the terms that are used in the Chapter.

1488. I will just say a little bit about the costs of the overall implementation. Implementing the proposals will necessitate around £200,000 in one-off capital costs for organisational and IT changes, which we are meeting through reprioritising our existing resources. The ongoing administration costs will be absorbed by the agencies concerned. For most, this is a different way of dealing with existing offending levels, and it is not creating any new offences.

1489. The PSNI will incur additional costs in back-office processing of the fixed-penalty notices, and it is looking at the model that it will adopt. It is willing to absorb the resources that are required to implement that processing model, and this is to realise the significant longer-term efficiency gains to be made by removing the administrative burden of producing a full prosecution file in all of these cases.

1490. The number of disposals will depend on the take-up rate, but we anticipate that around 2,000 cases could be diverted from courts in this way. The net efficiency gains will be quite significant. They will depend on the processing model, as I have indicated, and the administration costs for police in relation to that, but we are estimating gains of between £750,000 and £1 million a year.

1491. The Chairperson: Do any members want to seek clarification on what has been said?

1492. Mr McCartney: Clause 78 allows a public prosecutor, with the consent of the offender, to vary the conditions. How does that work? If the offender does not give consent, what happens?

1493. Ms Smiley: The clause provides individuals with the ability to identify that they have moved house or that family who they may visit have moved to a prohibition area. That allows

the changes to be made. That is generally considered to be assisting the individual; it is not being imposed in cases where an individual has not consented.

1494. Mr McCartney: So, the application is made by the individual rather than the public prosecutor.

1495. Ms Smiley: If someone who is monitoring conditions finds that the person's circumstances have changed in a certain way, they may bring forward the recommendation. However, it is not imposed on the individual; it is a consensual arrangement.

1496. Ms Ní Chuilín: I am not sure if I heard you right, Janice, but when you spoke about clause 82, you said that once the draft has been agreed and laid before the Assembly, the code can be brought in by Order, and then from time to time the Department can revise the code. What does that mean? An equality impact assessment (EQIA) has been done on the Bill. Does that mean that the Department can add bits of it on without putting it out to public consultation or scrutiny?

1497. Ms Smiley: No, it means that whenever the code is initially produced it will come to the Committee and will then go out to public consultation. It will then be brought back to the Committee and the Assembly to lay an Order. If you seek to change the code, you have to go through the same process all over again, so it will go out to public consultation again and comes before Assembly scrutiny, and then it is produced and reissued.

1498. The Chairperson: We will leave it there. You are staying with us and will be coming back to the table a little later. Thank you very much.

1499. The next evidence session is with representatives from the Probation Board. I welcome Mr Brian McCaughey, who is the director, Hugh Hamill, who is the assistant director, and Louise Cooper, who is the head of business planning and development. You have 10 minutes to outline your brief — although I suspect that you will not need that long — and then there will be 20 minutes for questions.

1500. Mr Brian McCaughey (Probation Board Northern Ireland): Thank you very much. I intend to give a broad overview of the work of the Probation Board, although some members are very familiar with our work. After that, I will focus on Parts 5 and 6 of the Bill.

1501. The Probation Board and its work are enshrined in legislation. Our functions are set out in the Probation Board (Northern Ireland) Order 1982, and further responsibilities are outlined in the Criminal Justice (Northern Ireland) Order 1996 and the Criminal Justice (Northern Ireland) Order 2008. Part of that legislation empowers us to contribute funding to the voluntary and community sector. We have allocated £1·3 million to 57 voluntary and community organisations over the past year, including some of our colleagues who you will hear from this afternoon.

1502. Our role can be summarised under four core elements: ensuring that offenders comply with the sentences imposed by the courts; reducing reoffending; minimising harm; and working with offenders to promote and develop responsible citizenship. The Bill will assist us in those elements of work and help us to make a contribution to making Northern Ireland safer.

1503. The board employs 420 staff across 31 locations, including three prison sites. All probation officers hold a professional qualification in social work. They are committed to their jobs, believe in what they are doing and work to a very high standard. All of them undertake continuous professional development.

1504. On an annual basis, we prepare 6,000 reports for courts. On a daily basis, we supervise 4,300 orders, including probation orders, custody probation orders, combination orders, community service orders, article 26 licences and life licences, and the range of new public protection sentences. In our work, we deliver challenging programmes that tackle issues such as violent behaviour, sexual offending, alcohol abuse, drug abuse, domestic violence and anger management. We also play a full role in the public protection arrangements for Northern Ireland, chairing all the local committees.

1505. We continually review our work and continually try to be at the forefront of testing out new ideas. Some of our recent partnerships have included the Inspire Women's Project, which delivers services in the greater Belfast area, forging new partnerships across the voluntary and community sector. We have also developed a priority youth offending project with the Youth Justice Agency, which tackles the issue of higher-risk young people, and we have a very successful community service scheme working right across Northern Ireland in 300 community-based locations, which delivers over 140,000 hours of unpaid work. Our victims' unit was established in 2005, and it provides information to victims when someone has been sentenced to an order that requires supervision.

1506. I will move on to the Bill. We support the principle of offenders paying back for their crime, which is encapsulated in the offender levy under Part 1, and we also wanted to mention policing and community safety partnerships. I know that those are not issues for today and that there will be a chance to talk about those again. We understand that there will be a further meeting, and we wish to participate in that.

1507. I will focus on Parts 4 and 5 and start with the treatment of offenders. I will look first at clause 59, "Breach of licence conditions by sex offenders" and then at supervised activity orders, which are covered in Part 5. The Probation Board welcomes the proposed amendment to the Criminal Justice (Northern Ireland) Order 1996 through the insertion of paragraph (11) as a means of overcoming problems associated with petty session boundaries in respect of warrant applications for offenders residing in Northern Ireland. It would be beneficial to extend the amendment to custody probation orders and probation orders.

1508. The Probation Board welcomes the proposed amendment to the Criminal Justice Order to address the residency gap regarding sex offenders who are in the territory of Northern Ireland. As the law stands at present, article 26 licences are limited to the territory of Northern Ireland. The Probation Board recommends that legislative change is made to extend the provision of article 26 licences to the jurisdiction of England and Wales and the jurisdiction of Scotland.

1509. As regards supervised activity orders, the Probation Board has made preparations to pilot that disposal and can see the benefit of those orders, such as the direct benefit to the community through community service work and reserving prison for those who pose the greatest risk to the public.

1510. It is our view that there are advantages to introducing alternatives to prosecution, and our experience has been that there are some cases that could be dealt with outside the formal court hearing; for example, those that involve low-level offending or in which there are verified mental health issues. It is crucial, however, that, in considering alternatives to prosecution, the views of victims are taken into account. Chairperson, you recently spoke about a day in court having a sobering effect on people. I agree that it is not only important because it allows offenders to understand the gravity of what they have done but because it allows victims to see that justice is being done. Alternatives to prosecution may, however, be appropriate in certain conditions, but the views of victims and victims' representatives must be taken into consideration and the criteria must be clear, transparent and applied consistently.

1511. The board welcomes the clauses dealing with conditional cautions. However, we believe that more detail on budgetary and personnel commitments will be required in order to properly cost that development along the justice process. The Probation Board will welcome the opportunity to be involved in the code of practice for conditional cautions and the early enactment of the provision. Once the criteria for conditional cautions are met, the Probation Board will be in a position to assist prosecutors to decide what types of conditions could be attached to a caution. As has been mentioned, the types of cautions could be rehabilitative or reparative. Rehabilitative cautions would address the issues underpinning the offending behaviour and reparative cautions would involve undertaking unpaid work, making an apology or repairing the damage caused. Rehabilitative activity could include attending a programme or course. It could involve identifying the issues in an individual's offending history, which could include drugs and alcohol awareness courses or seeking to improve a person's basic skills or employability.

1512. As I mentioned, the Probation Board has a network of contacts in the voluntary and community sector across Northern Ireland. We believe that we can play a very important role in linking people and giving conditional cautions through those providers. However, in drafting a code of practice, it will be important to consider the need to ensure that an offender clearly understands what is to be done, when it must be done by and what acceptable evidence of completion is.

1513. In conclusion, I thank the Committee for the opportunity to give evidence today. We in the Probation Board want to make our contribution as fully as possible. We believe that the Bill presents opportunities to work more collaboratively and creatively and to contribute further to safer local communities in Northern Ireland. We welcome any questions on issues that the Committee wants us to expand on.

1514. The Chairperson: Thank you, Mr McCaughey. Not only does justice need to be done but it needs to be seen to be done. You summed that up quite well. Do you think that justice will be seen to be done if the processes in the Justice Bill are adopted?

1515. Mr McCaughey: We are keen that the restrictions around sex offenders are enhanced in the areas that we have outlined. We believe that, with the full involvement of victims, the other areas of supervised activity orders, alternatives to prosecution and conditional cautions can bring real meaning to justice in Northern Ireland. We are confident that those measures will be an addition to criminal justice in Northern Ireland.

1516. The Chairperson: I have heard it said by those who are looking at the Bill that the victim is at the heart of all of it. However, some of us are not convinced that that is the case. Some of us believe that the offender has been put at the heart of the Bill. How would you respond to that?

1517. Mr McCaughey: I would respond by saying that justice has to be at the heart of criminal justice in Northern Ireland. There is a place for an enhanced inclusion of victims at every stage of the process, and the Probation Board has championed that in the assessments it prepares for sentences in the courts and for the supervision of offenders in the community. We want to ensure that offenders are given the opportunity to repair the harm that they have done and that supervision remains a central plank of justice in Northern Ireland in the future. I am absolutely in favour of developing the inclusion of victims at every stage of the process.

1518. The Chairperson: Are you confident that the Bill will do that?

1519. Mr McCaughey: I am confident that it will make a contribution. We have a long way to go to ensure that the voice of victims is heard at every point in the process in Northern Ireland.

1520. Mr McDevitt: I thank Mr McCaughey and his colleagues for their presentation. I am curious about penalty notices and your attitude towards them. Some have suggested that fines do not normally change behaviour. Do you agree?

1521. Mr McCaughey: I shall ask Ms Cooper to answer that question in detail. For some people, a fine will be such a deterrent that they will not reoffend. However, for many others, it is a penalty that they cannot meet or, on some occasions, choose not to meet, and, in a calculated fashion, they make a decision to spend time in prison. The cost to the system in processing that choice is immense.

1522. Ms Louise Cooper (Probation Board for Northern Ireland): Extensive use is made of fines as a disposal in Northern Ireland courts. What is less well known is that, in 45% of cases in Northern Ireland, fines are paid on time, and, when fines are followed up by fine collection, that rate rises to 90%. However, when people choose not to pay a fine or are unable to do so, constructive activity to assist people is more conducive to helping them to stop reoffending.

1523. Mr McDevitt: What you are saying is that fine defaulters should not go to prison.

1524. Ms Cooper: Fine defaulters can be dealt with in alternative ways. The Probation Board believes that prison needs to be reserved for harmful people.

1525. Mr McCaughey: The time and money that we spend on bringing people who do not pay fines into the prison system — the time spent processing their case and then releasing them from the system — is a waste. We should look at more constructive and creative ways of ensuring that those offenders pay back to the community.

1526. Mr McDevitt: Is it fair to say that you see a role for fines and that you are not unhappy with the idea of fixed penalties but that you do not want prison to be the consequence of not honouring a fixed penalty?

1527. Mr McCaughey: That is correct.

1528. The Chairperson: Mr McCaughey, I want to put you over something that you said so that I can get it into my head. You said that the expenditure may not be justifiable. The PPS was before the Committee on Tuesday, and we raised the issue of a court case concerning the alleged theft of an item that cost £1·79. The answer that I got from the Minister was that expenditure on that case was, I think, about £15,000. I suspect that the PPS thinks that that is money well spent but that you are not of that opinion. You feel that a lot of money could be saved by doing it in another way. I read a newspaper article that highlighted that there are tens of thousands of unpaid small fines in the English courts. Do you think that we would be better at getting people to pay fines than they are?

1529. Mr McCaughey: I have lots of views on how we could be more creative in engaging people for non-payment of fines. A probation order costs around £4,000, and a community service order costs around £2,000. We have 4,300 people under supervision, and we are the most effective probation service on these islands. This justice system has a good news story, and we should build on that. Our effectiveness is unrivalled.

1530. As we have not previously had the option to deal with non-payment of fines in an alternative fashion, we now have an opportunity to be very creative. In many instances, money is wasted in processing people into prison, holding them there for a number of days and then releasing them. We could use that money much more effectively, not on softer options but on creating alternative, creative and demanding options that enable the community to see payback and restoration for the harm done.

1531. The Chairperson: Other places have tried that system. I cannot be emphatic about this, but I think that there are either 33,000 or 38,000 unpaid fines in England. Where will we be with the system if the unpaid fines accumulate in those sorts of numbers?

1532. Ms Cooper: As I said, in Northern Ireland, we are relatively better at fine collection. The figure for fine collection by the Court Service is around 90%. We are keen to have different ways to deal with people who default in the community. If people do not comply with the requirements of a supervised activity order, for example, they will be found in breach of it and brought back to the court. However, we do not see it as a revolving door. We see it as a constructive alternative to putting people in custody for not paying a fine.

1533. The Chairperson: Your illustration of a revolving door is a good one. Some people might see it as that, but you do not.

1534. Mr McCartney: Thank you for your presentation. I want to speak about clause 83, which gives powers to the Probation Board and which you mention in your written submission. Have you done any work on the personnel commitments and budgetary concerns?

1535. Ms Cooper: We are at the early stages of development of that. To be honest, it will depend on agreeing the code of practice so that we can be absolutely sure about the role of the probation service in assisting the PPS and about the types of caution, as well as about what the commitments and requirements will be for the supervision and rehabilitation of those given conditional cautions. That would be based on a cost-by-case basis. We will want to ensure that we fully cost that out and understand the full implications.

1536. Mr McCartney: Your submission states that the board:

"would welcome the opportunity to be involved".

Is the Probation Board involved, or is that just a broad statement?

1537. Ms Cooper: As far as I am aware, work on the code of practice has not commenced, but we welcome any opportunity to be involved in that.

1538. Mr McCartney: Will you be involved?

1539. Mr McCaughey: To date, we have had no involvement.

1540. Mr O'Dowd: I apologise for missing some of your presentation. I was interested in a point that the Chairperson picked up on about the role of the victim in the justice system, which has been a subject of debate here. The Committee heard an interesting remark from the PPS the other day. It was not the first time that I heard it, but it clarifies the situation. The comment was that the state takes the prosecutorial role off the victim, and, therefore, the state carries out the prosecution. It is no longer the victim who carries out the prosecution, it is the state. The victim is, therefore, set to one side. If we continue to say that the victim is at the centre of the justice system, we are only letting the victim down. How do you balance that with the comment — I am not quoting you verbatim — that we have to ensure that the victim is involved or central to the justice system?

1541. Mr McCaughey: I believe that I said that justice should be central to the justice system and that we have much work to do to include victims at every stage in the process, including in the work of the Probation Board in preparing reports for sentencers and in supervision in the community.

1542. Mr O'Dowd: I was not trying to entrap you. In preparing its reports and so on, does the Probation Board speak to the victim of a crime about the perpetrator? In what way would the victims and their needs be recognised in such reports?

1543. Mr McCaughey: We receive the case depositions, but we do not interview the victim. That is not a role that we have at present. However, I seek to explore further how we can ensure that there are always victim impact reports at court and that we can have access to those in the preparation of our report so that there can be no room for any minimisation on the part of an offender about the harm that they may have caused.

1544. Mr O'Dowd: I am not being flippant, but are you overly concerned that perhaps you are too associated with the perpetrator and that, rather than being inclusive, you are on one side of the judicial system? I did not expect your presentation to be so concentrated on the victim. That is not a criticism; it is a welcome development, but I thought it was an interesting angle for the presentation.

1545. Mr McCaughey: Since the establishment of our victim information scheme in 2005, and through our contact with victims associated with people on supervision, we have found that the major areas that require attention are: the lack of understanding of the justice system; the lack of awareness of what the sentence means; the lack of awareness of the progression of that sentence; the lack of awareness of whether the offender adheres to their sentence. So, if there is a rebalancing of my attention and focus, it will be because of that experience.

1546. My engagement with victims' groups as part of our corporate planning consultation over the past months means that that experience is fresh in my mind. We are writing our corporate plan for the next three years, and our engagements have been very inclusive. I want to place victims' needs and issues more centrally in the work of the Probation Board. Our core business is to ensure that offenders adhere to sentences. However, I want to ensure that work with victims is more central in the work plan with the offender, first, to make them aware that there was a victim; secondly, to make them aware of the impact of the offence on the victim; and, thirdly, to agree what work can be done to reduce the likelihood of such harm happening again.

1547. We have engaged in pilot projects over the past years with community-based groups that may be more skilled in that area and that may be able to help us to move, if possible, in a very managed fashion, towards a situation in which the offender and victim could meet and in which the offender will begin to make amends or at least to face up to what they have done. That is way, way down the road, but my vision is that, ultimately, victims' needs and work will be central to the supervision of offenders.

1548. The Chairperson: Did you allude to the fact that you feel that there should be more innovative approaches in the Bill? Did I pick you up right on that?

1549. Mr McCaughey: There is scope in the Bill for us to implement supervised activity orders, cautions and programmes, and to develop that creativity.

1550. The Chairperson: Do you want to tell us anything more?

1551. Mr McCaughey: Through the range of programmes that we can provide around alcohol, drugs, personal development or employability, we have a clear knowledge of the factors, the reasons why people offend and what can prevent them from reoffending. If we can get involved at an early stage, we will divert people from the criminal justice system. All of our experience tells us that, when people are brought into and processed through the system, it is very hard for them to stay out of it. We very much welcome anything that can be done in a constructive fashion as an alternative to prosecution.

1552. Ms Cooper: I will supplement that by giving an example to the Committee. The Inspire Women's Project centre is a place where the Probation Board, in partnership with the Prison Service and voluntary and community agencies, has brought together a range of services for female offenders. The likes of that type of centre would be helpful, perhaps at a diversionary stage, because, through a range of supports and service providers, people could be offered help to deal with issues and behaviours that lead them to offending. It would, hopefully, address some of the deficits and needs of those people.

1553. Lord Browne: In your submission, you refer to article 26 orders, which apply only to the territory of Northern Ireland and are not enforceable in England, Scotland and Wales. Have you had any communication with the relevant jurisdictions to put forward your case for those being extended?

1554. Mr Hugh Hamill (Probation Board for Northern Ireland): We have made the Department of Justice in Northern Ireland aware of the problem. It is my understanding that it has been in contact with its colleagues in London because it may require legislative change in London.

1555. Lord Browne: Do they apply to the Republic of Ireland? How does it fit into this?

1556. Mr Hamill: No, they are not transferrable to or enforceable in the Republic of Ireland.

1557. Sir Reg Empey: Brian, do you share some of the views that are being expressed by the Home Secretary?

1558. Mr McCaughey: I would respond by seeking clarification.

1559. Sir Reg Empey: Following on from the questions that the Chairman put to you a short time ago, do you share some of the views about short-term sentences and alcohol and addiction issues? Do you share some of the views espoused by Kenneth Clarke?

1560. Mr McCaughey: I certainly share some of those views, but some of the factors and drivers for change in England and Wales do not exist in Northern Ireland. Prisons in England and Wales are very overcrowded. They have introduced an early release scheme, and sentencing around the public protection arrangements has resulted in an overcrowding of prisons, because they removed discretion from the judiciary as to whether somebody is deemed dangerous. That has had a consequence for the prison population.

1561. I absolutely believe that we should be as creative as possible in the management of offenders in the community. We in Northern Ireland are an exemplar when it comes to how the probation service delivers its services in, with and through the community. I refer to the fact that we financially support 57 voluntary and community partners. We have 300 partners in the delivery of our community service scheme. In England and Wales, the Home Secretary is attempting to broaden the involvement of the voluntary and community sector and the private sector in the oversight of offenders. We already do that. I will be making that clear to the Government in our correspondence.

1562. Overall, prison needs to be reserved for the people who are most dangerous and who will cause hurt and harm to us and our families. Those people need to be in prison, and they should not be released until they have evidenced a reduction in their risk. However, it is an expensive resource, and, therefore, we need to use that option wisely, and we should use all our resources across all our Departments to work collaboratively to reduce crime and the harm that it does. That is the challenge that we face.

1563. The Chairperson: Thank you for your presentation. If you wish to remain in the Public Gallery, you may do so. The officials will come back and deal with some of the issues that you raised.

1564. Members, we move to the next presentation, which is by the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO). It is on the treatment of offenders and alternatives to prosecution. I welcome Mr David Weir, director of family services, and Pat Conway, director of adult services. Gentlemen, you are welcome. You have 10 minutes to outline the issues.

1565. Mr Pat Conway (Northern Ireland Association for the Care and Resettlement of Offenders): Thank you for giving us the opportunity to amplify the written evidence that we submitted. NIACRO provides services under the headings of working with children and young people who offend; providing services to families and children of offenders; supporting offenders and ex-prisoners in the community; and working with prisoners. We also prize the connection from practice to policy comment. Mr Weir and I will focus on Part 6 of the Bill. Mr Weir will lead on alternatives to prosecution, and I have a few words to say about the offender levy. We will stick to the 10-minute timescale.

1566. Mr David Weir (Northern Ireland Association for the Care and Resettlement of Offenders): We support the concept of providing effective alternatives to prosecution. We are a bit concerned that the proposed legislation appears to focus almost exclusively on monetary penalties. We have raised the concern before that the proposed legislation does not particularly address the issue of fine default, and our concern is that the proposition of a focus on further monetary fixed penalties, including fixed penalty notices, will increase the risk of people being in default of payment.

1567. The consequence of default can be admission to custody. From our reading of the Department of Justice's report on the Northern Ireland prison population in 2009, it seems that 24% of all receptions into prison were for fine default. That represents 1,400 people. By our calculations, an average of 29 or 30 people a week enter custody for fine default. That must represent a colossal drain on the resources of the Prison Service. Our colleagues from the Probation Board referred to managing the admission, detention and discharge of a revolving prison population and the amount of the Prison Service's time that that must absorb. Those resources are not then being directed towards effective resettlement.

1568. Our argument is that the proposals in the Justice Bill have the potential to increase that drain on prison resources. We are not arguing that people should not be fined or that they should not pay their fines. In many cases, a monetary penalty can be an effective tool, both as a punishment and as a deterrent. However, we are arguing that the monetary penalties for some are neither an effective deterrent nor an effective punishment. By way of illustration, we are working with a family where a single mother with four children has received fines for non-payment of her TV licence.

1569. We are not suggesting that she should avoid the responsibility of paying for her TV licence. However, we are suggesting that imposing a fine on someone who is already in financial difficulty is not a solution. She is subject to arrest and has, in fact, been arrested. She has borrowed money to pay the fine, so she continues to be in debt and is an increasingly disadvantaged financial position. We would, therefore, like an alternative alternative to prosecution for that type of incident.

1570. By way of comparison, someone in debt to a credit card company or bank has the possibility of entering into a voluntary agreement to pay that off over time. Similarly, we argue that someone in default of a TV licence should, for example, have the facility to enter into a

voluntary agreement to discharge that responsibility. In that type of context, we believe that an appropriate disposal and alternative to prosecution is referral to a debt counselling service as opposed to recourse through a monetary penalty. That case illustrates our vision of alternatives to prosecution as more of a diversion to a service.

1571. Through direct work with our client group, we have also seen other examples of where monetary penalties and prosecution do not actually address the causes of offending. We are not talking about letting people away with it. We are, instead, talking about situations in which an offence has been committed and the police or Public Prosecution Service, while expressing societal disapproval of that, consider that a monetary penalty could actually increase the risk of custody and of the person being criminalised through default of payment. The sort of instances that we believe should be considered for alternatives to alternatives are poor money management skills, where that is a contributor to offending; homelessness or inadequate accommodation, where that is a contributor; mental health issues, and drug and alcohol issues; and the types of low-level assaults and aggression that are associated with alcohol-related behaviour.

1572. We have some concerns that the proposed legislation, at is stands, runs the risk of providing a quick and efficient way of reducing court lists. However, we do not regard that as a particularly effective way of preventing offending and believe that it would, in fact, lead to criminalisation.

1573. Clause 69 states that the Department may issue guidance about the exercise of discretion given to police officers. We urge that that guidance contain a clause setting out that, in appropriate circumstances, police officers should consider a referral to an appropriate service as opposed to a fixed penalty notice. We are not arguing for that as a single solution to all situations but as something that could be considered as an alternative disposal. Having said that, we do not want such discretion to be unmonitored, and we expect the exercise of that discretion to be applied fairly and consistently across the jurisdiction.

1574. Conditional cautions provide a second bite at the referral to a service. However, such referrals are conditional and, therefore, enforceable. We support that concept as an alternative to prosecution and a court disposal. However, we are anxious that, rather than eating into the higher-level disposals, conditional cautions would actually creep downwards and that people who were not previously involved in that level of disposal would creep into it.

1575. Mr Conway: To reinforce what David said: we anticipated that we would be asked about the alternatives. We run a series of projects that we call "assisting people and communities". We have people working directly with women offenders and ex-prisoners. We also have people working with individuals who were given no support when they were discharged from Hydebank. Those individuals are usually subject to short sentences and do not come out with any probation support. They are the people who are most likely to go back into communities, reoffend and then to re-enter the prison system. We have a person working on mental health issues related to offenders, including addictions. There are also people who are working with young people through our child and parent support (Caps) programme.

1576. We agree with the concept of the offender levy, in so far as it is a tool for offenders to address their behaviour through understanding the impact on victims. However, the legislation, as it stands, does not require the criminal justice system to explain to offenders why they must or should pay. If it is the intention to make offenders more accountable, we would argue that they must understand what they are paying, and for what reasons. We remain concerned about the departmental view that moneys for administration will be taken from existing budgets, not the proceeds of the levy. We recommend that that be reviewed annually, along with a published report that details where the money has gone. In short, if the two issues of the offender levy

and alternatives to prosecution are bundled together, we feel that any alternatives that are arrived at need to have connectivity to the community. They need to be resourced, and by that we do not necessarily mean financially, but through the training of police officers and others in the criminal justice system.

1577. Any scheme should be subject to regular review and underpinned by a "what works" philosophy.

1578. The Chairperson: Thank you very much for your insight and your time. You spoke about community projects. Did you have in mind, for instance, the clearing of snow from footpaths, etc?

1579. Mr Conway: Not immediately. We have very good councils that do that, apparently. [Laughter.]

1580. The Chairperson: In the absence of councils' debating whether they should do that, perhaps you could consider it as one of your projects.

1581. You are quite emphatic in your paper that fines do not normally change behaviour. We are told that prison does not normally change behaviour. What do you think would change a person's behaviour?

1582. Mr D Weir: An analysis is required of the situation that the person is in. It is not an absolute statement that prison does not change behaviour. My argument on fines is that, if we consider a small business model, a fine is an expense that eats away at the bottom line. Therefore, people do not act in a way that adds to their costs. For someone who is already in financial difficulties, a fine is almost meaningless; it deepens their difficulties.

1583. As for prison, the thought of imprisonment is a deterrent — a preventative tool. However, as I think Sir Reg mentioned, Ken Clarke's recent green paper pointed out that, despite the vast increases in investment in the criminal justice system, 50% of people still reoffend, and the system has not actually addressed the causes of their offending behaviour. Although prison provides a sanction, I do not see many cases where it has changed the behaviour of the people who come out. In respect of alternatives to prosecution, we were not originally talking about that higher level of offending that merits court action and the sanctions that are available; our concern with lower-level offending is with people who are in difficulties or who are in situations where they are not adequately supported. Their social needs are what influence their behaviour. Prison does not affect those people positively. The thesis of our argument is that recognising and responding to those people who have needs is a way of changing their behaviour.

1584. The Chairperson: I take that point sincerely about those with needs. However, not all offenders are in the category of those with needs. There is a thing called bad behaviour and accepting responsibility for that. We hear a lot about human rights, and that is an important issue. We hear less and less about human responsibility, do we not?

1585. Mr D Weir: I can give you another example that I was going to refer to earlier, but I thought that I was going to run out of time. We have a case of a young man who is 36 years old. He was prosecuted for urinating in a public place when he was aged 18. He is now a professional and never reoffended, yet that offence appears on his criminal record if he applies for a job, and it also came up when he volunteered for a similar organisation to NIACRO. Therefore, for one piece of behaviour, which was offensive, inappropriate, silly and stupid, he is still paying the price and is still humiliated by it 18 years later. People need to accept responsibility for their actions, but, in his case, surely it would have been better to tell him to go

home and catch himself on, rather than having to go to court and get a criminal record, which is still affecting him 18 years later. However, again, that may be an extreme case.

1586. The Chairperson: No, you make a good point and you make it well.

1587. Mr D Weir: Thank you.

1588. Mr McDevitt: I am still struggling with whether the issue is with the penalty notices or with the default or non-payment of a penalty notice. I do not want to focus on one case, but had the young man you referred to been offered a penalty notice, he may have paid it and would not have a criminal record. However, would that not have had the same effect as what you suggested? He would have been told to go away and think about his behaviour and cough up £40, which, according to schedule 4 to the Bill, is the fixed penalty for indecent behaviour?

1589. Mr D Weir: That is possible, and another young person may have defaulted simply because they did not have the £40. I know of young people who are living semi-independently, and who must make the choice between paying a fine and eating dinner. Those are the type of situations in which I would ask that the police officer involved to exercise discretion, and, rather than issuing a fixed penalty notice, they could consider telling someone to go home and catch themselves on.

1590. Mr McDevitt: Just on that point —

1591. The Chairperson: Sorry, if I could butt in. You said that 18 years later that individual is still paying for the offence, but he had no needs at that stage, did he?

1592. Mr D Weir: No, he did not have any needs, but I was talking particularly about the issue of fixed penalty notices.

1593. The Chairperson: It was in a moment of folly that he did what he did. He then caught himself on, for the sake of a better term, and 18 years later he has not reoffended. However, could that not be said about many people?

1594. Mr D Weir: It could, Lord Morrow, and that is part of my thesis. An immediate action without sanction, but which allows the person the opportunity to catch themselves on, can be effective and we would argue that it should be tried as a first step. It could involve simply taking someone home to their mummy — my background is in youth justice — or diverting them to a debt counselling service or some form of accommodation support. If they reoffend, that is fair enough; at least we would have tried, but they would not have been brought in to the criminal justice system at the first opportunity, which is a risk for some.

1595. The Chairperson: There is an example of guy who smashed a window in the 1970s and was sent to jail for, I think, 3 months. He has not reoffended. Do you think that that was rough justice?

1596. Mr D Weir: I would propose that he was probably never going to reoffend anyway.

1597. The Chairperson: OK. Sorry, Mr McDevitt, I cut in during your question.

1598. Mr McDevitt: No, that is OK, Mr Chairman; we were talking about related issues. Mr Weir, are you arguing against penalty notices?

1599. Mr D Weir: No.

1600. Mr McDevitt: What you are arguing is that there should be discretion, and, in this case, that it should be with the police officer.

1601. Mr D Weir: That is the clause that I see as offering that possibility.

1602. Mr McDevitt: OK. Define "catch yourself on." What are we talking about? This section refers to adults. Are we talking about them being given the choice between a fixed penalty notice and a series of scheduled community services, or, on the basis of some needs assessment, that an offender would be referred to a support service?

1603. Mr Conway: It is about ability to pay. People who are clogging up the prison system are in for fine defaults and they have to have other needs met to stop that from happening. There are clearly many people subject to fines who can pay them. That is OK and it is punishment enough. However, there are others who have a disproportionate effect on other elements of the criminal justice system, such as probation and the Prison Service, who, we argue, do not have to be there.

1604. It is relatively easy to enter the criminal justice system but far more difficult to extract people, and once they are in prison, a whole series of consequences may arise.

1605. Mr McDevitt: Let us say for argument's sake that the police officer was able to apply a quick ability-to-pay test by saying, for example, "I am proposing to fine you, are you able to meet this fine?" Say the individual before him says, "No". What specifically are you asking us to legislate for in that scenario?

1606. Mr Conway: To maintain an ability to divert people from the criminal justice system, utilise the resources that exist in the communities that those people will eventually be hosted in, and have those needs addressed.

1607. Mr McDevitt: Give us an example.

1608. Mr Conway: Our women's project has a relationship with the Women's Support Network. We are involved in a project with it. People who come out of prison and are on probation work with women's centres. We have a pilot project running in Belfast at the moment. Those centres will host them and attend to those needs.

1609. If a crime is committed, or a TV licence is not paid, for example, it has to be addressed and flagged up. However, if the issue is inability to pay, those needs have to be addressed to stop a downward spiral that continues into the criminal justice system.

1610. Mr O'Dowd: I am interested in Ken Clarke's approach to the justice system. I watched 'Newsnight', which was recently broadcast from a prison. I thought it most enlightening, especially given the difference between Ken Clarke's political views on life and my own. He has a very enlightened view on justice. It was useful.

1611. Your briefing paper gives us the example of James. You recommend that a police officer should be equipped to direct potential offenders or offenders into diversionary or rehabilitation services. Is a police officer sufficiently trained to do that?

1612. Mr D Weir: To be fair: I said that that clause seems to offer that possibility. I am not saying that that is necessarily a solution. However, within the legislation as drafted, it seems that that possibility is there.

1613. Pat mentioned the requirement for a police officer to be trained in that decision-making. It is not that long ago that we had youth diversion officers. The arresting officer could refer the child to a diversion officer who was trained specifically on how to respond to the particular situation. His or her choices were to give an informal warning, a restorative caution or to proceed to prosecution. Therefore, somewhere in there the facility and ability exists. Whether it is with the front line police office who comes across the offence, I do not know. I was only saying that I see that clause as providing that possibility.

1614. Mr Conway: We are concerned that the police may be, in effect, judge and jury. We need an independent arbiter, but decisions need to be made to be rapidly. When young people, or anyone for that matter, commit an offence, often it is dealt with nine months later, which is a bit of a nonsense. There must be immediacy. If someone has done wrong and admits to it, that is an easy one. It should be more easily dealt with than it is now, but I am not convinced that the police should have the functions of judge and jury.

1615. Mr O'Dowd: The other side of the coin is that, if the system was working properly and young people in particular were being redirected away from the criminal justice system, are there sufficient support networks out there for young people to be directed towards?

1616. Mr D Weir: I am not entirely convinced about that, as you might imagine, but we do not think that their spending three months in custody or wherever would necessarily create that opportunity or that it would appear while they were there. The shortage of resources is a continuing issue, and needs to be worked on. We know that it can be done. In some areas of work, we have demonstrated how we can work with 18- to 25-year-olds with mental health issues who are returning to the community from custody. We want to see investment in that area.

1617. However, we also want to draw on the ordinary, everyday mainstream resources that exist. One of my anxieties is about ensuring that the criminal justice system does not become the route to services. Mental health, addiction and counselling services are already there. Using the criminal justice system as a way of getting to them seems inappropriate.

1618. Mr O'Dowd: We visited Hydebank recently and were informed that, occasionally, a judge would send people there for services that do not exist — rehabilitation services and so on. It looks well on the sheet, they did not want to send the person to prison, so they sent them to Hydebank for services, but they do not exist. I agree with your thought process of how we deal with this, but we have to ensure that, if we are doing it that way, we support the services at the other end.

1619. The Chairperson: The NIACRO example about James mentions that he is 22 years old. If he is caught shoplifting an item under the cost of £100 from Tesco, or even one that costs £1·79, we know where he is going. The question is: what age is a "young person"? Is James a "young person"?

1620. Mr D Weir: The protocol in England and Wales is that a young person is 18- to 21-years-old. We would probably go with 18- to 25-years-old, just to match the Hydebank population.

1621. The Chairperson: Your analysis is that James would not reoffend. Reading your submission, I would not be very sure about that. However, that is a call that everybody makes in life.

1622. Mr D Weir: The problem with preventative services is that people know about only the failures.

1623. Mr Buchanan: You spoke about alternatives to prosecution and the concept of diverting young people away from the courts system. What, in your opinion, defines the difference between a slap on the wrist, a fixed penalty notice or fine or something like that? Who makes the decision as to whether it is a slap on the wrist or whether it is something that deserves much more than that?

1624. Mr D Weir: That is the skill in the assessment process and all those outcomes have their place. The problem is assuming that one of them has more efficacy than others. A slap on the wrist for my son would probably be mortifying, but for other people, it might not be quite so mortifying. A slap on the wrist would have been mortifying for me.

1625. For some young people, and some of the adults who we work with, their sense of self-worth and how they are viewed by others is so flawed and low down that further approbation or opprobrium from the state or the court will not do anything to help lift them out of that. It is for those people that we argue that a slap on the wrist does not do anything except confirm their inadequacy. We suggest that a referral to a service has greater potential to change their behaviour. However, fining someone who is already in financial straits or imprisoning somebody who has already lost their social contacts and community supports does not address, or have the same potential to change, their behaviour.

1626. Mr Conway: There is a fundamental issue here about citizenship and people's contribution to society. You can get into nebulous, ethereal territory about the respect for people and property. I am not sure that that is fully accepted in some areas in Northern Ireland, and there is variance in that. People talked about rights and responsibilities, and it is correct to say that young people — people up to the age of 25 — feature disproportionately in the criminal justice system. There is an issue about promotion of citizenship, and that brings in people from outside the criminal justice system from the education system and the political classes. We must be clear on what that is, what that means and what the impact of it is.

1627. Three or four years ago, we were in a period of economic well-being, and we have been trying to get people into employment as a solution. It is generally recognised that getting people into a job will address and reduce their offending behaviour. That task will become much more much difficult, and, for economic reasons, the numbers of people who come before the courts will probably increase. We need to counter that in some way, but that project is much wider than being purely for the Department of Justice or the criminal justice system to deal with.

1628. The Chairperson: Once you leave it to subjectivity, you can be taken in all sorts of territory. It is about knowing where the bar is.

1629. Mr D Weir: We urged that, if our proposal were adopted, it would need to be monitored strenuously. The guidelines would have to be clear enough to allow the room for discretion not to be too wide and to allow the equity of it to be measured and monitored.

1630. The Chairperson: Gentlemen, we are stopping there. Thank you for coming.

1631. In the next briefing session, we will hear from representatives from Include Youth. We welcome Koulla Yiasouma, Edel Quinn and Paula Rogers. Koulla is the director, Edel is the policy manager and Paula is the policy co-ordinator. Ladies, we welcome you to the meeting, and you have 10 minutes to outline your brief, after which we may have some questions.

1632. Ms Koulla Yiasouma (Include Youth): On behalf of Include Youth, we are delighted to be here once again to give evidence to the Committee on the Justice Bill. As the Chairperson pointed out, I am joined by my colleagues Edel Quinn, who is the policy manager, and Paula Rogers, who is our policy co-ordinator. I am aware that you have had a busy and tiring

afternoon, so we will try to be as brief as possible. We heard the evidence from our colleagues in our partner organisation NIACRO, and we will try, where possible, not to repeat what they said. I agree with many of their points.

1633. I hope that, by now, members are aware of the work of Include Youth, but I will recap. We are a voluntary organisation with over 30 years experience of working with young people in need or at risk. We work at policy and practice level. We work directly with young people aged between 14 and 21 through a number of schemes, including Give and Take, which addresses employability, and policy and consultation work with young people in Hydebank Wood, the Juvenile Justice Centre and across the community in Northern Ireland.

1634. Our comments will draw heavily on work in our manifesto for youth justice, which all the Committee members have received and, no doubt, have read on several occasions. Include Youth commends the Minister and the Department of Justice for seeking to implement alternatives to prosecution. We are a strong advocate for the development of effective alternatives to prosecution, and we welcome the inclusion of measures that will successfully divert young adults form offending behaviour and away from the criminal justice system.

1635. We, like NIACRO, will talk exclusively about Part 6. We welcome the fact that the proposals will not be applied to under-18s, but we remain concerned about their potential adverse impact on vulnerable adults, particularly up to the age of 21. As I said, our Give and Take scheme works with that vulnerable group. I will try to give you a very quick understanding of who the scheme works with and and where our experiences come from: 100% of the young people with whom we work are considered NEET, i.e. not in education, employment or training; three quarters of them are in care or from a care background; 70% have essential skills difficulties, i.e. they do not have the standard of education required to join the world of work; 60% come from a socio-economically deprived background; and nearly half have experienced significant abuse or neglect as children.

1636. What do we believe works in crime reduction? Members have heard me say on several occasions that I am the first to want to stop offending of any kind. I do not want my children to grow up in a community that is unsafe and in which they will be harmed in any way. I do not want my family members or those who are close to me to live in fear of any sort of activity by anyone, including young adults, that would cause them anxiety or distress. Include Youth accepts that that type of unacceptable behaviour must be addressed effectively. It is not about being soft on young adults or making excuses for them; it is about finding the option that best fits. Having heard members' questions, I know that that is something that we can explore much further when we are being questioned.

1637. We are concerned that the proposals focus exclusively on fines and conditional cautions, both of which can result in a criminal conviction and which do little to address the underlying causes of behaviour. Those methods are unlikely to be as effective as a mixture of holistic community-based diversionary measures that address the reasons behind that type of offending.

1638. Our evidence today is set in the context of the wider piece of work that we are undertaking to inform the ongoing youth justice review, in which alternatives to prosecution will form a central part. With that in mind, we are concerned about the timing of the introduction of the Bill, particularly as there are a number of ongoing critical reviews on parallel issues that should inform the development of law, policy and practice in respect of alternatives to prosecution and some of the other measures that are outlined in the Bill. Those include youth justice, the prison review and the work on the strategy on offending. It is not helpful that those proposals have pre-empted the outcomes of those reviews. I will now hand over to Paula.

1639. Ms Paula Rogers (Include Youth): Before I talk about our substantive concerns about fixed penalty notices and conditional cautions, I want to take the opportunity to very briefly talk about some of our concerns about the EQIA. I will not take up much time. We produced a written submission, and we have a number of procedural concerns as well as substantive equality concerns, the first of which is about the lack of meaningful consultation. Members will be aware that the EQIA was put out for consultation from 12 August to 4 November of this year. However, the Bill was introduced to the Assembly on 18 October, which was before the consultation had closed and all the responses had been received and analysed. We believe that that is in breach of the Department's statutory obligation under schedule 9 of the Northern Ireland Act 1998. Secondly, we believe that the screening process was flawed. It failed to properly identify significant potential adverse impact on young males in respect of the current proposals on alternatives to prosecution. Thirdly, we think that that led to a wrong decision to not conduct a full EQIA.

1640. The concerns that we will outline arise precisely because of their potential to adversely impact on young men. Those issues need to be fully explored and remedied. We ask that Committee members seek further information and clarification on those issues from the Department and ask that the Department conducts a full EQIA.

1641. We have a number of concerns about fixed penalty notices and conditional cautions. Both of those measures can result in a criminal record, which will increase barriers to education, training and employment opportunities. Both can draw young people into the criminal justice system, including, potentially, into custody for what originated as a minor offence. Both fail to adequately or at all address the underlying reasons that can give rise to offending. They also fail to deal with the 1,700 people who spend short periods in custody as a result of fine default. Those people have no opportunity to access the necessary diversionary programmes of support to help them to desist from offending in the future. As you have already heard, they could also disproportionately impact on groups with very low incomes.

1642. Fixed penalty notices may have a detrimental impact on young adults for a number of reasons, the first of which is to do with their inability to pay the fines. That is plain and simple to understand. There is concern that they will be more likely to accept the fine and will not be aware of the implications of doing so or that they will not be aware of the consequences of not paying it. They are likely to agree to anything just to get out of the immediate situation in which they find themselves. Young people may also not understand the process, which is a real concern and can often be down to poor communication skills, limited social and intellectual development or special needs, including mental health, alcohol or substance misuse problems.

1643. Research in England has shown that fixed penalty notices have led to an increase in the number of people being put into custody. That research was done by Professor Rod Morgan, who is the former chairperson of the Youth Justice Board. We can get the Committee more information on that, if required.

1644. The Attorney General for England and Wales, Dominic Grieve, speaking in 2009, when he was still the shadow Justice Secretary, warned that the increasing use of administrative penalties represented an undermining of justice. We share that concern. There also needs to be clarification of how police officers assess the correct age of an individual. Could there be ambiguity over the age of a young person? We want clarification on that.

1645. We are also concerned about the possibility of an overenthusiastic application of fixed penalty notices for young adults and the degree of discretion that police officers will have to issue them. The risk is that the situation regarding minor offences, which might previously have been dealt with very informally, will escalate to the use of a penalty. We recommend that, if the decision is made to go ahead with fixed penalty notices, at the very least a robust mechanism

should be used to assure effective police training and regular monitoring and oversight of powers.

1646. We support the concept of conditional cautions in principle. However, we suggest that a conditional caution should not appear on a criminal record and that its purpose should genuinely be about rehabilitation. We are concerned that the rehabilitative aspect of the cautions is not a mandatory component of the proposals in the legislation as currently drafted. We are also concerned that the proposals appear to provide for statutory criminal agencies to deliver the rehabilitative programmes. We believe that the programmes would be best delivered by organisations that are currently working in the community, such as NIACRO and community-based organisations that provide drug and alcohol support, suicide prevention support and family support.

1647. We accept that our suggestion may require additional investment, but we would argue that that will reap a significant long-term saving. For example, the total annual cost of keeping a young person up to the age of 21 in prison is £88,181. A young person who is not in education, employment or training in 2008 will cost an average of £56,000 in public finance before retirement age. Research has shown that £4,000 of short-term support to a teenage mother, for example, can reduce public service costs by nearly £200,000 over a lifetime. Those are simple sums.

1648. In conclusion, we support community-based diversionary measures that are run by local communities and use models of restorative justice. Those models, which are centred on strengthening and supporting families, are more likely to prevent offending and are, therefore, a more viable alternative to prosecution than those proposed under this legislation.

1649. We are disappointed that the Minister has decided to proceed with the proposals to address alternatives to prosecution in advance of the outcome of the prison review, the youth justice review and the review on reducing offending. With regard to the current proposals, we submit that fining vulnerable and marginalised young adults will not stop them committing crime and will not ultimately make the community safer. The evidence is clear that putting vulnerable young adults into custody does not prevent offending and that it costs the public purse hugely. We would like to see community-based diversionary measures that are delivered in a timely matter and that not only address the underlying causes of offending but support the person who has committed the infringement to take responsibility for his or her action and the harm or hurt that it has caused individuals and the wider community.

1650. The Chairperson: Thank you very much. You finished inside your time by 10 seconds or thereabouts, so well done.

1651. You are like some of the rest of us in that you ask for a definition of antisocial behaviour. We have wrestled with that for a long time, but it is a wee bit like wrestling with smoke. You are absolutely right that the definition is not clear. Are four people who keep an elderly person up half the night by standing talking beside a fence engaging in antisocial behaviour? It has been kicked around for a long, long time, and we are still waiting for the proper definition. You are disappointed that antisocial behaviour orders are not gone, and so am I, because they are usually worn as a badge of honour and have been ineffective.

1652. Everything that you have said is very good, but the one thing missing is how you intend to take the public with you in all this.

1653. Ms Yiasouma: This is a massive issue. On any given day, you only need to pick up a local or regional newspaper or to switch on the radio, particularly between 9.00 am and 10.30 am, to be aware of the public outcry about crime and, in particular, about the behaviour of young

people and younger adults. Society has grown increasingly intolerant of our young people's behaviour. I am one of the few who have gone on 'The Nolan Show', for example, on behalf of Include Youth. I have been pilloried, insulted and verbally abused because of some of the stances that I have taken, which we have reflected today.

1654. We have to be brave. We need education that states what has to be done if people are to feel genuinely safer. Locking people up does not work, and intolerance of young people standing on street corners is not the way to go. We have to find other ways. We must have a public conversation about how certain types of behaviour are viewed and about what will reduce offending. What the public and some journalists seem to think will work will not work. We go into communities and ask people about their young people who are all over the media. Those communities are solution-focused. Although they want the behaviour to stop, they understand that those kids are from the most disadvantaged homes. There is nowhere for them to go. Why should they all be expected to go to youth clubs that offer only pool and are closed during the public holidays?

1655. We must be brave and have a public conversation. The problem is that it is people like us, the liberal do-gooders, who come out and make a stand. We ask the Government, the police, the Youth Justice Agency and the Probation Board to stand up and say, "If you want to stop offending, this is what you have to do and this is what works." It should be done community by community, if not street by street. They must take Nolan on.

1656. The Chairperson: Your submission states that the Give and Take scheme works with approximately 135 young people. Are those young people exclusively from broken homes? Do you feel that parents have any responsibility for their offspring?

1657. Ms Yiasouma: Absolutely: parents are key. Parents who feel that they can do their job are the best people to support young people. The problem is that some parents are struggling. If we support parents and families, we support children, regardless of whether they are teenagers or five years old. The challenge is how we do that in a supportive way that does not label people as bad parents; otherwise, it becomes a conflict.

1658. There is some phenomenally good work going on around Northern Ireland, particularly in the west, in family support. We need to mainstream that work so that we can pick up on certain children and determine how we can get health visitors to identify parents who might be struggling and how we can break cycles. It is no coincidence that parents who are struggling to look after and parent their children are people who did not have role models in their own lives. We are in a cycle, and we need to know how to break it without getting into the rhetoric of blaming bad parents.

1659. The Chairperson: Would you not accept that there are some parents who have abdicated their responsibility?

1660. Ms Yiasouma: If there are, there are very few of them. I have met many parents of children who have done some awful things, Lord Morrow, and our NIACRO colleagues have met even more parents in that category, but not one of them has said, "It is not my fault". They have told us and our colleagues that they did not know what to do, that they were struggling and there was no one there to help them. As a middle-class woman I might think, "Oh my goodness", when I hear about some of the behaviour, but I have to put that behaviour in context. If someone, perhaps from a school, had intervened, or if someone had intervened when the children concerned were much younger, those children might not have got into situations in which they became involved in bad behaviour. If there are parents who have willingly and knowingly abdicated their responsibility, they are very few and far between.

1661. The Chairperson: Are you concerned that the Bill will not put those wrongs right or even set the infrastructure in place to bring that about?

1662. Ms Yiasouma: It is about breaking the cycle.

1663. Mr McCartney: Thank you for your presentation. You mentioned the EQIA process. Have you written to the Department, and did you get a response?

1664. Ms Rogers: We made a written submission but have not yet received a response. I know that a lot of our concerns about the EQIA process are shared by our colleagues in other organisations. We are not a lone voice in that regard.

1665. Mr McCartney: You would have expected the Department to at least respond to your concerns.

1666. Ms Rogers: We would have liked a response by this stage, but there has been nothing to date.

1667. Mr McCartney: The officials are here, and we will be able to raise the matter with them at the end of the session.

1668. Mr McDevitt: We are dealing with the Bill as we see it. Are you arguing that there is no place for penalty notices in any circumstances?

1669. Ms Edel Quinn (Include Youth): Include Youth is not arguing that there are no circumstances in which fixed penalty notices should be issued. We have attempted to draw on our 30 years of experience of working with vulnerable young people aged 18 to 21 who have come through a lot of challenges in their childhood. We are exercised about how the application of a fixed penalty notice will have any positive outcome for such young adults. There may be occasions when there is a short, sharp shock effect. The difficulty is that the proposal is a homogeneous one that is blind to the vulnerabilities of young people. The operation of the fixed penalty system by the police at the discretion of individual officers places an onus on those officers. The proposal needs a lot more teasing out and examination. We would welcome the opportunity to develop that further in conversations with others to come up with solutions.

1670. Mr McDevitt: Did you hear the evidence that was given by colleagues from NIACRO?

1671. Ms Yiasouma: Yes, most of it.

1672. Mr McDevitt: I do not want to misrepresent them, but to reflect what they said. They said that there was possibly a place for fixed penalty notices, but in the context of an assessment. The assessment could quickly determine whether an individual would be a suitable candidate for a fixed penalty notice and whether the short, sharp shock would work particularly well or whether an alternative would have to be found. Would that type of approach to this clause meet the concerns that you have raised?

1673. Ms Yiasouma: It would, except to say that the behaviours that have been identified in the legislation do not provide much opportunity for assessment. We are generally talking about night-time activity and we wonder where there would be opportunities for assessment. Given what Edel has just said, we endorse fully the idea that there is no need to discuss diversionary issues if an incident is an aberration, and if, as Edel says, the person involved has the wherewithal to pay the £40 or £80 and it is a quick wake-up call that will allow that person to move on in life. In the context of Friday night chucking-out time, when people talk about

indecent behaviour generally, we know what that means. Where is the opportunity for assessment and what level of training will police officers be given to be able to undertake what is, generally, a social needs assessment?

1674. Mr McDevitt: Are you saying that, essentially, there is a place for fixed penalty notices, but not in this Bill?

1675. Ms Quinn: Part of our disappointment in respect of those aspects of the Bill is that there have been a lot of conversations, in-depth research and gathering of experiences from young people, families and communities about what works and what does not. That will all be submitted to the review of youth justice in due course. Central to that will be how to prevent young people from getting into the justice system in the first place and how to divert them should they come into contact with it.

1676. The point has been well made by the Probation Board and NIACRO that, when young people get into the system, it is very difficult for them to back-pedal their way out. We believe that the timing is unfortunate for those reasons. We are giving a qualified welcome, but we reserve the right to come back, having had time to take a broad spectrum of the views of our stakeholders.

1677. Ms Yiasouma: There are some safeguarding issues.

1678. Mr McDevitt: Would it be helpful for us to request further written evidence from the organisations? Ideas are emerging, but they are broad. In defence of everyone, it is difficult to firmly assess that.

1679. The Chairperson: There is nothing to prevent any organisation or group that has presented to the Committee from submitting an additional paper; they are quite at liberty to do that. That is always open to witnesses.

1680. Ms Yiasouma: We are not satisfied that there are sufficient safeguards that the right people will be getting fixed penalty notices. We are happy to discuss and get specific about whether that is a matter for additional clauses in the legislation or the codes of practice and regulations that will accompany it. We are happy to come back to you with specific wording if that would be helpful.

1681. Mr McDevitt: We are dealing with the Bill now, so we have to focus the conversation on what is before us. If you have some specific suggestions about the outworking of the clauses, I would welcome that.

1682. The Chairperson: You should submit that by the first week in January. The Committee has to have its work collated and deliberated on by 11 February. Therefore, we need any further paper from you by the first week in January so that we can give it due consideration.

1683. Sir Reg Empey: First, I declare that I have worked with this organisation and am fairly familiar with its work. We are confronted with a dilemma. People tell us that fines do not work. I think that the NIACRO representative said that something like 24% of people in prison were there because of non-payment of fines. We are told that prison does not work for a variety of reasons. Statistics are used in the debate that is going on, and I mentioned Kenneth Clarke because it is a national debate as well as a local one. It is very difficult when we are confronted with a piece of legislation that we are being told could add to the complexities and the problems, which is what the witnesses are saying. As Mr McDevitt has said, we have to distil this down to writing that can be interpreted by a court, so we are confronted with a very great dilemma. I echo Conall by saying that we are happy to look at anything that can distil that down.

1684. We are being advised that two of the principal methods of inflicting punishment for a crime do not work. I do not dispute that there is a great deal of supporting evidence that they do not work in many cases — I am talking about repetition and all the rest of it. We all know the social backgrounds of a lot of offenders. I saw the young people in your office who you took from care and whose lives you turned around. Unfortunately, that is not everybody's experience.

1685. It is a bit unclear where we go from here. However, I would appreciate any additional points about this, because the last thing that we want to do is to add to the problems. We are looking for solutions, not to create more problems. This will be extremely difficult for us, because everybody in the developed world is trying to solve this problem.

1686. Ms Yiasouma: That is right. The challenge between solving the problem and public perception and confidence is where we sometimes ignore the evidence. A lot of work has been done on what works. The Northern Ireland Office commissioned research entitled, 'Reducing Offending: A Critical Review of the International Research Evidence', which is just one of several pieces of research in this area. It identifies what it calls "sixteen worth trying". Those include CCTV and burglary prevention schemes. However, the research is also clear about holistic working and what it calls infant home visitation; that is, working with young families. The sixteen interventions include community restorative justice and employment opportunities. So, there is research that talks about what may work and what we are promising, and, as my colleague just reminded me, it does not mention fixed penalty notices or conditional cautions.

1687. Sir Reg Empey: The Chairperson tried to tease out the issue of responsibility. The average person does not go around harming their fellow citizens. They may not be taken by the hand and given special treatment. If somebody is from a very difficult background, it does not automatically mean that that person will commit crime, although, statistically, on average, that tends to be the case. However, I think that the Chairperson's point, if I am reflecting it correctly, was that there is a right and a wrong, and we cannot go chasing after the wrong at the expense of the right. That is the crux of the debate, where those different tensions collide.

1688. Ms Yiasouma: It is about citizenship for me, particularly with the young people with whom we work. Let us forget about our organisation: if our society can help people to become active — I will use the "r" word — responsible citizens, that is, for us, the way to go, because that is how we make communities safer and reduce reoffending.

1689. That is all that we are suggesting. We are suggesting that we support people, young and old, to be citizens, to take the rights that come with that and to protect the rights of their fellow citizens. There is no other way. My colleagues did a lot of reading around this, and they found nothing that says that some of the measures proposed in this legislation are more likely to produce active citizens than some of the stuff that is mentioned in the research.

1690. Sir Reg Empey: I am relieved that we will find the solution delivered to us on two sides of A4. [Laughter.]

1691. The Chairperson: Finally — and I want you to take this on board — we do not want a system fixed around 135 or 140 people, if you understand what I am saying, and I am saying that in as nice a way as I can.

1692. To repeat what has been said a few times around the Committee table: we are told that the prisons do not work, that we need not send people to prison because that will not work. We need not fine them either, because that will not work. So, we are left in a dilemma. I am not saying this in a belligerent way, but you are saying that here is a system and we should suck it and see if it will work.

1693. Ms Yiasouma: Sorry, will you repeat that? What are we saying?

1694. The Chairperson: It is an Ulster one — suck it and see if this work. Some of the presentations today might have told us that the systems in place are not working. Now, we have to get our heads around all this. And you are saying to us that here is a novel idea —

1695. Ms Yiasouma: No.

1696. The Chairperson: — now, try this one to see if it will work. Then, when we are down that system, whoever sits around this table in years to come will say that we have tried this, that and thon, and none of them worked, here is another idea that we need to get into. Is that it?

1697. Ms Yiasouma: No. We are not basing our evidence on the 150 people we work with every year. Our evidence is based on the specific work that is undertaken in Northern Ireland and on international research. We are definitely not suggesting "suck it and see". This is far too expensive and important to go into blindly. We suggest that there is international evidence from, among other sources, Northern Ireland Office-sponsored research that, fortunately, reinforces some of our views, based on 30 years' experience that we and colleagues share. That tells us that, if you are brave enough to withstand the public debate and make that initial investment, this may be the way to go and this is some of the stuff that is worth trying. It is not about 140 kids.

1698. The Chairperson: That is good. You did say that this "may be the way to go". There is a wee bit of suck it and see there. However, we have to stop there. Sorry.

1699. Mr McCartney: On what date in November did you send the equality impact assessment to the Department?

1700. Ms Rogers: Sorry, I do not have a date on the document. I do not know exactly when, but I will e-mail to you the date on which it was sent.

1701. The Chairperson: Thanks for your presentation, well done.

1702. The Committee has come full circle. The departmental officials are coming back after listening intently to everything said. In the new year, the Department will be providing a briefing and answering questions on the results of the EQIA, which is an issue that has arisen. Are members content with that?

Members indicated assent.

1703. The Chairperson: Mr Johnston, you and your team have been very tolerant. You have listened to everything said and picked up on all the issues, so it is over to you.

1704. Mr Johnston: I will start with the points made by the Probation Board, with the rider that I will try to pick up the points that are relevant to the Bill. I recognise that wider points were made and, if the Committee wants to come back to us with questions on any of those, we will answer them.

1705. We welcome the Probation Board's support for the thrust of the proposals on those Parts of the Bill. We recognise the board's expertise and potential role, particularly in the context of conditional cautions and delivering services on the back of such cautions. There is, of course, specific provision in the Bill that would allow the Probation Board to do that.

1706. We believe that the Bill's provisions on sex offenders in breach of article 26 orders will be helpful and take us a certain distance, particularly for offenders who breach and who have no clear residence. However, we recognise that wider powers would be useful beyond this jurisdiction. That would require legislation in England and Wales, but we will raise with the Ministry of Justice and the Home Office the question of whether those changes can be accommodated in future legislation for England and Wales.

1707. We are working separately on an EU decision on mutual recognition, and we will have more to say to the Committee about that next year. That will be helpful in enforcing things in other European countries, including the Republic of Ireland.

1708. The Probation Board asked whether the provisions on warrants could be extended to custody orders and probation orders. That is related to our existing work on a single jurisdiction and it would not be appropriate to expand on that in this Bill until we have done some more consultation. However, that request has been noted and we will certainly consider it for future legislation. The Probation Board also expressed concern that, in giving alternatives to prosecution, full account should be taken of the views of victims. I can confirm that the police and/or the prosecution will consider the impact of an offence on a victim in considering the appropriateness of an alternative disposal. In particular, when considering a conditional caution, the views of the victim will be an integral part of any decision as to the appropriateness of attaching a reparative condition to that caution. We will provide guidance to the police and prosecutors on the consideration of the views of victims.

1709. I will group the points that were made by NIACRO and Include Youth.

1710. The Chairperson: Will you elaborate on the budgeting and personnel commitments that will be needed for conditional cautions?

1711. Mr Johnston: The personnel commitments are containable within existing resources. We are prepared to introduce conditional cautions on a phased basis so that training can be carried out and all the other personnel things that need to be put in place are put in place. There will be an upfront cost, which is included in the £200,000 for changes to computer systems. The cases are going through the justice system anyway. We are not creating new offences; this is simply a different, and we hope a better, way of dealing with them.

1712. NIACRO and Include Youth raised various concerns about fine default. I take the points that were made, but the introduction of fixed penalty notices should not, of itself, increase the number of fine defaults. The cases that we are targeting are those in which there would have been a fine from the court in any event. Indeed, as we are dealing with people who will have voluntarily accepted a penalty rather than having one imposed by the court, there may be an opportunity for a slightly lower level of default. In England and Wales, fixed penalties were perhaps embraced a little too enthusiastically. We are concerned that they should be used only in cases that would have been taken through the justice system already, and that their use does not creep into areas that are not currently criminalised. When fixed penalties are introduced, the police will regularly monitor their use to ensure that they are being used appropriately. NIACRO also made the point about offenders paying a fine by instalments and needing extra time to pay. I can confirm that those options are already available at the discretion of the court. If the Committee wants me to say something more about fine defaults in general, I can, but hopefully that addresses the specific issues that are associated with the Bill.

1713. The majority of the rest of the time was spent discussing the prevention of offending and the contribution or lack of contribution of the proposals to that. It has to be recognised that the justice system will not be reformed in 108 clauses. I listened to NIACRO and Include Youth and

agreed with a great deal of what they said. However, the issues raised are featuring in wider plans and wider reviews of the justice system.

1714. A fine can often be an effective disposal. As a number of people acknowledged, it has the effect of encouraging people to catch themselves on and we welcome the recognition that fixed penalty notices could do the same. However, fixed penalty notices are only a part of a wider menu of options. One option is the ordinary discretion that police officers exercise, and a pilot to make sure that that is well-grounded in the police is being expanded throughout Northern Ireland. There is the option, in the first instance, to think about whether the offence is something to be referred to the PPS, gets a fixed penalty notice or whether discretion at a local level to deal with it can be used. That is one stage.

1715. The conditional caution is another option on the menu, another part of the armoury. Various conditions can be attached that address some of the issues which have been discussed. We are looking seriously at a pilot scheme of specific conditions that could be attached under conditional cautions using the Inspire project and tapping into the community support services that are available to help women offenders. The Department, through the Probation Board, has been providing support to the Inspire project, and there are various other examples of funding that provide alternative disposals. We are also working at improving the identification of people with mental health issues who come into contact with the justice system and at diverting them to appropriate services. We are working on that with our health partners as well as with partners in the criminal justice system.

1716. All those issues come together in the strategy on reducing offending that the Minister announced. That is where we can look particularly at wider social issues and breaking the cycle of offending. It is also where we can draw on the research to which Koulla referred, even though it was conducted by an organisation called the Northern Ireland Office, which we do not mention now. [Laughter.] We are looking at finding the solutions that best fit. That all leads me to say that I am not sure that we are too far apart. However, I ask the Committee not to expect too much from one piece of legislation.

1717. Looking ahead, we will come every year for the foreseeable future with another justice Bill. Those will present opportunities to pick up on the results of the reducing offending strategy, the prisons review and the review of youth justice. The Committee may well want to come back on those points.

1718. I want to address a few points that Include Youth raised. We spoke before about the equality impact assessment. The various major policies that led into the Bill were consulted upon. We screened them out in equality impact terms, but then did the equality impact assessment, in some ways, as a belt and braces exercise. We have been finalising our report on responses, and I hope that the Committee will have that within the next week. That will be our response to the various points made, including those by Include Youth, whose submission we received on 25 November. Once the Committee has seen our report on responses, we will publish it and it will be available to everyone.

1719. There were concerns about inability to pay fixed penalty notices, which we appreciate. We have taken into account a number of considerations on that. To encourage payment, we set the penalty levels slightly lower than the equivalent court fines. We extended the time limit for paying to 28 days, and, although that might seem like a small extension, the Scottish experience has been that that has led to 12% more payments than in England and Wales, which have a limit of 21 days. If people cannot afford the fine and want the court to take on board an assessment of their means, they can decline to accept the penalty notice. In such circumstances, the PPS would consider court prosecution, and the court could take means into account in setting the fine level.

1720. A query was raised about ensuring that the age of someone who is being given an alternative disposal is known and is accurate. In such cases, particularly for fixed penalty notices, we will look to people to produce identification so that details can be checked.

1721. Ms Smiley: Yes, we would rather have documentary evidence of their age. A person might not go about with that information on them, so they could go back to the station and confirmation could be obtained from a number of sources to ensure that the person is 18 or over and is eligible to receive one of those penalties. In exceptional circumstances, the penalty might be issued to someone who is under 18. That would be voided because it would be an unlawful use of the powers, so the individual would not be required to make payment.

1722. Mr Johnston: We can confirm that arrangements will be in place to confirm age. There will be oversight and monitoring by the police to ensure that the fixed penalty notices are being used in appropriate circumstances.

1723. Finally, a couple of concerns were raised about the offender levy. That has not been the subject of our presentation, but the fixed penalty notice will state clearly about the offender levy. I will leave to the judges what they might say in court about the offender levy. When a levy is being imposed in court, there will be an opportunity to note its purpose. We do not intend to take the administration and governance costs of the levy and of the victims fund from the victims' fund. That fund will be ring-fenced for the benefit of work directly with victims. We are happy to publish a report annually on the expenditure of the victims' fund.

1724. The Chairperson: Thank you, Mr Johnston. The next Bill will be a good Bill to look forward to.

1725. Mr Johnston: Yes, and the one after that.

1726. The Chairperson: You said that you could not fix everything in 108 clauses, and you are right. When we talked about the sports law clauses, you talked about providing for 20 years down the road.

1727. Mr Johnston: With each individual aspect that we legislate on, we look to ensure that it will be durable. Likewise, that is the case with the different aspects that we are legislating on here. On alternatives for prosecution, we want to provide a framework that will be durable. For example, we may well come back after consultation with the Committee and look again at the offences that are listed for fixed penalty notices. We are trying to create a durable framework, and that is the same for sports law.

1728. Mr McCartney: Thank you for addressing the Committee. Include Youth made a number of points on the specifics of the EQIA. As you know, we have raised concerns about the process throughout. Include Youth is clear that it feels that the Department has not complied with its statutory obligations under section 75. What do you say to that point?

1729. Mr Johnston: We feel that we have complied with those statutory obligations, both at the policy stage and in issuing the EQIA on the Bill as a whole. We were very conscious of the changes that are being made and the section 75 guidance. We will concern ourselves with ensuring that we continue to implement those.

1730. Mr McCartney: The consultation began on 12 August and ended on 4 November, but the Bill was introduced between those dates.

1731. Mr Johnston: The Bill started its Committee Stage on 4 November. The stages before that were fairly formal. The EQIA results will be available to the Committee in the next week or so and I am confident that they will inform the Committee's continued consideration of the Bill. I come back to the fact that the individual policies were screened out but we are trying to be copper-fastened, in a sense, by doing the EQIA.

1732. Mr McCartney: How will the youth justice review and the prison review impact on the content of the Bill?

1733. Mr Johnston: I do not think that the content of the Bill would be negatived by those reviews. In the alternatives to prosecution, we are dealing with low-level offending. We are dealing with a limited range of offences, but certainly we want to hear the outcome of those reviews and consider what further legislative implications there might be.

1734. Mr McCartney: You said that in England and Wales the fixed penalties were used overenthusiastically —

1735. Mr Johnston: Too enthusiastically, I think.

1736. Mr McCartney: I am sure that, when this was being laid in front of government in England and Wales, it would have been with the same outcome in mind that you are trying to achieve. What guarantees do we have that it will not be overenthusiastically applied here?

1737. Mr Johnston: We are starting small with the fixed penalties. We are starting with a very limited range of offences. It still has potential to divert a significant number of cases from the justice system and to save between £750,000 and £1 million a year. There is a much longer list in England and Wales. It has 26 offences, which includes possession of cannabis, wasting police time, giving a false alarm to a fire and rescue authority and certain fireworks offences. We are not covering those. I think England and Wales learned from going too far because, in 2009, there was a proposal to add 21 further offences to the fixed penalty notice scheme. They pulled back from all those with the exception of cannabis. We want to start small, judge it by the experience and see where we go.

1738. Mr McCartney: Was there enthusiasm in the ones that are not included here?

1739. Mr Johnston: There was a whole list of things that we are not including that England either included or proposed to include.

1740. Mr McCartney: Are you excluding them because that is where they were overenthusiastic?

1741. Mr Johnston: I think that is, frankly, where England and Wales went wrong. They ended up trying to cover a lot of things in the fixed penalty notice scheme that perhaps should not have been covered.

1742. The Chairperson: Include Youth was not enthusiastic about ASBOs. Do you still think they merit inclusion in the Bill?

1743. Mr Johnston: We are not making any specific provision in the Bill about ASBOs. However, our general position is that we feel that they have been applied very proportionately in Northern Ireland. The agencies have concerned themselves with looking at all the alternatives, including various sorts of agreements with young people and their families before reaching the stage of issuing an ASBO. That is partly in recognition of what you said, in that there is the risk that an

ASBO can be regarded as a badge of honour. The number of ASBOs in Northern Ireland has been relatively low, and we maintain that they have been used appropriately.

1744. The Chairperson: In some areas, they have not been used at all. For instance, in F district, which covers Fermanagh, Omagh, Dungannon and Cookstown, no ASBOs have been issued.

1745. Mr Johnston: Those figures have been published. We believe that ASBOs have been used in response to need, but not as the first port of call.

1746. Mr McDevitt: I want to go back to the debate about penalty notices, which, to sum it up, was about penalty notices having their place but about their being a little too blunt an instrument if they were legislated for as a sole discretionary alternative for a police officer. Would it be feasible to build in an assessment exercise to look at that idea of the fixed penalty against an alternative diversionary model?

1747. Mr Johnston: I am certainly happy to see what we can include in the guidance for police on the circumstances in which a fixed penalty is appropriate. As you say, it is just one option. However, there are options, such as conditional cautions —

1748. Ms Smiley: There are a number of ways in which the police can already exercise discretion without using any disposal that comes before the justice system. They are rolling that out across each of their districts at the moment. If something in somebody's behaviour suggests that there is an activity that they could undertake to address their behaviour and to prevent them from reoffending, they might be given a fixed penalty, an informed warning, a caution or a conditional caution as opposed to a criminal sanction. The police, therefore, have a complete gamut and, as Gareth mentioned, the guidance with the Bill will explain how officers can exercise that discretion within the whole gamut of the options available to them. This is not a one-size-fits-all approach for the offences in the Bill. Rather, it is a tool that can be used in circumstances where it is the most appropriate disposal.

1749. Mr McDevitt: What about taking a further proactive step and indentifying, based on a basic needs assessment, whether an individual needs a specific diversionary process? That individual could then be diverted to a support service. Would that be achievable under the guidance, or would specific reference need to be made in the Bill to enable an officer to do that?

1750. Ms Smiley: I think the guidance will allow for that. We are bringing in conditional cautions, which may be used when a need to address behaviour that is leading to further offending has been identified. At that point, the PPS will become involved in assessing whether that is a suitable diversion. As you heard, the Probation Board may also be asked for its expertise if it is able to assist on any particular issues. Elements are already there that allow that to take place.

1751. Mr McDevitt: Ms Smiley, are you able to provide us with a short list of the alternatives and the suite of discretionary disposals that a police officer has as it stands today? I am not asking for a huge research paper, just a short list.

1752. I want to ask a further question about the conditional cautions and, specifically, about enabling the code of practice. I note that the Bill requires the Department to get the agreement and consent of the Attorney General, to lay that code before the Assembly and then to make an Order. When I go back to the schedule referring to what will be done by negative and affirmative resolution, I see that the Order is secondary legislation that is subject to negative resolution.

1753. Ms Smiley: We would consult on that publicly and speak to the Committee about it, so there would be an opportunity to address any possible areas of concern. The publishable version would, therefore, be done in full consultation with all the interested parties.

1754. Mr McDevitt: I want to ask the Clerk a technical question. It seems strange that the legislation will require the Department to lay the code before the Assembly. Does that mean that we debate it?

1755. The Committee Clerk: I will have to check that.

1756. Ms Smiley: It is prayed against rather than debated on. Therefore, if there were obvious concerns about it, those could be raised, and the Order could then fall. However, if there were no objections, it could be taken forward as drafted and consulted on with the Committee, the Assembly and others.

1757. Mr McDevitt: I am curious about this, Mr Chairman. I know that I have not been around here long, as members are quite keen to point. However, if the legislation is subject to negative resolution, it would go through unless we actively pray against it. Before telling us that the Order will be subject to negative resolution, you are putting in a specific line stating that the Department must lay it before the Assembly. It would be useful for us to know exactly what that means.

1758. The Chairperson: I am sure that we can ascertain that and deal with it at our next meeting.

1759. The Committee Clerk: I can check that. It could simply be a matter of submitting it to the Business Office so that it is laid before the Assembly, although that does not mean that it will be debated on the Floor of the House.

1760. Mr McDevitt: Given its impact, we will need to scrutinise it quite carefully.

1761. Sir Reg Empey: In his response, Mr Johnston painted a slightly more benign picture of the differences between some of the evidence that we have received from the various organisations. He indicated that perhaps there is not that much between us. Unless I picked them up wrong, some of the evidence and presentations indicated that we could make matters worse by supporting some of the clauses. That is the thrust, as I read it, of some of the evidence that we have received. I am not convinced that there is such a benign difference between the position on the current proposals and the evidence that we have received.

1762. Be that as it may, however, I take the point that Mr Johnston made that 108 clauses will not cure everything. That is true, but we want to be absolutely sure that we do not make matters worse. It seems that there is perhaps a conflict between Mr Johnston's interpretation of some of the evidence that we have received and the interpretation of some of the rest of us, but that is a matter for future deliberations.

1763. The Chairperson: I think that you are making a point that was made in a different way when we talked about legislation for the sake of legislation.

1764. Sir Reg Empey: Janice talked about age. What documentation are young people expected to have to establish their age?

1765. Ms Smiley: If young people are in education, they will have identification from the school, university or further education college.

1766. Sir Reg Empey: Hold on. I fully accept that a university student will have a student card. However, I am thinking of a group of young people who perhaps do not have the sort of formal lifestyle that is regarded as normal in society; in other words, the young people who do not go

home at teatime and have meat and two veg and all of that. Quite a number of the young people who fall foul of the justice system come from dysfunctional families or care backgrounds or whatever. What would they be likely to have in their possession to establish their age?

1767. Ms Smiley: They do not always have to have the identification information in their possession; it is about the ability to be able to tap into the information that is already available, such as the information that is available through the police database records and all sorts of things that the police hold.

1768. Sir Reg Empey: That will work for somebody who has already clashed with the justice system, because there will be some record.

1769. Ms Smiley: People could be on the electoral register.

1770. Sir Reg Empey: I am talking about a person who has not crossed that threshold. What do you expect them to produce?

1771. Ms Smiley: The individual can produce information at the time, or it can be produced within an agreed time frame.

1772. Sir Reg Empey: What are they likely to have on their mantelpiece to determine their age?

1773. Mr Johnston: We are not dealing with something that is different from the issue at the minute, because we are talking about cases that would currently be considered for prosecution and would go through the fines process. So, at the moment, when someone is taken to a police station, there are procedures in place for the police to make sure that they are dealing with the person whom they think they are dealing with.

1774. Sir Reg Empey: I do not dispute that, Mr Johnston. I just wonder what you expect the young people who are about an area to have access to that determines their identity.

1775. Ms Smiley: A lot of young people would have some form of identification to buy alcohol, for example, because they need to be 18 or older to do so.

1776. Sir Reg Empey: Most of them are produced. I have seen a few of them, and some are not too great.

1777. Ms Smiley: I think that the police would require proof of age, identity and address.

1778. Sir Reg Empey: I think that I have seen one that would cover you, Mr Johnston. [Laughter.]

1779. Mr Johnston: If it would be helpful, I am happy to get clarification on that from the police and to write to the Committee.

1780. Sir Reg Empey: Bureaucracies, by definition, look for forms and things that most people have. However, we are dealing with a particular group of young people, and I am not sure that, in the informal life that they lead, the things that we take for granted are necessarily readily available to them, even in their homes or wherever they reside. However, that is only a detail, and I am sure that you will pick up on that.

1781. Mr Johnston: We will write to the Committee. If it is any consolation, I find it difficult enough to find my own driving licence.

1782. Mr O'Dowd: Thank you for your presentation. Other members have drawn attention to your comment that we cannot reform the justice system in 108 clauses. I totally agree with you. However, as legislators, we have to ensure that we do not make the justice system worse, and it is those 108 clauses that we are looking at today.

1783. Part of the justice system deals with alternatives to prosecution. However, the justice system and prosecution system are not only about punishment but about ensuring that we reform the character of the individual or, as was mentioned earlier, make him a good citizen. What part of Part 6 is about making a person a good citizen?

1784. Mr Johnston: We must look at the wider context in which it is set. The Justice Bill is one key goal of the addendum to the Programme for Government that the Department took through the Assembly, but it is only one key goal. There are other issues, for example, the reducing offending initiative, in which those questions of citizenship will be factored in to a much greater extent.

1785. Mr O'Dowd: It is interesting that you mention it. To my mind, this chapter should be held. It fits in neatly with the alternative methods of dealing with offenders. I agree that we need to take substantial numbers of people out of the justice system and ensure that fewer people go through it, both for financial reasons and so that people do not get criminal records at a very young age that stay with them. I wonder whether we have put the cart before the horse. Should we not wait for the other strategy and see what comes out of that discussion? We could then marry them instead of going ahead with this.

1786. Mr Johnston: My fear is that we could end up waiting for that discussion and then the next one and the one after that. The provisions, particularly those on fixed penalty notices, have been very firmly called for by, among others, the Policing Board. They represent a way of dealing effectively and efficiently with minor crime, particularly with first-time and non-habitual offenders. They provide a way of addressing some of the clogging up of the justice system with cases that really do not need to be there. We can certainly think about how the powers could be tweaked and look at what guidance will be issued, but this is a good start to make. We can then address all the other questions about alternatives to prosecution, diversion and getting the right solution for the right problem.

1787. Mr O'Dowd: We can do all that, but, in the meantime, chapter 6 will be on the statute books and the police will be running around giving out fixed penalty notices in the wrong circumstances.

1788. Mr Johnston: At the moment, 1,000 people, including young adults, are going through the courts each year and getting fines that that will likely result in a criminal record. Through fixed penalty notices, we offer the opportunity for that sort of minor, first-time offending to be dealt with by a short, sharp shock that has no lasting effects. It is useful that we do that now as a starter, and we can then consider what other measures might be useful.

1789. The Chairperson: That is it. We have exhausted the list. Mr Johnston, I thank you and your team very much for coming today.

16 December 2010

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne

Mr Thomas Buchanan
Sir Reg Empey
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt
Mr David McNarry
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Ms Alison Allen	Antrim Borough Community Safety Partnership, Antrim District Policing Partnership and Antrim Borough Council
Ms Cathy Watson	Ballymoney Community Safety Partnership
Ms Suzanne Wylie	Belfast City Council
Mr Iain Creswell	Coleraine Community Safety Partnership
Alderman Maura Hickey	Coleraine District Policing Partnership
Ms Sarah Wilson	Craigavon Community Safety Partnership
Ms Claire Linney	Dungannon and South Tyrone Borough Council
Ms Liz Cuddy	Extern
Ms Koulla Yiasouma	Include Youth
Ms Wendy Carson	Larne Borough Council
Ms Bridget McCaughan	Limavady Borough Council
Mr Michael McCrory	Magherafelt Community Safety Partnership and Magherafelt District Policing Partnership
Mr Philip McKeown	Moyle District Policing Partnership
Ms Bridgeen Butler	Moyle Community Safety Partnership
Mr Campbell Dixon	Newtownabbey Borough Council
Ms Olwen Lyner	Northern Ireland Association for the Care and Resettlement of Offenders
Councillor Jack Beattie Ms Helen Richmond	Northern Ireland Local Government Association
Ms Mary McKee Ms Rosaleen Moore Ms Amanda Stewart	Northern Ireland Policing Board
Mr Paul Doran	Probation Board for Northern Ireland
Mr Derek Hussey	Strabane Community Safety Partnership
Mr Jeff Barr	Strabane District Policing Partnership

1790. The Chairperson (Lord Morrow): Good afternoon. I welcome you all here today to Parliament Buildings to participate in this evidence event for the Committee for Justice. As you will be aware, the Justice Bill is a large Bill that covers a range of areas. Today, we will focus on Part 3 and schedules 1 and 2, which will integrate the roles of community safety partnerships

(CSPs) and district policing partnerships (DPPs) to create a single partnership for each council area.

1791. The Bill was introduced in the Assembly on 18 October and passed its Second Stage on 2 November. The Bill's Committee Stage began on 3 November and will continue until 11 February 2011, when the Committee will report to the Assembly. It is expected that the remaining stages of the legislative process, which will be dealt with in plenary session, will take place during February and March 2011.

1792. In response to the Committee's public call for evidence, responses from almost 70 organisations were received. Some 49 organisations commented on the clauses and schedules that deal with policing partnerships and community safety partnerships, and many of those groups are represented here today. I want to take this opportunity to thank you all for your written submissions and for your attendance today.

1793. Turning to the evidence session itself, members of the Committee staff have microphones that are to be used when speaking. If you wish to speak, please signal to me or a member of the Committee staff. Please ensure that all mobile phones and electronic devices are turned off. Please do not just put them on silent mode, as that will still interfere with the recording of today's proceedings.

1794. I will now outline the format for the evidence session. I understand that a paper setting out the order in which evidence will be taken has been provided to everyone. Departmental officials will briefly outline the clauses in Part 3 and schedules 1 and 2 and their intent. There will then be a brief opportunity for Committee members to seek any clarification that they need, after which I will open up the meeting and deal in turn with each clause about which issues have been raised or comments have been made.

1795. I will call first the organisations that are listed to speak on clause 20. If you are called, staff will pass a microphone to you, and you should state your name and organisation for the Official Report and outline the points or issues that you want to make as briefly as possible. We do not want you to be overly brief, but we want as many people as possible to participate today. Anyone who wishes to make follow-up comments should indicate that to us, and you should also ensure that you state your name and organisation for the record. There will then be an opportunity for Committee members to ask questions and to seek clarification on clause 20, after which I will move on to the next clause listed.

1796. Once all the areas have been dealt with, departmental officials will respond to the issues raised and respond to any questions or points of clarification that Committee members may have. There will be an opportunity for the organisations and stakeholders here today to raise issues with the departmental officials. However, if there are any further points that you wish to draw to the attention of the Committee once you have heard the response from officials, you may wish to write to the Committee on those issues. I hope that that is clear. We will work at it, and I am sure that we will get through it all right.

1797. I will commence the session by welcoming the witnesses from the Department of Justice: David Hughes, who is head of policing policy and strategy division; Gareth Johnston, who is deputy director of justice strategy division; Nichola Creagh, from policing policy and strategy division; and Dan Mulholland, from policing policy and strategy division. I invite them to outline the clauses on policing and community safety partnerships and their intent. You will have 15 minutes in which to do that. David, you are kicking off.

1798. Mr David Hughes (Department of Justice): As has been said, the Committee has the draft legislation, the explanatory notes and a briefing note from the Department that covers Part 3

and schedules 1 and 2. Before covering specific clauses, I would like briefly to set out some of the principles that lie behind the Bill. Issues around policing and community safety are consistently a priority for the public, and the Department recognises the importance of those issues to the public and the importance of addressing them locally and in a multidisciplinary fashion. Local partnership in that field is essential.

1799. The legislation creates a new local partnership in the policing and community safety field. It is intended to replace the DPPs and the CSPs with a new partnership that preserves the functions of both and which creates something that takes the good work of both and, hopefully, amplifies it by bringing all the functions together.

1800. The work of DPPs and CSPs is highly valued, and all the functions of those partnerships are to be preserved, as set out in clause 21. The great advantage of a single partnership is that it would have the responsibility for the full range of functions and would ensure a holistic approach to identifying local concerns, prioritising issues, working out how problems can be tackled, agreeing who is to take the lead and who is to support, committing resources and expertise, ensuring the delivery of solutions, and evaluating the success or otherwise of specific projects. A fully coherent body of such work, centred on the production and delivery of a unified partnership plan, ought to enable the new partnership to be effective in securing safer communities.

1801. The monitoring work of the PSNI in the district, which at present is a function of the DPPs, is a unique feature of the oversight of the police. It is not replicated for other delivery agencies, and it has not been the task of the Department of Justice to extend that model beyond the police. However, it is a critical element in ensuring the transparency and accessibility of the police to the community. As such, it forms an integral part of the arrangements for that holistic partnership working.

1802. However, it would not be appropriate for the police to give an account of their performance to the representatives of other delivery agencies. Therefore, it is one of the functions to be reserved to a committee of the partnership called the policing committee. The policing committee is to be made up of the councillors and the independent members.

1803. The idea of single partnership working in the policing and community safety field is attractive, as it would be consistent with the original view of Patten and with the recommendations of the Criminal Justice Inspection. During public consultation on the future of the functions of DPPs and CSPs, it became clear that there was widespread support for the concept of a single partnership working in the policing and community safety field.

1804. The consultation not only demonstrated the general — although not universal — consensus that there should be a single partnership; it also demonstrated the range of views about what that partnership ought to be like. Perhaps unsurprisingly, there is no consensus on the best model for a new partnership. The original consultation document, which was published by NIO Ministers earlier in the year, contained three models for the partnership. Consultees raised concerns about all of them. It is worth noting that the version that has since been set out in the legislation is different again. Consultees' views were taken on board, and a version informed by priorities in Northern Ireland has been worked out.

1805. The Department has endeavoured to work with the views of stakeholders to create a partnership that achieves the best solution for the public. That is to say that we believe that the legislation creates a partnership with a clear responsibility and capacity for improving communities' experiences of safety and policing. The new partnerships are designed to be effective in council areas on the current scale or on a larger scale as envisaged under local government reorganisation. They are also intended to be broadly in keeping with the principles

of community planning. We do not believe that it is necessary to wait for the introduction of community planning before creating those new partnerships, but it is important that we have been liaising with the Department of the Environment to ensure that it is not inconsistent with what is being proposed for community planning generally.

1806. I am conscious that the draft legislation draws attention away from the outcomes of partnership work in the policing and community safety field. It, inevitably, focuses on the practicalities of membership, functions, accountability and so on. Those things are important and necessary, but it is also important that they are scrutinised to ensure that they allow partnerships to be effective in delivering improvements in the experience of community safety. However, they are not, in themselves, the end goal of the Department. The goal of the Department is to improve policing and community safety.

1807. I will look in more detail at the legislation. Clause 20 establishes the new partnerships: one policing and community safety partnership (PCSP) for each district and, in Belfast, one district policing and community safety partnership (DPCSP) for each police district. It is worth clarifying that, in the legislation, "police district" refers to what in common usage is an area command unit, namely north, south, east and west and not A and B districts. The confusion arises from the fact that the original legislation still refers to police districts in that way, and the drafting has to be consistent with the Police (Northern Ireland) Act 2000. That explains why there will be four DPCSPs.

1808. Clauses 21 and 22 set out the functions of the PCSPs and DPCSPs respectively. Those are basically the same functions as those of the DPPs and CSPs put together. That confirmed the view of the Department that those functions are still valuable and relevant. The first three functions are functions of the policing committee rather than of the partnership as a whole, because they relate specifically to the police. Clause 23 requires the Department of Justice and the Policing Board, acting together in a joint committee, to issue a code of practice for the PCSPs and DPCSPs. It sets out what kinds of issues may be included, but it is not prescriptive. That code of practice will be developed afresh. It will be informed by the experience of DPPs and CSPs to date, and, crucially, it will inform the new partnership about the exercise of its functions and ensure a degree of consistency.

1809. Clauses 24 to 32 may look extensive, but they are basically a framework for the reporting of the work of the partnership to the council, the Department and the Policing Board. There are differences in timing for Belfast and the other partnerships, because the principal partnership in Belfast would have to go to the DPCSPs for reports before it can complete its reporting. The legislation does not require the reports to councils, the Department and the Policing Board to be different. In fact, we assume that they will basically be the same. However, the legislation recognises that all three authorities have an interest in the overall work of the partnerships. The work of the policing committees is more specifically related to the police and, therefore, the reporting is to the Policing Board. That is an important inheritance from the DPPs and one that it would not be appropriate to break.

1810. Clause 33 enables policing committees to establish additional consultation mechanisms for the engagement of the police and the public. Again, because it is specifically about engagement with the police, it is reserved to the policing committee. Clause 34 places a duty on public bodies — effectively all public bodies — to exercise their functions having due regard to the effect on crime and antisocial behaviour and with a view to enhancing community safety. Clause 35 sets out the responsibility of the Policing Board and the Department for assessing the performance and effectiveness of PCSPs and policing committees. Schedules 1 and 2 are basically the same. Schedule 2 contains for the DPCSPs in Belfast what schedule 1 contains for the PCSPs. They set out the detail of membership, procedure and so on of the partnerships.

1811. The partnership will consist of, first, elected members appointed by the council and reflecting the balance of parties in the council; secondly, independent members appointed by the Policing Board; and, thirdly, representatives from designated organisations that are identified by the partnership itself.

1812. This last group may include statutory delivery agencies, non-statutory agencies, relevant non-governmental organisations, charities, voluntary groups and so on. There will be eight, nine or 10 councillors, one fewer than that of independents and at least four representatives from designated organisations. There are so many organisations that could make a useful contribution that it makes no sense to specify the designated organisations in the legislation and thereby limit the partnerships in making their own choices suited to the needs of the district. The policing committee will be made up of councillors and independent members.

1813. I also draw attention to paragraph 14, which enables PCSPs to establish subgroups. That power is intended to allow partnerships to set up groups that are focused on a particular neighbourhood or a theme and to allow those groups to include representatives from all sorts of other organisations and groups as well as individuals who can contribute to the issue in hand.

1814. I draw attention to paragraph 20, which allows PCSPs to combine to cover more than one district, with agreement. That is a mechanism that would enable some transition, if necessary, to larger council areas or, for practical purposes, where there is a unity of purpose and similar issues need to be addressed. I hope that that provides a sufficient overview of the legislation. However, Committee members may have some questions.

1815. The Chairperson: I will turn to the Committee now for points of clarification and then I will go to the audience. Was the model adopted in the legislation recommended during the consultation period? If so, how many organisations suggested that model?

1816. Mr Hughes: The model in the legislation is not precisely any of the models that were set out in the consultation document, but it had to take into account the views that were expressed in the consultation period. The models in the consultation document were not felt to be adequate by almost any of the consultees.

1817. The Chairperson: So, have we got a mishmash?

1818. Mr Hughes: It is a development of one of the models in particular. It represents a significant development of model two.

1819. The Chairperson: Do any other Committee members want to raise any points?

1820. Lord Browne: I declare an interest as a member of Belfast City Council. I am glad that you sought to clarify the position regarding the setting up of district policing and community safety partnerships, of which there will be four. You said that, rather than corresponding to A and B districts, they will represent north, south, east and west Belfast. There has been some misunderstanding about there being four areas rather than two. I would be grateful if you clarify that again.

1821. Mr Hughes: That issue arose during drafting. At the moment, there is a principal DPP in Belfast and four subgroups — north, south, east and west. Those map against the four area command units that the police recognise. In legislation, what we all call area command units are still called police districts, and so the legislation in front of us has to reflect that legislation. So, under the current DPP model, we have a principal partnership and four subgroups, and, under this legislation, there would be a principal PCSP and four district PCSPs. That is possibly a confusing element, but we recognise that.

1822. Mr McNarry: Can we be assured that, in the evaluation of the current practices of DPPs and CSPs, no imperfect practices have been identified or are being carried forward?

1823. How can you ensure that there will be an adequate balance between police accountability issues and wider community safety and policing issues?

1824. Finally, how will the selection of the delivery partners in the PCSPs be undertaken and how will a representation from a cross section — this is the important bit for me — of the community be achieved?

1825. Mr Hughes: I will try to make sure that I stay with your three questions.

1826. Issues may arise at present around the practice of CSPs and DPPs. It was drawn to the Department's attention, and is a matter that stakeholders indentified, that there are currently frustrations in some places about the fact that there is a distinction between the two bodies and the fact that it would be useful to have greater integration and harmony between the ways in which the two work. The framework model set out in the legislation brings the two bodies together to create a single partnership. Therefore, the potential imperfection has been addressed.

1827. In all these things, the detail of how it works will be in the individual partnerships. Some of that will be the responsibility of the partnerships as to how they decide to work and fulfil their functions. The broad legislation will not necessarily be in a position to specify every last detail of practice. However, there is provision in the Bill for a code of practice to be prepared on the performance of functions. In drawing up that code of practice, which would be issued by the Department and the Policing Board together, there will be an opportunity to look afresh at what does and does not need to be set out in a code of practice. If there are issues of practicality and detail that present partnerships feel need to be fed back to the Policing Board and the Department, both the Department and the Policing Board would be very willing to hear those so that the code of practice is the most useful document that it can be.

1828. Mr McNarry: Nothing we have is perfect; it would be great if it was. However, where there are imperfections, I am trying to ascertain if you are alert to them, know what they are and are not carrying them forward.

1829. Mr Hughes: Unless someone is going to correct me, I do not think that we have ignored any of the issues that have been raised with us, or of which we have been conscious, that we feel could be addressed in bringing the legislation forward.

1830. You mentioned the balance between the police monitoring function and the wider community safety and policing function. That is a balance that needs to be addressed. By bringing the functions together and having what I describe as a holistic approach to addressing issues in a district — by being able to consult and engage, identify issues, work out what to do, prioritise, allocate, see that delivered — it is intended that that complete cycle of responsibility will bring about a balance. Therefore, it should be possible for the different functions of a single partnership to operate in harmony, because that would all be part of the one partnership's work.

1831. You had a third question.

1832. Mr McNarry: How will the selection of the delivery partners in the PCSPs be undertaken to include a cross section of the community?

1833. Mr Hughes: I think that there is a desire to ensure that any code of practice would give some guidelines in that area.

1834. Mr McNarry: You are saying words to me such as "desire", which is very nice. You said that my other question "needs to be addressed". However, I am looking at a draft Bill and cannot put desires in that. I need you to try to be specific. If you cannot be specific today, perhaps you can come back and tell us that those things have been addressed and are in the Bill, or that you are going to address them and put them in the Bill. I cannot take on board desires, much as I would like to.

1835. Mr Hughes: We will be addressing the issues that you raised, and they will be addressed in the code of practice, which would come back to the Committee anyway. That kind of code of practice would contain a lot of detail that would not normally appear in a Bill. However, it would come to the Committee and would be full of the kinds of practical issues that matter a lot.

1836. It is also worth reiterating that the code of practice would be issued by the Department and the Policing Board together. Therefore, there is work to be done between the Department and the Policing Board to ensure that we are all thinking along the same lines and can come to an agreed code of practice.

1837. The Chairperson: We are moving on. I say to members of the Committee that we are here to hear from the organisations that are with us. Our remarks should be solely in relation to clarifying a point. If there are questions, we will continue after the public session.

1838. I want to give the audience the best chance of participating because they will not have the opportunities to do so that we, as Committee members, will have.

1839. Sir Reg Empey: DPPs and CSPs are morphing into PCSPs. We also have CPLCs and PACTs. How will anyone make head or tail of all that? How will it be coherent or credible to the ordinary citizen whose life and experience we are trying collectively to improve? There seems to be an enormously complicated structure of interface between the police and various parts of the community. Is the scope of the Bill sufficiently wide to put in place coherent arrangements that people can understand?

1840. Mr Hughes: Creating a single partnership out of the functions of the DPPs and the CSPs is one step towards greater clarity, by having a single partnership that has responsibility across the field rather than the present arrangement of two separate partnerships.

1841. There is a relationship to other points of consultation and contact between the police and the public. Partners and Community Together (PACT) groups will have PACT meetings as part of the wider package of ways in which the police will relate to communities. Often, that is done on a much smaller scale than the district scale. There is, of course, still a place for PACT meetings, but there is also a place for the connection between a district-level partnership and things such as PACT groups.

1842. There are many community and police liaison committees (CPLCs) and they are widely spread, although on a smaller scale than the district policing partnerships and community safety partnerships. I expect that the PCSPs will have an interest in maintaining relationships with the public and in maintaining the public's interest in their work. However, they will fulfil a slightly different function from place to place. The functions and responsibilities, which are unique to the new partnerships, are set out in statute. The sheer range of functions and organisations makes it a unique partnership.

1843. The new single partnership does not completely clear the field of any possible rubbing points or relationship complexities, but it simplifies the situation while not wiping out the role that CPLCs and PACT groups have and will continue to have.

1844. Sir Reg Empey: If one goes to those meetings, as I am sure that Mr Hughes has, one generally sees the same people, no matter what heading they are under. My anxiety is, given the time pressure on the police, how on earth will officers find time to attend all those meetings to have any meaningful interface or dialogue with the community? I understand the principle of simplification, for want of a better word, that you are pursuing. However, are we only half doing the job? Will alternative solutions be introduced? I am sure that the Committee will return to that.

1845. We still have a large number of different organisations populated by many of the same people, whose meetings are attended by the same police officers and whose functions are so obscure to the public that they cannot distinguish between them. Are we achieving our objective?

1846. Mr Hughes: I understand your point. The effort is to simplify what is being done at district level, and you have recognised that. There will always be a question for those involved in securing the relationship between the community and the police and other policing and community safety organisations to ensure that they prioritise their efforts in the right way. It may be entirely appropriate that there are different levels and different places in which those connections are made. What we have in statute at present with the DPPs and CSPs, we are simplifying by statute.

1847. The Chairperson: Other members have asked for points of clarification, but I am moving on, as our time is running away already. I want to be fair to our audience out here and give them a fair wind. I will move on to representatives of organisations: first, Derek Hussey from Strabane Community Safety Partnership. I remind everyone that we are dealing with clause 20. After Derek has spoken, we will hear from Suzanne Wylie of Belfast City Council.

1848. Mr Derek Hussey (Strabane Community Safety Partnership): Thank you, Chairperson and members, for the opportunity to be here. We in Strabane Community Safety Partnership are concerned that the prominence of the community is not prioritised in the title. The first contributor alluded to the importance of this issue to the public; I would equate that to the importance to the community. However, the proposed name would indicate that police are the dominant partner. That may not be an actuality, but it could be a community perception.

1849. Furthermore, just under half of the respondents to the consultation in June 2010 suggested "safer community partnership" as a favoured title. I understand that 27 stakeholders suggested that within 16 responses. Of all the responses, none suggested the title "policing and community safety partnership", as outlined in the Justice Bill. However, eight stakeholders within five responses suggested "community safety and policing partnership". We were told by the first contributor that the views of the consultees were taken on board; therefore, we query why that title was opted for. We recommend that the Justice Committee re-examines the proposed title.

1850. Ms Suzanne Wylie (Belfast City Council): Good afternoon. First, I will clarify my position: I can only represent the views of Belfast City Council in accordance with what was said at the strategic policy and resources committee of that council and views that have been confirmed through that committee.

1851. In relation to clause 20, Belfast City Council supports the intention of the Minister and Department to bring together a more integrated partnership. The council has been calling for that to happen for some time. That joint partnership will look at public views and consider them;

plan together; look at funding together; and jointly report through various structures. The council also agrees that the functions of the community safety partnerships and the district policing partnerships are relevant and should be carried forward. However, it has a number of concerns, particularly around the proposed model for Belfast. I will go into those one by one.

1852. The council thinks that the proposal to establish one policing and community safety partnership and four district police and community safety partnerships in the Belfast area, as well as associated policing committees for each, is complex, will increase the administrative burden already on staff in trying to manage and facilitate all of those structures and could reduce the ability to deliver front line services. In our view, it will also place a burden on elected members and independent members to sit on both the police and community safety committee and the policing committee itself, as well as on other statutory agencies. They will potentially have to sit on five different structures throughout the city.

1853. We appeal for flexibility. We appreciate that a code of practice and guidance will be drawn up on how the structures operate, and we appeal for Belfast City Council to be involved in drawing up those codes of practice. However, there needs to be flexibility because when those structures are put together and have a membership of elected members, independent members and so on, they take on a life of their own. They expect to meet on a regular basis and expect to have a valuable and credible function. That has to be borne in mind; they will set their own agendas.

1854. Some clarity has been given on the police districts for Belfast. The council was unclear about that, and David Hughes provided some clarity this afternoon. However, it is my understanding that the Chief Constable determines the number of districts. Therefore, in the future, the Chief Constable could potentially bring about a change to the number of police districts in Belfast. Again, the council appeals to the Committee to make sure that the legislation, guidance and codes of practice enable that kind of flexibility in the future.

1855. I want to make a point about the linkages with the community-based partnerships that already exist throughout the city. I am sure that that is the case in other parts of Northern Ireland as well. Sir Reg mentioned some of them, such as the PACT structures and the CPLC structures. There are, however, other structures throughout the city of Belfast. We have the West Belfast Community Safety Forum, the area partnership boards and the neighbourhood renewal structures. It is vital that the new structures connect with existing structures because, to make a difference, it is absolutely vital that communities are involved in identifying the problems, trying to solve the problems and working with all the agencies to solve those problems. We cannot have any disconnect between the various structures.

1856. Finally, we would have valued more political discourse on the model for Belfast, and we appeal to be involved in the codes of practice that will be developed in the future.

1857. The Chairperson: I thank Derek Hussey and Suzanne Wylie. We will open the meeting to others, including Committee members. I emphasise that we are still dealing with clause 20. Anyone else on the floor or in the Committee should indicate that they want to speak and we will list your name and call you in the order that we pick you up.

1858. Mr McDevitt: I want to pick up on Ms Wylie's last point about Belfast City Council's desire to have been slightly more involved in the design of policing partnerships in the city. What, specifically, would the council have wanted to see in the Bill in that regard?

1859. Ms Wylie: I cannot propose an alternative model because there is no council position on that at this point. However, we would have liked to have talked that through with the Department of Justice and with members of the Committee to look at whether there are

alternatives, because 10 partnerships — five main partnerships and their policing subcommittees — will place an administrative burden on the staff. That will give us a difficulty in trying to make sure that we devote most of our resources to delivering services on the ground as opposed to preparing papers for meetings and convening and organising those meetings.

1860. Mr McDevitt: Do you have any sense of the extra cost that the council might incur as a result of the proposed structures?

1861. Ms Wylie: I could not give specific figures on the cost. However, at present, the current structures in Belfast City Council are that we have one community safety partnership for the city, one principal district policing partnership and four DPP subgroups. This will create another layer, so there will be four groups meeting regularly.

1862. Ms Sarah Wilson (Craigavon Community Safety Partnership): Some communities in Craigavon have not fully engaged with policing individually but have been involved very much in CSP activities, where the police are seen as only one element in a wider partnership. As mentioned, we are concerned about the title, which will project to communities a sense that there is a dominant partner and that this could potentially be a policing structure, rather than a wider partnership approach. Therefore, it might undo some of the good work that has been undertaken by the CSP in Craigavon.

1863. Ms Claire Linney (Dungannon and South Tyrone Borough Council): Our council has talked about the issue that Suzanne raised. Councils are the third partner in the structure, and there was potential to involve them earlier in overseeing delivery. As Sir Reg said, councils will be the advocates for making this happen on the ground, when it comes to public perception and community involvement. Councils are the third strand and need to be involved as a partner with the Department of Justice and the Policing Board, rather than being a stakeholder consultee when it comes to planning how it will operate and how the structure will link with communities.

1864. The council also felt that this is an opportunity to be innovative. We are undertaking a review and are considering the elements of DPPs and CSPs that worked well and whether there is an opportunity, at this stage, to go back to the Patten report and look at a community planning model in which we bring in the wider, public safety, organisations, as the report envisioned at the start. We should take this further to realise greater involvement by councils.

1865. Mr Jeff Barr (Strabane District Policing Partnership): I concur with my colleague Derek Hussey from Strabane CSP. We have done extensive work on the ground in Strabane, particularly to get community support. Derek is right when he says that the document implies that this will be a heavily police-dominated model and would, therefore, undermine some of the work that we have done. The Committee's emphasis has to be in placing the community at the forefront. That would help us at this stage and would give the community aspect the lead.

1866. The Chairperson: Thank you. We will move to clauses 21 and 22. I call Koulla Yiasouma from Include Youth, then Suzanne Wylie from Belfast City Council, followed by Liz Cuddy from Extern.

1867. Ms Koulla Yiasouma (Include Youth): Thank you very much for the invitation to speak. I want to speak on two subsections of clause 21, subsections (1) and (3), and their mirror subsections in clause 22. I want to talk about a possible limitation in clause 21(1), particularly paragraphs (c), (d) and (e), which concern co-operation and obtaining the views of, and discussion and consultation with, the public. I will be brief and, hopefully, helpful.

1868. For some time, Include Youth has been concerned about a consistent lack of meaningful engagement with children and young people across some of the processes that we are talking

about today. Indeed, some young people have informed Include Youth that they have found some of the meetings to be inaccessible and very adult-focused. Some of them felt that the meetings were combative in nature.

1869. We look forward to partnerships that, in whatever form, recognise that young people are partners in making communities safer. Too often, young people are viewed as the cause of crimes and the enemies of law-abiding communities, rather than as part of the solution in making communities safer. As such, clause 21 is crucial, and we welcome and applaud the notion of genuine and meaningful participation with the public and with communities in general.

1870. We suggest the addition of the following words to clause 21(1)(d): "fully considering", after "to make arrangements for obtaining". I have sent that alternative wording to the Committee Clerk. We would like clause 21(1)(d) to read:

"to make arrangements for obtaining and fully considering the views of the public about matters concerning the policing of the district and enhancing community safety in the district".

1871. We are saying that we are looking for meaningful consultation with communities in a way that is accessible to particular groups in communities.

1872. My second point is on clause 21(3). This is an age-old issue for Include Youth. The clause places a level of responsibility on PCSPs and DPCSPs to reduce actual and perceived levels of crime and antisocial behaviour. Include Youth has gone on record about the definition of and actions to address antisocial behaviour. Our understanding is that the term is first mentioned in legislation in Northern Ireland in the Anti-social Behaviour (Northern Ireland) Order 2004, in which it is described as behaviour that:

"caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household".

1873. We have fundamental difficulties with such a vague definition of behaviour, which language is being repeated in the Justice Bill. A lot of work and resources have been expended on the notion of antisocial behaviour since 2004. For example, the PSNI has a performance target to, in this financial year, reduce antisocial behaviour by 15%. That is really difficult to do when there is such a nebulous definition. In fairness to the PSNI, however, it has come up with 14 categories of antisocial behaviour and a fifteenth catch-all. Having looked at those 14 categories, most of them seem criminal in nature, rather than the sort of behaviour that the 2004 Order is intended to address. We ask that the term "antisocial behaviour" be removed from the Justice Bill until we can get a definition that is clear and can support the partnerships in actually doing something about it.

1874. Ms Wylie: Thank you. I will not repeat any of the points that I made earlier. Belfast City Council's view is that the functions and structures of the PCSPs should, ultimately, lead to improved community safety and policing across the city. That should be their ultimate purpose. They should support responsive and effective service delivery, which is focused on making a difference in communities. That reflects what someone else said earlier, which was that communities should be at the forefront. The approach should not be only top-down; it should be balanced with a bottom-up approach from communities.

1875. Belfast City Council understands why the separation of the PCSPs and the policing committees is being put forward. However, the council believes that there is a risk that a culture of distinctiveness could build up in the new structures. Therefore, the council calls for clear guidance on how the PCSPs and DPCSPs can work in an integrated fashion, have a shared culture and establish clear communication lines with one another.

1876. Thirdly, there is a lack of clarity around the purpose of the principal district policing partnership in Belfast. The learning from that should certainly be taken forward when designing the distinct functions between the policing committee at the main Belfast level and those at the four district levels.

1877. Finally, there needs to be clarity around the status of the new partnership. By that I mean the legal status around the powers and vires it has: what will fall to the body itself and what powers and vires will fall to the councils in the future. If, for example, it is the council's responsibility to enter into contracts on behalf of the partnership, it is recommended that that should be made explicit in the legislation to ensure that the council has the vires to do that.

1878. Ms Liz Cuddy (Extern): Good afternoon. I thank the Committee for this opportunity. Extern provides services for vulnerable people with complex needs and challenging behaviours in communities. In doing so, we work closely with communities across Northern Ireland.

1879. My points are general ones about clauses 21 and 22. In principle, we welcome the establishment of PCSPs. Anything that streamlines the current situation, continues to improve policing and community safety, simplifies bureaucracy and reduces costs is to be welcomed. However, we are not assured that the current proposals will achieve any of that. We are concerned that the remit, agenda and working of the partnerships will become skewed and occupied by policing matters, although we accept that that is not what is intended in the Bill. However, the community focus must not be diluted or treated as secondary to policing matters. We would like to see that reinforced. Hence, monitoring and supporting relationships between policing, community representatives and all agencies that deliver community safety outcomes, whether they be community, voluntary, private or public, must be the agenda, actions, outputs and outcomes of all of those partnerships.

1880. The partnerships will need to provide evidence and assurance, from appropriate participation, decision-making, outputs and outcomes, that they support and promote those relationships. To do that, there must be appropriate representation of voluntary and community sector providers and their constituent groups on the partnerships. We are not clear about how that will be respected, developed or delivered. Some matters that appear to be for the code of practice should be looked at in the legislation.

1881. Ms Bridget McCaughan (Limavady Borough Council): I am concerned about clause 21's huge emphasis on policing. It will deliver a scenario in which the police monitoring role supersedes front line delivery of vital community safety services. Looking at the proposed functions of the PCSP, most of the focus is on discussion and consultation of policing. Indeed, there is no mention of delivery of any kind before clause 21(1)(h).

1882. Mr Hussey: I have a similar point about clause 21. Our community safety partnership is of the view that, overall, the functions are too similar to the Police (Northern Ireland) Act 2000, so they are very police-orientated. We are concerned that community safety has not been legislated for outside of the policing arena.

1883. In addition, multi-agency working has been neglected in the proposed functions. The role of the police may also be perceived as being monitored, as has been said, rather than working in partnership. The PCSP is unbalanced in respect of delivery to the community. Further, on clause 21(2), we query how a partnership can be formed when there are functions that pertain to only one part of the model. Furthermore, clause 21(2)(b) should not be restricted to the policing committee. Rather, the functions should be exercised by the whole partnership.

1884. We would suggest that clause 21(3) is evidence as to why clause 21(2) should not be restricted to the policing committee.

1885. The Chairperson: Anyone else want to comment on this? Any Committee member? No one has responded. That being the case, we will move on to clause 23, which deals with the code of practice for PCSPs and DPCSPs.

1886. Ms Sarah Wilson: Many of the proposed provisions outlined in clause 23 refer to practices that are already taking place under the DPP model. However, there is no evidence or information, either from the consultation or in subsequent papers, on whether those practices are effective in a local council or local community setting. We, therefore, propose that robust evaluations of those practices, as well as of all other practices in the CSPs and DPPs, should be carried out and that only the most effective should be carried into the new partnership. Therefore, we are establishing whether there is merit in including them in the current legislation.

1887. In addition, a cost-saving analysis should be carried out, as requested by Craigavon CSP, Craigavon DPP and Craigavon Borough Council during the initial stages. That would reinforce any evaluation of the practices proposed in the legislation. Furthermore, many of the codes of practice are very traditional, and the legislation provides a key opportunity to look at alternative and more innovative ways of community engagement. In addition, the clause provides clear insight into the role of the policing committee, but little is mentioned about the practices in the overall partnership and what they will adhere to.

1888. Therefore, Craigavon CSP and Craigavon DPP view the legislation, as it stands, as increased bureaucracy that brings no added value to the current situation. We recommend that the Committee request an evaluation of current practices, including a cost-saving exercise, to bring forward any proposed recommendations in the new legislation.

1889. Ms Rosaleen Moore (Northern Ireland Policing Board): The Policing Board welcomes the legislation. I think that one of the first actions of the newly formed Policing Board was to make representations to the Northern Ireland Office about the desirability of trying to meld the DPP function and the community safety function, so we are glad to see this coming about.

1890. We take a little bit of issue with one point. The DPPs have been subject to periodic review by the Policing Board. A very comprehensive review was undertaken a short time after the DPPs were formed. As a result of the review, a number of changes to the code of practice were implemented. The Northern Ireland Office instigated some legislative change on foot of that.

1891. The board also carries out a consultative exercise annually and assesses annually the effectiveness of the DPP functions against that. There was mention of public meetings, but public meetings are only one facet of a DPP's engagement with the community. The engagement is also with community organisations, sporting bodies and educational bodies and about working on further themes in relation to, for example, domestic abuse and working with young people, which is work that the board has instigated itself. So, we would not be in agreement with what Ms Wilson said.

1892. Mr McDevitt: I want to understand the position of the Policing Board. Does the board object to there being a code of practice in the Bill?

1893. Ms Moore: No. We are endorsing nearly everything that is going forward.

1894. Mr McDevitt: I want to be sure that I understand this. What are your specific issues with clause 23?

1895. Ms Moore: We are not taking issue with it. We are just disagreeing with the analysis that we, as a Policing Board, have not effectively assessed the district policing partnerships against the code of practice and other issues. We have carried out our responsibilities, as have the DPPs.

1896. The Chairperson: Anyone else? OK, we will move on to clauses 24, 27 and 30, which deal with accountability and reporting.

1897. Ms Wendy Carson (Larne Borough Council): My point comes from Larne Borough Council and is about the accountability of the four bodies — the joint committee, the council, the Northern Ireland Policing Board and the Department of Justice — in the new proposed PCSP model. That is very concerning to us, given that the process was to simplify the lines of accountability, not to add more bureaucracy. The legislation may lead to conflicting targets and requests in the future. Therefore, we appeal to the Committee that, whenever it looks at reporting lines and mechanisms, it tries to put them into one.

1898. The Chairperson: Does anyone else want to comment?

1899. Ms Helen Richmond (Northern Ireland Local Government Association): There remains a lack of clarity on the level of accountability and oversight that will rest with councils if it is considered that a PCSP is underperforming in any way. We welcome clarity on that.

1900. The Chairperson: Anyone else? We will move on to clause 30, which is about reports by policing committees to the Policing Board.

1901. Mr Barr: I am vice-chairperson of Strabane DPP. If the Chairperson and the Committee permits, I want to place on record frustrations on behalf of Strabane DPP. Having made a submission, we feel restricted in the sense that we are being told to come and talk about a particular clause. It is a very real frustration.

1902. As a DPP, we have concerns about clause 30. The legislation suggests that the policing committee will not report to the overall PCSP. The policing committee could independently issue and publish reports. Is that not an unusual governance arrangement? In our estimation, it certainly will not lend itself to good partnership working. In fact, one could infer that PCSP logos could not even be applied to policing committee documents if they have not been ratified by the PCSPs. Furthermore, if PCSPs do not see reports to the Policing Board, that will not lend itself to true partnership working. We are concerned that it will lead to confusion, even poor relations, and it will certainly inhibit good partnership working. Sir Reg Empey has already referred to a lack of coherence.

1903. Furthermore, if the Committee will permit me to do so, I will dip back into clauses 23 and 24. It is indicated that, as body unincorporated of council, councils should have an accountability role as opposed to a reporting role. Therefore, there are even questions about reporting. Under the provisions of clauses 27 and 30, we suggest that there is a risk of duplication of reports, because reports are required from both the Policing Board and the joint committee. Therefore, there will be one report for the policing aspects of an issue and another report to cover the community safety aspects. As my colleague indicated, there are serious questions about the whole reporting mechanism, and we ask the Committee to take a serious look at that, to try to simplify it and, furthermore, to make it work.

1904. Sir Reg Empey: I want to ask Mr Barr for clarification. Could he elaborate on his first point about frustration at the restrictions?

1905. Mr Barr: We took the opportunity to make a submission. We were, for instance, invited to identify and prioritise three items that we might talk about here. The correspondence that then came out asked us to talk about clause 30. In many respects, that did not concur with the initial thoughts of the Strabane DPP. When we made our submission, we thought that we would have the opportunity to come here, along with the rest of the people, to indicate our concerns to the Committee.

1906. I will give you one example. The arrangement that will be on offer is about community partnership working. The Strabane DPP has put a lot of store by that fact, given that is based in a very difficult area where policing is still not accepted. We have put a lot of store by brokering confidence in the community. We have tried to place the police alongside other emergency services. We feel that we have started to make strides, but we have a long way to go. Policing is not accepted in a lot of parts of Strabane, and we also have a dissident threat. Therefore, we are concerned about the new arrangement because of its compilation.

1907. Our members value strongly the fact that there is remuneration when they participate. A lot of them gave up their time, working hours and salary to attend and participate in the DPP, often at unsociable hours. We, as independents, are out working on the ground. For example, we are the ones who go into communities to try to ensure that there is little or no bother on 12 July. We would have appreciated the opportunity to come and give a fuller response, rather than to just comment on one clause.

1908. Ms Moore: I will comment on clauses 24, 27 and 30. The board's view is that there is a certain amount of standardisation between a number of the reports that are referred to in those clauses. There will not necessarily be duplication.

1909. There is a clear line of policing accountability from the policing committee through to the board. That cannot really be diluted because it is a statutory obligation that was enshrined in the Patten recommendations, and we are very keen that it is maintained.

1910. The Chairperson: Mr Barr, I want to ask you about your comments, just for clarification. You said that you feel restricted. Did you mean that you are restricted because of what happens in Strabane or because of what is happening here?

1911. Mr Barr: It is purely about being able to report to the Committee. As I said, we made the response and prioritised three items. We then received correspondence indicating that you were inviting us to make a response on clause 30. In our submission, we highlighted a number of factors that have been omitted and are not even being talked about. That is where we, as a DPP, feel that we have been restricted.

1912. Mr Givan: Mr Barr, when the Chairperson has asked whether anyone wants to comment on any other clauses, have you picked that up?

1913. Mr Barr: Yes.

1914. Mr Givan: So, you have had the opportunity to comment on other clauses.

1915. Mr Barr: I mentioned remuneration, which is one of a number of examples. I do not see provision for that here or where it is likely to come up.

1916. The Chairperson: We will be dealing with remuneration a little later.

1917. Mr Barr: That is great. I appreciate that.

1918. The Chairperson: Does anyone else wish to comment on clause 30? If not, we will move to clause 33, which is entitled "Other community policing arrangements".

1919. Ms Cuddy: We are not clear about what clause 33 means or what it will look like when it is implemented. I apologise if that is apparent to everyone else. Consultation with communities is critical, but it needs to follow clear processes that are understood, if not established, by those

communities. As we understand it, the process that is laid out in clause 33 suggests that consultation could be approved by the Policing Board but not approved by the PCSP. For us, that would create governance and coherence issues and, potentially, conflict. We would like clarification and, hopefully, an assurance that that is not what it means.

1920. The fact that all parts of the community have a role to play in achieving and maintaining the community safety focus must not be lost. Consultations need to result in better policing and community safety, and there needs to be a mechanism for evaluating and monitoring, otherwise it will just be a matter of consultation for consultation's sake.

1921. The Chairperson: Anyone else like to comment?

1922. Mr Hussey: Our CSP contends that clause 33 contradicts and undermines the spirit of the single partnership and that consultation requirements will be wider than policing. It is inadvisable that the policing committee should be able to establish any body, and we hope that the role of the committee will be re-examined by the Justice Committee.

1923. Mr Iain Creswell (Coleraine Community Safety Partnership): We believe that the consultation requirements should include more than policing and should encompass all aspects of community safety, which would reflect the spirit of the single partnership and avoid consultation duplication. Additionally, the establishment of bodies could duplicate various roles in the council, including community development.

1924. The Chairperson: Anyone else? Let us move on to clause 34, which deals with the duty on public bodies to consider community safety implications in exercising duties.

1925. Councillor Jack Beattie (Northern Ireland Local Government Association): I thank the Committee for inviting the Northern Ireland Local Government Association (NILGA) to give evidence on Part 3 of the Justice Bill. I am a councillor in Castlereagh Borough Council, a member of Castlereagh's community safety partnership and an executive member of NILGA.

1926. In principle, NILGA members broadly welcome the proposal to establish policing and community safety partnerships as an opportunity to establish a more focused and holistic approach to reducing crime and improving community safety across council areas. Although the police and the PCSPs are key contributors, NILGA members consider that they cannot deliver community safety successfully alone. The inclusion of clause 34 provides an opportunity to build broad-based responsibilities for community safety and contribute to the delivery of a shared community safety agenda. The duty should ensure that community safety issues are made central to all policy development by government and public authorities and are not limited to those public bodies directly involved in the PCSPs.

1927. The clause has the potential to make a real difference to the lives of the people of Northern Ireland by providing a framework to design public services around the needs of individuals.

1928. Ms Bridgeen Butler (Moyle Community Safety Partnership): We feel that clause 34 is vital and that this is a unique opportunity to gain cross-departmental support and participation. However, the Bill needs to go a little bit further and name the appropriate public bodies, similar to the Crime and Disorder Act 1998 in England, which will ensure buy-in and participation from all key stakeholders. That, in turn, will realise the full potential of the partnership.

1929. Mr McDevitt: Will Ms Butler give us a sense of the bodies in the Crime and Disorder Act 1998 to which she is referring?

1930. Ms B Butler: We are considering bodies such as the police, the Housing Executive, health boards, youth services, the emergency services and the education board; any bodies that can make a meaningful contribution to the community safety agenda.

1931. Mr McDevitt: I understand Councillor Beattie's concern, but where in the clause is that concern not being met? Does subsection (3) not try to meet his concern to some extent?

1932. Councillor Beattie: I did not hear the end of the question.

1933. Mr McDevitt: You make a very good point. However, I wonder where it is that you feel we need to strengthen the clause that we are looking at? It could be read that the clause does everything that you say, but that you are putting an interpretation on it.

1934. Councillor Beattie: You can widen these things too far and, then, perhaps get nowhere. The clause needs to look at other people and be as broad as it can be. I take your point that it could go too wide, but the clause needs to have a broader outlook for the individual. Sometimes, statutory bodies are inclined to draw a line around themselves and simply deal with their own issues. They stick within their own sections or compartments.

1935. Ms Mary McKee (Northern Ireland Policing Board): I am an independent member of the Policing Board. We fully support clause 34. It provides a unique opportunity for innovative engagement practices, which some of my colleagues mentioned, especially with disaffected and vulnerable organisations. We also endorse the fact that the clause should go a bit further and mirror some of the legislation in England and Wales, particularly the Crime and Disorder Act. It is a unique opportunity, but it needs to be pumped up a bit and go a bit further. However, we strongly support the clause.

1936. The Chairperson: Anyone else?

1937. Mr Hussey: I have a very brief point. I get the sense that there is a very welcoming atmosphere around this clause, but a feeling that it needs to be strengthened. The suggestion is to look at the Crime and Disorder Act in England and Wales. Hopefully, the Committee will do that. At the end of the day, we all want legislation that enables the partnerships to be fit for purpose.

1938. Ms Sarah Wilson: Another element that the Committee may wish to consider is how the legislation will be enforced. We recommend that public agencies are included in the legislation. To add to the list that Bridgeen gave, Roads Service is one of the key bodies that need to be brought into the legislation. We recommend that the clause is strengthened in that way and that the ways in which it is going to be enforced across the agencies are looked at.

1939. Ms Yiasouma: I was going to make the same point. We, too, welcome the clause and recommend that it is strengthened by naming the core bodies that are instrumental in making communities safer. My question is: have any of those possible bodies responded to the consultation or made any representation to your colleagues in DOJ or at a ministerial level? I wonder whether a lot of those organisations are aware of the clause.

1940. The Chairperson: Anyone else want to comment before we move on?

1941. Mr Barr: There are obviously resource implications when community safety is being taken into consideration. Therefore, perhaps there is a requirement to community safety-proof all policies and procedures, particularly those of public bodies. In light of the current situation, there has been a fall-off in representation from public bodies in the local strategy groups. I ask the

Committee to take that into consideration. With the new model, is it a likelihood that public bodies will not put people forward to sit on these bodies?

1942. The Chairperson: The Executive have also raised some issues and concerns around clause 34.

1943. Anyone else? As I do not see anyone else who wishes to speak, we will move on to clause 35, which is entitled, "Functions of joint committee and Policing Board".

1944. Ms Wylie: Belfast City Council would welcome the setting up of a joint committee and any attempt to ensure that there is joint working between the Department of Justice and the Policing Board around the new partnership arrangements. However, what is specified in clause 35 refers solely to the monitoring roles and separates the monitoring roles of the joint committee and the Policing Board. If it is necessary to separate them in that way, it is fundamental that the wider role of the joint committee is defined in the legislation.

1945. For example, the legislation should set strategic direction for the partnerships and how they operate, streamline how they operate and ensure that there is no duplication. Furthermore, we should look jointly at the funding arrangements for the partnerships and take on board the views of the partnership structures and make decisions on those where there is a need for change. There is a need for clarity on the role of the joint committee and the role of councils, particularly if it is the role of the joint committee to set strategic direction. There should be input from councils to enable them to have a say in the strategic direction of the partnerships.

1946. Ms Moore: The Policing Board supports the formation of the joint committee and its establishment in legislation with a caveat that there should be no diminution in the board's current statutory roles or responsibilities.

1947. Ms Sarah Wilson: I have a point about the inclusion of independent assessment of the levels of public satisfaction. I made the point earlier about a robust evaluation. That evaluation needs to be independent and, therefore, there needs to be an independent assessment of levels of public satisfaction so that we get a very clear picture of the performance of both the policing committee and the PCSPs.

1948. The Chairperson: Anyone else?

1949. Mr Barr: Taking on board that the legislation provides for the joint committee to assess public satisfaction and the effectiveness of the overall PCSP and that the Policing Board will assess public satisfaction, do you agree that there is a possibility of confusion or duplication of roles?

1950. Ms Richmond: Our members welcome the streamlining of the administrative process but need more detail on the role of the joint committee. We contend that the model must take account of the role of councils in supporting PCSPs. There will be three funding sources. Indeed, the proposed removal of the 75%:25% funding spilt between the Policing Board and councils could lead to an increase in overall council contribution, yet there is no direct link with council priorities.

1951. The Chairperson: Anyone else? We will move on to schedules 1 and 2, which are about policing and community safety partnerships and district policing and community safety partnerships. We will start with paragraph 4.

1952. Mr Michael McCrory (Magherafelt Community Safety Partnership and Magherafelt District Policing Partnership): I will speak about the recruitment of independent members through the Policing Board. Our DPP and CSP feel that, at the minute, that is quite expensive. This year, we will spend roughly £25,500 to recruit eight members. The overall figure across Northern Ireland is approximately £700,000 to £800,000 for the recruitment of independent members. We feel that it might be better for the local council to do that through the new PCSP, if it is appointed. We compare that to the Peace III partnerships where, locally, we have Dungannon, Cookstown, Magherafelt and Fermanagh as one partnership that appoints independent members. It spent £2,000 just to advertise in the local papers. There is staff time associated with the interview process, but, then again, that applies to the recruitment of independent members of the district policing partnerships. Therefore, we ask the Committee to look into that and to assess the cost-effectiveness of the recruitment policy.

1953. Alderman Maura Hickey (Coleraine District Policing Partnership): Thank you for having me here to speak on the issue. I want to speak on paragraph 4(12) of schedule 1, which refers to the payments of expenses to independent members. The legislation states:

"The council may pay to independent members such expenses as the council may determine."

1954. There does not appear to be any such inclusion for elected members in the partnerships, which means that councils would have to meet those costs separately and would not be able to recoup them from the central grant. Therefore, the members of the DPP believe that the expenses should be set at a central level through the code of practice, as was the case for the DPP, to ensure equality throughout the council areas and among members of the partnership and to allow councils to recoup the potential costs.

1955. Members of the DPP also believe that the independent members should receive a nominal allowance. There are a number of reasons for that. Firstly, the calibre of the people needed for such an appointment and the level and amount of input that independent members can make to a partnership. I can certainly endorse that from my knowledge of the independent members of Coleraine DPP. Therefore, it is likely that fewer people would be interested in applying to be members of the partnership, if there was no incentive to take part.

1956. Members also questioned if the payment of allowances to members of the Northern Ireland Policing Board, by virtue of paragraph 2 of schedule 1 to the Police (Northern Ireland) Act 2000, would be repealed. There does not seem to be anything in the legislation that replicates clause 22 of that Act in relation to the district commander consulting with the new partnership on the priorities and a local policing plan. Members would be grateful if that apparent oversight could be clarified. I am the chairperson of the Coleraine DPP.

1957. Ms McKee: I want to go back to the cost implications. The Policing Board is very aware of the costs of recruiting independent members. We are working this year to reduce that £700,000, as the gentleman mentioned. Previously, the £700,000 contained a contribution from the Northern Ireland Office. I understand that the Department of Justice does not intend to contribute to that cost this time. So we have a target in our business plan this year for recruitment of £550,000.

1958. The Chairperson: Someone's phone is on, and it is interfering with the recording. Please make sure that all mobile phones are switched off.

1959. Ms McKee: If councils are proposing to recruit independent members, we would welcome that. Are councils also proposing to do the legal challenges and the judicial reviews? We would be willing to hear from them, if we could do that and work in an effective way and in partnership.

1960. Mr McCartney: I have a question on cost for Michael and Mary. Does Michael have a breakdown of why it costs £25,000 to recruit eight members?

1961. Mr McCrory: No, I do not. That is the figure that is given to us by the Policing Board. It is £25,500, and we have put that into our accounts for next year. We do not receive the money from the Policing Board. The Policing Board recruits directly using consultants, and members of our DPP do the interview process.

1962. Mr McCartney: Mary, have you any idea why it costs £700,000? It is proposed that that is cut to £500,000.

1963. Ms McKee: It is because we are looking at efficiency measures and using our in-house staff to do the process.

1964. Mr McCartney: Why is it £700,000?

1965. Ms Amanda Stewart (Northern Ireland Policing Board): The £700,000 has largely been made up this year because in the previous round, the Northern Ireland Office made 100% of a contribution towards the advertising stage of the process. We understand that it is not going to do that this year, so we have had to pass that cost on to councils. Another issue is that there were a number of independent members who we were able to fast-track in previous competitions, subject to a satisfactory performance review, so there was no cost associated to them.

1966. In the last recruitment competition, we had 181 members with no associated cost. We understand that a fast-track process will not be put in place for current DPP members, because it would be a new partnership, so, assuming that a larger number of people would be processed in the competition, we have had to increase the cost per candidate.

1967. The Chairperson: Does anyone else wish to comment?

1968. Mr Barr: We suggest that, unless there is another, easier method, councils should be empowered to nominate and appoint independent members. Surely that would keep the cost down and be more efficient?

1969. Mr McCartney: I missed your first point. I am sorry, but I was talking. Will you repeat it?

1970. Mr Barr: Our suggestion is that councils, as unincorporated bodies, could be allowed to nominate and appoint independent members. Surely that would cut costs.

1971. Ms Sarah Wilson: We reinforce the idea that a cost-saving analysis needs to take place on savings that might come about from the establishment of a PCSP. In section 12, we outlined the fact that councils may pay independent members' expenses. We need to identify what those expenses would be in comparison to the remittance paid. Consequently, a cost-saving analysis needs to take place.

1972. Ms McKee: To my colleague in Craigavon: we would welcome that and any other ideas. It is interesting to note that the majority of the quite considerable costs that the Policing Board faces involve chasing up councillors to sit on panels. Therefore, if my council colleagues know of better ways to communicate with councillors in order to get them to sit on panels, we would very much welcome the savings. [Laughter.]

1973. The Chairperson: Councillors are sometimes busy, too. Nevertheless, the point is well made.

1974. Ms Linney: To go back to my earlier point, if the three key partners were to get around a table and work together to discuss costs, recruitment and so forth, maybe we would not have to be discussing those matters now, because systems would be in place and the matter would be sorted. Maybe we now need to get the three partners around a table.

1975. The Chairperson: And that might save people from having to chase around after councillors. [Laughter.] We get the point. Does anyone else wish to speak on this point?

1976. Ms Richmond: I would like to emphasise that councils should be consulted before consideration is given to allocating costs to them.

1977. The Chairperson: Anyone else?

1978. Mr Givan: I would like Alderman Hickey to clarify a point that she made. She said that independent members are cited in the legislation with regard to expenses. Was she alluding to the fact that councillors are not cited in the legislation and, therefore, independent members would receive expenses but councillors would not?

1979. Alderman Hickey: Yes.

1980. Mr Givan: So, she would like councillors to receive expenses as well — is that the point that was being made from Coleraine?

1981. Alderman Hickey: Yes, to a certain extent, I was referring to expenses. However, it is important that independent members get a fee, because they would be the only people sitting on those groups who would not be paid for being there. Consequently, I think you would definitely not get the calibre of individual whom we currently have in Coleraine Borough Council.

1982. The Chairperson: Anyone else?

1983. Mr Barr: Maybe this is the opportunity to talk about remuneration?

1984. The Chairperson: No. [Laughter.] Paragraph 17 deals with finance, so we would ask you hold on until we get to that point. I assure you that you will not be restricted. [Laughter.]

1985. Mr Barr: That is the clarity that I want. Good stuff.

1986. The Chairperson: Anyone else?

1987. We will move on to paragraph 7, which deals with representatives of designated organisations. Before I call the next speaker, who will be Philip McKeown from Moyle DPP, I would ask contributors to stand when commenting or asking a question.

1988. Mr Philip McKeown (Moyle District Policing Partnership): Thank you for giving us the opportunity to speak. Paragraph 7 of Schedule 1 provides for the representation of designated organisations on a PCSP. However, that, in effect, means that the policing committee of the not-yet-formed PCSP will have to designate such organisations. The schedule may pose potential difficulties and raises a number of queries. First, how and on what basis will such organisations in the council area be designated? Secondly, what contribution, if any, will designated organisations be required to make, and at what level? Will that include finance, staff and a

commitment to the delivery of community safety? Will representatives of each of the designated organisations be required to attend the PCSP?

1989. Mr Paul Doran (Probation Board for Northern Ireland): Thank you and good afternoon. The Probation Board for Northern Ireland (PBNI) would like to be specifically named in the Justice Bill as one of the designated organisations. We recognise the advantage to the delivery of justice sector services at local levels and that certain flexibility is required to reflect the appropriate local organisations best placed to be represented on each PCSP/DPCSP. However, there should also be room for a regional context in order to provide consistency of approach.

1990. The Probation Board has 31 offices throughout Northern Ireland and is represented in every major town. We have experienced staff who are aware of regional strategy and are skilled in delivering that strategy in a local context. We pride ourselves on working in, with and through the community, and, as such, we work closely with local communities and their representatives to reduce reoffending and provide a safer environment.

1991. Having the Probation Board statutorily identified as a designated organisation in the Bill on a regional basis would bring a consistent level of experience and skills to assist in the preparation of plans to reduce crime and enhance community safety in the district role of each PCSP, provide a consistent approach to the work of PCSPs and allow for better co-ordination across the sector in pursuing the objective of reducing offending and reoffending. We believe that we have proven expertise in that field; we currently effectively supervise over 4,300 orders and licences in local communities throughout Northern Ireland. PBNI also believes that that approach would provide a better basis on which to work with the PSNI and other agencies to focus PCSPs on the wider issue of reducing crime.

1992. In England and Wales, the Policing and Crime Act 2009 made probation boards responsible authorities on community safety partnerships. That new status came into effect on 1 April 2010. We appreciate the opportunity to give evidence today and we ask that the Probation Board be named in the Bill as a designated organisation.

1993. Ms Cathy Watson (Ballymoney Community Safety Partnership): I have two points to make. We acknowledge that no upper limit to the number of people who can sit on the PCSPs is stipulated in the Bill. However, other factors, such as room size, especially in smaller council buildings, will dictate the maximum number of participants. That will be at the expense of community, voluntary and statutory representation on the partnership body when the number of elected and independent members who have to sit on that body is taken into account. Following on from that, current research in the Causeway coast and Glens area across the four CSPs has identified that there is significant leverage — 100% plus, in fact — from partner agencies. We are in grave danger of losing that amount of leverage if the organisations are not sitting around the table.

1994. Mr Campbell Dixon (Newtownabbey Borough Council): I want to go back to the point about the representation of other organisations. It is considered that, for completeness and co-ordination of effort, such designations should be made by the council, having regard to functions that are delivered through partnership arrangements with other statutory and community bodies, such as those involved in good relations, neighbourhood renewal and Peace III. That would allow for a more joined-up, corporate approach to achieving the aims of the legislation and associated council objectives, particularly in anticipation of future developments in community planning.

1995. Ms Yiasouma: Following on from Paul Doran's point; we suggest that youth justice agencies be named on the same basis as the Probation Service should be named. The paragraph provides the opportunity to give effect to clause 34, which we discussed earlier regarding other

bodies joining the PCSP and DPCSP — we have got new acronyms to learn. We ask that the paragraph be strengthened and include, for instance, criminal justice organisations in one grouping and health, social care and education in another. It needs to be a little more explicit as to the groups wanted. We ask that the voluntary and community sector is mentioned specifically, which will enable the councils to undertake election or selection processes and nominate the particular groups they want. We do not believe that it is enough to say "at least 4 organisations". We believe that the categories and sectors of organisations need to be made more explicit in the paragraph.

1996. Mr Hussey: I am sure that we can all agree that the reduction of crime and disorder is a multi-agency issue. Given that fact, should the naming of agencies, similar to the Crime and Disorder Act 1998, be considered, to place an obligation on agencies to reduce, or assist in the reduction of, crime and disorder?

1997. The Chairperson: We move on to paragraph 10, which deals with the chair and vice-chair.

1998. Ms Watson: We believe that the positions should be open to anyone in the partnership. That is on the basis of studies carried out by IDEA, which is an organisation in England, to research into and improve the provision of public sector organisations. IDEA found that the most effective chairs of the CDRP came from the voluntary, statutory and community partners.

1999. Ms Moore: We believe that the position of chair should be held by an elected member of the council and we feel that there should be a single chair for the complete organisation.

2000. Mr McCartney: Will you give your rationale for that?

2001. Ms Moore: Councillors are elected and have a mandate. Therefore, there is accountability. As regards the policing function, we think that it would be a much better arrangement to have a single chair, a single entity, for continuity purposes if nothing else.

2002. Ms Watson: I forgot to say that I can forward the research to the Committee for consideration.

2003. The Chairperson: Thank you.

2004. Ms McCaughan: I ask the Committee to consider not restricting the positions of chair and vice-chair to elected members, in the spirit of true partnership working. Other agencies should not be excluded from holding those positions in order to maintain their interest, allow ownership, and promote an ethos of shared responsibility within the PCSP.

2005. Mr Barr: We concur with the latter comments. We do not believe that it would make for an inclusive partnership if there were not co-chairs, one of whom was a representative of the community, rather than having one chair who is an elected representative.

2006. Mr McDevitt: Mr Barr introduced the term co-chairs. As I understood it, there was a debate as to whether there will be a chair and vice-chair.

2007. Mr Barr: I mean chair and vice-chair.

2008. Mr McDevitt: Are you arguing that it should be open to anyone and that it does not have to be a political representative?

2009. Mr Barr: Yes.

2010. Mr McDevitt: OK.

2011. Ms Richmond: For the reasons put forward in respect of democratic accountability and the role of the policing committee, NILGA members support the idea that the chairperson should be an elected member.

2012. Mr O'Dowd: What is the current practice in CSPs for holding the positions of chairperson and vice-chairperson? Is it rotated?

2013. Ms McCaughan: The Limavady CSP took the decision, which was supported cross party, that everyone but an elected member would hold the chair — [Laughter] — simply in the interests of partnership working. The councillors felt that the council was facilitating the CSP; therefore, they would enable other organisations to hold those posts.

2014. The Chairperson: So it is a partnership excluding the council. [Laughter.]

2015. Ms Sarah Wilson: Councillor O'Dowd, you are probably aware that Craigavon CSP and DPP have the same Chairperson. Inevitably, because of the instruction from the Policing Board, that Chairperson is an elected member. However, the arrangement works very well, and that is why Craigavon CSP and DPP feel that they work cohesively together already. Therefore, we do not see the added value of this legislation, as we have the same chairperson on both bodies.

2016. Mr Barr: There are many models and examples of good working relationships. DPPs work well together and Investing for Health also has a community chairperson, so we should try to keep it as inclusive as possible.

2017. The Chairperson: That was quite interesting. We will move on to paragraph 13, which relates to policing committee procedures.

2018. Ms Alison Allen (Antrim Borough Community Safety Partnership, Antrim District Policing Partnership and Antrim Borough Council): Good afternoon. I will speak to schedule 1 paragraph 13, which provides for the establishment of subgroups under the policing committee and its mirror clause in paragraph 14, which provides for the establishment of subgroups under the main body of the PCSP. As has already been indicated, a wide range of community-based organisations, such as CPLCs and PACTs, deal with policing and community safety issues at a local level. This could lead to confusion if extra subgroups are set up. The public have an expectation that they will have one point of call in relation to all policing and community safety issues. Setting up further subgroups would only confuse the public.

2019. In the absence of information in the Bill and the relationship between the main PCSP and the policing committee, there is a danger that if two different subgroups were set up, communities would not get the best level of service, which has been stated by officials as being the purpose of the Bill.

2020. As I have already stated, communities should have the expectation of one point of contact in relation to all aspects of community safety and policing. Due to the confusing lines of accountability in the Bill and the lack of information on agreed priorities between the Department of Justice and the Policing Board, there is a danger that having two separate sets of potentially conflicting objectives could result in perverse outcomes for communities. I propose that establishing geographically-based or issue-based groups should be within the remit of the overall body of the PCSP so that a joined-up approach to problem solving at a local level is taken, which will deliver the best for local communities.

2021. The Chairperson: Thank you. If you see an apprehensive look on our faces, it is because we are trying to keep an eye on the level of snowfall. We have been told that is going to be very severe, but it is not too bad at the moment.

2022. Ms Watson: It is my understanding that the policing committee would be responsible for inviting other organisations to sit on the policing and community safety partnership. How will they ensure that there is equality of representation in the overall partnership?

2023. The Chairperson: Thank you. We will now move on to paragraph 17, which deals with finance.

2024. Ms Wylie: First, in relation to financial assistance, Belfast City Council welcomes the proposal in the schedule to provide financial assistance to councils towards the running of the new partnership arrangements.

2025. I will read from paragraph 17, because we propose a slight change to the wording:

"The Department and the Policing Board may for each financial year make to the council a grant towards the expenses incurred by the council in that year in connection with the establishment of, or the exercise of functions by, PCSPs."

2026. Councils, including Belfast City Council, supported the establishment of DPPs and CSPs in good faith. Councils invest considerable levels of finance in running the partnerships and towards the interventions that come out of those partnerships. You will have heard this afternoon that more and more costs are being passed to councils in connection with partnership arrangements. Therefore, Belfast City Council advocates that the wording used in the schedule places a greater commitment on continued financial assistance. With that in mind, we are proposing that paragraph 17 should read "shall" provide that assistance rather than "may".

2027. We also propose that the level of finance made available to councils through the grant should, at least, be comparable with the current arrangements.

2028. The Chairperson: Would it be presumptuous of me to call Mr Barr? [Laughter.]

2029. Mr Barr: Thank you, Mr Chairman. I knew you could not wait. [Laughter.] You will be pleased to know that this is my final point.

2030. The Chairman: Feel free.

2031. Mr Barr: Very good.

2032. Strabane DPP feels that consideration should be given to the provision of a members' allowance. We believe that the proposed structures carry an increased significant workload from current structures, and, at a time when there is an increased dissident threat, activity from dissidents and others would have a detrimental impact on the take-up from the independent sector.

2033. The initial threat to DPP members in Strabane cannot be underestimated given the level of attacks that members in the area endured when DPPs were first established and the potential dissident threat at this time. Our DPP would also be so bold as to propose that perhaps there is parity between board members of the NIPB.

2034. Ms McKee: You will be surprised to hear that the Policing Board has a unanimous and clear view on this. We recommend that the Department of Justice fund a single way for the organisation, which should come through the Policing Board. Our rationale is that that would save on the confusion that people have clearly articulated. There would be one point of contact and one point of appeal. We could build up the trust and the true partnership working that people want to be underpinned by these structures.

2035. Given yesterday's announcement about the rise in the rates, my colleagues will be delighted to hear that the legislation no longer requires councils to make a contribution. Indeed, that is at their discretion. Given some of the innovative funding streams about which we have heard, such as Peace III, I imagine that that will make for some very innovative partnership workings with colleagues in the community and voluntary sector.

2036. The Chairperson: Thank you. So, there is some good news. Does anyone else wish to comment on that?

2037. Ms Sarah Wilson: Craigavon Borough Council and its two partnerships would like to request evidence-based justification for the proposed legislation, including cost implications and savings. Additionally, we request that a programme of future expenditure is outlined and forwarded to the council, the CSP and the DPP.

2038. Ms Richmond: NILGA members urge that the paragraph on the contribution be strengthened to ensure that the joint committee "shall" make a contribution in connection with the establishment or the exercise of the functions by PCSPs.

2039. Mr McDevitt: Ms Richmond and Ms Wylie made the point that the paragraph should be strengthened to "shall", making the provision a statutory duty. Ms Wylie went on to say that that level of finance should be comparable with current levels. Are you saying, Ms Wylie, that that should be included in the paragraph, or was that just an observation?

2040. Ms Wylie: It was just an observation.

2041. The Chairperson: We are coming near the end. That takes us through the clauses that we wanted to discuss. However, are there any issues or points that any organisation represented here today wants to raise?

2042. Mr Hussey: I have a couple of points to make. I am sure that members are aware that there is no mention of the role of the community and voluntary sector organisations in the legislation. Those are very important groups that contribute fully to the work of our CSPs. I hope that members can take that on board. It is also suggested that councils should be responsible for the decision on the make-up of the partnership. Currently, the legislation allows limited input from councils. However, it appears that all of the liability lies with councils.

2043. Mr McCrory: For the past two or three years, since this process started, we have asked for the areas of duplication that have been put forward in all the documents to be identified. They have never been identified. I am holding the record of a stakeholder meeting from two years ago, during which we asked for that. The reason for this is that we in Magherafelt want a baseline to be set so that we can see what we need to build on, what we want to change, and how we need to move forward in developing a new partnership locally to make it more effective and efficient and meet all the targets. However, we are still waiting on the areas of duplication that have been put forward.

2044. Ms Olwen Lyner (Northern Ireland Association for the Care and Resettlement of Offenders): On a more general point, as this consultation process has moved through the past

couple of years, one key issue that has been raised regularly is how we would make formal links with community planning when it came. One of the reasons for the NIO and the Department of Justice moving ahead with this consultation at this time was that we were not in a position to have a view on community planning. As we know, those proposals have come forward again and are out for consultation, and it seems to our organisation that there are very important links between community planning, the function of well-being, and community safety. We need to ensure that we do not wrap up in a parcel around police accountability so that, in the future, we have to disengage those again. With the proposals out for consultation, it seems that it is timely to consider whether this is the right moment to move ahead with this.

2045. The Chairperson: Thank you. We will be coming back to the officials in a moment or two. However, it might be useful to take the pulse of the meeting and see what support there is for the clauses in principle. We accept that there are issues around all of them, but I am talking about the principle. Are all those here today in agreement with the principle of the clauses? I am not talking about the detail. We have listened as intently as possible to all the issues that have been raised. All those in favour, raise your hand. All those who are against, please raise your hand. I see that there are some who are against. It seems that there is a clear majority. For those who voted against, do you feel that there are fundamental difficulties with the clauses? Please put your hand up. Now, please put your hand up if you are relaxed about the clauses. OK. I am not sure what the message is on that one. We will go home and think about that. [Laughter.]

2046. I thank the members of the Committee. They have held back because they wanted to give you the opportunity to participate as you are not here every day. Does any member of the Committee want to raise any issue about anything that has been mentioned here today? No. That is good. It is back to the officials. Mr Hughes, please take the stage again.

2047. Mr Hughes: I will endeavour to share the honours with colleagues, who may answer points on different clauses. We will take it in turns to ensure that there is full coverage of the questions raised. I hope that we will capture as much as possible, starting with clause 20 and the initial question about why in the legislation the bodies are called policing and community safety partnerships.

2048. There were a number of suggestions about the title of the partnership, and people will remember the original suggestion of a crime reduction partnership, which I think was universally criticised in the responses to the consultation. It is important that both the community and policing elements of the functions of the partnership be reflected in the title. Because the partnership will have specific functions in respect of the police, inherited particularly from the DPPs, that policing element needs to be reflected in the title. Whether that means that it should be called the policing and community safety partnership, or the community safety and policing partnership, I am not sure that there is a strong argument either way. However, I do not think that the way in which the title of policing and community safety partnership was reached was an indication of the dominance of the policing function, any more than if it were the other way round, it would indicate the dominance of the community safety function. One has to come before the other in the title. We felt that it was important that the title reflected the fact that there were specific functions in respect of the police.

2049. A number of questions were raised about the model for Belfast and the complexities and burden that that might create. Of course, it in many ways reflects the fact that, at present, there is a principal DPP and DPP subgroups, yet there is a single CSP. However, the model that has been taken with the DPPs also reflects the fact that Belfast is a big city with different issues in different areas. Having said that, we hear what the city council has said, and in the preparation of the codes of practice we want to continue the engagement that the Department, the board, the police and other stakeholders have had with the city council and other councils through

representation from NILGA and the Society of Local Authority Chief Executives (SOLACE). This whole process has engaged stakeholders considerably and will continue to do so as we work towards conclusion and, in particular, the development of codes of practice.

2050. I am not sure that there was anything else on clause 20. There was a challenge that there was an opportunity to be more innovative. It is worth making the point that we are hoping that what we are doing is taking this arrangement closer to an integrated model, particularly one envisaged by Patten, but also by others in the years since the DPPs and CSPs were established. We do not think that this is necessarily the final word on local partnership working in this field, and there will always be opportunities and times when this could change and when there will be further innovation. However, we are starting from the point that we are at presently, with DPPs and CSPs that have many years of practice and experience.

2051. I will hand over to Nichola on clauses 21 and 22.

2052. Ms Nichola Creagh (Department of Justice): Thank you, David. A point that was made by a lot of people on clause 21 was about the dominance that people felt that there might be with the policing side, rather than community safety. I would like to say that that is not the point of the partnership, regardless of the name and what people might feel the name's implications are.

2053. The point of creating the partnership is to find the best way to deliver those services to the public. We are very keen to always return to that and not to get hung up on the actual structures and bureaucracy around that. The point of creating the partnership is to make it easier for the public to get the community safety and policing services that they need. We must emphasise that the policing committee is a very important part of the partnership. It has a particular role, which is to monitor the police. However, in creating the partnership, we would want them both to work together. It is a partnership. David Hughes referred to the creation of a virtuous circle in which the new partnership will be able to identify the local community's needs in respect of both issues.

2054. Most people probably recognise that the community, in general, does not make a distinction between police and community safety issues. They simply want a solution to problems. The idea of the partnership is to enable those solutions to be identified, action to be taken and how it has worked to be evaluated. That is what we want the partnership to achieve. However, policing and the policing committee have a particular role, and it is important that that is maintained.

2055. We have referred to the code of practice and so on that will be established. If clarity is needed about particular approaches and how they will work together, we will aim to provide that. A particular point was made about partnership working, restricted functions and reporting back. As I said, that is very much about people working together and the partnership actually being a partnership. If we can emphasise that in codes of practice, we will do so.

2056. As regards clause 20, Include Youth made a point about antisocial behaviour. As you would expect, we have used the definition of antisocial behaviour that is in use currently. That can obviously be addressed in other forums, not least through the community safety strategy, which is out for consultation. We, in the Department, can reflect on that. There are opportunities to look at it.

2057. I do not think that there were any other specific points. The dominance of policing was the key thing, but that is not the intention behind the creation of the new partnership.

2058. Mr O'Dowd: Good afternoon. I will paraphrase you. You said that we should not get too hung up on the structures and that the idea is to deliver services to the community. If the

structures are not right, the service to the community will not be right. We are dealing with legislation that will form structures. We have to get those structures right. Perhaps you will clarify that point.

2059. Ms Creagh: Certainly. I did not intend to imply that we do not want to get the structures right. I appreciate that it is a relevant concern, but I am worried that people may have an impression that policing will be the dominant feature. That is not the intent of the legislation. I do not think that there is anything in the legislation that means that that will definitely happen. It is certainly something that we can be aware of. The partnership should be aware of it in how it operates, and, if necessary, we can reflect it in the guidance. That will be picked up by my colleague. We will develop that guidance with councils, the Policing Board and other stakeholders. I am not saying, in any way, that the legislation is not important. However, I think that people have the impression that the legislation implies that policing is more important, but that is not its intention.

2060. Mr Dan Mulholland (Department of Justice): I will talk about the code of practice, about which a number of people have raised concerns. Mr McDevitt asked whether we had looked at current practice to try to facilitate better practice when we develop the code. Sarah Wilson from Craigavon CSP also mentioned the current procedures. We are aware of inadequacies in the current procedures that have developed through time. They have served a purpose, but there are some aspects that merit change. We have had some preliminary discussion with the Policing Board, councils and others on the effectiveness of those, and we will continue to do that when drawing up guidance on the code of practice. Things will change, and the board is open to those changes. It will be a work in progress, but it will be very much based on the feedback that we have received to date on how it has been working.

2061. The Chairperson: Any questions at this stage? We will move on.

2062. Mr Hughes: A number of points were made on clauses 24 to 32, which, hopefully, I can gather together. There is a desire, which I think has also been expressed in consultation, to simplify and create a single line of accountability. The fact that there are so many clauses setting out reporting arrangements to different authorities suggests that the accountability is too complex. It is fair to say that it looks like an awful lot on paper, but, in fact, it reflects the fact that there are three different authorities with an interest in the work of the partnership. In setting that out, the Department wants to preserve the responsibility of all three authorities. It does not mean that there would be three separate reports of a different nature going to three separate authorities, but rather that a report needs to be provided to the Department, the Policing Board and the council, all of which have an interest in the success of the partnership and what it is achieving. That was underlined by a point made by Rosaleen Moore from the Policing Board that it is not about the duplication of reporting but about the standardisation of reporting.

2063. A specific question was asked about the relationship between the policing committee and the PCSP and whether any reporting from the policing committee should go through the PCSP per se before it goes anywhere else. I am grateful for the observation, and I will need to think that through a little more carefully. However, my initial reaction is that, since the policing committee is a committee of the partnership — in essence, it is a very unusual arrangement — and is made up of the majority of members of the partnership and has the same chairperson and vice-chairperson as the partnership, it is not clear to me whether there is any particular reason why the reporting of the policing committee on issues that do not affect the full partnership should not go directly to the Policing Board. Having said that, I will take that point away and examine it more carefully. I think that those were all the points on clauses 25 to 32.

2064. Sir Reg Empey: Apropos my initial point, having listened to a number of members, it seems to me that it might be useful, if you can find a piece of paper large enough, to draw a diagram of all of this, setting out the lines of accountability, and so on. In parenthesis, I would also put the other structures that I referred to and their accounting lines and processes. We could then see where all those dots join up. A number of people made the point from an administrative point of view and another point of view that when we get to the stage where a committee of a board is almost the same size as the board and is chaired by the same person, we are in some difficulty.

2065. I am not trying to be facetious, Mr Hughes; I am being serious. It may be very helpful to see all that set out in a flow chart that shows us where all those lines go from and come to. It may also be useful to put in issues that are not in the Bill, such as CPLCs and PACTs, because they are all relevant.

2066. I also want to make a point about the name, which Mr Hussey and a number of others mentioned. Again, not to be facetious, if an organisation is called the Quacking Ducks Society, there will be a perception in the community that it deals with quacking ducks. Equally, if you deal with the name as currently proposed — I think that this is the point that Mr O'Dowd was trying to get at — people outside who do not have the working and detailed knowledge that we have may assume that it does something different, even though the official made it extremely clear that that was not the intention.

2067. Mr Hughes: Obviously, the legislation does not include diagrams, but there are diagrams back in the office, and we could easily forward something that illustrates the issue as we understand it. They do not at present include the CPLCs and PACTs, which are looked at separately. However, if it would help, we would be more than happy to provide something that would illustrate that text.

2068. Sir Reg Empey: I would find that helpful, Chairperson.

2069. Mr Mulholland: Clause 30 is entitled, "Reports by policing committees to Policing Board". Comments were made that the policing committee appears to operate independently, with no requirement to report back to the overall partnership.

2070. Just to clarify, the Policing Board can call for special reports of the policing committee on specific issues on an exceptional basis, which will be reported back directly to the Policing Board. That is about a reporting mechanism; it is not about sharing information. We would fully expect the policing committee to share information with the rest of the partnership when it meets. I just want to make that distinction between reporting and sharing information.

2071. A comment was made on clause 33, which is about other community policing arrangements. There may have been a misunderstanding about what the clause says. Its focus is on facilitating the police to consult the public. There would be a lot of consultation with the public, the policing committee and the overall partnership. To avoid consultation fatigue, we would see that as being as minimal as possible. In particular, clause 33(2) relates to where it appears, to the board's mind, that the partnership has not made sufficient arrangements for the police to consult a local community. From the comments received, it appears that there was a misunderstanding about that.

2072. Ms Creagh: A number of people spoke about clause 34. I am glad that a lot of people seem to support the clause, because we regard it as an important part of the Bill that adds a lot of benefit to the partnerships. I am sure that the Committee listened to what people said about the clause today.

2073. There seems to be a misapprehension that the bodies to which clause 34 will apply are not listed. To clarify, those bodies are listed in schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996, and that is laid out in the legislation. Schedule 2 is very extensive, and it is difficult to anticipate any body that is not included in that schedule. A number of people raised that as a point, but the bodies to which clause 34 will apply are listed.

2074. The question was raised as to whether any body had difficulties with that. We are alert to the fact that, in applying the clause to organisations, it imposes a duty on them to demonstrate their compliance and to look at their policies on community safety. When that requirement is placed on an organisation, we are obviously alert to the fact that that could have financial and other implications. In recognition of that, we have, within the legislation, undertaken to consult widely the designated bodies to look at how that may best be dealt with.

2075. The intent is not to create a bureaucratic construct in which people have to fill in lots of forms to demonstrate how they are complying. However, if the duty is there, organisations will have to demonstrate that they have complied with it. Departments and the other bodies listed will have that obligation.

2076. That being said, we anticipate that, for an organisation that takes into account issues such as community safety and its policies, that could have beneficial consequences and returns, such as saving money in the long run. For instance, a number of people mentioned the Housing Executive. One practical example would be the Housing Executive taking into account such policies when designing estates, buildings or facilities. The reduction in crime and antisocial behaviour would pay for any additional features that it may have to design. That is the point.

2077. As I said, we are alert to the potential for increased costs to organisations, but we hope that that would, in many ways, repay itself many times over through the reductions in antisocial behaviour or crime that could come from that.

2078. The Chairperson: Are those the points that the Executive have expressed concerns around?

2079. Ms Creagh: Yes, the Executive have expressed concerns around the costs that could be placed on Departments and the organisations associated with Departments. The Minister is alert to those concerns, and we have given a commitment to work with the Departments in drawing up guidance. There is also a commitment that that part of the Bill would not be commenced until such times as Departments are happy with it. However, we emphasise that we regard the provision as having the potential to save money, perhaps in the longer term, but it could save money nonetheless.

2080. Mr A Maginness: Considerable legal liability is created across a wide range of public bodies as a result of this statutory duty. Has that been taken into consideration?

2081. Ms Creagh: That, again, is something that we are alert to. That was raised at the Executive, and they expressed a view. The Attorney General has certainly expressed a view on it.

2082. In crafting this, we looked at legislation in England, Wales, Scotland and the Republic of Ireland. Those countries have not had significant legal challenges. I am in no way suggesting that that means that there will not be any challenges here. However, it has not been their experience that that has happened. Again, we are alert to that possibility, and, in drawing up the guidance, we want to work with Departments and their advisers to see how that could be minimised. At this point, we feel that it is still a worthwhile feature that we want to try to work with the Committee and the Departments to retain.

2083. The Chairperson: You said that the Attorney General had expressed some views. Are you prepared to set those out in writing for the Committee's consideration?

2084. Mr Gareth Johnston (Department of Justice): Disclosure of the Attorney General's view requires his permission, but I am sure that we can ask his office about that.

2085. The Chairperson: You can tell him that we were asking about it.

2086. Mr McDevitt: I note the list of bodies in schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996, which you hope will apply. However, a number of people raised the case of the list in the Crime and Disorder Act 1998. Are you aware of the differences between the two lists?

2087. Ms Creagh: I must say I am not, but it is something that we can look at. The Crime and Disorder Act is legislation that extends only to England and Wales and it refers to the type of organisations that exist in those countries. Obviously, those local authorities have many powers that, in Northern Ireland, are reserved to Departments. I think that that is the primary difference. We can look at that in detail.

2088. Mr Hughes: The Crime and Disorder Act 1998 is specific about the kinds of organisation which, it is assumed, will naturally have a contribution to make to community safety in a locality. The difference between what has been done in England and Wales and what is proposed here is that we have endeavoured to capture all public authorities so as not to limit the duty placed on public authorities. It may well be that there are all sorts of public authorities who can usefully make a contribution to community safety in one district in particular circumstances, and this applies the duty to that authority at the outset to get everyone on board. The risk of making a list is that one starts with a relatively short list and every so often that has to be lengthened as people ask: should not this or that organisation be on it? That is an unnecessary process for achieving what we achieve by capturing them all. That answers the point of specific organisations that ask to be specified on the list: they already are. The fact that there is enthusiasm is brilliant.

2089. Mr O'Dowd: I want to ask about the comments made by Mr Maginness as to whether the clause gives statutory liability problems to Departments. If no major claims have been introduced as a result of this, it begs the question as to whether the clause is practical. Does it force Departments to have a duty of care to, for example, design out antisocial behaviour? It is of proven worth?

2090. Ms Creagh: From the feedback that we received on how it operates in England and Wales, it has been very useful. That fact that English and Welsh public bodies have not had many legal challenges may simply illustrate the type of environment in which they work. It is hard to say. The evidence suggests that it has been useful in that context.

2091. The Chairperson: That brings us to clause 35.

2092. Mr Hughes: There were a number of questions about the role of the joint committee. The Bill contains only a small number of the statutory functions of the joint committee and the question is whether it should not set out all the functions of the joint committee.

2093. The joint committee is the Department and the Policing Board operating together. Both the Department and the board will have many administrative functions that will need to be operated in respect of those partnerships. The joint committee is the place in which those functions will be conducted in parallel and in a co-ordinated fashion. It would not be normal to set out all those administrative functions in primary legislation, but the existence of the joint

committee means that that is the challenge for the Department and board: to operate in that way.

2094. As for whether it should be for the joint committee and councils to set the strategic direction together, the joint committee represents two authorities that operate at a regional level. They set a regional strategy. That is not to say that the council is not setting a strategy at a district level. If we were to endeavour to include all councils in the joint committee, we would create a body with a membership of two regional authorities and 26 district councils. I am not sure whether that is necessarily practical or what was intended.

2095. On the evaluation function, as members of the Policing Board have pointed out, the functions of the DPPs are evaluated regularly. I believe that the challenge to the Department and the board will be to continue an assessment of effectiveness, which will be made easier by having a single plan with specific outcomes against which to measure effectiveness. That would make an analysis of effectiveness very much easier. In addition, presently, public satisfaction, awareness and knowledge of what partnerships are doing are surveyed regularly, and that should continue.

2096. Of course, PCSPs will have the input of councillors, as members of PCSPs, on strategies in districts, and that input should encompass the role of councils in setting strategies locally, which is why there are partnerships at a local level. Those are the points that I wish to make on clause 35.

2097. The Chairperson: Does anyone wish to make a point on that? No. OK, we shall move on to schedules 1 and 2.

2098. Mr Hughes: The first points made on schedules 1 and 2 were around the recruitment exercise and the cost of recruitment. I know that a conversation on that has already taken place between the Policing Board and councils. However, from the Department's perspective, we felt that it was important that the present role of the Policing Board in appointing independent members be carried over.

2099. The Chairperson: Does anyone have any issues around that? No.

2100. Ms Creagh: It is expenses and allowances rolled into one. The current legislation does not allow for the payment of allowances; however, that, as the Minister has pointed out on a number of occasions, is not intended to reflect on the good work that has happened in DPPs. The people on the current DPPs have played a valuable role, and the fact that the new partnerships do not include the provision to pay allowances is not intended to take away from that work or to imply that it has not been valuable. That said, the payment of allowances, in itself, creates considerable costs, and, in deciding where money should go, the feeling is that as much as possible should go to front line services. That is the rationale behind the decision. That said also, the Minister's position is obviously that no one should be out of pocket as a result of serving on a partnership, which is why there is a provision to pay expenses to members. The current legislation states that expenses should be paid only to independent members. The Committee may wish, therefore, to consider an amendment to include councillors in the legislation covering DPPs. That is something that we might look at. We intend to work with the Policing Board and councils on drawing up guidance on how best to pay expenses. However, at this point, it would deal with expenses rather than allowances.

2101. Mr A Maginness: What is the total amount of expenses paid? You may not have the figures here, but can you give us an indication of the total amount of expenses and allowances?

2102. Ms Creagh: The figure for allowances is £1·5 million a year. I do not have to hand the figures for expenses, but we can certainly provide them to you.

2103. Mr A Maginness: Do you have a breakdown of allowances for independent members and councillors?

2104. Ms Creagh: Expenses are administered by the Policing Board, so I would say that it does. However, I am conscious that I am speaking on its behalf. We can provide that for the Committee.

2105. The Chairperson: Are there any further questions?

2106. Mr Mulholland: We are talking about paragraph 7. There were quite a number of comments about designated organisations. There was a bit of confusion about organisations designated under clause 34. There are three parts to the partnership: the elected representatives; the independents forming the policing committee; and designated organisations from statutory and voluntary community groups and business, etc. The latter group will be invited to the partnership and designated, in the first instance, by members of the policing committee, who are obliged to bring on board a minimum of four organisations. There is no maximum. It is up to them to say who should be invited to the board, and the principle under which they should apply that is consideration of who is best placed to contribute to the work of the partnership. We received a number of representations from the Probation Board and many others stating that they should be included and designated. We have avoided listing people to be designated, because the designation of a smallish church group or other fairly small groups, which might be usefully contributing to the local area, could be useful. Rather than being prescriptive, we think that it is best to capture that without listing them. However, that does not stop the partnership doing that.

2107. Mr McCartney: This is without prejudice, but the general thrust of Paul Doran's presentation is: if there is an organisation that fits the criteria to do what is required, why should it not be designated, rather than leaving it to the committee?

2108. Mr Mulholland: It is up to the partnership to determine who should be designated. They have a statutory duty to follow the section 75 in the same way as the partnership.

2109. Mr McCartney: I understand the concept of what the Bill is saying. However, in a general principle, if "we", or as broad as we want to make it, have a view of the right type of organisation, why is there not a statutory provision for that?

2110. Mr Mulholland: The committee can —

2111. Mr McCartney: The committee does not have the task of committing legislation; it has a task of doing what it feels right in a particular locality.

2112. Mr Mulholland: I am talking about the policing committee.

2113. Mr McCartney: Yes, but if we have the power to say that designations are a good idea, why can we not say that a particular organisation should be designated across all partnerships, as a principle. In the same way, we are saying that there should be nine or 10 elected members.

2114. Mr Mulholland: I suppose that it is because there is a risk of leaving somebody off who might be useful. A youth club, for instance, might have an activity that would be useful.

2115. Mr McCartney: We are doing that by saying that there has to be so many elected members.

2116. Mr Mulholland: We are saying that there is a minimum.

2117. Mr McCartney: We could be excluding a church group by saying that there has to be a particular number of elected members. If there is a designated body, which, we all agree, will bring something to it, why should we not designate them? I am saying that as a principle. Why should we not name a designated body?

2118. Mr Mulholland: When you talk about "we", I am not sure who you mean.

2119. Mr McCartney: As we frame the Bill. If, as we frame the Bill, we say that we are trying to do X, Y, and Z, and A fits with what we are trying to do, why should we not designate A?

2120. Mr Hughes: I do not think that there is a strong argument for saying that it would be inappropriate to designate a certain relatively small number of organisations who should always be present on a PCSP. However, that is taking the decision out of the hands of the local partnership, the elected members in the locality, and the independents appointed to that partnership. There was strong comeback during the consultation when the original consultation paper suggested that there were four categories of members of partnerships, and, once people had done the sums, they said that a partnership of more than 30 people would not work because it was simply too big to be operationally slick enough or effective enough in the locality. Therefore, if one begins to designate organisations and there is consensus on four, is that too few or too many to specify that they should always be represented if the list gets any longer? How many designated organisations would there have to be in a partnership? How big could a partnership get?

2121. That kind of discussion and decision-making probably makes more sense where some districts have quite a large partnership and where they would normally operate on that scale. Other districts would expect to have relatively small partnerships and to operate on a smaller scale. It is for this Committee to make that kind of recommendation, but I do not think that we have a rock-solid, principled objection to it. We have come to the conclusion that, on balance, allowing districts the flexibility to make those decisions seems to be the best way to do it.

2122. It is also worth reiterating that involvement can be not only through being designated as an organisation, but community and voluntary groups can be involved in the work of the partnership. It may well be that some independent members come with a background in a certain field, and there is the provision that each partnership could set up smaller groups working on specific themes and areas where it is more appropriate to co-opt some of the smaller organisations on to the specific work group in that area or on that themed basis. Therefore, there are still lots of opportunities for community and voluntary organisations to be involved.

2123. Mr McDevitt: I am trying to get to the bottom of the departmental thinking on this matter. Is the Department of the view that, as a matter of good practice, no organisations should be present beyond those listed today? Is the Department of the view that the Probation Board does not need to be present for it to be a successful PCSP?

2124. Mr Hughes: I would not say that. We have not sat down and tried to take it upon ourselves to determine what relatively small number of organisations should be listed because there is always an argument that it should be somebody else, or more.

2125. Mr McDevitt: I agree with Mr McCartney's point. The downside to that is that if there are some must-bes, and it is in the honest opinion of the Department that those are must-bes. If

you do not do it, it is possible, as the legislation stands today, that they would not be there. For whatever reason, a locality could just take the view that they are not relevant and they do not want them there.

2126. Mr Mulholland: You then put that duty on some of the smaller partnerships, such as Moyle, to bring somebody to the table from those statutory organisations. We know that, very often, the Housing Executive and the police will have to be there in many cases, but in some cases, they do not need to be there. It is about allowing flexibility and addressing local needs. We know that, in practice, through the community safety partnerships and the way that they work, they know the organisations that can contribute.

2127. Mr McCartney: The Probation Board is making the case. It is not as if Moyle will have to look to the Probation Board to join. The Probation Board is making the case that it will provide someone for each of the partnerships.

2128. Mr Mulholland: The legislation also means that when they are designated they will have to attend every meeting, but that may not always be necessary.

2129. Mr McCartney: I understand your point, but the Probation Board is making the case that it should be necessary. Therefore, if it makes the case and then does not turn up, it will be up to other people to remind them.

2130. Mr McDevitt: I am sure that we will want to debate this among ourselves, but in one part of the Bill you are putting in a statutory duty, which is seriously upping the ante on public bodies, and, in another part, you are refusing to put the compulsory list in. We are now in a situation with the Transport Bill, the report on which was signed off on Tuesday, where there is a short compulsory list of three or four organisations, and then there are other bodies that, in this case, the local transport partnership feels are necessary.

2131. Mr Hughes: As we have had this discussion, there is quite clearly strength on both positions. We will cheerfully take that away. There may be a consensus that perhaps three or four organisations will pretty much have to be on every partnership. We have not started with that position, but we hear what the Committee is saying.

2132. The Chairperson: We will move on to paragraph 10.

2133. Mr Hughes: The Department's starting position is that there is particular value in having the same chairperson and vice-chairperson of a policing committee as the partnership as a whole. That would maintain the unity of the partnership and ensure the connection between the functions of the policing committee and the functions of the partnership as a whole. As that is the case, it would not be possible for a member of a delivery agency to be the chairperson of a policing committee, and therefore, they would not be the chairperson of the overall partnership. I would be very interested to see the research that is being referred to, and I am quite happy to receive that.

2134. I think it was said at some point that an independent member could not be chairperson, but the legislation as set out states that, in the first 12 months, the chairperson would have to be a councillor, but after that, the chairperson and vice-chairperson would have to be a councillor and an independent; it could be one way or the other. It could be that the independent would chair, and the vice-chairperson would be the councillor.

2135. The Chairperson: OK. Let us move on to paragraph 13, which is about policing committee procedure.

2136. Ms Creagh: The point made under paragraph 13 is quite similar to clauses 21 and 22, which is about the role of the policing committee vis-à-vis the partnership as a whole. That piece of legislation refers to the appointment of subcommittees by the policing committee, which may or may not be something that they would want to do. Those subcommittees would be purely responsible for the restricted functions that the policing committee would look at, and not the roles of the whole partnership. That is why that particular measure states that policing committees should do that. Again, it is connected to the issue of the policing committee sitting within the partnership and what the point or role of that is.

2137. To emphasise the point, the policing committee would not be working in isolation. The committee is a member. The whole partnership encompasses the policing committee, and any subcommittee that the policing committee would set up would, by its very nature, be encompassed within the whole partnership.

2138. The Chairperson: OK. We will move on to paragraph 17, which is about finance.

2139. Mr Mulholland: Nichola mentioned general funding earlier. There are a number of issues around finance, and I have picked up that one of those is the withdrawal of the 75:25 split between the Policing Board and the councils on the funding of DPPs. That is being removed from the funding of PCSPs. There is also an issue of "may" being used in legislation as opposed to "shall".

2140. On the first point, the Minister was quite clear that we do not know what overall funding will be coming from the Budget just yet and what the ramifications of that are. However, the principle is that, if we leave aside the budget for the time being, the money available through the Policing Board and the Department, through the community safety unit, will go towards the new partnership. We will not require the council to contribute. We are not stipulating that they must contribute 25%, as the board has stipulated for the DPPs. It can be quite administratively burdensome if every invoice has to be split. We know that, in practice, many councils already contribute more than the 25% that they are obliged to so that they can deliver a service to the community that the community expects. Therefore, there is not going to be a stipulation as to the amount. As somebody else said, a council could opt to reduce its contribution. However, the Minister's position is that he is hoping that councils will contribute to deliver a service that they feel is appropriate to their community.

2141. Mr Givan: So, there would be no compulsion on councils to contribute anything.

2142. Mr Mulholland: Leaving aside the budget that has been agreed, an amount of money will be given from the Policing Board and the Department, through the community safety partnerships, to the partnership.

2143. Mr O'Dowd: Will the 25% cut make it a statutory duty on councils to be part of the arrangements? Could a council walk away from this? Is the onus on councils to be involved?

2144. Mr Mulholland: No. There is a statutory duty in the legislation, under clause 20(1) and 20(2), for councils to establish PCSPs in each council district. That is the statutory duty. This is about funding.

2145. Mr O'Dowd: But there is no statutory duty around funding?

2146. Mr Mulholland: Not around funding any additional money.

2147. Mr O'Dowd: Has the Department of the Environment been consulted on that?

2148. Mr Mulholland: Yes. As we are talking about how our policy links with the overall aim of community planning and RPA, the Department of the Environment has been fully consulted. It is happy that this is going in the right direction.

2149. The Chairperson: We are trying to get at what the enticement for councils is. You are saying that there is no financial commitment, but that there is a statutory obligation.

2150. Mr Mulholland: There is a statutory obligation.

2151. The Chairperson: That can be paid at a certain level.

2152. Mr Mulholland: Yes.

2153. The Chairperson: So there is no financial commitment at all.

2154. Mr Mulholland: No. Councils are obliged to consult on the local need and local issues and decide on a strategic direction for the partnership through the joint committee, which will be the Policing Board and the Department working together. That strategic direction will be delivered through councils. Councils will consult at a local level to see what the local needs are. Using the two bodies, councils will carry out an analysis and come up with an action plan to address those local needs.

2155. To use a practical example, Belfast City Council contributes a significant amount of money, far above that which the Department can contribute, towards community safety wardens. Some of that money is used and is topped up by the council's contribution. I have worked over a number of council areas, and that happens in many councils. For example, Down District Council does the same. All councils top up the money.

2156. Part of the existing arrangement is the requirement to lever in money from other organisations on the partnership. At the moment, the requirement is for 20% minimum match funding.

2157. Sir Reg Empey: Let me get this clear: you have removed the 25% cap, but imposed a statutory duty, and, as Alban pointed out, there is a potential liability if people feel that things are not designed or done in a certain way. Although you have removed the cap, it could end up that councils pay more than that because of the statutory duty.

2158. Mr Mulholland: Yes, councils can contribute more than 25%. In fact, that is the point that I am trying to make.

2159. Sir Reg Empey: The point I am making is that councils, at the moment, have a choice that they can contribute more than 25%. However, the statutory obligation and the potential liabilities may mean that councils have no choice but to contribute more than 25%. Is that a possibility?

2160. Mr Mulholland: Councils can contribute more than 25%, whether they have a statutory obligation to do so or not. You are referring to clause 34, which deals with the duty to consider community safety implications. Whatever that public body is, it needs to be within its strategic objectives to take community safety issues into account. It may consider an issue and decide that it is not its priority, and that it has higher priorities.

2161. Mr Hughes: I want to make a supplementary point. Mr Chairman, you mentioned the inducement to councils to contribute to the work of PCSPs. A critical inducement is that

community safety is pretty consistently a priority for the voting public. It is important to councils that they address that issue. It is in their own interests that they contribute to PCSPs' work.

2162. Mr Mulholland: The other point that I want to make is that, in the legislation, it states that the Department "may" pay a contribution towards councils' expenses in setting up partnerships. That was not our intention. It is certainly not the Minister's intention to draw funding from partnerships. It emerged when legislative draftsmen drafted the Bill. We are not sure exactly why it has emerged. It may be to protect the Bill's integrity. We are happy to go back to the Minister and ask him about that. There is no intention. It says "may" when it should be "shall".

2163. The Chairperson: Perhaps we should not kick the dog to see whether he is sleeping. We should just let him sleep on.

2164. That covers everything. Officials have nothing further to add. In drawing the meeting to a close, I thank everyone for coming and sharing your expertise with us. As Chairperson, I have found the meeting useful and informative, and I believe that I speak for all Committee members when I say that. Thank you very much.

2165. As for what happens after today's event, the next step in the Committee Stage of the Justice Bill is that, within the next few days, a transcript of the event will be circulated among all participants for their comments. The finalised transcript will be made available on the Justice Bill section of the Committee's web page. In February 2011, the content of that transcript will be fed into the Committee's report on the Justice Bill to the Assembly. That is the procedure from today onwards.

2166. Finally, I want to thank the Official Report for transcribing the event, Assembly Broadcasting for providing its services, and the catering and support staff for their help. Again, I thank you and wish all who are travelling a safe journey home. The snow is not as bad as forecast — not yet anyway.

11 January 2011

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt
Mr David McNarry
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Assistant Chief Constable Will Kerr Chief Superintendent Stephen Martin Superintendent Chris Noble Superintendent Alister Wallace	Police Service of Northern Ireland

Mr Tom Haire
Mr David Hughes
Mr Gareth Johnston
Ms Janice Smiley

Department of Justice

2167. The Chairperson (Lord Morrow): We will begin the oral evidence session from the PSNI on the Justice Bill. The PSNI will outline key issues and points about the Bill. The relevant papers have been included in members' packs. There will be 10 minutes for an oral presentation and 20 minutes for questions.

2168. I welcome Assistant Chief Constable Will Kerr, Chief Superintendent Stephen Martin, Superintendent Chris Noble and Superintendent Alister Wallace. Gentlemen, I welcome you to the first meeting of 2011 and wish you and the Police Service every success in the future. I trust that 2011 will be even better than 2010, no matter how you found 2010.

2169. I will now hand over to Assistant Chief Constable Kerr to brief the Committee. After you have done so, perhaps you would be good enough to take our questions.

2170. Assistant Chief Constable Will Kerr (Police Service of Northern Ireland): Absolutely. Thank you for your very kind introduction and welcome. It is with no lack of satisfaction that we find ourselves in our local Assembly today discussing local justice legislation in front of local legislators, and we are grateful to the Committee for the opportunity to do so.

2171. You already introduced my colleagues, but I will explain who they are. Alister is head of public protection, so if there are any questions specifically around vulnerable and intimidated witnesses, he will be able to answer them and explain the practical implications. Stephen is district commander in the north-west, which covers Derry, Strabane, Magherafelt and Limavady, and deals regularly with district policing partnerships (DPPs) and community safety partnership (CSPs). Chris Noble is the operations manager for south and east Belfast, including the city centre, Ravenhill Rugby Ground and Windsor Park. Should there be any questions about sporting fixtures, he will be able to answer them.

2172. I am conscious that the Bill is large and detailed. We note that it was presented to the Assembly just six months after the devolution of policing and justice powers, covers an eclectic range of provisions and has a broad reach across many areas of justice provision. For example, it seeks to broaden eligibility for access to special measures for vulnerable and intimidated witnesses, which we strongly support. It also seeks to further deter knife crime in schools with increased penalties, and we believe that it is right to do so. Through penalty notices and conditional cautions, it seeks to contribute to the provision of effective justice by adding to the range of measures that will form part of a proportionate response to offending, and we welcome that, too.

2173. The Committee will not be surprised to know, however, that our chief interest in the Bill concerns the creation of policing and community safety partnerships, and, specifically, clause 34, which places a duty on public bodies to consider community safety implications in exercising their functions. Our policing plan is explicit in committing us to work with communities and partners to help make Northern Ireland safe, comfortable and peaceful. The plan also embeds our ethos of policing with the community and in everything that we do and, in essence, drives us to work collaboratively with a range of partners and communities to try to deliver on the aforementioned objective. We do not always get those partnerships right, and it is fair to say that we and communities are still learning how to get the most from them. However, policing does not and cannot operate in a vacuum, and we are absolutely committed to that approach.

2174. To be candid: there has been a growing recognition in policing over the past number of years that, although we are good at the serious crime end of the spectrum — the majority of homicides in Northern Ireland last year ended up with someone's being charged — we are also getting better at crime prevention. Recorded crime in Northern Ireland is at a 12-year low. However, we need to do more to deal with those issues.

2175. In the past, we might have been considered to be at the less serious end of the offending spectrum, but actually have the biggest impact on community life. I am talking specifically about quality of life issues, in particular antisocial behaviour, which can have a really negative impact on community life. Antisocial behaviour is a perfectly good example of the need for practical and sensible partnership working so that we do not just manage the symptoms but actively address the causes through joined-up plans that address, for example, better street lighting; better facilities for young people; better parenting and parenting support, although it is not just young people who are involved in antisocial behaviour; dealing with alcohol misuse; early years support; collaborative working to drive the link between deprivation and offending; and so on.

2176. Enforcement clearly has a part to play in tackling antisocial behaviour, but it will not provide the sole solution. From experience, we believe that that the most effective way to deal with those issues is through a strong partnership with all the relevant agencies that is underpinned by effective and collective joint accountability. We think that the Bill provides a significant and timely opportunity to deliver just that.

2177. Policing accountability has been enshrined in legislation in our culture for quite a few years. We welcome being held to high standards and, indeed, think that the local accountability mechanisms, onerous as we may sometimes feel they are, have contributed to the sustained crime reduction in Northern Ireland over the past 12 years. Therefore, we believe that the policing and community safety partnerships (PCSPs) governance arrangements should compel all the relevant statutory authorities to create and deliver joint policing and community safety plans and an effective accountability mechanism to accompany that responsibility.

2178. We believe that clause 34 is the minimum that is needed to ensure that that happens. However, clause 34 needs to be directly translated into the broader accountability arrangements within PCSPs. As it stands, the Police Service will remain the only statutorily accountable organisation within those partnerships. A range of other agencies can be designated by a PCSP as a member of that PCSP, including, for example, local government, probation services and the health, education and housing sectors. All those designated agencies may be involved in the creation of plans to, as the Bill says, "reduce crime" and "enhance community safety". However, once those joint delivery plans are set, the only mechanism in that forum to hold any of those delivery agencies to account is through the policing committee in respect of the PSNI.

2179. I appreciate that some of those designated agencies might say that they are being held to account in the court of public opinion by virtue of the fact that they have to sign up to a joint plan. However, we believe that the other agencies, having committed to actions in the delivery plan, should be publicly accountable to local communities and local politicians for their actions on their clause 34 responsibilities. That having been said, I have no wish for Northern Ireland legislation to simply replicate legislation elsewhere. Local solutions are required for unique local problems. However, the miseries inflicted upon our local communities by crime and antisocial behaviour are not unique to Northern Ireland and, in many cases, are worse elsewhere. Therefore, it remains eminently sensible to learn from the experiences of others.

2180. I will give a few examples. The crime and disorder partnerships, which were established by the Crime and Disorder Act 1998 in England and Wales, were created on the understanding that no single organisation could hope to reduce incidence of crime. The then Audit Commission said:

"Local organisations need to work together to develop comprehensive solutions to improve the community's quality of life".

2181. Clause 34 has the potential to go further than the Crime and Disorder Act 1998 in that it covers all Departments in Northern Ireland whilst the 1998 Act principally, but not exclusively, deals with local or joint authorities.

2182. Policing in Scotland enjoys similar provisions — although with a broader range of partners — and are monitored by the Scottish Assembly. In the Republic of Ireland, local authorities have contributed to joint policing committees since 2005.

2183. I will give a couple of very quick examples from further afield. France has a locally accountable system through which responsibilities are shared between the local mayor, the prefect, local prosecutors, local authorities and the police. Belgium has adopted what are called strategic security plans that are accompanied by a robust joint accountability element. Germany has the German Forum for Crime Prevention, which has a number of private companies as foundation members. Therefore, although I appreciate that clause 34 may have created some apprehension amongst some Departments, it seems logical that joint working and joint accountability for that working offers us the best opportunity to effectively reduce crime and disorder.

2184. I note with interest the broad support that has been expressed at this Committee in other sessions from agencies such as the Northern Ireland Local Government Association (NILGA), community safety partnerships, the Probation Board, Include Youth and the Policing Board, to name but a few. As I said before, we view clause 34 as a minimum requirement for effective partnership working.

2185. To conclude — hopefully leaving some more time for questions — the Police Service of Northern Ireland welcomes the responsibility placed on us by the policing and community safety partnerships. We are used to it. We strongly think that politicians and local communities have a right to robustly and publicly challenge us when we get policing wrong in Northern Ireland. That right is exercised quite frequently, but rightly so. We strongly believe that the arrangements would be a lot more effective if that responsibility was shared and supported by a robust public accountability system that is enshrined in statute.

2186. Mr McNarry: You are very welcome, gentlemen. I am keen to deter violence and disorder at sporting events, as everybody is. I see that, when the PSNI is called in, it does an excellent job. I want to concentrate on that line. This Committee has been told that the responses that have been received about the sporting proposals, including those from the GAA and rugby and football bodies, have shown broad support, specifically about the clauses that address offensive chanting, missile throwing and unauthorised pitch incursion. They have all been welcomed.

2187. The creation of the offence for ticket-touting and banning orders are also broadly supported. I see that part of your submission deals with that. A number of respondents supported the alcohol proposals, although others, such as those who are affiliated to rugby, had reservations. That does not mean that rugby followers are all alcoholics or drunks; where they are coming from on that issue is clear. A range of views were expressed on banning alcohol on private transport, which, I believe, is silly, particularly since I have read that. Can you tell me how many of those offences you deal with already under current law?

2188. Mr Kerr: Absolutely. I will ask Chris to talk in a little detail about your specific point in practice. The effect of any legislation is not just to enforce but to deter. Certainly, no police officer will turn down additional powers. We always welcome having those powers. The fact that

we have them does not necessarily mean that we will use them. Chris, would you like to address Mr McNarry's question specifically?

2189. Superintendent Chris Noble (Police Service of Northern Ireland): I can speak from my experience of central, south and east Belfast, where many of the main sporting grounds are located. I will make a couple of points for context. First, the vast majority of sporting events and fans do not pose any problems to us.

2190. Mr McNarry: Hear, hear.

2191. Superintendent Noble: They are not violent, abusive or offensive in any way. However, a small minority of fans drag supporters' names through the mud and, indeed, make life difficult for clubs. We prefer self-regulation, ideally. Many clubs deal effectively with those issues daily at a low level. During the past number of years, a number of isolated incidences of disorder have occurred. For example, just after Christmas, there was a pitch incursion in one of the mid-Ulster grounds. Clause 39 deals with pitch incursions. Had the legislation been in place, pitch incursion would have been the appropriate offence for which to report and charge that person.

2192. Some of those types of incidents do happen, although they are not common or regular. There is no doubt that the legislation, which, for me, sits alongside safety of sports grounds legislation, closes some loopholes. Broadly speaking, the vast majority of clubs would support the opportunity for police to get involved and use those powers for more serious offences.

2193. Mr McNarry: I am grateful for that. I am glad that you said that, overall, such incidents are quite uncommon. I see that, I am aware of it and it was my perception. Then, I think, "hang on a second; if it is not all that common, are we going to legislate for a few?" I appreciate that, if incidents are sufficiently bad, we must legislate for a few. I do not know how high you prioritise the difficulty with that. The fact that those incidents are uncommon reflects the manner in which you police them.

2194. You mentioned one matter. I want to deal with the banning of alcohol on a private bus. An example that springs to mind is that someone who comes from Scotland might take a bottle of hooch home to his grandfather and could be in trouble. A rugby supporter who goes to Ravenhill on a Friday is able to enjoy a drink. If the same guy wants to go to a football match on a Saturday and, perhaps, a GAA match on a Sunday, he must abide by different laws. What I am really trying to get at is that much of that seems to be repetitive. I have not made my mind up as to whether those provisions are necessary. Therefore, I seek your guidance. However, I do not want to put you in a difficult position so that I can say that you told me something. I would not do that.

2195. How can you enforce some of those matters? In the modern age, we are trying not to make criminals out of people. You refer to that in another way. We still feel and refer to the threat to society from dissidents, I think is the term used. We want to see concentration on that without neglect towards asserting the law. What do you need to put in place to enforce those things? How much will it cost? What do you need to do with regard to manpower and adjustments?

2196. Assistant Chief Constable Kerr: I will let Chris answer that in some detail. However, to summarise our position: sports disorder is not a big problem in Northern Ireland. I think that is patently obvious. However, just because those powers are enacted in the statute books does not mean that we will use them. We would prefer to have reference back to those powers in the small number of occasions when we have to use them. Chris, will you touch on the practicalities of the powers, please?

2197. Superintendent Noble: I will cover a couple of points around enforcement and resourcing and will then briefly touch on alcohol and public transport. We have police at approximately one in five football matches in Belfast. I do not foresee us having to use additional resources. From a football match perspective, sports safety is based around an assessment of risk. Matches will be categorised A to C, with C being the highest risk, and supporters will be identified as risk or non-risk. That is done in collaboration with the Irish Football Association (IFA), the clubs and the police. It is at that point that we consider our resources and where some of those potential offences may come into play according to the risk element. I do not see significant additional resourcing being required.

2198. On the practicalities of enforcement: some of the new offences, chanting for example, will require us to engage with the Public Prosecution Service (PPS) to determine the nature of the chanting and how we record the evidence, because, in my understanding, although there might be video recording in some grounds, I do not believe that there is always audio. Work will have to be done on the guidelines. I do not think it is insurmountable, but there is no doubt that some of the offences will require a different approach and prior consultation with the PPS.

2199. Mr McNarry: OK. I am measured by that. I think that is very helpful. It is up to us, now, Chairman, to find out whether it is worthwhile going down that route. Thank you, gentlemen.

2200. The Chairperson: How do you see that being enforced at events that you do not attend?

2201. Assistant Chief Constable Kerr: That is a great conundrum. If we are not there, we are reliant on evidence being presented to us by third parties who were. As Chris rightly said, we have been trying to push to a position in which a lot of these matches are self-regulated, quite successfully so over the past years, but if evidence is presented to us, whether through video footage taken on site or evidence from stewards or marshals, we will have to consult with the Public Prosecution Service and decide what meets evidential standard and what does not.

2202. Part of our response is also intelligence led. If we get indications that there is likely to be trouble at any sports events, we put police officers into the grounds, but I think it is fair to say that happens infrequently. If they are there, and if an offence is disclosed, the investigation and the power of arrest are sometimes used after the fact, not during. The fact that police officers may not necessarily be on the grounds will not stop us investigating the offence or arresting the offender afterwards.

2203. Superintendent Noble: There is a certain parallel here with, for example, shoplifting. Police will not immediately be at the scene, but it will be clear that an offence has taken place. A store detective will be there who has had a degree of training and has some appreciation of what the offence involves, and when police subsequently come along, they will receive a briefing and take action from there. However, I think it is a fair point that there will be difficulties if an act takes place when police are not there. What this will not do is stop the responsibility on clubs to self-regulate. On a regular if not frequent basis, clubs will still ban people from their grounds.

2204. The Chairperson: You drew a comparison with shoplifting by saying that you are not there at the time of the offence. That is right. Shoplifting is very often carried out by an individual. Some hoodlums could have somebody killed or half dead by the time the police arrive on the scene. I would have thought that the two were marginally different, to put it mildly.

2205. Superintendent Noble: That is a fair comment. I was drawing the example on the fact that, if police are not there, there is still an opportunity for another party or agent to gather evidence with which to supply the police. Again, I return to my comments about the risk factor around matches, which is based on history, intelligence and the clubs' own grading for high-risk

matches. If police do not have a presence, we will be keeping a very close eye on what is going on.

2206. The Chairperson: I suspect that you cannot win this one. When something happens, the first question asked is often, "Where were the police?" You are supposed to be here, there and everywhere. People say that the police are never there when you need them. I think that is a bit unfair at times. I have had to call the police out to situations at a soccer pitch quite close to where I live where they could never have anticipated what was happening. When police arrived, a very short time after they were called, I might add, they quickly had the whole situation sorted out. However, before having to deal with a nasty situation in which two sets of fans may have a real go at each other, I suspect that you folk would have leaned on history and identified a potential cracker. There are times at matches when incidents are sparked by something stupid, serious things can happen and people can get injured. Then, of course, people will say that the police are never there when they are needed. You will have difficulty winning that one.

2207. Assistant Chief Constable Kerr: That is a conundrum of policing: you can never legislate completely for the unpredictable or the unforeseeable.

2208. Lord Browne: Would you agree that, over the past 10 years, the amount of disorder at sporting events, particularly at football matches, has declined and that, if disorder breaks out at a sporting event, particularly at a football match, there is enough existing legislation to deal with that, which allows for people to be prosecuted for throwing missiles if it causes harm or if there is drunken behaviour that could be viewed as disorderly behaviour? Do you agree that there is no need for more legislation to deal with such instances?

2209. Assistant Chief Constable Kerr: The answer to your first question is yes. The management of sports events and the self-regulation of such management has improved markedly and measurably over the past 10 years. That is undeniable.

2210. The answer to your second question is no. I do not agree with you about the powers that are available to us. I need to be candid about that. No police service is going to turn down additional powers. Just because we have a number of tools in the box does not mean that we are going to pull them out for every football match. We will use them discreetly, sensibly and proportionately, but it is always better to have the power there on the off chance that an offence is committed so that, if we are there, we can respond immediately. That is better than not having the power at all.

2211. Superintendent Noble: I will comment briefly on that. It is helpful to view the Bill in the context of the safety of sports grounds legislation. There has been a sea change in what sports grounds look like. The focus has moved from security at grounds to safety at grounds. Fences have come down and access is more open so that grounds are not only more welcoming but safer. There is a changing dynamic, which, potentially, raises vulnerabilities, because there are people who seek to abuse that. That is where the Bill deals with some of the gaps.

2212. The Chairperson: Let us imagine that a serious incident take place on a sports field at which the police are not present and the fact that such a serious incident has happened is blazed across the television screen. What do you do in a case such as that? Do you wait until you are informed about it, or do you take the initiative and say that it is something that you need to be investigating?

2213. Superintendent Noble: We take such instances on a case-by-case basis. Let us look at a classic example: in the vast majority of occasions in which two players decide to have a punch-up, they will neither make nor seek to make a complaint. If, however, something comes to our attention, we will talk the teams and the clubs. In fact, in advance of some matches, we give

some warnings to individuals whom we know can provoke members of the opposing team or their fans. The vast majority of such occasions, however, are never brought to the attention of the police. If we become aware of the occurrence of high-profile incidents, we will speak to the clubs and to the individuals concerned.

2214. The Chairperson: I am not talking about two players falling out on the pitch. If one has a go at the other, I suspect that the referee's report will go to the appropriate authority and the incident will be dealt with through those channels. I am talking about riots or mini-riots, which occur when there is no police presence, but which are reported on television at 5.05 pm. Would you intervene in a situation such as that and ask for a report of what went on?

2215. Assistant Chief Constable Kerr: We would, absolutely. Stephen will make some additional comments about that. We would, hopefully, be made aware of such an incident very quickly. Hopefully, we would have been aware of any tension in advance of the match, but even if we were not, we would respond very quickly. We have public order assets available throughout Northern Ireland that we can deploy to the scene of an incident. We would be made aware of an incident within minutes, and, no doubt, we would be asked to go in immediately. Stephen, do you want to add anything?

2216. Chief Superintendent Stephen Martin (Police Service of Northern Ireland): Mr Kerr has answered the question. If a situation such as that which you described were to occur in my area of responsibility, Chairperson, I would call myself in and I would start an investigation. There are things that we can do even in the absence of a complaint, such as binding people over to keep the peace. It is incumbent on the police, in a situation such as that which you described, to get involved and establish what happened. That can be done. There are times when the first we have heard about an incident is in the Sunday newspapers and, as a result, I have directed detectives and others to make enquiries on the Monday. There are parallels with what you talked about. We would absolutely call ourselves in when such incidents occur.

2217. The Chairperson: There was one match in particular, and I suspect that the police could not have anticipated that there was going to be an incursion when not only the players fell out, but the substitutes then felt that they should get involved and went charging on to lend their weight. The whole thing just ended up in a melee, and it was nothing short of a disgrace. I suspect that even the police could not have anticipated that.

2218. However, we are talking today about soccer matches, which is the very thing that the football bodies have a concern about. I have seen serious incidents at GAA matches with rioting or players falling out or getting overexcited. However, the soccer bodies feel that football is the prime target, and that rugby and other sports are not. They feel that this legislation is purely for football. What would you say to that?

2219. Assistant Chief Constable Kerr: I will ask Stephen to comment specifically on how we police Gaelic games, and we have a responsibility for that on his patch as well. To be entirely candid, and looking at the small number of incidents at rugby, Gaelic and football venues over the past number of years, it would be to the latter that we were called and were involved. However, the number is so small and infrequent that it is not a policing priority. Bearing in mind our other operational challenges, it would not feature at the top end of our concerns.

2220. Chief Superintendent Martin: We have a healthy relationship with the GAA, and the overwhelming majority of its matches go completely unpoliced. The Deputy Chairperson will know that last year's féile was in Derry — I had meetings with the secretary of the Ulster branch around that — and we facilitated issues about parking and worked with them on stewarding. GAA games largely go unpoliced; in fact, are virtually entirely unpoliced. That is also the case in my own area of Derry City, to be parochial.

2221. The Chairperson: You say that about the GAA, and I accept that, but could you not say that about football and rugby?

2222. Assistant Chief Constable Kerr: We could, yes.

2223. The Chairperson: Therefore, whether you talk about one of the three sporting organisations, the occasions when you have to intervene are seldom.

2224. Assistant Chief Constable Kerr: And minimal, and we hope that it continues that way. We think that the benefit of this legislation is that, on the occasions when we do have to intervene, we have the fullest range of powers to help us.

2225. The Chairperson: Is it not ironic that the one organisation that stepped right up to the plate on this issue was the IFA? It said that it probably did not think that the legislation was necessary, but had no problem with it, whereas it was the rugby representatives, I think, that asked what this was all about. There are problems associated with Ravenhill, not on the pitch at all but, as I suspect with a lot of grounds, with a bit of traffic management outside and things such as that. That is the only time that I see police there.

2226. I could be at either of two sporting grounds within five minutes of my front door. I never see the police there, and rightly so, other than maybe directing traffic, or sorting out things such as that. It has to be said of all the sporting organisations that, percentage wise over a year, the times when the police are involved would, I suspect, be very small. Sometimes we maybe think legislation for legislation's sake. Mr McNarry wants to ask a supplementary question on that point.

2227. Mr McNarry: When I was presented with those ideas, I thought that we had a major problem, and it is very reassuring to hear that we do not and that it is at a low level. However, I also take on board that maybe you are saying that the introduction of those new laws will add something to you if necessary.

2228. If those laws come in, will it increase costs for the clubs? In other words, if the clubs have to recognise that those new laws are in place, will that necessitate them saying, "There are new laws, and we need you to police them", and you then say, "That's fine, but we are going to have to charge you"? Will those laws necessitate an increased PSNI presence at sporting events? If so, will that, in turn, increase costs for the clubs concerned? We discussed your budget before you came into the meeting, so you had better answer carefully because we have not discussed the clubs' budget.

2229. The Chairperson: That sounds like a threat, doesn't it?

2230. Mr McNarry: I am sorry. It is not a threat at all. [Laughter.]

2231. Assistant Chief Constable Kerr: The answer is that it will not increase the necessity for policing at sporting events. I will ask Chris to talk in some detail about the specific sporting venue. Will it increase costs for the grounds? Frankly, I am not sure at this stage. It may require some upgrade to the infrastructure and training for marshals or stewards, so there may be some associated costs. I do not think that they will be prohibitive; they are not going to be massive, but it will not increase the police presence at grounds. Unless we think that there is a need to be present, we will not be there. Chris, is there anything you would like to add?

2232. Superintendent Noble: That covers the issue from my perspective. Such matches are policed. We attend matches at which there is a degree of risk, in other words, those at which

there is a need for us, because, we would, obviously, much rather be elsewhere doing neighbourhood policing and investigating crime in the community. Therefore, when members of the public engage with this legislation, it will be at those "risk" matches. However, there will also be a post-event opportunity for stewards and so on to report the evidence that they have gathered to police and for police to have additional opportunities. In my view, the deterrent factor in some of those offences is incredibly clear, not just for a club taking action that is quite difficult for it to enforce, but also for an individual potentially being brought before the courts for some of those offences.

2233. Mr McNarry: OK. Thank you for that, from which I take it that there is also a need for the clubs to look to their marshals if the legislation is enacted.

2234. The Chairperson: I think clubs are already doing that to a great extent.

2235. Mr McDevitt: I have a few questions about the fixed penalty notices, which I know that you generally welcome. Clause 69 will require the Department to issue guidance. How strongly do you feel about the need for guidance? Are there any areas of what is proposed that particularly concern you on which you wish to see guidance? If so, what are they?

2236. Assistant Chief Constable Kerr: Our principal concern is that we do not wish to take a police officer off the streets to administer the system. Therefore, the guidance should rationalise the offences and the conditions that apply to the penalty notices for disorder (PNDs) to make the process as simple as is practicable. We submitted some suggestions in our written response. The Department, in its interim guidance, talked about a slightly different standard in the financial threshold for shoplifting offences as opposed to criminal damage offences, and perhaps we could rationalise that.

2237. We also have look at the whole issue of PNDs in the context of a range of other diversionary options open to police and prosecutors. I would not want to see the situation arise of a person getting three or four fixed penalties in a rolling 12-month period. That would rather undermine their value in the first place. Apart from that, I would not get massively precious around the guidance that comes with such notices, so long as it as simple and as unbureaucratic as possible.

2238. The only other consequence that I should refer to around PNDs is the default consequentials that come with them. We have a significant number of fine defaulters in Northern Ireland, so every justice disposal, including PNDs, will come with a consequence if someone does not pay the bill. We already struggle with the strategic management of fine defaulters, and we are doing a lot of work with the Department to take that matter forward. England and Wales have a different approach through a fine collection agency that is separate to policing. Therefore, all the additional powers that come with the legislation will end up with an additional consequence for policing, because we execute the warrants if somebody defaults in Northern Ireland.

2239. Mr McDevitt: I may be wrong and Chairman, you may want to correct me, but I seem to remember that when officials gave evidence on this previously, the general expectation was that fixed penalty notices would not be issued on the street. They would be the sort of thing that people would come into the police station to have issued, but they would not be given to someone, for example, at a corner who would be asked for their name, address and a few other details that would be whacked down, parking or speeding fine-style. Assistant Chief Constable Kerr, you said that you did not want one of your officers taken off the street to do this, but the likely reality, as I read it, is that you are going to have to take someone off the street and put him or her into a station, and you will have to go through due process to administer fixed penalty notices.

2240. Assistant Chief Constable Kerr: That is true in part. They can be issued on the street or at a police station. They were overused in Great Britain for a whole host of reasons. When it comes to issuing a PND for somebody who is involved in a street-level disorder and may have quite a bit of drink taken, they are likely to rip it up and forget about it. That automatically increases the potential that they will not pay it, which could mean a fine default, a warrant being issued and us having to arrest them. That will not add any value to the criminal justice process. Some forces overused them for a range of offences for which, to be quite honest, they were not appropriate. They started to creep in to some quite serious theft offences and assault offences. We set out the criteria and the Department will set out the guidance very clearly as to how we use them here. They are part of a range of measures that we will use sensibly.

2241. Mr McDevitt: I return to another aspect of the sporting stuff. Throughout our scrutinising the Bill, I have been interested in the proposed series of offences about being caught drinking in vehicles that travel to or from regulated matches. Clause 44(5) states:

"A person who is drunk on a vehicle to which this section applies is guilty of an offence."

2242. If someone left from Newry to travel to the latter stages of an Ulster Championship GAA match in Clones, they would they exit and enter Northern Ireland a number of times. A bunch of guys, or women, for that matter, could go to the pub after the end of a game in Clones and drink perfectly legally and responsibly because they are not driving. They would be in the Republic but could then be stopped routinely in the North. How in God's name are we going to be sure that an overzealous police officer will not say that they are guilty of an offence under what will then be section 44 of the Justice Act 2011? They will be guilty of an offence just because they are drunk on a bus.

2243. Assistant Chief Constable Kerr: Just because they are guilty of an offence does not mean that we will investigate or prosecute. It is one of the clauses that perfectly illustrate the fact that it will have more of a deterrent value than an enforcement value. The fact that it is there does not mean that we will arrest or investigate somebody on the back of it. The legislation closely mirrors the public processions legislation as well, but we just hope that it will have a deterrent value. We will apply it with a bit of common sense. We will certainly not do anything in the circumstances that you talk about.

2244. Mr McDevitt: That begs the question: a deterrent from what? If it was travelling to a game, I would understand. I understand why, on public safety grounds, you do not want people arriving drunk at any type of major public event. However, if memory serves me right, the draft legislation refers to "to or from".

2245. Assistant Chief Constable Kerr: I would not die in a ditch over this issue either. Clearly, we do not want people arriving at any sporting fixture drunk, because there is a greater potential for disorder. On the way home, frankly, I am not massively interested, aside from the fact that it will be more difficult for the poor coach driver to have to manage the people on his or her bus or coach.

2246. The Chairperson: I know that you did not say it, but that is close to saying that it is not enforceable.

2247. Assistant Chief Constable Kerr: I am trying to give you an honest assessment. If somebody has a few tins of whatever their drink is, hides it under the seat of a bus and has it on the way home from a sporting fixture, is it likely that we will investigate that case? It would be highly unlikely. I will not say that we will never investigate, Chairman. You would be surprised if I did. It is one where the deterrent value outweighs the enforcement value.

2248. The Chairperson: But, you are quick to recognise that it would be difficult to enforce.

2249. Assistant Chief Constable Kerr: Yes.

2250. Mr McCartney: Thank you for your presentation. You made a number of observations about the policing and community safety partnerships. Will you elaborate on those, particularly about the definition of "police custody" and how you feel that that needs tightening up or clarified better?

2251. Assistant Chief Constable Kerr: I am more than happy to help you with that one. It is more a point of semantics than anything else. We have eight policing districts — we jumped slightly ahead of the review of public administration (RPA) changes. Stephen is one of our eight district commanders. We have 29 areas. The PCSPs would be analogous with our policing areas with an area commander at chief inspector level, not a district commander at chief superintendent level. It might seem like a minor semantic point, but, for the purposes of clarity, it might be as well to make that explicit in the legislation.

2252. Mr McCartney: Have you made that position known to the Department?

2253. Assistant Chief Constable Kerr: Yes.

2254. Mr McCartney: You made an observation about clause 21 and clause 22 and the policing committee. Will you elaborate on that?

2255. Assistant Chief Constable Kerr: The observation is very simple, as is the point that I made in my introductory comments. The PCSP can designate a range of agencies that it wants to help deal with the joint crime and antisocial behaviour plans. They are designed to reduce crime and enhance community safety, and a range of agencies can make a positive contribution. I named some of them at the outset, and they include agencies that work in education, health, local government, probation and housing.

2256. The important point is that we have been used to accountability under the Police (Northern Ireland) Act 2000, which created district policing partnerships, and we are comfortable with that. If we were to sign up to a joint delivery plan and, in that PCSP, the PSNI, through the policing committee, were the only organisation that were held to account statutorily for the delivery of what it promised to deliver, all the other agencies, some of which I named, could say that they would do x, y and z in the delivery plan but there would be no means by which local communities or local politicians in that PCSP could hold them to account for their clause 34 responsibilities. We think that that is wrong.

2257. Mr McCartney: My next question was going to be on clause 34. You made an observation about whether it is clear that the policing committee, rather than the wider committee, has the role of accountability. What is the practical way that that should be tightened up in the legislation?

2258. Assistant Chief Constable Kerr: The first five responsibilities of the PCSPs or the district policing and community safety partnerships (DPCSPs) are effectively a replication of section 16 of the Police Act, which deals with the functions and responsibilities of district policing partnerships. If the membership of PCSPs is to be increased, perhaps by including some of the other statutory agencies, and that larger group's remit includes responsibilities for police monitoring and police engagement with local communities, there is the risk that housing, education and a range of other agencies fixate on police accountability and the performance of policing because they replicate those responsibilities as part of the functions of the PCSP. The policing committee is a separate issue and is simply about monitoring police objectives and

acting as a forum for discussion of policing issues. DPP responsibilities, which are set out in section 16 of the Police Act, are the responsibility of the full PCSP.

2259. Mr McCartney: There seems to be a sense that the sports clauses do not introduce powers that you need but powers that you would like to have in case of certain situations. You made a number of observations about things that you feel are not in the legislation. Are you making the argument that the things that you would like to be included would be better placed in sport or in some other aspects of the legislation?

2260. Assistant Chief Constable Kerr: I do not know how feasible the time frames on that are. We have had a number of discussions with our departmental colleagues on what we would like to see on the second and third justice Bills. We have to be fairly sanguine about what realistically can be included in the first Bill. If there were any space to include any of the other issues that we name, we would be delighted if they could be included. I just do not know how feasible that is.

2261. Mr McCartney: Reference is made to a civil-based fine enforcement model. What difference would that make to policing work?

2262. Assistant Chief Constable Kerr: I made that point in response to Mr McDevitt's question. If non-court disposals are increased, there is always a risk that someone will default on it. We talked about penalty notices for disorders specifically. In England and Wales, the police service does not execute the warrants, while, in Northern Ireland, we do. In Northern Ireland, that was fine when we had 13,000 police officers and the operational capacity to do it. With 7,000 police officers and a number of other operational challenges, we do not have that operational capacity anymore. Up to one quarter of all fines that we execute are civil debts. It is not the role of policing to execute civil debts, whether someone has not paid for a BBC TV licence or not paid for a premium match on Sky TV. In the absence of any other body doing that, the order from the court is to the Police Service, and we are obliged by law to execute it.

2263. Mr McCartney: You said that the proposals on vulnerable and intimidated witnesses have the potential to enhance the rate of participation. Is there a monitoring process for that so that, if the legislation is enacted, you will be able to say in a year or 18 months that it resulted directly in more people coming forward to give evidence?

2264. Assistant Chief Constable Kerr: There absolutely will be, and I will let Alister touch on that. There is a higher attrition rate than there should be for certain types of offending and certain types of offences in the Northern Irish criminal justice system. The Bill will extend the special measures from young people to vulnerable adults. Those might not always be used, but it means that they can be used, particularly with certain types of offending.

2265. Superintendent Alister Wallace (Police Service of Northern Ireland): Absolutely. I think we will be working with the Public Prosecution Service on that to look at how many of the witnesses that we recommend to it go forward to court, and the reasons why they may not end up in court. There will be a way of monitoring that through the PPS monitoring system as it is at the moment.

2266. Mr O'Dowd: Thank you for your presentation. I listened carefully to your comments about — I am paraphrasing you now, Mr Kerr — parts of the sporting legislation not being absolutely necessary. I accept that may not have been the exact phrase you used, but you can certainly use your own terminology. I am concerned about giving powers to policing bodies unless they are absolutely necessary. I can understand the logic of a policing service taking powers that it is given and holding them in reserve in case it has to use them. I completely understand the logic of that — I do not agree with it, but I understand where you are coming from.

2267. I have a concern that we are making legislation for legislation's sake. Even on resources — there are nine legislators sitting in this room, four senior police officers, I do not know how many civil servants are sitting behind you, and the Committee staff. We have spent hours and hours on the sports clause alone. If we do not need the legislation, why are we bothering with it?

2268. Assistant Chief Constable Kerr: Let me comment on your observation, if that is the case. I am being entirely candid with you: no police service is going to turn down additional powers. We might use them infrequently — perhaps only once every number of years — but having the powers there in case we need them increases our tactical flexibility, and that is something that we, as senior police managers, will always be interested in. If you are also asking me for an honest assessment of whether I would die in a ditch if those powers were not included, the answer is that no, I would not.

2269. Chief Superintendent Martin: I will come back to yours and Mr McDevitt's point about the clause that deals with people going to and from an event in a vehicle drunk, and give you a parallel example. There are literally hundreds of Loyal Order parades in my district every year. Many of them go unpoliced, some of them go with very little policing, and then, on the Saturday closest to 12 August, the Apprentice Boys of Derry hold a major demonstration, and I deploy literally hundreds of police. At demonstrations such as that, we will work with the organisers in notifying the visiting clubs and bands that we will be enforcing legislation relating to alcohol under the Public Processions (Northern Ireland) Act 1998. Even though we do that, we still seize quite a bit of alcohol on those days. We are not in the position of having to do that for the hundreds of other parades.

2270. If the Republic of Ireland was playing Northern Ireland at Windsor Park, for example, I imagine that, depending on the prevailing environment, there could be quite a few tensions. The local police commander might want to work with the IFA and the Football Association of Ireland (FAI) to indicate that we would intend to enforce the legislation. As tensions would be high, it would be appropriate to do it under those circumstances. My colleague said that there are a lot of football grounds in his area, and that only one in five are policed. It is about having the availability, when appropriate, to dip into that toolbox and use it — in the example I gave, to use it with the IFA or FAI. At the moment, I do that in parallel with the Loyal Orders and it works positively. We use it when it is appropriate. It is about having it so that we can do it on the right occasions, Mr O'Dowd, as opposed to doing it all the time.

2271. Mr O'Dowd: I accept that argument; however, there are a couple of issues. First, I welcome your comments at the start about being glad to be here discussing local legislation with local legislators. It would be a bad start if we were to make legislation for legislation's sake and send a message to the Department of Justice that it should bring forward legislation and we will implement it, even though it is not necessary. We are all very busy people, both we as legislators and you in the police service. Let us make legislation where it is necessary.

2272. If a busload of supporters from either side turned up at Windsor Park and a number of them got off the bus drunk, you already have powers to say that they are not going any further, that you believe they are involved in disorderly behaviour or are drunk in a public place, and you can arrest them.

2273. Assistant Chief Constable Kerr: We do have powers under common law and public order legislation — of course we do. Sometimes, the additional powers are just about crossing the t's and dotting the i's to make sure that we have additional powers there should we need them. I take you're overarching point, but it is for legislators to decide what is included in legislation, and we police as a result of that.

2274. Mr O'Dowd: We will move on to another element of the Bill.

2275. Mr McNarry: Before you do that, John, did I hear a suggestion from the PSNI that the solution is to do away with the Parades Commission and to leave the matter in their good hands? [Laughter.]

2276. The Chairperson: I think that that is stretching the point.

2277. Mr McCartney: In Derry.

2278. Mr McNarry: Is Christmas over?

2279. Mr O'Dowd: You have made me lose my train of thought. [Laughter.]

2280. Mr McNarry: Sorry, John, it was not intentional. [Laughter.]

2281. Mr O'Dowd: You commented on the structure of the new community safety partnerships and the community's role in policing in and making society safer. I totally agree with everything you said about the fact that dealing with antisocial behaviour and low-level crime is not simply a policing role but a community issue. However, I am concerned that, rather than fulfilling its role of going into communities where crime is being committed and dealing with criminals, the police has got itself into a place from which it now sees itself as a facilitator for community involvement. In the meantime, the community has to build a community infrastructure. You seem to go to the stage of building community infrastructure, but sometimes without dealing with ongoing low-level criminal activity and antisocial behaviour.

2282. Assistant Chief Constable Kerr: You will not be surprised to know that I disagree philosophically with that assessment. The proof of the pudding is the fact that recorded crime in Northern Ireland is at a 12-year low. I was honest in saying that the partnerships do not always work, but they are having an impact on crime. When we go in, we have to achieve a balance between enforcement, support and facilitating, but we do not always get that balance right. However, we are absolutely clear that when we need to enforce, as a law enforcement agency, we are very comfortable doing so. However, that should be the answer of last, as opposed to first, resort, particularly when it comes to young peoples' involvement in some of those issues, so that we do no criminalise them unnecessarily.

2283. Mr O'Dowd: This comment goes back to the comments around the sporting laws. There is a provision in the Bill to deal with knife crime in schools. Based on anecdotal evidence, I do not think that we have a serious problem with knife crime in schools. I know that you want the power, but is there a specific reason why you would support that?

2284. Assistant Chief Constable Kerr: I have to refer you to the earlier answer. In fact, let me answer your question in two parts. Is it a specific problem? No. I could probably count on one hand the number of specifically knife-related incidents in schools in Northern Ireland in the past number of years. Certainly, we have knife-related crime, including robberies and assaults, and a lot of domestic murders involve knives or sharp instruments, but we do not have a problem on the scale of that in England and Wales. Some big English cities have a problem, certainly London, for example. However, this is another issue about which society says that the protection of young people in schools is so important that it wants legislation as a deterrent and to ensure that what is acceptable and not acceptable around schools is absolutely clear. The deterrent value of the clause means that it is worth putting including it.

2285. Mr Givan: How would you like the other bodies in the community safety partnerships treated in whatever area they are designated?

2286. Assistant Chief Constable Kerr: The other bodies that are designated will have two responsibilities. First, we will all have to sign up to joint community safety plans. In other words, we are a lot more effective when we work together, rather than disparately. That point was has been well made, and most people around the table would probably agree. However, I think that that responsibility must be accompanied by accountability, which is why I would like to see the statutory duty in clause 34 enshrined in the accountability arrangements of the PCSPs. Therefore, if a number of bodies sit down and say that they have a problem in a particular neighbourhood, and they agree to do x, y and z about it, the community and local politicians will have a right to ask them whether they did what they said they would do and to have a look at what they actually delivered. At it stands, people would have to go to the policing committee, and the PSNI is the only body that can have a finger point at it publicly. I take the point about the court of public opinion; however, I am sorry, it needs to be a wee bit more robust than that.

2287. Mr Givan: As the legislation is framed, bodies will be designated to sit on the wider partnerships. However, your fear is that the Housing Executive or the Probation Board, for example, can point out issues that they want to address, but you go to the policing committee and it is said that you have failed here or there.

2288. Assistant Chief Constable Kerr: That is exactly it.

2289. Mr Givan: So, the others set the agenda, but you guys are held to account.

2290. Assistant Chief Constable Kerr: That is exactly our concern.

2291. The Chairperson: I want to go back to what Mr O'Dowd said earlier when he outlined the number of senior police officers, civil servants, MLAs and Assembly staff who were concentrating their minds on the Justice Bill. I bumped into the Attorney General today in the corridor, and he has offered his services, in particular, to come along and deal with clause 34. I am sure that, Mr O'Dowd, you would find that useful.

2292. Mr O'Dowd: He may as well; everybody else has been here. [Laughter.]

2293. Mr McNarry: Do we get immunity from prosecution when he comes here? [Laughter.]

2294. The Chairperson: He feels that he can come to enlighten the Committee, and I think that we should take him up on that offer.

2295. Gentlemen, that seems to be all the questions that we have for you. Thank you very much for your briefing today and for taking our questions. I wish you all the best.

2296. The departmental officials will now come to the table and deal with the issues that you folk raised and the questions that have been asked. You are free to go or to retire to the Public Gallery.

2297. Mr McDevitt: Mr Chairman, you mentioned the possibility that the Attorney General may be available to speak to us. If he were to come, I suspect that my colleagues would be interested in hearing an update of his opinion as to the clause on solicitor advocates, in which I understand he had taken a particular interest.

2298. The Chairperson: It is funny that you should say that. When he stopped me, I thought about mentioning that to him, because it was on the tip of my tongue. However, I decided that if he is coming to the Committee, we can raise that with him when he gets here.

2299. Mr McDevitt: Fair enough, Chairman. Thank you very much.

2300. The Chairperson: We welcome to the table Mr Gareth Johnston, head of the justice strategy division; David Hughes, deputy director of policing and strategy; Janice Smiley, head of the criminal policy unit; and Tom Haire, the Justice Bill manager. Folks, although you were perhaps not here for all the previous session, you certainly heard most of it. If you are missing any information, I am sure that members will remind you of it. Gareth, if you could respond to what was said and, then, perhaps some questions will arise from what you have to say.

2301. Mr Gareth Johnston (Department of Justice): We will cover the various areas that were discussed, including the policing and community safety partnerships, sports law, fixed penalty notices and knife crime in schools. Maybe we can start with the police and community safety partnerships, because I know that there is welcome support for clause 34 but some questions around the definition of a police district. I will turn to my colleague David Hughes, who will comment on those points.

2302. Mr David Hughes (Department of Justice): The question around the references to police districts was also raised during the evidence session in the Long Gallery. The legislation refers to police districts, or what the police know as area command units, simply because that is the way in which the Police (Northern Ireland) Act 2000 refers to those units. There has to be consistency between this legislation and the Police Act. Therefore, what, in legislation, is called a police district, is what the police call an area command unit for the sake of their business.

2303. A point was made around a couple of the functions that are listed in clause 21. Subsection 1(d) and 1(e), which detail the two functions that are, at present, DPP functions around engagement and acting as a forum for discussion. Although the provision uses the terminology of the existing legislation around DPPs, it is worth reminding the Committee that CSPs also have an engagement function, although that is not set out in legislation in the same way. That engagement function, interface with the community and provision of a place for discussion around the issues of policing and community safety is the principal overlap between the functions of DPPs and CSPs. So, it is important that that is something that is done within the full PCSPs and not just the policing committee. That is something that extends beyond the policing function but is relevant to the whole range of the remit and functions of the new PCSPs. That is why those are not restricted functions that are kept to the policing committee.

2304. There were a number of points around accountability. The accountability arrangement is, probably fairly, described as asymmetrical, whereby the police are held to account at a local level in a way that other statutory agencies are not.

2305. For the sake of clarity, it is worth making the point that, when the PSNI is monitored by the policing committees of the PCSPs, they are done so against their local policing plan rather than the police elements of the partnership plan, which is an annual plan that covers all the strategic priorities for the district. The police are monitored against the commander's local policing plan. I do not want to confuse things by making the point that those are two quite distinct plans, because in many cases, although they are distinct, the plans need not be completely separate. The police's local policing plan should entirely tally with the thrust of the partnership plan. So, although the police are held to account in a different way, they are not held to account against the whole of the partnership plan, which is the responsibility of the full partnership; they are held to account against the local policing plan.

2306. As well as the points that assistant chief constable Kerr made about the value of clause 34, one of the reasons why the model that is being presented for PCSPs is attractive is the membership of each partnership, which is a mixture of councillors, independent members, statutory organisations, voluntary organisations and members from across the piece. That

membership means that, within the same partnership, people are bringing skills and are making contributions that are relevant to their positions.

2307. The question of whether the partnership should be accountable to the electorate and to elected members can be answered by saying that each partnership will include seven, eight or nine elected members. One of the contributions of those members will be to ensure that the partnership, in all its parts, is delivering against what it is committed to. That is one of the values of having a mixed membership. So, that internal accountability is factored into the design of the partnership. Those are the main points.

2308. Mr Givan: So, the partnership creates its overall plan?

2309. Mr Hughes: Yes, it does.

2310. Mr Givan: Who is held to account for the delivery, or non-delivery, of the overall plan?

2311. Mr Hughes: Overall, with the measurement of the outcomes of that plan, there has to be a degree of accountability to the Policing Board and to the Department of Justice, which will be funding the partnerships. Principally, there is internal accountability to ensure delivery: there are the different elements within the partnership that should ensure delivery.

2312. Mr Givan: But, the council identifies the problems and hands them over to this body, which then sets about creating the mechanisms for addressing them.

2313. Mr Hughes: No; the partnership itself identifies the issues that it wants to address. That is done through engagement with the community and through what the individual members, and the organisations or councils that they represent, bring to the partnership. So, the partnership itself set the priorities and the strategic direction for the district.

2314. There is also the indication of the overall regional strategic priorities that are coming from the board and from the Department. There is accountability for the use of public funds that will ultimately go back to the Department and to the board, but the partnership itself ensures the delivery against what it set out to do.

2315. Mr Givan: You mentioned that there will be seven, eight or nine councillors on each partnership to ensure accountability in a democratic sense. However, what you did not say was that councillors will be a minority of the membership. By the including councillors in the partnerships, albeit as a minority, you give a veneer of the partnerships having democratic accountability when they actually do not. That is my concern when it comes to who will ultimately be held to account.

2316. Mr Hughes: To create partnerships in which the councillors were in the majority would limit the number of other partners that could be included; otherwise they would be enormous. The balance of the different kinds of members who can contribute needs to be ensured. We have had to step through arguments on both sides as to what the balance should be, and having three distinct categories is probably the best way forward.

2317. Mr Johnston: I will now move on to sports law and the question that the Committee asked about why we are all here and why these various well-paid individuals are paying so much attention to this issue. Part of the reason is that the Assembly resolved in 2007 that the provisions should be introduced in Northern Ireland. That is part of the background to why the work was done. However, the police have indicated that they believe that it is better that the provisions are there —

2318. The Chairperson: It never was your idea in the first place, Mr Johnston.

2319. Mr Johnston: They have indicated that the provisions have value. Although they would propose to use them discreetly and sensibly, there is a significant deterrence value in them and an option to signal, in collaboration with the sports, that they are going to be enforced in a situation where there are likely to be problems or there is a risk of problems. Therefore, we appreciate the police's welcome of the powers in general.

2320. The police confirmed that they do not expect additional resource requirements of any significance for the clubs. They feel that those requirements are likely to be minimal. As we said before, if clubs are implementing the safety of sports grounds legislation properly and have the stewarding and other arrangements in place that come from that legislation, there should be no additional costs. There may be a bit of extra training but no significant additional costs for implementing the legislation.

2321. In the course of the discussion on sports law, the point about bringing alcohol from outside the jurisdiction has come up again and, for example, whether it would outlaw someone buying a couple of bottles of whisky in Scotland and bringing them home as a Christmas present. Regardless of whether our law outlaws that, we have checked current Scottish provision, and it has a ban on alcohol in vehicles coming back from sporting events as well as going to them. Therefore, you could already be stopped in Scotland for that.

2322. Mr A Maginness: Is that a warning? [Laughter.]

2323. Mr Johnston: I get the sense from the police that they will not hurry to stop people in those situations, which I hope is what we communicated before, but there are situations in which insisting on alcohol provisions could be useful, and we emphasise that.

2324. Another issue that came up with the Committee and on which the police have commented was about how things can be enforced and prosecutions brought if the police were not there. Some examples were given: the police are already working with private security firms in respect of shoplifting, and they feel that they could work in the same way with stewards. If a prosecution needed to be brought, the evidence that stewards had gathered could be passed to the police and on to the Public Prosecution Service.

2325. Finally, on sports law, the police noted that there were one or two things that were not in the legislation that they would have welcomed, including the extraterritorial enforcement of football banning orders. That is something that we have been exploring the competence of. We still aim to bring an amendment, which would mean that, if someone from Northern Ireland who was subject to a football banning order proposed to go to a football match in Scotland, they could be stopped from doing so. We are finalising those issues with lawyers.

2326. Mr McDevitt: I am not quite giving up on clause 44(1), which relates to going to or coming from a game. The bit that is beginning to exercise me most is clause 44(5), which makes it an offence to be drunk on a vehicle. Therefore, it is not about being in possession of alcohol. Schedule 3 contains the list of matches to which this could apply. It points out that this could apply to Gaelic and rugby matches anywhere on the island of Ireland, so long as there is northern participation. For argument's sake, Ireland has won the Six Nations or the Grand Slam in Dublin, and a bunch of rugby fans from the North have a few beers, which is not illegal in the South. They get on a chartered bus; they are drunk, but behaving perfectly and trying to remember the details of the game. When they reach the border, they go from being perfectly legal and within the law to breaking the law. According to schedule 3, the same applies with a Gaelic game, so long as a northern team is participating. If you wanted to be sympathetic to the police argument, and I am not saying that I want to be particularly so, I could understand the

public order argument. What is the policy merit of making such a provision for coming home from a game?

2327. Mr Johnston: There can, sometimes, be difficulties for bus operators and drivers when there is a significant number of drunk people in a confined space, even if they have been rooting for the same team. The provision gives bus operators the backing of the criminal law.

2328. Mr McDevitt: But, there is ample legislation covering that. It is Mr O'Dowd's point, but there is any number of pieces of legislation relating to drunk and disorderly behaviour that bus operators could avail themselves of, north or south of the border.

2329. Mr Johnston: There is nothing that says that you cannot bring alcohol onto a bus in those circumstances.

2330. Mr McDevitt: I am questioning clause 44(5), which is about an individual being drunk in a vehicle. Let us park the idea of clause 44(4), which deals with being in possession of intoxicating liquor, and let us talk about clause 44(5), which relates to a person who is drunk in a vehicle. An individual could have been drinking in the pub, which is legal, and got in the vehicle for a nice sleep all the way home. This states that they will be breaking the law.

2331. Mr Johnston: It comes back to the point that the police were making. There can be circumstances in which you would want to tell fellas to take it easy when they are in the pub, and that they can do what they want to do when they get home. If the Committee has views on that provision, I am happy to discuss them with the Minister. The thinking is that it is about providing a background of legislation that the police can use sensibly.

2332. Mr McDevitt: I take your point of information about the laws in Scotland. I will not labour it too much, but because schedule 3 extends the remit of the legislation to sporting events outside of the jurisdiction, such as rugby, Gaelic or, for that matter, international football games or Setanta Cup games in the Republic, which take place regularly, the legislation is saying to people that they are fine until they reach Ravensdale. When they get there, they will have to stop off and sober up in a hurry, because they will go from behaving perfectly legally to breaking the law. I cannot see the policy merits in that, but I have not been able to see them since day one.

2333. The Chairperson: We will keep working at it.

2334. Mr Johnston: It is a preventative power, and it is about supporting bus operators and bus drivers in being able to tell people not to bring alcohol onto the bus. If the Committee wants to express views on that clause, we will be happy to hear them.

2335. The police were commenting on the guidance that will be issued on fixed penalty notices. There was one query relating to our proposal to set different limits for shoplifting and criminal damage. We proposed that there would be a higher limit for criminal damage. The explanation is that there has been public concern about applying fixed penalty notices to shoplifting, and that has been reflected in our consultation exercises. We thought that it was better to start gently and to set a lower level. That can be kept under review. It will be in the guidance, and it will be easy to change it after consultation with the Committee. We are happy to continue to take the police views on board. The purpose of the guidance is very much to ensure that the value of fixed penalties notices is not undermined. Keeping it simple would make our job easier, and we are very happy to take up the point that was made by the police.

2336. There was a question about whether fixed penalty notices would add to the problem of fine default. On this issue, my interpretation differs a little from the assistant chief constable's.

Given that we are dealing with cases that would otherwise go to court and, most likely, attract fines, and because we are in a situation in which people agree to fixed penalty notices, we do not think that such notices will contribute materially to the problem of fine default. However, Will made some very important points about the need to review how we deal with fine default. We are some way along that journey, but we still have further to go. The point about civilian enforcement is being actively pursued, and we are doing a joint workshop with the police, the Courts and Tribunals Service and others in the very near future to explore the potential for civilian enforcement. Therefore, I am in accord with those points, even if I disagree slightly with how the problem might be exacerbated.

2337. Finally, I will move on to knife crime in schools. The purpose of the amendment is to bring the offence of knife possession in schools into line with all the other knife-crime offences, which were amended in 2008. It will not make a huge change to the law, but there is a deterrent value. In the past couple of years, there have been a number of initiatives. For example, we created a drama programme in conjunction with a range of schools that was entitled 'Knives Ruin Lives'. That challenged young people about the thought that some have that they might be safer if they carry a knife. It was very successful, and we had excellent feedback from teachers. That is another area in which the criminal law underpins other efforts that we might make to get the messages home that knives are dangerous, to discourage young people from carrying them and to encourage them to tell someone in a position of responsibility if they know that a friend is carrying a knife. I am happy to take any queries from the Committee.

2338. The Chairperson: The police said that knife crime in schools is not a worrying issue.

2339. Mr Johnston: We need to keep emphasising that the number of knife crimes in Northern Ireland is relatively low and have been relatively stable over the past five or six years. However, we feel that it is important that we continue to keep that message in front of young people.

2340. The Chairperson: Yes. I am sure that you have the facts and figures to back that up. However, there have been a number of very serious knife crimes in my own town. In the past year, there was at least one fatality, and there was a fatality the year before that. Therefore, although you say that it is not on the increase, when I look at my own town, I sometimes feel that it maybe is on the increase. However, I know that you have to take a holistic view.

2341. Mr Johnston: We look at Northern Ireland overall. In 2008, we doubled the penalties that were available for knife crime to try to send a very strong message about that. As I said, we have been working with schools and others. The consultation on the community safety strategy, which will be launched shortly, is another opportunity to hear what communities are saying about knife crime and decide how we can respond to it.

2342. The Chairperson: We now have a movement of people right across Europe. Maybe other parts of Europe do not look at knife crime in the same context that we do. Do we have any understanding of what happens in other countries in Europe and how they deal with the issues such as knife crime?

2343. Mr Johnston: I am not aware of any research on that specific point. However, during the consultation on the community safety strategy, if groups of people who have come from other countries highlight issues and outline their understanding of the laws on knife crime, we will be very happy to deal with them.

2344. Mr McDevitt: I want to get Mr Johnston's specific view on a comment that assistant chief constable Kerr made about penalty notices. He said quite clearly that he did not envisage that they would ever need to take resources off the street. I raised my recollection of very early evidence when, if memory serves me right, you envisaged something a little different and

thought that those notices would probably require a visit to a station to be properly administered. Will you comment on that?

2345. Mr Johnston: After listening to Mr Kerr's response, I am not sure whether there is any distance between us.

2346. Ms Janice Smiley (Department of Justice): The PSNI looked at the Metropolitan model, where around 40% of tickets were issued on street and 60% were issued in the station. A lot of the offences were around disorder. I think that assistant chief constable Kerr said that it would not be appropriate to deal with such offences, including intoxication, on the street, and that is reflected in the figures.

2347. Mr McDevitt: You are not overly concerned about that?

2348. Mr Johnston: No. We have been talking to police about that, and we will continue to do so.

2349. The Chairperson: Is that all your points, Mr Johnston?

2350. Mr Johnston: That covers everything that we wanted to cover.

2351. The Chairperson: No one else is intimating that they wish to ask a further question, so we will move on. I thank the officials for their briefing.

11 January 2011

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Paul Givan
Mr Conall McDevitt
Mr David McNarry
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Mr Tom Haire
Mr Gareth Johnston Department of Justice
Ms Janice Smiley

2352. The Chairperson (Lord Morrow): We will now receive a briefing on the Justice Bill equality impact assessment (EQIA). I understand that the officials will now outline the key points and issues regarding. The relevant paper is included in members' packs.

2353. Mr Gareth Johnston (Department of Justice): Chairman, it says here that I should wish the Committee a very happy new year and say how pleased I am to be back before it today; I am sure that that is true. [Laughter.]

2354. We are presenting our analysis of the equality impacts of the Justice Bill, of our consultation exercise and of its outcome. As the Chairperson said, members have a summary

paper that has been prepared for the Committee alongside the full report on the responses, which the Minister is preparing for publication. With me today are Tom Haire and Janice Smiley, with whom the Committee will be familiar. Tom is Bill manager, and Janice is policy lead for much of the offender-based provisions in the Bill. They will contribute as we answer questions.

2355. The paper provides an overview of the responses received and our response to the points made. It does that in two ways: first, by identifying the overarching points made by a number of respondents; and, secondly, by taking a more detailed look at the comments on individual parts of the provisions. It covers all of the matters that were being considered for inclusion in the Bill as the EQIA was being prepared, including those that in the end did not make it into the draft Bill for various reasons. It comments on the proposals for a single jurisdiction, which we hope to bring back and on the proposals for case initiation reform and Public Prosecution Service (PPS) summonses, which were not included because of concerns about competence. It also covers solicitor rights of audience, court funds, and sex offender improvements, which were also included, and, as you know, we are making efforts to get those into the Bill by amendment.

2356. As the paper indicates, a number of respondents took the opportunity to comment on more general policy matters as well as on the specific equality aspects. For the purposes of completing this, the report on responses deals with all the policy and equality points that were raised. However, given that the policy points were considered in our various presentations to the Committee before Christmas, I will focus on the equality side in this short introduction.

2357. The equality consultation began on 12 August and was to run up to 4 November, which was the date when the Bill moved in to its Committee Stage. However, that was extended to 24 November to accommodate some later returns. The consultation, therefore, ran for 15 weeks in total.

2358. The consultation was built on nine major policy consultations that preceded the equality exercise, and which laid the groundwork for the Bill. We had 14 responses to the equality consultation from statutory bodies, the voluntary sector, and one or two at council and DPP level.

2359. Some welcomed the appraisal, agreed with the analysis and commended the Department for the overall aims of the Bill. Some recognised the planned benefits of the Bill to the justice system and for those who came into contact with it, be they victims, witnesses or defendants, and there was recognition of the intention of ensuring that moneys available were spent wisely.

2360. However, others raised issues, and, as the paper indicates, four broad themes emerged: the assessment process, timing issues, our assessment conclusions — how we approached mitigation — and, finally, around data availability. I will deal with each of those in turn.

2361. Comments on the assessment process included concern that our regard for section 75 of the Northern Ireland Act 1998 had not been adequate. There were also concerns about a previous challenge to the Northern Ireland Office's anti-social behaviour order (ASBO) legislation. There were comments about screening versus full impact assessment, and about the Department's overall equality scheme.

2362. We believe that we have had regard for section 75 requirements, and that lessons were learnt from the previous challenge to the NIO's ASBO legislation. Although that challenge was struck down, the ASBO legislation is very much still law. However, we consulted fully on our policy proposals, screened those proposals and consulted on each of the screenings. We briefed the Committee on the proposals, and obtained Executive approval. We published all our reports on responses, and, as a belt-and-braces exercise, we re-consulted on the Bill as a whole.

2363. One criticism of the ASBO exercise was the short, perhaps six-week, policy consultation. For this Bill, most of the policy proposals have been consulted on twice, a total in most cases of up to 24 weeks, and in some cases, six months. That was across those two consultation periods. So, in process terms, and that is where most of the points under that heading came from, we believe that we had full regard to the section 75 duties.

2364. There were comments about the equality scheme. There were queries about whether we were operating under the previous NIO's equality scheme or the Department of Justice's scheme. As a new Department, we are creating our own equality scheme, and that is part of a wider exercise. The Equality Commission issued its revised guidance on section 75 in May 2010. As part of that, all Northern Ireland Civil Service Departments were asked to follow a process to develop a new equality scheme by May 2011.

2365. We in the Department of Justice have our draft scheme ready for consultation. We are doing an audit of existing practices, developing an action plan, and we intend to consult on the scheme very shortly. It is expected that it will be brought to the Committee before the consultation process is launched in February.

2366. The revised scheme is being developed in line with the model scheme template, which was issued by the Equality Commission in November. So, that is where we are on the new Department's equality scheme, but I assure the Committee that all our policy screenings were completed in accordance with the Equality Commission guidance.

2367. Concerns about timing included that the consultation was closing on the equality impacts after the Bill had been introduced, and about whether that meant that our policies had been settled. There were also concerns about the parallel consultations that were under way, which suggested that perhaps the Bill needed to be delayed pending the outcome of those exercises. On the introduction of the Bill and policy settlement, we contend that the policies are not settled until the Committee and the Assembly conclude on them, so this stage of sharing and discussing proposals with the Committee, including the consideration of equality issues, is still crucial to the policy development stage.

2368. I think the parallel consultations that the consultee was referring to were the likes of consultations on offender management and the review of youth justice, both of which are getting under way. The Department's view is that the current proposals have significance for our justice system in service delivery and should therefore be proceeded with. The parallel consultations would not conflict with nor would they be compromised by the policy areas that are addressed in the Bill. Therefore, we feel that we are justified in moving on with what is in the Bill, while recognising that there are more proposals out for consultation that will come to the Committee further down the line.

2369. I will move to the area of assessment, conclusions and mitigation. There were comments on the impact of criminal law on young males. There were concerns about our use of a term in the equality impact assessment, when we said that offenders were "self-selecting". The claim was made that we implied they were not entitled to equality and human rights protections, which I do not think was the case, but there was concern around that and the apparent absence of mitigating measures or alternative policies.

2370. Much of criminal law ends up affecting young males more than other groups, because they are the group in which most offending takes place. We recognise that, and a great deal of effort is put in across the system in addressing that through crime prevention, diversion, reintegration and rehabilitation. We will be taking that further in future, particularly through a new focus on reducing offending, which is, at its core, about addressing the causative factors

around offending. We will come back to the Committee with a discussion document on a reducing offending strategy next month, with the aim of starting consultation in March.

2371. The Bill includes moves to take a more proportionate response to offending. Fixed penalties, for example, will mean that many who offend for a first time or non-habitually do not end up with the restrictions of a criminal record. In retrospect, the term "self-selecting" that we used was probably sloppy drafting. We recognise the complexities of individuals' backgrounds and how they impact on offending. That does not mean that it is unjustified to take account of the different degrees of choice that are involved when people offend, but I hope that we can continue to demonstrate to the Committee that these issues are recognised and are getting more attention than ever.

2372. Finally, there were concerns about limited availability of data on the justice system and also a couple of comments on children and the Bill. There were concerns that we should have included more data on children and that we did not produce a child-accessible document. Where data are available, we have used it in our assessments. We published the data that we used, which included survey material, research reports, data that we routinely collect from police, prisons, and so on.

2373. We are making progress on a specific issue, which is on equity monitoring in police custody suites. That has begun, and the challenge is to get sufficient coverage of what can only be a voluntary system to draw statistically reliable conclusions and police are taking a range of measures to that end.

2374. We can stress that we produced a child-friendly consultation document for the EQIA, but, that having been said, very little of this Bill will apply to children. Indeed, a number of the offender-based provisions were specifically excluded from under 18s.

2375. That deals with the four broad heading under which responses came, but the Committee will rightly ask what we have done in response to the consultation comments made, whether on the equality issues or more generally on policy. Therefore, for the Committee, the key aspect of our report may be our undertakings in response to the contributions that were made, and they are in section 20 of the response document.

2376. I stress that, before we published that document, equality considerations had already influenced the Bill in various ways. They influenced how the proposals applied to children and young people; the rate of the offender levy and how it would be deducted from prison earnings; and the remission of that levy in certain circumstances. They had also influenced making specific reference to sectarian chanting, which we aim to do through an amendment. Equality considerations affected other issues in the Bill as well as leading to a bigger emphasis being put on training in the use of fixed penalties.

2377. In the report on responses, we give a series of short-, medium- and longer-term undertakings in light of comments made and the checks and balances required, which, as I said, are summed up in section 20. Those involve commitments to consultation on various rules, regulations, codes of practice and published guidance, including regulations in respect of the enforcement of the offender levy, a code of practice on policing and community safety partnerships (PCSPs), guidance on the use of fixed penalty notices, a code of practice on conditional cautions and rules about eligibility for free legal aid. Alongside that, we are committed to continuing to develop our data systems and to monitoring the Bill's impact on implementations. We hope that Criminal Justice Inspection will play a continuing and important role in the long term.

2378. In conclusion, the consultation exercise responses challenged some of our thinking and ensured that we took stock of our proposals. The Minister has been firmly committed to ensuring that the Bill's provisions comply with section 75. We are now presenting to and keen to work with the Committee to satisfy its members of our equality assessments, and, where adjustments are required, the Minister is keen to assist wherever possible.

2379. The Chairperson: Thank you, Mr Johnston. Your report states that there were a total of 14 respondents. Is that figure not meagre? How many were consulted?

2380. Mr Johnston: Yes. About 300 would have been e-mailed. It needs to be seen in the context that we had consulted individually on each of the policy areas and there had been good responses across the board. The consultation input that we have had to the Bill as a whole satisfies me that we have had a good and comprehensive range of inputs. Yes, I might have expected more responses to the EQIA, but we have worked with the responses that we got.

2381. The Chairperson: That sometimes makes me wonder about the resources that are poured into this type of consultation to get 14 out of 300 responses. I suspect all those consultees were sent papers directly. We are past the stage of general advertisements being placed inviting anyone to respond. We now go directly to them, don't we?

2382. Mr Johnston: The process is that we e-mail people to let them know that a papers is available on the website, and there is a link there to allow people to access it, or, on request, we will send them a hard copy.

2383. The Chairperson: So, the other 286 consultees had nothing to say?

2384. Mr Johnston: I like to think that the other 286 were completely satisfied with what we proposed, but I am sure that that is wishful thinking. However, as I said, there were many other opportunities for people to express views during the genesis of the Bill.

2385. The Chairperson: In these austere times, when we are all being told that it is time that we did things differently and were more effective, efficient and prudent, we might want to look at this area. I am not advocating that we throw away consultation, but there is a clear message that it needs to be done differently.

2386. Mr Johnston: I would welcome that for two reasons. First, we are starting a piece of work to provide guidance to criminal justice organisations on good practice in consultation. That was a recommendation from the Criminal Justice Inspection that we are taking up. If the Committee wants to contribute to that process, I would welcome that very much. The second reason is that we have taken steps towards different sorts of consultation. The traditional consultation paper was probably right in the current circumstances. However, look at what we have done in some of the policy proposals, such as alternatives to prosecution, where there was an opportunity for a workshop on the women's strategy to look, among other things, at how the proposals would impact on women offenders. We have taken steps to look at different, and maybe more effective, ways of consulting. I would welcome the Committee's contribution to that thinking.

2387. Ms Ní Chuilín: Gareth, you have answered some of the questions I was going to ask, particularly with your comments about self-selecting. That phrase jumped out at me, and it probably jumped out at the people who responded.

2388. Mr Johnston: We will not use that phrase again.

2389. Ms Ní Chuilín: It almost read as though people make their own decisions and, therefore, are not entitled to any rights; that was almost the shorthand translation. Your explanation was reassuring.

2390. You raised the whole issue of parallel consultations, which I think may have contributed to the poor response. There were parallel consultations alongside the full EQIA, and it is almost like death by consultation. People may pick the areas they want to respond to but do not have the opportunity to respond en bloc. Whatever was introduced first, whether it was the Bill or the EQIA, that did not happen. We have that on record anyway. How many consultations do you envisage the Department being involved in by May? You will consult on the Department's equality scheme. What else did you say will be out for consultation?

2391. Mr Johnston: The discussion document on reducing offending will be out for consultation. There will also be consultation on making community sentences more effective, which we are due to brief the Committee on in a couple of weeks.

2392. Ms Ní Chuilín: Youth justice?

2393. Mr Johnston: Yes; the youth justice review and the community safety strategy. I mention these without having a list in front of me. If it would be helpful for us to —

2394. The Chairperson: Prison review; you can put that one in.

2395. Mr Johnston: The prison review is clearly ongoing. There is a lot happening.

2396. The Chairperson: The review of access to justice; you can put that one in too.

2397. Mr Johnston: Access to justice is another; thanks to the Committee Clerk for that one.

2398. If there are better ways of consulting overall and pulling different themes together, I am sure that we, as a Department, will be happy to think about those. It is a busy time in the Department. Obviously, the Minister has come into a new Department with a big agenda. We have done a lot of preparatory work over the past eight months, and it is starting to hit the streets in the form of consultation documents.

2399. Ms Ní Chuilín: It is an issue regardless of where people sit and differences in their approaches to justice. We had the NIO, which, by and large, was invisible and had no public face. Now, we have the Department of Justice and a growing list of consultation documents. I believe in consultation, but a gap has arisen in the way in which people feed into it; the EQIA is an example of that. There has been more talk about the equality impact assessment than there have been people responding to it. Therefore, maybe you want to take a leaf out of our book and hold a Long Gallery event and invite people and do themes, because I thought the Long Gallery event was helpful. Even though people were up and down like a fiddler's elbow, there were still opportunities to feed into the consultation. There is significant work involved and fundamental views. I am concerned that we will not get the best out of these opportunities if things are not done differently. Consultation will happen, but it could be done differently, not excluding costs.

2400. Mr Johnston: I am happy to consider that and to see how we could bring some of the themes together and use other methods alongside the traditional ones to help people to express their views. From the Department's perspective, I agree that the Long Gallery event was helpful and useful. In a short time, we got through a lot of people who were heard by the Committee and the Department.

2401. The Chairperson: It should be remembered that only one person felt restrained at the event.

2402. Ms Ní Chuilín: I would not like to see him if he did not feel restrained. He was the one who was up and down like a fiddler's elbow.

2403. The Chairperson: I do not want to comment on every individual, but he said that he felt restrained.

2404. Ms Ní Chuilín: He did not look it.

2405. Mr McNarry: I have a brief question on solicitor advocates. You outlined the reason why the proposal was not included in the draft Bill that was presented to the Assembly. You are now saying that the Department is continuing to work on revising the provisions to address competence issues and to preserve the policy. You say that, subject to the competence issues being resolved, the intention is to introduce the provisions in the Bill by way of an amendment. When can the Committee expect to see that amendment?

2406. Mr Johnston: As soon as possible. There has been intensive work going on, particularly over the past couple of days, and it is all still in discussion. The aim is still to bring an amendment that will address those competence issues but will still allow for solicitor advocacy in the higher courts to the Committee in time for it to be considered properly.

2407. Mr McNarry: I am grateful to hear that because I am sure that other members will have picked up from other sources the potential for a legal challenge, because that was changed. Are you suggesting to me that that potential has now evaporated?

2408. Mr Johnston: The Department always had doubts about the reasons for the legal challenge that the Law Society has had to bring.

2409. The Chairperson: In what respect?

2410. Mr Johnston: It has doubts about the necessity of it, because we are taking steps to try to ensure that something can be brought on solicitor advocacy. The Law Society has decided to pursue that, but the work on trying to formulate a clause that can be brought to the Committee is continuing intensively.

2411. Mr McNarry: The Law Society is reputed to have spent a substantial amount of money on this matter, and it might not be too pleased to hear that it may not have been necessary. It must have thought that it was necessary, otherwise it would not have spent the money on getting an opposing legal view.

2412. Mr Johnston: The Department and the Minister have been in contact with the society through all this, and we are continuing to liaise with it.

2413. Mr McNarry: I am sorry to press you, but I am not satisfied with the words "as soon as possible". Will it be next week or the week after? I am worried about the passage of the Bill.

2414. Mr Johnston: We have discussed with the Clerk when amendments need to be signalled to the Committee. The aim is to adhere to that timetable, but there are still issues to be resolved. When I checked this morning, solicitor advocates were still being discussed, so I cannot commit to a date. However, we will let the Committee know as soon as we can.

2415. Mr McNarry: I will ask you the next time that I see you then.

2416. The Chairperson: That seems to be it. Thank you and your team for coming here today and briefing us.

13 January 2011

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Thomas Buchanan
Sir Reg Empey
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Mr Tom Haire Mr Gareth Johnston Mr Chris Matthews Ms Janice Smiley	Department of Justice

2417. The Chairperson (Lord Morrow): We now begin informal clause-by-clause scrutiny of the Justice Bill. I remind members that this part of the meeting will be recorded by Hansard. I advise members that a summary paper covering the evidence received on Parts 1 and 2 of the Bill has been provided to assist the Committee. It was circulated yesterday, and further copies are available if any member needs one. Members' Bill folders already contain all of the relevant documents, and, as agreed at the meeting of Tuesday 11 January, departmental officials will be at the table to provide further information if that is required. I welcome back the team, which has been with us virtually all day. They will comment or clarify if a member wishes them to do so.

2418. We will start with clause 1, and I am ready to invite views and comments from members. If members wish the officials to comment, we will bring them in as appropriate. We have been working towards this for a long time, and we knew that this day would come. It is open to anyone who wishes to comment on it to do so. Is there anything in clause 1 that members feel anything about, strongly or otherwise? I can see some members nodding that they are reasonably content with the clause, but that may not be the consensus view.

2419. Mr O'Dowd: I do not know whether it would speed matters up, but we would like to return to the clauses to give a definitive position. That does not mean that we should not discuss each of the clauses today, but, at this stage, our silence does not mean agreement.

2420. The Chairperson: I suspect that that might be the case around the table. Members may feel that they are going into a trap and that there is no way out because they are committing to a position. If it is any comfort, I can tell you that you are not doing that today, because we are taking general comments, suggestions and views, but we are not asking members to take a definitive position. If members were to say that, in general, they were reasonably happy with

clause 1, that would not prevent them from saying at a later date that they had put it through the scrutiny net again and that the position was not what it was previously. That might help members to relax.

2421. Sir Reg Empey: We do not want to simply get into another debate. At what point will we be signing off on the clauses? That debate is different from a debate on the clause in principle. I am not quite sure whether that is what John was saying. Was he happy to talk about it in principle? Are there other clauses that he or others are happy to sign off on today, or are we all in the same boat? I am not quite clear about that.

2422. The Chairperson: That is a fair enough point. I will let members speak for themselves. If they feel that there are issues on which they want to sign off, that is all right. You know the final date for completion of our scrutiny of the Bill, and, therefore, everything must happen between now and then.

2423. Sir Reg Empey: I was not criticising; I was just looking for clarification.

2424. The Chairperson: I understand that. Sir Reg, I do not know whether, as a member of the Committee, you want to sign off on clause 1 and move on. That would not stop you from coming back at a later date and saying, "Hold on a minute; I signed off on clause 1 in general, but, having looked at it again, I now recognise that I cannot sign off on a certain issue."

2425. Sir Reg Empey: All that I will say is that perhaps I would be happy to finish clause 1 today. However, equally, there might be other clauses that I would not be happy to finish. I am not trying to be restrictive; I am just trying to get clarification on when we will go live on taking decisions on clauses as opposed to simply teasing them out further. I seek only that clarification. I am not trying to restrict anyone's room for manoeuvre, because we would be in the same boat on some clauses.

2426. The Chairperson: Mr O'Dowd, do you wish to revisit your comments? We have heard what you have said —

2427. Mr O'Dowd: I did not take umbrage at what Reg said. We are not in a position to sign off on any clauses today. Further discussion is required internally with the party. Obviously, we have to complete that by the time that the Committee needs to complete its services. All of that will be in hand.

2428. The Chairperson: But nothing in clause 1 jumps out at you as something that your party feels strongly against at this particular time?

2429. Mr O'Dowd: There is nothing on which I want to comment.

2430. Mr A Maginness: If there is an issue with any of those clauses, we should raise it now. That is really what the process is about. If there are no issues, we should remain silent and get on with business.

2431. The Chairperson: Yes. That is why officials are here. They may be able to assist us on matters of clarification or provide further explanation or detail.

2432. Mr A Maginness: That is fair enough.

2433. The Chairperson: Let us move on. I do not hear anyone shouting at me about clause 1. I understand the way in which that is coming at me. It is not being signed off in detail by any means.

2434. We will move on. Does anyone want to raise an issue? Members have a paper that contains views from written submissions and oral evidence, the departmental response and options. We will move on to page 3. Does any member want to raise an issue, comment or ask officials for further explanation on anything on that page? If not, we will move on to page 4.

2435. Mr McCartney: Have officials told us that there is no additional cost for the administration of levies?

2436. Mr Johnston: Implementation of the levy system would involve capital costs for changes to computers, for which we have budgeted £100,000 as a one-off cost. We believe that ongoing costs can be assimilated into ordinary administration. When the system is set up and someone is fined, the fine money will go in one direction and the levy money will go in the other. That should happen automatically as part of the process.

2437. The Chairperson: Does that clarify the issue?

2438. Mr McCartney: Yes.

2439. The Chairperson: Clause 1 takes us right from page 1 to page 7 of the paper. If I do not hear anyone call, I will move on without assuming anything. Perhaps that is a better way to do it. Is that all right?

2440. That takes us to clause 2, which deals with the enforcement and treatment of the offender levy that has been imposed by a court. Does any member have a question or require clarification on clause 2?

2441. Sir Reg Empey: The only issue is the general concern about ability to pay, particularly for women, and that was raised previously by Professor McWilliams and during evidence from the Women's Support Network and others. Chairman, you may recall that that theme seemed to run through some of the submissions. That issue seems to be of concern, particularly with regard to female offenders.

2442. The Chairperson: Mr Johnston, in its response, the Department said that:

"The Department will be carefully considering the timetable for the introduction of the remaining 5 of eligible disposals".

2443. Can you be more precise about that or tell us anything more about that issue?

2444. Mr Johnston: We feel that taking a phased approach to implementation is sensible, rather than trying to bring everything in at once. Implementing the levy for fines and prison earnings is reasonably straightforward. However, we want to implement the levy for community sentences at a second stage as there is currently no arrangement for any money to change hands and, therefore, one would need to be put in place.

2445. I will turn to Janice, who can perhaps give you a sense of when in the programme that may happen.

2446. Ms Janice Smiley (Department of Justice): We are looking to programme that in with other work that is currently ongoing on fine default more generally and to ameliorate the impacts of fine default. That work is looking at issues such as extending the supervised activity order and the deduction of benefits or attachment of earnings. Those provisions will dovetail, and the implementation of the provisions with those measures will mean that we then have an alternative to default to custody in relation to those particular areas and for fines more generally, as well as the ability to collect the levy at the same time.

2447. The Chairperson: We are moving to clause 3, "Deduction of offender levy imposed by court from prisoner's earnings". Do members have any questions on that? We heard something about this earlier, and perhaps members are content with the information that they have and feel that, when they come to make a definitive decision on the clause, they will be able to do so.

2448. Clause 4 is entitled "Offender levy imposed by court: other supplementary provisions". Do members have any queries on clause 4?

2449. The Department's response states that:

"The provision which prevents the court from setting a default period of imprisonment for non-payment of the levy was considered appropriate in recognition that it is not part of the sentence of the offence, but a separate levy based on the disposal, which acknowledges the impact of offending behaviour on victims."

2450. Do you think that there is now a possibility that there will be confusion that that is, in fact, part of the sentence?

2451. Mr Johnston: In parallel with implementation of the levy there would be a lot of publicity about its introduction, which would explain to the public at large, as well as to people who may offend, that it is being introduced, what it is about and what it is going to do. As discussed, we have dealt with the fact that something might be said in court about a fine being imposed and, in addition, a levy being imposed. Therefore, efforts will be made to make sure that people understand what the levy is about and what its nature is.

2452. Ms Smiley: A levy will be imposed and announced by a judge formally. A sentence will be given for the offence, and the judge will then say that a levy is being imposed at the appropriate level as set out in legislation. It will be quite clear in court. Prosecutors will be aware of the levy, and awareness will be raised among defence counsel and the judiciary as this is introduced. There should be fairly wide awareness quite early on, as fines are a common disposal and will be introduced first. That will become the common understanding.

2453. Ms Ní Chuilín: So, in the event of fine default, the levy will be imposed first. If someone did not pay their fine and went to jail, they would pay the levy first and then be sentenced for default of a fine. That seems as though it is two terms in jail for one thing.

2454. Ms Smiley: The fine will be imposed if that is the disposal of the court, and, because a court fine has been set, the levy will be set at a level of £15. If someone starts to make payment by part-payment, any money that is received goes first towards discharging the levy and whatever else is paid then goes towards discharging the fine. If someone were to stop paying or were not to pay at all, the person would be in default of the fine, and the court would have to take action and decide whether it would treat the default as a default to custody or a default to a supervised activity order. If the final conclusion of the court were that the person should be committed to custody, the levy would be discharged, because that is the ultimate outcome of non-payment of a financial order. Nothing further can be done in that regard, so it would be discharged at that point if it has not already been paid through part-payments.

2455. Ms Ní Chuilín: Does discharged mean that there is an acceptance that the levy cannot be paid?

2456. Ms Smiley: Yes, in the same way as the court accepts that the fine cannot be paid.

2457. The Chairperson: Does that come first?

2458. Ms Smiley: The levy comes from any moneys received. It is common in the courts that any money that is received from individuals for fines and compensation orders that are imposed goes to compensation orders first in a payment priority order. It will go to direct victim compensation, then to the levy, the fine itself and any court costs that there may be for a departmental prosecution. There is a tiered effect to how it is distributed.

2459. The Chairperson: What if the person cannot pay?

2460. Ms Smiley: If an individual could not pay for any of those issues, there would be a default for fines, which is a warrant to custody. They would not be defaulted to custody for not paying the levy; they would be defaulted because of the fine that had been imposed.

2461. Mr Johnston: In other words, you end up in prison only once if you do not pay and if nothing else works.

2462. The Chairperson: Clause 5 is entitled "Offender levy on certain penalties". Do members have any queries or points of clarification on that issue? Are members content? When I say content, I mean that you simply understand. I do not hear anything from anyone.

2463. Clause 6 deals with the amount of the offender levy. No members have indicated that they require clarification on any issues.

2464. Clause 7 is entitled "Eligibility for special measures: age of child witnesses". Do members have any issues that they wish to to raise? Again, no member wishes to raise an issue.

2465. Mr Johnston, concern was expressed about 18-year-olds who have a lower mental age. We keep talking about mental health in prisons and in courts, and the issue seems to come up quite often. Your paper states:

"It was considered that processes should be put in place to support adults with hidden communication difficulties."

2466. How do you identify those hidden communication difficulties if they are so obscure?

2467. Mr Matthews: It is a challenge for the court to identify when someone may need extra support to communicate. We touched on autism, which could be one hidden difficulty, and dyslexia is another. It comes down to an assessment being made of the witness in an individual case and to the judge examining whether the person's evidence would be compromised by whatever problem they may have. That may be down to submissions put forward by whoever is representing the witness and to any assessment that the court makes of the person's ability to give evidence. It is a very tricky area to assess, and it is one that really requires assessment on a case-by-case basis.

2468. Ms Ní Chuilín: Are you saying that the judge makes the assessment rather than an expert?

2469. Mr Matthews: No; the judge makes the decision about whether special measures are warranted. That will be done on the basis of the advice that the judge requires to make that decision. The way that the 1999 Order and the provisions are worded gives them quite wide latitude, because the issue comes down to whether or not witnesses can answer questions and give evidence rather than to specifying disabilities.

2470. The Chairperson: We are continually told, and I have little doubt that it is true, that there are people in prison who should really be in a hospital because of their mental capacity. Prison is not the right place for them, and it is not where they should be. Will this provision address that sort of issue?

2471. Mr Matthews: No, it will not.

2472. Mr Johnston: There is already provision for people who have mental health difficulties that cannot be catered for in prison to be transferred to hospital. The Department regularly issues warrants to transfer people. Obviously, there are still lots of people in prison who have extensive mental health needs, and we recognise that. However, we have fairly regular movement between prison and hospital for those who have been convicted.

2473. Mr Matthews: It is also probably worth pointing out that the whole area of competence to plead is being examined by the Department of Justice and the Department of Health, Social Services and Public Safety with a view to bringing forward provisions sometime this year or possibly next year.

2474. The Chairperson: Clause 8 is entitled "Special measures directions for child witnesses". Do members have any points that they want clarified or any questions for officials? Is it all clear enough?

2475. Mr O'Dowd: With these clauses, I take it that, in making assessments, the judge will seek access to expert witnesses.

2476. Mr Matthews: Yes. Healthcare professionals will give them whatever assessment they require to determine whether support is needed. In this case, the clause is giving more agency back to young witnesses so that they do not have to necessarily follow what we call the primary rule, which funnels them into giving evidence via a video link. That is subject to certain safeguards, such as the judge making an assessment based on expert advice on whether or not the person is capable of making a decision. So, the protection of the witness is still in there, but it also gives older young witnesses, if I can put it that way, a bit more say in the process so that they can give evidence directly if they want to.

2477. Mr O'Dowd: I take it that that is for witnesses for both the defence and the prosecution.

2478. Mr Johnston: Yes.

2479. The Chairperson: Clause 10 is entitled "Evidence by live link: presence of supporter". Does anyone want clarification on any issues?

2480. Clause 11 is entitled "Video-recorded evidence in chief: supplementary testimony". Are there any issues that members want further clarification on today?

2481. Mr O'Dowd: Can a defence counsel challenge the introduction of such evidence?

2482. Mr Johnston: The introduction of any evidence can be challenged under the usual arrangements on evidence.

2483. Mr Matthews: The judge would probably hear submissions from either side on whether it should be admitted, but there is no specific mechanism in this clause to challenge the admission of such evidence.

2484. Mr O'Dowd: And there is no specific mechanism to bar a challenge.

2485. Mr Johnston: Exactly; they would have to rely on the ordinary mechanisms available in court.

2486. The Chairperson: We are moving on to clause 12, which deals with the examination of the accused through an intermediary. I draw members' attention to the following line in their paper:

"The Law Society considers that the Justice Committee may wish to make a similar recommendation".

2487. Members can read what the society is saying there about issuing guidance. It is entirely up to the Committee to decide whether to take direction from the Law Society. However, that is one issue that members will want to be up for one way or another when we come back to make a decision. That is all that I am saying; I am not trying to tell members what they should decide. However, I am saying that they should take a long hard look at the issue.

2488. Mr McDevitt: If memory serves me right, during the oral evidence session, some concern was expressed by professionals who act as intermediaries at other stages in the criminal justice system that the qualifications of such an individual were pretty vague in the Bill. Has the Department given that further consideration?

2489. Mr Matthews: We wrote to the Committee a couple of times about the general support outside the courtroom and about our plans for training intermediaries. There is an existing training course that we propose to fund. That training is of a very high standard. In fact, it is probably of a higher standard than that which is available elsewhere. For example, the appropriate adult scheme probably has a higher threshold. Essentially, intermediaries are akin to an interpreter. In taking on that role, intermediaries also take on certain responsibilities of the court, and if they are found guilty of breaching those responsibilities, they are liable for a custodial sentence. Therefore, an intermediary is actually a very serious position, and it is not one with which we are comfortable without people being properly trained.

2490. Mr McDevitt: A further issue arose about continuity. If someone has been identified as needing an appropriate adult and that adult has been with the person from the time that they were first brought into custody, would it be right or wrong for that adult to continue with that person? If it is right, should the Bill make specific provision for that? If it is wrong, why is that?

2491. Mr Matthews: We looked into the appropriate adult scheme, the legislative basis for which is courtesy of the Police and Criminal Evidence Act 1984 (PACE). Essentially, when someone aged under 17 is in custody and is being interviewed by the police, the scheme kicks in automatically and that individual gets an appropriate adult. That is also the case for someone with mental health issues. In fact, it is even the case for individuals suspected of being under 17. There is no agency involved; it just happens, and the individual concerned gets an appropriate adult. In those circumstances, the appropriate adult is meant to advocate for the individual, as a solicitor would do, and to help them to get through the process and to understand its consequences. When MindWise gave its evidence, it mentioned similar points about the idea of advocacy right across the criminal justice system and continuity of care.

2492. As I said, an intermediary is meant to be a neutral observer and an interlocutor between the court and the individual. There would be an issue, however, if there had been any sort of history, because that would leave the adult open to accusations of bias from either side, as it could be argued that they had advocated for the individual up to that point. For example, the adult may be aware of things that were said under privilege and at interviews. That could then put them in a very difficult position, because, if the individual says something during questioning in court that the adult, from previous experience, knows or suspects not to be true, they have to flag that up. Therefore, the adult is put in a very difficult position, whereas someone who is completely neutral will just faithfully report back to the court what they have been told. The advocacy side of things makes sense. However, given those particular circumstances, neutrality in the courtroom is probably safer for both parties in the interests of justice.

2493. The Chairperson: Mr Matthews, on that particular point, when this was discussed previously, a Committee member expressed the view that there was some disconnect, as everyone who had an appropriate adult with them in a police station was not automatically eligible to have an intermediary when their case came to court. Rather, it was for the judge to make a decision based on the interests of justice.

2494. Mr Matthews: That is right. The appropriate adult scheme kicks in automatically if someone is under the age of 17 or if the police even suspect that someone has mental health issues. As to whether an intermediary is required, the question is about whether or not the person is capable of giving evidence themselves. It could be that someone is under 17 years old, but quite capable of understanding the questions put to them by a judge. Therefore, that person would not necessarily need an intermediary, but would have automatically got an appropriate adult.

2495. The Chairperson: I could take you to a man in my town, and, every time that you met him, you would suspect that he is drunk. He is not; that is just the way he is because of a stroke or something. Everybody who meets that man thinks that he is drunk. I know that he is not, because I have known him for 30 years. He is anything but drunk; he is quite sane and sensible and sober. However, I guarantee that, if you meet him, you will say that that man is drunk.

2496. Mr Johnston: If that impacted on his communication ability, he may well be the sort of person who a court would feel qualified for an intermediary. However, the point that we want to make is that that is different, and very specific, from the appropriate adult scheme that is extended to everybody who is under a certain age or who may, it seems in the police station, have a mental health issue.

2497. Mr McDevitt: Both are important points. However, my questions are on the previous point about continuity. Did you look at experience in other jurisdictions? Is there precedent for continuity? Is there precedent for clear separation at the point at which someone walks into a courtroom?

2498. Mr Matthews: We are not aware of any other jurisdiction that has advocacy. However, we are aware that that is under discussion with certain voluntary bodies here. At the minute, we do not have any funding. I guess that, because Northern Ireland has single justice agencies, it is perhaps easier to do that sort of thing here than it would be anywhere else.

2499. The Chairperson: We will move on to clause 13, which is about the age of child complainants.

2500. Sir Reg Empey: There seems to be a lot of confusion about age limits. A young person can be sent into war to kill and be killed, we have the age of sexual consent and the age of criminal responsibility. People can get married at a certain age, and we are looking at perhaps lowering

the voting age and various other things. There seems to be a lot of confusion around age and the definition of a child. Therefore, I wonder what the precise rationale for this clause is.

2501. Mr Matthews: Essentially, it mirrors clause 7, which raises the age limit for accessibility to special measures. We did that with both those clauses because that matches the European Convention on the Rights of the Child, which says that anyone under the age of 18 is a child. That is why we have done this. As to the wider societal issues, that is —

2502. Sir Reg Empey: I am just making a point. I am right in saying that that does not apply to soldiers.

2503. Mr Johnston: I think that people can join the army before the age of 18.

2504. It depends on the particular considerations. This is about protections for young people who are giving evidence in court. The considerations for that may be different from those involved in voting, employment or the military.

2505. Sir Reg Empey: I would regard sending somebody into battle as being further up the scale than going into court, but that is just a personal opinion. However, it does seem that we have not quite got our heads around the issue of age. I am not making a big issue of it, Chairman. I am just flagging up that we appear, as a society, to have some contradictions.

2506. Mr Johnston: We may well do. For our purposes, we looked at the UN Convention as our best guide on criminal proceedings.

2507. The Chairperson: OK. We will move on Part 2 of the Bill, which is on live links. Clause 14 deals with live links for patients who are detained in hospital. Does anyone have any comment or observation to make or question to ask on that issue? Clause 15 deals with live links for preliminary hearings in the High Court. No specific views have been raised since the last time that we visited that issue. I do not hear anything different today. Clause 16 deals with live links at preliminary hearings on appeals to the County Court.

2508. Mr O'Dowd: I want to raise the concern that was highlighted by the Human Rights Commission about the right of an appellant to appear or give written consent for a live link. What is the Department's view on that?

2509. Mr Tom Haire (Department of Justice): The position is that consent is built into any appeals or sentencing matters. The issue here is the preliminary hearing that leads to a sentencing. It is correct to say that there is no consent in the text of the Bill. However, it provides the opportunity for parties to make representations.

2510. Mr O'Dowd: Are you, therefore, suggesting that, under the legislation that is before us, the appellant does have a right to appear?

2511. Mr Haire: When an appeal makes its way to the County Court, there is a substantive requirement for consent for that appeal. If there will be a live link, there must be consent for it.

2512. Mr O'Dowd: OK. I will return to that issue.

2513. The Chairperson: Clause 17 deals with live links in sentencing hearings on appeals to the County Court. Clause 18 deals with live links in the Court of Appeal. Clause 19 deals with live link direction for vulnerable accused. Include Youth had something to say on that.

2514. Mr McDevitt: It suggested a pilot.

2515. The Chairperson: Mr Johnston, do you or your team want to comment on the recommendation that that be piloted in order to assess its effectiveness? Have you views on that, gentlemen?

2516. Mr Johnston: We do not have the advantage of the papers that you have. Perhaps, you could just remind me —

2517. Mr McDevitt: I do not mind passing it over to you, Mr Johnston. I will get into trouble with the Committee Clerk for passing over a Committee paper.

2518. The Chairperson: Whose side are you on?

2519. Include Youth suggests that there be a pilot to test and assess the effectiveness of that.

2520. Mr Haire: I know that live links and special measures are monitored by the Courts and Tribunals Service. Clause 19, effectively, maps physical disability and disorder into the vulnerable accused and expands to allow for physical problems in court.

2521. Mr Matthews: To a certain extent, paragraph 12 of the Criminal Evidence (Northern Ireland) Order 1999 already covers some of what Include Youth suggests. However, we want to check that and get back to you with specific details.

2522. The Chairperson: That is fair enough. Perhaps, we are at a slight advantage in that respect. As we will not sign off clauses today, it must be reasonable for you to be able to come back with your views on that.

2523. Mr Johnston: We can go back and check that.

2524. Mr McDevitt: They did return the papers, Mr Chairman. [Laughter.]

2525. The Chairperson: You keep those papers to yourself, Mr McDevitt.

2526. That was not so quick, members. The only downside to it is that we have not made any decisions, and we recognise that. Looking at this whole thing from a timetabling perspective, I am doubtful whether we can go past next week without coming to decisions. There is a considerable amount of things to be done. We could propose amendments to any of the clauses if we decide to, but it would be much better if we tell the Minister that it is our view to do that and why. It would be better if he agrees with us and does it, because the expertise is all there. However, if we feel strongly about it and he feels strongly in the opposite direction, obviously we will go our separate ways and fight that battle elsewhere. However, if the Committee agrees on amendments, we should pass them on to the Department and the Minister, and ask him to incorporate them into the Bill. Are members clear on that?

2527. Looking at the timing of the whole thing, I see that there is a fair volume of work to be done by officials. I am talking about Committee officials; the Department is very capable of looking after itself. We need to give them a heads-up, but I cannot see it going past next Thursday's meeting at the latest. Indeed, Tuesday's would be preferable, but certainly by Thursday's meeting we should come in and make decisions. That will give every group around the table an opportunity to go back to discuss it with their colleagues, put it through the grinder and see what it comes out like at the other end.

2528. Sir Reg Empey: Just to get clarification on that: we pleaded the O'Dowd protocol here — [Laughter.]

2529. The Chairperson: Well, we did not adopt it, but go ahead.

2530. Sir Reg Empey: We have had a run through Parts 1 and 2, so, basically, that has been done on a without-prejudice basis. Are you saying that we will come back to those two Parts next week with the objective of signing off on them, or are you saying that we will move on to everything else in sign-off mode?

2531. The Chairperson: No. Again, if the Committee feels strongly about it, we can do otherwise, but we have had this dummy run, so we should come back and do the work for real on what we have done here, and the Committee can sign off on that. The only thing that you have to decide is whether to do that on Tuesday or Thursday. That is the bit of latitude that you can have.

2532. Mr McDevitt: I would have thought that we could have a stab at that on Tuesday. I do not sense that there is a huge debate on these two Parts. There is other stuff that we will want to debate at some length.

2533. The Chairperson: I am inclined to agree with you, but I cannot look into the souls or minds of people and know what they are really thinking.

2534. Sir Reg Empey: Why not?

2535. The Chairperson: Well, I do not claim those powers. [Laughter.] Members must come out and say where they stand.

2536. Mr McCartney: This is on a general principle, but there is a particular point. We are getting clear evidence that taking the levy from sentenced prisoners may be in contravention of the European Charter. How do we satisfy ourselves that we are not in breach of that, so that in two or three years' time we do not find ourselves losing a case in the European Court of Human Rights (ECHR) because we were not duly diligent?

2537. Mr Johnston: Obviously, the Bill has been through our own lawyers and through the Attorney General, and they have provided that assurance in that respect. I take considerable assurance from what the Human Rights Commission representatives were saying earlier about it being important that the European prison rules are taken into account. As I said, we have very carefully taken those into account, so that gives me confidence in respect of any prisoner standing a challenge.

2538. Mr McCartney: I understand that, but if a case goes to the European Court of Human Rights, somewhere along the line, people will give that same advice. This is without prejudice, but looking at the right to vote, I am sure that, in every part of the legislation, from the prison rules to the Supreme Court in Britain, they would say that prisoners do not have the right —

2539. Ms Smiley: The measure is in place other jurisdictions in Europe and across the world, and we are not aware of any challenges it through the ECHR. Although these provisions are for our own jurisdiction, they are fairly similar to those elsewhere, which have not been subject to challenge. In the international research that we did, we did not find evidence of any particular challenge in regard to prisoners.

2540. The Chairperson: The Committee can take legal advice on that, but asking to have it back for next Tuesday might be pushing it. We could probably have it back for next Thursday.

2541. Mr McCartney: One of the reasons why I asked is that, in response to issues about the deductions from prisoners' earnings, the comparison was drawn with the £1 deducted for the television. However that is a voluntary process that a prisoner enters into; it is not compulsory for a prisoner to have a television, so they do not have to pay £1 if they do not want to. You could end up with a scenario in which the money is wrongly taken off a certain prisoner. For example, it could be a week until his or her release. I am trying to satisfy myself that we are not doing something for which we will be found to be in breach of something in two or three years' time.

2542. Mr Johnston: We have looked at what happens in other jurisdictions, but the amount that we are proposing to take out is just £1 a week. Prison earnings vary from between £6 and £20, so we are talking about only a small proportion of what is earned in any week being taken out compulsorily.

2543. The Chairperson: There is another distinct advantage of having the Minister making these changes. If we propose an amendment, it is probable, or at least possible, that consequential amendments would have to be proposed. Therefore, it would be better for the Department and the Minister to apply themselves to that, because then they could propose the necessary consequential amendments that would result from our activities. We are talking about next Thursday.

2544. Sir Reg Empey: To clarify: will delegations be expected to come here next Thursday to sign off on Parts 1 and 2?

2545. The Chairperson: Yes, that is basically it.

2546. Mr Givan: Today is the dummy run, but I take it that we will not move to formal clause-by-clause scrutiny when we move to Parts 3 and 4. I take it that we will have a chance to come back to those Parts?

2547. The Chairperson: After what we have discussed this afternoon, we will be putting them to bed next week. We cannot go through this exercise on this section again, because time is not on our side

2548. Ms Ní Chuilín: Are we going to try to do the same thing for the other sections?

2549. The Chairperson: Yes, we will try to.

2550. Ms Ní Chuilín: So, we will be having preliminary discussions one week and going into clause-by-clause scrutiny the following week?

2551. The Committee Clerk: The normal process is for the Committee to work through the clauses and reach a decision. Sometimes, the Committee may want to hold a clause back because it is waiting for a draft amendment or some further information. In such cases, the Committee will work through the Bill and try to agree a position on each clause. At the end of that process is the formal clause-by-clause scrutiny, which is when the formal question is put on each clause. The formal question put will be based on the decisions that were made previously. The formal clause-by-clause scrutiny is your final sign-off, but the question that will be put will be based on the decisions that were made earlier. The formal clause-by-clause scrutiny usually happens fairly rapidly; you just work through each clause and put the question that was agreed, which will either be that the Committee is content with the clause or that the Committee has agreed to amend the clause. So, there would be that final stage before the end of the process. Before that, the Committee should reach a position on each clause. We will set out the position on each clause in a paper as we work through the Bill so that the Committee is very clear on

what it agreed previously. The question is about whether you want to start the process on the clauses on Tuesday or Thursday.

2552. The Chairperson: I think it should be done on Thursday. Is that agreed?

Members indicated assent.

2553. Mr McCartney: On Tuesday we will just continue with the first read of the next Parts of the Bill?

2554. The Committee Clerk: If that is what the Committee is content with. We will issue the papers as soon as we can pull them together.

2555. The Chairperson: Yes. I thank the officials again for their time.

13 January 2011

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Thomas Buchanan
Sir Reg Empey
Mr Alban Maginness
Mr Conall McDevitt
Mr David McNarry
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Ms Ann Jemphrey Professor Monica McWilliams Mr Ciarán Ó Maoláin	Northern Ireland Human Rights Commission
Mr Tom Haire Mr Gareth Johnston Mr Chris Matthews Ms Janice Smiley	Department of Justice

2556. The Chairperson (Lord Morrow): I welcome Professor Monica McWilliams, who is the chief commissioner. You are very welcome. I welcome Ciarán Ó Maoláin, who is head of legal services, policy and research, and Ann Jemphrey, who is a policy worker. Professor McWilliams, you have 10 minutes, but if you want 11, I do not think that we will fall out. After that, perhaps you will be good enough to take questions from members.

2557. Professor Monica McWilliams (Northern Ireland Human Rights Commission): I hope that I do not take up your 10 minutes. We welcome the opportunity to contribute our views on the Justice Bill. As you know from our submissions, we did not feel the need to address all aspects and all clauses. We concentrated on the areas on which we have recently submitted evidence to the Department and, indeed, before devolution, to the Northern Ireland Office.

2558. The discussion during the previous evidence session was very interesting in that one of the submissions dealt with a strategy for the management of offenders and, in particular, we have been focused on a strategy for the management of woman offenders. On the discussion on corporate manslaughter, we gave evidence on one occasion to the Coroner's Court following a pattern of suicides by women. In the case of Roseanne Irvine, which, if I recall properly, was the fourth death, the coroner wrote to the Secretary of State — this occurred prior to devolution — outlining the pattern of those deaths and asking the Prison Service to respond.

2559. Following April 2011, we responded to the corporate manslaughter legislative proposals. We would be very interested to know what the response would be if such a letter were sent to the current Minister. At that time, we also wrote to the Secretary of State about that pattern of deaths, and my recollection is that there was no response. Therefore, that was one submission. Obviously, the issue continues to be looked at through the Justice Bill with regard to the management of offenders.

2560. Other issues with which we have had long-standing involvement include the consultation and proposals on fine defaults. The case that Mr McNarry raised was very interesting. We have come across a number of cases like it. We would be interested to hear more about that case, Mr McNarry. The most recent case that has concerned us involved a woman with serious, life-limiting kidney disease who went to prison for fine default. The magistrate had not seen the woman and did not know the condition that she was in. We had to attend to that case. She was in custody for fine default. On my frequent visits to prisons, I often find, particularly in the case of women in prison, that too many of them — the majority on one occasion when I visited — are there simply for fine default. We very much welcome the proposals on diversion from prison in the Justice Bill. To keep people in custody is an expensive way to deal with fine default.

2561. We also submitted responses to the consultations on alternatives to prosecution and on the offender levy and the victims of crime fund. Our final and most recent submission was on an issue that is not in the current Bill, namely the notification requirements for sex offenders. The Minister has written to me to say that he proposes to add that to the Bill. We have taken a fairly active and long-standing interest in all of those issues. We very much welcome those proposals. As you know, we are also engaged, as you are, with the ongoing reviews of prisons and youth justice, which relate to work that you have just heard discussed and to provisions in the Bill. Therefore, all those issues interact.

2562. We welcome positive proposals on the criminal justice review, some of which came out of the Agreement at Hillsborough Castle, have been taken forward and are now in front of us. There was a requirement to address victims' needs. We are pleased to see that that is happening. Initiatives have been long-standing. We will come back to them in response to your questions.

2563. More clarification is needed on supervisory orders as alternatives to fine defaults. We do not understand fully what the pilot scheme will mean. We are concerned that there might be a difference in practice in one area compared with another; in other words, discrimination by postal code with regard to what is available to some and not to others. We also welcome fixed penalty notices for low-level offences and, indeed, diversionary disposal under the conditional caution. I will not take up any more of your time with those concerns as, undoubtedly, they will come up in questions.

2564. I am accompanied by Ann Jemphrey, our policy officer, who has dealt with most of the clauses in our submissions. We have submitted two papers, the first of which deals with the clauses on sports. Ciarán Ó Maoláin, who is the head of our legal and policy team, will address those particular clauses, if you have questions on them. Ann will address all other clauses. I will also come in, if necessary. Thank you very much.

2565. The Chairperson: Thank you very much for your presentation. I know that you will say that this is a perception. I accept that there is a perception that you focus less on the victims of crime than on those who commit it. What do you say to that?

2566. Professor McWilliams: Recently, I wrote to you on that issue because I was concerned. Of course, there is a public perception that when a commission is asked to deal with the human rights of people for whom, as you have just heard, the state has responsibility, that often means people who are in detention or in institutions. Indeed, a focus of our work has been, as yours is now, on prisons. That probably has to do with the legacy of the Troubles. It also has to do with the fact that less of a spotlight had been shone on the Prison Service in Northern Ireland.

2567. Staff mentioned to me that you had raised that particular concern in the public consultation that you held here. As a result, we carried out a review of all of the submissions that we have made. In fact, it broke down that we were making as many submissions in relation to victims as we were in relation to those who had been offenders or, indeed, who had perpetrated the crimes. You will probably know that the press report what they find interesting, and work with victims is often not as interesting as what the press would want to report on offenders. Indeed, I engage with the press practically every day to try to turn that around. I hope that the press will take as much interest in our current investigation, which is on the rights of older people with dementia in nursing care, as they have done on any issues that we have raised about people in custody. I will live to be surprised if they do.

2568. Mr McNarry: That is you put in your box.

2569. The Chairperson: I am always being put in my box.

2570. Mr McDevitt: Clause 3 is about the deduction of the offender levy imposed by courts from prisoners' earnings. You referred to European prison rule 105.5, which states:

"In the case of sentenced prisoners part of their remuneration or savings from this may be used for reparative purposes if ordered by a court or if the prisoner concerned consents."

2571. I take it that you consider that part of the Bill to be consistent with the European prison rules.

2572. Professor McWilliams: We do, and I will let Ann answer that further because she has gone through those.

2573. Mr McDevitt: Can I ask you to elaborate on a specific point in your answer? You made a comment about the need to take into account the huge disparity in the amount of money that a prisoner can earn in custody. Can you elaborate on that and identify the specific concern that you have, if any?

2574. Ms Ann Jemphrey (Northern Ireland Human Rights Commission): Obviously, a prisoner has limited means to earn any money at all. The figures that have been produced look at average weekly earnings of between £10 and £12, but earnings can range from £6 to £20. Our concern is that there is proper evaluation so that particularly vulnerable prisoners have enough money to cover basic needs such as telephone calls to families, which can prove very expensive with mobile phones, and that there is no adverse impact on their ability to access such basic essentials in prison. It is also an additional financial punishment on top of the punishment that has been given out already to the prisoner. We want the effectiveness of the scheme to be evaluated so that the adverse impact is not greater than what we get from it.

2575. Mr McDevitt: Do you believe that the Bill, as drafted, allows enough space, through regulation and subsequent guidance, for the Department to do that?

2576. Ms Jemphrey: Yes. We know that discussions are taking place with the Prison Service, particularly to ensure that this aspect will not impact negatively, and we would like to see the outcome of that. We are not saying that it conflicts with any of the European prison rules, but it is open to different interpretations, so we should be mindful of that.

2577. Mr McDevitt: The other area, on which Mr Ó Maoláin may be able to help, is the question of defining sectarianism. I have been interested in that since the beginning of our consideration of the Bill. It applies mainly to clause 38, which deals with chanting. It appears that you are taking a position of saying that we are about at the point at which we should start calling a spade a spade around here. Although we have a body of law that defines sectarianism indirectly, we should take the opportunity to call it as it is.

2578. Professor McWilliams: Ciarán can answer that, and it would be the commission's position that there was an opportunity. The Minister has written to me on that and said that, as the Bill progresses, he will consider that further and that he will write to me when he has done so, so we are in correspondence on that issue. Ciarán was responsible for what we put into our submission.

2579. Mr Ciarán Ó Maoláin (Northern Ireland Human Rights Commission): We think that the international human rights standards provide a clear framework for defining racism in the Northern Ireland context. There is a very clear and well understood correlation between religion and community background or ethnic identity and nationality within Northern Ireland. That is not universal or immutable and may change over time. However, in the society that we live in now, by and large, when we talk about the Protestant/Catholic divide, we are also talking about the divide between Britishness and Irishness or those two ethnic elements of identity in our community.

2580. The international standards on racism provide a very clear framework for setting out the duties of the state in combating racism and limiting freedom of expression in relation to racist expression. We believe that that internationally accepted framework can apply very clearly to sectarian expression in Northern Ireland.

2581. When it comes to chanting at spectator sports, any limitation on freedom of speech or expression has to be within the international standards and, particularly, article 10 of the European Convention on Human Rights. In our interpretation, the state can limit freedom of speech or expression only when that is consistent with the purposes that article 10 defines as being permissible within a democratic society. Permission can be refused for racist expression, which is also consistent with the United Nations standards.

2582. The advice that we have given the Minister is that the opportunity could be taken through this Bill to introduce a statutory definition of sectarian expression in Northern Ireland that relies entirely on the international standards on racism.

2583. Mr McDevitt: To be absolutely clear about what you are saying, Mr Ó Maoláin; do you believe that it is possible to statutorily define sectarianism in a way that is consistent with article 10?

2584. Mr Ó Maoláin: We believe that that would be a very simple task. Already, there is an accepted definition from the Council of Europe that racism is the belief that:

"race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons".

2585. The definition goes on, but that is the essence of how racism is perceived through the lens of European human rights standards. We believe that a very similar construction could be devised to define sectarianism in Northern Ireland statute.

2586. Mr McNarry: I take the point that we should call a spade a spade, and I am quite sure that people can readily understand if sectarianism is being directed at them; certainly, I would, and have.

2587. On Mr McDevitt's point, would you be able to provide the Committee with the legal definition of sectarianism? That is where we have struggled, not just with this Bill but with previous legislation that did not make it onto the Floor of the House in which there was reference to sectarian harassment. The best brains that work for us were unable to give a definition in legal terms and, therefore, turn that into law. I hear what you are saying about people providing the best developed body of international standards from which a definition can be drawn. However, can you lay down in writing a definition of sectarianism? Have you been asked to give such a definition to the legal profession?

2588. Mr Ó Maoláin: We are not parliamentary draftspeople, and the precise translation of international standards into the content of the Bill would be a matter for their expertise. However, we believe that the international standards are clear in allowing racism in the Northern Ireland context to fit within the universally accepted definition of racism. Sectarianism is, in essence, a subset of racism, and by relying on —

2589. Mr McNarry: I share all that, but I am struggling to find someone who can put in front of me a definition that will stand up in law. The draftsmen whom we employ have been unable to do that so far. I was interested to know whether or not you felt confident, having said what you did to us, that you could provide that from what you know. Have you provided a definition, or been asked to provide one, to the legal profession? That is all that I want to know.

2590. Mr Ó Maoláin: We would be very happy to work with Assembly draftsmen to try to come up with a statutory definition that could be used in a Bill. We are more accustomed to commenting on drafts that come to us for Assembly Bills or proposals for Bills. However, in this instance, we would be very happy to take a more proactive approach and work with draftsmen.

2591. Professor McWilliams: The answer, Mr McNarry, would be that we have never been asked.

2592. Mr McNarry: I appreciate that you have never been asked, but you are never far behind the post in having something to say. Therefore, on subjects such as this one, I thought that you might have been knocking on someone's door to say,

"Hang on, we can provide this. Now that the offer is there, I think that we will take it up."

2593. Professor McWilliams: We will certainly be more than happy to work in that advisory capacity, but I emphasise that we act in an advisory capacity; it is not about offering legal advice to an individual on what constitutes sectarianism. We do assist individuals in litigation all the time, as you know. We are quite clear in our submission that defining sectarianism is not complex and that, if you base the definition on international standards, which is what the Human Rights Act 1998 did when it incorporated the European Convention on Human Rights, it could then be possible to propose what a legal standard would look like.

2594. Mr McNarry: Let us hope that, with your brains, the brains of the draftsmen and the brains in the legal profession, we can turn it into a legal definition, which we ain't got.

2595. Professor McWilliams: I am pleased to say that the Minister has left the door open on that. I can speak only for the Minister of Justice, who has entered into correspondence with us on this matter. On previous occasions, we have not been asked for that. We have made submissions on the other issues that you have referred to, and, again, as you can imagine, those are not easy issues — for example, the issue of harassment.

2596. Mr McNarry: I appreciate that.

2597. The Chairperson: I am looking at your comments on disability, which I read earlier. What do you believe could be reflected in the Bill to deal with disability in a more positive way? What do you think is missing from the Bill that should be there?

2598. Mr Ó Maoláin: In all of the existing body of legislation around disability, the reliance is on the traditional medical model of disability, in which people's physical or sensory impairments are defined purely in terms of their individual situation rather than in terms of how society adapts or fails to adapt to the needs of people with disabilities. We are seeking to move the whole approach of law, policy and practice towards the definition in the UN Convention on the Rights of Persons with Disabilities, which follows the social model of disability, whereby disability is defined in terms of barriers to full participation in society. The reference to disability in our submission is in relation to an item that is not covered in the Justice Bill. It perhaps could be addressed in future justice Bills.

2599. The Chairperson: We are told that there is another one in the making.

2600. Sir Reg Empey: The Bill of Bills.

2601. Mr Ó Maoláin: The issue that we picked up on in particular was the Criminal Evidence (Northern Ireland) Order 1999, which refers to witnesses who are eligible for special measures of assistance on grounds of age and incapacity. The definition of incapacity in that Order relies clearly on the medical model of disability; it talks about mental disorder, significant impairment of intelligence or social functioning and physical disability. We believe that that reflects almost a presumption that people with disabilities are unlikely or less likely to have the capacity to participate fully in court proceedings, whereas the approach in the convention is that you presume capacity always. Indeed, some interpretations of the convention would say that people in the criminal justice system must always be treated as if they had capacity and that whatever measures are necessary must be taken to ensure that such capacity as people have is fully reflected in their participation in proceedings. That issue will not be remedied through the Bill, but we wanted to draw the Committee's attention to it as it needs further treatment within the future reform of the criminal justice system in Northern Ireland.

2602. Mr McCartney: There was mention of European rules on reparation. Do other jurisdictions use that sort of levy to fund support services for victims?

2603. Ms Jemphrey: A victims' fund is operational in England and Wales, but, as far as I am aware, there is no fund in Scotland or the Republic of Ireland.

2604. Mr McCartney: What about across Europe?

2605. Ms Jemphrey: There are some in Europe as well as in New Zealand and, possibly, Canada.

2606. Mr McCartney: I am just wondering if the reference to using remuneration or savings was designed more for cases in which courts awarded costs to victims from an offender — for example, costs of £50 — than for cases involving a levy. The levy is designed in such a way that a prisoner may not even be aware of the particular victim being able to benefit from it; it is just a wider fund. I am just wondering whether the contexts are the same.

2607. Mr Ó Maoláin: The European prison rules talk about reparative awards being made either through a court order or with the consent of the prisoner. Obviously, it is much more satisfactory if the prisoner volunteers to make what will only ever be a token payment. When prisoners have earnings of £10 or £12 a week and the amount that we are talking about is £1 a week or thereabouts, the payment will only ever be a token gesture, but it is much more meaningful if it comes with an acknowledgement from the prisoner that they have done wrong.

2608. Mr McCartney: Yes, but at present the prisoner does not consent. In some situations, a judge may say to an offender that he or she can do three months in prison or, if costs of £250 are awarded to a victim, two months in prison. Therefore, you can see the direct link with the restorative aspect, rather than just the principle of getting fined £50 and another £10 on top of that.

2609. Mr Ó Maoláin: Making deductions from prison earnings is a separate concept to the awarding of compensation or an award that is made by a court against an offender. This is a new mechanism to allow or oblige prisoners to make reparative payment.

2610. Mr McCartney: So, there is no aspect of double sanction in it.

2611. Mr Ó Maoláin: No.

2612. Mr McCartney: On the fixed penalty payments, you have some concerns around the subjectivity of the decision-making process. You feel that there should be a mechanism that allows people to challenge that. For example, if someone is in court for petty theft after having seen someone else being given a fixed penalty for the same offence only the day before, is there a mechanism for him or her to ask why they did not receive a fixed penalty?

2613. Ms Jemphrey: We are concerned that there is a potentially problematic degree of discretion available to the police in their response to a very wide range of offences outlined in our submission. We felt that it was important for the Committee to seek assurances from the Department of Justice that clear guidance will be provided to the Police Service on the implementation of the provisions and that the commission might be consulted on human rights compliance. The concern is just about potential net widening and the use of discretion.

2614. Professor McWilliams: We are also concerned about any breaches. All of our concerns are very much about making sure that the guidance is clear, that the training is in place and that the practice is consistent so that we do not end up with patches where fixed penalty notices are being handed out and other areas that do not have those hot spots. We are already familiar with that.

2615. Mr McCartney: How can that be monitored? Sometimes a police station might be very progressive and give out more cautions than another police station. That might be down to the people in the station feeling that an adult caution is the best thing to do in the circumstances. However, 10 miles away, an offender might not get an adult caution for the same offence. In such cases, nobody is doing anything that is out of kilter.

2616. Professor McWilliams: That is why we have asked the Committee and the Assembly to seek that assurance when the guidance is being produced. Responsibility will also fall to the

Policing Board. Occasionally, following innovations, the Policing Board undertakes a thematic inquiry, which reassures the Human Rights Commission on systemic issues that we bring to the Policing Board because people have brought them to us. It is very useful to have those pieces of accountability in place, and we hope that the police take on board those matters and look at whether practice is consistent.

2617. Mr McCartney: With regard to the Irish language, does the Minister have the power to repeal the Administration of Justice (Language) Act (Ireland) 1737? That issue is omitted from the Bill.

2618. Professor McWilliams: This was mentioned in our additional submission. We had suggested that, if people wanted to address that, it could have been added. We believe that, in meeting international standards, it would have been useful if that opportunity had been taken in this Bill.

2619. Mr McCartney: Would the Minister have the power to repeal it? Would it lie with him?

2620. Professor McWilliams: It would.

2621. Mr O'Dowd: I want to talk about a couple of areas of the Bill, starting with vulnerable and intimidated witnesses and the special measures that are being put in place. The very title, no one could argue against. However, accepting that the person charged before the court is innocent until proven guilty, is there a danger that, during adversarial court proceedings, the balance of rights within the courtroom will be in favour of the prosecution rather than the defence?

2622. Mr Ó Maoláin: The interests of justice require that, when witnesses are particularly vulnerable, through youth or circumstances of the crime and so on, the court needs to design its processes in a way that does not further victimise them. Special attention needs to be given to protecting victims and witnesses to allow them to participate fully in the work of the court. It does not necessarily disadvantage the accused to have measures such as screening; the defence counsel should be able to see the witness.

2623. As far as possible, there ought to be open justice, with all parties present in the courtroom. However, in the interests of fairness to victims and vulnerable witnesses, provision for measures such as live links is acceptable in human rights terms. The aim is to go as far as possible towards the ordinary process of open justice. However, there is a very strong case to say that, when vulnerable people are exposed to the stressful experience of appearing in court, their evidence could be impaired, and that could result in guilty offenders getting away with crimes, which we do not want to see.

2624. Professor McWilliams: In work that I did previously on domestic violence, I looked at access to criminal justice and the procedures involved. It was quite shocking to see the withdrawal rates from the justice system. Therefore, it is really positive to see that the special measures are constantly being revised and reviewed to see what is working and what is not.

2625. Recently, we visited the Court Service to see procedures for ourselves and whether the special measures are working. One issue that we would like to be reassured about is whether those measures are accessible across Northern Ireland. Quite often, we find that those measures are in place in Belfast, but, in Dungannon or somewhere else, you may find that they are not in place.

2626. It is about making sure that the measures are comprehensive and universal and that victims know about them. We speak constantly to the Public Prosecution Service (PPS) about this. It is not enough to have something in place if nobody knows about it; people need to be

informed. The PPS said that if it told everybody who would perhaps want such measures about them, it would be overwhelmed. A judgement and risk assessment does have to be made as to who should have access to such measures. However, what the Bill is suggesting is really positive.

2627. Mr O'Dowd: I will move on to some of the clauses about sports and the banning orders for people convicted of violent offences associated with or near sporting grounds. The orders go to great lengths to describe what the banning order is but also to restrict people's right to freedom of movement on a specific day or on the day of a regulated match. Those people have to report to the police regularly after their conviction and when their sentence has been served. Do you have any concerns about banning orders?

2628. Mr Ó Maoláin: We did not address that matter specifically in our response, because we believe that the court is likely to apply those orders in a proportionate and careful manner. Banning orders are only applied after conviction and are a preventative measure. We would, of course, look at any evidence that may emerge of disproportionate interference with people's liberty of movement. However, in principle, there is nothing wrong with a measure that seeks to protect the public by keeping violent individuals away from matches or other situations in which they could commit crimes.

2629. Mr O'Dowd: This may not be a question for you, but is there not an argument for introducing such legislation for a wide range of scenarios?

2630. Mr Ó Maoláin: There are, of course, many scenarios in which a conviction can lead to restrictions on a person's freedom of movement, but, in the specific context of violence at sporting events, experience has shown that banning orders can be effective in making sporting occasions safer for families to attend. It was not done lightly when the measures were introduced in England and elsewhere, but they have been effective. They are subject to judicial oversight. It is possible to appeal against an order, and the courts have to be trusted to take a balanced view and to apply that measure only when it is proportionate and necessary.

2631. Professor McWilliams: With your permission, I will return to Mr O'Dowd's previous question on live links. I should have said that we are positive on clauses 11, 14 and 19, but we would have preferred an amendment to clause 16 to insert a requirement for the appellant's consent. That fits in with some of your concerns.

2632. Mr O'Dowd: Yes, I noticed that in your papers.

2633. Mr Ó Maoláin: That is in relation to appeals.

2634. The Chairperson: We are stopping there. Thank you for your attendance and your presentation. We will now invite departmental officials to deal with some of the issues. You may wish to stay to hear what they have to say, but it is entirely up to you.

2635. I welcome again Gareth Johnston, head of justice strategy division; Janice Smiley, head of the criminal policy unit; Tom Haire, the Justice Bill manager; and Chris Matthews, head of sentencing delivery and European unit. You have heard what has been said, the questions that have been asked, the answers that have been given and other comments. Mr Johnston, you may want to respond or comment.

2636. Mr Gareth Johnston (Department of Justice): I shall respond to the main points that we picked up, and, if there are any others, we are happy to take questions on them. I welcome the commission's comments, particularly on the diversionary matters in the Bill, and on other aspects of the Bill. I recognise that the commission was not saying that the recovery of the offender levy from prisoners' earnings conflicted with the European prison rules but that it was making the

point that it was important to be mindful of those rules in putting together the procedures for recovery. I confirm that we have been mindful of those in the arrangements that have been put in place.

2637. Obviously, imposition of the levy is a statutory requirement. The level of deduction to be applied will be at a proportionate rate of £1 a week, regardless of the regime level. That rate will remain consistent, irrespective of whether the prisoner is promoted to standard or to enhanced status. Pitching it at that level will help to ensure that the prisoner remains motivated and incentivised to progress to the higher regime levels. That helps to maintain good prisoner and staff relations in the prison, but, at the same time, it will still provide an equitable remuneration for the work that is to be undertaken and allow prisoners to spend a proportion of their earnings to buy goods, to provide money for their family or to save for resettlement. The European prison rules have been an important part of our consideration.

2638. The Committee moved on to think about the sports provisions in the Bill and, in particular, a definition of sectarianism that might be recorded in the legislation. We have committed, both to the Committee and, as Professor McWilliams noted, to the commission, to come back with proposals on sectarianism to make the issue more obvious in the Bill, and we will do that. We are having discussions with the draftsmen. At this stage, those have not been finalised, so I cannot offer the definition that Mr McNarry is looking for. I am conscious that the parades Bill talked about sectarian harassment based on religious belief or political opinion, but we have shared with our lawyers the advice that the Human Rights Commission provided in its written submission so that account can be taken of those points and of what we could take back to the Committee to address sectarianism in the Bill.

2639. There was a specific query from the commission about supervised activity orders, and there was concern that, if we were to run a pilot scheme on supervised activity orders for fine defaulters, there would be inequity of access across Northern Ireland. Resource issues would still need to be addressed, but we feel that it is important to have the opportunity to run a short pilot on supervised activity orders for a number of months to see how they work in practice and how linkages between the court and the Probation Service work. We could perhaps try different sorts of approaches to see how they could best be rolled out if the scheme were rolled out across Northern Ireland. However, we are talking about a short pilot over a number of months, and we feel that that balances the interests of getting a workable scheme against equity of access. However, as I said, before we would run any such scheme, we would need to take account of a number of issues, including resourcing, and we are looking at those at the moment in the wider context of our fine default strategy.

2640. The Committee moved on to some questions on disability and special measures, which Chris will say something about.

2641. Mr Chris Matthews (Department of Justice): I appreciate that the point on disability is wider than the Bill and probably much wider than the criminal justice system. However, in the context of the Criminal Evidence (Northern Ireland) Order 1999, we thought it worth pointing out that article 31(1) of the Order states quite clearly that the presumption is that:

"At every stage in criminal proceedings all persons are (whatever their age) competent to give evidence."

2642. So, in the context of special measures, there is a positive presumption that you can give evidence, unless there is a good reason that you cannot. I think that the suggestion was that there is a presumption that people with disabilities cannot give evidence.

2643. Mr Johnston: I am pleased to give what I hope are the assurances that the commission was looking for on fixed penalties. It was stressed that it would be important to have guidance for police on the exercise of the fixed penalty notices that will be available, and we are very happy to consult the commission on the content of that guidance. Likewise, there will be an emphasis on training in the new arrangements for fixed penalty notices.

2644. As for ensuring consistent practice, we see there being two levels of assurance: one would be that the use of fixed penalty notices in the different districts would be reviewed internally within the PSNI, but the other would be that we would then expect the Criminal Justice Inspection to pick up the experience of implementation of fixed penalty notices. That is a very important area for the justice system. Indeed, we could consider whether the Minister might make a request to the Criminal Justice Inspection that it do a specific piece of work on that. Those are the two levels of review that we envisage. Beyond that, as was acknowledged, the Policing Board may well want to have regard to the implementation of fixed penalty notices in what it would be reviewing with police.

2645. Finally, the Irish language Act was mentioned. I want to refer to something that the Minister said in answer to an Assembly question on 14 May. He recognised that language is a cross-cutting issue on which policy needs to be agreed by the Executive. He said that he would consider his Department's language policy, including the use of the Irish language in courts, as part of his contribution to the Executive strategy. He noted that, in the meantime, the Courts and Tribunals Service has adopted a code of courtesy on the use of Irish in official business, in line with obligations under the European Charter for Regional or Minority Languages.

2646. So, although the Minister recognises that there are questions, concerns and suggestions about the use of the Irish language in court, he feels that the proper context in which those issues should be dealt with is the wider context of an Executive strategy on minority languages.

2647. Mr McDevitt: On a point of clarity, can I take it from your reply, Mr Johnston, and from indications that Mr Haire and the Minister were able to give us privately, that you are positively looking at including a definition of sectarianism in the clause on chanting at sports grounds?

2648. Mr Johnston: We are positively looking at the inclusion of sectarianism in the Bill. Whether and how that could be defined is not an easy point to address. It is a discussion that we will need to finalise with the draftsman before we bring something back to the Committee.

2649. Sir Reg Empey: Before he left the room, Mr McNarry mentioned autism and other disabilities that are not within the definition of physical disabilities that we are familiar with. Mr Johnston, do you and the Department have a view on the practicality of all of this, given the very significant breadth that such a definition might have? I ask that because we are talking about a spectrum, and considerable knowledge is required. Different points along that spectrum require different responses. What are the practical probabilities of any involvement there?

2650. Mr Johnston: Chris might want to say something about definitions in the particular context of special measures for people with disability issues, and we have also talked about sports law.

2651. However, more widely, thought is being given to the challenges of conditions like autism for the criminal justice system. A group that is particularly focused on the Prison Service and how it deals with such challenges has been meeting. That recognises that there is a spectrum and that what is needed and is appropriate at one end of the spectrum may be very different to what is appropriate at the other end.

2652. There will be people for whom aspects of disability and autism have some effect, albeit limited, on functioning. It may be that those people progress through the justice system in a way

that has regard for their circumstances but that is not very different to the way in which anyone else would progress through the justice system. However, for those whose functioning is very severely affected, we would need to presume that the appropriate pathway will probably be through specialist services rather than prosecution in the justice system. I do not know whether Chris wants to add anything in particular to that.

2653. Mr Matthews: It might be helpful to be specific about when special measures kick in. Essentially, they kick in when the court thinks that the evidence given by a witness will be diminished by any disability that they have. That is determined case by case on the basis of any professional judgement given to the judge.

2654. In more extreme cases, the person may not be competent to give evidence at all, but that will depend on where they are on the spectrum, how well they can understand questions put to them and how capable they are of answering them in a way that can be understood by the rest of the court.

2655. The Chairperson: I have no other names in front of me for questions. We will stop there. Again, I thank officials for coming to the table. No doubt, you will come back later for the clause-by-clause scrutiny of the Bill. I suspect that you will not be going home just yet.

18 January 2011

Members present for all or part of the proceedings:
Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Paul Givan
Mr Alban Maginness
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Mr John Larkin	Attorney General for Northern Ireland
Ms Claire Duffy	Office of the Attorney General for Northern Ireland

2656. The Chairperson (Lord Morrow): As agreed at the meeting on 11 January, the Attorney General for Northern Ireland is in attendance to brief the Committee on clause 34 of the Justice Bill. I remind members that clause 34 places a requirement on Departments and public bodies to have due regard to crime, antisocial behaviour and community safety implications when exercising their duties. Some Ministers were concerned about the implications and requirements that might arise for Departments, and the Minister of Justice has given an undertaking that he will go back to the Executive once the Committee has considered the clause.

2657. I welcome the Attorney General for Northern Ireland, Mr John Larkin QC, and Claire Duffy, head of division of the Office of the Attorney General. Perhaps the Attorney General will outline his views on clause 34, after which members may wish to ask some questions.

2658. The Attorney General for Northern Ireland (Mr John Larkin): It is a pleasure to have an opportunity to speak to the Committee, and I am grateful to do so in respect of clause 34. Before I invite the Committee to look closely at the text, which I assume you all have before you, it is right that I compliment the Justice Minister for providing the occasion for this discussion, because, as will become clear shortly, I have significant reservations about clause 34,

so it is a tribute to the Minister's openness to debate that he has encouraged this exchange between us today.

2659. I invite the Committee to engage with me in a glossed reading of the clause. As we know from clause 34(4), a "public body" is defined broadly. Some witnesses referred jocosely to public bodies being hard to identify, and many of them do not fall within the definition. Interestingly, I do not think that the police would be included, but that is probably because they have a like or analogous duty in other respects. Of course, it includes Departments.

2660. "A public body", as defined in clause 34(4), must exercise its functions "with due regard". That is a classic public law formulation that one finds throughout our body of legislation. Then there are a number of matters to which regard has to be had. At this point, I should say that, where a public body fails to have regard to a statutorily relevant consideration, its decision is susceptible to being quashed in an application for judicial review. Indeed, it could be further argued that it creates a duty that might be owed to the public at large and that, therefore, might conceivably and independently support an action for damages against the public body that it was suggested had failed to comply with the duty. I pause to observe that such a clause is often described, not unkindly, as a mom and apple pie clause, and I suspect that everyone is broadly supportive of the kind of objective that is at issue here. Most public bodies working in this field are already thinking or should be encouraged to think along those lines. I invite the Committee to reflect on whether more would be gained by advancing that public duty in other ways than by creating the potential for vast expense, which, in my view, would certainly be experienced by public bodies that have to defend — sometimes successfully, sometimes not — applications for judicial review or other actions founded on clause 34. Indeed, we can see how difficult the exercise in which they have to engage is.

2661. Clause 34(1)(a) refers to:

"the likely effect of the exercise of those functions on crime and other anti-social behaviour in that community".

The phrase "the likely effect" would involve people engaging in a predictive exercise, which, of course, is not always readily or easily done.

2662. Secondly, in addition, clause 34(1)(b) refers to the need for a public body to:

"do all that it reasonably can to enhance community safety."

That is a positive duty: it is not merely to protect what we have or to protect the public but to "enhance community safety". That is amplified in clause 34(3), which states:

"References in this section to enhancing community safety in any community are to making the community one in which it is, and is perceived to be, safer to live and work, in particular by the reduction of actual and perceived levels of crime and other anti-social behaviour."

2663. There are two references to "perceived", which is significant and begs the question: perceived by whom?

2664. In summary, I consider that that is likely to give rise, given the appropriately rights conscious, and, perhaps, not so appropriately, litigious culture that we have in this jurisdiction, to a great deal of problems and claims without necessarily generating positive outcomes in improved policymaking or thinking by those various public bodies.

2665. One example, which has often been discussed in this context, is that of local government refuse collection. A council could, for example, arrange refuse collection times that result in bins being left out overnight in an area of significant student social activity and in the vicinity of places where students have frequent resort with access to alcohol and so forth. Those bins could be pushed over. That is the kind of thing that a council might well want to reflect on and to correct in due course. However, would it be right for a council that had inadvertently not done so to lie open to the prospect of being judicially reviewed or having an action maintained against it for its failure under clause 34?

2666. There are, I suppose, two alternative positions. One relates to section 37 of the Garda Síochána Act 2005. That section states:

"A local authority shall, in performing its functions, have regard to the importance of taking steps to prevent crime, disorder and anti-social behaviour within its area of responsibility."

2667. It is confined to local government, but it says something along the same lines of clause 34(1) of the Justice Bill, albeit in a slightly pared down version. Subsection (2) of the 2005 Act states:

"Subsection (1) is not to be taken to confer on any person a right in law that the person would not otherwise have to require a local authority to take any steps referred to in that subsection or to seek damages for a local authority's failure to take such steps."

2668. Therefore, section 37(1) imposes the duty, and subsection (2) essentially results in the duty not being actionable. That may be attractive on one view. However, I think I have picked up a thread that has been expressed by a number of Committee members in recent times, which is that one should legislate to a purpose and for a purpose. Section 37 strikes me as a monument to legislative futility, because, one has on the hand a duty, but a duty that is enforceable by no one. A via media might be that, if one goes down the road of clause 34, one ensures that the duty can be made justiciable only by, for example, the Minister or, alternatively, the Minister and/or the Attorney General. The latter reference to the function of the Attorney picks up the kind of theme that one sees, for example, in the Contempt of Court Act 1981, which states that contempt of court proceedings cannot be brought save by or with the consent of the Attorney General. It also reflects the role of the Attorney with respect to relater action or, for example, in bringing an injunction to enforce civilly breaches of the criminal law or public law duties.

2669. The three possible approaches are clause 34 as it is at present; clause 34 undone, as it were, by the addition of something like section 37(2) of the Garda Síochána Act 2005; or via media, where there is a duty but there is a sieve to its enforcement and public bodies — I am thinking particularly of local councils — are not subjected to essentially mischievous and frivolous litigation simply because of a little inadvertence on their part.

2670. There might well be a case for enforcing a duty if — to use the example of refuse collection again — councils, despite having the problem repeatedly drawn to their attention, continually create a situation which is, to use the fashionable word, "crimogenic" and likely to give rise to antisocial behaviour. It seems appropriate that, when going down this road, there should be a vehicle for making clause 34 workable.

2671. Mr Givan: Thank you for that. Everything you said seems to make a lot of sense. To get it a little bit more down to my level and beyond the legal jargon, I will summarise what you said. Currently, clause 34(1)(a) refers to "the likely effect". What is that? Clause 34(1)(b) contains the word "reasonably". There could be a lot of argument as to what would be deemed reasonable. Clause 34(3) contains the word "perceived", but the question is: perceived by whom? Those are

the three main points that I have picked out. If it were taken to court, there could be a lot of argument. As it is worded, it could leave public bodies open to litigation.

2672. You said that section 37(1) of the Garda Síochána Act is cancelled out by subsection (2).

2673. The Attorney General: It is.

2674. Mr Givan: So, that is outlining something but it is legally unenforceable. Therefore, what is the point? Am I right that you think that the better option would be to retain clause 34 but add another element to say that it is enforceable either by the Minister or by the Minister and the Attorney General.

2675. The Attorney General: And/or the Attorney General, yes.

2676. Mr Givan: Is that your preferred option?

2677. The Attorney General: On balance, it probably is. In fairness, it is something that has only very recently arisen in discussions. It strikes me as having comparable models with the Contempt of Court Act and the other enforcement roles of the Attorney General. The dual control mechanism might be preferable, because one can see why the Justice Minister is going to have access to fully developed policy support in the field, but there might be occasions when, for a variety of reasons, the Minister might feel constrained to act, and the Attorney General, appropriately, could act independently in that setting.

2678. Mr Givan: How does that work? I take it that schools and education boards will be regarded as public bodies?

2679. The Attorney General: The education boards certainly will be.

2680. Mr Givan: So, if someone took a case against an education board because a school had not properly secured its grounds and something happened, would that come to the Minister through the court, and the Minister and the Attorney General then would need to give their consent for a case to proceed?

2681. The Attorney General: Suppose, for the sake of argument, that a board does not put in place sufficient security measures at a school that is close to a bail hostel and there are, perhaps, legitimate concerns on the part of parents about the safety of their children. If the parents wished to raise an issue, instead of kicking off litigation that might be ill-founded, they would, I suggest, write to the Justice Minister. The Minister would look at the matter, and he might be firmly of the opinion that the measures in place at the school were quite enough to address all the concerns. One of the interesting points that would then arise is the issue of perceived levels of crime. There is a free-standing problem with the use of the word "perceived", because even though the Minister might say, entirely accurately, that there was really no objective problem, if there was an ill-founded perception, someone could get something up and running based on clause 34, unless there was a safeguard against litigation simply being kicked off without the control mechanism.

2682. The Chairperson: Will you elaborate a little more? Clause 34(1)(b) refers to the need for a public body to:

"do all that it reasonably can to enhance community safety."

That could come down to interpretation, could it not?

2683. The Attorney General: Yes.

2684. The Chairperson: What you might perceive to be reasonable, somebody might feel was not reasonable.

2685. The Attorney General: Indeed. I think it was Lord Hailsham who, as Lord Chancellor, said that two people might take diametrically opposite views without either of them losing their title to be regarded as reasonable.

2686. The Chairperson: Therefore, you could have this protracted debate and dialogue to find out whether, in fact, all reasonableness has been applied, and then you could make a decision after that deliberation as to whether you take the step. Is that right?

2687. The Attorney General: Courts have traditionally been appropriately sensitive to judgements about what is reasonable. The difficulty is that, when you tie "reasonably" to "perceived", as in clause 34, you create potentially an enormous problem. It is not that, in every case, a public authority would in fact be acting unlawfully, but that the impression could reasonably be given to citizens that it had not done all it reasonably could in the context. Hence, unless you have the kind of sieve mechanism that I am suggesting, or something similar, public authorities could indeed face a huge number of actions that are, perhaps, doomed to failure, but nonetheless were legitimately brought on one view and, however one looks at is, would certainly result in huge expense for the public authorities concerned.

2688. Mr A Maginness: The Attorney General's comments are very helpful. I am unhappy about the creation of yet another duty on public authorities that would, perhaps, add an excessive burden. I am sympathetic to the idea of an amendment to this clause. In addition, it is very useful to highlight a potential conflict between reasonableness and perception.

2689. I welcome these comments, but would it not be more straightforward to adopt section 37(2) of the Garda Síochána Act 2005, which qualifies 37(1)? Would that not be a more preferable way of dealing with it? It makes it straightforward. It says, effectively, that a public body has an obligation to take measures to reduce criminality and antisocial behaviour, but it is not actionable. It is not something that somebody can go to court with and get damages. Would that not be a preferable situation, rather than a less clear position in which you are inviting either the Minister or the Attorney General to make some sort of adjudication?

2690. The Attorney General: Obviously, these are policy matters in which the judgement of the Committee and, in the fullness of time, the Assembly as a whole is paramount. However, I think that legislation should be for a purpose. It should do something; it should achieve a measurable result.

2691. The structure of section 37 is a classic case of "on the one hand, and on the other". Section 37(2) literally cancels out 37(1). It is the kind of exercise that is likely to promote a good deal of cynicism on the part of the public. A public authority, of whatever kind, falling within clause 34 could, if it had the benefit of such a provision, literally fold its arms cynically and do nothing.

2692. Mr A Maginness: Section 37 seems to be an encouragement to a local authority to carry out certain responsibilities. That is an important thing for the law to state. I think that that is the purpose of section 37.

2693. Would it not be preferable for the Attorney General, who is an independent law officer serving the Executive and the Government at large, to make the decision on any action for

damages or on breach of duty, rather than the Minister of Justice or any other Minister, who might not be considered independent enough to make a proper assessment?

2694. The Attorney General: I can see the force in that position.

2695. Ms Ní Chuilín: Thank you for the presentation. I share your thoughts on section 37 of the Garda Síochána Act. I think it is a bit cynical and very cute. I am not from a legal background, but on the one hand, it is saying what we will do something and on the other hand it says that we will really do nothing. If anything, regardless of where people are coming from, they want to see changes that can be clearly understood. If part of the legislation is to do nothing on subsection (a), people will understand that. It is a much more honest position.

2696. The definition of "antisocial behaviour" has come up here time and again. If that was clearly defined, perhaps the whole area of what "perception" might be would be more limited and narrow. Perception is mine, yours and everybody else's. That is an issue. Some people who responded to the consultation also felt, not about clause 34 but in general, that it really should be down to the police to define or act on antisocial behaviour, rather than anyone else, because it then becomes arbitrary. For example, young people hanging around may just be hanging around, but the perception of other people might be that they are being antisocial.

2697. There is no point in asking a public body to do something if we are tying its hands as to what it can reasonably do.

2698. The Attorney General: I am grateful for that question, because it raises again the issue of the problem with "perceived". One of the issues that police officers constantly record is the acronym YCA — youths causing annoyance. One can understand how elderly persons might be a little unnerved simply by the presence of young people at street corners, whether or not the young people are actually doing anything. On the other hand, if they are creating a good deal of noise, kicking balls against walls, and so forth, one can quite see how pensioners in particular might be alarmed by that.

2699. Good architecture can avoid those kinds of arrangements. It might be entirely appropriate for good, intelligent planning to take account of those kinds of considerations. However, it should do so against a fairly objective substratum of data. That is why I do have a problem with "perception" as found in that clause, as I think Ms Ní Chuilín has.

2700. I am grateful for your comments about section 37. I do think it will promote a climate of some cynicism about legislation.

2701. The educational objective can be achieved in other ways. Although there is a vestigial educative function for some forms of legislation, I think that, when you create a duty, there should be someone who is at least capable of trying to enforce it.

2702. Ms Ní Chuilín: Thank you.

2703. The Chairperson: Would three teenagers standing at a gate at the bottom of someone's path be antisocial behaviour?

2704. The Attorney General: You ask me a difficult question, which I will duck by referring to the word "perceived" in clause 34. Those young people may be behaving entirely lawfully; nonetheless, if I was of a particularly nervous disposition, I may resent their presence and regard it as antisocial.

2705. The Chairperson: Would the legislation, in its present form, be enforceable in such an instance?

2706. The Attorney General: Are you talking about clause 34?

2707. The Chairperson: Yes.

2708. The Attorney General: If, for example, the particular behaviour was facilitated by the opening hours of council facilities, it may give rise to a person saying that the behaviour happened only because those facilities are open at a particular time and get the children coming home from school or coming from another place of public resort. You might then have the council being carted off to court, rightly or wrongly, simply on the basis of perception.

2709. The Chairperson: While we have the Attorney General here, does anyone else have any questions?

2710. Mr McCartney: Not on clause 34. Are we —

2711. The Chairperson: We are really now in the hands of the Attorney General. It depends on whether he is prepared to take questions about other clauses. We know that you came to address clause 34.

2712. The Attorney General: I did. It is probably better if we confine it to that. I certainly found this useful in getting feedback from members. However, there are some areas of the Bill that there is a keen interest in, and rightly so, but, I suspect those are the very areas that, for a variety of reasons, I probably cannot talk about. Rather than go into that, it might be preferable to simply keep it to clause 34.

2713. The Chairperson: I have not read his mind, but I suspect that the member is not going to ask about the parts that are maybe in another arena or will be soon. Am I right, Mr McCartney?

2714. Mr McCartney: Yes, absolutely. However, it might be unfair as the Attorney General may not have been briefed on the subjects that I wanted to ask about.

2715. The Chairperson: Mr Larkin, thank you for your attendance here today. We appreciate it, and it was very useful.

2716. The Attorney General: Thank you, Chairman.

18 January 2011

Members present for all or part of the proceedings:
Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Thomas Buchanan
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Ms Nichola Creagh
Mr David Hughes
Mr Gareth Johnston
Mr Dan Mulholland

Department of Justice

2717. The Chairperson (Lord Morrow): We will start the informal clause-by-clause consideration of Part 3 of the Justice Bill, which is about policing and community safety partnerships (PCSPs). A summary paper covering the evidence received on Part 3 is included in members' papers. It was agreed that departmental officials will be at the table to give further information. They will comment as and when members wish them to.

2718. I welcome the officials. No doubt you will be glad to see this Bill through one way or another. We have Gareth Johnston, head of justice strategy division; David Hughes, deputy director of policing policy and strategy; Nichola Creagh, policing policy and strategy division; and Dan Mulholland, policing policy and strategy division. They are here to take any queries or questions, or to provide further explanation to members.

2719. We will start in the same format as we used to take a run at the 19 clauses before Part 3. We will go straight into clause 20, which is about the establishment of PSCPs and district policing and community safety partnerships (DPCSPs).

2720. A question was posed regarding the choice of the title of Part 3 of the Bill. The majority of community safety partnerships (CSPs) recommended that the Justice Committee re-examine the proposed title. If any member wishes to comment, we will hear what they have to say. We will then turn to the officials to see whether they have anything to say on that point. The recommendation is that the Justice Committee re-examine the proposed title. Is there any reason why we should not do so?

2721. Mr David Hughes (Department of Justice): I do not think there is any strong reason why that particular title is better than others. I would offer a note of caution about whether changing it from what is printed in the Bill would send a message about the meaning of the title that was not meant when it was chosen. The act of changing it might be significant itself; we do not feel that the title itself is not as significant as that.

2722. The Chairperson: The paper that members have been provided with states:

"It was highlighted that, from the consultation conducted in June 2010, just under half of respondents suggested 'Safer Communities Partnership' as a favoured title (27 stakeholders suggested within 16 responses). Of all responses, none suggested the title of 'Policing & Community Safety Partnership', as outlined in the Justice Bill, however 8 stakeholders (within 5 responses) suggested 'Community Safety & Policing Partnership."

There was no support for the suggested title among stakeholders. Do you wish to say anything about that, Mr Hughes?

2723. Mr Hughes: Nor was there a consensus around the title. There is a strong case for ensuring that both "policing" and "community safety" are expressed in the title, whether as "policing and community safety" or "community safety and policing". I do not think that the Department has a strong view either way. However, to deliberately change it from what is contained in the Bill may be perceived to have more meaning than is necessarily the case.

2724. The Chairperson: The only consensus was around the fact that no one suggested the title of "policing and community safety partnerships". You say that there was no consensus around what the title should be, but there was consensus around what it should not be.

2725. Mr Hughes: My colleagues will correct me if I am wrong, but the consultation document did not propose the title of "policing and community safety partnerships", so people did not respond to that. I think that the consultation document proposed the title "crime and disorder partnerships", which was unilaterally rejected. That is why a different title was brought forward in the legislation.

2726. Mr Dan Mulholland (Department of Justice): The consultation document contained a number of proposals. It is correct that that was not one of them, but it has the two key elements — "policing" and "community safety" — in the title. It does what it says on the tin. The working practice may be that, although the legislation proposes that such a body will be known as a policing and community safety partnership, a particular partnership may use "Safer" in its title, for example, "Safer Lisburn" or "Safer Moyle". It will still be known in legislation as a policing and community safety partnership, but there is nothing to prevent a particular partnership branding itself.

2727. Ms Ní Chuilín: Do you think you may be overstating the significance of changing the title? The title "community safety and policing partnerships" seems to be the preferred or favoured title. You are probably right about local acceptance, in that whatever it is called will probably be prefixed by the geographical area in which you live and whatever, but if the Department is not totally averse to the change, I do not see the big deal about it. It is just a change of title, and I think that the significance of that is being overstated.

2728. Mr Hughes: I do not think that the significance of changing the title is, in itself, absolute reason not to do it. I would just caution that I think that a message would go out that it was determined that policing and community safety partnership is not an acceptable title for a partnership that deals with policing and community safety. At this stage, that would seem a strange message to send, but I do not want to overstate it.

2729. The Chairperson: We will move on, since no one else has comments to make at this stage.

2730. We move on to clause 20(2). It has been suggested that clarity is needed on the Belfast model. The paper states that:

"Belfast CSP, DPP and City Council seek clarity in respect of Clause 20(2) of the draft Bill which requires the establishment of DPCSPs in each Police District and asks the Committee to ensure that the legislation, guidance and codes of practice enable flexibility in the future if, for example, the Chief Constable were to bring about a change to the number of police districts in Belfast."

2731. Lord Browne: I declare that I am a member of Belfast City Council. There seems to be some difficulty in getting clarification on this issue. I would be happy to receive clarification on why the four subcommittees do not correspond with the policing districts, if that is the case — even I get confused now, I have to admit.

2732. Mr Hughes: At the moment, there are four area command units in Belfast and four DPP subgroups. The intention of the Bill is to maintain the current arrangement in the new PCSP arrangement. That does not mean that there is not the capacity for those four to group together in pairs or in a three and a one, for instance, or for the number of area command units in Belfast to be changed. It is not the last word; it is consistent with the current arrangement, and the same flexibility would apply in the future.

2733. Mr McCartney: Perhaps it is a matter of parlance, but partnerships are not referred to as subgroups anywhere in the Bill.

2734. Mr Hughes: I am sorry. I referred to the DPP subgroups; that is how they are referred to. It is a similar model, because there would be a PCSP and four DPCSPs in Belfast. That might be awkward.

2735. Mr McCartney: Sometimes people slip into the idea that they are in a subgroup, when, in essence, those groups have their own identity and are the same as the other partnerships that have been established.

2736. Mr Hughes: I understand your point.

2737. Mr McCartney: I understand why people use the term, but, in the past, it was almost as if some DPPs were less than other DPPs. That might be unfortunate, but we need to avoid it.

2738. Mr Hughes: But it does reflect the fact that there is a principal DPP in Belfast.

2739. Mr McCartney: Regardless of whether there is a principal partnership, there are no subgroups. They are policing and community safety partnerships in their own right, with the same functions as the rest. When you talk about a subgroup, it sometimes gives rise to the notion that they are different.

2740. Mr Hughes: In a way, that is why the Bill has the title of district PCSP for those four parts of Belfast rather than subgroup. They are deliberately not referred to as subgroups in the legislation.

2741. Lord Browne: How will the PCSP and, in particular, the DPCSPs integrate with the existing structures in Belfast? We have the West Belfast Community Safety Forum, Partners and Community Together (PACT) meetings throughout Belfast and neighbourhood partnership boards. There must be a relationship with those, so I am not sure where that comes into the legislation.

2742. Mr Hughes: The critical issue is that there does not need to be a statutorily defined relationship between PCSPs and other groups that are working in similar or related, but not the same, fields. For example, PACT groups specifically focus on a relationship between police and communities, but groups often do not cover the same ground as each other or include the same number of partners. They are not statutory organisations, so we would not, therefore, be able to plug them in for statutory means. However, it is in the interests of PCSPs to know what is already in the field. It is in the interests of the police, for example, to know how their involvement with PACT groups or community and police liaison committees (CPLCs) works with their involvement with PCSPs.

2743. There are different ways for organisations to operate in larger or smaller areas, and that mixture of different groups and meetings is perfectly reasonable. What works can be built on, and what does not work may well not continue for any length of time. The critical issue is that we are setting up a comprehensive statutory set of arrangements, but that is not to limit the non-statutory arrangements that may exist elsewhere.

2744. The Chairperson: On that issue, our notes state that the Department indicated that it would be happy to provide a diagram to illustrate the text. Where are you with that? Have we got that yet? If not, when can we expect it?

2745. Mr Hughes: I think that that has already been provided to the Minister, but he has not passed it on.

2746. Mr O'Dowd: He has not worked it out yet.

2747. The Chairperson: Is it locked away in a closet?

2748. Mr A Maginness: He has got lost.

2749. The Chairperson: Will he let us see it sometime?

2750. Mr Hughes: Yes. We are aware that that is to be provided.

2751. The Chairperson: We will move on. Clause 21 is entitled "Functions of PCSP". Do members have any questions about it or require further explanation?

2752. Lord Browne: Belfast City Council submitted a serious concern about the legal status of PCSPs. That concern centred on whether PCSPs would be capable of entering into contracts themselves or whether the council would be forced to take on that role on their behalf. I seek clarification of that.

2753. Ms Nichola Creagh (Department of Justice): As a statutory body, the PCSP will be able to enter into its own contracts.

2754. The Chairperson: Are members content to move through our paper page by page? If any issues arise, members can draw them to the Committee's attention and we will pause to consider them.

2755. The paper flags up that the majority of CSPs recommend that the Justice Committee re-examine the proposed functions. Do members have any further views on that? That is a big question. Do officials have any comments? If not, we will move on.

2756. Our paper states that Coleraine Borough Council recommends that the Justice Committee re-examine clause 21(1)(c) and does not restrict the function to the policing committee as it applies to the whole partnership. Does any member or official here have any views on that?

2757. Mr Hughes: I would just underline the point that was made in December, which was that the function in clause 21(1)(c) is specifically about obtaining the co-operation of the public with the police, rather than with the full range of those involved in policing and community safety. Therefore, it seems more appropriate that that function is given to the PCSPs.

2758. The Chairperson: We will move on to consultation and discussion with the public. Include Youth has concerns that clause 21(1), particularly paragraphs (c), (d) and (e), have limitations and suggests the addition of the words "and fully considering" to clause 21(1)(d) after "to make arrangements for obtaining". In that event, clause 21(1)(d) would read: "to make arrangements for obtaining and fully considering the views of the public about matters concerning the policing of the district and enhancing community safety in the district".

2759. Do any members have any views on that? If not, do the officials have any views on it?

2760. Mr Hughes: We do not have a strong view on whether that disrupts the import of the functions. That suggestion does not seem to cause a problem. It strengthens the function as it is defined.

2761. The Chairperson: Are you saying that officials could live with that change?

2762. Mr Hughes: I think so, yes.

2763. The Chairperson: Include Youth has fundamental difficulties with what it describes as a vague definition of behaviour and asks that the term "antisocial behaviour" be removed from the Justice Bill until there is a definition that is clear and can support the partnerships in doing something about it. I honestly think that, if we wait until we get a proper and full definition of "antisocial behaviour", the youngest Member of the Assembly will be retired by that stage. If we hold up the Bill for that reason, the Minister will not get a Bill. Having said that, if anyone else wants to comment, we will listen to what you have to say. If no members have anything to say, we will ask the officials for their views.

2764. Ms Creagh: We commented on that in the previous session on 16 December. As we said then, we used the widely accepted definition of antisocial behaviour, namely the one that is defined in the community safety strategy and so on. Therefore, we do not anticipate making any changes to that at the moment.

2765. The Chairperson: Strabane, Derry and Limavady DPPs have proposed that, as funding can be provided to constituted groups only, "persons" should be replaced by "organisations". Do any members have any views on that? I am very interested in whether the departmental officials have any comment on that.

2766. Mr Hughes: Where is that?

2767. The Chairperson: In clause 21(1)(h) on page 17 of the Bill.

2768. Mr Hughes: We would have to check whether, under the meaning in the drafting, "persons" excludes organisations.

2769. The Chairperson: Do you want to take that away with you?

2770. Mr Hughes: Yes.

2771. Mr A Maginness: Could we not simply say "persons or organisations"? Is that not a simple way to address the issue?

2772. Mr Gareth Johnston (Department of Justice): It may well be that, under the Interpretation Act (Northern Ireland) 1954, "persons" includes organisations anyway. We will check with the draftsman. We will take that away and clarify that.

2773. The Chairperson: OK. We will rest it there. Strabane District Council suggested that clause 21(1)(g) is rather verbose and suggested that it should read: "to quantifiably measure the performance of the partnership in terms of reducing crime and enhancing community safety in the district".

2774. Did the Attorney General not give us an answer to that?

2775. Mr Givan: I do not think that it changes 21(1)(g) much.

2776. The Chairperson: Do any members have any views or do officials have any strong or moderate views?

2777. Mr Hughes: I cannot see that it adds anything in particular to what is already there.

2778. Mr Givan: It remains verbose.

2779. The Chairperson: Let us move on to clause 22, which deals with the functions of the DPCSP. Does any member wish to comment on anything on that in the paper? Lord Browne's point about legal status and powers is dealt with in the paper: "Belfast City Council feel that there needs to be clarity around the legal status of the new partnership and the powers and vires it has: what will fall to the body itself and what powers and vires will fall to the councils in the future."

2780. Do the officials want to add to what they have already said?

2781. Ms Creagh: We have had extensive engagement with all councils, but particularly Belfast City Council, on all issues, and we will continue that engagement when we are drawing up guidance and so on. There will be ample opportunity to explore those issues in more depth and to give more information and guidance to councils on how things will work in practice.

2782. The Chairperson: We move to page 19 of the paper, which deals with clause 23.

2783. Mr McDevitt: Chairperson, for some reason, clause 23 is on page 18 of my paper. I do not know if it is the same for other colleagues.

2784. Mr A Maginness: Yes.

2785. Mr McDevitt: We have two page 18s and two page 19s, but we are starting on clause 23.

2786. The Chairperson: Yes. It is on page 20.

2787. Mr McDevitt: That is page 18 for me.

2788. The Chairperson: OK, well, I am on clause 23 if anyone wants to come with me.

2789. The paper states that:

"The majority of the CSPs recommended that the Committee requests an evaluation of current practices, proposed for inclusion in the Bill, and that further consideration should be given to the practices of the overall partnership."

2790. Do members have any views or comments? If not, we will ask the officials to share anything that they want to say.

2791. Mr Hughes: In the preparation of the code of practice set out in clause 23, there would naturally be extensive engagement with those involved in delivery. Therefore, rather than holding back on preparing the code, issues about current practice that arise and that need to be reflected in the code of practice would be picked up at that point.

2792. The Chairperson: Does any member have any views on what Mr Hughes has said?

2793. Right, let us move on to clause 24, which is dealt with on page 22 of the Committee's paper. Mr McDevitt, are we on the same wavelength now?

2794. Mr McDevitt: No; clause 24 is on page 21 of my papers. If you call the clause number, I will follow the discussion.

2795. The Chairperson: I am not sure what is going on, but I think that we are doing all right. Clause 24 refers to annual reports. The paper states that: "The majority of the CSPs recommended that the Justice Committee re-examine the lines of accountability so that they are simplified."

2796. Does any member have any further views on that? Do the officials have any further views?

2797. Mr Hughes: I will reiterate a point made in a previous evidence session. Although there is a lot of text around the reporting between partnerships, councils, the Department and the Policing Board, the effect is to standardise the reporting so that the same report can be sent from a PCSP to a council, to the board and to the Department. Effectively, the reports will contain the same information, because all those bodies are interested in the same information.

2798. The Chairperson: Do members have any views on that? We are generally in agreement.

2799. Mr A Maginness: Yes.

2800. The Chairperson: OK.

2801. The paper also states that:

"The majority of the CSPs recommended that clause 24(5) be removed."

2802. Let us have a look at that clause. It must be an awkward clause if it has to be taken out. The papers states that:

"a number of CSPs, DPPs and Councils felt that the practice of providing an annual report to the policing committee in order to consult with the district commander seems inappropriate, given that it would be assumed, the area commander will be a member of the overall partnership. Therefore it would be more appropriate, in line with policing structures, for the police representative to carry out this consultation with said commander. 5 DPPs, 1 CSP and Larne Borough Council also related this issue to clauses 27 and 30."

2803. Does any member or official wish to comment?

2804. Mr Hughes: This is a carry-over of provision. It is already relevant to DPPs, and I think that we would be reluctant to remove something that is part of the structural arrangements for DPPs.

2805. The Chairperson: Is that the only reason that you can give to retain clause 24(5)?

2806. Mr Hughes: It forms part of the current arrangements, and the Policing Board would certainly express the view that, as far as possible, there should be no diminution of that.

2807. Mr O'Dowd: On a point of clarification, clause 24(5) includes the words "shall consult". The report could say that the policing commander is not up to much and that it was time that he — or she — moved on, but whether he likes it or not, he cannot stop the report going forward.

2808. Mr Hughes: That is right. Whoever consults has to hear what is being said back to them and has to take it seriously, but it does not necessarily change the output.

2809. Mr Givan: Until now, has it not been the case that the area commander needs to sign off on a local policing plan? Is this the community safety plan?

2810. Mr Hughes: This is the annual report. It is a report on the performance of that partnership and the functions. In this case, the function is a function of the policing committee; it is not the local policing plan, which is something on which the district commander would sign off.

2811. The Chairperson: Let us move on to clause 25. I do not know what page it is on in your papers, but it is on page 24 in mine. It relates to the annual report by Belfast PCSP.

2812. I do not hear anyone saying that they want to comment, so I will move on through the paper. I will not stop anywhere, unless you ask me to. The next clause is clause 31. Any comments on that?

2813. We then move to clause 33, "Other community policing arrangements". We are dealing with that. If members wish to comment, please do. The paper states that:

"The majority of the CSPs recommended that the Justice Committee re-examine the role of the policing committee."

If members or officials wish to comment on that, please do. The paper also states that:

"The majority of both the CSPs and DPPs noted that this clause contradicts and undermines the spirit of the single partnership and consultation requirements will be wider than that of policing. It would be unadvisable that the policing committee should be able to establish any body."

2814. Mr Hughes: As is the case with other clauses, clause 33 reflects a provision that is currently relevant to the DPPs. We believe that there is a continuing role for the policing committee in carrying out a specific set of functions that it would not be appropriate to apply to the partnership as a whole. In bringing together the functions of DPCSPs, there are certain functions that need to be conducted by the policing committee, and that is one of them. To remove it would diminish the function of the partnership.

2815. The Chairperson: Do any members wish to comment? No? We shall keep going.

2816. The majority of CSPs recommended that the Justice Committee look at strengthening clause 34, so that the partnership is, in their words, fit for purpose. Again, that could be down to perception. We heard what the Attorney General had to say about clause 34. Does any member wish to comment further?

2817. Mr Givan: I share the Attorney General's concern about the duty. Certainly, in line with the spirit of the clause, all of us want public bodies to do all that can be reasonably expected of them. However, given the litigious society in which we live and the perception of what is reasonable and likely to have an effect, we would be creating a charter for people to take whatever public body they want to court. Consequently, clause 34 causes me some concern. I do not know whether we should adopt the Attorney General's proposal to include some kind of call-in mechanism for the Minister or the Attorney General, as opposed to the courts, to determine whether they feel that it has been reasonable or whether the clause should be removed altogether. I am certainly not in favour of strengthening or adding to it, as has been suggested. In fact, I am not certain whether we should have it at all.

2818. Mr A Maginness: I agree to a large extent with Mr Givan. Further to the points made by the Attorney General, clause 34(3) states:

"References in this section to enhancing community safety in any community are to making the community one in which it is, and is perceived to be, safer to live and work, in particular by the reduction of actual and perceived levels of crime and other anti-social behaviour."

2819. That is a very strange subsection, because it combines the actuality of a reduction in levels of crime and antisocial behaviour with perceptions of them. You could, therefore, have a situation in which there was an actual reduction in crime and antisocial behaviour, established by empirical methods of assessment, but the local community's perception might be that there has not been a reduction. Implementing that subsection could cause serious confusion and tension. Clause 34 undoubtedly needs to be reworked, because we would be imposing an additional and burdensome statutory duty on public bodies. It has not been thought through properly. I am not against it, but it has not been thought through properly, so it has to go back to the Department to be looked at again. The language used could give rise to considerable concern.

2820. The Chairperson: Having listened to what the two members have said, do officials wish to add anything?

2821. Mr Hughes: The Department is well aware of the concerns that have been raised by those who recognise the risk of litigation and the cost and time involved in dealing with challenges to organisations as a result of the duty. We are also aware of a number of ways in which that could be mitigated, and a number of options have been looked at. The Attorney General made reference to the Garda Síochána Act 2005 and the duty that is contained therein. He also mentioned his views on a filter mechanism.

2822. The Department is also aware of the views of stakeholders, who have expressed very clearly that they want the duty to be strengthened and that any lessening of the duty could render the edifice of PCSPs not useless, but certainly weakened. There is still work and engagement ongoing on treading between those two opposing positions. Clearly, the view of the Department is that that clause should be introduced in the Bill and should be taken through the Bill. However, consideration may well have to be given to an amendment to it, bearing in mind the different views of different stakeholders.

2823. Mr Buchanan: It is important to note that some Departments have raised concerns about that clause and that the Executive have indicated that they will revisit it after the Committee's decision has been made. It needs to be looked at again and, perhaps, reworded or rejigged in some way because, given the amount of concerns expressed, the Bill, in its current form, will not get acceptance in the House.

2824. The Chairperson: If no one else wishes to comment, we will move on. Craigavon CSP suggested that the Committee should consider how the legislation will be enforced. We have already dealt with that and do not need to dwell on it any longer.

2825. Clause 35 deals with the functions of the joint committee and the Policing Board. Belfast City Council welcomes the setting up of a joint committee and says that, if it is necessary to separate the roles in that way, it is fundamental that the wider role of the joint committee is defined in the legislation. It goes on to say that there is a need for clarity on the role of the joint committee and the role of councils and that, in particular, if it is the role of the joint committee to set strategic direction, there should be input from councils to enable to them to have a say in the strategic direction of the partnerships. Do any members or officials wish to comment?

2826. Mr Hughes: First, it is true to say that the joint committee will have many more functions than the statutory functions that are set out in legislation. They will include the functions of the Department and the Policing Board on funding and accountability and other responsibilities for the arm's-length bodies that the partnerships will be. It is not necessary for those to be defined

in statute, because they are requirements of the two funding authorities that will establish the PCSPs. I am not sure that there is any need to include any more in the Bill in that regard. The joint committee would involve the Department and the Policing Board operating in partnership on those various functions.

2827. Secondly, the purpose of the joint committee is to set the strategic context and direction in that field for the whole of Northern Ireland. The contribution of councils would be made at council level, and it is not clear whether the joint committee would necessarily be the mechanism by which the councils would set the strategic direction across Northern Ireland.

2828. The Chairperson: Does any member wish to comment? The paper states that:

"Larne Borough Council notes that Councils are not represented on the Joint Committee."

That was on purpose, was it not? It was not just an omission.

2829. Mr Hughes: No. That is right. The joint committee will be the Policing Board and the Department operating together.

2830. The Chairperson: Does anyone wish to comment on that? If not, we will move on.

2831. The good news is that we have finished. That is a run-through, just like the one that we did last Thursday. We will not make a decision today, but when we come back next Tuesday, we will ask members to agree a definitive position on those clauses. Members can take one of three positions: yes, no or maybe, which is normally treated as an abstention.

2832. Ms Ní Chuilín: Or we may amend.

2833. The Chairperson: We have to come back to that business at our next meeting, which will be on this day week.

2834. I remind members that the Committee agreed to revisit Parts 1 and 2 of the Bill. Members know that, on Thursday, they have to come back with their definitive position on clauses 1 to 19. So, the clauses on victims and witnesses and live links will be considered at our meeting on 20 January, at which we will reach a decision on those clauses. That was agreed, was it not?

Members indicated assent.

2835. The Chairperson: I also advise the Committee that we will continue our informal scrutiny of the Bill. We will consider the schedules that relate to policing and community safety partnerships and Part 4, which is on sport. That Part stimulated considerable debate, and members will recall what the different organisations said to us on those clauses. Is everyone clear on that?

Members indicated assent.

2836. Mr McCartney: So, on Thursday, are we discussing the schedules on policing and community safety partnerships?

2837. The Chairperson: Yes, and we will adopt a definitive position on clauses 1 to 19.

2838. Mr McCartney: We have a number of issues with the schedules. Should we seek to highlight those or to propose amendments?

2839. The Committee Clerk: The first part of Thursday's meeting will be spent formally considering Parts 1 and 2 and making decisions on them. After that, assuming that there is time, we will do what we did today, but on the two schedules that relate to the policing clauses. Therefore, it will simply be a matter of going through the commentary and seeking clarification or making points. If we have time, we will also start that process with the sports clauses. The Committee will then make formal decisions on the policing and community safety clauses at a separate meeting. If the Committee is ready to do so, it can decide on the clauses and the two schedules at the same meeting.

2840. The Chairperson: Is everyone happy and content with that? I thank the departmental officials for their attendance.

20 January 2011

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Thomas Buchanan
Mr Paul Givan
Mr Conall McDevitt
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Mr Davis Hughes Mr Gareth Johnston	Department of Justice

2841. The Chairperson (Lord Morrow): We will now return to our informal clause-by-clause consideration. Today, we will cover schedules 1 and 2, which relate to the policing and community safety partnerships (PCSPs) and the district policing and community safety partnerships (DPCSPs) clauses of the Bill. The same issues were raised for both schedules. I invite the departmental officials to the table, and we can refer to them for clarification if necessary.

2842. We will start with paragraph 1 of schedule 1, which is about interpretation. If no one needs any further explanation, we will move on. There were no specific issues with paragraphs 2 and 3, which relate to composition and political members respectively.

2843. Paragraph 4 relates to independent members. Strabane District Council recommended that the Bill should include a clause that states:

"the PCSP shall implement Community Safety initiatives informed by priorities recommended by the Council and that the Council can designate and delegate authority to do so."

Does either of the officials wish to comment on that?

2844. Mr David Hughes (Department of Justice): I am not absolutely clear what the council is seeking through its suggestion.

2845. The Chairperson: I accept that you are at a disadvantage because you do not have the paper that we have. Strabane District Council recommended that the Bill should include a clause that states:

"the PCSP shall implement Community Safety initiatives informed by priorities recommended by the Council and that the Council can designate and delegate authority to do so."

2846. Mr Hughes: I think the principle would be that the PSCP would agree as a partnership what the priorities would be rather than specific priorities being set by one of the members without the agreement of the other members. I am not sure that the latter is the way that partnerships ought to work. The council will, of course, have input on the setting of priorities and the objectives of the partnerships as a whole, because its membership will include councillors. Therefore, I am not sure that the suggested clause is necessary to achieve what I think they want to achieve. [Inaudible due to mobile phone interference.]

2847. The Chairperson: So, you can see no good reason as to why that should be included?

2848. Mr Hughes: I am not sure that it would add anything.

2849. The Chairperson: If no member wishes to add anything, we will move on. The majority of the community safety partnerships (CSPs) recommended that the Justice Committee examine the potential cost savings of councils undertaking the recruitment of the independent members. Members will see in their notes that the Policing Board recognised the costs of recruiting independent members and stated that it is working to reduce the £700,000 cost to a target in the business plan this year of £550,000. The board pointed out that the £700,000 contained a contribution from the NIO but its understanding is that the Department of Justice does not intend to contribute to the cost this time. So, the councils will be asked to pile that on to the ratepayers, is that it? The ratepayers might feel that they are paying enough already. If no member has any comment on that, we will move on.

2850. Coleraine District Policing Partnership (DPP) believes that, for a number of reasons, independent members should receive a nominal allowance. It went on to state the calibre of the people needed for such appointments. Does any member have any comments?

2851. Mr McCartney: We are supportive, and we want to hear the Department's view as to why there is no remuneration for the members of the partnerships.

2852. Mr Hughes: That point was made previously. We took it away and we are pursuing the option of an amendment that would enable the partnerships to pay expenses to all members. We had started from the position that, at the moment, members of DPPs receive allowances and members of CSPs receive no allowances with only councillors receiving expenses because the CSPs are committees of councillors whereas the PSCPs will not be part of a council, so councils will not be in a position to pay councillors' expenses for their participation. Taking that on board, it is, therefore, only fair that councillors, independent members and, where appropriate, the third category of members would also be able to claim expenses for their participation.

2853. Mr McDevitt: That was fine up to the point when Mr Hughes referred to the third category of members, where appropriate. Will you explain what type of the third category of members would be entitled to claim?

2854. Mr Hughes: The third category will include representatives of organisations. It may well be that organisations, because it is part of their work, would be able to pay expenses out of their own funds. I do not think that the legislation needs to set out that distinction, because it would be understood that a representative of an organisation would be able to claim expenses from

that organisation because they are attending as part of their job. They would be in a different position from someone who is representing an organisation as a volunteer and who, therefore, would not be able to claim expenses. It would not be inappropriate for councils to be funded to pay that person's expenses for their participation in PSCPs.

2855. Mr McDevitt: Will it be down to the councils to have policies in place to prevent a civil servant, for example, being paid double?

2856. Mr Hughes: The principles will need to be set out in guidance.

2857. The Chairperson: Mr Hughes, you said that you are going to propose an amendment. When will we see the wording of that?

2858. Mr Hughes: It will be in a short time, because I think that the Committee is doing its formal —

2859. The Chairperson: We will, perhaps, need to have it by next Thursday.

2860. Mr Hughes: We have that in mind.

2861. The Chairperson: Good man, thank you.

2862. Mr McCartney: When you talk about expenses, do you mean per meeting or as it is now with the DPPs?

2863. Mr Hughes: It is not an allowance in the way that it is with DPPs.

2864. Mr McCartney: That was my original question. What is the logic behind removing the allowance that was available for DPP members?

2865. Mr Hughes: We know that CSP members were operating without any allowance. The partnership worked in that way and people were bringing what they had with them. That was not the case with DPPs. In bringing them together, we had a choice of extending allowances to all or not. On balance, we do not think that the work of the partnerships would be compromised by saying that the memberships are not supported by a specific allowance but that, of course, members should not be out of pocket.

2866. Mr McCartney: I can understand that position. However, if the DPPs were giving people an allowance as an encouragement, if you like, to come forward, by removing it, will you be reducing the pool of people who may come forward, even for the policing committees? It is different for someone who is already working and whose membership is part of that work, because they can claim expenses from their employer. For an independent member, indeed, even for an elected member, the logic behind the DPPs is being removed. I want to be satisfied that this is not simply a cost-cutting exercise.

2867. Mr Hughes: I do not think that there was any sense that the contribution that would be made by members or the willingness of members of the public from whatever background to contribute to the work of PCSPs will necessarily be compromised by their not being paid an allowance. There are models of both kinds across the piece, and there are instances of partnerships in which no allowances are paid. It did not seem that the argument for maintaining an allowance was necessarily persistent.

2868. Mr McCartney: I understand that it may be different elsewhere. Policing committees elsewhere may not have paid allowances, but it was paid here for DPPs for particular reasons. I just do not follow the logic behind removing it.

2869. Mr Hughes: I think that it is more of a case that it was not clear that there was a strong argument for carrying over the payment of allowances from the DPP model.

2870. Mr McCartney: Money is left aside for allowances for members of the DPPs.

2871. Mr Hughes: Budgeted for?

2872. Mr McCartney: Yes, as we sit today. Therefore, why should that money not be used to pay allowances for members of the new partnerships?

2873. Mr Hughes: It is because we are setting up the new partnerships under the new terms with new arrangements. In designing the partnerships, it was determined that it was effectively a voluntary partnership but that no one should be out of pocket. That was decided rather than paying allowances.

2874. Mr Gareth Johnston (Department of Justice): As well as the policing committee, there will be other committees of the partnership and other people who might be contributing just as much of their time or might be losing earnings or whatever. To pay one group and not another would look unfair.

2875. Mr McCartney: I want to avoid a situation in which members of the partnerships are paid the same allowances as the DPP members are being paid at present. If allowances for current DPP members is budgeted for, the exact amount can be used to pay allowances for everyone on the partnerships. Therefore, it would reduce the allowance but would still give people an incentive.

2876. Mr Hughes: I take the point that a large amount of the Policing Board's funding goes on DPP members' allowances and that there could be an argument that that money should be reallocated amongst all the members. However, there is also a strong voice being heard that is saying that the amount of money that is being paid for DPPs is primarily spent on administration and allowances and it is being asked whether that is appropriate when the allocation of money should be to front line services.

2877. Mr McCartney: Where is the "strong voice" coming from?

2878. Mr Hughes: That was a definite message that was received in the consultation responses.

2879. Mr McCartney: Was the message that people on those partnerships should not get allowances?

2880. Mr Hughes: It was not that specific point. It was about money being spent on administration and allowances, which, therefore, was not being used on front line services.

2881. Mr Givan: I would not draw a distinction between independent members and elected members. I served on a DPP and I found that, in Lisburn anyway, it was elected members as opposed to the independents who were doing a lot more of the front line work with the police and the community. Therefore, if we are doing anything about independent members, it should be on parity with elected members.

2882. The DPPs were supposed to involve two days' work a month. The members would draw their independence from the community and they were supposed to be engaging with the police and the local community. The administration costs was mentioned, but those were for individuals who were supposed to be drawing the support of communities and the police together, which was fundamental, I would have thought. The new body will require considerable commitment from whoever is on it, whether it is the policing element or both. It will be a considerable time commitment and I do not think that you should take it for granted that people will do it voluntarily. There should be no distinction between independent members and councillors. Currently, councillors receive remuneration for their workload, and the DPPs were seen as additional to that. Rural partnerships have been established through the Department of Agriculture and Rural Development, and those have required additional work that elected members have taken on without an allowance. We should not simply take councillors for granted either and assume that they will continue to do more and more based on their current levels of remuneration.

2883. The Chairperson: OK. Our paper says that the majority of CSPs recommended that the Justice Committee investigate cost savings of expenses compared with the current arrangements. If no one wishes to comment, we will move on.

2884. The CSPs queried whether the demographics of all partners being taken into account would be appropriate. The majority of them recommended that the Committee amend paragraph 4(3) of schedule 1 to read:

"In appointing independent members the Council shall so far as practicable secure that the members of the policing committee (rather than PCSP) are representative of the community in the district."

If no one wishes to comment on that, we will move on.

2885. There were no issues around paragraphs 5 or 6. Paragraph 7 is about representatives of designated organisations. The majority of CSPs recommended that the Committee look to name agencies in order to place obligation on them to reduce crime and disorder.

2886. The Probation Board for Northern Ireland said that it wished to be named in the Justice Bill as one of the designated organisations. Is there any reason in the world why it should not be?

2887. Mr Hughes: As was said during the evidence session in December, if the Committee thinks that it would be useful to have a number of specific organisations represented on every PCSP, it would be important that there is a mechanism for listing those organisations that did not require an elaborate process for extending or shortening it. As we have seen in other jurisdictions, that can be quite torturous.

2888. Another issue would be about getting a consensus around which organisations should be included. It would have to be ensured that the number of specified organisations is relatively small if the overall balance of the PCSPs is to be maintained. There are views that elected members should make up the largest number of any group on each partnership. There is also a view that partnerships in different areas should be able to be flexible in designating the organisations that are most appropriate to their districts. It may well be that are two, three or four organisations could be, with their agreement, specified for all partnerships. There would need to be consensus about which ones.

2889. The Chairperson: Am I right that there is no strong argument that the Probation Board could not or should not be named in the Bill?

2890. Mr Hughes: Is it the Committee's view that the Probation Board be on every partnership? What other organisations should be included? The police and the Housing Executive would be natural or almost automatic members of a partnership that looks at community safety. However, after that, who should be included? Would the Probation Board necessarily be one of a relatively small number?

2891. The Chairperson: It was an issue that it felt strongly about. You mentioned the Housing Executive, but the Probation Board might feel that it merits being included just as much as the Housing Executive and others. The more I think about it, the more I am coming round to agreeing with that position.

2892. Mr McDevitt: Chairman, I agree with you, then. During the evidence session in December, what struck me was the degree to which there appeared to be consensus not just amongst us but amongst those giving evidence. It was clear that there is a specific and small number of organisations that should be at the table to give the partnership integrity. Therefore, why would those organisations not be specified? Specifying them would prevent any partnership, for whatever reason, accidently excluding an organisation. Secondly, the inclusion of the Probation Board, for example, would strengthen the commitment to look at the totality of community safety and the totality of options and available disposals. I presume that any schedule could be easily amended should the need ever arise. I strongly support the listing of a small and specific number.

2893. Mr McCartney: If we decided to include the Probation Board, would that need to be done today or during formal scrutiny?

2894. The Chairperson: We are not making decisions, as such, on this today. We took formal decisions on clauses 1 to 19. We can come back and do it. The Committee can make a recommendation today then formally vote next week.

2895. Mr Givan: The Probation Board may be one that should be included, but, as the officials said, the police and the Housing Executive may be others. If a small number of organisations are to be specified, we should include the Probation Board in isolation. It may be useful to have an idea which ones may be specified before we start picking one or two.

2896. Mr Johnston: If that is the Committee's view, there is the question about how that would be done and whether it is appropriate to start to list organisations in the Bill, which could, as David said, be quite cumbersome to amend. The alternative is that it could be picked up in the guidance that will be issued.

2897. Mr Hughes: If it is contained in guidance, we would have an opportunity to consult more widely as to which organisations should be included in a list. It would also give us the opportunity to get the agreement of the organisations to being on the list. Given the timescale involved, it would be impossible to get that agreement to get it included in the Bill. We would want to suggest an amendment that requires partnerships to specify organisations contained in a list in a code of practice that would be issued by the Department.

2898. The Chairperson: Will the guidance be statutorily binding?

2899. Mr Hughes: I am not sure how it will be drafted, but it will be a code of practice. I will have to check.

2900. Mr Johnston: The expectation is that any of the codes of practice will be followed. Indeed, if they are not followed, that sometimes offers the opportunity to make a legal challenge as to why they were not followed.

2901. Mr McDevitt: I thought there was a strong consensus at the December meeting about a small and specific number of organisations that should be included. That was an obvious expectation. The thinking was that, if certain organisations were not included, people would wonder why they were not. It does not seem to a hugely complex exercise to list that small and specific group in the schedule and then allow for such other groups as may be required by guidance. Will the officials specify the organisations that they think should be present?

2902. The Chairperson: That would be helpful.

2903. Ms Ní Chuilín: That is the point that I was going to make. Also, what is the difference between guidance and codes of practice? If something is a duty, it is clear. If the guidance for that duty was not followed, we could go back to the code of practice. However, if it is not a duty, what is the difference?

2904. Mr Hughes: I will have to check, but it is probably based on the degree to which it can be enforced. If it is a statutory duty, the court can enforce an authority to do it. In a code of practice that contains guidance, there may well be, in some instances, completely defensible reasons for not following it. However, that would have to be expressed. The expectation would be that that guidance would be followed and, if it was not, it could be challengeable. However, as I said, there may be instances in which whoever is being challenged could defend their decision not to follow the guidance. In this case, if we were to produce a list saying that the partnerships must include representatives of five specific organisations, and one of the smallest districts said that that would skew its membership and decided to take only four of them and include another couple that it really needed, that would provide an explanation and justification for doing something slightly different.

2905. The Chairperson: My notes clearly state that the Department was to give further consideration to this matter. Will you be in a position to come back next Thursday with a list of potential organisations that should or may be named in the Bill?

2906. Mr Hughes: We would probably need to come back very quickly with a draft amendment. If it is the Committee's view that it should be amended, we would need to move quite quickly to do so and any draft amendment would need to include that list.

2907. The Chairperson: Will you have the list?

2908. Mr Hughes: Yes, if that is the most straightforward way to get clarity.

2909. Mr Johnston: There is still a question as to whether the best way is for the legislation to contain that list or for it to say that, in appointing members, the PCSP will have regard to directions issued by the Department or to a code of practice, which would be more easily amended.

2910. The Chairperson: We will leave it there and move on to paragraph 8, "Removal of members". A number of councils pointed out that consideration should be given to including in the definition of unfit a relationship to attendance criteria, as that would be important in any voluntary partnership. Does anyone wish to comment on that? Do the officials wish to say anything?

2911. Mr Hughes: Only to say that the terms of the paragraph are the same as those of the existing provisions for DPPs.

2912. The Chairperson: Everybody is clear.

2913. Paragraph 9 deals with disqualification. As there are no comments on that, we will move on.

2914. We come to paragraph 10, "Chair and vice-chair". The majority of the CSPs recommended that the Justice Committee re-examine the chair and vice-chair positions. Limavady Borough Council asked the Committee to consider not restricting the positions of chair and vice-chair to elected members in the spirit of true partnership working. It said that other agencies should not be excluded from holding those positions in order to maintain their interest, allow ownership and promote an ethos of shared responsibility within the PCSP. However, by the same token, as many argued contrary to that. Does anyone have a view on that?

2915. Mr Givan: I am pretty sympathetic to the view that an elected member should hold the position of chair. In the first 12 months, the chair of the policing committee will be the chair of the wider partnership. After 12 months, there could be a different chair. I am curious about whether there is merit in retaining the chair of the policing committee as chair throughout the four-year term for which the partnerships would be active. Obviously, an elected member would then be chair for each of those four years.

2916. Mr Hughes: We have come to the position that having one elected member and one independent member as chair and vice-chair of the overall partnership is a consequence of sharing the positions between the policing committee and the overall partnership. That councillor/independent combination is a necessary consequence of that. The sense was that it is not necessarily sustainable for the councillor to always be chair, and the argument is why should there not be an independent chair rather than a councillor. However, I think that chairing and vice-chairing should always be shared between the two types of member. In establishing the new partnerships and local ownership, and in underlining the democratic element of the partnership, it was felt that ensuring that the chair would be a councillor in the first year was an appropriate way to start.

2917. Mr Givan: I accept the logic of what you are saying. However, I hear no logic as to why years two, three and four should be any different to year one. It should be the councillor who takes the lead in the initial establishment, and I do not see why that position cannot be maintained for the full four-year term.

2918. Mr Hughes: That would be up to the partnership. The partnership could determine that the chair is a councillor for the full period.

2919. Mr Givan: Yes, but given the composition of the partnership, councillors are in the minority. Therefore, unless we specify the arrangement at this point, it will be in the hands of the partnership. Given that the council will have a role in identifying the safety aspect needs and that this is the body that will try to tackle and deliver that, is there not merit in retaining the councillor as chair?

2920. Mr Hughes: I do not think that we want to send the message that the councillor would be the only effective chair of the partnership. The effectiveness of the chair also has to be a factor in the considerations.

2921. Mr Givan: The other point that I wanted to make relates to the allowances issue that was raised earlier. Currently, the chairpersons of DPPs will receive an enhanced allowance because of the work that they are doing. If I were minded to go down the route of the elected member being chair of the DPCSPs for each of the four years, given the workload involved, would there be provision for the chair of that body to receive a responsibility allowance?

2922. Mr Hughes: Not as set out in the Bill as it stands. It provides for expenses to be paid.

2923. Mr Givan: Councils have all their committees and chairs, and they are given a special responsibility allowance. Is there anything stopping an amendment being made stating that, if the council deemed the position of chair to merit a responsibility allowance, it would attract one? Would you have to propose an amendment to the Bill to do that?

2924. Mr Hughes: It would have to be amended in the Bill. The partnership is not part of the council, so the council itself could not make the payment. It could only be done in the Bill, and there would be resource consequences.

2925. The Chairperson: Does anyone else want to comment on that?

2926. We will move on to paragraph 11 of schedule 1, which deals with the procedure of the PCSP. Some councils pointed out that:

"a quorum is defined in terms of the PCSP and that to ensure representation, consideration should be given to stipulating the ratio between the Policing Committee members and designated members."

It was also suggested that the chairman should seek "consensus of agreement" rather than a vote on every question raised within the PCSP. Votes should be taken only on items of particular significance. That chairman could have fun if he wants consensus on everything. He could be there a long time.

2927. Mr O'Dowd: It would require your skills. [Laughter.]

2928. The Chairperson: No comment.

2929. Are there any comments on the views on a quorum? As there are no comments, I will move on.

2930. Paragraph 12 deals with the constitution of the policing committee. Newtownabbey, Coleraine and Moyle DPPs noted that the payment of allowances to members of the Northern Ireland Policing Board by virtue of schedule 1, paragraph 12 of the Police (Northern Ireland) Act 2000 has not been repealed and that that raises issues of equality between members of the Northern Ireland Policing Board and members of DPPs, and, consequently, the PCSPs. Does anyone have any views on that?

2931. Strabane District Council has said that it would welcome more clarity on the financial contribution that local government will make to the PCSP and on who will pay for recruiting the independent members. Mr Hughes, do you want to comment?

2932. Mr Hughes: I will come back to the point about the recruitment of independent members, because that has been raised with us. We are not yet there on paragraph 17 and the way in which the partnership is funded. The specific question has been raised. There is a cost attached to the reconstitution and establishment of the partnerships, and that is aside from the funding for the activity of the partnerships. To date, the constitution and reconstitution of DPPs has been funded on a 75%:25% split, just as all costs associated with DPPs are split at present.

2933. As funding for the partnerships is being changed, it is proposed that an amendment should be made to make it clear that the cost of the recruitment and appointment of independent members should still be funded by the Policing Board and councils on a 75%:25% split. That is just to ensure that that particular point is not lost in the overall financial

arrangements that the Bill sets out. The issue was also raised at an evidence session, and I know that the Policing Board has done considerable work to reduce overall costs.

2934. The Chairperson: In the paper, the Department states that:

"We are however minded to suggest an amendment to require a 25% contribution from councils towards the costs associated with both the initial and subsequent appointment of independent members to the PCSP."

Does anyone wish to comment?

2935. Mr McCartney: Paragraph 12(3)(b) states:

"that office is held in turn by each of the four largest parties represented on the council immediately after the last local general election."

I wonder whether that is the best way to decide who chairs the committee. Why not use d'Hondt? There could, perhaps, be only three parties on the council. An independent member could claim that he or she is a member of a party.

2936. Mr Hughes: I think that I am right in saying that an independent member constitutes a party for the purposes of that paragraph. However, I am not absolutely certain of that. The critical point is that we are maintaining arrangements that have been used for DPPs in the arrangements for the policing committee. Therefore, the chairing of the policing committee would follow the same pattern that has been used to date for DPPs.

2937. Mr McCartney: Is that the pattern?

2938. Mr Hughes: Yes.

2939. Mr McCartney: Is that not decided by the council and the DPP?

2940. Mr Hughes: Paragraph 12(3) sets out precisely how it is currently set out for DPPs in the Police (Northern Ireland) Act 2000. Therefore, it is for the council to ensure who holds the office of chair following that model.

2941. The Chairperson: Does anyone else wish to comment? Mr Hughes, will you suggest an amendment?

2942. Mr Hughes: Yes.

2943. The Chairperson: When are we likely to see it? Will it be next week?

2944. Mr Hughes: I think it will be, yes.

2945. The Chairperson: We will move on paragraph 13, which deals with policing committee procedure. Antrim Borough Council, community safety partnership and DPP propose that the establishment of geographically based or issue-based groups should be within the remit of the overall body of the PCSP, so that a joined-up approach to problem-solving at a local level is taken that will deliver the best for local communities. The vast majority of community safety partnerships noted that the appointment of subcommittees should be agreed by the whole partnership to prevent duplication and confusion. Does anyone want to comment on that?

2946. Mr Hughes: I think that what they are looking for already exists; they are simply looking for it somewhere else. They are looking for it in paragraph 13 when, in fact, it is in paragraph 14. The PCSP, as a whole, may constitute other committees, smaller groups, subgroups and offshoots from the partnership.

2947. The Chairperson: So it is there. OK.

2948. Strabane District Council recommends that the quorum be broken down and that the number of independent and political members required to make a quorum should be stipulated. Do you want to comment on that?

2949. On voting, Strabane District Council suggests that the Bill should be reworded as follows:

"Every question at a public policing committee meeting shall be determined by a majority of votes of the members present".

The paper goes on to say that:

"The Council agrees that a more formal approach is required when holding policing committee meetings in public but that normal private meetings do not require a majority vote for every question raised."

Any comments on that?

2950. As regards paragraph 14, some of the councils pointed out that, to ensure representation, consideration should be given to including a ratio of policing committee members to designated members. Are there any views on that?

2951. Mr Hughes: The purpose of the paragraph is really to set up the kinds of groups that may be able to address specific issues in specific places and to give the partnership maximum flexibility. We did not think that it was necessary to specify which type of member should sit on them.

2952. The Chairperson: OK.

2953. Paragraph 15 deals with indemnities. Does anybody wish to comment on that? The paper notes that, in the absence of clarity, Strabane District Council is opposed to paragraph 15.

2954. Mr McCartney: Strabane District Council says that it is highly unusual for councils to insure any organisation or individuals that they do not have control over or responsibility for. Do you have any views on that?

2955. Mr Hughes: I was not aware that that was unusual. However, I know that that is already in existence in the way that the DPPs have worked to date.

2956. The Chairperson: Paragraph 16 deals with insurance against accidents. Strabane District Council has said that, in the absence of clarity, it is opposed to sub-paragraphs 1 to 4 of this paragraph.

2957. Mr McDevitt: Mr Hughes, can you clarify whether this is a rollover?

2958. Mr Hughes: Yes, it is.

2959. The Chairperson: Paragraph 17 deals with finance. The majority of the CSPs recommend that the Justice Committee amend paragraph 17 to reflect that the two bodies "shall" rather than "may" provide a grant.

2960. Mr Hughes: We have gone back to the draftsman, and that appears to be perfectly acceptable.

2961. The Chairperson: Are you tabling such an amendment?

2962. Mr Hughes: Yes.

2963. I wish to make a couple more points about paragraph 17. The model of financing set out in the legislation as it stands is that the council spends the money and then invoices and the split is 75:25. However, we are proposing to table an amendment that would mean that the PCSPs are funded by drawdown in advance of need in the way that most arm-length's bodies are. It is simply an administrative arrangement whereby the partnership is funded in advance of rather than following expenditure.

2964. Mr Givan: What about the 75:25 split?

2965. Mr Hughes: That would no longer be the case. It would be up to the council to determine how much it wants to add to a grant, and that would be set in advance.

2966. Mr Givan: Will the Department decide how much to allocate?

2967. Mr Hughes: The Department and the Policing Board will together determine what the grant to a partnership would be.

2968. Ms Ní Chuilín: The councils could, therefore, put nothing in.

2969. The Chairperson: Belfast City Council welcomed the proposal in the schedule to provide financial assistance to councils towards the running of the new partnership arrangements but proposed a change of wording so that paragraph 17 reads "shall" provide assistance rather than "may" provide assistance. Are you happy enough with that?

2970. Mr Hughes: Yes.

2971. Mr McDevitt: I understand that Mr Hughes is arguing for an administrative change. However, does he anticipate that the new funding arrangement could lead to a reduction in the amount of cash in real terms that would be available from central government?

2972. Mr Hughes: I do not think that a change in the way in which the partnerships are funded would necessarily mean a reduction in funding.

2973. Mr McDevitt: For clarity, then, they will still identify levels of need, so they will effectively be funded in advance, after which it will be up to their local authority to top up as much as they so decide politically.

2974. Mr Hughes: Yes. In effect, the partnership would produce a costed partnership plan, which would then be brought to the Department and the Policing Board. The joint committee would determine what the —

2975. Mr McDevitt: The use of the word "shall" indicates that there is a statutory duty on the Department and the Policing Board to fund that costed plan. OK.

2976. The Chairperson: OK? Let us move on. Paragraph 18 of schedule 1 deals with validity of proceedings; paragraph 19 deals with disclosure of pecuniary interests, family connections, etc.; paragraph 20 deals with joint PCSPs; and paragraph 21 of schedule 1 deals with Belfast PCSP. Do members have any issues with those paragraphs? No?

2977. That is it, folks. We will come back to those elements of the Bill next Thursday, when we will do what we did with clauses 1 to 19 today. Is that clear enough? We will also deal with the policing clauses and the two associated schedules.

2978. Mr McDevitt: And the amendments?

2979. The Chairperson: Yes, and the amendments. We will have sight of the wording of the amendments. Thank you for your attendance, gentlemen.

20 January 2011

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Thomas Buchanan
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Mr Tom Haire
Mr Gareth Johnston Department of Justice
Ms Janice Smiley

2980. The Chairperson (Lord Morrow): We will now conduct our formal clause-by-clause consideration of Parts 1 and 2, which are about victims and witnesses and live links. This is the part you have all been waiting for. I remind members that, at our meeting on Thursday 13 January, the Committee informally considered the evidence received about clauses 1 to 19 of the Justice Bill, which covers Parts 1 and 2. At that time, we received further information and clarification where necessary from the departmental officials. It was agreed that we formally consider those clauses at today's meeting. A copy of the summary paper on clauses 1 to 19 and a copy of the Hansard report of the informal discussion have been included in your packs. The Department of Justice has provided the Committee with two letters this morning relating to the live links clauses. Copies of those can be found in the tabled packs. I will refer to the letters when the Committee is discussing the relevant issues.

Clause 1 (Offender levy imposed by court)

2981. The Chairperson: We will start with Chapter 1 — the offender levy. Members should indicate whether they are content with the clauses as drafted or whether there are any issues that they wish to discuss about clauses 1 to 6 or paragraph 1 of schedule 5.

2982. Mr McCartney: I want to discuss the principle of the levy, which will have an impact on voting on the clauses. We have no problem with clauses 2 to 6 as they are written. However, we want to have a discussion about reparation, which I mentioned when Mr Johnston gave evidence. We are not sure whether the levy, as it is being presented, has the proper focus on reparation. We feel that people will basically see this as an addition to a fine rather than an offender accepting that a victim is involved and that that is part of the process. To strengthen the provision, we would like to see a person having the option to say whether or not they want to pay a levy or take part in some sort of community service, small and limited as they would be. That would, at least, give the offender the choice and, by doing so, there would be recognition that the levy or the community service is part of the reparation project.

2983. The Chairperson: Does anyone else wish to comment? The departmental officials are present, and they will comment if we ask them to. Mr McCartney, are you saying that, in your analysis, you feel that this is punishment twice over?

2984. Mr McCartney: I think that that becomes an issue later when it comes to custody. The double sanction will be one of the issues that we will be seeking legal advice on. One of the witnesses referred to that in written evidence. The idea of restorative measures or reparation is when an offender is to face up to the fact that they have done something wrong to a person, persons or the wider community.

2985. We feel that offenders would see the levy, as it is framed, as an addition to a fine or as part of the inconvenience of going to prison. It would not help in the process of offenders accepting that what they did was wrong. If people are given the option of paying the levy or doing a small amount of community service, at least they would be part of a process of accepting that they did something wrong and should be part of the reparation process.

2986. The Chairperson: Are you saying that they should make that decision?

2987. Mr McCartney: They should be given the choice as to whether they want to pay the levy or do community service.

2988. Mr Givan: I have a couple of queries about this. The first is about the administration of a community service element as opposed to the levy. The second is that the levy, as I understand it, is being brought in to generate a pot of money to support victims financially. However, Mr McCartney's suggestion would change the objective of bringing in the levy. The provision would apply to someone who was caught for speeding. When there is no victim per se, what would the community service element be for breaking a speed limit of 10 mph or 20 mph?

2989. Mr McCartney: When we get to the relevant clause, we will be saying that there should not be a levy for such offences.

2990. Mr Givan: OK. If someone is sentenced to imprisonment, it would be clear that the judge has decided that community service was not appropriate for that offence. Therefore, if someone is already in prison, substituting the levy with community service concerns me, because they would obviously be deemed to have committed a serious enough offence that resulted in them going to prison.

2991. Mr McCartney: There are two issues. First, the amount of money that the officials told us would be generated by the levy in a year would be between £220,000 and £300,000. Valuable as it is, it is not a large amount of money to be working with victims.

2992. Secondly, a person who is given the choice of paying a £5 levy or perhaps standing in a supermarket on a Saturday afternoon packing bags to raise money for the hospice might opt for the £5 levy, but, at least in doing so, they are being asked to make a choice and would be part of the reparation process. If they had to go to prison, I am sure that the Prison Service could ask a prisoner, while serving their two years, to go to a handicrafts class and furnish two handicrafts or do a painting or whatever, which could then be sold and used for victim support. That way, they would be part of the process of acceptance and part of the reparation process. That is our broad argument.

2993. The Chairperson: Would the victims have any say in this?

2994. Mr McCartney: They should have. Under this provision, as drafted, the victims have no say as to whether the levy is £5, £10 or £50. The victims are being acknowledged, but the reparation is going to be prescribed.

2995. The Chairperson: Who would you consult first: the victim or the offender?

2996. The Chairperson: Victims should be part of the wider the discussion, and we should be representing them. If I was a victim and I heard that someone got a £50 fine and a £5 levy, honestly, I would see that simply as a £55 fine. Perhaps it would be more cost-effective to say that it is a £55 fine, 10% of which will go to a victims' fund. That would save on all the administration.

2997. If this is supposed to be part of the process of saying to people who have committed offences that they have to be part of the reparation and accept that they done something wrong, our opinion is that the provision is not strong enough. I am not arguing that, simply by being given a choice, people will be accepting that they have done something wrong. However, it is our view that we have to send a signal to those who we are legislating for that this is a process that is designed to do something. I am mindful of what the Attorney General said the other day about making laws that have no purpose.

2998. The Chairperson: We all agree with that. Maybe it is not relevant to the part of the Bill that we are discussing now, but we also all agree that part of the Bill is maybe making laws that already exist to deal with some offences. We have discussed that, and that will be another story for another day.

2999. Lord Browne: Giving them an alternative would increase the administration costs, which defeats the purpose of the money going to victims or the charities that support victims.

3000. Mr McCartney: The levy ranges from £5 to £50. Any community service element would be a one-off. It would not be a supervised scheme lasting for six months, for example. If someone has to pay a £5 levy, it would not take a lot to offer them some sort of equivalent, for example, two hours in a supermarket packing bags to raise money for the hospice.

3001. Lord Browne: I am not so sure.

3002. Mr McCartney: I understand that there would be an administration cost. I am not minimising that, Wallace.

3003. Mr O'Dowd: We have just had a discussion about community service and alternatives to imprisonment. It would not be a great stretch to include in the administration the element that we are talking about for the alternatives to a levy. It would simply mean directing an offender into a different section of the criminal justice system.

3004. Mr A Maginness: It is an interesting discussion, but I do not think what is being proposed is practical for such a small amount of money. It is an interesting idea, but it would not be practical in a live court situation; rather, it would complicate court proceedings. At the end of the day, I am not certain that it is worth all that.

3005. The Chairperson: You think it would bring no add-on value?

3006. Mr A Maginness: I do not think it would. I understand where Raymond is coming from, and it is an interesting idea. However, I really do not think that it is a practical proposition.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 5; Noes 3.

AYES

Lord Browne, Mr Buchanan, Mr Givan, Mr McDevitt, Mr A Maginness.

NOES

Mr McCartney, Ms Ní Chuilín, Mr O'Dowd.

Question accordingly agreed to.

Clause 1 agreed to.

Clause 2 (Enforcement and treatment of offender levy imposed by court)

3007. The Chairperson: Does anyone wish to comment on clause 2?

3008. Mr McCartney: We have no problem with how the clause is presented. However, obviously, we may seek to propose an amendment somewhere along the line. If we do not vote for clauses 2 to 6, our decision will be based on our original submission.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 5; Noes 0.

AYES

Lord Browne, Mr Buchanan, Mr Givan, Mr McDevitt, Mr A Maginness.

Question accordingly agreed to.

Clause 2 agreed to.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 5; Noes 0.

AYES

Lord Browne, Mr Buchanan, Mr Givan, Mr McDevitt, Mr A Maginness.

Question accordingly agreed to.

Clause 3 agreed to.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 5; Noes 0.

AYES

Lord Browne, Mr Buchanan, Mr Givan, Mr McDevitt, Mr A Maginness.

Question accordingly agreed to.

Clause 4 agreed to.

Clause 5 (Offender levy on certain penalties)

3009. Mr McCartney: This is around road traffic offences. We are opposed to the clause. We feel that it undermines the issue of reparations and victims. Clearly, it should be applied when someone has been hurt as a result of a road traffic accident. However, for other offences, we believe that the public may see the provision as being a revenue-raising power, rather than it being aimed at helping with victim support.

3010. Mr McDevitt: I understand what Mr McCartney is saying. However, I have a problem with the concept of victimless crime.

3011. Mr McCartney: I do not think that I said "victimless crime".

3012. Mr McDevitt: I understand that. When trying to codify stuff in law, it is important for us to send a message that all crime impacts on society. If someone is done for speeding but did not kill someone or hit something, it does not mean that there was not the serious potential for them to have done a lot of damage. Drink-driving, possession of drugs or financial crimes, which is topical, are often described as not impacting on society. However, they do. If we are going to go down this road, we should do so for everything as listed in the penal code as opposed to doing so for some but not others. That is the weakness that I see in the argument.

3013. Mr O'Dowd: Maybe I am splitting hairs, but I am not trying to. Are road traffic offences such as speeding or illegal parking criminal offences? I do not think that they are classed as criminal offences. They may be offences; however, when someone applies for a job and is asked to list their criminal offences, I am not sure that they would include the fact that they received a £50 fine for breaking a red light. I accept that road traffic offences have the potential to cause serious harm and hurt, but, when that is the case, it is taken into account. If someone hurts someone else as a result of their actions on the road, they certainly would not receive an on-the-spot fine; they would be in court to receive a sanction from the judge. So, there is a slight difference in this category. The fine imposed on someone for a road traffic offence is the punishment and the person's reparation to society and acknowledgment that they did something

wrong. To add to that will be seen simply as further taxation. If someone breaks the 30 mph speed limit in a residential area, will residents' associations be able to apply to the fund for their activities? I do not think so. I accept that victims of road traffic offences may be able to apply to the victims' fund, but we are stretching it a bit far with this one.

3014. The Chairperson: I am going to ask the departmental officials to come to the table. Maybe you could give us some assistance. The question has been posed about whether speeding is a criminal offence. Does it make someone a criminal?

3015. Mr Gareth Johnston (Department of Justice): We are not talking about minor parking offences, which are not dealt under this regime. If someone refuses to pay a fine for a speeding ticket, they are then entered into the prosecution system for consideration. It is just that the speeding ticket is a way of dealing with that offence. So, we are still talking about offences when referring to speeding.

3016. Ms Janice Smiley (Department of Justice): Those are all offences in the criminal code. A bit like the fixed penalties in Part 6 of the Bill, this is an opportunity to deal with it outside the courtroom. If someone gets a speeding ticket, they can refuse to accept it and have their day court. In such cases, the decision will be made by the judge. Therefore, this is two ways of dealing with the same offence: it is an individual's choice as to whether accept the ticket.

3017. Mr McCartney: Would that not apply if it was just a fixed penalty for speeding?

3018. Mr Johnston: It would apply for a fixed penalty for speeding but not for a parking ticket.

3019. Ms Smiley: It would apply to what are called endorsable offences. The levy will apply to the sort of offence that would lead to someone having their driving licence endorsed in court. It will not apply to non-endorsable offences such as parking —

3020. Mr McCartney: If someone takes the fixed penalty and gets three penalty points, are they liable to pay the levy?

3021. Ms Smiley: Yes.

3022. Mr Johnston: They would pay the £5 levy.

3023. Ms Smiley: Not, though, for minor traffic offences.

3024. Mr Givan: Correct me if I am wrong, but drivers can now go to classes rather than accept penalty points and a fine. If a driver chooses to go for one of those classes, would he still have to pay the levy?

3025. Ms Smiley: No, because he would be paying for the driver awareness course, which I think costs over £100. That is a one-off, just in the way that some of the fixed penalties are.

3026. Mr Johnston: In many ways, that is a diversionary alternative as opposed to a penalty.

3027. Lord Browne: Is that course in addition to paying a fine?

3028. Mr Johnston: No, it is instead of the fine. People can go on the course in certain circumstances. It is about diverting appropriate —

3029. Ms Smiley: I think it is for a first instance of speeding. People will be educated about the dangers of the type of driving that gave rise to the offence.

3030. Mr Johnston: Then, if they do it again —

3031. Mr Givan: But, that person will have committed an offence. In that sense, a levy —

3032. Mr Johnston: Yes, but I would look at that more with a view to the various diversionary functions. A young person may commit a minor offence but the police officer could use discretion as to whether the case gets taken forward or whether the young person should be brought home and spoken to with their parents present and receive an informal warning. In a sense, the driving course falls into that category.

3033. Ms Smiley: When it becomes a charge and someone goes to court, there has to be an outcome. This is an alternative.

3034. Mr Givan: When someone has to pay the levy, will the reason for it be made clear to them? For example, is it pointed out to them what victims were created because of their actions?

3035. Ms Smiley: Yes. That would be detailed on the ticket and explained by the officer. The person has to understand what they are paying. There will be two components: it will not be a £65 fine but a £60 fixed penalty fine and a £5 levy, for example.

3036. The Chairperson: If I am caught on camera, I am sent out a fine. What options do I have when that fine arrives with me?

3037. Ms Smiley: That would be a conditional offer of a fixed penalty. After an offence is caught by a speed camera, they have to identify who the driver was, so they would write out to the registered owner of the vehicle to ask whether that person was the driver on that occasion. The driver will then have the option to pay a fixed penalty with a levy or go to court in the normal way.

3038. The Chairperson: What about this driver awareness course? Do they get that option, too?

3039. Ms Smiley: That is a one-off opportunity for an individual who has been caught speeding for the first time but was not so far over the limit to be deemed dangerous enough to merit taking it forward in any other way. The person is given an opportunity to attend an education course on the dangers of speeding. We are not attaching a levy to that, as is the case with a number of other alternatives to prosecution.

3040. The Chairperson: The cameras are the best revenue-raising stream that is available, are they not?

3041. Ms Smiley: I am not sure whether that is the case or whether it is officers stopping people in the normal way. I can find that out and let the Committee know.

3042. Mr Givan: Will victims of car crime be able to access this fund?

3043. Ms Smiley: It is for victims across the board. The money for the communities will go through the community safety partnerships. A pot of money will be available, and the partnerships will identify priorities every year. I think that the fund will be open to all victims' groups, and allocations will be based on what the partnerships thought were the priorities for any particular year.

3044. Mr Givan: I would have thought that this levy on the motorist would be one of your key revenue generators.

3045. Ms Smiley: That is why we did not want to exclude the fact that victims of car crime could avail themselves of funds that may have been generated by a levy applied to car crimes.

3046. The Chairperson: Is there a tolerance level? If I am doing 32 mph in an area with a 30 mph speed limit, will I get a ticket?

3047. Mr Johnston: There is the usual discretion. I am not sure what exactly that would be.

3048. The Chairperson: Does that discretion depend on how good a form the person on duty is in on the day?

3049. Mr Johnston: I understand that the police have guidelines. I am not sure of the detail, but I understand that there are guidelines to show what action will be taken if a driver is a certain level over the limit.

3050. Ms Smiley: There are certain levels for a fixed penalty, and a person caught using excessive speed would automatically have to go to court, so the discretion operates within a framework.

3051. The Chairperson: Would it be a 10% tolerance level?

3052. Ms Smiley: I am not sure what guidelines the police use.

3053. Mr Givan: I do not think that they tell you.

3054. Mr O'Dowd: I note that the Bar Council also raised concerns about this matter in its evidence session. In your response, you said that the levy would attach to the offences of speeding, using a mobile phone while driving and parking on pedestrian crossings etc. I am also concerned that the levy is the only levy that will be imposed outside the judicial system. It will be imposed on the side of a road by a police officer. As the Chairperson said, a lot can depend on what form the police officer is in on the day.

3055. Mr Johnston: The fixed penalty itself is being imposed outside the judicial system as well, and, if you do not agree with the fact that it is being imposed, there is always the option to say, "No, I want to go to court to argue my case". In that circumstance, you are arguing the case against both the penalty and the imposition of the levy.

3056. Mr O'Dowd: With traffic offences in particular, a number of sanctions can be taken against you for one offence. If you speed, you can get a £60 fine and three, or perhaps more, penalty points on the spot. So, there is an additional sanction placed against a driver for committing an offence, and the insurance costs then increase, too. There is a multiplication of effects for that driver. Surely that has already made the driver think, "I should not have done that. I have just lost £60, I have three penalty points and my insurance has gone up."

3057. Therefore, there is already a sanction against drivers that tells them that, in the eyes of the society, they have done wrong. On top of that, the Bill adds a levy that a driver has to pay to a fund for victims. I accept that there are no victimless crimes. However, if a driver has committed a driving offence that directly involves an individual victim, the court seeks reparation as well. Therefore, I do not think that this if the way forward for these sorts of offences.

3058. Mr Johnston: I am not sure that the arguments are very different here. As with a great many crimes that go to court where there is not necessarily an identifiable individual victim, the same considerations apply. We would hope that the penalty that is imposed by the court will make somebody think, "I should not have done that, and I will not do it again". The levy encourages offenders to see that what they have done has consequences for victims and the community, so there is an element of general reparation for those consequences.

3059. The Chairperson: It is a wee bit hard for us to get our heads around this. If I am doing 32 mph in a 30 mph zone, I can get booked. I hear what is being said; there is no victimless crime. There is always a victim somewhere. Yet, I could be doing 9 mph. I am talking about the levy. How is it applied in a case like that? The decision has been taken that I am now worthy of a ticket for driving at 32 mph.

3060. Mr Johnston: I do not think that you would generally get a ticket for doing 32 mph in a 30 mph zone.

3061. The Chairperson: Are you sure?

3062. Mr Johnston: In a sense, we are getting into a different debate here. We are getting into the debate about what you punish and what you deal with by discretion. All we are saying is that, if something is punished by a fixed penalty, fine or imprisonment, the levy attaches to that.

3063. Mr McCartney: What is the logic in applying this to someone over the age of 18? Can someone get a driving licence at 17?

3064. Mr Johnston: For someone younger than that, the normal disposal is a youth conference order, but we also felt that, for under-18s —

3065. Mr McCartney: For a road traffic offence?

3066. Mr Johnston: With under-18s, it is often the parent who ends up paying. We did not think that, for younger people, the connection would effectively be made between the individual offender and the victim.

3067. Ms Smiley: When someone aged under 18 goes to court and a financial order is imposed, there is a responsibility on the parent or guardian to discharge the order for them. So, in effect, if we were to apply a levy on those individuals, they would not be making any reparation; their parents would be doing so on their behalf. Therefore, it defeated the policy intent that the individual would feel that they had made some kind of reparation.

3068. Mr O'Dowd: Is that a legal or moral obligation on the parents?

3069. Ms Smiley: It is an obligation in law. There is a provision that states that, if an under-18 is fined or has another financial penalty imposed on them, the parent has a legal responsibility to discharge the fine in the event that the individual does not have the money to do so.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 5; Noes 3.

AYES

Lord Browne, Mr Buchanan, Mr Givan, Mr A Maginness, Mr McDevitt.

NOES

Mr McCartney, Ms Ní Chuilín, Mr O'Dowd

Question accordingly agreed to.

Clause 5 agreed to.

Clause 6 (Amount of the offender levy)

3070. The Chairperson: Does anyone have any comments on this clause?

3071. Mr McCartney: A number of witnesses have told us that they feel that imposing a levy on someone who has already been given a custodial sentence creates a double sanction. Loss of liberty should be the only sanction.

3072. Mr Johnston: There are certainly circumstances in which a custodial penalty is already combined with other things. Janice will keep me right, but there may well be a compensation order or a fine as well as a sentence. As that is already provided for in law, we do not feel that we are making a departure in principle here. As we have said before, we have looked at this issue against the prison rules, and we have taken account of what the Human Rights Commission has said. We are looking at only a very small deduction each week from prisoner earnings. It is a reminder to a prisoner that what has been done has consequences.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 4; Noes 0.

AYES

Lord Browne, Mr Buchanan, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 6 agreed to.

3073. The Chairperson: Before we move on to clauses 7 to 13, we have to deal with paragraph 1 of schedule 5, which is on the offender levy. Does anyone wish to comment on that? If not, we will put it formally to the Committee. Are members in favour of paragraph 1 of schedule 5?

Members indicated assent.

3074. The Chairperson: We will now deal with clauses 7 to 13. Can we have an early indication as to whether there are any issues around anything in those clauses?

3075. Mr O'Dowd: I have some issues with clause 12.

3076. The Chairperson: Are there issues with anything before clause 12? OK, I will put the question on those clauses.

Clauses 7 to 11 agreed to.

Clause 12 (Examination of accused through intermediary)

3077. The Chairperson: Mr O'Dowd, you wished to raise an issue.

3078. Mr O'Dowd: In its evidence session, the Law Society referred to the fact that best practice dictates that those suffering from mental health illness should be diverted away from the criminal justice system. It cites the Bradley report in England, which has received attention from even the House of Commons, where the Joint Committee on Human Rights has raised significant concerns about how similar legislation in England has drawn people with mental health issues into the criminal justice system instead of dealing with them outside it. Therefore, although, on the face of it, the clause seems to support people with mental health issues, it actually makes it easier for them to end up in the criminal justice system rather than be diverted away from it. Does the Department have any views on the Law Society's evidence to the Committee?

3079. Mr Johnston: I really do not think that that is the intention of the provisions. They are supportive provisions that have, in many ways, come about as a result of pronouncements of the European Court of Human Rights on situations involving the vulnerable accused and how they have been treated.

3080. Therefore, the clause does not take away from either of two commitments. First, it does not take away from the commitment that we have given to review the law on unfitness to plead that may be engaged. We did that subsequent to the Donagh case, and that review is under way. Secondly, the clause does not change the commitment to look at the same ground that Lord Bradley looked at, which is how people with mental health issues are dealt with in the justice system and how they are diverted away from it. Lord Bradley was over for a seminar at which the various criminal justice agencies were represented, and that has kicked off the work of a new subgroup of the Criminal Justice Board that will deal with mental health and will look at what our strategy is. All of that is informed by the Criminal Justice Inspection report, 'Not a Marginal Issue', which was published in the past year.

3081. Therefore, this matter is really about support and people's rights as espoused by the European Court of Human Rights. However, you are absolutely right; there are lots of people with mental health issues who should be diverted away from the system, and we are trying to pick up on that in different ways. We could certainly brief the Committee on those points at a later stage, if that would be helpful.

Question, That the Committee is content with the clause, put and agreed to.

Clause 12 agreed to.

Clause 13 agreed to.

Clause 14 (Live links for patients detained in hospital)

3082. The Chairperson: We move on to Part 2, which is on live links. This covers clauses 14 to 19. Members have been given some letters on this Part, which they might want to use as an aide-memoire.

3083. The Committee Clerk: In the first letter, which refers to clause 16, the Department outlines an amendment that it intends to bring forward. The second letter refers to clause 19 and provides further information on issues that the Committee discussed with officials last week.

3084. Ms Ní Chuilín: We have an issue with clause 14. We think that it should provide for a mental health advocate to be present for live links.

3085. The Chairperson: Have you made your point, or do you have something more to say?

3086. Ms Ní Chuilín: No, that is it.

3087. The Chairperson: Mr Johnston, since you are here, do you want to comment on that?

3088. Mr Johnston: We are moving into an area in which other colleagues are a bit more expert than I am.

3089. Ms Ní Chuilín: They are coming up behind you now.

3090. The Chairperson: They anticipated that we would need them.

3091. Mr Johnston: I beg the Committee's indulgence to allow Mr Haire to speak on this point.

3092. Mr Tom Haire (Department of Justice): I did not hear the question.

3093. Mr Johnston: The question was about clause 14: should an advocate be present with a person who is detained in hospital?

3094. Mr Haire: Arrangements are already in place, although not necessarily in statute, for the resident medical officer, for example, to be with the patient. Indeed, the general powers being created in the previous clauses will apply to allow intermediaries to be available to the client.

3095. Ms Ní Chuilín: That may be customary practice at the moment, but we think that the issue should be included in statute. It does not seem to be any big shakes to you, but it is better looking at it than for it, particularly where mental health issues are concerned.

3096. The Chairperson: Would the Department die in the ditch about this one?

3097. Mr Johnston: We would need to look at it. We can have a think about it and consult colleagues. I am not thinking of just the practical issues. If we put in the Bill that we want something to happen automatically when, in other circumstances, it is at the discretion of the court, issues will arise around the interests of justice, and we would need to think about those. If the Committee wanted to pause its consideration of that clause, we could certainly come back to it.

3098. Ms Ní Chuilín: Fair enough.

3099. The Chairperson: We could park it until Tuesday. Would that give you enough time?

3100. Mr Haire: I know that, in the Bamford review of mental health, the position of advocates for mental health patients more generally is being addressed. It is also addressing how to deal with advocacy rights in mental health law more generally.

3101. Ms Ní Chuilín: The Bamford review has been going on for a lot longer than this mandate. I suspect that it will probably go on for a lot longer still. So, no disrespect, but this is an opportunity for us to make a difference.

3102. Mr Johnston: We are happy to look at that, Chairman.

3103. The Chairperson: I think that the Committee is happy to park clause 14. We can perhaps get consensus on it when we revisit it.

Clause 14 referred for further consideration.

Clause 15 agreed to.

Clause 16 (Live links at preliminary hearings on appeals to the county court)

3104. The Chairperson: We have had some indication that someone wants to comment on this clause.

3105. Mr O'Dowd: I have asked before about the Human Rights Commission's concern about the right of the appellant to give consent to a live link. Mr Haire told me before that it is implicit that the appellant gives written consent to a live link. However, I have gone through the legislation again, and I am still confused. I still think that the Human Rights Commission has a point. We should be proposing an amendment to clause 16 to give the appellant a right to give written consent to a live link.

3106. Mr Johnston: This is just about preliminary hearings for appeals to the County Court, not about the appeal hearing itself.

3107. Mr Haire: The point that I made last week was about the substantive hearing — the appeal hearing itself or, for example, the sentencing hearing. Various statutes require consent for the substantive appeal or sentencing hearings. When it comes to preliminary hearings such as the one outlined in clause 16 — indeed, this maps onto other law on preliminary hearings — the Human Rights Commission is right, there is not consent. There are representations by the appellant or defendant in terms of that live link hearing.

3108. Mr O'Dowd: So, we now accept that that is not in the clause. A preliminary hearing can last several days or, in some cases, weeks. Therefore, it is still our view that there should be an amendment to the clause to give the appellants or defendants the same rights as they have in other cases where written consent is required.

3109. Mr Johnston: This is about preliminary hearings for appeals to the County Court. It is for appeals from the Magistrate's Courts. Generally speaking, those appeals are disposed of within quite prompt timescales, not the sort of timescales that you mentioned. A preliminary hearing could be on a very straightforward issue that needed to be dealt with in advance of the trial. Indeed, it is feasible that a hearing could last only a matter of minutes. This clause is trying to deal with the need, in those circumstances, to deliver someone from prison to the court and back again.

3110. As Tom said, this provision sits with other provisions on preliminary hearings, where there is a right to make recommendations, but not a right to object. It comes down to the general approach of the European Court of Human Rights, which is to look at the whole criminal process from start to finish and to ask whether people have had the opportunity to tell their side of the story and to be heard during the entire process. That does not mean that someone needs to have that right to appear in person at every single stage. As we said about the provisions on the appeal hearing itself, if you want to be there in person, you will be there in person.

3111. The Chairperson: Is that clear?

3112. Mr O'Dowd: Well, I am not satisfied, but there is no point in rehearsing the argument.

3113. The Chairperson: But you understand it.

3114. I draw members' attention to their information packs, as the Minister has proposed an amendment. Therefore, when members consider the clause, they are also being asked to consider the proposed amendment. Is everybody clear on that? The amendment is as follows:

"Clause 16, page 12, line 5, at end insert —

'(8A) If the court proceeds with the hearing under paragraph (8) it shall not remand the appellant in custody for a period exceeding 8 days commencing on the day following that on which it remands him.'"

Perhaps the officials can take us through the amendment so that there is clarity at this stage.

3115. Mr Haire: The proposed amendment is to clause 16. Subsections (7) and (8) deal with what happens if the live link breaks down. The subsection that we are proposing is included in other law. It is a backstop provision that requires the court not to leave things unresolved. If, for example, the live link breaks down, under subsection (7), the court adjourns the hearing. Under subsection (8), it may then proceed without the appellant. However, we wanted to include an additional provision to say that, if the court does that, it must deal with the case not within the normal 28-day remand period, but more expeditiously than that. It is a gap that we did not have, and we did not think that we could slot this into existing law.

3116. The Chairperson: That sounds like common sense. Does anyone with to comment? If not, I will put the question on clause 16, with the proposed amendments as before you and as outlined here in your presence.

3117. Mr O'Dowd: I just want to clarify whether the Committee would support amending clause 16 to take into account the Human Rights Commission's concerns?

3118. The Chairperson: The paper before us states that the commission:

"would prefer that clause 16 be amended to insert a requirement for the appellant's consent; it is otherwise content with the draft clauses."

Mr O'Dowd, you are proposing that that should be done.

3119. Mr O'Dowd: Yes.

3120. The Chairperson: Is everyone clear on what is being proposed? I take it that everyone is clear on that. I will formally put the question to the Committee.

3121. Mr McDevitt: What are you putting to the Committee?

3122. Ms Ní Chuilín: The clause as amended by John's proposal.

3123. Mr Johnston: Chairman, if I might just mention that there would be considerable practical consequences in having to obtain consent for what are very regular and straightforward hearings. I just thought it right to flag that up.

3124. Mr O'Dowd: You are not trying to influence the vote in any way.

3125. Mr Johnston: Far be it from me to try to influence the Committee.

3126. Ms Ní Chuilín: You are doing a good job for someone who is not trying, no harm to you. [Laughter.]

3127. The Chairperson: Folks, just to be clear on this, the first vote will be on the amendment as proposed by the Department, and we will then vote on Mr O'Dowd's amendment. Is that clear?

3128. OK. Are members in favour of clause 16, with the proposed amendment as outlined in the papers?

Members indicated assent.

3129. The Chairperson: We will now vote on the additional amendment as proposed by Mr O'Dowd. Are members in favour of the proposed amendment?

Members indicated dissent.

Clause 17 agreed to.

Clause 18 agreed to.

Clause 19 (Live link direction for vulnerable accused)

3130. The Chairperson: Someone had indicated that they wish to comment on this clause. I am not sure who it is. I think that the Department is going to bring us further information. Is that right?

3131. Members will see from their papers that, in their response to clause 19, Include Youth advocated the need for a pilot study. The paper states:

"Include Youth supports the use of live links for accused under the age of 18 and aged over 18 where their ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by their level of intellectual ability or social functioning, and where the use of live link would enable more effective participation. Include Youth recommends that this be piloted to assess effectiveness."

3132. Members, you have that in from of you. Do the officials wish to comment further on this issue?

3133. Mr Johnston: We believe that the provision that Include Youth is looking for is already available under the Criminal Evidence (Northern Ireland) Order 1999. This legislation is extending that provision. Include Youth mentioned a pilot, but the operational arrangements for live links have been available for some time. Essentially, the answer is that we believe that what Include Youth is asking for is already provided for in legislation for people under the age of 18 with vulnerabilities.

3134. Mr Haire: It is already operating.

3135. The Chairperson: If no one has anything to add, I will put the Question.

Question, That the Committee is content with the clause, put and agreed to.

Clause 19 agreed to.

3136. The Chairperson: We now turn to paragraph 2 of schedule 5, which deals with vulnerable and intimidated witnesses. Does anyone want to ask any questions on that before I put it formally to the meeting? Is the Committee in favour of paragraph 2 of schedule 5?

Members indicated assent.

3137. The Chairperson: Folks, thank you very much for your time and attention. I also thank the officials for their assistance.

25 January 2011

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Thomas Buchanan
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Mr Tom Haire Mr Gareth Johnston	Department of Justice

3138. The Chairperson (Lord Morrow): We will now continue with our informal clause-by-clause consideration of the Justice Bill, focusing on Part 4, which is on sport, and schedule 3. I have been asked whether members will be asked to make any definitive decision on this today. The answer is no; that will come next week. We will go through the relevant Part clause by clause, and members can ask questions. We are joined by the departmental officials Mr Johnston and Mr Haire. You are very welcome. I am sure they will give their expertise and opinion, as usual, if and when it is required.

3139. Members have copies of relevant papers. I remind you that the Committee has written to the Committee for Culture, Arts and Leisure seeking its views on this Part of the Bill, and it provided a detailed response. Its comments are included under the relevant clauses in the summary document for consideration, which members have before them. Pages 1 to 6 of the summary document highlight general comments that account should be taken of when considering individual clauses.

3140. We will start with clause 36. I invite any comments or views and ask members whether they have any questions by way of clarification. Mr Johnston, do you or Mr Haire wish to provide anything additional at this stage about clause 36? Feel free to say so.

3141. Mr Gareth Johnston (Department of Justice): We are proposing one amendment to clause 36(2)(a). We propose that, instead of being applicable for two hours before the start of the match and one hour after the end of the match, the regulated period during which the provisions in the sports law section would apply would be for one hour before and half an hour after the match.

3142. I am conscious that the Committee has a fair amount of concern and that there are enduring concerns among sports bodies about the sports law Part of the Bill. The amendments that we will propose today follow a series of meetings and correspondence with sports groups over the past few weeks. Indeed, each group has met either the Minister of Justice or the Minister of Culture, Arts and Leisure.

3143. We still feel that the overall concept of legislating and regulating in that area is right; it complements the safety of sports ground legislation. A range of amendments that we will suggest to the Committee include dropping the Bill's proposals regarding ticket touting; reducing the periods before and after the match, which I mentioned; amending the provisions on alcohol to remove the specific offence of being drunk on a vehicle; and other changes to accommodate the Committee's concern, which we will come to as we go through the Bill. Therefore, my general preamble is that there is a range of things that we want to propose.

3144. The Chairperson: We will deal with each as it comes up in the round. We are now dealing with clause 36. The Committee for Culture, Arts and Leisure recommends: "clarification of the definition of 'regulated matches' and 'designated ground'."

Have the officials anything to say in response to that?

3145. Mr Johnston: The GAA was concerned about designated grounds, which will also come up separately when we get into discussing schedules and so on.

3146. The Chairperson: We will pick up on that when we discuss schedule 3.

3147. Mr Johnston: Right, OK.

3148. Mr O'Dowd: Clause 36 is one of those that we will have to return to after the officials outline their proposed changes to the Bill further on, because they are connected.

3149. The Chairperson: If no one else wishes to comment at present, we should discuss the time period. I think that Mr Johnston has already dealt with this issue, but Councillor Ken Robinson MLA said:

"that the time period for regulated matched of 'two hours before and ending one hour after' is perhaps too long".

I think that you, Mr Johnston, said —

3150. Mr Johnston: Yes, we propose to change that to one hour before and half an hour after.

3151. The Chairperson: Do any members wish to comment or are they in general agreement with that?

3152. Mr McCartney: We may have to come back to that in some of our discussions later, but in principle it is OK.

3153. The Chairperson: Therefore, that deals with call by the Irish Football Association (IFA) and the Amalgamation of Northern Ireland Supporters Clubs for a relaxation in those time constraints. We have also dealt with the other point in members' paper on the Bill, which was that:

"The CAL Committee echoed the point raised by the IFA regarding the time factor before and after matches".

During an oral evidence session, the Department highlighted that there is the opportunity in the legislation to substitute the periods of time, which Mr Johnston has hinted strongly will be done.

3154. We will move on to consider schedule 3 on "regulated matches" as it pertains to clause 36. Does any member or official wish to comment on schedule 3 at this stage?

3155. Mr Johnston: Paragraphs 6 and 8 of schedule 3 refer to grounds that are designated as requiring a safety certificate and to stands that are separately designated as requiring a safety certificate. That point was raised by the GAA. It is happy with the designation of grounds but feels that the designation of stands would take things too far and would mean that the legislation applied to some quite small grounds at relatively minor games. We consulted colleagues in the Department of Culture, Arts and Leisure (DCAL) about that and are prepared to remove the reference to "stands" in paragraphs 6 and 8 by taking out paragraph 6(b) and 8(b)(ii).

3156. The Chairperson: Does any member wish to comment on what Mr Johnston said? Members are not officially signing off on this now, but is there general agreement about it?

Members indicated assent.

3157. The Chairperson: The officials undertook to discuss the issue with the draftsman to ensure that the Ulster GAA is completely covered in schedule 3.

3158. Mr Johnston: The advice from the draftsman is that it is and that if we were to include a specific reference to the "Ulster Gaelic Athletic Association", it could bring into the legislation some of the other games that the GAA promotes, which we are not intending to cover here. The advice from the draftsman is that the formulation that we have got is the best one. There was a recent meeting between the Minister and the GAA, and the point about including the name was not raised at that stage.

3159. The Chairperson: The Department also said that the issue had only recently come up and that there were certainly points that it would look at and come back to the Committee on. That has been dealt with. Our paper says that Ulster GAA believes:

"the inclusion of paragraph 6(b) in the definition of regulated games ... is superfluous".

That has also been dealt with.

3160. Our paper points out that the Public Prosecution Service (PPS) said:

"If this is the intended impact of the provision, the PPS recommends that it be expressly stated in the body of the legislation that certain offences are extraterritorial."

3161. Mr Johnston: Is the extraterritorial element in relation to football banning orders? We will be dealing with those orders a little later.

3162. The Chairperson: I will read the whole paragraph aloud so that you get the drift, Mr Johnston.

3163. Our paper says that the PPS stated:

"an important issue arises in relation to the provisions of Schedule 3, which appear to extend jurisdiction for prosecution of offences committed at certain gaelic games and rugby matches taking place extraterritorially, ie anywhere outside Northern Ireland, where one of the teams is representing Northern Ireland, as provided for by Schedule 3."

3164. Mr Johnston: If a match takes place outside Northern Ireland, none of the provisions about throwing missiles, chanting and those sorts of offences would apply. Tom will keep me right about the provisions on travelling to matches.

3165. Mr Tom Haire (Department of Justice): Those will operate only in Northern Ireland.

3166. Mr Johnston: What would happen if someone committed an offence while travelling in Northern Ireland to a match outside the jurisdiction?

3167. Mr Haire: The law would apply in that case. There is a general point about how convictions that are secured outside the jurisdiction would have a bearing on this. My view is that it would be like any other area of criminal law, in that if someone were prosecuted in a Northern Ireland court, their criminal record would be available across Europe. Given that we are moving to look at EU convictions being available to the courts here, those extraterritorial convictions would have a bearing on the courts' consideration of a case.

3168. Mr McDevitt: My reading of schedule 3 is that it lists the regulated matches to define those where someone could be found guilty of, for example, drinking on a bus. It means that, if you are going down to a sporting event, a rugby game for argument's sake, involving Ireland and are leaving from the North, as long as you are in Northern Ireland and are drinking on the bus, you are potentially committing a crime. The same applies if you are going to a GAA game, as long as it involves a Northern Ireland county. So, if you are going down to Croke Park or over to Clones to watch any of the northern counties, as long as you are on a bus in Northern Ireland, you will be committing a crime if you are drinking. That was my understanding. Is that how the officials see it?

3169. Mr Haire: Very much so. We have not seen or heard the PPS's response to that. As Gareth said, I suspect that that is connected to the football banning regime and whether or not a conviction secured outside Northern Ireland could have a bearing on the imposition of a football banning order.

3170. The Chairperson: That was in the written submission that you should have received. Maybe you did not get it, but the Committee Clerk can provide you with it.

3171. You talk about travelling on a bus. If the Ulster rugby team is playing in Italy, it is most likely that supporters will go to the match by plane. They could also go by boat.

3172. Mr McDevitt: That would be a long trip.

3173. The Chairperson: Would the provision apply in a case like that?

3174. Mr Haire: It applies only to motor vehicles.

3175. The Chairperson: So, if you are in the air or on the sea you are all right. [Laughter.]

3176. Mr Johnston: The specific offence would not apply. There are other restrictions on behaviour on aeroplanes, which would kick in.

3177. The Chairperson: What about a motorcycle? [Laughter.]

3178. Mr Johnston: I would like to see you trying to drink on a motorcycle. [Laughter.]

3179. Lord Browne: What if you were on a supporters' train that had been booked? Obviously, the relevant public transport company would have rules, but if you were on a public train for supporters, what would happen?

3180. Mr Haire: Laws are in place for trains that ban alcohol altogether. So, the Bill does not need to address trains, because the possession of alcohol is barred on them.

3181. Mr A Maginness: The other examples were jocose, but Lord Browne raised a reasonable point. When people are travelling by train, alcohol is normally available.

3182. The Chairperson: That is dealt with in other clauses. Lord Browne, we will be able to satisfy you on that issue.

3183. Lord Browne: If you are going first class, you might be all right. [Laughter.]

3184. Mr A Maginness: I suppose that Lords do go by first class.

3185. Lord Browne: No, economy. [Laughter.]

3186. The Chairperson: We will move on to clause 37, which deals with the throwing of missiles. Does anyone want to comment on that? Councillor Ken Robinson MLA has questioned the blanket use of that clause and the scale of the fine. He suggests that a person throwing chewing gum or a paper aeroplane, although being guilty of littering, is surely not engaged in the same spectrum of missile throwing as someone who hurls a bottle or coin on to a pitch. That sounds like a fair point, does it not?

3187. Mr Johnston: It is not the intention of this clause, as it is not the intention of criminal law generally, to deal with trifles. That is always the maxim: the law does not deal with trifles. That applies to very minor infractions such as the ones that you mentioned. What the clause does do, and the police referred to this when they were giving evidence, is give a means of dealing with behaviour that is dangerous and is not currently covered in the law. As we have said in previous evidence sessions, to be tackled and prosecuted for throwing something at present, you would need to show that you were trying to hit someone or had been reckless about who you had hit. The message that we are getting across in clause 37 is, "you do not throw things in sports grounds."

3188. A reasonableness test applies to all criminal law. An assault can be committed by simply tapping someone on the shoulder, but no one will ever be prosecuted for that. Likewise, if you threw a piece of chewing gum, technically, that could come under the scope of the clause. However, in practice, no one will be interested in prosecuting you for that. It is the same sort of situation that obtains right across criminal law. What we are trying to tackle is dangerous behaviour.

3189. Mr Haire: The use of the word "missiles" in the title of the clause is indicative. The clause relates to the throwing of missiles and not litter.

3190. Mr Johnston: It comes with the rider of: "without lawful authority or lawful excuse".

3191. Mr O'Dowd: It goes back to whether or not the legislation is needed. Clause 37(1) states: "to throw anything at or towards -

(a) the playing area".

It does not give a proviso. Technically, you could be arrested for throwing your scarf, either in jubilation or disgust, at the end of the match.

3192. Mr Johnston: Technically, you could be. However, technically I could be arrested if I poked Tom like so. Technically, I have committed assault and battery. That is an issue right across criminal law.

3193. Mr O'Dowd: You have not committed assault, because there was no intent to cause injury or harm. [Laughter.]

3194. Mr Johnston: Interestingly, it is common assault regardless of whether there is a permanent injury.

3195. Ms Ní Chuilín: The last officials only had shoes thrown at them. [Laughter.]

3196. Mr Johnston: I will explain why this provision is useful using the example of me throwing that bottle. Under the ordinary law, if I simply throw the bottle and it lands in the middle of the floor, I have not committed an offence. I did not intend to injure anyone. I was not reckless about injuring anyone, because I was not aiming at anyone. However, you do not want people to do that sort of thing in a sports ground, because the bottle may well hit someone. It may shatter and cause a problem. Clause 37 is designed to get around the hole in the ordinary law whereby, if you throw things and do not intend to hurt someone and are not reckless about hurting someone, it is very difficult to find grounds on which to deal with you and prosecute you. This clause means that you do not throw things inside a sports ground for one hour beforehand and half an hour afterwards.

3197. The Chairperson: It brings us back to the question that was asked at a previous meeting: is it necessary?

3198. Mr Johnston: My contention is that it is necessary because it fills the gap in the current law. All the usual protections about whether prosecution is in the public interest will still apply.

3199. Lord Browne: Is there not legislation currently that allows for a spectator who throws a bottle onto the pitch, which hits the goalkeeper and hurts him, to be charged and prosecuted?

3200. Mr Johnston: If you were able to show that that person intended to hurt the goalkeeper, or was reckless about hurting the goalkeeper, that person could be prosecuted. However, that person could not be prosecuted if they simply decided to throw a bottle and not for it to have any consequences. That is the gap in the law.

3201. Mr A Maginness: I understand the argument; it is not an unreasonable one. If it will afford extra protection to spectators, players or officials in a stadium, we have to look at it very seriously. There seems to be a gap in the law. However, why is the clause entitled "Throwing of missiles" when there is no mention of missiles in the text?

3202. Mr Johnston: We would then need to define a missile.

3203. Mr A Maginness: Could the court not interpret what a missile is? I could throw my scarf, cap or whatever, but that is clearly not a missile. Is it not up to the court to take a common-sense view of what a missile is? The text of the clause is strangely silent on the definition of a missile, although we could interpret what that is because the clause is titled "Throwing of missiles". The word "missile" is not used in the text of the clause. Would its inclusion not strengthen the clause?

3204. The Chairperson: Clause 37(1) says:

"It is an offence for a person at any time during the period of a regulated match to throw anything".

That could mean a scarf or a cap.

3205. Mr A Maginness: Yes, but the title of the clause is "Throwing of missiles". The purpose of the clause is to sanction those who throw missiles, yet "missile" is not mentioned in the text.

3206. The Chairperson: It talks about throwing "anything".

3207. Mr A Maginness: There is the chewing gum argument. However, the use of the word "missile" might clear up the issue. We could just leave it up to a court to take a common-sense view of what a missile is.

3208. Mr Johnston: We could explore that issue with the draftsman over the next couple of days. It might help to narrow the clause so that it is directed at the more dangerous situations.

3209. The Chairperson: OK. We will move on to clause 38. The Committee for Culture, Arts and Leisure recommends the inclusion of the word "sectarian", with a clear definition of that word, and clarification on the definition of chanting. That was discussed in our meetings, too. The word "sectarian" had not been defined.

3210. Mr Johnston: The Minister proposes to bring an amendment to include sectarian chanting in the Bill. That would mean that, at clause 38(3)(a), "is of an indecent nature" would be replaced by, "is of a sectarian or indecent nature".

3211. What we are proposing for the definition of the word "sectarian" is:

"if it consists or includes matter which is threatening, abusive or insulting to a person by reason of political opinion or religious belief".

That would be how sectarianism is defined for the purposes of this section of the Act. There is a definition of chanting in clause 38(2), which is:

"the repeated uttering of any words or sounds (whether alone or in concert with one or more others)."

There was a query during the consultation about what was meant by "sounds". The clause would encompass a situation, for example, in which a spectator made monkey sounds, even though such sounds are not actually words.

3212. We are content to include the aforementioned definition of the word "sectarian" in the Bill.

3213. Mr McDevitt: I welcome the intent to define sectarianism. Your definition includes the words: "by reason of political opinion or religious belief".

How did you come to that definition? Are you drawing on something from elsewhere? What is your rationale for choosing that specific form of words?

3214. Mr Haire: There were two things, Mr McDevitt. First, the form of words mirrors that which was in the draft public processions Bill, as Mr McNarry had said.

3215. Mr McDevitt: The failed parades Bill.

3216. Mr Haire: That was the definition that the draftsman had come up with at that stage. Secondly, the alternative was to simply slot the phrase "political opinion" into the list in clause 38(2)(b), which would have achieved the same effect. However, we thought it worth proactively bringing that out and including the definition of sectarianism.

3217. Mr McDevitt: May I ask a very innocent question? Where will you define it in the Bill? Will it be in the schedule to the Bill? How does that happen?

3218. Mr Haire: It will be in clause 38. It will also be in clause 49, where a similar issue arises.

3219. Mr McDevitt: So, it will be in clause 38(5) or something like that.

3220. Mr Haire: Yes. The construction will be something like, "Chanting falls within this subsection if it is indecent in nature or sectarian in nature."

3221. The Chairperson: The Committee would like to see the wording of the amendment. You may say that that is simple enough to do, but there is a time factor. We would need it for next Tuesday. Are you happy enough with that?

3222. Mr Johnston: We want to take the views of the Committee, but I would hope to be able to share the amendments that we have already drafted and are proposing if not tomorrow, then certainly on Thursday.

3223. Mr O'Dowd: Did you have further discussions with the Human Rights Commission about defining the term "sectarian"?

3224. Mr Johnston: The Human Rights Commission offered to have discussions with us if we thought that that would be helpful. However, given that we are taking the definition from the processions Bill, we feel that we are leaning on good advice from a range of sources.

3225. Mr O'Dowd: I need to declare an interest: I sat on the drafting of the processions Bill. [Laughter.]

3226. Mr McCartney: It might not be that good.

3227. The Chairperson: The Committee paper states that the Human Rights Commission:

"also highlights that whilst the provisions against discriminatory chanting can be consistent with human rights duties the present criminalisation of 'indecent' chanting in clause 38(3)(a) may be incompatible with the ECHR".

3228. Mr Haire: We looked at that, and we are confident with what we have come up with in the Bill in terms of human rights compliance and competences. It has gone through the Attorney General's office, the Speaker's counsel and our own lawyers. So, we are content with the construction as is.

3229. The Chairperson: We move now to clause 39, and clarification of authorised pitch incursions. The paper states that: "The CAL Committee recommends the inclusion of the phrase 'controlled celebratory occasions', as pitch invasions are acceptable in some sports. The CAL Committee was concerned that 'which shall be for that person to prove', places too much onus on the individual and recommends that this phrase is removed from the clause. The CAL Committee also recommends clarification of the phrase 'lawful excuse' and in particular questions if this covers emergency evacuation procedures."

3230. Mr Johnston: On the latter point, yes, it does. An authorised pitch incursion is one authorised by the match organisers. We recognise that, in some sports, there is a tradition of good-humoured pitch invasion at the end of certain matches. It would be open to the match organisers to authorise that. Having said that, the GAA, in particular, is increasingly concerned about the practice. A referee was recently injured during a pitch incursion. The GAA will, no doubt, want to have further discussions about that within the sport. However, if something is authorised by the match organisers, it would not be caught by this clause.

3231. Mr O'Dowd: Again, it goes back to the question that has plagued us throughout this chapter: is it necessary? DCAL and others gave reasons for a celebratory pitch invasion. Is it such a problem that we need to criminalise it? When the IFA appeared before the Committee, one guy — I think he may have been involved in a Coleraine club — gave the example of three guys who went onto a pitch during a match that the club was hosting. As a result, they were barred from the club for life under the rules of the game. Why do we need to criminalise that?

3232. Mr Johnston: It goes alongside the provisions for safety at sports grounds, which have meant that the fences and railings around a lot of the pitches have been taken away. It is now very easy to get onto the pitch. Therefore, if there is a Hillsborough-type emergency, people can get onto the pitch and will not be crushed. However, the criminal law is designed to set a clear standard that, unless authorised to do so, people should not go onto the pitch. It was very much part and parcel of the safety at sports grounds proposals that, when the protection of the barriers is removed, something else needs to be put in its place.

3233. Mr Haire: Each of the sports authorities said to us that there are occasions when there is a humorous or celebratory intent behind going onto the pitch, but that can sometimes hide what is really going on. It is about protecting referees and players and preventing civil claims and damage to pitches. Each of the sports authorities was content that the issue needed to be addressed in an appropriate way.

3234. Mr McDevitt: I know that this is a big debate, particularly in the GAA, following the events in Croke Park last summer. If I arrive at a game of any code, how do I know whether it is OK to go onto the pitch? How will I be informed about "lawful authority"? Will it be in the programme or will there be tannoy announcements? How will you be able to measure that to determine whether it is OK or whether it is an unlawful act?

3235. Mr Johnston: We expect that, where there has been a tradition of allowing people onto the pitch and match organisers want to change that, they will make it very clear in the programmes that you cannot go onto the pitch.

3236. Mr McDevitt: OK. People will now arrive at a GAA ground — I guess the GAA is the best example to use — and be told that it is not OK to go onto the pitch and that, if they do, they will be committing an offence.

3237. Mr Johnston: That would have to be done, because there has been that tradition.

3238. Mr McCartney: It is announced at some soccer games.

3239. Mr McDevitt: I am aware of that.

3240. Mr Haire: There could be signage.

3241. Lord Browne: There could be notices around grounds stating that invasion of the pitch will lead to prosecution.

3242. The Chairperson: If 300 supporters rush onto the pitch after their team has won the cup, are they all going to be prosecuted? Say that, after an announcement has been made that there will be no pitch invasion, a B division club hammers a Premier League team 1-0 and wins the cup. If those 300 fans are so exuberant that they cannot contain themselves in the stand and have to get out onto the pitch, will all 300 fans be sallied off to appear in the courts?

3243. Mr Johnston: It is going to be very difficult to prosecute in those circumstances.

3244. The Chairperson: That is the point that we are all trying to make; it is not enforceable.

3245. Mr Johnston: The fact that it will be difficult to prosecute 300 individuals in that sort of situation does not mean that you cannot enforce the provision. If you are aware that there is likely to be a problem, an announcement can be made that the police will be enforcing that part of the legislation. It gives the match organisers the potential to explain to people that it is a criminal offence. That, in itself, has weight and effect, even if 300 people rushed onto the pitch and you could not identify them all.

3246. Lord Browne: I am sorry to go back to this again, but if I run onto the pitch and commit an offence, surely the current legislation would be such that I could be prosecuted? If I run onto the pitch and assault the goalkeeper or damage the pitch, the marshals would report me, eject me from the ground and possibly report me to the police, who could take action.

3247. Mr Johnston: You could be prosecuted if you ran onto the pitch and committed an assault or caused criminal damage or something like that. However, the evidence that we have been getting from the sports is that just the practice of people running onto the pitch is liable to create or exacerbate a situation. People get very excited and, in a crowd, they start to do things that they may not do ordinarily. You would want to tell them that they must not go onto the pitch in the first place rather than tell them that, if they do go onto the pitch, they should not hit anybody. Once people are on the pitch, there could be a lot of excitement and perhaps a certain amount of drink taken.

3248. Lord Browne: The club could have a notice on the gate saying that invasion of the pitch could lead to prosecution. Would that be a sufficient deterrent?

3249. Mr Johnston: Yes.

3250. Mr McCartney: In earlier evidence, Sport NI suggested a good way to come at this issue. It said:

"the intention of the legislation was not to catch people doing wrong but to incentivise people to change their behaviours".

Pitch incursion is not a big issue as such. There may be certain occasions when it happens. I would be a regular enough attendee at Derry City games at the Brandywell. The league imposes a fine if there is a pitch incursion, so the club takes steps to ensure that nobody goes onto the pitch at the end of a game. It does not become an issue. The clauses have been lifted from England, where there was a particular problem at a particular time. There were large crowds, and, perhaps after a team lost a game, there were pitch incursions, with one group of fans rushing towards the other group. Are we trying to bring in something that is not wholly necessary?

3251. Mr Johnston: The provision was introduced in England and Wales, but we have discussed it locally. For example, the GAA supported the idea of having the provision here. If the organisation wanted to, it could authorise incursion and that would be fine, but, if it wanted to take steps to prevent it, the provision would give it a bit more weight.

3252. Mr McCartney: I understand that, but a fine can be automatically issued. If a match official representing the FAI, for example, attends games, certain things have to happen at the ground. If they do not, a report is made and there is a graduation of fines. By your own admission, 1,000 people could invade a pitch tonight and nothing would be done, because it would be problematic to charge 1,000 people or to isolate one person and charge them. We could instead work in conjunction with the associations to change behaviour, and we could suggest to them that it would be a good idea to state in the match regulations that an incursion will result in a fine of £500 or €500 or whatever. That gives everybody a collective interest. If some young lad is about to climb over a fence in the Brandywell, it will be other fans who pull him back. They will tell him that he cannot do that because he will get the club a £500 fine — a fine that it can ill afford.

3253. So, if the intention is to change behaviour rather than to criminalise people, this is not the way to do it. PSNI representatives appeared before the Committee, and they told us that many of the clauses were nice to have but that they may never use them.

3254. Mr Johnston: But they still made the point that they felt that they were valuable because the law was normative and was setting standards.

3255. Mr McCartney: They said that no police force in the world would refuse any piece of legislation. That is not the way that legislation should be framed. Of course the police would say that; why would they not want it? However, if something is going to be done, there has to be a purpose. The purpose should not just be that the powers might be used somewhere in the distant mists. That reason is not sufficient. If we are out to change behaviour, we should work with the associations to do that rather than create some law that will not change behaviour.

3256. Mr Johnston: That assumes that fining clubs would be sufficient to change behaviour. If someone knows that their club could be fined if they do something, that may impact on them. If someone is a member of an opposing club, it might or might not. However, if we are trying to discourage people from pitch incursion, telling them that they are committing a criminal offence if they go onto the pitch sends a very clear message.

3257. Mr Haire: Each of the three sporting associations was in favour of the provision.

3258. The Chairperson: The paper states that the Amalgamation of Northern Ireland Supporters' Clubs:

"welcomes the proposals to create offences that will cover unauthorised pitch incursion. However would like reassurance that the 'lawful authority or lawful excuse' for entering the playing area prior to a match will include the ability of football fans to erect banners and supporters' flags prior to matches."

I suspect that it is talking about club colours and stuff like that.

3259. Mr Haire: It will be for the match organisers to say whether fans are permitted to do that.

3260. Mr Johnston: If the club is happy with it, that is fine. The clause will not capture that.

3261. The Chairperson: We move to clause 40, and the Committee for Culture, Arts and Leisure's recommendation to include laser pens. I refer to oral evidence from Sport Northern Ireland. Representatives mentioned that it would be worth considering whether laser pens should be included in the clause. Have you any comments on that?

3262. Mr Johnston: We are exploring that matter with the draftsmen. If we can get a definition of laser pen drafted, the Minister will propose an amendment to include them. That might prove too difficult in the available time. If we cannot do that, we will certainly look at it at another time.

3263. The Chairperson: We move to clause 41, which deals with being drunk at a regulated match. On self-regulation, the Committee for Culture, Arts and Leisure questioned the need for this clause on the basis of existing legislation and regulation by sports governing bodies, which may address the issues outlined in the clause. Do you wish to comment on that?

3264. Mr Johnston: The ordinary law covers being drunk in a public place. Part of the thinking behind the clause is to get around legal questions or arguments about whether a football or sports stadium is a public place.

3265. Lord Browne: What about being under the influence of drugs?

3266. Mr Johnston: That is an offence whether it is in public or private.

3267. The Chairperson: Yes — whether it is at a football match or not. Therefore, the present legislation is adequate in respect of drugs.

3268. Mr O'Dowd: Are the officials proposing an amendment to the clause? Sorry; I may have misheard them.

3269. Mr Johnston: We are not proposing an amendment to that clause. We are proposing an amendment on being drunk on transportation, which we will come to.

3270. The Chairperson: We have not reached that clause yet, but we will get there. We are still at the match at this stage.

3271. The summary of responses states:

"However, it is the view of Ulster GAA that this is best done under the general application of the safety certificate provided by the local authority and within the responsibility of the event controller in the organising of the games and under its ground regulations."

3272. Is everyone happy with that?

3273. Mr O'Dowd: I know that I sound like a broken record, but it goes back to whether we need new legislation. If it is private property, the authority of that property can deal with someone who is drunk. Is that not the case? On private property, the organiser of an event can tell someone that they have to leave the premises because they are drunk. That person would have to leave. Is that right?

3274. Mr Johnston: Yes, but it raises issues about how to get those people out and whether the use of reasonable force is allowed, and so on.

3275. Mr O'Dowd: You can push them with your finger. [Laughter.] How is this law going to be enforced? I assume that a steward would notice that someone was drunk and would bring that to the attention of a police officer, if one was present at the ground. If a police officer was not present, the steward would have to make some form of report to the police.

3276. The Chairperson: The sporting organisations that gave evidence said that, when a person who was under the influence came to their ground, that person would be prohibited from entry by stewards and officials of the club. They said that such people would not get in. That goes back to Mr O'Dowd's point about whether the provision is necessary, because there are already voluntary arrangements in place to deal with it. Frankly, I suspect that the last person on earth who any club wants in its ground, whatever the sport, is someone who will make a proper nuisance of themselves and spoil the game for everyone else. They are not going to let that sort of an individual through their gates. If they do, I suspect that they will let him through only once. Walking up to him and saying, "You are drunk; we don't need you here" will not be enough to remove him. He will say, "I got in without you, and, now that I am here, I am going to stay."

3277. Mr Haire: You might call that part of the package in chapter 2 of Part 4, "Conduct at regulated matches." We are trying to put a series of powers in place so that organisers and stewards have criminal law behind them and can tackle a number of issues at matches, such as missile throwing, chanting and unlawful entry to the pitch. You would actually be committing a criminal offence by trying to enter the ground drunk. As Gareth said, as much as anything, this is a declaratory package.

3278. Mr Johnston: It means that, if somebody digs in their heels, instead of officials telling that person that they are breaking club rules and asking them to leave, the officials will be able to say, "You are committing an offence, and you are going to have to leave. If you do not go, we will call the police." Ultimately, if someone refuses to go and is causing a nuisance, the police could be called to arrest them, because an offence would have been committed.

3279. Mr McCartney: The assumption is that a police officer would be present at the ground.

3280. Mr Johnston: Not necessarily.

3281. Mr McCartney: In England and Wales, the crowds in most of the grounds that we are talking about would be sufficient to justify having police officers present. They are present at most big games in England and Wales. However, that is not the case here. I could understand how the provision would work for matches at which a police officer is present, because clubs confront situations in which they do not know what to do with fans who arrive drunk. Ejecting them to the vicinity of the ground can cause more problems than allowing them in, isolating them until the end of the game and then packing them on their way. However, in most of the matches here that we are talking about, there is no police presence. Therefore, when someone who is obviously drunk comes to the turnstile, match officials must be guaranteed that, when they phone the PSNI, they will arrive. I assume that, if you phone on a Friday night to say that

you have a drunk man at the turnstile, the police might have other priorities and tell you just to give him a shake.

3282. One of the weaknesses of the proposal is that it is sound only when you are talking about grounds containing 25,000 people, because then there will be multiple offenders for any given offence. On most Saturdays in England, you can see how it might be enforced. I have not come across evidence from any of the sports that people arriving drunk to games is a big issue that causes clubs headaches. The clubs are not knocking at the door asking for something to sort that problem out.

3283. Mr Johnston: Certainly, none of the sports is raising a specific objection to the provision. The GAA told the Committee that there is very good liaison with the police in advance of matches. I think that we heard that from the police, too. On the back of that, the police will be aware that a match is happening, and one would hope that, if there is a need for the police to deal with a situation, they will be able to come and will prioritise it. Short of that, it will give clubs the chance, which they do not have at the minute, to say that it is not just that they want you to leave, but that if you do not leave, you are committing an offence and they will call the police. Being able to say that would give clubs something more to deal with those situations than they have at the minute.

3284. Mr McCartney: I understand what you are saying, but, technically speaking, it is already an offence to drink on the street. People go to lots of games without causing offence. If a bar is overcrowded and 10 or 12 people are standing drinking in the street, the police will rightly say that that is about discretion. If a game is on a Saturday and the same group of people are still standing in the street on a Sunday, that might cause offence. Situations change. You have to legislate for problems that exist, not for problems that might exist. I could see the provision working if you said that there would be a PSNI officer at every regulated game to ensure that, if a drunk person tries to get into a ground, he or she would be arrested and charged. If that were so, we would be in the business, but we are not in the business at the moment. That is just my instinct.

3285. The Chairperson: We move on to clause 42, "Possession of drink containers, etc." The Committee's paper summarising the responses states that: "Sport NI considers however that some guidance is required to clarify the term 'article capable of causing injury' and whether it refers to plastic bottles with/without the cap removed and plastic receptacles such as cartons."

Do you remember that we had a debate about when the cap was on the bottle and when it was off? That is what we are dealing with now.

3286. Mr Johnston: There were queries along the way about what exactly a drinks container is. We propose to issue guidance to help clubs in that regard.

3287. Mr O'Dowd: I do not know how much more guidance you could issue. Never in my life have I seen a piece of legislation go into so much detail in trying to describe an object. People who have their wits about them and who wish to smuggle something into a sports ground can use a veterinary medicines container or a medical container. Just like at airports, we will have people on the turnstiles asking us, "Could you take a drink out of that, please? We want to make sure that it is not harmful."

3288. It is a crazy piece of legislation, especially given that the staff working for clubs can now, quite rightly, say to people at the turnstiles and ticket areas who have a bottle, plastic or otherwise, "No, I am sorry, you are not bringing that in with you. We sell drink inside." It seems as if the draftsperson has too much time on their hands.

3289. Mr Haire: The detail was to try to help people to understand what the law covers. We looked at the need for formal guidance, but the Bill is quite detailed about what is and is not covered.

3290. Mr Johnston: The guidance was to cover situations such as coming to a ground with a plastic bottle and the top being taken off it. That would be acceptable.

3291. One of the issues with going through the provisions clause by clause is that we maybe miss the whole. The purpose of the provisions in chapter 2 as a whole is to stop us getting into the sorts of situations where there could be widespread trouble and injury, where drinks containers end up getting used inappropriately, where drunkenness contributes to trouble and where people end up running onto the playing area. We need to look at all the clauses individually, but there is something about the combination of them that is important in trying to deal with how to keep things calm and how to stop the escalation of issues that can — although thankfully rarely — result in some of the very bad situations that we have occasionally seen.

3292. The Chairperson: But the whole purpose of this exercise is clause-by-clause consideration.

3293. Mr Johnston: Yes.

3294. The Chairperson: It is to draw out that there is a reason behind the clause.

3295. Mr Johnston: Yes. I am just making the point that, although there is a reason behind this clause — to address the damage and injury that drinks containers can do — there is also the aspect of all the provisions working together to stop bad situations arising.

3296. Mr McCartney: But drinks are then sold inside the ground.

3297. Mr Johnston: Yes. We are not saying that this clause bans all drinks containers, but it aims to ban the dangerous ones.

3298. Mr McCartney: You are saying that it is an offence to take a can of Coke into a ground but not to have a can of Coke inside the ground.

3299. Mr Johnston: It would not be sold in a can in the ground if there was going to be a problem with it.

3300. Mr McCartney: A shop inside a football ground will sell cans of Coke. A lot of people think that it is ridiculous that the Odyssey sells bottles of water and does not give people the tops. However, it sells bars of chocolate and bags of sweets, which could cause as much damage as a bottle of water being thrown —

3301. The Chairperson: Removing the cap could just be to help the person.

3302. Mr McCartney: People have suspicions. When someone goes to the Odyssey — I am not singling out the Odyssey; it also happens in some picture houses — they are told that they cannot take in their own bottle of lemonade, etc. Most people suspect that that happens because the same bottle at the counter costs three times as much as it does in the corner shop.

3303. Mr Johnston: Tom will keep me right, but there is nothing in the legislation that would stop someone bringing in a bottle of Coke if the top was taken off as they came in. There is nothing that would stop them bringing in a plastic glass with Coke in it, so the clause should not

help people to breach the competition laws. It is simply about safety and the fact that a 500 ml bottle of water weighs half a kilo, which can do a fair amount of damage.

3304. Mr McCartney: So would a bag of wine gums. [Laughter.]

3305. Lord Browne: To enforce the legislation, well trained marshals and stewards would be required to search people going into the ground. Surely a responsible club will be doing that anyway without the necessary legislation. Everyone who goes through the turnstiles will now be frisked to see what is in their pockets, and, if they have a bottle, officials will have to decide whether the legislation applies to the container and whether to take it off the person. A responsible club would already have rules and regulations to deal with that.

3306. The Chairperson: Our paper says that the Committee for Culture, Arts and Leisure stated that it: "recommends that Clauses 42 and 43 should be read together and questions the need for both clauses. The Committee believes that the issues pertaining to these clauses could be achieved through regulation by sports governing bodies. With regard to Clause 42, the CAL Committee is concerned that this clause limits any sort of containers being brought to a ground. Members recommend that further consideration is given to addressing the needs of families; children's and baby's bottles."

3307. Mr Johnston: I draw attention to clause 42(2), which states: "This subsection applies to any article capable of causing injury to a person struck by it".

It is not about banning people from taking drinks into grounds or having drinks in grounds; it is simply about how people get drinks in and how they are distributed in the grounds. A plastic bottle without a top is fine, but a plastic bottle with a top, which could cause injury, would be banned.

3308. The Chairperson: Clause 42(2)(a) refers to a "bottle". The Committee for Culture, Arts and Leisure highlighted the issue of a baby's bottle.

3309. Mr Haire: Clause 42(2)(a)(ii) refers to: "normally discarded or returned to, or left to be recovered by, the supplier".

It is really about disposable cans and bottles that people would bring to grounds. If people bring something that they own, they would not throw it on to the pitch.

3310. Mr McCartney: Does that allow someone to bring in a flask?

3311. The Chairperson: A hip flask?

3312. Mr Haire: My interpretation is that would not be something that is normally discarded, returned or left to be recovered by the supplier.

3313. Mr Johnston: It is up to the clubs to decide whether they want to let people bring in flasks.

3314. Mr McCartney: Clause 42(2)(a) refers to a:

"portable container (including such an article when crushed or broken)".

Allowing a flask in nearly defeats what you are trying to do. A person will do as much damage with a flask full of water as they will do with a small bottle of water.

3315. Mr Johnston: As Tom said, it is based on the assumption that, if someone brings a flask, they are probably not going to be throwing it about because they have paid money for it.

3316. Lord Browne: The person intent on causing trouble could bring a flask in.

3317. Mr O'Dowd: That is the loophole in the law. We will see flasks flying all over the place.

3318. The Chairperson: Are you prepared to look at that provision again, too? There are some potential anomalies. A hip flask could be easily concealed, could it not?

3319. Mr Johnston: A hip flask would probably come under that exception in clause 42(2)(a)(ii), because it is not disposable or normally returned to the supplier. Again, are people likely to throw their hip flasks?

3320. The Chairperson: It would make a handy missile, whether full or empty, would it not?

3321. Mr Johnston: It would, but, if you have a solid silver hip flask, you may not want to throw it about the place.

3322. The Chairperson: Maybe if you were drunk, you would forget about that and just let fly.

3323. Mr Buchanan: You could have a hip flask, or any flask, with alcohol in it rather than water.

3324. Mr Johnston: We are just about to come on to alcohol. [Laughter.]

3325. Ms Ní Chuilín: I think we are all just about to go on alcohol at this stage. [Laughter.]

3326. The Chairperson: Does any member have any blue sky thinking on the issue?

3327. Mr O'Dowd: Scrub it.

3328. The Chairperson: Will you come back to us on that one, Mr Johnston?

3329. Mr Johnston: We will certainly look at it again. We have looked at it a number of times and we were hopeful that we could offer further guidance to clubs making things very clear about what they should allow in and what they should not. That would be helpful, but we will take it back and think about it again.

3330. The Chairperson: Now we are at clause 43, which deals with the possession of alcohol. We are told that the Committee for Culture, Arts and Leisure recommends:

"that Clauses 42 and 43 should be read together and questions the need for both clauses. The Committee believes that the issues pertaining to these clauses could be achieved through regulation by sports governing bodies."

3331. Mr Johnston: We have been in consultation with the three governing bodies since we last gave substantive evidence on this provision. There was a particular concern on the part of rugby as to how it would impact on the nature and feel of rugby matches. The Minister met the representatives and offered to make a provision so that a commencement Order under the clause would need to be by affirmative resolution. That means that there would need to be full consultation, including with the sports governing bodies and this Committee, before we would commence that clause. So, we are proposing to bring an amendment that states that commencement would have to be by affirmative resolution.

3332. The sense that we have heard from the governing body of rugby is that, although that may not be its number one preference, it would address its concerns. There have not been objections to that part from the IFA or the GAA. The GAA made the point that it may not be needed for GAA, but is content that it is there in law.

3333. The Chairperson: If there are no comments, we will move on. According to our paper, Ken Robinson states: "this clause provides major concern for him as the Minister of Justice has already indicated he is minded to implement the legislation in an unequal manner across the three sports. This raises equality impact issues. Mr Robinson proposes that this clause should be expanded to include the Odyssey Arena when ice hockey is played and also other sporting occasions held at venues with large numbers such as racecourses if this clause is not to be expanded then the Department should provide a valid reason for those exemptions."

3334. According to the paper:

"Sport NI considers that care should be exercised in the implementation of this clause".

It continues:

"Sport NI therefore considers it to be appropriate for this Section to be implemented at 'designated' venues where soccer is played."

In addition:

"Sport NI considers that it would not be appropriate to implement this Section in relation to the 'designated' venue where rugby is played unless there were to be deterioration in alcohol related spectator behaviour."

Finally:

"Again, Sport NI considers that it would be inappropriate to implement this Section in relation to the 'designated' venues where Gaelic sport is played unless there were to be deterioration in alcohol related spectator behaviour."

3335. The paper states that the Department said that it:

"proposed to take the powers relating to alcohol, but not to commence them without further consultation with the Committee and the sports bodies. That was the case for all three sports.".

3336. The paper says that Ulster Rugby states that it:

"is strongly opposed to the inclusion of matches played at Ravenhill in Clause 43 and is concerned about relying solely on a commencement order to create an exemption. Ulster rugby urges the Committee to remove it completely from Clause 43 for the following reasons."

It goes on at length about those reasons, under the headings "Inconsistency with legislation elsewhere in the UK/Ireland", "No History of Disorder" and "Financial Implications and Obligations to Tournament Sponsors".

The paper continues:

"In correspondence of 30 November from the Minister of Justice to Ulster Rugby, the Minister advised that the current text of the Bill provided flexibility in implementing Clause 43 and that a sport-by-sport approach, could be taken to commencing the clause."

I think that that is the matter that Mr Robinson was referring to in his comments.

It adds:

"The Minister undertook to re-examine how the Bill deals with these mechanisms with a view to strengthening the commitment to consult before commencing clause 43. The Minister confirmed that his officials were engaging with the legislative draftsman about this and he would write to Ulster Rugby and the Justice Committee with his further thoughts as soon as possible."

There is a fair wee bit there, folks, but it is important to say that because it covers the spectrum.

3337. Mr Johnston: There are a fair number of points there. On Mr Robinson's point about unequal treatment between sports, what we will be trying to do in commencing this is to deal with where there were issues, and to deal with only where there issues. It might be said that that was unequal. I would say that it was about targeting the implementation and commencement of the legislation where it is needed.

3338. On wider sports, for example, ice hockey, the legislation is really linking to the safety of sports grounds legislation, which has been focusing on football, rugby and GAA. Certainly, we would keep that under review with DCAL. If the need comes for wider coverage, we can consider amendments at a later stage. At this stage, the conception of the legislation was in the safety of sports grounds provisions.

3339. You read some lines from Ulster Rugby. I am not sure when those were submitted to the Committee. However, at the latest meeting we had at ministerial level with them, we proposed that there would be a requirement in the Bill for consultation before section 43 is commenced. You get that requirement through an affirmative resolution requirement on the commencement Order. Although that is maybe not their first preference, the sense from that meeting was that they were prepared to live with that compromise.

3340. This clause would not apply to registered clubs in grounds outside the site of the pitch. Some grounds would have a registered club, a licensed club, for example, underneath the stand. They will still be able to operate as they do at the moment.

3341. The Chairperson: I did not say that the paper also states: "The Ulster Rugby Supporters Club also wants common sense to prevail and that the Committee will see fit to exclude Ravenhill from this section of the Bill."

We were all there the day that they were here. If my memory serves me right, Mr Johnston, you and your officials intimated that you worked closely in tandem with all the sporting organisations on this issue. It was asked at that time whether they requested this. I distinctly remember everyone moving their heads — behind your back, by the way — to intimate that they did not ask for it. Ulster Rugby specifically says that it is strongly opposed to the inclusion.

3342. Mr Johnston: As I said, at the latest meeting, its representatives did not request it, but they were prepared to live with the compromise.

3343. The Chairperson: The organisation that was most prepared to live with it — and was perhaps the one that was most targeted — was, you will all remember, the IFA. The IFA said

that it did not think it was necessary, but it could live with it, whereas there was emphatic opposition from Ulster Rugby in particular.

3344. Mr Johnston: I think that the IFA went further and supported the clause.

3345. The Chairperson: Yes, it said that it could live very well without it, but it would support it. Some of us were a bit surprised that it took such a relaxed approach to it, but that was the approach it took. We are not here to put words in the mouth of IFA, or take them out of it either.

3346. Mr A Maginness: Of course, Ulster Rugby has said that, in a situation in which it feels that the clause is going to go through, as a sort of backstop, it would be satisfied to accept the staggering of the commencement Order. It is not its first preference, and that should be emphasised. Ulster Rugby was very strong about that in its submission. I think that it is compromising because it feels that it has to compromise; it is important to remember that.

3347. In any event, I am not so certain that you can get away with staggering a commencement Order, because, on the face of it, it is discriminatory against certain sports. What would happen if someone involved in football went to the High Court to seek a judicial review of the commencement Order and the judge agreed that it seemed to be discriminatory? People involved in football could say that it seems to be aimed against them, as it is not done in rugby or GAA. I know that you come to the Committee in good faith and put forward that argument, but I am not so certain that it is the right argument. In fact, there could be problems with the course of action that the Minister is putting forward. We will have to be satisfied as to whether you can do that. I think you have problems there.

3348. The other thing is that we do not want to destroy any of those sports. Ulster Rugby in particular is very strong about that, and, it has to be said, rugby spectators are mostly well behaved — I cannot remember any incidents at rugby games. Do we want to create a situation in which rugby is undermined as a sport? It is a wonderful sport. Do we want to undermine the source of income that maintains that sport? We have to take that point.

3349. The Chairperson: The point is even stronger, bearing in mind that Ulster Rugby did not request it.

3350. Mr O'Dowd: What we have to remember when going through each of the clauses is that we are talking about regulating sporting fixtures to which thousands of people — and, during the summer, tens of thousands — travel every weekend and there is never an incident. Here we are bringing forward various clauses that will create a raft of criminal offences.

3351. This clause deals with a matter on which clubs are able to regulate themselves. Certainly in GAA matches in some of the bigger grounds you can purchase alcohol, but you are not allowed anywhere near the seating or stand area with it. The stewards would stop you and would not let you down with it. It is well managed in the bigger soccer grounds as well. There is alcohol being served but you are not allowed down, and the stewards are perfectly placed so that you cannot go any further. In rugby, they allow you down to your seat with alcohol.

3352. Again, however, there is no record of public disorder at any of those events. So, I just do not see the need for us to be bringing in legislation to create a criminal offence around an event for which we have no evidence base to show that it is causing a difficulty at any of our sports grounds or disruption to any of our sporting events. So, I return to my own question with regard to a lot of the clauses: why do we need it?

3353. Mr Johnston: Taking the legislative power now allows us to respond. We propose to move ahead with consultation to apply that to football. We need to think and consult a bit more about GAA and rugby. My current feeling is that we would not be in any rush to apply it to either of those sports.

3354. We are looking at the evidence and in what incidents drink was a factor — we shared details of various incidents with the Committee — to respond to that and target our response according to that evidence. That is how we get around concerns about unequal treatment. You can treat different groups differently if there is a reason. The reason would be the evidence of the risks in each sport, which is potentially greater for football than the other two sports.

3355. However, rugby assured us of the good behaviour of its spectators. Interestingly, at Ravenhill, they do not allow you to take drink onto the stand, which is because health and safety issues around the steps and the height of the stand, and so on. If it started to become an issue and maybe the law needed to be engaged, the law could be engaged. The fact that there is that sword of Damocles is maybe an extra encouragement to the supporters to maintain their good behaviour. So, we still support taking the powers in primary legislation, with the assurance that any commencement would be subject to full consultation.

3356. The Chairperson: I know that Mr McDevitt wants to say something, but I want to look at comments about the redevelopment of Ravenhill stadium. The document states: "In 2009 Ulster Rugby submitted a business case to the Department of Culture Arts and Leisure (DCAL) regarding the redevelopment of the Ravenhill Grounds. These plans, produced in conjunction with Sport NI and with prior consultation with DCAL rely heavily on the provision of better food and beverage facilities within the ground, easy access to and from these facilities and, in keeping with practice in our sport elsewhere in the UK and Ireland, the supply of food and beverage to people in their seats."

3357. Mr Johnston: All those points were made to us. That is why we are proposing full consultation before we move to commence.

3358. The Chairperson: According to our paper, Ulster Rugby also said:

"It is our view that the inclusion of Ulster Rugby in the legislation in relation to clause 43 is at odds to what we are working to achieve for the stadium development, in conjunction with another government department."

You understand what is being said, which is that this clause will hinder what it is trying to achieve and trying to do with another Department.

3359. Mr Johnston: I do not see how it should hinder them if we are not commencing the legislation.

3360. The Chairperson: But, you have the legislation, Mr Johnston. The threat is there, is it not?

3361. Mr Johnston: Yes, the threat is there but that should, hopefully, encourage supporters to be well behaved so that we do not need to commence the legislation in the case of rugby.

3362. The Chairperson: But, rugby would say that it is already self-regulatory. Rugby actually encourages the Committee to take evidence from the PSNI to see what its records say about problems at Ravenhill.

3363. Mr McDevitt: Mr Johnston, you talked about differential commencement. How will you provide for that in clause 43?

3364. Mr Johnston: It is provided for by virtue of the provisions on commencement Orders.

3365. Mr McDevitt: The Bill will still say that it is illegal to drink at any regulated match. In your schedule of regulated matches, the list will include the Football Association of Ireland (FAI), the IFA, the GAA and the Irish Rugby Football Union (IRFU), according to the criteria that we debated earlier.

3366. Let us think about Ulster Rugby. This past weekend, they made it through to the quarter-finals of the Heineken Cup for the first time since 1998. We could debate the merits of alcohol sponsorship of sport, on which we might have our private opinions or even party policies, but the Heineken Cup is what it is. Let us say that Ulster beat Northampton and there is the prospect of a semi-final of the Heineken Cup here in Northern Ireland. If this piece of legislation were on the statute book, Heineken could take the head staggers and decide not to put its sponsorship or money into the region because the legislation is directly at odds with what it perceives to be a positive involvement in sport in a responsible and sensible way. Before we know it, the game could be played down at the new Aviva/Lansdowne Road Stadium, in which case we would have lost the revenue from the game and lost the opportunity to be able to celebrate a regional sporting success here locally.

3367. If you are saying that clause 43 will be amended to break up three codes and allow for differential commencement, it would be one argument. However, it would open up another argument, which Lord Browne was saying to me privately: it would appear highly discriminatory against one code.

3368. Ms Ní Chuilín: It is not private now. [Laughter.] Say nothing to Conall.

3369. Mr McDevitt: I was having a conversation with Ms Ní Chuilín last week — [Laughter.]

3370. That would open up a whole separate debate about discrimination. No matter which way you come at the problem, the solution that you propose — although it is reasonable, and I accept it as common sense from a drafting point of view — opens up all sorts of other unintended consequences and other messy scenarios that you or the Minister particularly want to bring us to.

3371. The Chairperson: It is a valid point that you make about, for instance, an organisation that enters into an agreement with a sponsor. The sponsor could go to its solicitor with the terms of the deal, and the solicitor could ask whether the sponsor is aware that a Bill is waiting and that it will not be fit to carry on. What solicitor would tell the sponsor that it would be better to just ignore that? I suspect that he will flag it up in very big print and say that it is on the sponsor's head if it is signed. The solicitor could advise the sponsor not to touch that sort of agreement because it could potentially be in big trouble a month or a few months down the road.

3372. Members, I have been passed a note that says that a vote will be coming up in the House very shortly as the Minister is making his winding-up speech. I do not say that as a threat or anything. [Laughter.] It is just to keep you informed.

3373. Mr McCartney: My point is back to the intention. Ulster Rugby pointed that England has the Football (Offences) Act 1991, which bans alcohol inside football grounds. However, alcohol will be allowed in the same ground for a rugby game. Three different associations — the GAA, the FAI and the IRFU — used Croke Park, and there were different restrictions for each of the games. I am not saying that any of the sports have a particular problem about anything, but the

idea that we bring in legislation to cover everyone instead of dealing with whatever the particular problem is will not deal with the issues properly.

3374. Mr Johnston: The differential commencement would let us arrive at that kind of situation. It is two different ways of arriving at the same thing.

3375. The Chairperson: Members, does anyone wish to add anything? Mr Johnston, you heard what was said around the table. Do you wish to come back on anything?

3376. Mr Johnston: Again, we will think further. As I said, we have thought further about that provision at various stages of the consideration.

3377. The Chairperson: We shall move on, because the rest of it has been dealt with. We are now at chapter 3, "Alcohol on Vehicles Travelling to Regulated Match".

3378. Mr Johnston: We have two amendments to propose. There is a divergence of views between the sports on alcohol on vehicles. In football, the IFA and the Association of Official Northern Ireland Supporters' Clubs gave the Minister a joint paper that suggested that the offence of having alcohol on vehicles going to and from a match should be dropped. However, the GAA indicated that it would welcome the offence for people travelling to matches and that it would be a useful part of the armoury. So, we are trying to reconcile different views.

3379. To address some of the scenarios raised by the Committee, we propose that we omit the words "or from" from clause 44(1)(b), which would mean that alcohol would be restricted on buses travelling to a match but that there would be no restrictions on the way home. We feel that that would balance the safety issues that arise when people turn up tanked up. Whether or not they are allowed into the ground, there can still be safety issues at the turnstiles and outside the ground. The Bill would state that when you are going home, it is up to you whether you drink.

3380. The other proposed amendment is that, in clause 44(5), the offence of being drunk in a vehicle, to which the Committee previously drew particular attention, will be dropped. There are already provisions on drinking on public transport, particularly on trains, and we accept that subsection (5) is not a necessary part of the overall scheme of the legislation.

3381. The Chairperson: Are members content with that? Do you wish to comment?

3382. Mr O'Dowd: On the way home, there might not be anybody on the bus, because they will all have been arrested for the other offences that they have committed. So, the bus will be empty anyway. [Laughter.]

3383. The Chairperson: We have to assume that the bus is full.

3384. Mr Johnston: And so are the occupants. [Laughter.]

3385. Mr McDevitt: It would be only fair to acknowledge that those were the two issues that I raised. I mentioned the scenario of going to the pub for a few pints after the match and, in a very responsible fashion, getting on the bus to be driven home. Dropping subsection (5) would deal with that. The other issue that I raised was about coming from a match.

3386. The Chairperson: The one consolation for the Committee is that members will not be making a decision on this today. However, we will next week, so, in the meantime, having heard what the officials had to say, members can turn the matter over in their minds.

3387. Ken Robinson suggested that, although Translink has its own by-laws covering alcohol on trains, perhaps it would be helpful to expand clause 44 to cover trains as well.

3388. Turning to the Public Prosecution Service (PPS), the summary paper states that:

"The PPS cites the proposed offence in Clause 44 as a further example of difficulty in proving the commission of an offence to the requisite criminal standard, namely beyond reasonable doubt."

3389. The Ulster GAA also had something to say. The paper states that:

"A cross-jurisdictional partnership with the relevant authorities is important and clarity was sought on the operational function of any cross jurisdictional co-operation on the policing of such matters."

3390. Members, you will be thinking those things through between now and next week, which is when you will make the actual decision. We have heard the officials' thinking on those issues today.

3391. Mr McCartney: The observation made by the PPS has to be considered.

3392. The Chairperson: It is quite telling.

3393. Mr McCartney: If the PPS is telling you that it has reservations, I cannot see how this matter is going to be processed.

3394. Mr Johnston: We are unsighted on the PPS point. We will check up on that for next time.

3395. The Chairperson: We will move on to chapter four, which deals with ticket touts at regulated matches. The Committee paper states that:

"The CAL Committee questions the need for this clause which is not relevant to local conditions. However, the pressure on capacity caused by health and safety regulations may require greater flexibility."

3396. The paper goes on to say that the Amalgamation of Official Northern Ireland Supporters' Clubs:

"supports the introduction of laws to tackle ticket touting. However, it believes that any legislation should be extended to include Rugby, GAA or indeed all sports."

We also have some more comments from Mr Ken Robinson.

3397. Mr Johnston: The need for clause 45 has been subject to particular questioning. We and DCAL have had further discussions with the IFA and the Amalgamation of Official Northern Ireland Supporters' Clubs, which have got together to discuss the matter. The Minister has had a joint communication from them, which states: "The IFA believe that controls on the sale of tickets and segregation of rival fans can be addressed adequately by initiatives developed by the IFA, in conjunction with Member Clubs. The IFA will make a commitment to reviewing the way tickets are distributed and sold for domestic games, with a view to implementing new regulations for the start of the 2011/12 season. The purpose of these regulations will be to ensure that clubs can control and account for any tickets sold on their behalf."

3398. In light of the commitment that is being made to a new system of self-regulation, and in light of the various other comments made in Committee, the Minister proposes to remove clause 45.

3399. The Chairperson: I am sure that we can agree with that.

3400. We will move on to clause 46 and chapter 5, which deals with banning orders in relation to regulated matches. The Committee for Culture, Arts and Leisure agreed that banning orders should be extended to include all categories of matches, not just regulated matches, and to other jurisdictions. Does any member wish to comment on that? Do any of the officials?

3401. Mr Johnston: We would have liked to have extended the banning orders so that people would be banned from attending external fixtures outside the jurisdiction, but we came up against the problem of competence because extraterritorial aspects were involved. It is a point that the IFA and the amalgamation raised in their joint response. We have been exploring it with the draftsmen and the lawyers, but I am afraid we have not been able to come up with a way of doing it that would satisfy those competence concerns in the time available. However, we are certainly happy to keep the matter under review to see if that extraterritorial provision can be included in future legislation.

3402. The Chairperson: Do banning orders in Scotland and England not apply here?

3403. Mr Johnston: My understanding is that they do.

3404. The Chairperson: Why can we not do it then?

3405. Mr Johnston: As I said, we are going on the advice that we are receiving from lawyers locally.

3406. The Chairperson: And they are quite explicit about that, is that right?

3407. Mr Johnston: Certainly, we have had fairly firm advice. It is not that there may not be a way of doing it, but the advice was that the way in which it was being done in earlier proposals could fall foul of the Assembly's competence.

3408. Mr O'Dowd: I want to know about the mechanics of this. If somebody is brought before a court and found guilty of a serious assault or an offence of a violent nature, would that court also deal with the banning order or would the individual be brought before another court?

3409. Mr Haire: It would be dealt with at the same time.

3410. Mr O'Dowd: It would be up to the prosecution to apply for a banning order. Would there be a charge?

3411. Mr Haire: I think that there would be an application, although that is not the terminology for it. We would only be creating banning orders to be used in conjunction with a criminal conviction.

3412. Mr O'Dowd: So, the individual would be convicted and the prosecution would then apply for a banning order to be placed on that individual.

3413. The Chairperson: Does anyone else wish to comment? Are we aware of any challenges in England and Scotland?

3414. Mr Johnston: If you mean challenges to the extraterritorial aspect; no, we are not aware of any challenges, although I am not sure whether it has been used very much in Scotland to cover matches outside the jurisdiction.

3415. The Chairperson: OK. Let us move on then. Clause 47 is entitled, "Banning orders: content". Does anyone wish to comment on anything? If not, we will move on to clause 55.

3416. Mr Johnston: It is only a technical point; on clause 49, a consequential amendment is needed to clarify that "disorder" can include sectarianism, and that comes from the reference to sectarianism. I should also say that clause 49(3) is a mistake, which will be removed. It is just a carry-over from an earlier draft.

3417. The Chairperson: Some members were insinuating that other clauses are a mistake, too.

3418. We move to clause 55, which deals with powers of enforcement. The summary paper states:

"The CAL Committee was content with the clause, subject to due consideration of the concerns raised by stakeholders in written and oral submissions to the Committee for Justice. In addition to PSNI Constable the Committee recommend the inclusion of an authorised person to cover circumstances when there is no visible PSNI presence."

Therefore, if the policeman cannot go himself, he can send his wife.

3419. Mr Johnston: Giving authorised persons the powers to search in the same way as a police constable would be quite a big step.

3420. The Chairperson: I draw members' attention to what the PPS said, which is included in the paper. This is a significant sentence:

"The PPS stated that confidence in the administration of justice is liable to be undermined where difficulties of proof lead to under-usage of the offence or a disproportionate number of acquittals. Specific points raised by the PPS are included under the relevant clause."

It said other things as well, which you can see for yourselves, but I just wanted to draw your attention to that. Mr Johnston or Mr Haire, do you wish to comment?

3421. Mr Johnston: I do not see why there would be a disproportionate number of acquittals as a result of the legislation. It is like anything else; you gather evidence and then decide whether the test for prosecution has been satisfied. In fact, the PPS has a very good strike rate when it comes to getting convictions.

3422. The Chairperson: Members have heard what the officials said. Does anyone want to comment?

3423. Mr O'Dowd: Do you have a rough estimate of how often the legislation has been used in England or Scotland?

3424. Mr Haire: I have some figures. At any one time, around 3,000 banning orders are in place in England and Wales. In Scotland, there are upwards of 100.

3425. Mr O'Dowd: Banning orders?

3426. The Chairperson: There are 3,000?

3427. Mr Haire: Those are the figures that we have for English football banning orders.

3428. The Chairperson: Last but by no means least, schedule 5, "Transitional and saving provisions". There were no specific comments about this schedule last time. Paragraph 3 of the schedule states that: "A banning order may not be made under section 46 where the offence mentioned in subsection (1) of that section was committed before the commencement of that section."

3429. Mr Johnston: Those are the normal restrictions on the retrospectivity of criminal law. It is, effectively, a European Convention on Human Rights point.

3430. The Chairperson: Does any member wish to comment? If not, we will end there. Thank you, Mr Johnston and Mr Haire, for your attendance, advice and explanations. We do appreciate it.

27 January 2011

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Lord Empey
Mr Conall McDevitt
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Mr Tom Haire Mr Gareth Johnston Ms Amanda Patterson Mr Billy Stevenson	Department of Justice
Ms Geraldine Fee	Northern Ireland Courts and Tribunals Service

3431. The Chairperson (Lord Morrow): We will now continue the informal clause-by-clause consideration of the Justice Bill with Part 5, which is about the treatment of offenders. Part 6 relates to alternatives to prosecution. If members are content, I propose to move the discussion on that Part to Tuesday to give members a bit more time. Are members content?

Members indicated assent.

3432. The Chairperson: I welcome back Gareth Johnston, Tom Haire and Amanda Patterson. It has been a long wait, but we are back to deal with Part 5, which contains clauses 56 to 63. I invite comments on clause 56. Mr Johnston, do you or one of your colleagues wish to comment at this stage?

3433. Mr Gareth Johnston (Department of Justice): We have no comments on most of these clauses.

3434. The Chairperson: That brings us to clause 57, which is about penalties for certain knife offences. If no members wish to comment on that, we will move on to clause 58.

3435. Lord Empey: Can I ask officials for their response to Extern's comments?

3436. The Chairperson: Are you aware of those comments?

3437. Mr Johnston: We have the Extern response, but it would be helpful to be reminded.

3438. Lord Empey: Extern expressed the view that extension to the deferment period might require some level of support to be offered to the offender to maximise effectiveness and positive outcomes.

3439. Mr Johnston: The purpose of deferment of sentences is to see how offenders get on with a treatment regime or to address some of the underlying issues that contributed to the offending behaviour. Therefore, support is available and, in some cases, it is available from voluntary organisations that provide courses on getting off alcohol or dealing with drug addiction.

3440. Lord Empey: I understand that and I am happy with it. However, Extern seems to be saying that some level of support being offered to the offender obviously increases the workload on the bodies that have to provide that support. I presume that the officials would accept that.

3441. Mr Johnston: Of course, support is already being provided in a lot of those cases. The deferment of sentence provides a greater incentive to an offender to participate where that support is offered and make a success of the programmes that we are doing. Support will be provided, but I am not sure that we anticipate a lot of new support that is not already provided. This gives more incentives for offenders to comply with that, because they know that the decision on their sentence will depend on how well they have complied.

3442. Mr O'Dowd: I am sorry, Chairperson. I think that you have moved on to clause 58, have you?

3443. The Chairperson: Do you have a question about a previous clause?

3444. Mr O'Dowd: It is about the increase in penalties in clause 57. I take it that the penalties apply to juveniles as well as adults. It would mean that a pupil in a school who is in possession of a knife would face more robust penalties.

3445. Mr Johnston: It just completes a strengthening of the penalties for knife crime that began with the commencement of the Criminal Justice (Northern Ireland) Order 2008. This particular offence was not covered, so it is to be brought up to the level of the other offences, which, likewise, could be committed by young people as well as adults.

3446. Mr O'Dowd: For the sake of clarity: if a juvenile were to be found in possession of a knife on the street, would they, in the other codes, go through a similar adjudication process to that faced by an adult who was caught with a knife? Would they face the same penalties?

3447. Mr Johnston: They would face the same penalties, yes. The process would be different in that there would, potentially, be a youth conference.

3448. Mr O'Dowd: Would a youth conference be available under this scheme?

3449. Mr Johnston: The same arrangements would obtain as for any other offences.

3450. The Chairperson: We will move on to clause 59, which is about a breach of licence conditions by sex offenders. According to our summary document, the Probation Board for Northern Ireland (PBNI) asks that:

"the single jurisdiction boundary also applies to warrant applications before Lay Magistrates. In addition, it would be beneficial to extend the amendment (II) (a) to: Custody Probation Orders; and Probation Orders respectively."

Do you wish to comment on that, Mr Johnston?

3451. Mr Johnston: There is one comment to make, which is about the Department's proposed amendment.

3452. Mr Tom Haire (Department of Justice): There was an issue about extraterritoriality and the Probation Board's suggestion about making probation orders more generally. If we were to try to map probation orders onto this Bill, it would involve Westminster legislation. I think that we said that we would look at that and take it forward. However, for the purposes of this provision, we had to focus on only the Northern Ireland disposals.

3453. The Chairperson: That also deals with the PBNI's further recommendation, which, according to our document is that:

"legislative change is made to extend the provision of Article 26 Orders, to the Jurisdiction of England and Wales; and Scotland."

Is that correct?

3454. Mr Haire: That would be the same, yes. We have been in touch with our Westminster colleagues about being able to transfer article 26 cases formally.

3455. The Chairperson: We will move on to clause 60, which is entitled, "Sexual offences closure orders". Do members have any comments? If not, we will move on. Do members wish to comment on clause 61, which is about financial reporting orders? If not, we will move on to clause 62, which is entitled "Dangerous offenders: serious and specified offences". If there are no comments on that, we will move on to clause 63, which is entitled, "Supervised activity order in respect of certain financial penalties".

3456. Mr McDevitt: I am curious about the Department's feelings about what the Human Rights Commission said. According to our document, it said:

"Clarification is required as to when supervised activity orders will be piloted; what geographical area will be covered; and how long the pilot is envisaged to run prior to evaluation."

It seems to be an interesting point, so I wonder whether you have any thoughts on it.

3457. Mr Johnston: As yet, there have been no decisions on that. If we were to pilot, doing so on a geographical basis would be useful, because this is something new for us, so it would be important to learn lessons. Nevertheless, it would be for a relatively short period, perhaps six months, nine months or a year, with a view to rolling it out. It is a matter of balancing being fair and making the orders available to everybody against being confident that we have dealt with all the issues and are able to offer them effectively.

3458. Mr McDevitt: Mr Johnston, you said "if" you were to pilot. What key criteria would you apply to the decision on whether to pilot?

3459. Mr Johnston: Resources are certainly an issue. In a way, the provision just fixes the bit of a hole that was left after the 2008 Order. We are looking separately at the whole gamut of responses to fine default. A workshop for the various agencies to think about our wider fine default strategy is being organised for the tail end of next month, and we will look at supervised activity orders in that context.

3460. Mr McDevitt: Fair enough.

3461. The Chairperson: That brings us to schedule 5, which is about transitional and saving provisions. Paragraph 4 is about the increase in penalties. Are there any comments around that? If not, we will move on. Paragraph 5 is about condition of sex offender licence. Paragraph 6 is about serious and specified offences. If there are no comments on those paragraphs, we will move on.

3462. We will now hear from the departmental officials about the Department's proposed amendments.

3463. Ms Amanda Patterson (Department of Justice): This amendment is necessary because of a Supreme Court ruling, namely that certain parts of the sex offender notification requirements are incompatible with article 8 of the European Convention on Human Rights (ECHR). The incompatibility relates to notification requirements attached to somebody on an indefinite basis. The ruling is that that is incompatible with the privacy rights in article 8. The Committee knows to expect the amendment. A response will have to be made by all jurisdictions in the UK. Scotland has an Order in place, and this is our response to the Supreme Court ruling.

3464. I do not know whether you would like me to brief you on the clause and schedule that would put the review mechanism in place. Paragraph 1 of the schedule details the interpretation, telling you what sexual harm is. That is the barrier that an offender must reach in order to have notification requirements lifted. It is a review mechanism that will be exercised by the police. An offender who has indefinite notification requirements attached to his conviction can, after a period of 15 years following his release back into the community after serving his sentence, make an application. For anyone who was under 18 at the time of conviction, that period is reduced to eight years. If an offender is subject to any other requirements by virtue of a sexual offences prevention order or has a fixed period of notification attached to him following a conviction since the one that attached the indefinite notification period, he cannot apply to have the indefinite notification requirements removed. It is purely for offenders who have an indefinite notification requirement attached to one particular offence. If more than one offence is attached to the indefinite notification requirement, the 15 years will be taken from the latest of those convictions.

3465. The determination on the application is made, in the first instance, by the police. Paragraph 3 of the draft schedule sets out that the Chief Constable must be satisfied that, on the balance of probabilities, the offender no longer poses a risk of sexual harm to the public or to any particular members of the public. That is the barrier that the offender has to get over. Sub-paragraph (2) of paragraph 3 sets out the entire criteria that the Chief Constable must take into account in reaching that judgement, including what the conviction was for; the age of the offender at the time; the age of the victim; any further convictions or findings made by a court; any outstanding criminal proceedings; and any assessments over the years on the risk that the person poses.

3466. The police have duty to come to a decision within 12 weeks of the date on which they receive the application. They must then serve notice of their decision to either discharge or continue the offender's notification requirements. If notice is served that there will be no discharge of the notification requirements, the offender will be informed that he can make an application to the Crown Court to ask the court to decide whether the notification requirement should be lifted or he can wait for a further five years. He in entitled to a further review after five years from when the notification requirements were not discharged.

3467. That is, basically, the end of it. The final paragraph deals with the fact that, if he has been discharged from the notification requirements in Scotland, which could happen at the minute, it applies in Northern Ireland as well. It is a fairly straightforward procedure. The offender has to bring the application to the police, and the police have to make a determination on the basis of what is set out in statute. There is an opportunity for any offender who has been turned down by the police to go to the court, and there is a further review every five years after the initial review. That is the procedure that the amendment would put in place.

3468. The Chairperson: Your briefing paper states:

"In terms of the provisions we are now proposing, Section 82 of the Sexual Offences Act 2003 provides that all persons sentenced to 30 months' imprisonment or more for a sexual offence become subject to a lifelong duty to keep the police notified of personal details".

How is that done and how often?

3469. Ms Patterson: They have to make an initial notification and give the police those details within three days of leaving prison and going back in to the community. If their details change, they have to notify the police immediately or within three days of the change happening. They also have to notify the police annually confirming that their details are still the same. In addition, they have to notify the police if they have a change of address, travel abroad or anything like that.

3470. The Chairperson: Does this type of legislation apply to any other type of offender?

3471. Ms Patterson: No. It is for those on what people are inclined to call the sex offender register. Therefore, it is purely sex offenders who fall within this. The person has to be convicted of a sexual offence within the schedule attached to the Sexual Offences Act 2003.

3472. Mr McDevitt: How closely does this schedule mirror what has been done in Scotland? Is it very similar?

3473. Ms Patterson: It is very similar but not the same. The one thing that is the same and is likely to be the same in the three jurisdictions is the length of time before an offender can apply for a review. However, the details of the actual review mechanism are slightly different depending on the jurisdiction.

3474. Mr McDevitt: It was brought to our attention previously — I remember having a brief conversation about this some time ago — that this is a fulfilment of a Supreme Court ruling. However, from an equality point of view, do any screening issues need to be considered for the new schedule? If so, has that been completed and what stage is that at?

3475. Ms Patterson: We completed a screening exercise and did not find anything that needed to be taken any further than that. The provisions will apply to offenders who are already convicted, and we could not find any issues with them.

3476. Mr McDevitt: Just to play devil's advocate: when you are screening, there are obviously offenders, but there are also victims of, in this case, pretty serious sexual crimes. Will you just remind me how you factor in the victims' needs and rights in such a screening process?

3477. Mr Johnston: It is a matter of looking at the whole thing in the round. What is a particularly relevant consideration here is that the need to do this is coming out of the European Court of Human Rights.

3478. Mr McDevitt: I accept that.

3479. Mr Johnston: We look at the impacts on offenders and victims across all section 75 categories. In this case, it does not really matter which section 75 category a victim falls in to, because they could still be a victim of sexual abuse. We, therefore, did not feel that there was any particular differential impact there.

3480. The Chairperson: The paper refers to "a lifelong duty" and then "an indefinite period". According to your paper, the indefinite period was challenged in the European Court of Human Rights. Is it, therefore, possible that the other term could be challenged? If "an indefinite period" can be challenged, could "a lifelong duty" be?

3481. Ms Patterson: That is just using different words. It means the same thing.

3482. The Chairperson: I thought that it meant the same thing, so I was going to ask you to explain the difference.

3483. Ms Patterson: There is no difference. An "indefinite period" is just a loose term like "lifelong" or "life notification". However, the correct terminology in the Act is "a period of indefinite notification", but it means the same thing.

3484. The Chairperson: It should, therefore, read, "become subject to an indefinite period of notification".

3485. Ms Patterson: Yes, that is right.

3486. Lord Empey: I think that there is a difference.

3487. The Chairperson: I did, too.

3488. Ms Patterson: "Indefinite" is the correct term. I must apologise; the use of "lifelong" was the result of my drafting.

3489. Lord Empey: Something that is "indefinite" is "indefinite" at a particular point, but it could change and have a timescale put on it. On the other hand, lifetime is clear cut and definitive.

3490. The Chairperson: OK. The correct term is "indefinite," is that correct?

3491. Ms Patterson: Yes.

3492. The Chairperson: No other member has indicated that they wish to comment. I thank the witnesses. We will return to the issue next Thursday when we will make a definitive decision.

3493. We will now move on to our informal clause-by-clause consideration of Part 8 of the Bill. Part 8 comprises clauses 92 to 101 and deals with its miscellaneous provisions. We will retain

Gareth Johnston and Tom Haire, and be joined by Geraldine Fee and Billy Stevenson. I welcome you both to the meeting.

3494. Clause 92 relates to the compassionate grounds for bail. No members indicated that they want to comment on that clause, so we will move on. Clause 93 relates to repeat applications for bail. No members indicated that they wish to comment on that clause either. Clause 94 relates to the possession of an offensive weapon with the intent to commit an offence. There are no comments from members on that clause.

3495. Clause 95 relates to the publication of material relating to legal proceedings. I draw members' attention to the table of responses, which shows that the Committee considered the view of the Examiner of Statutory Rules on this matter, and that it wrote to the Minister to seek his views. The Committee is still awaiting a response.

3496. Mr McDevitt: Could the officials provide us with a response?

3497. The Chairperson: I suspect not.

3498. Ms Geraldine Fee (Northern Ireland Courts and Tribunals Service): The Minister will write to the Committee next week. In broad principle, we have no problem with making either the Magistrate's Courts rules or the County Court rules subject to negative resolution, but whether that can be achieved in the timescale for this Bill remains to be seen. As the rule making procedures apply to rules that are in the transferred and excepted fields, we would need to contact the Ministry of Justice in England and Wales and the Westminster authorities. We would also need to speak to the chairpersons of the relevant committees as a matter of protocol and courtesy and there are also timetabling pressures around the Bill. However, the Minister's response will broadly support the change recommended by the Examiner.

3499. The Chairperson: Thank you. Clause 96 relates to membership of the Crown Court Rules Committee.

3500. Lord Empey: There was a little flurry of activity about that clause earlier.

3501. The Chairperson: Yes. The Committee's table of responses indicates that: "The Department later indicated to the Committee that it proposed to make amendments to clauses 96 and 97 to reflect that the person nominated by the Attorney General will be a solicitor or barrister."

3502. Ms Fee: During the Committee's previous meeting, it was pointed out that the clause that we were proposing to amend regarding the Attorney General's nominee did not have the same categorisation of qualification as the other provisions.

3503. We consulted the Attorney General, who indicated that his intention would be to nominate a practising barrister or solicitor. We feel that that is consistent with the requirements for other members of the committee. Therefore, the Department proposes to amend the provisions for both the Crown Court Rules Committee and the Court of Judicature Rules Committee.

3504. The Chairperson: Thank you. We move on to clause 97, "Membership of Court of Judicature Rules Committee", which deals with the same thing as the previous clause.

3505. Clause 98 is entitled, "Appeals from Crown Court: Proceeds of Crime Act 2002". There was a small typographical error, but I think that it has been dealt with.

3506. Ms Fee: I believe so, Chairperson. We are examining whether we can deal with that through a printing change at the Bill Office. It is a numbering issue that does not affect the substance of the clause.

3507. The Chairperson: Clause 99 is entitled, "Witness summons in magistrates' court". Would members like to comment on that? MindWise recommends that:

"when the witness is a juvenile and vulnerable by virtue of age or a vulnerable person by reason of mental health regardless of age they should be supported and assisted by a trained advocate."

Do departmental officials wish to comment on that?

3508. Ms Fee: We have noted the comments of MindWise. Any young or vulnerable witness attending court is already eligible for extra help through special measures. In addition, Victim Support and the National Society for the Prevention of Cruelty to Children (NSPCC) also operate witness services within quite a few of our courthouses, so the special measures assistance is there where necessary. The change made by the clause would be a procedural one to allow better access to material held by third parties. It would fit into the overall regime for anyone giving evidence in a Magistrate's Court or a Crown Court, and the same assistance would be available to a witness under what we call a third party summons, just as it would be under any other type of summons.

3509. The Chairperson: That sounds adequate, but does any member wish to comment?

3510. We move on to clause 100, which is entitled, "Criminal conviction certificates to be given to employers". The Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) said that:

""For Basic Disclosure certificates, while the employer is entitled to have sight of the information, they are not subject to the Code."

It also said that:

"Employers will continue to have access to basic disclosure information regarding an applicant, without being subject to regulation."

Does the Department wish to comment?

3511. Mr Johnston: The only change that this provision would make is that it would allow Access NI to send a certificate, if requested, to both the employer and the person who is applying for a job, which might speed things up for the applicant. It would just be an administrative change to speed things up a bit for people who need those certificates.

3512. The Chairperson: Let us move on to clause 101, "Accounts of the Law Commission". Members, I draw your attention to the proposed departmental amendments included in the papers, which I, like others, am struggling to get through. I have the paper now.

3513. Lord Empey: Hold on a minute; you have someone to get it for you. [Laughter.]

3514. The Chairperson: Help will be given to anyone who is under stress. Have all members found that paper now, with or without help? The paper reads as follows: "New clause

After clause 94 insert—

'Power of Department of Justice to make payments in relation to prevention of crime, etc

"94A.—(1) The Department of Justice may, with the consent of the Department of Finance and Personnel, make such payments or grants to such persons as the Department of Justice considers appropriate in connection with measures intended to—

(a) prevent crime or reduce the fear of crime; or

(b) support the recovery of criminal assets and proceeds of crime.

(2) A grant under subsection (1) may be made on such conditions as the Department of Justice may, with the consent of the Department of Finance and Personnel, determine."

Clause 107, page 62, line 7, at end add 'or (Power of Department of Justice to make payments in relation to prevention of crime, etc)'"

Perhaps the officials will take us through this.

3515. Mr Billy Stevenson (Department of Justice): Thank you, Mr Chairman. The purpose of the amendment is to give the Department of Justice powers to make payments from criminal assets paid to the Northern Ireland Consolidated Fund, with the consent of DFP, to prevent crime, reduce the fear of crime, and to support the recovery of criminal assets. The need for the amendment follows from amendments to the Proceeds of Crime Act 2002 (POCA), the Administration of Justice Act (Northern Ireland) 1954, and to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010. In other words, it is a consequence of devolution.

3516. Prior to the devolution Order, the value of all criminal assets, civil and criminal, recovered in Northern Ireland were remitted to the Home Office. The Home Office, under an agreement reached with Her Majesty's Treasury, retained 50% of those funds and returned the remaining 50% to agencies responsible for securing the assets, including agencies in Northern Ireland. That is known as the assets recovery incentivisation scheme (ARIS).

3517. Following devolution, there is no longer authority for the proceeds from criminal confiscation orders imposed under POCA to be paid to the Home Office; instead, receipts of criminal confiscation orders are paid to the Northern Ireland Consolidated Fund. Civil recovery receipts are unaffected by the devolution of functions Order and continue to be paid to the Home Office.

3518. DFP is engaged with the Treasury to agree arrangements whereby the Department of Justice might draw upon the proceeds of criminal confiscation receipts to the Consolidated Fund in Northern Ireland up to a certain limit. That would replicate agreements between the Treasury and the Home Office as well as agreements between the Treasury and the Scottish Government. In the interim —

3519. Lord Empey: I am sorry, Billy, but would you repeat the last bit as I missed it?

3520. Mr Stevenson: DFP is engaged with the Treasury to agree an arrangement whereby the Department of Justice may draw down funds from the Consolidated Fund.

3521. Lord Empey: You said "up to a certain limit".

3522. Mr Stevenson: Yes.

3523. Lord Empey: In the past, all confiscated criminal assets went to the Home Office; however, after devolution, the Department of Justice will be given access to some of them.

3524. Mr Stevenson: It will be given access to criminal confiscation receipts but not to civil recovery assets. The Home Office has agreed a limit with the Treasury of, I believe, £300 million. The Scottish Government have a limit of £30 million, which I think is based on the Barnett formula. We are looking for a similar agreement whereby the Department of Justice can have access to such funds, in line with the rest of the UK.

3525. In the interim, DFP has agreed, as a temporary measure only, to facilitate the payment of the assets recovery receipts in 2010-11 to give the Department of Justice authority to pay those funds by way of the Budget (No. 2) Act (Northern Ireland) 2010 as the sole authority. However, the Department of Justice has no authority to pay or allocate funding from criminal assets for the purposes mentioned in the amendment beyond the 2010-11 financial year, hence the need for an amendment to the Justice Bill.

3526. Mr McDevitt: We are talking about criminal assets seized in Northern Ireland.

3527. Mr Stevenson: Yes.

3528. Mr McDevitt: By the Serious Organised Crime Agency (SOCA)?

3529. Mr Stevenson: No, we are talking about criminal assets; SOCA does civil recovery. In Northern Ireland, criminal assets are recovered by the Northern Ireland courts on application by the PSNI etc.

3530. Mr McDevitt: Therefore, you are telling us that criminal assets seized in Northern Ireland by the Northern Ireland Courts and Tribunals Service go to the Home Office.

3531. Mr Stevenson: Prior to devolution, they went to the Home Office.

3532. Mr McDevitt: And we got 50% back.

3533. Mr Stevenson: The Department of Justice got nothing. Agencies such as the PSNI, the Court Service and the Public Prosecution Service (PPS) got half.

3534. Mr McDevitt: Therefore half came back to Northern Ireland.

3535. Mr Stevenson: Yes.

3536. Mr McDevitt: What will happen now?

3537. Mr Stevenson: We will get all of it, and that includes the 50% that the Home Office kept. That is what DFP is agreeing with the Home Office. It is new money that was not previously available.

3538. Mr McDevitt: However, half of it will still go to —

3539. Mr Stevenson: Half will go to the agencies, as it did before. If negotiations with the Treasury go well, we will get the 50% that was previously retained by the Home Office. It is a new funding stream.

3540. Mr McDevitt: It is a better deal for us. That is grand. I was a bit confused.

3541. Mr Stevenson: It is difficult to estimate how much it will be, as it varies year by year. However, we think that this year there will be about £2·8 million, which is £1·4 million extra — the half that the Home Office used to keep.

3542. Mr McDevitt: What happens to the SOCA money?

3543. Mr Stevenson: It is returned to the Home Office; it keeps half and returns half to the agencies.

3544. Mr McDevitt: Even though it was confiscated here?

3545. Mr Stevenson: Even though it was confiscated here.

3546. Mr McDevitt: And even though it was seized through the work of local SOCA agents?

3547. Mr Stevenson: Yes. You may be interested to know that the Minister wrote to the Home Secretary to ask that that money be returned to Northern Ireland, although that would require legislation. You may not be surprised to learn that we got a letter back yesterday in the negative. However, we think that we will be going back with an argument to pursue the matter, because we think that some of that money should come back to Northern Ireland.

3548. Lord Empey: The Home Office may be looking for money for customs officials and so on. Is that what the argument is going to be?

3549. Mr Stevenson: SOCA would provide services here on a regional basis, and it will argue that, but there are some elements of the money that we could argue should be returned here. We will continue to pursue that matter.

3550. Mr McCartney: I have two questions. The previous amendment, which we received evidence on, was the result of a decision by the Supreme Court. You can understand why this amendment has been proposed. Is there any particular reason why —

3551. Mr Stevenson: We were informed in December 2010 by DFP that we needed to put the primary legislation through in order to give ourselves cover from 2011-12 onwards. I appreciate that it is very late coming through, but this is the first opportunity that we have had to put primary legislation through.

3552. Mr McCartney: Who has been consulted or has had access to consultation during the wider consultation on the Bill?

3553. Mr Stevenson: The consultation on this measure has not happened yet because of time considerations. In the future, the Minister of Justice will have to determine how those funds are allocated. That will be subject to bringing information to the Committee, which will be subject to consultation.

3554. Mr Johnston: In essence, the problem was that, if we missed the boat on this matter and did not use the Bill as a vehicle, we would lose out on the money next year.

3555. Mr McCartney: The wording of the proposed new clause uses the phrase "such persons". We discussed that when we were talking about organisations, and I understand that part of it. The clause deals: "with measures intended to —

prevent crime or reduce the fear of crime; or

support the recovery of criminal assets and proceeds of crime."

Will there be a decision taken that 50% of any such grants should go to each measure?

3556. Mr Stevenson: The Minister has to make that decision. That provision would allow him, if required, to consider incentivising agencies that collect the money.

3557. Mr McCartney: How would those agencies do that? Would it be through employing more staff?

3558. Mr Stevenson: Currently, the agencies use it for various purposes. Some of them employ financial investigators, who, in turn, help to produce the assets. Other agencies, such as the PSNI, will give the money from the fund to communities. There is a mixture of uses.

3559. Mr McCartney: At present, how much would that be a year?

3560. Mr Stevenson: We estimate that about £2·8 million in total will come through in the current financial year. Half of that is going to the agencies. The amendment will give us the power to pay that out in future. We hope to have access to the other half, the £1·4 million on which DFP is negotiating with the Treasury, but that is not yet agreed. DFP has facilitated the payment of the 50% because that was what happened before. In the absence of a new scheme, the agencies fully expect that to happen.

3561. Mr McCartney: The Committee for Culture, Arts and Leisure received a presentation on something similar in Scotland. Is the application process by invitation or is it open?

3562. Mr Stevenson: We do not yet have a scheme in place. The agencies get their 50% on a pro rata basis; they do not apply for it, but get it as of right.

3563. Mr McCartney: Do you think that there will be an open application process, or will you decide that because a particular agency is doing a good job, you will issue an invitation to that agency?

3564. Mr Stevenson: I do not know how it will happen yet. The scheme has not been developed yet. That will be subject to consultation and will be brought to the Committee in due course.

3565. The Chairperson: We will move on to schedule 6, which deals with minor and consequential amendments. Do the departmental officials wish to comment on the schedule or explain it? Do members wish to ask anything of the officials? Are members completely clear about the ramifications of the schedule? Minor amendments may sometimes amount to changing a comma, but I am not sure whether schedule 6 goes beyond that or not. Does the Department wish to flag up anything and tell us that there is a big change, or are the amendments minor, as the title suggests?

3566. Mr Haire: Most of them are minor and consequential amendments. The only one to point out is amendment 13 about supervised activity orders, which Gareth mentioned earlier. It is a technical amendment to allow us to pilot the supervised activity order, which Mr McDevitt enquired about.

3567. The Chairperson: Paragraph 6 of schedule 6 says:

"In Article 15(5) (consequences of admitting video recording) in sub-paragraph (a)(i) for 'otherwise than by testimony in court" substitute "in any recording admissible under Article 16'."

Is that saying the same thing a different way round?

3568. Mr Haire: We can check that. I think that it slightly widens the scope to reflect the changes being made through the special measures earlier in the Bill. We will confirm that.

3569. The Chairperson: OK. I will move on. The Department officials will take us through schedule 7.

3570. Mr Johnston: Those are repeals, particularly to areas of district policing partnerships that are no longer relevant and are now covered by the Bill.

3571. The Chairperson: If members have no questions, we will move to Part 9, which deals with supplementary provisions. Clause 102 is entitled, "Supplementary, incidental, consequential and transitional provision, etc". No comments were received about that. If any member wishes to ask for clarification or explanation, now is the time to do it.

3572. I thank the officials for their attendance.

27 January 2011

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Lord Empey
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt
Mr David McNarry
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Ms Nichola Creagh Mr David Hughes Mr Gareth Johnston Mr Dan Mulholland	Department of Justice

3573. The Chairperson (Lord Morrow): The officials are at the table. I welcome Gareth Johnston, Nichola Creagh, David Hughes and Dan Mulholland. I suspect that we may need your expertise from time to time.

Clause 20 (Establishment of PCSPs and DPCSPs)

3574. Clause 20 deals with the establishment of policing and community safety partnerships (PCSPs) and district policing and community safety partnerships (DPCSPs). If any member wishes to comment, indicate to us and we will let you in right away.

3575. I draw members' attention to the paper summarising the responses to the Bill. The majority of the community safety partnerships (CSPs) recommend that the Justice Committee re-examines the proposed title. Moreover, clarity is needed on the Belfast model, and the Committee was asked to ensure that the legislation, guidance and codes of practice enable flexibility in the future if, for example, the Chief Constable were to bring about a change to the number of police districts in Belfast. Do any officials or members wish to comment on that?

3576. Does the Committee formally agree clause 20?

The following members indicated assent: Lord Browne, Mr Givan, Mr Maginness, Mr McDevitt.

3577. The Chairperson: Three members have abstained, and the rest have agreed it.

3578. Mr McNarry: Chairperson, the Ulster Unionists will abstain, as there are some items that we have not fully resolved. We would like to hold our position on that until later stages of the Bill.

3579. Lord Empey: Chairperson, may I make a comment, or have you closed the debate on this?

3580. The Chairperson: You may if it is to do with what Mr McNarry said.

3581. Lord Empey: There is a particular issue with the Belfast model in that there will be subgroups, which is not the case in other districts. Members can see from the paper that the complexity of the model is of concern to Belfast City Council. That is one issue that we want to follow up. It claims that this would be a significant added burden. You will remember that, in our session in the Long Gallery, other concerns were expressed by people from other districts. We certainly want to revisit that issue. I do not know whether the officials have any views on that.

3582. The Chairperson: We will hear what other members have to say and then we will give the officials an opportunity to comment if they wish.

3583. Ms Ní Chuilín: I will just repeat the comment that I made at the start of the meeting, which is that we are abstaining on this clause because there are difficulties in Belfast that have not been resolved yet. For the sake of the smooth running of the Committee, we formally abstain. It is worth noting that there are issues there that we need to come back to. I want that to be put on the record.

3584. Lord Browne: I declare that I am a member of Belfast City Council. Lord Empey said that there is difficulty with how the PCSP and, in particular, the DPCSP will integrate with existing structures, such as the West Belfast Community Safety Forum, Partners and Community Together (PACT) groups and the West Belfast Partnership Board. I think that the Department has had conversations with them to try to satisfy them that this can be done.

3585. Mr David Hughes (Department of Justice): I am not sure whether there is an issue with the clause as drafted or whether those issues could be addressed when the guidance on the operation of the functions of the partnerships is drawn up. The question of the relationship between the statutory partnerships that the legislation will establish and the non-statutory organisations, partnerships and forums that exist in Belfast or elsewhere is whether there is a flaw in the current drafting that needs to be addressed or whether it can be addressed on the back of the clause as it is currently drafted and proposed.

3586. Ms Ní Chuilín: To clarify further, there are issues with the clauses and schedules as well as with the guidance and other areas of concern. I am reluctant to agree the clauses and the

schedules on the basis that, if they are in the Bill, they may have an impact on the guidance when it is produced. The devil is in the detail, so we are parking everything until we get clarification across the board.

3587. The Chairperson: Does anyone else wish to comment before we move on?

3588. Lord Empey: What appears to be happening is that the Bill could impose an additional administrative burden and, consequently, a resource burden on another body. There is a significant issue there, and that is at the core of some of our issues. That is why we wish to revisit the proposal.

3589. The Chairperson: Some of you are telling us today that you have not made up your minds. Are you saying that you have not made your minds up today and that you are not likely to do so during the Committee's consideration of the Bill, or are you saying that you want to make your minds up in another arena?

3590. Mr McCartney: We will have our minds made up before the end of Consideration Stage.

3591. Ms Ní Chuilín: Yes, we will.

3592. Mr McNarry: As far as we are concerned, we are unable to do it today. We hope that through further development we will be able to contribute an opinion, but we cannot do so today. We just need to clarify some positions.

3593. The Chairperson: Members know the timescale and where we are with all of this.

3594. Ms Ní Chuilín: Yes, we appreciate that.

3595. The Chairperson: I am not sure whether we can come back to it another day. Time may not permit that. If time permits, we will. If it does not, we will have to go ahead with the verdict of the Committee. Is that understood?

3596. Ms Ní Chuilín: We appreciate that.

3597. The Chairperson: If members want to come back to the business another day, it is entirely up to them. If we have time to do so, we will, but this was to be the day that we were to make decisions. I think that everybody agreed to and signed up for that, if I remember correctly.

3598. Mr McNarry: By no means do we wish to impair the process in the Committee, which we respect fully. It is just that our position is that we are not able to participate as fully as we would like. We are also aware that, if the time schedule in this Committee does not suit, there are other options open to us whereby, if we have reason to propose amendments, we can do so.

3599. The Chairperson: That is what I thought. Folks, I will park that until the end. I have been advised of another option. I am told that we can agree the clause informally, and, when we come to the end of the process, we can put the Question again and agree it formally. Is everyone clear on that?

3600. The Committee Clerk: Just to clarify the position: if the Committee wishes, it can agree its informal position on this clause today. Some members may wish to abstain. At the end of the Committee Stage, in about a week and a half, we can formally put the Question, if that is the decision of the Committee. If, in the meantime, members are in a position to add more information or revisit it, that allows the Committee to do so. Otherwise, the Question will be

formally put on the basis of today's decision and will go through on that basis in about a week and a half.

3601. Ms Ní Chuilín: That was our understanding anyway, but thanks for that clarification.

3602. The Chairperson: The only downside is that we could chew them all up like that and come back to all of them another day. The real danger is that we could have all the clauses informally agreed to be formally agreed, which can sometimes make the whole process a bit convoluted. At the end of the day, we need to bring down the guillotine. If members are agreed, we can follow that process, but I think that there is an element of risk attached.

3603. Ms Ní Chuilín: Well, in fairness, this is the first time that this has happened, Chairperson. There is a first time for everything.

3604. The Chairperson: Yes, but I am just afraid of people learning bad habits. That is all that I am saying.

3605. Ms Ní Chuilín: I appreciate that. So, we agree to informally abstain. [Laughter.]

3606. Mr McNarry: I enjoy your flippancy at times, but I am not encouraging anyone to fall into a bad habit. We actually have a right to adopt the position that we have. As I said, we hope that we are doing that without impairing anybody else.

3607. The Chairperson: I did not think that I was being flippant, but I must try it more often.

3608. Mr McNarry: It is meant to be a bit more serious, Chairman.

3609. The Chairperson: I cannot tell anyone what stance or attitude they should take here, and I have no intention of doing so. However, we sometimes give a commitment one week, but that commitment seems to lasts only until people go out through the door. Then, when they come back to make an actual decision, they discover that they are not in a position to do so. Maybe if we all stayed for the full meeting, we would be able to do that more often.

3610. Are members agreed with what was outlined by the Committee Clerk? I do not hear anyone saying nay; well, not today anyway.

3611. Ms Ní Chuilín: We have made our position clear; we are abstaining even at this informal stage.

3612. The Chairperson: And might even be abstaining the next time we come to it.

3613. Ms Ní Chuilín: As you outlined, that is our right.

3614. The Chairperson: Who is abstaining?

3615. Ms Ní Chuilín: Raymond, John and I.

3616. The Chairperson: Five members are abstaining.

Clause 21 (Functions of PCSP)

3617. The Chairperson: The majority of PCSPs recommended that the Committee for Justice re-examine the proposed functions. Coleraine Borough Council recommends that the Committee re-

examine clause 21(1)(c) and does not restrict the function of the policing committee as it applies to the whole partnership. Include Youth has concerns that clause 21(1)(c), clause 21(1)(d) and clause 21(1)(e) in particular have limitations. It suggests the addition of the following words to clause 21(1)(d): "fully considering" after "to make arrangements for obtaining", which would make clause 21(1)(d) read: "to make arrangements for obtaining and fully considering the views of the public about matters concerning the policing of the district and enhancing community safety in the district".

3618. Include Youth has fundamental difficulties with what it describes as a vague definition of behaviour and asks that the term "antisocial behaviour" be removed from the Justice Bill until there is a definition that is clear and can support the partnerships in actually doing something about it.

3619. Does anyone wish to comment on any of that?

3620. Mr McDevitt: I apologise to you and the officials for being late, Chairperson. I want to ask about the definition of antisocial behaviour. It is one of those definitions that we keep batting about the place. I wonder whether the officials could tell us what the working definition of antisocial behaviour is. Is there a statutory basis for it elsewhere? How would they respond to the point that Include Youth and others have raised?

3621. Mr Hughes: We are not aware of a statutory definition of antisocial behaviour. In fact, a definition of community safety has been developed to serve the purposes here, but it is common, as it were, in that it is a combination of improvement and the perception of somewhere being safer to live and work.

3622. Mr Dan Mulholland (Department of Justice): At the Long Gallery session on 16 December 2010, my colleague Nichola Creagh read out our understanding of the position on that matter. We will come back to you on that; I do not have it to hand. It is a definition that is in common usage across a number of criminal justice agencies, and it is used by the community safety unit.

3623. Mr McDevitt: Normally, officials are very reluctant to come to us with any term that is in any way vague, unspecific or untested. Normally, draftsmen and draftswomen are very reluctant to allow such phrases to creep into a Bill. Is this an exception to the norm, or is it something to which you could respond properly in a way that meets the genuine concerns that have been expressed?

3624. Ms Nichola Creagh (Department of Justice): The definition of antisocial behaviour is, as my colleague said, is one that is in common usage in the community safety strategy, which has been in existence for quite a few years now. I would not refer to it as vague, but that does not preclude the fact that people could have a difference of opinion as to what it is. Certainly, from our point of view, we are content that the current definition is the one that we will use here. As I say, we can certainly provide the Committee with the wording of that.

3625. Mr Gareth Johnston (Department of Justice): It is important to remember the context in which it is used here. It is about the sorts of issues that PCSPs will talk about, think about and make plans about. Nobody goes to prison or gets arrested because of what is written here. It is about trying to suggest to the PCSPs what they need to take account of.

3626. Mr A Maginness: Clause 21(3) says:

"References in this section to enhancing community safety in any district are to making the district one in which it is, and is perceived to be, safer to live and work, in particular by the reduction of actual and perceived levels of crime and other anti-social behaviour."

I am concerned about the use of the term "perceived to be". In other words, it is not just a matter of satisfying the community that the community is, as a matter of fact, safer to live or work in or has been empirically established as such — it must also be perceived to be. How do you measure perception in that context? It adds a vague extra dimension; it adds something that is very difficult to measure to something that should be objective. For example, from looking at the number of burglaries, we can say that burglaries have decreased. However, if people in a district believe that burglaries are widespread, they have that perception. The phrase "perceived to be" jars, and I do not think that it should be in the clause. It is not a huge point, but it complicates the issue.

3627. The Chairperson: Include Youth's submission says that the words "fully considering" should be added to clause 21(1)(d) to make it read: "to make arrangements for obtaining and fully considering the views of the public about matters concerning the policing of the district and enhancing community safety in the district."

3628. Mr A Maginness: That might be a better formulation.

3629. The Chairperson: Do any other members want to comment on that?

3630. Ms Ní Chuilín: The issue will re-emerge in clause 34.

3631. Mr McCartney: Do officials have a view on the Include Youth amendment and the addition of "fully considering"?

3632. Mr Hughes: The addition of that phrase does not damage the effect of what is currently drafted. As an amendment, it would be perfectly acceptable in view of the intention of the legislation. Therefore, we would not oppose that amendment. It is implied that, if one obtains the views of the public in that context, something must be done with those views, because the remaining functions require the views of the public to inform what is to be done. That amendment does not cause us any concern.

3633. I will respond to the point about a district in which it is, and is perceived to be, safe to live. The point was well made that crime can be reducing but that the perception of crime continues to be very strong. That is precisely the circumstance that Northern Ireland has been in for some time: crime has been reducing but the perception that crime is going up is absolutely persistent. If people's perception that they are not safe affects the way they behave and think, that is significant in itself, even if their safety is increasing year on year.

That is one of the reasons why the functions of a partnership to address people's perception of crime in a district sit alongside addressing crime and antisocial behaviour themselves. I think that those two things need to be addressed together; otherwise, there will be only a partial solution to the problem.

3634. The Chairperson: What are the views of members on the inclusion of the words that Include Youth has asked to be considered: "fully considering"? Clause 21(1)(d) would then read: "to make arrangements for obtaining and fully considering the views of the public about matters concerning the policing of the district and enhancing community safety in the district".

3635. Are members content with that? My view is that it does not take anything away. It may not enhance the clause, but it does not do any damage. Are members agreed?

Members indicated assent.

3636. The Chairperson: Further down, the table of responses states:

"Include Youth has fundamental difficulties with what it describes as a vague definition of behaviour and asks that the term 'antisocial behaviour' be removed from the Justice Bill until there is a definition that is clear and can support the partnerships in actually doing something about it."

3637. I suspect that, if we talked to 100 people, we might get 100 different answers to the question of what antisocial behaviour is, or how it should be defined. Include Youth is saying that, since no one seems to be able to agree on what antisocial behaviour is, the term should be removed. I do not think that it should be removed, but that is a personal view. I have some sympathy with those who say that the definition is not very clear, but maybe it will be clear one day.

3638. Mr McDevitt: I would like a much clearer definition of antisocial behaviour. That would be in everyone's interest, but I am sensitive to the point that Mr Johnston makes, which is that the Bill is not scheduling or creating a new realm of offence that someone could be convicted of. Therefore, I am happy for it to remain in the Bill, but I want to see some concerted efforts by the Department and other criminal justice agencies to firm up the definition so that we use the opportunity to hone what is really meant by that term.

3639. The Chairperson: Are members agreed that the words "antisocial behaviour" should be included?

Members indicated assent.

3640. The Chairperson: Therefore, the clause will stand as drafted and amended.

3641. Strabane, Derry and Limavady District Policing Partnerships (DPPs) propose that, because funding can be provided only to constituted groups, "persons" should be replaced by "organisations" in clause 21(1)(h). I would like to hear from the Department on that issue.

3642. Mr Hughes: Although we have not had the formal word from the draftsmen, we do not believe that the fact that the Bill states "persons" and not "organisations" precludes organisations being covered.

3643. The Chairperson: Are members agreed that the wording stays as it is?

3644. Ms Ní Chuilín: Our position remains the same, Chairperson.

3645. The Chairperson: Are you opposed?

3646. Ms Ní Chuilín: No; we are abstaining.

3647. The Chairperson: I take it that you speak for the three members from your party.

3648. Lord Empey: What are we talking about, Chairman?

3649. The Chairperson: We are talking about the proposal that, because funding can be provided only to constituted groups, the word "persons" should be replaced with "organisations".

3650. Lord Empey: At the top of page 14 of the summary document, which deals with the legal status and powers, there is not a lot of substance, but concerns have been expressed. Do the

officials have any update on the point the Belfast CSP was trying to make, particularly about the legal status and powers? Some of the functions for community safety were in local government and others were in central government. Will bringing them together create a legal difficulty for a local authority versus a central power? Have the officials had a look at that?

3651. Mr Hughes: I am sorry; I am not absolutely clear what the question is.

3652. Lord Empey: The view has been expressed that there needs to be clarity on the legal status of the new powers that DPCSPs will have. In other words, what will fall to the new body we are creating and what powers will fall to the councils in the future? There seems to be a bit of uncertainty amongst the local authorities as to what their powers will be, if any, when the changes have been made.

3653. Mr Hughes: The reassuring point to be made is that the structure that is seen here mirrors the current structure of DPPs as regards the statutory organisation of a body. The question was raised previously about whether those are organisations in their own right and have a legal entity, so I will take this opportunity to make the position clear. We went back to lawyers to check that, although they are statutory bodies, they are not a body corporate. The partnerships will not, in themselves, be able to enter into contracts, but the council will be able to enter into contracts on their behalf, which is currently the relationship between the councils and the DPPs. That is my understanding of the current position.

3654. Lord Empey: Does that mean that they do not have what I think is termed a "legal personality"?

3655. Mr Hughes: I think that is right.

3656. Mr Givan: I will follow up on that. The Lisburn Community Safety Partnership is a limited company. I think it is the only community safety partnership that is a limited company. Will the legislation be able to address that?

3657. Mr Mulholland: The legislation will place a duty on councils to establish PCSPs, so it will be for Lisburn City Council to establish a PCSP. It is up to the council how it chooses to do that, whether through a limited company or not.

3658. Mr Givan: So, that limited company that has been formed will become defunct?

3659. Mr Mulholland: It could, if Lisburn City Council forms it directly.

3660. Mr Givan: It does not have to, though?

3661. Mr Mulholland: Not that I am aware.

3662. The Chairperson: If no member wishes to comment further on clause 21, we will move on. I will put the Question. This is the informal position, you understand. Are members content with clause 21, with the proposed amendments that we seem to have agreed?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

3663. The Chairperson: Five members have abstained.

Clause 22 (Functions of DPCSP)

3664. The Chairperson: If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 22 agreed to.

Clause 23 (Code of practice for PCSPs and DPCSPs)

3665. The Chairperson: If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 23 agreed to.

Clause 24 (Annual report by PCSP to council)

3666. The Chairperson: If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 24 agreed to.

Clause 25 (Annual report by Belfast PCSP to council)

3667. The Chairperson: If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 25 agreed to.

Clause 26 (Annual report by DPCSPs to principal PCSP)

3668. The Chairperson: If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 26 agreed to.

Clause 27 (Reports by PCSP to joint committee)

3669. The Chairperson: If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 27 agreed to.

Clause 28 (Reports by Belfast PCSP to joint committee)

3670. The Chairperson: If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 28 agreed to.

Clause 29 (Reports by DPCSP to principal PCSP)

3671. The Chairperson: If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 29 agreed to.

Clause 30 (Reports by policing committees to Policing Board)

3672. The Chairperson: If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 30 agreed to.

Clause 31 (Reports by policing committee of Belfast PCSP to Policing Board)

3673. The Chairperson: If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 31 agreed to.

Clause 32 (Reports by policing committee of DPCSP to policing committee of principal PCSP)

3674. The Chairperson: If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 32 agreed to.

Clause 33 (Other community policing arrangements)

3675. The Chairperson: If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 33 agreed to.

Clause 34 (Duty on public bodies to consider community safety implications in exercising duties)

3676. Mr McDevitt: This clause seems like it could be —

3677. The Chairperson: Just before Mr McDevitt comments, I refer members to correspondence from the Department, which details a proposed amendment to clause 34. Sorry about that; go ahead.

3678. Mr McDevitt: OK; thank you. It seems like clause 34 could present the Committee with an opportunity to include in the Bill the concept of community impact assessments, which could be brought into force later. Colleagues will remember the interesting debate that the Committee had about the report on the Donagh case before the summer, and the need for the Department to consider the introduction of community impact assessments in Northern Ireland. Although I accept that the details of how they would operate are yet to be agreed, I am not sure that there is a massive political debate about the findings of the Donagh inquiry and the need for community impact assessments.

3679. Looking at the clause, it seems that it would give us the opportunity to get the ball rolling through this piece of legislation, obviously subject to subsequent commencement. You would think that that would happen by affirmative resolution, given the importance of such measures. I was wondering whether the officials or my colleagues had any opinions about that.

3680. Mr Johnston: As members will be aware, the Minister welcomed the Criminal Justice Inspection report into the events in Donagh and noted that, in response to its recommendation on community impact statements, a lot of work is now under way. However, it is important to bear in mind that the Chief Inspector of Criminal Justice, in making that recommendation, said that consideration should be given by the Department and a proposal brought. Inherent in his report and recommendations was a recognition that it would take a bit of time to look at the area and consult — there would be views from victims and from organisations that represent offenders — and to up come with something that was workable for the future. Our plan is to bring forward a proposal in June.

3681. I am not sure whether Mr McDevitt is proposing a specific form of words, but it seems rather difficult to capture something at this stage before all that work has been done and when we do not really know what a community impact assessment will look like.

3682. Mr McDevitt: I thank Mr Johnston for his commentary. The clause is entitled, "Duty on public bodies to consider community safety implications in exercising duties". The first part of the clause seems to list a series of areas that the bodies would have to pay due regard to in considering such duty. Without wanting to second-guess draftsmen and draftswomen, you would think that you could add:

"(c) and community impact assessments, where appropriate."

Or:

"(c) and community impact statements, where appropriate."

That would allow us to take on the power, subject to future detailed debate following the formal publication of your views in June and the subsequent public consultation.

3683. If we do not take that on here, we will have to do it some other way, by way of amendment, for, example. Given that we at the end of January and the Department's proposal will be published in June, and we know that we are going to be doing it, but it is just a question of how, why would we not take on the power in principle

3684. Mr Johnston: We are really talking about two things that are directed at different groups of organisations. The clause 34 duty is very much directed at a range of organisations and it is about making sure that they participate in thinking about local community safety issues.

3685. The proposal that came out of the Donagh review for a community impact statement is more focused on decisions of courts so that information on the impact on a community would be available to a court when deciding on appropriate disposals.

3686. So, we are talking about two very different things. I can reiterate the Minister's commitment to giving active consideration to the whole area of community impact statements. That work has started and is ongoing. It will need to be a very inclusive process that involves consultation, but it is one of the Minister's priorities and there is a commitment, as I said, to get an early result from it. I can certainly give that commitment to the Committee, but I suggest that, in clause 34, we are dealing with something that is rather different.

3687. Mr McDevitt: I have one last question. I can see the argument that Mr Johnston is making. However, if it were thought about rationally, you would think that the community safety partnerships would be the most likely vehicle through which community impact assessments and statements would be formulated. They will be the branch of the criminal justice system that takes it down to community level. At one level, it could be argued quite sensibly that, if a court were looking for a community impact statement or assessment, it would, in the first instance, approach the community safety partnership in that area, say that this was a major case and that it would like that partnership to reflect on that. In my mind, there is an inherent link between CSPs and community impact statements. I take the point that maybe clause 34 is not the place, but, somewhere along the line in this bit of the Bill that deals with CSPs, we should anchor that concept.

3688. Mr Johnston: I could suggest a couple of ways to anchor that concept. One is that I will communicate to colleagues who are taking forward the work what has been said about the potential link with CSPs. I could also commit to asking them whether the views of CSPs could be taken on board in some way as the work on community impact statements goes forward so that we would ensure that, if there is a link to be made, it can be made.

3689. The Chairperson: OK?

3690. Mr McDevitt: OK, for now.

3691. Ms Ní Chuilín: We have not had a chance to look at the amendment in proper detail. We should bear in mind the evidence that we received from the Attorney General on clause 34. Again, I take the position that I will come back to it.

3692. Mr Givan: The amendment would enable the Department, if it so wished, to issue the regulations or guidance that could, in effect, replace what would be removed from the Bill. If we accept the amendment, even though the Department would have to consult with other Departments, ultimately it could then issue guidance about "reasonably" and "the likely effect". Is that correct?

3693. Mr Hughes: The Department's responsibility to issue guidance that explains how the duty is to be effected is in the original version and is then reflected in the amendment. It is a requirement to ensure consultation with all Departments. It is fair to say that the amendment would place that responsibility on the Department to consult with all Departments. However, in practice, the Department of Justice would consult all Departments on that guidance anyway because we anticipate that it would affect public bodies across all Departments. It is an important assurance to Departments that the guidance will provide them with a sufficient understanding about how to effect that duty in the exercise of their functions, and that they would not then subject to challenge for doing it in a way that someone else thinks is inadequate. There is considerable weight in the guidance for Departments to have the assurance that they are doing what is sufficient to demonstrate that they have given due regard to the duty as set out. It strengthens the importance of the guidance for the effective implementation of the duty.

3694. Ms Creagh: If you are asking whether we would be seeking guidance to reintroduce "reasonably", the answer is no. The guidance is as it is written. We would not be seeking to try some strange or underhand means to put that back in. It would simply be about explaining the actual clause as it would be redrafted. If those bits were removed, it would not hark back to those in any way.

3695. Mr Givan: The Attorney General said that clause 34 could be very litigious for organisations. My concern was that removing those aspects then giving the Department the

power could be a way of doing the same thing through the back door. I welcome the clarification.

3696. Mr A Maginness: Sorry, Chairperson, I had to go out and so I did not hear all the discussion. Clause 34 creates a new statutory duty. I am unhappy about that, because I think it adds to the burden placed on public bodies. I think that it will add to their administration and will make them culpable for any default or breach of this public duty. They could be exposed to claims for compensation and so forth. I do not think that public bodies are ready for this new and very sweeping statutory duty, and I think that there should be a serious rethink about it.

3697. Lord Empey: I think Alban Maginness raised this issue at a previous meeting. Think, for example, of circumstances around the design of a housing estate that has too many nooks and crannies and insufficient lighting; in other words, those mistakes that have been made in the past. It is perfectly right that we try to design things that reduce the potential for antisocial behaviour.

3698. I am not a lawyer, but the way this is written gives me the impression that, even if you were not responsible for the original design of something, let us say a housing estate, you might be responsible, or deemed to be responsible, for allowing it to remain in its present position. That takes us back to the use of the word "perception". I think that the question was asked of the officials before, and they answered us, but I wonder whether the full implications of this are filtering through to public bodies. It opens a whole area of potential litigation for all sorts of things that we probably have not even thought of. We need to be very careful to ensure sure that people understand fully what this could mean. It is not as if it would start from the date on which this Bill is enacted and that everything done after that is subject to it. Someone could perfectly well argue that a public body has known for a certain time that something, a structure or housing estate, for example, has bad design features where youths gather and so on. They could argue that it has been pointed out to the statutory body that the site has been a crime hotspot, and that the body has done nothing about it. Perhaps a case could be constructed on those lines, so I just think it is a very sweeping power.

3699. Of course we want to point out to people that they should take things into account when they are designing housing, for instance, or other issues that we have not perhaps even thought of. However, bodies are responsible for the historical mistakes, or for things that were designed in an era when the behaviour patterns of the population were different, and this is a pretty sweeping power. I just wonder whether public bodies really fully understand what this would sign them up to. I remain to be convinced.

3700. Mr Hughes: We held discussions with stakeholders about the development of the policy that led to the Bill, and there was a strong appetite for a statutory duty to underpin the co-operation of public authorities to address community safety at a district level. That sentiment was evident during the Committee's evidence session in December, and, after the clause was discussed by the Committee and the Executive, it was reiterated that the structures of the PSCPs could be weakened if not undermined if there were no statutory duty on public authorities to contribute to the shared enterprise of addressing community safety. There are potential vulnerabilities in establishing a statutory duty in that area, but, on balance, having that statutory duty is better than not having it.

3701. We have taken on board the concerns, and we proposed an amendment to the clause. The amendment will limit the scope of the duty in a number of ways, and it will ensure that we do not paint with too broad a brush, which would increase the risk. Rather, the amendment will draw closer parameters around that duty to mitigate the risk. There is strong argument for having a statutory duty, but the Minister has made it clear that he does not intend to take it forward without the agreement of Executive colleagues who have expressed concerns about it.

3702. Lord Empey: I have no difficulty with the principle of applying a duty to take things into account; that is fair. The first thing that a Department will do is to conduct an audit to establish what the liabilities are. Over time, behaviours will change and issues will arise in areas that were not thought about originally, but we should not expose public bodies to the sins of the past. If, after conducting audits on areas or parts of their activity that do not help with community safety, public bodies become aware that they are liable for areas over which they had no original control, we may open up a new area that will be extremely difficult to resolve.

3703. Has provision been made for, or thought given to, how much the duty will cost to implement? It is not going to cost nothing? If the duty is placed on public bodies, the first thing that they will do is appoint an official who is responsible for community safety planning. They will then appoint others to be responsible for this, that and the other in the audit process, and will engage consultants to draft strategies. We could add that to the mix of what Departments already do, but it will inevitably cost public bodies money, or it will divert them from doing the stuff that they currently do: it must be one or the other. It will not be cost neutral, and I am sure that you would accept that.

3704. Mr Hughes: One of the ways in which the amendment is intended to limit the scope of the duty is to ensure that it applies to only those bodies that are set up and prescribed by the Department in regulations. Therefore, there is an intention that the duty will not apply universally in the way that the original duty was cast, and, in the first instance, it will apply only where it is most likely to be relevant.

3705. It is also intended that the guidance should provide Departments and other organisations with an indication of how the duty can be applied in the most proportionate way. That is because we do not intend to create a bureaucratic structure or an enforcement regime around it; rather to underpin the fact that there will be areas of business and the organisation of Departments where it is quite right that implications around crime and community safety are taken into consideration. There is a statutory duty that underpins the exercise of functions that will focus attention on that. However, that is the first step, which is not intended to create an elaborate bureaucratic regime.

3706. Lord Empey: I am quite sure that is the intention, but I will tell Mr Hughes exactly what will happen: when the power is enacted, the function will be allocated to a particular division in a Department. The assistant secretary or the grade 5 responsible for that particular division will form a group within that division who will devise a strategy that will lead to a policy. That will go to the management board of the Department and will then spread out to every other division. Every other division in the Department will then have somebody in that Department who is responsible for that aspect of their work. They will then establish a reporting mechanism, and all that will be copied to the financial side, to the finance director, and so on. They will subsequently bid in the departmental estimates for money to do that.

3707. Once you apply a statutory duty to a public body, the first thing that that body does is to set up a working group to establish what that duty will mean for that particular Department. It will do a scoping study, it will do the whole ball of wax, and there will be an army of people working on it. That is how the system works. When I heard Alban Maginness talking about it back in December, I got the feeling that, perhaps, people do not understand how public bodies work, think and organise themselves.

3708. For every piece of legislation that goes to a Department, the first thing that they say, rightly, is that either Parliament or the Assembly has decided it, so they now have to get on and do it. People — or in other words, man hours — will automatically start to be applied to the new duty, because if Parliament or the Assembly wants to do something, if that is the will, then it is quite rightly up to these bodies to implement it. They can implement that only by putting people

on it. Once they do that, it will have to be followed by resources, so there will be a scoping study, a group will be established, which will lead to a strategy, a business plan, bids for resources, and so on. That will become an extra line to the Department of Finance and Personnel in every Department's bid, and will therefore be reflected, so the Department will have another line of expenditure that it did not have before. That is how it is going to be, Chairperson. You have done the job yourself; you know what I am talking about.

3709. Mr Givan: Has there been any evidence to suggest that public bodies have not been considering crime and community safety? Is there any evidence that would require a duty to be placed on them, or that they have been found to have failed?

3710. Mr Hughes: I am not suggesting that there has been a forensic examination of all public bodies that could be contributing in that way to find out whether some are doing more than others. Anecdotally, if one goes to partnerships currently at work in districts, in some places, members of partnerships may well say that they wish that a particular organisation or group was more wholehearted in contributing, was contributing in a way that it is not thinking about at the moment, or was contributing in a way that has been suggested to them. That is the kind of thing that is talked about, but there is no quantitative evidence as to whether some organisations are just simply not delivering where they could be.

3711. Mr Givan: I can understand stakeholders saying that there should be a duty. Often, those stakeholders have a very narrow perspective, and wish a public body only to carry out a duty in regard to that perspective. Public bodies have to take broader considerations, and I think that the duty will remove that type of thinking in those public bodies. That is why I have concerns about it.

3712. Mr McNarry: Will you refresh my memory as to what is meant by: "and other anti-social behaviour in that community"?

3713. Mr Hughes: Going back to the question of the definition of antisocial behaviour?

3714. Mr McNarry: No. Clause 34(1)(a) states:

"the likely effect of the exercise of those functions on crime and other anti-social behaviour in that community".

Will you refresh my memory as to what you mean by "and other anti-social behaviour"?

3715. Mr Hughes: We have not set out a definition of antisocial behaviour in the Bill, and I know that that is contentious, but I think that there is agreement —

3716. Mr McNarry: What you are saying to me is that there is more than one definition of antisocial behaviour.

3717. Mr Hughes: There are certainly types of behaviour that could be deemed antisocial without being criminal.

3718. Ms Creagh: Where it states: "functions on crime and other anti-social behaviour" —

it is implying that crime, by its nature, is antisocial, but there that could be other antisocial behaviour that is not a crime but that comes within the ambit of "antisocial".

3719. Mr McNarry: I understand and accept what you are saying, but I am just trying to find out whether you can tell me what you actually mean — you have written it here — by "and other anti-social behaviour", because, if you cannot, how is anybody going to interpret it?

3720. Ms Creagh: What it is trying to say is similar in many ways to the definition of the functions. Obviously, a crime such as assault could be committed in a darkened area — harking back to the design features of an area — but there could be other antisocial behaviour that is not, strictly speaking, crime. It could be that, because there is that darkened area, people are hanging around.

3721. Mr McNarry: Will you illustrate to me what other antisocial behaviour you are talking about? What length is the list? I do not want to dwell too much on it, but the problem that I see with the phrase "and other anti-social behaviour" is that your interpretation of "other anti-social behaviour" might not be the same as that of someone else. That is why I think you need to tighten it. Are there illustrations that you can give me? The danger is that if you illustrate something, you might leave something out.

3722. Ms Creagh: That is why the idea is that, if a community is concerned that there is a darkened area in a particular housing area where people hang around, and people walking by are scared, the provision of a street lamp or something like that could perhaps solve the problem. There is no crime — or maybe there is, but the crime is not the whole problem there. The fact that it is dark and that people are scared to walk by because there are people hanging about could be a problem in an area. The idea is that a bit of lighting there might solve that problem.

3723. Mr Johnston: There are other examples. There could be a group of people who are using a piece of waste ground to drink in the evenings. There is a certain amount of noise generated, people are getting drunk or tipsy and perhaps being insulting to passers-by, bottles end up getting broken, etc. That does not really fall within the category of criminal offences, but it is all stuff that contributes to a feeling of a lack of safety in a community and affects people's quality of life in that community. That is the category that we are trying to capture.

3724. Mr McNarry: I can understand why you want to put it in, but how will it be implemented? Unless you throw out a list, you could invent new instances of antisocial behaviour on a daily basis. I just think that communities might want to be enlightened.

3725. Mr Johnston: I am not sure that communities are not fairly clear about what they regard as antisocial behaviour. When we have discussions with communities, do surveys and hear feedback from community safety partnerships, issues about drink, noise and litter are raised. I appreciate that there is no scientific definition, but for the purposes of this and of asking local bodies to consider the problems of antisocial behaviour in a local context, they will not be short on suggestions from localities about what sorts of problems they need to tackle.

3726. Mr McNarry: OK. Maybe I am just confused about the word "other".

3727. Ms Ní Chuilín: Have you received a copy of the Hansard report of the meeting when the Attorney General attended the Committee to discuss clause 34? In his evidence, he said that he had significant reservations about that clause. Did the Department consult the Attorney General about the amendment to clause 34? If so, what was his view on that?

3728. Mr Hughes: We consulted the Attorney General on the clause as drafted and on the ideas that he had raised. We have not consulted him on the specific amendment, but we have taken into account his views and points.

3729. Mr Johnston: I understand that the amendment is about to be sent to his office for more formal consultation.

3730. The Chairperson: I am not sure that members are ready to take a definitive position on this clause, particularly in light of the fact that they received the amendment only today. Therefore, if the Committee is content, we will park the clause and, time permitting, return to it at another date.

3731. Ms Ní Chuilín: I understand that the tabled items were e-mailed to us this morning. I want to make it clear that I did not pick it up this morning. That was not the Committee's responsibility; it was mine. I want to put that on the record in case it has been implied that the Committee did not forward it to me until 2.00 pm. That is not the case.

3732. The Chairperson: Are members content to return to this matter?

Members indicated assent.

Clause 34 referred for further consideration.

Clause 35 (Functions of joint committee and Policing Board)

3733. The Chairperson: As there are no comments, I will put the Question on clause 35.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 35 agreed to.

Schedule 1 (Policing and community safety partnerships)

3734. The Chairperson: I refer members to the correspondence from the Department that proposes an amendment to provide for the payment of expenses to all members of the CSPs. Does anyone wish to comment?

3735. Lord Empey: I have a point about political members. In another Committee, we recently came up against a particular circumstance involving councils. I just want clarity on the matter. If a council appoints x number of members to partnerships, does the Minister have any role in signing off those appointments formally to the body?

3736. Mr Hughes: No.

3737. Lord Empey: An issue has arisen recently about appointments to library boards and other agencies. The Minister invoked the fact that people had to go through a process equivalent to that which is used by the Office of the Commissioner for Public Appointments. Either councils have the right to choose the members of the partnerships or they do not. Is there any way in which that choice can be inhibited by the Minister?

3738. Mr Hughes: The appointments of political members are made by the council in light of the requirement that it does so, as far as is practicable, to reflect the balance on the council. There is no role for the Minister or the Department in the appointment of the political members of the partnerships.

3739. The Chairperson: Does anyone wish to comment further, having heard that?

3740. Mr Givan: Are we open to comment on all the paragraphs?

3741. The Chairperson: No. We are dealing with paragraph 1. I will, therefore, put the Question on paragraph 1 of schedule 1. Are members content?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

3742. The Chairperson: Paragraph 2 deals with composition. Does anyone wish to comment on that?

3743. Mr Givan: Will the representatives from the specified organisations have the same voting rights as the independent and political members?

3744. Mr Hughes: Their members are in exactly the same position.

3745. The Chairperson: I will put the Question formally on paragraph 2. Are members content?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

3746. The Chairperson: Paragraph 3 deals with political members. Does anyone wish to comment on that?

3747. Ms Ní Chuilín: Can I have some clarification? Does paragraph 3 deal with the appointment of the chairperson or anything like that?

3748. Mr Johnston: No.

3749. Ms Ní Chuilín: Thank you.

3750. The Chairperson: I will put the Question formally on paragraph 3. Are members content?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

3751. The Chairperson: We move to schedule 1, paragraph 4. I refer members to the correspondence from the Department proposing an amendment providing for the payment of expenses to all members of PCSPs and DPCSPs. Does anyone wish to comment?

3752. Mr O'Dowd: The way in which this is worded, the Department of Justice is saying that the councils can pay them, but are you going to be paying them, rather than any assistance?

3753. Mr Hughes: It needs to be read with the paragraph on finance, whereby the expenses incurred by the partnerships are funded. It is not the council's function.

3754. Mr Givan: I would expect that the organisations would pay their members' expenses. The amendment proposes that expenses be paid to "members of" the partnerships; therefore, I take

it that the council can determine whether members are already receiving expenses from their organisations.

3755. Mr Hughes: That is right. We expect that it would effectively need to be self-regulated and that an individual who claimed expenses from two organisations would be committing a fraud. It is perfectly legitimate for a council not to pay expenses when they know that they are being paid elsewhere.

3756. The Chairperson: Are members in favour of schedule 1, paragraph 4, as amended by the Department?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

3757. The Chairperson: We move to schedule 1, paragraph 5. Does any member wish to comment on that? Are members content with paragraph 5?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

3758. The Chairperson: Are members content with paragraph 6?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

3759. The Chairperson: Are members content with paragraph 7? I refer members to correspondence from the Department, which proposes an amendment to designate certain organisations to partnerships. A list of the organisations has also been provided to members. If any member wishes to comment, we are happy to listen. Otherwise, I will put the Question on the proposed amendment.

3760. Mr McCartney: The list refers to "Most desirable" and "Desirable" organisations. I wonder about the logic of the Probation Board being a desirable, rather than a most desirable, organisation.

3761. Mr Hughes: The list was based on the assessment of the Community Safety Unit and an element of work that it has done in the past. As I understand it, community safety partnerships would recognise that pattern in their work — the "most desirable" and "desirable". I am not in a position to speak on behalf of the Community Safety Unit, which has greater expertise on the matter. The list illustrates that it is very difficult to pinpoint a small number of organisations that really must be on every partnership. However, if we were to go down that route, that would be the first advice that we would look at.

3762. The Chairperson: The Probation Board put up a strong case as to why it believes that it should be on the "most desirable" list. You do not agree, Mr Hughes?

3763. Mr Hughes: It is fair to say that I do not believe that one can separate the desirability of, for example, the Probation Board being more desirable than, say, the Youth Service or alcohol and drugs co-ordination teams. It would be desirable to have the involvement of many organisations. However, if we are looking at the possibility of specifying a number of organisations that must appear on every partnership and maintain the balance between elected, independent and representative members, it would be possible to have only a small number of organisations that appear as representative members on every partnership. Otherwise, there is no flexibility and the balance of membership on partnerships is skewed.

3764. Therefore, the challenge was, in a sense, to prioritise organisations so that there was a very small number that one could argue would be best to appear on all partnerships. That is what we have attempted to do. The fact that we have provided quite a long list demonstrates that there is an awful lot of organisations whose involvement would be valuable.

3765. The Chairperson: The Youth Justice Agency is included in the "Most desirable" list. I have no great argument against that. However, the Probation Board works with these people from the day of conviction, and if its representatives were here today, I am certain that they would tell you that their role is to try to ensure, to the best of their ability, that those people will not reoffend. In other words, they is trying to turn them out, after they have been through their hands and supervision, to be better or good citizens. Yet, the Probation Board is not deemed by the Department to be in the "Most desirable" category, but the Youth Justice Agency is, which is very difficult to understand. I am not batting against the Youth Justice Agency, I want to make that very clear, but I think that the Probation Board should be included in that category.

3766. Ms Ní Chuilín: I agree. My concern is around the fact that the Youth Justice Agency is jumping off the page up there on the "Most desirable" list, which makes it seem as though a lot of antisocial behaviour is caused by young people. I can see how people are going to translate that. The Probation Board has the same access and delivers across the whole of the North, and yet it is down in the "desirable" category; I do not understand that. The Housing Executive, councils, the PSNI and the Probation Board have representation in most towns and cities, yet they are not in the "Most desirable" category. I am sure you will find that people working as advocates for children and young people will, when they see that list, see the Youth Justice Agency and think, "Here we go again with the criminalisation of children and young people."

3767. Mr Hughes: Although I could not put it as eloquently as colleagues who work in the community safety field, it is worth emphasising that the great thrust of dealing with community safety is to address issues before they reach the stage of criminality. Therefore, I would not necessarily say that, for example, the Probation Board is a more important member of a partnership than the Youth Justice Agency, which has a role in ensuring that the route to criminality is not reached by the vast majority.

3768. The list is purely illustrative, but I think it demonstrates the large number of organisations that can usefully contribute to enhancing community safety. If we are to go down a route of specifying certain organisations that must appear on every partnership, and there is a desire that those representative members of the partnership are not too many in number, it is very difficult to specify which of those small number of organisations must appear on every partnership. That is not to say that they cannot be involved, because I think partnerships should be able to bring in as many members as they like in accordance with the size that they want and the balance of members. However, the challenge to us was to set out the organisations that we think must appear on every partnership. This is a proposal; it is not the final word, but you can see from the discussion that no one is going to agree on a relatively small number.

3769. Ms Ní Chuilín: I appreciate that, but the fact is that, for example, the Housing Executive in my area will tell you that, if there are people partying in houses, it is not children and young people but adults. The fact of the matter is that the nature and complexion of each partnership, whatever the needs or the response from the bodies, has to come from the community. I am not disagreeing with you on that point, but what is consistent across the board is that, when people are released from prisons or whatever sentence they received, it is often the gaps in the follow-up that cause the problem, for example, if bail conditions are broken, if cautions are not honoured or whatever the case may be.

3770. The Youth Justice Agency, for example, deals with one aspect of our population, and the Probation Board deals with adults, but they are all related to the justice family. Going by your

argument, I would include only councils, the Housing Executive and the PSNI, because they are practically in every town, village and city, but then some organisations would be taken off the list and excluded.

3771. Mr Hughes: It is important to say that we will not exclude anybody from membership of the partnerships. We have been asked to come up with a short list to illustrate the organisations that must be on every partnership, but that will not exclude any organisation that an individual partnership wants to bring on board. If partnerships were told by the centre that two or three organisations must be represented, I would be surprised if they did not want another half a dozen others because of the contribution they make in addressing community safety. That pattern may be similar across all the districts, but partnerships need to have the flexibility and discretion to make those choices.

3772. Ms Ní Chuilín: I agree with you; it should not be prescriptive.

3773. Mr Hughes: It may be that an even shorter list is a more valuable place to start. Our suggestion was that four organisations would be "Most desirable," but that may not be the case.

3774. Mr Mulholland: Our starting position was not to designate any bodies, as that would allow for maximum flexibility. During discussions with the Committee in December, the suggestion was made that there are some organisations that should be on each partnership. We want to keep the list as short as possible to allow for maximum flexibility, and, as David said, it is up to the partnerships to say which groups best reflect the needs of their respective communities.

3775. Ms Ní Chuilín: In your list, you included one branch of the justice family under "Most desirable" and another branch of the justice family under "Desirable." I would not like to have dinner in your house.

3776. Mr Mulholland: The list simply reflects current practice in community safety partnerships.

3777. Ms Ní Chuilín: Fair enough.

3778. Mr Mulholland: The groups under "Most desirable" are the ones that regularly attend meetings of the partnerships.

3779. Mr Hughes: That is part of the reason why the proposed amendment, which reflects the comments made by Committee members and stakeholders, does not attempt to set out a list in the Bill. Rather, the proposed amendment would allow for a designation to be done separately after the legislation is enacted. That designation could be amended, but that would be done after full consultation and with the agreement of organisations that they should appear on those lists.

3780. Mr Givan: If that agreement can be reached, will some organisations be specified and the partnerships left with the flexibility to pick their own members? Not all will need to be specified; flexibility will be built in.

3781. Mr Hughes: That is right; the intention would be to specify a number. However, there will be no maximum number on the partnerships and they could designate any number of organisations themselves.

3782. Mr Mulholland: If an organisation is specified, it would have to be on every partnership, but some districts do not require some of the organisations.

3783. The Chairperson: Mr Hughes, did you say that it will be difficult to make changes to the legislation, if, at some stage, you wanted to include —

3784. Mr Hughes: Yes; relatively speaking. If the Bill contained a list it would be more cumbersome to change. The proposed amendment will bring in the less cumbersome mechanism of designation.

3785. The Chairperson: Could those changes not be made by subordinate legislation?

3786. Mr Hughes: They could, but that would necessitate a greater degree of process to make any necessary changes.

3787. Ms Ní Chuilín: We do it all the time in Committees; it is no big shakes.

3788. The Chairperson: You said that your list is only a wish list of "Most desirable," "Desirable" and "Possible". Therefore, it would seem that you do not have any strong opposition to the Committee's suggestion that the Probation Board, for example, should be included in the "Most desirable" category. Is that correct?

3789. Mr Hughes: In any exercise that creates a list of specific organisations, the role of the Probation Board and the fact that its potential role in partnerships has been strongly advocated by this Committee and itself would need to be taken into account.

3790. The Chairperson: Yes; that is the hub of it. Therefore, if there was no recommendation from this Committee, it is unlikely that the Probation Board would make it into the "Most desirable" category.

3791. Mr Hughes: That would not stop every partnership in every district bringing the Probation Board onto the partnership by designating it themselves.

3792. The Chairperson: It would not stop them but it would not encourage them.

3793. Mr McDevitt: I agree with you, Chairperson. If I am right, what you are saying is that there seems to be nearly a clash of culture here. The Probation Board clearly believes that it needs to play a fuller role in community safety. However, the Community Safety Unit seems to think that, because the Probation Board's job is to pick up the pieces after the crime, so to speak, it does not have such a central role.

3794. Mr Hughes: I think it is unfair to say that when it is stated that the board is in the "Desirable" category.

3795. Mr McDevitt: With the greatest respect, when you were asked, one of the rationales that your presented for the Probation Board not being in the "Most desirable" category was that it tends to get involved only after the crime, so to speak. The Probation Board has a strong opinion about needing to be more involved in the conversation about community safety in a more holistic sense. The Committee welcomes that, because it shows an appetite for reform and for changing the way in which the board is perceived and its role. Are we dealing with a slightly different emphasis of opinion between the Department and the Probation Board? Are you trying to deal with that by keeping it out of the Bill and out of the realm of further scrutiny?

3796. The way you have answered the questions suggests to me that there is a cultural gap here or two schools of thought. It is not terribly reassuring for me to hear that. It seems to me that the Probation Board is not arguing for inclusion for the craic, it is for a good, thought-

through reason, which it has taken the time to articulate to me and, I presume, to my colleagues. What is the reason for the Department's resistance? What is the problem with the Probation Board playing a much more central role in community safety?

3797. Mr Hughes: I do not think that there is any problem with the Probation Board playing a greater role in community safety. The challenge to the Department was to set out a relatively small number of organisations which ought to, in every case, be represented on a PCSP. We acknowledge that it is very hard to set out a relatively small number, and that is why we came up with the categories of "Most desirable" and "Desirable". The Probation Board is on the list with other organisations that are desirable members of PCSPs. The others do not do what the Probation Board does. We do not have a particular difficulty with the Probation Board being involved in PCSPs, any more than we have a particular difficulty with the Youth Justice Agency or alcohol and drug co-ordination teams being involved. However, fettering the discretion of partnerships to choose representative organisations was not our starting position. We started from a position of allowing partnerships to designate organisations for membership. The Department was asked how it would be done if some organisations had to appear on every partnership, so we asked the question internally, and, reflecting current practice, this is the pattern that we see.

3798. Mr McDevitt: That may be the issue. I presume that the list with the categories of "Most desirable" and "Desirable" is the one that will be used when a partnership asks a local government official to phone the Community Safety Unit to ask for guidance about appointing a representative group. Is that —

3799. Mr Hughes: That does not happen.

3800. Mr McDevitt: That does not happen. So, the community safety partnerships receive no guidance, at all. Could they appoint a bunch of football clubs?

3801. Mr Mulholland: There are sporting groups that have a contribution to make to a project that delivers against —

3802. Mr McDevitt: When the new bodies are set up, surely someone somewhere will be able to indicate to them the type of bodies that will make a useful contribution.

3803. Mr Mulholland: When the Community Safety Unit and the community safety partnerships were set up, they were able to draw on the community safety strategy, which was introduced in 2002 and which detailed the sorts of organisations that might be useful for a partnership to consider bringing on board. There is a list of such organisations, and the health and social services boards and the education agencies are on it, as well as the Probation Board and the Fire and Rescue Service. Each partnership looks at its own needs in the locality and invites people to come on board and contribute to the partnership.

3804. Mr McDevitt: Have you guys ever been asked for an opinion? Have you ever offered any guidance?

3805. Mr Mulholland: About?

3806. Mr McDevitt: About which bodies may be included.

3807. Mr Mulholland: There is a certain level of autonomy among the partnerships.

3808. Mr McDevitt: I understand that they are autonomous, but it seems reasonable for a partnership to phone up and ask for some guidance and advice. It seems a reasonable thing for members of the partnership to ask a partnership officer to determine whether there is anyone who can help them out.

3809. Mr Hughes: It is fair to say that, over the course of the years that the Community Safety Unit has been running, no one here can put their hand on their heart and say that a phone call had never come from a community safety partnership asking whether it might be an idea to include a particular organisation. I am not going to say anything that I cannot stand over. However, the community safety partnerships, the elected members who may be involved and the organisations that are already involved in community safety, to their credit, are well aware of who can contribute to delivering the objectives of the partnership without necessarily needing to seek that degree of guidance from the centre.

3810. We are also working in two quite distinct areas. Community safety partnerships can be of variable size and can bring a lot of people in. A lot of organisations can be represented on some partnerships. PCSPs will be of limited size, because they are a combination of different types of members. It is a slightly artificial position, in which the representatives of the designated organisations would not come from all the organisations that can contribute. That is why the model includes the capacity to establish subgroups and groups that deal with specific issues in specific areas.

3811. There is also strong representation, in that the elected members should be the largest group on the partnership. If that principle is to be carried through, there has got to be a degree of self-limitation of the number of organisations that are brought onto the group. It may well be that, in some areas, the representative members who are full members of the partnership could usefully be a slightly different combination in one district to those in another district. That is why we have resisted the idea, to a degree, of specifying organisations to be represented there. That is not to say that all sorts of organisations cannot be involved and engaged or contribute to delivering outcomes. Giving partnerships the flexibility to determine who should be represented as full representative members is a valuable thing. However, we have heard the position that the Committee has taken, which is why we have proposed the amendment.

3812. Ms Creagh: It may be worth looking at what the amendment says. It is not saying that the Department will designate any of those organisations. It is saying that the joint committee, which comprises departmental officials and Policing Board representatives, will consult all PCSPs about the designations. It is not the case that we would, in any way, reflect issues concerning the Probation Board, for instance. It is about a choice and a consultation process that will go on to identify those organisations. The list illustrates only those that are currently represented. It could be those organisations or different ones. That will depend on the consultation between the people who are best placed to make a determination as to who should be on the partnership.

3813. The Chairperson: I hear what you say, but you have taken it to the next step. You have broken it down into different categories: "Most desirable" and "Desirable". If you had produced that list and declared it as a suggestion, your argument would have held a bit more. You have not done that; you have gone further than that. You not only suggested the list but said how the partnerships should form. You have said that you accept that, ultimately, others will make that decision. However, had you produced the list and simply said that the partnerships will put the organisations into different categories, we would maybe not be having this debate.

3814. Mr McNarry: I think that you are right about that. I want the Probation Board to be specified and included. Although I cannot speak for others, I have had discussions with its representatives and have satisfied myself that their intentions on that issue are professional and genuine. I sense and fear that we are digging deep when I hear the resistance from the

Department. Given that it is the Committee's consensus, do you think that there is a way that you might be able to reflect more appropriately its views? It is not a deal-breaker, but genuine views are being expressed, and I cannot see any reason why the Probation Board should not be included. I do not know why we are stuck on it, but because we are, it makes me wonder why. You have your opinions, and we have our opinions.

3815. Mr Hughes: If we had provided a list of 10 organisations whose membership of the PCSPs is desirable, it would have undermined the consistent position that, in partnerships, elected members should form the largest group. There could well be districts with only eight elected members. That is perfectly possible. Therefore, I am not sure that that is a credible way to approach the exercise. We were asked —

3816. Mr McNarry: What kind of a list will you produce?

3817. Mr Hughes: We do not know. We have not begun the process of consulting on a list because, until recently, it was not the intention —

3818. Mr McNarry: I do not know how many organisations you want on the list. A fair argument has been made that the Probation Board should be clearly recognised in through what we are trying to achieve.

3819. Lord Empey: I am sorry for missing part of the discussion. It could be phrased in a way so as not to be exclusive. I understand the difficulty with that. However, we could draft the clause to say that the list of organisations "shall include" and add a reference to the fact that other organisations could be included, "as might, from time to time, be appropriate." It could be drafted in an inclusive way that it is not designed to exclude organisations and be made clear by way of a schedule or an example. Organisations come and go, and it could be phrased in such a way to enable flexibility.

3820. The Chairperson: I will ask Sian to comment on whether there is an alternative way, either by statutory rule or otherwise.

3821. The Clerk of Bills: It is difficult for the Committee to agree something when the policy has not been developed. In those situations, the Department sometimes likes to bring forward regulations later through an affirmative procedure that the Committee could then scrutinise in the usual way. Although that would mean giving the list the status of a statutory instrument, the Committee would get to see it, debate it and have dialogue with the Department on it. Therefore, the Committee could ask it to amend the Bill in that way to bring forward regulations to allow the Committee more scrutiny.

3822. The Chairperson: Thanks; that was helpful.

3823. Mr O'Dowd: That may resolve the issue. We are almost now in negotiations with the Department on what we want it to do when, in reality, the power lies with us.

3824. The Chairperson: Do you think that we are near to telling the Department what to do?

3825. Mr O'Dowd: I think that we are near the time to tell it what to do.

3826. Mr McNarry: Do you think they are listening, John?

3827. Mr O'Dowd: It is beyond the point of listening. The power lies with us and, hopefully, the Department will agree with us. However, if the Bill gets into the Chamber and the Assembly agrees with it, life will move on.

3828. The Clerk of Bills: It is worth pointing out that the Committee can have a say over the Bill and any regulations that come forward to change it, and that is the guarantee that it will happen. If the Department has its own guidance, it is up to the Department to change it whenever it wants, so whatever is agreed now may change in the future depending on what the Minister wants to do. That is worth bearing in mind.

3829. The Chairperson: We are going to try to unstick ourselves — I think that is a word. We are sort of stuck, but we will see whether we can move out of it. If I have taken the pulse of the meeting correctly, if there is going to be a designation list in the order in which it is here, the Committee is of the mind that the Probation Board should be in the "Most desirable" category. Am I right on that?

Members indicated assent.

3830. The Chairperson: I formally put it to the meeting — we are going to get into a spot of bother here, but we will try not to.

3831. Mr McNarry: Informally or formally?

3832. The Chairperson: We might have to do it both ways. Can we deal with paragraph 7 of schedule 1? We have the proposed amendment from the Department. We are going to make the proposal that we want an amended regulation. Bearing in mind what we have been told, are members agreed to adopt that, with the powers of amended regulation? Is that clear? I will let the Committee Clerk comment, because she will make it even simpler.

3833. The Committee Clerk: The Department has proposed for the Committee's consideration an amendment to paragraph 7 of schedule 1, which is: On page 66, line 4, at end insert —

"(2A) The joint committee may, after consulting all PCSPs —

(a) designate organisations for the purposes of this paragraph;

(b) at any time revoke such a designation.

(2B) A designation under sub-paragraph (2A) has effect in relation to all PCSPs."

The Committee has taken advice from the Clerk of Bills that an alternative proposal to amend the legislation is to include a requirement for the Department to produce a regulation, which would then come before the Assembly, listing the proposed designated organisations. The Assembly would scrutinise that list and either agree the regulation or not.

3834. If you want to look at those two proposals, the advice is that you take the proposal regarding the regulation first, because if you agree that proposal, the Department's amendment will not apply. The proposal is that the Committee wishes to see the clause amended so that a regulation is required to set out the designated organisations. That will come through the Assembly for scrutiny.

3835. The Chairperson: It would be great if we could agree that without having to informally agree. Can we agree that?

Members indicated assent.

3836. The Chairperson: You stepped up to the plate at the end; well done.

3837. Mr McNarry: We are unstuck now; we are all right.

3838. The Committee Clerk: If the Committee is content with that position, we will bring the draft amendment for you to have a look at.

3839. The Chairperson: The good news is that you get another go at it. Does any member have any comment on paragraph 8 of schedule 1, which deals with removal of members? If not, I will formally put it to the meeting. Does the Committee agree to paragraph 8 of schedule 1?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

3840. The Chairperson: Paragraph 9 deals with disqualification. Are there any comments on that? If not, I will put it formally to the meeting. Is the Committee in agreement?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

3841. The Chairperson: Paragraph 10 deals with the chair and vice-chair. Are there any comments on that?

3842. Mr Givan: I raised an issue when we were considering it informally. Initially, the chair and vice-chair of the policing committee will also then be the chair and vice-chair of the entire PCSP. I think that makes sense; there is good logic to that. However, I disagree that that should then change so that there may be different chairs of both bodies, and the chair of the entire PCSP may not be an elected member, which I do not think is appropriate. I, therefore, want those provisions removed from the Bill and schedule 1. It makes sense to have the same chair and vice-chair on the policing committee and the policing and community safety partnership. However, if there is not agreement on that, I would still like the chair of the wider policing and community safety partnership to be an elected member or to be appointed under the same system that is used to elect the chair of the policing committee. I am keen to hear other members' views on that.

3843. The Chairperson: Do any other members wish to air their views or comments on that?

3844. Mr McCarthy: We agree in principle.

3845. Mr Givan: Do you agree that the same individual should chair both bodies?

3846. Mr McCarthy: It is more that the chair should be an elected member.

3847. The Chairperson: Paul, I will ask you to make a formal proposal in a moment or two.

3848. Mr McDevitt: Just before Mr Givan puts the proposal, will he go through it again step by step? Are you proposing that the chair must be an elected member and that that elected member must chair both bodies?

3849. Mr Givan: I am not hard and fast on that. It makes sense for the same individuals to be the chair and vice-chair of both bodies in the first year. I am relaxed about the wider partnership having a different chair, so long as that individual is an elected member. However, the chair of the wider partnership should be appointed in the same manner as the chair of the policing

committee; that is, by the council using the same procedures that currently exist. It should not be left to independent members of the wider partnership to designate and select a councillor to be chair.

3850. The Chairperson: Do the departmental officials want to comment on that? If not, we ask them to take that away and come up with wording to incorporate Mr Givan's proposal.

3851. Mr Givan: I would appreciate that.

3852. The Chairperson: It is you I am thinking of.

3853. Mr Hughes: We can explain why the current arrangement is designed that way. We had strong representations that it is not necessarily the case that an elected or independent member would make a better chair or vice-chair; therefore, there could be flexibility in due course. An issue is the importance of having the same two individuals as chair and vice-chair of both bodies, or vice versa. The way that it is currently presented allows partnerships a degree of flexibility. However, I am happy to take away the points that are being made here.

3854. The Chairperson: It seems that Mr Givan's proposal has universal support around the table. I am sure that he is mightily relieved that you are going to take that away. Will you come back to the Committee with the amended wording?

3855. Mr Hughes: We will need to take that away and ensure that we have properly grasped the precise detail of what Mr Givan has suggested.

3856. The Chairperson: Other members will want to see that what comes out is exactly as they have agreed.

3857. Paragraph 11 deals with the procedure of PCSP. Do members have any comments? Are members content with this paragraph?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

3858. The Chairperson: Paragraph 12 deals with the policing committee's constitution. Do members have any comments? Are members content with this paragraph?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

3859. The Chairperson: Paragraph 13 deals with the policing committee's procedure. Do members have any comments? Are members content with this paragraph?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

3860. The Chairperson: Paragraph 14 refers to other committees. Do members have any comments? Are members content with this paragraph?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

3861. The Chairperson: Paragraph 15 refers to indemnities. Do members have any comments? Are members content with this paragraph?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

3862. The Chairperson: Paragraph 16 refers to insurance against accidents. Do members have any comments? Are members content with this paragraph?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

3863. The Chairperson: Paragraph 17 is around finance. I draw members' attention to the Department's proposed amendment. Does anyone wish to comment or ask for further explanation? Since the Department is represented here, do the officials wish to say anything?

3864. Mr Hughes: The principles behind the amendment have been flagged already and are outlined in the papers provided. I was previously asked whether the duty on the Department and Policing Board is to fund the partnership plan as presented, and I gave a very swift yes. I will make sure that I am understood: the Department and the board shall fund the partnership plan inasmuch as it can, in that it delivers the objectives being set. If a partnership plan steps completely outside its objectives and the strategic objectives of the board and the Department as a whole, there would have to be consideration of that before it is funded.

3865. The Department and board can only fund what they have a remit to fund. That sounds like a qualification, but what I mean is that, if the partnership plan includes buying a yacht, it will not be funded.

3866. Lord Empey: Chairman, I will raise something that you and other colleagues will be aware of. What we are saying is that the Department and board will make a grant in connection with the expenses incurred by the council. Are we talking about a full, total grant, or a contribution? How will that be determined?

3867. Mr Hughes: Administrative arrangements are being worked through, but the intention is that the partnership will be informed of the sum that will be given by the Department and board, acting as a joint committee. That is not necessarily all the money that that partnership will have to use. Councils contribute to the work of DPPs on a fixed formula and to the work of CSPs on a minimum proportionate. We are ensuring that how much the council should contribute in addition to the grant made by the Department and the board is not prescribed in the legislation. Rather, the legislation sticks to the simple grant from the Department and the board. After that, how much additional funding is provided is at the discretion of the council and other partners.

3868. Lord Empey: What I am trying to get at is that there has been a pattern over the years of grants being given to local councils that start off at a particular rate, which then goes south. Given that local government's ability to spend money is much more circumscribed legislatively than central government's, I am trying to prevent a further burden being transferred from central to local government as a result of this formula. Is there any mechanism to address that? Can Mr Hughes provide us with any illustration to allay that concern?

3869. Mr Hughes: When the original draft came out there was a concern with the wording, which said that the Department and the Policing Board "may" fund the partnerships, so that was changed to "shall", meaning that there will be a duty to fund. I am not sure whether legislation is ever the place to bind an Executive to the degree to which it funds work, and I am not sure whether the text of that paragraph can be made to provide the assurance or comfort for which the member is looking.

3870. Lord Empey: Mr Hughes seems to be reinforcing my concerns. There is a long history of councils being sucked into things that are not in their remit, with them ending up holding the baby.

3871. Mr Hughes: Given that they are statutory bodies in their own right, the reference to councils funding something is not there. However, the partnership will be there and it will have objectives that it wants to meet, and because it is a partnership, there will be other organisations for which the work of the partnership is to meet objectives in the policing and community safety field.

3872. Lord Empey: The reality of the situation is different. Elected representatives are accountable, so, if things are not being done for reasons of funding, they will be out there front and centre taking the heat, because people can get at them. I will give you a classic example, Chairperson, of which you will be well aware, as will other members. Years ago, in order to improve community relations and draw a lot of young people away from antisocial behaviour, councils were encouraged, with large capital grants, to build leisure centres. At the start, they got 75% of capital and 75% of running costs. Once the leisure centres were built, the 75% did not take long to go down to nil. To this day, councils are paying millions of pounds a year for many of those facilities, and, if they decided to close them, they would be hammered and would get all the pressure.

3873. My point is about trying to limit potential liabilities, because, until comparatively recently, local government was not involved in that area of activity, so, by and large, it is new territory. Ten years ago, there were not any of those rules. It is a bit like my earlier point about liability issues. It is another role: the organisation has to appoint staff to do the work, and it takes up directors' time and so on. As far as local government is concerned, it is just another spending machine and another cost centre. However desirable the policies might be, they cannot be delivered for nothing, and, under the current system, the only source for such money is, by and large, the ratepayers.

3874. My anxiety is that, as time passes, central government will employ their exit strategy, leaving the locals to pay the bills. That is a long-established pattern. There is form there, over a range of areas. I have been talking about leisure centres, but community centres fall into the same category. They, too, were built for the perfectly good reason of trying to avoid antisocial behaviour. There are very few new things under the sun, and I am just pointing out that I can see where things will end up in a few years' time. That is my only worry.

3875. The Chairperson: Does anyone else wish to comment on that?

3876. Mr Hughes: Only to offer by way of comfort the fact that, although you say that this is new, in fact it will inherit the last numbers of years' work of the CSPs and DPPs. That is a relatively short period, but it is not brand new.

3877. Lord Empey: If we go back a few years more, we had none of this. That is my point. Therefore, it is a new spending area for local government that was not there before.

3878. Mr Johnston: The assurance may be that the Department's budget is subject to Committee scrutiny, so the amounts being spent on community safety and on this are matters that the Committee could keep under review. That power, now available under devolution, would not previously have been available. That having been said, the launch of a consultation on community safety shows this to be one of the Minister's priority areas, which will be significant when we make funding decisions. I add the rider that there is now that level of scrutiny of the Department's spending plans that there would not have been in the bad old days of the NIO.

3879. Mr McNarry: The what old days of the NIO? [Laughter.]

3880. As a matter of interest, where did you come from?

3881. Mr Johnston: I am a faithful member of the Department of Justice. [Laughter.]

3882. The Chairperson: Right from its inception.

3883. Mr Johnston: Since its inception, yes. [Laughter.]

3884. The Chairperson: Members have heard what has been said. The proposed amendment to paragraph 17 of schedule 1 changes "may" to "shall". It may do other things, but we can take it only as we read it. Are members content that we adopt this amendment, or do you want a bit longer to think about it, since there are noticeable changes? Are members content with the proposed amendment to paragraph 17 of schedule 1?

The following members indicated assent: Lord Browne, Mr Givan.

3885. The Chairperson: Paragraph 18 deals with validity of proceedings. Do any members or officials wish to comment? In the absence of any comments, I will formally put the question on the acceptance of paragraph 18.

3886. Lord Empey: Chairperson, how can we accept that the validity of any proceedings:

"shall not be affected by ... any defect in the appointment of any member"?

If somebody is wrongly appointed to something and that person takes a decision, do we just shrug our shoulders and say, "So what"?

3887. Mr Hughes: I come back to my point that that reflects precisely how DPPs are governed at the moment. The alternative is that there would be a question mark over the validity of proceedings even if there were a minor, trivial defect in the appointment process.

3888. Lord Empey: It will come to me eventually, but I remember an issue like this before, regarding a decision being taken by a person who was or should have been disqualified for something. It will come back to me; I will not hold up proceedings now.

3889. The Chairperson: I will formally put the question on paragraph 18 of schedule 1. Are members content with this paragraph?

The following members indicated assent: Lord Browne, Mr Givan.

3890. The Chairperson: We will move to paragraph 19, on disclosure of pecuniary interests, family connections, etc. Do members have any comments? Are members content with this paragraph?

The following members indicated assent: Lord Browne, Mr Givan.

3891. The Chairperson: Paragraph 20 deals with joint PCSPs. Do members have any comments? Are members content with this paragraph?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

3892. The Chairperson: Paragraph 21 deals with the Belfast PCSP. Do members have any comments? Are members content with this paragraph?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

Schedule 2 (District Policing and Community Safety Partnerships)

3893. The Chairperson: In my estimation, the Committee has agreed around 96% of schedule 2. There are some amendments that will be brought to members' attention. Some of the proposed amendments have been drafted at the Committee's request.

3894. There is a proposed amendment to paragraph 4(11) of schedule 2. That is not one of our amendments; it is from the Department.

3895. Lord Empey: Sorry; I am a bit lost.

3896. The Chairperson: We are dealing with paragraph 4(11) of schedule 2, on page 73 of the Bill. Would the Department like to comment on the proposed amendment?

3897. Mr Hughes: The proposed amendment to paragraph 4(11) of schedule 2 is precisely the same amendment that was proposed to paragraph 4(12) of schedule 1. All the Department's amendments are replicated in both schedules, as they are virtually identical.

3898. The Chairperson: Members, the three proposed amendments that were previously agreed for schedule 1 also apply to schedule 2. As the proposed amendments are the same, the Committee must decide whether it is happy with the read across from schedule 1 to schedule 2. I cannot for the life of me think why the Committee would not agree to those amendments as they are the same as those agreed for schedule 1, but there are a lot of things that I do not understand. Are members content with schedule 2, as amended?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

3899. The Chairperson: That concludes this section of the Committee's consideration of the Justice Bill. We will adjourn the meeting until 5.00 pm. I thank the officials for their attendance.

1 February 2011

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Thomas Buchanan
Mr Paul Givan
Mr Conall McDevitt
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Mr Paul Black Mr Tom Haire Mr Gareth Johnston Ms Janice Smiley	Department of Justice
Mr Robert Crawford Mr John Halliday	Northern Ireland Courts and Tribunals Service

3900. The Chairperson (Lord Morrow): We will now move on to the continuation of the informal clause-by-clause consideration of the Justice Bill and will cover Part 6, which deals with alternatives to prosecution, and schedule 4, which deals with penalty offences and penalties. We will also cover Part 7, which deals with legal aid. I welcome Janice Smiley and Paul Black. Others have left and you have come in.

3901. I draw members' attention to the information provided in your folders, which will hopefully assist you in your considerations. There is a summary paper covering the evidence received on clauses 64 to 91. There is also a response from the Minister of Justice regarding proposed amendments relating to the delegated powers contained in the Bill. We will address each amendment as the relevant clauses arise. There is also a copy of the departmental briefing paper on the results of the research into a fixed means test for criminal legal aid. The Hansard report of the oral evidence session that is relevant to clause 85 has also been provided.

3902. Clause 64 deals with penalty offences and penalties. We will start with the departmental officials, if they wish to say anything or provide further information.

3903. Mr Gareth Johnston (Department of Justice): We have nothing in particular to say.

3904. The Chairperson: Do members wish to comment?

3905. Mr McCartney: I want to make a general observation and remind members that we want to see a community service element included when we were dealing with the prisoner levy. We also think the option of community service should be attached to any penalty. We will approach it with that general principle in mind. We are not opposed to many of the clauses. However, we just feel that, if the payment of a fine is introduced, the alternative of community service should also be provided for.

3906. Mr Johnston: Janice may want to add something. No one is under an obligation to accept a penalty notice. If someone does not want to accept it, they can say so, and the case will go forward to the prosecution for consideration in the usual way. One of the options then open to the court is some sort of community service order. Frankly, the cases that we are talking about are those that usually end up with a fine instead.

3907. The major concern about offering a community service option is the cost of doing so. I recently asked for some information on the cost of supervised activity orders, where a probation officer does not monitor someone constantly while they are doing a piece of work but is involved in setting up the opportunity, making sure that the arrangements were made and checking that the person has turned up and has done their allotted number of hours. The information that I got back was that it is something like £1,000 a case, so introducing community service option here may be a very expensive option. If the concern is about people's ability to pay, there is always the option for people to go to court and for the court to take account of the person's financial means in setting the level of the fine.

3908. Ms Janice Smiley (Department of Justice): If someone goes to court, they may find that their fine can be dealt with by extending the time available to them to pay or by their providing payment through instalments. There are, therefore, ways in which the court already deals with any financial order. However, if a person were not able to pay the fixed penalty, the traditional fine default arrangements would apply and additional payments would kick in. A supervised activity order as an alternative to custodial default could be available but it would have to be legislated for.

3909. Mr McCartney: OK. Thank you.

3910. Mr A Maginness: I want to ask a question for clarification and for my satisfaction. If someone receives and accepts a penalty notice, does it count as a conviction?

3911. Mr Johnston: It does not go on someone's criminal record. However, a note of it will be kept on the system, so that, if the person offends again, the first notice will be taken into account in deciding whether they get another penalty notice. However, it is not part of their criminal record.

3912. Mr McCartney: Would that be traceable through AccessNI or that type of trawl?

3913. Mr Johnston: No.

3914. The Chairperson: Include Youth said:

"we are now of the opinion that the proposals about the use of fixed penalty notices and conditional cautions should be removed from the legislation."

It went on to say:

"it is essential that this legislation is right and we would purport that there is no need to rush these proposals through before their effectiveness has been fully tested and safeguards considered."

Therefore, it is Include Youth's opinion that Part 6 of the Bill should be held back until the findings of the youth justice review, the development of the reducing offending strategy and the prison review can be assessed.

3915. Mr Johnston: The provisions in Part 6 apply only to those who are 18 and over. We are not changing the arrangements there. If I recall correctly, Include Youth's concerns were in the context of wanting to see a bigger strategy on reducing offending. Work on that has now started, and the Committee will be briefed about it presently. We still feel that what is being done here is perfectly compatible with that strategy and gives older younger people, if you like, from the age of 18 to 25 the opportunity for minor offences in order to avoid starting a criminal record, given the implications that that might have for employment. That is a positive development and is fair to that age group of people.

3916. Mr McCartney: It says in our papers that the penalty for being drunk at any road or public place is a £40 fine. However, when we were going through the sports clauses, a fine of £1,000 was proposed.

3917. Mr Johnston: That is the maximum fine. There may be circumstances when a penalty notice was not appropriate and where police prosecution would want to pursue something through the courts because it was a more serious case. In fact, for all the offences that we are dealing with under the penalty notices, there is a higher maximum penalty if they are prosecuted.

3918. Ms Smiley: Yes, there are one or two within maximum penalties that incur a level 1 fine, which is about £250. The others are level 5, which could be £1,000 or more. The court is allowed the flexibility to deal with the variety of cases that might fall within the offence categorisation and the circumstances in which the offence occurred. It is about giving the court the full flexibility.

3919. Mr McCartney: If we had agreed to the clause about being drunk in a football ground, would that offence have been subject to a fixed penalty notice?

3920. Mr Johnston: It is not on the list, although it is certainly something that we could look at in the future.

3921. The Chairperson: Our summary of responses says that the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO):

"recommends the introduction of a proper diversionary based system, rather than reliance on fine based solutions and conditional cautions as alternatives to prosecution."

It also says that MindWise:

"notes that the penalty notice is for people over 18 years and suggests this should read 'people who have attained the age of 18 years'."

Is there some ambiguity there?

3922. Mr Johnston: It will just be people who are 18 and over.

3923. Mr A Maginness: Is there a time limit for paying the penalty? I cannot see that it is specified.

3924. Ms Smiley: It is 28 days from the date of issue.

3925. Mr Maginness: Do you know where it says that?

3926. Ms Smiley: Clause 68(1) states:

"Proceedings for the offence to which a penalty notice relates may not be brought until the end of the period of 28 days beginning with the date on which the notice was given ("the suspended enforcement period")."

3927. Mr A Maginness: I did notice that. However, is that the actual time limit? It does not explicitly say that, and that is the point that I am making. I thought that there could be a prosecution after that period and, I suppose, common sense would make you believe that it is 28 days. So, 28 days is envisaged as the period of time that a person has to pay the notice?

3928. Mr Johnston: It is. Certainly, what is printed on the penalty notice and what is said at the time would make people aware of that.

3929. The Chairperson: If no one else has any comments, we will move on to clause 66, which is entitled "Form of penalty notice". There were no responses received on this clause. Does the Department wish to add anything?

3930. Mr Johnston: No.

3931. The Chairperson: We will move on to clause 67. Our summary of responses states that the Law Society think:

"Police officers should be properly trained and the exercise of their powers should be audited. It is of fundamental importance that persons are informed of their right to be tried for the alleged

offence. The penalty notice should inform the recipient of their right to seek independent legal advice."

Mr Johnston, do you have any comments?

3932. Mr Johnston: Yes, arrangements will be in place for training police officers. We have been in conversation with the police about this since the early stages of the planning.

3933. The Chairperson: If no member has any comments, we move on to clause 68. Were there any additional views, Mr Johnston?

3934. Mr Johnston: No.

3935. The Chairperson: No member or official wishes to comment on clause 69, so we move on. Clause 70 deals with payment of penalty, clause 71 deals with registration certificates, clause 72 deals with registration of penalty and clause 73 deals with challenge to notice. There is no additional information from the Department on those clauses.

3936. Clause 74 is on the setting aside of the sum enforceable under section 72. Our summary of responses says that the Women's Support Network (WSN) and Women's Aid:

"remain concerned that women, particularly those with complex needs will continue to find themselves in the system, facing custodial sentences. WSN and Women's Aid believes that a fixed penalty will not address the causes of offending behaviour."

Do you want to say anything on that, Mr Johnston?

3937. Mr Johnston: There is a much broader women's strategy, and, as part of the consultation on that strategy, the workshop that was run dealt with alternatives to prosecution. However, we are not pretending that those are the only answer to addressing offending amongst women. A much broader strategy is in place.

3938. The Chairperson: Clause 75 is entitled "Interpretation of this Chapter".

3939. Mr A Maginness: I wish to go back to clause 73, which is on challenges to notice. Is that challenge through a Magistrate's Court?

3940. Ms Smiley: A statutory declaration would be made at the Magistrate's Court.

3941. Mr A Maginness: So, if I were to have some difficulty with a notice that was served to me, I would go to the court to challenge that. Is that the same as challenging the substance of it?

3942. Ms Smiley: When the 28 days have elapsed and no payment has been received, it will be registered and the individual will be written to. In some cases, that may be the individual's first indication that there is a case against them, and that is their opportunity to say that the notice did not relate to them and they did not receive it or that they have already requested to be tried within the 28 days and that, somehow, the payment notice has continued to proceed through the system.

3943. Mr A Maginness: That is not the same as being tried.

3944. Ms Smiley: No, there is no hearing. It is purely a written statutory declaration that the individual makes to say either that it was not them to whom the notice was issued or that they have already requested to be tried and that the notice should not have proceeded to that stage.

3945. Mr A Maginness: Who determines that issue?

3946. Ms Smiley: It will be an administrative arrangement in the court.

3947. Mr A Maginness: It is not a magistrate who hears that?

3948. Ms Smiley: No, I think that it will be a Magistrate's Court's clerk.

3949. The Chairperson: Clause 76 is on conditional cautions. On the issue of consideration of the victim, our summary of responses says that Victim Support said:

"it is essential that an identified victim is provided with an opportunity to comment on action being proposed in relation to an offender, particularly where the victim's participation is integral to the proposal."

Our summary also says that British Irish Rights Watch (BIRW) said:

"It is important that if these proposals are implemented both their effectiveness and integrity of application are regularly assessed and monitored."

We are also told that WSN and Women's Aid:

"WSN and Women's Aid urges the Committee to recommend that the Bill is amended to ensure conditions are applied before cautions in dealing with low level female offenders and this diversion should also be adopted rather than the imposition of a fixed penalty."

The summary points out that MindWise said:

"As part of the cautioning process an 'Advocate' trained in supporting vulnerable people should be present and ensure the same level of understanding takes place regarding the administering and accepting of a caution as occurs in the initial investigation stage. MindWise recommends that its suggestion be incorporated into the statutory codes".

3950. Mr Johnston: Those are all good points and we can pick them up in the guidance. When considering the issue of conditional cautions, the views of the victim will form an integral part of any decisions on the appropriateness of attaching a reparative condition. The views of victims will be taken into account.

3951. Mr McCartney: Do conditional cautions show up in traces carried out by AccessNI?

3952. Mr Johnston: Yes.

3953. Ms Smiley: They show up because they are police cautions.

3954. The Chairperson: We move on to clause 77, which relates to the five requirements. Our summary states:

"WSN and Women's Aid urges the Committee when considering clause 77, to recommend that the Bill ensures that cognisance is taken with respect to persons with mental health and other complex needs to ensure they understand the implications of the conditional caution."

We are also told that the Law Society:

"considers that sufficient safeguards must be put in place to ensure that any admission by an offender is made in the full knowledge of the case before him and the consequences. Government must avoid a situation in which an offender admits a crime he is not guilty of, simply to avoid prosecution. The Code of Practice referred to at Clause 82 must provide appropriate safeguards. Alleged offenders should be advised to discuss their options with their solicitor."

Mr Johnston, do you have any comments?

3955. Mr Johnston: The usual arrangements would apply, and, as with any other sort of caution, people will have access to the advice of a solicitor.

3956. The Chairperson: We will move on to clause 78, which relates to variation of conditions. If no member wishes to comment, we will move on to consider clause 79, which relates to failure to comply with conditions. Clause 80 relates to arrest for failure to comply. Again, our summary of responses says:

"WSN and Women's Aid note that there is no definition of what constitutes reasonable grounds contained within clause 80, nor does it define what constitutes a reasonable excuse. WSN and Women's Aid seeks assurances that those accused of non compliance of conditions are afforded every opportunity to provide a reasonable explanation and to have that explanation verified."

Mr Johnston, do you wish to comment?

3957. Mr Johnston: Again, that language is used elsewhere in the law. For example, when someone breaches the conditions of a community service order or a licence, there is always an opportunity for a person to explain and to justify what happened. The same standards would apply with clause 80.

3958. The Chairperson: If no member wishes to comment, we will move on to consider clause 81, which is entitled "Application of PACE provisions". Our summary of responses states:

"MindWise recommends that as the Department of Justice approved appropriate adult service delivery scheme in Northern Ireland any amendment to PACE should contain within either the code of Practice or a PACE schedule stating that in the event of an appropriate adult being required other than;-"

It then provides a list. Do the officials wish to comment?

3959. Mr Johnston: That is not quite my area, but that comment was made in a broader context about the role of appropriate adult services. The comments were heard and the Department will consider them further.

3960. The Chairperson: If no member wishes to comment, we will move on to consider clause 82, which relates to the code of practice.

3961. Mr Johnston: The Department has proposed an amendment to that clause. The Examiner of Statutory Rules recommended that the Assembly use the affirmative procedure to approve the code of practice. The Minister is content that that would be the case and proposes to bring forward an amendment accordingly.

3962. The Chairperson: If no member wishes to comment, we will move on to consider clause 83, which relates to the powers of the Probation Board. Our summary of responses states:

"Whilst PBNI welcomes the clauses covering Conditional Cautions, more detail on budgetary and personnel commitments will be required in order to properly cost this development in the Justice procedure."

Are there any comments?

3963. Mr Johnston: Discussions are ongoing with the various agencies about the implementation of those powers. I am confident that we can pick that up.

3964. The Chairperson: Clause 84 relates to interpretation of this chapter. We will move now to schedule 4. Do you want to take us through that or is it self-explanatory? It is not any more devious than it looks?

3965. Mr Johnston: It just sets out the offences that would be covered by the provisions and the penalties that would apply. It reflects lists that we gave the Committee when we gave evidence at the policy stage.

3966. The Chairperson: Schedule 5 is entitled "Transitional and Savings Provision". Does anyone wish to comment on paragraph 7, which relates to alternatives to prosecution?

3967. Mr Johnston: All it does is the usual human rights thing about making sure that it does not apply to any offence committed before the legislation came into place.

3968. The Chairperson: We will pause there. I thank Janice Smiley and Paul Black for their attendance. We will now be joined by the whole team. Mr Crawford, you are very welcome.

3969. We will move on to Part 7. Clause 85 deals with eligibility for criminal legal aid.

3970. Mr Robert Crawford (Northern Ireland Courts and Tribunals Service): We have discussed that on previous occasions.

3971. The Chairperson: We should look at the comments from the Bar Council. Our paper states:

"The Bar is concerned that the administration of the new test would result in delay. The Bar Council pointed out that people are entitled to say that they are not ready for trial because their legal aid application has not yet been considered and that this will result in further administration and could well result in delay."

In addition, the Law Society:

"emphasised the importance of putting into place effective administrative arrangements to ensure that it does not create delay in the criminal justice system".

Therefore, two bodies have mentioned delay. Do you want to comment on that?

3972. Mr Crawford: We spoke about that at the previous Committee meeting. We acknowledged the potential for delay, but there are ways of avoiding that, particularly in respect of funding for a first offence in court before legal aid has actually been determined under a means test system. There are examples in the research paper of how that is done in England, Wales and Scotland. Therefore, we are mindful of those concerns. Before we bring proposals back to the Committee — indeed, we have not put proposals to the Minister yet — we want to ensure that we have that properly provided for.

3973. The Chairperson: The Law Society's view is that:

"means testing should be first commenced in the Magistrates court and be the subject of a pilot scheme before it is fully introduced across all courts. Early review arrangements should also be put in place."

3974. Mr Crawford: We have no difficulty with the first part of that. It makes a great deal of sense to begin in the Magistrate's court and transfer, effectively, most cases. We would want to consider exactly how piloting could best be done. It was not possible in England and Wales to pilot the current means testing scheme, and the lack of a pilot meant that they ran into difficulties. I think that that is what the Law Society is referring to, and we are aware of the difficulties over there. Without saying, "yes, definitely" to that point, we are certainly aware of its benefits.

3975. The Chairperson: The paper goes on to say that the Law Society is still not convinced that the potential for savings will outweigh the likely delays and increased administration that will result.

3976. Mr Crawford: The point that we made on the previous occasion was that a research paper has information on cost and savings. Members of the Committee made the point about the high costs compared to the level of savings. As that has been drawn to our attention, we will take it on board when making our proposal.

3977. Mr McCartney: Will the new rules for financial eligibility come to the Committee for scrutiny?

3978. Mr Crawford: They will. In fact, they have to go out to public consultation.

3979. Mr McDevitt: Where are we on the commencement? Does the Department still propose to commence it by negative resolution, or has the Department agreed with the Committee that it should be done by affirmative resolution?

3980. The Chairperson: Page 9 of the paper says:

"The Committee considered the Examiner's views at its meeting on 13 January and agreed with the view expressed by the Examiner that this is a particularly important power that merits thorough Assembly scrutiny particularly as it relates to applications for legal aid in criminal proceedings."

3981. Mr McDevitt: Is the Department still resisting?

3982. The Chairperson: We think that the Minister has turned down draft affirmative resolution for clause 85(2). Is that still the position?

3983. Mr Crawford: That is the position based on the advice of the legislative draftsman. The Department was minded to go with the Committee's recommendation. However, the legislative draftsman pointed out to us that that would be extremely difficult in the context of the power, and it would have to be amended because that regulation-making power governs all the regulations that are made for legal aid and making that subject to affirmative resolution will have the impact of affecting all minor changes to legal aid. The Minister decided that he cannot go against the draftsman's advice at this point. He indicated that he will be prepared to look at that in a more general and wider context.

3984. Mr McDevitt: The draftsperson is saying that — if I hear you right — if you take powers of affirmative resolution on clause 85, a consequence will be that all subsequent changes to legal aid would need affirmative resolution?

3985. Mr Crawford: The legal aid rates are set under a power that is set out in article 36 of the 1981 Order. I think that he is drawing attention to the fact that there might be consequences of the connection between the eligibility for legal aid and the rates. For example, rates might include anything to do with contributions and eligibility matters as well. His advice has not gone into the level of detail to enable me to give a full answer to the question, but he has expressed concern to the Minister that that would be very difficult at this point.

3986. Mr McDevitt: This takes on novel powers. It is new policy as well as new law. According to the Examiner of Statutory Rules, it is best practice that novel powers should always be subject to affirmative resolution.

3987. Mr Crawford: The draftsman's view is that there is a practical difficulty. He is not quarrelling with the principle; it is about the practical drafting.

3988. Mr McDevitt: There is an interesting tension between the practicalities of the draftsman's need to write proper law and the substance of the law. It strikes me that the substance is more important than the practicality of the drafting. In other words, we would not want to do it by negative resolution because that is a practical way when, in fact, it is a substantial change that, in any other scenario, would require affirmative resolution.

3989. Mr Crawford: Again, the draftsman's view is that it has a connection to other legal aid provisions. Without him spelling all that out, the Minister's conclusion was that, on the basis of his advice, it would be best dealt with by looking more widely at the use of affirmative and negative resolution procedures for legal aid more generally. The Minister recognises that there are some areas where affirmative resolution might be appropriate, and he was prepared to go with the original suggestion from the Committee, whereas that might not be an appropriate use in other areas such as an inflationary uplift in rates.

3990. Mr McDevitt: I take Mr Crawford's point, but, in reality, we are being asked not to adopt best practice because of a practicality or technicality about the drafting of the legislation, not because it is not the right thing to do.

3991. Mr Crawford: To expand a little on the point about occasions where negative resolution may be more appropriate, the eligibility threshold would be set in those regulations, so if it were intended to increase that threshold by, say, 2% to reflect an increase in inflation or in living costs or whatever underlying principle that applied, that would then require affirmative resolution. That is an unusual use of affirmative resolution. There may be a solution in principle, but I think that the draftsman is saying that it is not by making everything made under this power subject to affirmative resolution. I think that his concern is that there would be technical changes that would also be caught by affirmative resolution.

3992. The Chairperson: However, importantly, it would permit and provide for debate on the Floor of the Assembly.

3993. Mr Crawford: It certainly would; there is no question about that.

3994. The Chairperson: Members, the Committee can bring its own amendment on this matter if it is minded to do so. That is something that we can consider.

3995. Mr McDevitt: It feels very uncomfortable to me that we are being asked not to do the right thing because of a technicality, given that everyone agrees that the right thing to do would be to make this through affirmative resolution. However, because of a technicality, perhaps in the way it has been structured or the way that the draftsman approached the structure of the clause by not separating it into distinct clauses, we cannot do it. It does not feel right.

3996. The Chairperson: I do not know whether other members wish to comment on that, but, if members are of the opinion that we should ask for the draft wording of an amendment, we can start to work on that and bring it to the Committee to look at the shape, size and direction of it.

3997. Mr A Maginness: We should do that.

3998. Mr Johnston: We note that, but we are not asking the Committee to abandon its concerns; we are simply suggesting that it would be better to explore them in the wider context of what is affirmative and what is negative in legal aid provisions. We are happy to bring back wider recommendations on that as soon as possible.

3999. Mr Crawford: To add to that, if the Committee has a particular concern about the first introduction of a means test, the affirmative resolution could be done for that occasion but not for subsequent changes. That might not meet all the Committee's concerns, but I simply offer that as a procedure that we have looked at in other areas.

4000. Mr A Maginness: That is interesting; that might be one way around it. To make a general point, we are going through this very carefully, and it seems to me to be quite a big change with all sorts of foreseeable problems in relation to people. However, at the end of the day, I am not convinced by the Department's argument that there will be any real savings. Savings seem to me to be fairly minimal in any event, even in the best case scenario. We may go through all this and, ultimately, find that we have made little savings, and we may perhaps jeopardise people's rights to defence.

4001. The Chairperson: Thank you. I draw members' attention to this statement in our paper: "When asked by a Committee Member for a view on the secondary legislation being introduced by negative resolution the Bar Council stated that, of all the clauses this is potentially the most significant around access to justice and it would be concerned if there was no further scrutiny of it."

The Law Society adopted a similar stance:

"The Law Society also supported that, where these proposals are being brought forward that are going to have such a major impact, they should be by way of affirmative rather than negative resolution."

4002. Two significant bodies are saying what some of us are saying at this table. Anyway, members, you have heard what the officials have said. If members are content, we will draft an amendment, look at the wording and make a decision.

4003. We will move on to clause 86, which is "Order to recover costs of legal aid". Do members wish to make any comments?

4004. Clause 87 is "Eligibility of persons in receipt of guarantee credit". Do members wish to make any comments?

4005. Clause 88 is "Legal aid for certain bail applications". No specific issues were raised in connection with that clause.

4006. Clause 89 is "Financial eligibility for grant of right to representation". Do members wish to make any comments? I refer members to the letter from the Minister of Justice. The same argument about affirmative resolution is being put forward. Is the Committee minded to explore whether it should draft an amendment to that clause?

Members indicated assent.

4007. The Chairperson: We will let you have sight of that as soon as we get it.

4008. Clause 90 is "Litigation funding agreements". There are some comments on this clause in our paper:

"The Bar's view is that money damages cases which represent a very small figure in relation to the expenditure of the Legal Services Commission – between £1 million and £2 million or 1% of the overall budget – should be maintained as a priority area (most cases are successful and there is no claim on the Legal Aid fund). It is recognised however that there are significant administrative costs ... The Bar Council asks the Committee to look again at the question of whether money damages should be excluded from legal aid and whether it is appropriate to use another untried way of providing assistance that may be unsuccessful."

4009. Mr Crawford: In a sense, that is what the Legal Services Commission is exploring with the legal profession; they want to see whether an arrangement can be set up to have some further funding from legal aid so that it can be self-maintaining.

4010. The Chairperson: Do members wish to make any comments? I refer members to the comments on page 26 of that paper: "The Law Society states that the removal of the prohibition on the NI Legal Services Commission funding legal services under litigation finding agreements is to be welcomed."

4011. We will move on to clause 91, "Civil legal services: scope". Do members wish to comment on that clause? No specific issues were raised in connection with it.

4012. Schedule 5(8) deals with witness summonses. That brings us to the end. Do members wish to put any other questions on those issues? Thank you very much.

1 February 2011

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Thomas Buchanan
Mr Paul Givan

Mr Alban Maginness
Mr Conall McDevitt
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Mr Tom Haire
Mr Gareth Johnston Department of Justice
Mr David Mercer

4013. The Chairperson (Lord Morrow): We will continue the formal clause-by-clause consideration of Part 4 and schedule 3, which deal with the Justice Bill's sports provisions. At our meeting on Tuesday 25 January, the Committee informally considered the evidence received on clauses 36 to 55 and schedule 3 and, at that time, received further information and clarification as necessary from departmental officials. The Committee also agreed to formally consider those clauses at today's meeting.

4014. I advise members that the following papers have been provided to assist with the consideration: a summary paper that covers the evidence received on clauses 36 to 55 and schedule 3; an additional paper that summarises the PSNI oral evidence on sports provisions; information on proposed amendments from the Department of Justice to the sports provisions; and a letter, which was tabled today, from the Attorney General that members may find useful during our deliberations. Each proposed amendment will be considered in the order of the clauses that they apply to. The Hansard report of the Committee's informal clause-by-clause consideration of the sports provisions is also provided. Members may find all that material very useful as we go through our deliberations today.

4015. I welcome to the meeting Gareth Johnston, head of justice strategy division, Tom Haire, Justice Bill manager, and David Mercer, criminal law branch.

Clause 36 (Regulated matches)

4016. The Chairperson: Does anyone have any comments on clause 36?

4017. Mr O'Dowd: Did the officials say at the previous meeting that it will propose an amendment to alleviate the concern of the GAA or will those be alleviated in some other way?

4018. Mr Gareth Johnston (Department of Justice): No. There is a proposed amendment. We will get to that when we come to the schedule. It will take out the mention of the regulated stands as well as the regulated grounds.

4019. The Chairperson: We also have correspondence from the Department, which outlines the proposal to amend the clause to reduce the proposed periods for times at regulated matches to one hour before the start and 30 minutes after the finish instead of two hours before and one hour after. You will remember a discussion and debate on that. We also received representation on that issue.

Question, That the Committee is content with the clause, subject to the Department's proposed amendments, put and agreed to.

Clause 36 agreed to.

Clause 37 (Throwing of missiles)

4020. The Chairperson: The Department's correspondence again outlines the proposal to amend the clause, which, as drafted, precludes anything from being thrown onto the pitch. The proposed amended will focus more on those items that are likely to cause injury. You will remember that there was considerable debate around that during which we tried to agree a better definition of missile. Some had thought that a paper plane was maybe a missile. If no further clarification is needed, I will put the Question.

Question, That the Committee is content with the clause, subject to the Department's proposed amendments, put and agreed to.

Clause 37 agreed to.

Clause 38 (Chanting)

4021. The Chairperson: I again refer members to the Department's correspondence, which proposes to add sectarianism to the chanting provisions. There was some debate on that issue when we previously discussed it. Do members require any further clarification or information? In not, I will formally —

4022. Mr McDevitt: My apologies, Chairperson. I note that the —

4023. The Chairperson: I might regret this, but go ahead.

4024. Mr McDevitt: I am really sorry; I know that we are trying to get through this. I note that the first amendment proposes to insert "sectarianism", but that the second one proposes to leave out "religious belief". For the sake of completeness, will officials explain why we need to leave out "religious belief"?

4025. Mr Johnston: It is to avoid dealing with it twice. Sectarian is defined in our proposed amendment, which is to insert in clause 38:

"(3A) For the purposes of this section chanting is of a sectarian nature if it consists of or includes matter which is threatening, abusive or insulting to a person by reason of that person's religious belief or political opinion".

The mention of religious belief has moved into clause 38(3)(a) from clause 38(3)(b), but it is still there.

4026. Mr McDevitt: Thank you.

Question, That the Committee is content with the clause, subject to the Department's proposed amendments, put and agreed to.

Clause 38 agreed to.

Clause 39 (Going onto the playing area)

4027. The Chairperson: We did not have anything from the Department on this clause. Do members wish to raise anything?

4028. Mr McCartney: During the previous discussion, the idea of intent was discussed. Amendments were proposed today about missiles that are likely to cause injury. Would the Department consider proposing an amendment to deal with an incursion to cause injury, rather than just exuberance?

4029. Mr Johnston: It goes a bit further than that, because we want to avoid people rushing on to the pitch, which, in itself, creates a danger of injury. If a herd of people who are very excited all rush on to the pitch, tempers could get overexcited. We want the provision to cover not only people rushing on to the pitch to injure but rushing on to the pitch in the first place where it is not authorised. We discussed that before. If a club is quite happy for people to have a good natured pitch invasion at the end of the match, there is no problem.

4030. The Chairperson: We have heard what has been said. Are members content with clause 39?

4031. Mr McCartney: We will seek to amend it in relation to what I just outlined, but we do not mind the Committee formally going ahead.

4032. The Chairperson: Will you tell us again?

4033. Mr McCartney: We have some difficulties with the clause as currently presented. We would like to see the malicious intent aspect of it to be covered, so our intention is to possibly propose an amendment, but we will allow the Committee to vote on the clause today.

4034. The Chairperson: OK. Mr McCartney seems to be saying that he is not going to obstruct the passage of the clause here today, but he may want to return to it at another time.

4035. Mr McCartney: Yes; at an appropriate time.

4036. The Committee Clerk: Are you proposing that the Committee —

4037. Mr McCartney: The Committee can vote now, and we will abstain.

4038. The Chairperson: I think he is saying that they are content to let it go, but they are flagging it up, and may want to come back to it maybe in another arena. Am I right?

4039. Mr McCartney: Yes.

4040. The Chairperson: I will put the Question, with the caveat that there may be something coming, not through the Committee, but possibly on the Floor of the House.

Question, That the Committee is content with the clause, put and agreed to.

Clause 39 agreed to.

Clause 40 (Possession of fireworks, flares, etc.)

4041. The Chairperson: I refer members to the Minister's letter, which indicates that he is giving consideration to the inclusion of laser pens, but there are difficulties with including that in statute at this stage. He does, however, recognise the problems that those pens can cause, and will take the issue forward with relevant Departments, which could permit a future and more rounded resolution. There was considerable debate on that issue, and I think there was a fairly strong feeling in the Committee that those should be included. However, I want to hear whether

members still think that. You now know what the Minister said in the correspondence. Does anybody want to comment or ask the Department anything by way of clarification?

4042. Mr McDevitt: I want to hear what advice the Minister received. Did he take advice from departmental solicitors or the Attorney General that has led him to the view that it is not possible to include laser pens in the Bill?

4043. Mr Johnston: We took advice from the Departmental Solicitor's Office about defining laser pens. The advice was that they are not really defined in legislation and that a definition would be difficult and would require us to consult a range of other interests and Departments to ensure that what we would be banning would be right and precise. That having been said, the Minister is happy for us to take that process through. However, it is outside the timescale of this Bill.

4044. Mr McDevitt: I remember people being convicted for using laser pens against aircraft, for example, and there were cases where they were used in Belfast a couple of years ago. Therefore, those projectile objects must be defined somewhere in statute. Why, then, is there a problem?

4045. Mr Johnston: Those people were convicted under the Air Navigation Order 2009, which states:

"A person must not in the United Kingdom direct or shine any light at any aircraft in flight".

Therefore, they can affirm to that definition.

4046. Mr McDevitt: Thank you.

4047. The Chairperson: Are members content with the clause? We had concerns about whether laser pens should be included. However, they not included and we have heard the explanation.

Question, That the Committee is content with the clause, put and agreed to.

Clause 40 agreed to.

Clause 41 (Being drunk at a regulated match)

4048. The Chairperson: Does any member wish to comment or seek clarification?

4049. Mr O'Dowd: We do not feel that the provision is necessarily required. However, by voting against it, would we be portrayed as thinking that it is all right to be drunk at a match or outside the ground, when it is not? Although we will support the clause today, it will not prevent us from returning to it before the legislation complete all its stages.

4050. Mr A Maginness: If someone is found drunk in public, they have committed an offence and they can be prosecuted. However, if somebody is drunk in a football stadium, which is not a public area, are they committing that same offence? I take it that they are not.

4051. Mr Johnston: There is doubt about that.

4052. Mr A Maginness: This clause would clarify the situation?

4053. Mr Johnston: Exactly.

4054. The Chairperson: Have you finished, Mr Maginness?

4055. Mr A Maginness: In the circumstances, it would not be unreasonable for the offence to be created to deal with people who are drunk at a regulated match. It would give the police and the authorities at a football match greater control as there would be certainty. The authorities could tell a person that, if he did not play ball with them and leave, they would phone the police and he would be charged.

4056. The Chairperson: Mr O'Dowd made the point that the Committee might be seen to be careless about drunkenness at a match, but that can be dealt with in the report. I draw members' attention to the summary table, where it is stated that the Public Prosecution Service (PPS) felt:

"there may be difficulty in certain circumstances in satisfying the test for prosecution or in proving the commission of an offence to the requisite criminal standard, namely beyond reasonable doubt."

Furthermore, the point has been made that the legislation already exists, so do we need to repeat it again? We honed in on that issue when we discussed the matter.

4057. Gareth, the Committee felt strongly that this was legislation for the sake of legislation: enough powers are already available; there is no need for more.

4058. Mr Johnston: I appreciate the PPS's point that drunkenness is not defined. However, it is the same issue that arises about drunkenness generally. The police would apply the same tests as they apply to someone who is drunk in the street to those who are drunk in sports grounds. We are not doing something that is different from what is done outside sports grounds.

4059. The point was made about legislating for the sake of legislating. As Mr Maginness said, it is about clarifying the law; it is not about applying one set of standards inside sports grounds and a different set outside. The legislation is about clarifying that the same standards apply inside and outside sports grounds. At the moment, there is some doubt about whether the law does that; the clause will plug the gap.

4060. The Chairperson: Surely the PPS's point is that the police are not inside the ground; they make arrests on the street. You will depend on stewards and volunteers to enforce the provisions. Is that right?

4061. Mr Johnston: I am not sure, Chairperson, if that is quite the PPS's point, but it is a perfectly valid point. The Department of Culture, Arts and Leisure is working with the sports bodies on an NVQ recognised training programme for stewards and marshals, and we expect that programme to cover issues such as those.

4062. Mr McCartney: I have two points to make. First, the PPS seems to be saying that it would not proceed with such a case. Therefore, if a club felt that someone was drunk and that person was arrested, the PPS would not proceed with the case. My second point is that, by regulation, clubs have the power to tell someone who is drunk to leave a ground.

4063. Mr Johnston: The PPS's point was whether there was some way of defining drunkenness in the legislation. It did not say that there would not be prosecutions; however, it acknowledged that there could be difficulty in certain circumstances in satisfying the test for prosecution. We are simply using the standards that are already in the law. We are simply asking the courts to apply the same tests that they already apply in practice.

4064. Mr McCartney: I accept that. However, perhaps the scrutiny was not done properly.

4065. Mr Johnston: I am happy to take away the more general point about whether there is a way of defining drunkenness for future reference. I am not sure that it is easy to resolve. We could do what the Americans do and see whether someone can walk along a white line touching their fingers to their nose. It is difficult to define. We can certainly look at that issue separately. However, I suggest that the PPS is not saying that there cannot be prosecutions, rather that the same issues that currently arise in cases in which someone is drunk in the street would carry across to this situation, and we acknowledge that.

4066. The Chairperson: I must put the clause formally to the Committee. However, judging by the drift of members' comments, I suspect that the Committee will reject the clause, although perhaps members are merely expressing an opinion to provoke comment. Are members content with the clause as drafted?

4067. The Committee Clerk informs me that we have three options: we can accept the clause as it stands; we can reject it out of hand; or we can amend it. I am of a mind to reject it, but I am not trying to steer anybody. I am simply saying that, having listened to the pros and cons and having read the views of the PPS, I feel that there is considerable doubt around satisfying the test for prosecution. The Committee for Culture, Arts and Leisure questioned the need for the clause on the basis of existing legislation. That is why we would reject it, if we do reject it: we simply believe that adequate legislation is already there.

4068. Mr O'Dowd: That is a fair summary. It is not a case of us disagreeing with the objective of the clause; it is that legislation is already in place. It is key that we, as a Committee, bring forward workable legislation.

4069. The Chairperson: Are members content that we reject the clause?

4070. Mr Johnston: In the Department's view, we need the clause because, if someone is drunk in a sports ground, the current law may not be sufficient to deal with them. That is my advice. There is substantial doubt about whether that is a public place and whether the provisions that relate to drunkenness in public places would apply. That is why we are making that provision. I am sorry to interrupt.

4071. The Chairperson: We will certainly tell the Department and the Minister that you battled hard for it. [Laughter.]

4072. Lord Browne: If someone is drunk, they are likely to commit an offence that will be enforceable, such as throwing a missile or hitting someone.

4073. Mr McCartney: Has anyone ever been arrested in a sports ground, contested the case in court and had a charge refused simply because the issue of whether the law applied inside a sports ground was successfully contested? If the PSNI saw someone drunk at a football ground, my reading is that they would have powers to arrest that person.

4074. Mr Johnston: I am not sure that I can point to a particular example. As I say, the advice that we are getting is that, if there is an incident, the current offence may not be wide enough to cover that.

4075. There is a broader context to the clause and, indeed, throughout those few clauses about alcohol. They try to address the risk factors associated with a group of people who are quite passionate about something being in a confined space. One risk factor is that somebody will say

something stupid; we are trying to address that through the chanting provisions. Another risk factor is that somebody will do something violent that will cause the place to erupt; we are trying to address that through the provision on missiles, drinks containers, and so on. However, the biggest risk factor is perhaps drink. It affects people's rational decision-making and reduces inhibitions — or so I am told. [Laughter.] It would be very odd if we brought forward a package of proposals on safety in sports grounds and did not mention standards on drink, drunkenness and the consumption of alcohol. Therefore, the package is trying to address those risk factors, and we see drink as something that is liable to inflame situations. That is why the provisions are included.

4076. Mr Tom Haire (Department of Justice): I will offer the Committee a parallel example. Under the Licensing (Northern Ireland) Order 1990, it is an offence to be drunk on licensed premises with the same level of penalty. That is clarifying the law around private premises versus public property, and it is in a context where, shall we say, things happen. Therefore, parallel law already exists in a similar context that, presumably, the PPS might have the same views on. People may say that two wrongs do not make a right, but the context is very similar as regards being drunk in a private place.

4077. Mr A Maginness: This is a very good rearguard action on behalf of the officials. [Laughter.]

4078. The Chairperson: Yes; they have tried hard. I take some satisfaction from the fact that Mr Johnston has said that you do not have to live the experience to realise that it happens. [Laughter.]

4079. Ms Ní Chuilín: Or so he is told.

4080. The Chairperson: To some extent, that strengthens our argument, too. If you are drunk on the street, in the park or in the stand, you are drunk and you have committed an offence.

4081. Are members content to reject the clause?

Clause 41 disagreed to.

4082. The Chairperson: That seems pretty clear; nobody is saying nay, although I know that there are some reservations. We are sorry about that, Mr Johnston. I hope that we are friends nonetheless.

Clause 42 (Possession of drink containers, etc.)

4083. The Chairperson: Are members content with the clause as presented?

4084. Mr O'Dowd: I think that it falls in the same category as the last clause. It is unnecessary and unworkable legislation.

4085. The Chairperson: The Committee's table of responses states that: "The CAL Committee recommends that Clauses 42 and 43 should be read together and questions the need for both clauses. The Committee believes that the issues pertaining to these clauses could be achieved through regulation by sports governing bodies.

With regard to Clause 42, the CAL Committee is concerned that this clause limits any sort of containers being brought to a ground. Members recommend that further consideration is given to addressing the needs of families; children's and baby's bottles."

We took it a stage further and spoke about hip flasks and that sort of thing.

4086. Ms Ní Chuilín: And wine gums.

4087. The Chairperson: Yes; somebody did think that wine gums could be included. Do members require any further clarification?

4088. Mr McDevitt: In my mind, there is a slight distinction between this clause and the previous clause. I want to ask Mr Johnston to elaborate on that. Is part of the reason for specifying containers that you want to remove the potential for them to be used as missiles, or is it simply that they may contain alcohol?

4089. Mr Johnston: It is the chance that they could be thrown or used as a weapon. The regulation of alcohol is dealt with separately. There is a difference between where the Committee for Culture, Arts and Leisure is coming from and where we as a Department are on the issue. We are trying, through a number of the clauses and certainly through this one, to avoid risky situations arising. It is not that we are looking for some means of dealing with a missile being thrown or an injury being inflicted. We want to stop those risk factors arising in the first place and to tell people not to bring in tins, glass bottles or plastic bottles with the tops on. Indeed, someone else could grab a bottle from them and smash somebody across the face with it.

4090. We are just trying to create a situation in which the risk factors that might exacerbate things in that pressure cooker that exists during and after a match are, as far as possible, removed, so that people can be assured of a good, happy, family time when they attend matches. It is about taking a step back, asking what the risk factors are and dealing with those. Certain containers can be a risk factor.

4091. The Chairperson: Including a hip flask?

4092. Mr Johnston: Yes, potentially including a hip flask. I realise that they do not fall within the definition, but I come back to my hope that, if you have invested in a hip flask, you are not too likely to throw it.

4093. The Chairperson: Even though you are ecstatic or totally depressed?

4094. Mr McCartney: Alcohol reduces your inhibitions.

4095. Mr Johnston: I am prepared to make a commitment that, if we become aware of an issue around people throwing hip flasks, we will certainly deal with it in future legislation.

4096. Lord Browne: On the whole, the clubs already enforce these provisions. They have regulations that state that no drinks or alcohol should be brought into the ground. As you say, they now have training schemes for marshals and stewards, who already implement the rules. When it is felt that supporters from different sides could become hostile at a particular match, the clubs go a long way to ensure that no containers of any sort are brought into the ground. Again, I feel that the legislation may be unnecessary.

4097. Mr A Maginness: Overkill.

4098. Mr Johnston: I come back to how the legislation would support the clubs in doing that. Undoubtedly, a lot of good work has been done already. The Committee has challenged us on many issues during Committee Stage. Certainly, on the sports provisions, it has challenged us to

go back to the organisations and have further negotiations with them. No one — not the IFA, football supporters, rugby or the GAA — is now flagging the issue as a concern. Different sports may feel that they do not have a problem. They are certainly saying that they do not have a problem with this provision.

4099. Mr Givan: Have the clubs indicated that, when carrying out searches, fans have said that there is no law that requires them to get rid of an item? Are they clubs saying that they need this provision to enforce their searches?

4100. Mr Johnston: Early on, the IFA said that it welcomed all of the provisions, and certainly this provision.

4101. Mr O'Dowd: We must remind ourselves that we are talking about a sporting match, to which people go to enjoy themselves. Are we going to have airport-style security checks with people going through the turnstiles being made to strip down to their boxer shorts to ensure that they are not carrying a container? It is unworkable legislation anyway. Anybody who is cute and who wants to be problematic will just turn up at a match with a medicine or veterinary bottle that they have poured alcohol into and then say that it cannot be taken off them because the Bill says that they are allowed to take it in. What steward will challenge them and say that they have no need for it or ask them to sample what is in it? Who will sample it? It is a silly law; there is no reason for it.

4102. The Chairperson: After Mr Johnston comments, I will put the Question to the Committee.

4103. Mr Johnston: We are not asking stewards to do intimate body searches or anything like that. The clause offers the chance to address the issue. If I walk into a football match carrying a container like those we have mentioned, the stewards can tell me that I am not allowed to take it into the ground. If I ask, "Who says so?", the stewards can say that the law says so and take it off me. They would be justified in taking it off me.

4104. Mr McCartney: That can be part of the admission conditions at present. The ticket will say that a person must fulfil the terms and conditions, one of which is that the person cannot carry a bottle into the ground. Therefore, if a steward tells you that you cannot take it in and you try to do so, you will not be admitted to the ground. We do not have to make it a criminal offence. Someone might be being awkward or stupid. People might be going to a concert or a football match and feel that there is nothing wrong with taking a bottle of lemonade in with them. However, their mind will be made up when they are told that they will not get into the ground.

4105. The Chairperson: We will have to make a decision one way or another. Is the Committee not content with the clause?

Clause 42 disagreed to.

Clause 43 (Possession of alcohol)

4106. The Chairperson: I draw members' attention to the briefing paper from the Department of Justice. In light of the particular representations made by Ulster Rugby, the Minister now proposes to amend the commencement of this clause to be subject to affirmative procedure and require full Assembly consent. The amendment is achieved by changing the commencement provisions in clause 103. I remind members that we are talking about the possession of alcohol, and you have all the comments in front of you. Does any member wish to say anything?

4107. Mr A Maginness: I am not certain that the commencement order solves the problem. It could be seen as discriminating against certain sports. If I understand the thinking of the Department and the Minister, they want to give a bye ball to rugby while insisting that some other sports must comply. Prima facie, that is discriminatory, and somebody could, quite properly, bring some form of judicial review or legal challenge.

4108. The Chairperson: It has the tone of bad law about it.

4109. Mr A Maginness: I think so. However, I am no expert in the field and am open to advice from the officials. It certainly does not seem to be a very satisfactory way of dealing with the matter. I am impressed by Ulster Rugby in particular. It came before the Committee and said that it does not have a problem with alcohol and that the legislation will seriously injure its project to develop Ravenhill. There is a lot of weight in that. I am not so certain that this provision is necessary at this point in time. I do not think that there is a problem that needs to be addressed.

4110. Mr McCartney: Can I make a suggestion in line with what Alban is saying? We could exclude clause 43(1)(a) and keep clause 43(1)(b) and make it an offence for someone to try to take intoxicating liquor into a ground. That would allow the sports to regulate the sale of alcohol in grounds. Therefore, if drunkenness becomes a problem inside a ground, the licensing laws will allow us to regulate.

4111. The Chairperson: I hear what the member has said. However, our paper says:

"Ulster Rugby is strongly opposed to the inclusion of matches played at Ravenhill in Clause 43 and is concerned about relying solely on a commencement order to create an exemption. Ulster rugby urges the Committee to remove it completely from Clause 43 for the following reasons."

One member of the Committee said that he is of a mind to take out a paragraph of the clause to make it acceptable. I detected that, when the clause was discussed at our previous meeting, some members were of the opinion that it should be rejected in its entirety. However, I am now in the hands of the Committee.

4112. Mr Johnston: It would be helpful for me to deal with those points, the first of which was about any potential discriminatory impact. The potential for differential commencement was there when the Bill was drafted. We took advice about competence in the usual way from the Attorney General, and there were no concerns about that aspect. However, given that we are proposing an amendment to make any commencement subject to affirmative resolution, it will go back to the Attorney General. Therefore, if there are any concerns, he will have an opportunity to flag them up.

4113. The Ulster Rugby position has moved on from the position that was given to the Committee in its formal response. We discussed the issue further with it at ministerial level before Christmas, and the compromise, as it were, was that there will be full consultation on any commencement, which we would bring about by making it subject to affirmative resolution. That was acceptable to Ulster Rugby. As I said, that may not have been its number one preference, but it was prepared to live with that. At that meeting, its hopes for further development were set out and explored. Therefore, the earlier response and the Committee's views pushed us into further engagement with Ulster Rugby, and the compromise seemed acceptable to it. It also has the support of the Minister of Culture, Arts and Leisure.

4114. Mr A Maginness: That is not the preferred position of Ulster Rugby. It is adopting that position because it thinks that it has to move otherwise the Bill will go through. Therefore, it is not a preferred position and is one that it has been more or less pushed into. I am not saying

that it has been blackmailed into it or anything like that, but it has been pushed into it and has to move. So, it is not a very satisfactory position for Ulster Rugby.

4115. I am also worried about sponsors or potential sponsors. They could say that there will be a problem because their contract was negotiated on the basis that they could advertise and sell their drink and so forth. That could undermine the sports, which find themselves in a difficult enough circumstance in the present economic climate. I am, therefore, not happy with the clause, and I do not think we should run with it, even with the commencement order, which I know the Minister and the Department put forward as a compromise. I am not so certain that it is such a good compromise. I accept the Attorney General's reassurances, though.

4116. The Chairperson: We have had no correspondence from Ulster Rugby to say that it has changed its stance. If you take out clause 43(1)(a), it would follow that you have to take out clause 43(3) completely.

4117. Mr Johnston: There would be a variety of consequential amendments.

4118. Mr McCartney: I do not know what the Committee will do, but I think that three months' imprisonment for possession of alcohol seems unfair given that the fine for being drunk is only £1,000.

4119. The Chairperson: I will put the Question to the meeting. Are members of a mind to reject clause 43?

Clause 43 disagreed to.

Clause 44 (Offences in connection with alcohol on vehicles)

4120. Mr Johnston: The Department has put forward a couple of amendments. One is to remove subsection (5), which deals with the offence of being drunk on a vehicle. As a result, subsection (6)(c), which deals with the penalty, would also be removed. The other proposed amendment is to change subsection (1)(b) to read "to a regulated match" rather than: "to or from a regulated match."

The reason for keeping in the provision for the journey to a regulated match is that the GAA has told us that it would very much support the idea of regulating booze buses, as it were, going to matches.

4121. The Chairperson: That is a new one; we need to watch out for the booze buses.

4122. Mr McCartney: Again, I have reservations because the PPS has said that it would find that a difficult charge to pursue.

4123. The Chairperson: Members have heard what the Department has said about the clause. Are members content with the clause as outlined by Mr Johnston? You have the option of rejecting it, but you will be aware of that anyway. I think that we are getting better at this.

4124. Mr O'Dowd: We will abstain at this stage. We want to return to the clause in our own deliberations.

4125. The Chairperson: Are other members content to accept the clause? You have heard what has been said. Some are holding their position on it, but may — well, they may do anything.

Question put, That the Committee is content with the clause, subject to the Department's proposed amendments.

The Committee divided: Ayes 4; Noes 0

AYES

Lord Browne, Mr Buchanan, Mr Givan, Mr Maginness, Mr McDevitt

Question accordingly agreed to.

Clause 44 agreed to.

Clause 45 (Sale of tickets by unauthorised persons)

4126. Mr Johnston: The Department proposes to remove clause 45 in light of the assurances from the IFA about a self-regulated arrangement.

Question, That the Committee is content with the clause, put and negatived.

Clause 45 disagreed to.

Clause 46 (Banning orders: making on conviction)

4127. The Chairperson: According to our summary paper, the Committee for Culture, Arts and Leisure said:

"that banning orders should be extended to include all categories of matches, not just regulated matches and also to other jurisdictions."

Has the Department anything new to say about clause 46 since you were last here?

4128. Mr Johnston: We have nothing new, Chairman.

4129. The Chairperson: Are members content with clause 46? No one has indicated that they are not content. Is anyone abstaining?

4130. Mr O'Dowd: We will abstain. We need to return to it in our own deliberations.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 5; Noes 0.

AYES

Lord Browne, Mr Buchanan, Mr Givan, Mr A Maginness, Mr McDevitt.

Question accordingly agreed to.

Clause 46 agreed to.

Clause 47 (Banning orders: content)

4131. The Chairperson: Does the Department have anything further to add to what you have given us already?

4132. Mr Johnston: We have nothing further, Chairman.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 5; Noes 0.

AYES

Lord Browne, Mr Buchanan, Mr Givan, Mr A Maginness, Mr McDevitt.

Question accordingly agreed to.

Clause 47 agreed to.

Clause 48 (Banning orders: supplementary)

4133. The Chairperson: Has the Department anything new to add on clause 48?

4134. Mr Johnston: No, Chairman.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 5; Noes 0.

AYES

Lord Browne, Mr Buchanan, Mr Givan, Mr A Maginness, Mr McDevitt.

Question accordingly agreed to.

Clause 48 agreed to.

Clause 49 (Banning orders: "violence" and "disorder")

4135. The Chairperson: Does the Department have anything new to add on clause 49?

4136. Mr Johnston: The Department is proposing two small amendments. These are to ensure that the sectarian aspect that we included earlier in the Bill is properly covered in clause 49, so that "sectarian hatred" is part of the definition of what constitutes disorder. Clause 49(3) was a mistake, and it is removed. It would be replaced by the amendment with the definition of "sectarian hatred". That is the other small change.

4137. The Chairperson: Are you saying that clause 49(3) is coming out in total?

4138. Mr Johnston: Clause 49(3), as it is, is coming out and being replaced with a new clause 49(3), which is the definition of sectarian hatred.

Question put, That the Committee is content with the clause, subject to the Department's proposed amendments.

The Committee divided: Ayes 5; Noes 0.

AYES

Lord Browne, Mr Buchanan, Mr Givan, Mr A Maginness, Mr McDevitt.

Question accordingly agreed to.

Clause 49 agreed to.

Clause 50 (Banning orders: duration)

4139. The Chairperson: Does the Department wish to add anything on clause 50 that you have not told us already?

4140. Mr Johnston: Nothing has changed.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 5; Noes 0.

AYES

Lord Browne, Mr Buchanan, Mr Givan, Mr A Maginness, Mr McDevitt.

Question accordingly agreed to.

Clause 50 agreed to.

Clause 51 (Banning orders: additional requirements)

4141. The Chairperson: Has the Department anything new to add on clause 51?

4142. Mr Johnston: No.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 5; Noes 0.

AYES

Lord Browne, Mr Buchanan, Mr Givan, Mr A Maginness, Mr McDevitt.

Question accordingly agreed to.

Clause 51 agreed to.

Clause 52 (Termination of banning orders)

4143. The Chairperson: Does the Department have anything new to add on clause 52?

4144. Mr Johnston: No.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 5; Noes 0.

AYES

Lord Browne, Mr Buchanan, Mr Givan, Mr A Maginness, Mr McDevitt.

Question accordingly agreed to.

Clause 52 agreed to.

Clause 53 (Information about banning orders)

4145. The Chairperson: Does the Department have anything new to add on clause 53?

4146. Mr Johnston: No.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 5; Noes 0.

AYES

Lord Browne, Mr Buchanan, Mr Givan, Mr A Maginness, Mr McDevitt.

Question accordingly agreed to.

Clause 53 agreed to.

Clause 54 (Failure to comply with banning order)

4147. The Chairperson: Does the Department have anything new to add on clause 54?

4148. Mr Johnston: No.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 5; Noes 0.

AYES

Lord Browne, Mr Buchanan, Mr Givan, Mr A Maginness, Mr McDevitt.

Question accordingly agreed to.

Clause 54 agreed to.

Clause 55 (Powers of enforcement)

4149. The Chairperson: Does the Department have anything new to add on clause 55?

4150. Mr Johnston: No.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 5; Noes 0.

AYES

Lord Browne, Mr Buchanan, Mr Givan, Mr A Maginness, Mr McDevitt.

Question accordingly agreed to.

Clause 55 agreed to.

Schedule 3 (Regulated Matches)

4151. The Chairperson: I refer members to the correspondence from the Department, which outlines the proposal to amend the schedule to remove sports grounds at which there is a stand requiring a safety certificate. Therefore, the provisions would apply only to matches played at designated grounds. Is there anything new to add on that?

4152. Mr Johnston: No, that was in response to the GAA's concerns.

Question, That the Committee is content with the schedule, subject to the Department's proposed amendment, put and agreed to.

Schedule 3 agreed to.

4153. The Chairperson: That completes the formal consideration of the sports provisions of the Bill. Mr Mercer, I think you are leaving us now. Thank you very much for your attendance. The other officials are staying for the next session.

3 February 2011

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Thomas Buchanan
Lord Empey
Mr Paul Givan
Mr Alban Maginness
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Mr Gareth Johnston	Department of Justice
Mr Robert Crawford	
Ms Maria Dougan	Northern Ireland Courts and Tribunals Service
Ms Geraldine Fee	

Mr Michael Kelly
Mr Richard Ronaldson
Mr Peter Campbell
Mr Alan Hunter — Law Society of Northern Ireland

4154. The Chairperson (Lord Morrow): I welcome Mr Gareth Johnston, Ms Geraldine Fee, Mr Michael Kelly and Mr Richard Ronaldson. I invite you to brief the Committee on amendments to funds in court legislation.

4155. Lord Empey: Will this session deal with the difference between the various courts and the fact that in one court people get paid, while in another court they do not? Will we look at that sort of issue?

4156. The Chairperson: I do not think so.

4157. Ms Geraldine Fee (Northern Ireland Courts and Tribunals Service): We had planned to start with court funds. That includes remuneration issues.

4158. Lord Empey: Will the issue that solicitors, for instance, are paid in the Court of Appeal, but not in the Magistrate's Courts, be discussed?

4159. Ms Fee: That will be part of the next session on solicitor advocates.

4160. Lord Empey: Thank you.

4161. The Chairperson: Lord Empey, I draw your attention to the briefing paper on amendments to funds in court legislation. We will hear from officials. Before I hand over to you, I just want to say that we have a fairly heavy schedule and agenda to get through. Therefore, you will have five minutes to outline key points, if that is acceptable. There will then be around 15 minutes for questions. If you are happy enough with that, we shall proceed.

4162. Ms Fee: As you have outlined, Chairman, the clauses relate to the handling of funds in court, whereby the County Court or High Court has ordered that money be paid to the court to be placed under its protective jurisdiction. That will occur, for example, when a minor has been awarded damages or when a person is deemed to no longer have sufficient mental capacity to manage his or her own financial affairs. In such cases, money is paid over to the accountant general of the Court of Judicature. He or she manages those funds under the terms of the Judicature (Northern Ireland) Act 1978. The director of the Northern Ireland Courts and Tribunals Service is the accountant general. His functions are exercised daily through the Court Funds Office (CFO), which is part of the Northern Ireland Courts and Tribunals Service.

4163. Funds may be invested, with judicial approval, in a variety of ways, which are set out in the 1978 Act. Those include being placed in deposit accounts and short-term and long-term investment accounts, and being invested in certain designated securities. For investments in securities, the Court Funds Office uses a stockbroker to advise on appropriate investments for all new funds placed in court and to review existing investments. In return, stockbrokers charge an annual management fee. Until recently, those management fees had been deducted directly from the funds of clients whose funds were the subject of that advice and management by stockbrokers. Legal advice obtained last year, however, suggests that there is doubt as to whether it is permissible to deduct stockbroker management charges directly from court funds without an express legislative power to do so.

4164. It is important for the Court Funds Office to be able to use stockbrokers so that it can enhance clients' investment returns. Otherwise, the office would have little option but to place those funds in cash deposits. That would be to the detriment of the CFO's clients as they would not have the opportunity to enhance the return on their funds. In turn, stockbrokers have to be paid for their services. In principle, the cost should be met by those who avail themselves of those services, rather than directly from the public purse. In order to seek legal clarity, we intend to apply to the High Court for a declaration on that particular issue. Should the High Court find that sufficient authority already exists to deduct stockbrokers' fees from the relevant funds of CFO clients, it would allow the Court Funds Office to revert to previous practice. However, there is a possibility that the High Court may rule that there is no current authority for such deductions. In that case, we would require an amendment to the Judicature (Northern Ireland) Act 1978 to provide that authority. The Justice Bill provides us with the opportunity to make that provision.

4165. Accordingly, we have prepared draft clauses that, subject to the Assembly's approval, would authorise the deduction of stockbrokers' fees directly from Court Funds Office client funds, with court approval, where it is necessary and proportionate to do so. The court will also be provided with a power to remit the fees in whole or in part where it is in the interests of justice to do so. The Committee is aware that we have worked with the Attorney General in developing the proposals. It was not possible to resolve some issues in time for the Bill's introduction and, therefore, the Minister advised the Committee that he hoped to table the provisions by way of amendment at Consideration Stage. Although the Attorney General has yet to advise formally on the issue of competence, he has confirmed that he is content with the proposed clauses, and it is the Minister's view that they are within the competence of the Assembly.

4166. We welcome the Committee's views on the draft clauses, and we are happy to answer any questions.

4167. The Chairperson: Members, you have heard what has been said. Are there any questions?

4168. Mr O'Dowd: I have a question on the broader process. How is the stockbroker appointed? Is it put out to bids?

4169. Ms Fee: Yes; a public procurement exercise was run on behalf of the Courts and Tribunals Service by central procurement division.

4170. Mr O'Dowd: What happens if the stockbroker makes bad investment choices and a person's money is lost?

4171. Ms Fee: There is always a risk with investments. However, the advice provided by the stockbroker is monitored on an ongoing basis. The court funds judicial liaison group is chaired by a High Court judge, and its members include other judicial representatives. The stockbrokers report into that group quarterly. Am I right, Richard?

4172. Mr Richard Ronaldson (Northern Ireland Courts and Tribunals Service): They report on a six-monthly basis.

4173. Ms Fee: The court keeps an eye on investments, as does the Court Funds Office, and matters can be brought back before the court if there is a concern that the investment is underperforming.

4174. The Chairperson: Who is liable for the advice in the event of the fund or the investment not performing? Will that be subject to scrutiny by the financial services?

4175. Ms Fee: I believe that stockbrokers will be regulated as in the ordinary course of events. I do not believe that there would be any liability for the underperformance of a particular investment, unless negligence were in play. Richard, is there anything else?

4176. Mr Ronaldson: I have nothing to add.

4177. Ms Fee: It is important to clarify that the stockbroker is very aware that the protection of the investment is paramount, and he or she would not adopt high-risk investment strategies; the strategies would be low-risk. The remit of those investments is set out in primary legislation. There is ongoing liaison with the court funds judicial liaison group, the Court Funds Office and the court on those matters. Any advice provided by the stockbrokers would also be discussed with the representatives of the minor or the person whose affairs are being managed by the court.

4178. The Chairperson: The risk strategy is always the difficult one. Once investors hear that their funds or investments have underperformed, they may want to take some action. It is only when investments do well that you do not hear from them. We have been through the whole concept of mis-selling in a million ways. Here, it primarily relates to funds being invested on behalf of a minor who will not have access to them until he or she reaches the age of 18. From the age of one to 18, many things can happen. Will the investor and the guardian be satisfied that anything that they have invested will be subject to all the usual rules under financial services legislation and that there will, in fact, be a continual monitoring of the portfolio so that funds will be moved from one fund to another in the best interests of the client?

4179. Ms Fee: You have described the status quo as regards how funds in court are managed. This clause proposes to provide authority for us to pay from those funds the fees that the stockbrokers charge for providing advice on the investments. The ways in which the funds are managed and the investment strategies are deployed are not being disturbed by that. To give the Committee reassurance, there is ongoing monitoring of investments and the performance of stockbrokers by the court funds judicial liaison group and the Court Funds Office with the involvement of the judiciary.

4180. The Chairperson: It might be difficult to ascertain a minor's attitude towards risk. Some might want low-level risk, some might want middle-level risk and some might be happy enough with high-level risk. I do not know how you would ascertain that with a minor. I understand that someone who is two, three, four or five years of age would not be making that decision. However, they might be making that decision when they are 16 or 18.

4181. Ms Fee: Yes, but that is why the funds are placed under the protective jurisdiction of the court, because you would then have a range of judicial advice. Again, the stockbrokers are made very much aware that it is a low-risk investment strategy that they are adopting. As I said, the Judicature Act clearly outlines that only certain types of investments can be made.

4182. Lord Empey: I was thinking along the same lines as you, Chairperson. Obviously, we are looking at an authority to pay. That is the key issue. The questions at the back of our minds are not about that at all; they are about the wisdom or otherwise of some of these matters. If you are looking for low-risk investments, you go for bonds. Once you move into the stock market, things are different. Most stockbrokers would have recommended having BP in your portfolio. There is no insurance; once you are involved in the stock market, you are in a high-risk environment. We are dealing with the narrow issue of authority to disburse funds as payment. So, to some extent, the questions that are at the back of all our minds are not really in front of us; only the issue of payment is. Although I, like you, have some issues about the wider picture, this is a policy issue as opposed to a legislative one.

4183. Mr Gareth Johnston (Department of Justice): It may be worth clarifying that investing funds in stocks and shares is just one of the options available to the Court Funds Office under the Judicature Act. At times, they will be placed in deposit accounts, and there could be short-term and long-term investment accounts. So, it is very much about the office deciding what is likely to generate the best return. If someone is 17 and the funds will be invested for only a year, you are probably not going to invest them in the stock market.

4184. Lord Empey: I understand that. In many respects, the types of investments that you want are those that you would have with a pension fund. We have organisations like the Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC), which has immense experience and a very successful track record of managing local government officers' pensions. I just wonder why it would not be possible to piggyback on an organisation like that, which has a vast amount of experience.

4185. The Chairperson: Did you say piggyback or piggy bank?

4186. Lord Empey: I asked why we cannot piggyback on their expertise and advice, because, effectively, the state is paying twice. There is a major public sector pension organisation that has a long track record of dealing with the type of investment that we are talking about with tremendous expertise, yet we are inventing a separate system with A N Other, or whoever is successful in the procurement exercise, investing for people. It might have made sense to have the funds linked in with that very successful public sector pension fund rather than invent a parallel system. That is not, strictly speaking, what we are talking about.

4187. Ms Fee: That does raise wider issues about the overall construct of the court funds regime.

4188. Mr McCartney: Your briefing paper states:

"Legal advice suggests that there is a doubt".

How and when did that doubt come to light?

4189. Ms Fee: It came to light as a result of general work that was done in the area of court funds and other work that was done as part of the procurement process. There was an ongoing discussion with legal advisers about that, and I think that it was finally determined in February 2010. At that point, the deduction of stockbrokers' fees from court funds ceased. Payments for stockbrokers' advice is currently being paid by the Northern Ireland Courts and Tribunals Service, and will be until the matter is resolved. It will be resolved either through a declaration in the High Court saying that the practice is permissible and can continue or a provision in the Bill providing sufficient legislative authority to make the deductions.

4190. Mr McCartney: Will the money that was paid prior to February 2010 be paid back to the clients?

4191. Ms Fee: That will have to be considered in light of the terms of the judgment. It is a very valid consideration. If the payments were not permissible without express statutory authority, we would be looking at refunds and would have to calculate the interest payments, etc.

4192. Mr McCartney: Has the practice been in place since 1978?

4193. Ms Fee: No, it began in 1996, so it was in place from then until February 2010.

4194. Mr A Maginness: What happened before 1996?

4195. Ms Fee: I do not know the answer to that.

4196. Mr Ronaldson: We still invested in various equities and gilts prior to that, but there were no stockbroker management fee charges at that time. It was only in 1996 that they commenced the payment of stockbroker fees.

4197. Mr A Maginness: What was the reason for that — high demand?

4198. Mr Ronaldson: I cannot tell you that, because I am not aware of the reasons.

4199. Mr A Maginness: An awful lot of money — £260 million — is involved here. The fees seem very substantial, but maybe they are not that substantial in comparison with the £260 million. However, they are over £300,000, which is a charge on the Courts and Tribunals Service at the moment, and they could go up to £500,000. What sort of charge is there for investing funds for individual plaintiffs?

4200. Ms Fee: The stockbroker's charge is a percentage rate of the individual investment and is competitive in comparison with the rates for other private investments. I cannot really go into detail about the precise percentage because that is commercial in confidence. However, if the Committee wants me to write to it to let it know what the percentage rate is, I can do so.

4201. Mr A Maginness: Can you give us a percentage for the individual amounts being invested?

4202. Ms Fee: As you say, the Court Funds Office manages around £260 million worth of funds. About £169 million of that is subject to stockbrokers' advice for around 4,850 clients. We are satisfied that the percentage that the stockbroker levies for an individual portfolio is a competitive rate and is not disproportionate in any way.

4203. Mr A Maginness: That money comes out of the compensation money that a person receives, so, at the end of the day, that person is not really getting the full amount when their money matures. For example, someone who gets £10,000 in compensation would get that amount with interest but minus charges.

4204. Ms Fee: That is right. The alternative, however, would be either to leave the amount invested in cash deposits or to have the state pay for the services of the stockbroker. In principle, we consider it appropriate that the person who uses the service should meet the costs of that service rather than the public purse having to do so.

4205. Mr A Maginness: I take your point. I am not so sure that I agree with it, but I understand what you are saying.

4206. The Chairperson: The briefing paper states that, if the High Court rules that previous reductions were unlawful, the Courts and Tribunals Service could be landed with a bill of £2·5 million.

4207. Ms Fee: The figure of £2·5 million is approximate, because we are undertaking a rigorous audit to ensure —

4208. The Chairperson: Where do you see that £2·5 million coming from?

4209. Ms Fee: Provision for that will need to be made within departmental budgets. We have alerted the Department to the issue.

4210. The Chairperson: Are you saying that provision has been made within the budget or that it will have to be made?

4211. Ms Fee: I am not sure whether it has been made or whether it will have to be made, but the Department is aware of it in its financial forecasting.

4212. The Chairperson: The loss of £2·5 million would drive a substantial hole in any budget, would it not?

4213. Ms Fee: It is a significant amount of money.

4214. The Chairperson: Carál Ní Chuilín, you wanted to ask a question.

4215. Ms Ní Chuilín: That is the question that I was going to ask. If you stop reading my mind, I will finish the other half of the question I was going to ask. [Laughter.]

4216. Mr A Maginness: That shows you how close the DUP and Sinn Féin have become.

4217. The Chairperson: It just shows you how we try to pre-empt everything.

4218. Ms Ní Chuilín: Perish the thought.

4219. The amount of money is significant. You are saying that you are not sure whether that money has been set aside in the budget yet.

4220. Ms Fee: I am sorry; I cannot say whether it has been set aside, but I can confirm that for you later.

4221. Mr Johnston: Of course, as yet it is only a contingency, because it very much depends on the outcome of the application to the High Court.

4222. Ms Fee: That is right. There is a possibility that the High Court will rule that the previous practice was permissible, in which case the question of refunds will not arise. We will proceed to make the application to the High Court within the next couple of months.

4223. Ms Ní Chuilín: If the High Court decides that it was not the right thing to do, we are going to have to amend the Bill to include a provision that was not consulted on in order to ensure that funds can be deducted. One way or the other, money will have to come out of the public purse to pay people back the money that they are owed. Will they also be paid compensation?

4224. Ms Fee: I think that it would be a case of restitution. However, I should say that the deductions were made with the approval of a court order. I do not want to leave the impression that they were not.

4225. Ms Ní Chuilín: I understand that. Thank you.

4226. Mr McCartney: How did this come to light? Did someone make a challenge?

4227. Ms Fee: No; I think it came to light because of a review of general court funds practice. The issue was triggered by internal consideration and then investigated.

4228. Mr McCartney: Why is it being presented to the High Court? If it came to light as part of an internal review and you think that it is not the correct thing to do, why not just —

4229. Ms Fee: We think that there is a doubt. As was said, £2·5 million — or approximately £2·5 million — is a significant sum of money, and that liability would lie with the taxpayer. Again, I stress the point that I just made: the deductions were made with the approval of a court and under the authority of a court order. Before we can say that the money should be paid back, we need legal clarity on the issue, and a declaration from the High Court will provide that clarity.

4230. Mr McCartney: So when the court was making the order to invest the money, it was not sure that what it was doing was proper?

4231. Ms Fee: No; I think that the court must have construed that the approval that it was giving for the deduction of funds was within its powers.

4232. Mr McCartney: Then someone discovered that it may not be. It just seems to be a bit odd.

4233. Ms Fee: I understand that, but, at the same time, I think that it is possible to construe a provision as entitling two different approaches.

4234. Mr McCartney: Who made the judgement that the matter should be contested in the High Court? Did that happen because there was a doubt?

4235. Ms Fee: It was because of the doubt and the issue of restitution from the public purse. There are accounting issues involved as well, and before proceeding to make a judgement that would disturb previous court practices, I think it is a valid approach to take an application to the High Court.

4236. Mr McCartney: There was a review of this around February 2010, and that was the conclusion.

4237. Ms Fee: I do not think the conclusion, at the point, was that the application would be made to the High Court. What was concluded in February 2010 was that there was sufficient doubt for the practice to stop until there was further consideration of what the next step should be.

4238. Mr McCartney: However, when it was initiated, no one thought that the doubt was there.

4239. Ms Fee: I cannot speak to that from personal knowledge, but I think the matter came to light in the context of a wider review.

4240. The Chairperson: Where did the advice come from originally that said that what was done in the past may not have been right and that there may be a bill for reimbursement coming down the track?

4241. Ms Fee: As I said, there was a review of general court funds practice, from which the issue came to light. Then, I believe, we sought —

4242. The Chairperson: Who brought it to light?

4243. Mr Ronaldson: We were undergoing a process of modernisation in the Court Funds Office. A modernisation project group was involved in the procurement exercise with the stockbroker, and it was during that procurement exercise that there was a review of the legislation to

determine what we could and could not do within the bounds of the stockbroker contract that we were going to award. That is when the first doubts arose.

4244. The Chairperson: Your paper also states that stockbrokers are the best people to advise on investment. Have I read that right?

4245. Mr Johnston: This was essentially a legal rather than a financial issue. In fairness, everyone has assumed that this power existed for a lot of years. The then Court Service and the Court Funds Office assumed that, and it was only when the review was carried out that we realised that there was some doubt about it.

4246. The Chairperson: Will a lot of people also have assumed that the Court Service would get it right?

4247. Mr Johnston: It is not yet clear whether anybody has got it wrong.

4248. The Chairperson: You are the folk who have put the question mark over it; not us. Therefore, you are not totally satisfied that you have got it right. I accept that you have not admitted that you have got it wrong.

4249. Ms Fee: As we said, there is room for doubt about the interpretation of the provision, but again, it is important to stress that it was not only an issue for the Court Service. The actions that the Court Funds Office took were under the approval of a court order, so it was also the perception of the court ordering the deduction that that was also within their powers at that time.

4250. The Chairperson: Do you expect a ruling on this in the near future?

4251. Ms Fee: We have yet to make the application to the court. It is hoped that that application will be made in the next month. We have made provision in our budget to continue to pay the fees that are due this year for the first quarter of 2011-12, so we anticipate that the matter would be resolved either by the declaration or by commencing this provision if it is enacted within that time frame.

4252. The Chairperson: Have you discontinued the practice in the meantime?

4253. Ms Fee: Yes; the practice was discontinued as of February 2010.

4254. The Chairperson: So, you had sufficient concern to discontinue it. I know that you have not accepted that there may something wrong, but you were sufficiently concerned to discontinue it.

4255. Ms Fee: Yes; and we are also sufficiently concerned to feel that there needs to be legal clarity on it, and that is why the accountant general will bring the application to the High Court.

4256. Mr O'Dowd: It is the High Court part that I want to query. Are you bringing yourselves to court?

4257. Ms Fee: It is not unusual to approach the High Court for a declaration to set out what the actual terms of a legal provision or practice are. Yes, I —

4258. Mr O'Dowd: Sorry; is that like a judicial review?

4259. Ms Fee: It is akin to a judicial review, but you are basically approaching the High Court to ask it to state whether a previous practice was permissible within the terms of the legislation. Part of the declaratory jurisdiction of the High Court is saying what the law is, what it means and what can be done under a certain provision.

4260. Mr O'Dowd: I just want to get this clear in my own head. Will there be a hearing with argument and counter-argument?

4261. Ms Fee: It will probably be done on the basis of an affidavit, but we will make the application. We are in contact with the official solicitor, who will act as the contradictor to the arguments that we will put forward. She will act, therefore, on behalf of the people whose funds are affected, and can put to the court reasoned arguments as to why the arguments that we put forward should not be accepted. It is also possible that the Attorney General may intervene in the proceedings or act as what is known as an amicus to the court to provide additional legal argument where necessary.

4262. Mr O'Dowd: You have not made the application yet. What will be the timescale between the application being made and a finding or decision?

4263. Ms Fee: We are hopeful that the matter will be resolved in the first quarter of the 2011-12 financial year.

4264. Mr O'Dowd: As you know, we have just gone through the Department's budget. I do not recall any such provision in that budget. However, if memory serves me right, there is a £5 million slush fund sitting to one side. Maybe it is unfair to mention that to you as you do not deal directly deal with the Department's finances, but we will wait to see what happens.

4265. The Chairperson: OK, Mr O'Dowd. Are you finished?

4266. Mr O'Dowd: Yes, I learned something new today.

4267. The Chairperson: It is always a poor day if you do not. I thank the officials for coming. Are members content with the proposed new clause as it has been outlined?

4268. Ms Ní Chuilín: I am not sure.

4269. The Chairperson: Do you want more time to think? On reflection, it might be appropriate if we return to this issue on Tuesday. That will give members time to consider it. Are members content with that approach?

4270. Mr O'Dowd: I agree with that approach, but we may be in a position where we are making new legislation, a hearing will be going on in court and the judge could come to a ruling that is contradictory or adds new light to the clause that we are looking at. We may be putting the cart before the horse.

4271. The Chairperson: You can make this decision on Tuesday rather than today, but is the inference that you do not think that the new clause is appropriate at this particular time?

4272. Mr O'Dowd: It is certainly something worth thinking about.

4273. The Chairperson: We can think about it until Tuesday and decide then. Did you want to say something, Gareth?

4274. Mr Johnston: To address Mr O'Dowd's point: we will commence the clause only if it is needed.

4275. Ms Fee: If we did not proceed to include this provision in the Bill and the High Court were to rule that the previous practice was not permissible, not only would the restitution have to be paid out of the public purse, but either the practice of engaging stockbrokers would have to cease or meeting their fees would have to come out of the public purse. So, we fully recognise that there is a possibility that including this provision in the Justice Bill may not be necessary.

4276. However, what I can say to the Committee is that, if we miss this legislative window, it is likely to be more costly to the public purse in the event that the High Court rules that the previous practice was not permissible. Also, depending on the terms of the High Court judgement, it may not be necessary to commence the provision. We will, of course, continue to liaise with the Committee about the proceedings that are going to be taken in the High Court. Any decision on commencement can be made in light of the terms of the High Court judgement.

4277. Mr O'Dowd: If we adopt the clause as set out before us and it is there for a commencement Order, can we then amend the clause to bring it into line with a High Court ruling that may shine new light on the matter? If something occurred that we had not considered, for example, if money was paid out and there was no clause in the first place, the High Court might take a look at it and, after it has heard all the arguments, decide that it believes that to be legal, but that you must do A, B and C. What do we do if that has not been included in the clause?

4278. Ms Fee: As with all such matters, there is always a possibility; however, that scenario is unlikely. The clause is drawn in broad terms to allow the deduction of fees from court funds, basically, to fill the potential legislative gap that exists. It would be possible if the High Court gave a declaration that indicated that certain administrative practices needed to take place. That could be supplemented by guidance, which could be developed and followed. The Department would not, in any way, seek to act in contravention of any guidance that is given by the High Court as to what should be done. Given the way that the clause is drawn, I do not believe that a scenario is likely to come from a High Court judgment that would necessitate the amendment of the clause. However, you are correct to say that, as the Bill stands, the ability to amend the clause when it is enacted is not there.

4279. The Chairperson: Having heard the additional information and asked questions, are members still content that we park a decision on the clause until we meet on Tuesday, when, I am sure, we can deliberate on it further?

4280. Mr McCartney: Is it possible to get a copy of what that amendment would replace?

4281. The Chairperson: I see nods all round. Can we have that for Tuesday's meeting?

4282. Ms Fee: Yes.

4283. The Chairperson: Thank you.

4284. We will move on to the next issue, which is solicitors' rights of audience. The departmental officials will outline the proposed amendments, after which representatives from the Law Society will give their views on the amendments. Finally, departmental officials will come back to the table to respond to the issues raised by the Law Society and to take any questions. The Department's briefing paper is included in members' packs. Two of the officials are staying, and I welcome Robert Crawford and Maria Dougan, who are joining us. Folks, I will hand over to you.

4285. Ms Fee: At the outset and in the interests of transparency, I should highlight that I am a barrister by training, although I have not been in private practice for around 20 years.

4286. The Committee will be aware that the Minister had previously signalled his intention to bring forward provisions in the Bill that would extend solicitors' rights of audience in the High Court and Court of Appeal in Northern Ireland. Unfortunately, those provisions were not settled in time to be included in the Bill on its introduction. The Minister had indicated his intention to bring forward those provisions by way of amendment at Consideration Stage.

4287. As the Committee will have noted from the briefing paper, solicitors in Northern Ireland have unlimited rights of audience in the Crown Court, County Court, Magistrate's Court and tribunals. However, restrictions are placed on the rights of audience of solicitors in the High Court and Court of Appeal. The proposed clauses are intended to remove those restrictions and, therefore, give effect to recommendation 41 of the Bain report on the regulation of legal services in Northern Ireland, which was published in November 2006. Bain recommended that a suitably qualified solicitor who had undertaken the necessary advocacy course should not be constrained from appearing as an advocate in the higher courts. The Bain report also placed an important caveat on that recommendation, namely that a solicitor should be obliged to make clear to the client where any additional fees would be earned by that solicitor for representation and that there was the alternative of using a barrister.

4288. In developing a clause to give effect to the Bain recommendation, the Department liaised closely with the Attorney General's office and has taken into consideration the views of key stakeholders. We believe that the proposals that are before the Committee give the public a wider choice of legal representation and enhance the provision of legal services in Northern Ireland.

4289. In overview, the clause creates a system of authorisation by the Law Society for solicitors who wish to exercise rights of audience in the High Court and Court of Appeal by making various amendments to the Solicitors (Northern Ireland) Order 1976. The clauses would also amend the Judicature (Northern Ireland) Act 1978 to provide that a solicitor who holds such an authorisation shall have the same rights of audience in the High Court and Court of Appeal as counsel.

4290. The framework for the authorisation scheme contains provision designed to ensure that standards of advocacy are maintained in the higher courts. The Law Society will be required to make regulations that will prescribe the education, training or experience requirements that a solicitor must meet before authorisation to appear in the higher courts can be granted. Those regulations may also provide that a solicitor who has completed such training, education or experience shall be taken to hold such authorisation. Those regulations will require the concurrence of the Lord Chief Justice as well as the concurrence of the Department after consultation with the Attorney General. In addition, the Law Society must maintain a register of authorised solicitors.

4291. In designing the framework for those arrangements, the Department has also been mindful that solicitors enjoy direct access to the public, while the Bar is a referral profession that depends on instructions from solicitors. Therefore, the clauses amend the Solicitors (Northern Ireland) Order 1976 to include measures that are aimed at ensuring that competition for advocacy is maintained and that the potential for perceived conflicts of interest is minimised. Those measures will include the creation of a duty for a solicitor, where he is minded to use an authorised solicitor to represent a client in the High Court and Court of Appeal, to advise the client in writing of the options available for representation; a duty to act in the best interests of the client and to give effect to the decision of the client; and a duty to inform the court that the client has been advised accordingly. The clauses also make provision for a complaint to be made

to the Solicitors Disciplinary Tribunal where there has been an alleged breach of those requirements.

4292. The clauses also contain some technical and ancillary amendments that I will highlight. The clauses give the Department an Order making power to make technical amendments to certain legal aid primary legislation to take account of the extension of solicitors' rights of audience. Those Orders will be subject to the negative resolution procedure. They also make a technical amendment to the County Courts (Northern Ireland) Order 1980 to remove a restriction that prevents a solicitor being retained by another solicitor as an advocate.

4293. The rights of audience proposals have been subject to an equality screening exercise that did not identify any adverse impacts for section 75 categories. The proposal was also part of the equality impact assessment (EQIA) on the Justice Bill. Two responses were received on the proposals, which welcomed the extension of solicitors' rights of audience as giving the public a wider choice of representation. The Law Society also responded, expressing disappointment that the provisions had not been included on introduction and requested that amendments should be introduced at a suitable juncture.

4294. A final technical point that I should bring to the Committee's attention is that the Secretary of State's consent has been granted for the amendment to the Extradition Act 2003, which is an excepted matter under the Northern Ireland Act. The amendment, which will be made by Order, will amend section 184 of that Act, which relates to the granting of free legal aid in extradition proceedings as a consequence of the extended rights of audience provisions.

4295. We welcome any comments, and we are happy to take questions.

4296. The Chairperson: Thank you. How do the clauses differ from the original clauses that you intended to bring?

4297. Ms Fee: The clauses have been the subject of a lot of discussion with the Attorney General's office in light of the concerns that he expressed about the interface with competition law. In particular, he considered that the safeguards that we provided were not sufficiently robust. Consequently, we developed certain safeguards in and around the training and experience requirements in particular and how they would be provided for so that any regulations in that regard would be made subject to the concurrence of the Department. The intention underpinning that was to ensure that, as a wider public interest was engaged, the Department would be involved in considering that that wider public interest was met when the concurrence was being given.

4298. Additionally, there were concerns around the competition issues where there could be a perceived conflict of interest with a solicitor, who has direct access to the public, potentially being able to influence the choice of representation. Therefore, it was considered that certain duties should be imposed on solicitors to ensure that full advice as to the choice of representation would be given to the client. The duties and the regulation making requirements have been strengthened in the clauses.

4299. The Chairperson: There was considerable discussion on the training and whatnot in the past. To what degree, if any, has that been changed or is it likely to change?

4300. Ms Fee: The training and experience requirements will still be prescribed in regulations issued by the Law Society, because it is well placed to determine what matters a solicitor should be qualified in before being able advocate in the higher courts. However, we are keen to ensure that advocacy standards are maintained in the higher courts, and, therefore, we have provided a

concurrence role for the Department, after consultation with the Attorney General, before those regulations can be commenced.

4301. The Chairperson: If my memory serves me right, there was a concern about the perception — I suspect that it is more than a perception — that the solicitor is the gatekeeper in all this. Is there any change to that?

4302. Ms Fee: Yes. We have provided that, where a solicitor is minded to engage an authorised solicitor to provide representation in the High Court or the Court of Appeal, he will be under a duty to advise the client in writing about the advantages and disadvantages of his choice of representation, outline that there is a choice and confirm to the client that the choice of representation is solely for the client. The nuts and bolts of what will be included in that advice can be prescribed in regulations to be made by the Law Society. Again, to ensure that the wider public interest is taken into account, we have also, after consultation with the Attorney General, provided the Department with a concurrence role. In addition, the solicitor will be under a duty to act in the best interests of the client in providing that advice and will also be required to notify the court when that advice has been given.

4303. The Chairperson: He is already under that duty, is he not?

4304. Ms Fee: A solicitor is under a general duty to act in the best interests of the client. When framing the clauses, it was considered, because of the wider public interests and because of the perceived risk of conflicts of interest in providing that advice, that the duty would be set out again and made specific to the provision of advice on that issue.

4305. Mr McCartney: I have two broad questions. I have not read — and will not pretend to have read — the Solicitors Order 1976, so I say this in ignorance. The briefing document says that the regulations are subject not only to the concurrence of the Lord Chief Justice but to the concurrence of the Department, which must consult the Attorney General. I assume that the Committee will have a scrutiny role to play around the regulations?

4306. Ms Fee: No. The regulations under the Solicitors Order govern the practice and conduct of the profession. They are professional regulations and, therefore, are not the type of regulations that are, ordinarily, subject to Assembly scrutiny. Most regulations that are made under the Solicitors Order relate to matters such as advertising, the way in which a solicitor issues fees and general issues on the regulation of the profession. Those regulations are made by the Law Society and are subject to the concurrence of the Lord Chief Justice. For these regulations, because there is a wider public interest issue, we considered that it is appropriate to leave the regulation making power with the Law Society but to add in ministerial concurrence after consultation with the Attorney General. The exercise of the ministerial function is, of course, subject to the scrutiny of the Justice Committee.

4307. Mr McCartney: The briefing document says that the Law Society is required to make regulations on the education, training and experience that a solicitor must possess before authorisation can be granted. Are you saying that this Committee will have no scrutiny role to say whether we feel that that is appropriate or inappropriate?

4308. Ms Fee: The Bain review on the regulation of legal services in Northern Ireland reported in 2006. The Executive endorsed the broad thrust of that review, although proposals have yet to be brought forward to give effect to it. The Bain recommendations were adopted, and those found that the professions should be allowed to continue to self-regulate and that that was appropriate. So, Bain did not recommend that the Assembly should be involved in the making of solicitors' regulations. We have been consistent with the spirit of Bain in that the power to make those regulations will stay with the relevant professional body. However, what we have sought

to do, where wider public interest is engaged, is to make provision for ministerial concurrence after consultation with the Attorney General.

4309. Mr Robert Crawford (Northern Ireland Courts and Tribunals Service): One of the reasons why the Department feels it appropriate to have an approval role in the training is that it will make the regulations for legal aid payments. So, it is important for the Department to satisfy the accountability requirement that the training is of the appropriate quality and standard to justify that expenditure.

4310. Mr McCartney: I do not know what the regulations are. However, let us say that one of them is that solicitors should have at least two years' experience. Are you are saying that the Committee should not play a role in scrutinising that regulation and that it should be left up to the Law Society, the Lord Chief Justice and the Minister?

4311. Ms Fee: It is to do with professional regulation, and it is consistent with the Bain recommendations. An independent review of the regulation of legal services in Northern Ireland was undertaken, and that was the conclusion of the report, which was endorsed by the Executive. As I said, we departed from that slightly but not fundamentally.

4312. Mr McCartney: Gareth will know that there has been wide public consultation on every aspect of this Bill right throughout. Therefore, will those groups that made valuable contributions on all the other clauses be brought back into the process and be consulted about the late inclusion of this clause in the Bill or will this remain basically a three-way process between us, the Law Society and the Bar Council. Should we be seeking other views?

4313. Ms Maria Dougan (Northern Ireland Courts and Tribunals Service): We initially conducted a targeted consultation on those clauses and proposals through the Bain recommendations, and the Bar and the Law Society were heavily involved in that. Last March, we also conducted a targeted consultation on our proposals, and we engaged with both professions throughout the drafting process for the clauses.

4314. Mr McCartney: What about other stakeholders, such as the Probation Board, and the many others who made valuable contributions to the process?

4315. Mr Johnston: I think that I am right in saying that our original plans for the original clause were included in the equality impact assessment on the whole Bill, which was put out to wider consultation.

4316. The Chairperson: What we are hearing today is that you have been consulting organisations such as the Law Society and the Bar.

4317. Ms Fee: There have been ongoing discussions. The development of those clauses has taken place over a period of time.

4318. The Chairperson: Sorry, I do not understand. We are getting this today. What was the period of time? Was it last week or the week before? I am talking specifically about the new clauses in front of us.

4319. Ms Fee: The new clauses before us were shared with the Bar and the Law Society last week.

4320. The Chairperson: They were shared with the Bar Council last week?

4321. Ms Fee: I believe that the letter did not issue until Monday, but the intention was to issue it as promptly as possible after the clauses went to the Committee.

4322. The Chairperson: So, was there a full consultation with the Bar Council?

4323. Ms Fee: There has been ongoing consultation on the development of the clauses that have been settled for presentation to the Committee. Those clauses were only settled in time to go to the Committee last week, and thereafter, they were issued to the Law Society and to the Bar.

4324. The Chairperson: Do you want to disclose what they said to you? Were they thrilled about the whole thing? Did they say that it was a good idea?

4325. Ms Fee: No; the Law Society wrote to us yesterday evening making representations on the clauses. I do not know if the Committee has had sight of that letter. I could address the points raised by the Law Society now, but I presume that the Law Society will want to make a presentation to you on those, after which I could answer any points. The Bar Council also wrote to us recently about our proposals. There were ministerial meetings with the Bar Council and the Law Society on the proposals in the middle of January. We sought to keep the Bar Council and the Law Society informed on progress as the clauses were being developed, and we have taken on board representations from both professional bodies in the development of the clauses.

4326. The Chairperson: You have taken those on board in your final findings?

4327. Ms Fee: Yes.

4328. Mr McCartney: I want to go back to the consultation process. I do not want to labour the point, but, at each stage of the Bill, observations about the provisions have been made by people who, from a distance, may seem like they have no reason to make an observation, but they have. What provision has been made for other organisations, not just people who may have a vested interest — I use that term loosely — to guide us on whether it is the right thing to do?

4329. Mr Johnston: In the consultation on the equality impact assessment, which, as you know, went out to about 300 interested parties, only a couple of respondents commented on that area. They welcomed the extension of solicitors' rights of audience as it would give the public a wider choice of court representation. One respondent welcomed the provision as enhancing the opportunity for disabled people to be legally represented by someone who understands their disability. Indeed, one respondent expressed disappointment that it had not made it into the Justice Bill. The views that we were getting back from the wider community were certainly supportive.

4330. Mr McCartney: Yes, but the clauses were not introduced at that stage. They are now being introduced.

4331. Mr Johnston: We had said at that stage that we intended to make provision for solicitors to have rights of audience in the higher courts. That was before we realised that there were competence difficulties that we needed to work our way through. However, we were signalling the intention at that stage. We were not giving the exact text of the clause that you and I have before us, but we were essentially saying what it would do.

4332. Mr A Maginness: Does that apply to the Court of Appeal in its exercise of its criminal jurisdiction?

4333. Ms Fee: Yes, it applies across the board to the High Court and the Court of Appeal.

4334. Mr A Maginness: The briefing paper states:

"Implementing the rights of audience provisions has no cost implications for the legal aid fund."

How do you come to that conclusion?

4335. Ms Fee: Our understanding is that it should be broadly cost-neutral to the legal aid fund.

4336. Mr Crawford: That is right. We have not yet drafted regulations because we are going out to consultation on what those regulations might say, but our expectation is that, when a solicitor acts in the role of counsel in the higher court he would replace that counsel, so there would not be a higher cost. In most cases, we anticipate that the fee will be about the same.

4337. Mr A Maginness: So there will be no enhancement?

4338. Mr Crawford: There will be an enhancement of what the solicitor would receive at present. Obviously, in the higher courts, that is not really a fee.

4339. Mr A Maginness: But it would not be additional?

4340. Mr Crawford: No, because one fee would replace another.

4341. Mr A Maginness: The other point that I wanted to raise was about training. How long does it take to train a barrister?

4342. Ms Fee: There is the degree requirement, which is currently three years, the institute course, which is a year, and then the non-practising pupillage for a year.

4343. Mr A Maginness: So that is two years.

4344. Ms Fee: It is two years post-law degree.

4345. Mr A Maginness: How long do you envisage that it will take to train a solicitor advocate?

4346. Ms Fee: The training regulations have not yet been made.

4347. Mr A Maginness: But how long do you anticipate that it will take?

4348. Ms Fee: We have not turned our mind to that.

4349. Mr A Maginness: Will it take a year? Two years?

4350. Ms Fee: We have to discuss that with the Law Society, because the power will be vested in the Law Society to set the training and experience requirements for a solicitor advocate. The Department will be alert to considerations in the public interest, given its concurrence role. As you are aware, some solicitors currently undertake the advanced advocacy certificate, which entitles them to payment of an enhanced fee. That course is in two stages and is focused around evidence exams, which last a couple of days, and a week's intensive training, at the end of which they are required to undertake a mock trial in front of a Crown Court judge. Those are the training requirements that the Law Society has set.

4351. Mr Crawford: From a legal aid perspective, my understanding is that, in the Crown Court, we currently provide a fee for solicitor advocates. The advanced advocacy course is the training

requirement to attract a higher fee. You can, by all means, check that with the Law Society when it gives evidence. My understanding from the Law Society is that a solicitor cannot take the advanced advocacy course unless they have done three years' practice.

4352. Ms Fee: I think that it might be two years.

4353. Mr A Maginness: The Chairperson referred to solicitors as being gatekeepers, but is it not appropriate to say that, in this instance, they are self-interested gatekeepers? For example, if I were a solicitor representing Lord Browne and I were to say to him that I had a very fine man or woman in my office who is a solicitor advocate and that Lord Browne really would like that person to represent him in the High Court —

4354. Lord Empey: If he got a ticket for parking on a double yellow line, he would get six months.

4355. Ms Ní Chuilín: You only get that for stealing jeans.

4356. Mr A Maginness: In that situation, I, as the principal in the firm of solicitors, would get the fee because I would have got the man or woman to represent Lord Browne, and I would not have gone out my way to dissuade Lord Browne and to tell him that he might be better off getting a barrister to represent him because the barrister has plenty of experience and knows the ropes. It is a bizarre concept that one would go along with a page or two of written descriptions of the advantages and disadvantages of representation by an authorised solicitor and by counsel respectively. It is a nonsense, given that the solicitor is so self-interested.

4357. Ms Fee: We have recognised the risk of self-interest and have sought to put in place sufficient safeguards. The provisions are drawn largely from provisions that exist in Scotland, where there are requirements to advise the client of the advantages and disadvantages of their choice of representation. We have gone further than the provisions in Scotland by requiring that that advice should be provided in writing. We have gone further than in Scotland by requiring that a notice be submitted to the court to confirm that that has taken place. We have gone further than in Scotland by setting out clearly in the primary legislation that the duty to act in the best interests of the client relates specifically to the provision of that advice.

4358. In that package of measures, we have tried to ensure that the risks of someone acting in self-interest are minimised while giving effect to the Bain recommendation that said that there was no reason why a suitably qualified solicitor should not have those rights of audience in the higher courts.

4359. Mr A Maginness: The English experience is that the Public Accounts Committee criticised the system because it reduced the quality of representation not in the High Court or the Court of Appeal but in the Crown Court.

4360. Ms Fee: Again, the situation in England and Wales, as I understand it, is that there is only a general duty in a code of conduct to act in the best interests of the client. There is no duty to provide advice in writing, and there is no duty to inform the court. Additionally, we have sought to ensure that there are no issues over the standard of advocacy in the higher courts by providing that training requirements specified by the Law Society will be outlined in regulations that will be subject to the concurrence of the Department after consultation with the Attorney General. We have sought to ensure that advocacy standards are maintained and that conflict of interest is minimised. That will allow the Law Society the flexibility to provide the detail of the regulations while ensuring that the core details are in primary legislation and that there is ministerial concurrence where required. That package strikes the balance.

4361. Mr A Maginness: Could I just declare my interest?

4362. Lord Empey: What is that? [Laughter.]

4363. The Chairperson: There are two names before me for questions. However, I will stop after that, because the officials will be coming back to the table later. Therefore, if you feel that you did not get a chance to ask your question now, you can ask it then.

4364. Lord Empey: I understand that the Attorney General was initially quite exercised about this. What has occurred to mollify his stance?

4365. Ms Fee: The Attorney General was concerned about the implications for compliance with EU competition law, particularly the Provision of Services Regulations 2009, which implement the EU services directive. In particular, he was concerned that, where the provider of a service creates an authorisation scheme, that scheme should in no way discriminate, in EU terms, against the provider of another service. He was concerned that, as Mr Maginness outlined, because of the direct access issue for solicitors to the public and the Bar being a referral profession, it would be necessary to protect against conflicts of interest and maintain effective competition for advocacy services. In framing the duties to be placed on a solicitor when engaging directly with a client, we have sought to address those concerns because they should ensure that competition is maintained.

4366. Lord Empey: Is the Attorney General now content with the proposals?

4367. Ms Fee: Yes. As I say, he has yet to indicate formally as to competence. However, he has indicated that he is content with the provisions as drafted. That is why the Minister has brought the clauses forward.

4368. Lord Empey: Therefore, although the Attorney General has not formally signed off on them, you expect that he will.

4369. Ms Fee: Yes; I think that that is a reasonable conclusion.

4370. Lord Empey: I have been to the Bar Library, and I know a little about it. Has consideration been given to the impact that the legislation will have on the Bar in the long term? There is a very high level of competition at present, and a significant number of junior barristers are being trained. Can the examples of England and Scotland teach us anything about what percentage of potential advocacy by barristers will be undertaken by solicitors? The clauses must have a significant implication for the choice of profession of those who are graduating or in law school. Unless there is a huge increase in the amount of legal representation required, there could be problems, as the current level of work will now be shared among a larger pool of people. Has consideration been given to the implications for increasing solicitors' workload or diminishing barristers' workload?

4371. Ms Fee: These clauses focus only on extending rights of audience in the High Court and in the Court of Appeal. Solicitors and barristers already compete for work in the Magistrates' Court, County Court and Crown Court. Solicitors have had rights of audience in the Crown Court since 1978 and, since 2005, have been able to claim an enhanced fee. Our figures suggest that only a small percentage of legal aid payments are made to solicitor advocates for work done in the Crown Court. Because of that, our prediction was that the effect on the Bar of the extension of rights of audience to the High Court and the Court of Appeal would not be unduly significant. Furthermore, our view was that any impact would be outweighed by enhanced choice for the client and the enhanced provision of legal services.

4372. Lord Empey: I am reluctant to ask a question that is very hard to answer, because it calls for a prediction. However, for something that is alleged to have relatively modest implications, there has been a fair degree of activity over the last period on the part of the various professional representatives. I am not sure that everybody would see the picture as quite so benign. However, no doubt we will come back to that.

4373. The Chairperson: We will leave it there. I thank the officials for their briefing and their attendance. You will be staying with us because you will be coming back before us a little later.

4374. Members, we will now hear evidence on this matter from representatives of the Law Society. I welcome Alan Hunter, chief executive of the Law Society, and Peter Campbell, chairman of the society's higher rights of audience committee. I will hand over to you, gentlemen. You know the drill by now. We will hear what you have to say on this matter, we will ask questions, and then we will hear the response from the departmental officials.

4375. Mr Alan Hunter (Law Society of Northern Ireland): Thank you for inviting us to appear before the Committee. We are grateful for the opportunity to make representations on proposed Part 8 of the Justice Bill, which shall, if it is enacted by the Assembly, introduce rights of audience for solicitors in the higher courts. As Committee members and Assembly Members will know, this matter has been exercising the Law Society for some time. Indeed, the society has been engaged on the issue with the Committee, Assembly Members, the Minister and the Department.

4376. The first indications from the then Government that they would introduce rights of audience for solicitors in the higher courts were given to the society more than 10 years ago. It has taken a little time for the clauses to be brought forward, and the process has not been without difficulty. Nevertheless, the society is pleased to have reached this stage in the discussion.

4377. I want to introduce, if I may, Peter Campbell. Mr Campbell is an elected member of the council of the Law Society, chairman of our higher rights of audience committee, and a partner in the firm Campbell Fitzpatrick Solicitors, specialising in commercial litigation, mergers and acquisitions, and personal injury litigation. Mr Campbell completed the Law Society's solicitor advocacy course in 2002. You will be aware that that course is run in conjunction with the American National Institute for Trial Advocacy and is highly regarded.

4378. As a matter of public policy, it looks extraordinary to the public that barristers have rights of audience in all courts, while solicitors have rights of audience in some courts, including the most complex trials before the Crown Court, but do not have rights of audience in the High Court or the Court of Appeal. However, in fact, any person — legally qualified or not — may represent himself or herself in proceedings in any court. I understand that there is an increasing trend of litigants in person.

4379. All solicitors have undertaken training in advocacy as part of their postgraduate vocational training. That enables them all to be well trained to appear in the courts where they presently have rights of audience.

4380. It is clear that the society considers that the introduction of rights of audience is in the public interest, as well as in the interests of the profession. The provision will enhance clients' choice and, as the draft legislation makes clear, it will allow the client to determine who he or she wishes to represent him or her in the proceedings. The society considers it a fundamental choice that should be open to the citizen.

4381. As I said, it is interesting to note that, while members of the public in England and Wales, the Republic of Ireland and Scotland have all hitherto had this choice, it has been denied to the citizens in this jurisdiction. It may well be that a member of the public would prefer to be represented by their solicitor or by a solicitor connected by the firm that they routinely instruct.

4382. To look at it from a purely human point of view, take, for example, a sensitive family situation. There may be a difficult background or story to tell, and a high degree of trust and confidence may have been built up between the client and the solicitor. Perhaps the Committee can see that, in such circumstances, the client may have built up confidence in a solicitor and might, naturally, wish that solicitor to make the case to the court on their behalf rather than have to meet another person about very personal issues and have to repeat their story again.

4383. However — this is an important point — that will always be subject to the solicitor's overriding duty to act in the client's best interests. That duty includes providing advice on who is best placed to represent the client in court. That is already part of a solicitor's duty and part of their day-to-day work and advice to clients. The society has no difficulty whatsoever with that requirement continuing, nor do practising solicitors. Fundamentally, that is the present position, and in ethical terms, it will continue. The interests of the client must be paramount, and judgements will be made in individual cases as to what is best for the client.

4384. Members have copies of the society's briefing paper, which was submitted yesterday. I will highlight some of the significant issues that the society invites the Committee to consider.

4385. A significant issue was raised about the absence of any provision to address the lacuna in the Magistrate's Court that would otherwise exist. That relates to the fact that the legislation does not empower district judges in Magistrate's Courts to award a legal aid defence certificate to a solicitor advocate on the same basis as counsel. Since I issued my submission to the Committee, the society has received an assurance from the Department that that matter is being addressed, and you have heard the departmental officials speak on that.

4386. You have already touched on the first and most significant point, which is that the society regards it as entirely inappropriate for the Department of Justice and the Attorney General to have a statutory role in the regulation of the solicitors' profession. Under current arrangements, our regulations are subject to oversight and scrutiny by the Lord Chief Justice. It is a significant departure that the independence of the solicitors' profession may be compromised by a statutory duty to consult both the Minister and the Attorney General.

4387. We make other points in our submission. As regards new draft article 9(a), there may be a need for a definition of legal representation so as to isolate the new rights as compared to the existing procedures. As regards new draft article 40A(2)(a), we are concerned that it may be difficult to determine the advantages and disadvantages of representation by an authorised solicitor and by counsel, and a view may be taken retrospectively on a matter that would perhaps have been unclear at the outset.

4388. As the solicitors' practice regulations already place a general duty on a solicitor to act in the best interests of a client, draft article 40A(4)(a) is not required. There is a requirement in new draft article 40B that a solicitor who is exercising those rights must inform the High Court or the Court of Appeal that he has complied with the legislation. It is an extraordinary proposition to suggest that an officer of the court must inform the High Court or Court of Appeal that he has complied with a duty. It is entirely unnecessary, to put it mildly.

4389. As part of the work that Mr Campbell's committee has taken forward, the society has, some time since, passed a resolution in respect of our policy for solicitors who wish to exercise rights of audience in the higher courts. That was passed to the Department a considerable time

ago. Our policy was determined at that stage to absolutely require solicitors to advise clients about the choice of advocate, including the availability of counsel. It also required that a record of such advice be written and retained on file for inspection. Our policy was, and is, that the client must be informed that the solicitor may receive an additional fee for those services, and that advice is also required to be recorded in writing and made available for inspection.

4390. To ensure continued high professional standards, the society has been developing a code of conduct for solicitor advocates. It has been considering the continued professional development requirement for solicitors and solicitor advocates on an ongoing basis. Its complaint mechanisms are also under consideration so as to ensure that they will be adequate to address the new circumstances.

4391. Solicitors are experienced in advising clients on their options for legal representation generally. Regulations are in place that require solicitors to issue retainer letters to clients upon receiving instructions that set out the work to be done, an indication of the likely fees and the terms of engagement. It is likely that the society will amend that standard letter, which is offered for use by individual solicitors' firms, to include the various additional requirements that will apply to solicitors acting as solicitor advocates in the higher courts.

4392. I want to refer briefly to some of the points that were raised with the departmental officials. The issue of quality was raised, and I am slightly concerned that there is almost a presupposition that the quality of advocacy and representation is dependent on whether someone is a solicitor or a barrister. The society does not believe that to be the case. It considers that, if there is an issue of quality, that issue should be considered against both solicitors and barristers and that a benchmark should be set against which both branches of the profession should be gauged. It is not about the difference between the quality of solicitor advocacy and the quality of counsel. The society considers that that is an entirely erroneous proposition and basis from which to work.

4393. I also want to draw your attention to the proposal that Orders should be made by the Department under the negative resolution procedure. Given the amount of discussion that there has been around these provisions, the society considers that the Committee may want to look at whether it is appropriate for such Orders to be approved by that method.

4394. I want to reserve the position of the society in some respects. We received the proposed new clauses last Friday. Although we have conducted a fair amount of work in preparation for appearing before the Committee today, having heard some of the Department's observations, we may want to come back to you in writing on some points. If we could crave the Committee's indulgence on that, we would be grateful.

4395. Having declared an interest, Mr Maginness made some observations about the potential for a solicitor to have a captive client. I hope that I have addressed the society's policy, which was developed in advance of us receiving the clauses. I also hope that I have given you the assurance that, in any case, the society's regulations would require strong advice to be given to the client.

4396. Let me just quote the Attorney General, who also has a view on this. He is, of course, the leader of the Bar. I am quoting from a 'Belfast Telegraph' article of 30 September 2010. I trust that the paper is accurate — I am sure that it is. The Attorney General said:

"At the same time it has to be acknowledged that you do have a number of solicitors who are experts in their field and where the absolute bar in their participation in advocacy in the higher courts just strikes me as absurd."

4397. Therefore, there seems to be a broad acceptance of the desirability of solicitor advocacy in the higher courts and that there are circumstances in which a client should have that choice open to him or her.

4398. We are available to take your questions.

4399. The Chairperson: Thank you, Mr Hunter. In your paper, you say:

"The Society shall be making observations about the role of the Attorney General in Northern Ireland generally when a suitable opportunity arises."

Would you like to make those observations now?

4400. Mr Hunter: There is a discussion on the remit and role of the Attorney General, perhaps in connection with increased powers for the Public Prosecution Service. So, I expect that there will be a consultation exercise on the role of the Attorney General. The society wishes to reserve its position and to contribute to any such review.

4401. The Chairperson: You also say that it is irregular for the Attorney General to be consulted about Law Society regulations, which is currently the responsibility of the Lord Chief Justice.

4402. Mr Hunter: No; the Law Society regulations are currently made by the council of the Law Society. Once they are made by the Law Society, having previously consulted with the Lord Chief Justice, they are submitted to the Lord Chief Justice for him to concur or not concur. So, he has an oversight role and a very real role in the public interest element of the Law Society's regulations. At present, there is precedent for the Attorney General to be consulted on, for example, some legal aid regulations, but certainly not on regulations that are connected with regulating the solicitor profession.

4403. The Chairperson: You also said that the requirement to consult the Attorney General, although not without precedent, is inappropriate.

4404. Mr Hunter: Yes. There certainly is precedent for the Attorney General to be consulted on, for example, legal aid rates of payment and so on. Historically, he had a statutory right to be consulted on those matters. That is one set of circumstances. However, there is another set of circumstances, namely the training and education of solicitors. Our view is that it is not appropriate for the Attorney General to be consulted on those matters. The oversight and input of the Lord Chief Justice addresses those concerns and considerations, and that is sufficient. So, we draw a distinction between where government is enacting legislation to do with rates of pay and the training, education and regulation of the solicitor profession.

4405. The Chairperson: Your paper also says that the effect of the provisions is to engage the Department of Justice in the regulation of the profession on those matters and that that is a significant departure in the regulation of the legal profession.

4406. Mr Hunter: The legal process has been very carefully considered in the constitutional devolution settlement so that, for example, the independence of the judiciary in courts is enshrined in statute. As a corollary of that, it was accepted by the Governments and, as I understand it, the Executive since, that, equally, there should be no interference with the regulation of the independent profession and that the independence of the profession is required to be recognised.

4407. Under these proposals, the Department will, as I understand it, for the first time, have a statutory role to be consulted on the training of solicitors, albeit solicitor advocates. I am saying that that is a significant departure and would require very careful consideration because, in every other area of the legal process, the political settlement has been such as to preserve the independence of the courts and the independence of the judiciary. If that is important enough, as of course it is, we are moving towards the Department beginning to be involved in the regulation of the profession. I am highlighting that for the Committee's consideration. The society certainly thinks that that is not appropriate.

4408. The Chairperson: Do you believe that the political settlement acknowledges the independence of the judiciary in all its parts?

4409. Mr Hunter: I am sure that there is good deal of discussion on that. All I am saying is that the independence of the judiciary is enshrined in the Justice (Northern Ireland) Act 2002. The precedent and the whole thinking has been to ensure that there is that independence of the legal profession, the judiciary and the courts. Since it applies specifically and directly to the judiciary and the courts, the society would say that the independence of the legal profession — both the solicitor profession and the Bar, although it is not for me to say — needs to be respected. Therefore, that encroachment by the Department is a departure from that. If the Assembly decides to do that, it should do so consciously and be aware of the overall context. The Law Society's position is that it is inappropriate and that the independence of the profession means that the profession should regulate itself.

4410. Mr Peter Campbell (Law Society of Northern Ireland): From a practical point of view, and as practising solicitors, we are always mindful of our position as officers of the court. It is a very onerous responsibility that we take very seriously. The Lord Chief Justice is the most senior judge in the jurisdiction and, as such, it seems entirely appropriate and fair that he oversees the regulations that control solicitors. Therefore, it seems entirely appropriate that he is in that position and is charged with that position, because we are officers of the court. This appears to be a departure from that position.

4411. The Chairperson: I want to ask a question on that point. These are your words, not mine:

"The Society strongly considers that it is entirely inappropriate that the Department concurs in such Regulations."

If it is regulated in this manner, do you believe that there is an unhealthy involvement, political or otherwise?

4412. Mr Hunter: Yes. Obviously the regulations have not been made; there would be discussion and a process involved in that. Therefore, it is very much in the abstract as a term of principle that there is recognition in the Justice Act that the independence of the judiciary and the courts is enshrined. If that is extended by corollary to the profession, can it be right that the Department begins to be involved in the regulation of the profession to the extent of training and so on? That is the issue that I am bringing before you. The professions self-regulate and, as Mr Campbell said, it is not that there is no oversight or no external involvement; there is, and it is subject to the oversight of the Lord Chief Justice, which is sufficient and appropriate.

4413. Ms Ní Chuilín: I do not want to sound like I am splitting hairs, but on the one hand you are clear about the role of the Attorney General with regard to regulations, and you say that it is entirely inappropriate. However, you make the distinction in the next paragraph of your submission, where you state:

"The Attorney General is the advisor to the Executive and the Head of the Department of Justice is the Minister for Justice."

The Minister for Justice is a member of the Executive. Do you not see a contradiction in that?

4414. Mr Hunter: I suppose what I am saying is that the Attorney General's role is to advise the Executive and the Minister. I am sure that the Minister is able to get his legal advice from the Executive on any point that he wants. Our point is that the way in which the profession is currently structured enables the society's council to make its regulations and that is subject to the oversight of the Lord Chief justice. We think that that is the appropriate way to do it.

4415. Ms Ní Chuilín: I want to ask about the equality impact assessment. This part was in the original draft and then it was removed. Had it proceeded, which it did through the passage of an equality impact assessment — even though I have difficulties because it was done in bits and pieces rather than in its entirely — I would not be happy with it at all. However, this proposed amendment will be subject to public scrutiny. Have you any difficulty with that, other than what you said previously?

4416. Mr Hunter: We have no difficulty with public consultation or the public expressing their views; quite the contrary. Every indication we have suggests that this is a choice that we think the public would want to have.

4417. Ms Ní Chuilín: You do not see a contradiction with public consultation. However, your submission states:

"The Society shall be making observations about the role of the Attorney General ... generally when a suitable opportunity arises."

Yet, you feel that his involvement thus far has been inappropriate with regard to regulations.

4418. Mr Hunter: No, because no regulations have been made, and the Attorney General has not yet been consulted. This will create a statutory duty for those regulations to go through a particular process, which is a new process. At the moment, the regulations are made by the Law Society council and overseen by the Lord Chief Justice, who concurs, or does not, as he considers appropriate. Under the new process and provisions, the regulations will have to have the concurrence of the Minister of Justice, who will be required to consult the Attorney General. That is a new statutory process, and it is a requirement. We are saying that we do not think that that is the right process for regulation of the solicitor profession.

4419. Ms Ní Chuilín: It is the imposition of a statutory duty. The Attorney General previously had some role, at least on paper, in respect of the regulations, but he was not really consulted. It is really just the introduction of a statutory duty now.

4420. Mr Hunter: No, because he nor the Minister nor the Department had any role in the regulations at all. Those were for the Law Society council and the Lord Chief Justice. Where the Attorney General and the Department had a role previously was in relation to legal aid payment rates and those kinds of things.

4421. Ms Ní Chuilín: Is that all it was?

4422. Mr Hunter: That is all that it was. This is a new departure. Apart from the fact that the Law Society feels strongly about it, I thought that it was important to highlight that departure to the Committee.

4423. Mr McCartney: I want to make a couple of points about the regulations. Alan, you said that the regulations were sufficient and appropriate as they stand.

4424. Mr Hunter: The process.

4425. Mr McCartney: Even if they are sufficient and appropriate, it does not mean that they cannot be added to. As I read them, the regulations are only a safeguard to ensure that the solicitor advocate will act in the best interests of the client. The Law Society may feel, for example, that it should be a year of practice, but I do not see the independence of the profession or the system in general being undermined by someone saying that it should be two years. I do not see a problem with that person not being part of the Law Society.

4426. Mr Hunter: You talked about a public consultation process and so on, and there is clearly a lot of interest in this. We touched on the training of a solicitor compared with that of a barrister. Solicitors will have studied a law degree for at least three years. They will then have done a two-year sandwich course, partly in a solicitor's office and partly at the graduate legal school at Magee or the Institute of Professional Legal Studies. At that point, they are qualified as newly admitted solicitors. They are restricted from practising on their own and must have continuing supervision for a period after that. As far as the current arrangements on solicitor advocacy are concerned, there is a requirement that solicitors cannot undertake the solicitor advocacy course for a three-year period after qualification. Therefore, it is, in fact, eight years before solicitors are even eligible to do the course, which is a significant period of time.

4427. Mr McCartney: I am not questioning the substance of the regulations in any way. What I am saying is that there seems to be a view that we should have no say in whether those regulations are good, bad or indifferent. If the regulations were presented, we might say that they are excellent and of a high standard. However, there seems to be a view that we should not have any input. I do not think that our involvement would undermine the profession or the independence of the judiciary in any way. Indeed, in many ways, it would strengthen both. It would lay your regulations open to scrutiny rather than the accusation being made that you decide and the rest of us have no say.

4428. Mr Hunter: I accept that that is your position, but it is not our position. We now live in an environment in which I receive regular comments and representations from a range of people. The Law Society, of course, takes those views into account.

4429. Mr McCartney: We are being asked to legislate, yet we have the feeling, rightly, wrongly or indifferently, that somebody is saying that we have to approve their regulations whether we like them or not. That is where I see the gap. We are legislators, and, to legislate, we should be satisfied that the regulations are in line with what are trying to do in bringing about a change in the law. That is why I stress that this is not about the substance of the regulations, nor do I want, in any way, to undermine the society's independence or the independence of the wider judicial system.

4430. Mr Hunter: It is a departure in principle. The Law Society maintains its view. The third point is that the draft clauses go considerably further than some of the other jurisdictions to meet some of the concerns that have been expressed by other parties. The legislation that you are being asked to enact already goes a significant way down that road, but our view is that it is important that the co-regulation of the society and the Law Society's regulations are made by the Law Society's council after concurrence with the Lord Chief Justice and all the other people who are engaged in that process. Some external people are involved.

4431. Mr McCartney: The officials might be able to answer my question, which is on the process. Has the trial judge any role in establishing whether the defendant or the client has been advised properly of his or her rights in selection?

4432. Mr Hunter: It is suggested in the legislation that rules of court, presumably made by the Supreme Court Rules Committee or in the Crown Court, will require to be satisfied that the advice has been given, and the rules of court will make provision to enable the judge to be satisfied about that. As I said in my opening statement, we do not find that to be a realistic proposition. The fact is that clients are advised on a range of issues. If it is a requirement that solicitors advise on choice, they will, of course, do so.

4433. As I said also, it was already settled Law Society policy that, when those rights of audience were introduced, it would be a requirement that solicitors would advise on choice between solicitor and counsel, that a note would be made of that in writing and that it would be available. Therefore, we believe strongly that that is important, and that is our policy. The legislation goes one bit further and says that the fact that that has been done has to be verified to the court, and the manner in which it is to be verified is to be determined by the Rules Committee. We think that that is unnecessary.

4434. Mr McCartney: Do you think that it is unnecessary that the trial judge satisfies himself or herself that —

4435. Mr Hunter: We think that it is unnecessary because we question why that is picked out rather than any other piece of advice that the solicitor gives to the client.

4436. Mr McCartney: When the officials said that the client has to be advised in writing, it struck me that, when we went to Hydebank Wood, we were told that 70% of the people there do not have level 1 literacy. I say that without prejudice.

4437. Mr Hunter: That point also occurred to the society, and it is why so much advice, particularly perhaps in criminal matters, is given verbally to clients.

4438. Mr P Campbell: There is a second branch to the obligation in the regulations to advise the client in writing. That is that the choice of advocate, be it an authorised solicitor or counsel, is the choice of the client alone. That must also be confirmed. That would take care of the informed consent, as opposed to a written document, which is a quite separate requirement from the obligation to inform the court as to the compliance with that obligation. So, there are two separate strands there.

4439. Mr McCartney: How would that be done in a practical sense? Would the best person to confirm that not be the trial judge? If that were in place for a trial judge to satisfy himself that a person has been —

4440. Mr P Campbell: That is a different matter, because the obligation to advise the trial judge that the written requirement has been complied with would not necessarily deal with the understanding of the client. It may be a separate matter in which the trial judge could inform himself or satisfy himself as to the level of understanding of the informed consent. My response to you was simply that the requirement on the solicitor to advise the client in writing is a two-tiered obligation to do so in writing and then inform the court that the choice of advocate is the client's alone. That, to me, suggests an informed consent, if the person has made a choice. It was just in response to that point.

4441. Mr McCartney: I am talking about independent verification. If people have a view, as articulated by Mr Maginness — self-interest, etc, etc — then if the trial judge asks someone at

the start of the proceedings if they are satisfied that they have been well advised, and outlines their rights, opportunities or choices, and the person says yes, in your best interest, it has to be better satisfied.

4442. Mr Hunter: Our policy was that the client would be advised, a note of advice would be recorded and that would be kept on the file and would be available for inspection, along with a host of other advice that would be given about a host of other matters. Part of our thinking in developing that policy was exactly the point that you made: that to send a client a letter indicating what their choices are gives rise to a range of issues, such as literacy, language, interpretation issues, and so on. We thought, therefore, that that was the better way to do it. To answer your specific question: a client is given a range of advice from a solicitor. Where do you draw the line? Why is there a necessity to seek verification on that particular matter when it is available for inspection on the file? That is our view.

4443. Mr McCartney: Your briefing states, "Otherwise there is a lacuna". I was hoping I would not be asked what that meant. I pretended to know. Over to you, Chairperson. [Laughter.]

4444. Mr A Maginness: Are you in favour of the clauses or against them?

4445. Mr Hunter: We are in favour of the policy, and we bring those matters to you as our representations on how we think they can be improved.

4446. Mr A Maginness: It seems to me that, on one hand, you want the basic principle of solicitor advocates in the High Court and the Court of Appeal, but you are not really prepared to undergo any serious regulation around that quite substantive change in the work of a solicitor. It seems to me that you want to have your cake and eat it. I think that is the impression you are giving to this Committee. I cannot speak for the whole Committee, but it is certainly the impression that I get.

4447. Mr Hunter: I will ask Mr Campbell to address some of those points.

4448. Mr P Campbell: I think that is much too wide. We have concerns about some aspects of the draft clauses that are before you. I would like to highlight the proposed new clause, which seeks to insert new article 40A(1)(a), by way of example. I think it is our duty to come before you and point out its shortfalls. The proposed new article effectively creates the obligation on the solicitor to advise the client of the choice of advocate, but it does so if the client is "likely to require, legal representation". My issue with that is that I think that "legal representation" requires some definition or refinement. If the phrase "advocacy representation" was used instead of "legal representation", I would fully understand how the rest of that clause flows.

4449. In many cases, when a solicitor is either issuing proceedings or defending a case and entering an appearance in either the County Court or High Court, at that stage, it is likely that advocacy services may be required, but it may be far too early to know some of the obligations that will be required to be informed to the client, such as any cost implications or the type of choices of advocate that may be needed. At an early stage of a personal injury claim, you may be defending a claim without knowing what the injuries are. Therefore, to impose an obligation on a solicitor at a stage in proceedings when he or she may not be able to comply with those requirements is a potential failing of the proposed primary legislation.

4450. There are areas that we have concerns about in the proposed primary legislation. However, we started by welcoming, in principle, the intention to reintroduce those clauses. We are grateful for the intention to do so. That is our first principle as we appear before you.

4451. Mr A Maginness: Of course, you also had a problem with the proposed new article 40A(2)(a). Your submission states that it may be difficult to determine and that:

"Obviously each case will turn on its own merits but this is quite a subjective judgment. The Society wishes it to be noted that this is a vague and general requirement and must therefore be a matter for the subjective judgment of the solicitor concerned in the particular circumstances of the case at that point in time."

4452. I agree with you entirely. That is the point that I was making. Whether you like it or not — I am not trying to be offensive — you are a self-interested gatekeeper. You would require the virtue and selflessness of a saint to urge a client to obtain the services of a barrister when your firm is set up, you have solicitor advocates, you know that you can do the job — or, at least, you feel that you can — and you go along to your client, Lord Browne, and say that, although you really do not think that he needs the services of a barrister, if he wants those services, he can, of course, have them. Now, Lord Browne is an intelligent and experienced man. However, if you take a minor, someone with a disability or someone who is not as well educated or experienced in life as Lord Browne, how do you think that you could objectively — I underline the term "objectively" — advise your client to use a barrister when it is in your financial self-interest to retain that client or to retain the services of a solicitor advocate in your own firm? I cannot get round that. In your submission, you say that it is a:

"vague and general requirement and must therefore be a matter for the subjective judgment".

You cannot give an objective assessment. That is the weakness in this.

4453. Mr P Campbell: There were a lot of questions there. In no particular order, I will start with the advantages and disadvantages of the draft article 40A(2)(a). Our concern with it is the fact that it can be answered only in principle. Therefore, on a subjective case-by-case basis, matters may simply boil down to experience and cost. It may be as simple as that. If that is the case and our members comply by giving that advice, so be it. However, you talk about us being gatekeepers and our potential conflict of interest. As a practising solicitor, I find it particularly — with respect, you are at the receiving end of solicitors' instructions — easy to answer your question in so far as solicitors, almost daily, instruct counsel in cases that they could take themselves. For all types of practical reasons, matters of choice and experience, they choose to use counsel.

4454. I can say without a shadow of a doubt or fear of contradiction by my colleagues that the solicitors' profession needs an independent and expert Bar, and that must remain. The structure and nature of the solicitors' profession is such that it requires the availability of independent expertise. As has been alluded to by the Courts and Tribunals Service, there has been a small uptake in solicitor advocacy in the Crown Court. My understanding is that, in the County Court, where there has been a financial inducement for solicitors to brief themselves and to appear in their own cases for over 10 years now, there has been even less uptake; it has been very modest and small. There may be many reasons for that, but that is the reality of what is happening. The evidence from the jurisdictions of England, Scotland, Wales and the Republic of Ireland, in which equivalent regulations have existed for more than 15 years, is that the Bars there are thriving.

4455. Mr A Maginness: I do not think that any members of the English Bar would say that their Bar is thriving.

4456. This is a charter for very large firms of solicitors. An ordinary, small firm in a small country town or even in Belfast could not spend the time on solicitor advocacy. The big firms in Belfast and elsewhere, however, would be able to do that. They could set up departments and would be

able to clean up. These clauses would undermine the Bar by weakening the general work that it does, thereby diminishing its role and reducing the expertise that is needed to build up and maintain an independent Bar.

4457. Mr P Campbell: I can understand that fear, which is why I deliberately chose to emphasise the support that the solicitors' profession gives to the Bar and the fact that the profession requires an independent expert Bar. However, as regards practical application, the practical evidence from the County and Crown Courts over the past 10 years suggests that your fear, while understandable and therefore valid, may not be as great a concern or fear as you have articulated.

4458. The Chairperson: The last member whom we will hear from on this is Lord Empey.

4459. Lord Empey: I get the feeling that, although you are seeking something perfectly reasonable, namely solicitor advocacy, Alban's concern is, to some extent, that that would open a Pandora's box. However, strictly speaking, the issue is not quite how he put it, because we are talking about clauses that deal with the regulation of solicitor advocacy as opposed to the principle of solicitor advocacy. Nevertheless, I share some of his concerns. However, I think that Mr Hunter was perhaps being a wee bit diplomatic in some of his comments, and I understand that. The truth is that we have an Attorney General now, and his role is not yet fully determined right across the board.

4460. As regards people being completely divorced from things, you could make the gatekeeper argument, as Alban does. However, that argument could equally be applied to the Attorney General or the Bar. Everybody has their own interests. The Department will probably say it has an interest because it supplies legal aid. However, the principle of regulation worries me a wee bit. Presumably, Mr Hunter's fear is that, if the Department and the Attorney General get a foot in the door by having a role in the regulation of advocacy rules, qualifications and training, it would set a precedent for solicitors' activities more generally. Is that really what is at the back of your mind in all of this, Mr Hunter?

4461. Mr Hunter: That is fundamentally it. It is a departure, and we are concerned that it could create a precedent.

4462. Lord Empey: Mr McCartney asked why we — I include the Department and us in that "we"— should not have a role in this. After all, we are contributing large amounts of money and so on. However, I have some concerns about bringing a Department into the regulation of a profession. For example, does the Health Department regulate the medical profession? I think that those are the sorts of areas that are at the back of your mind and that you are really concerned about.

4463. The Minister and the Attorney General will change over time: some may have little interest, some may have no interest, and others will be acquisitive in trying to extend their role; we do not know where that would lead. I suspect that that might present a greater danger than is presented by the narrower issue of the regulations, which are a comparatively small part of the overall picture. So, are you saying that it is the precedent that would be set that is at the bottom of the society's concerns?

4464. Mr Hunter: Certainly, the precedent is the concern. We are concerned because it is a departure from the pre-existing position and because that departure occurs against a background of a recent review that felt that it was important for the independent profession to continue to independently regulate itself.

4465. Lord Empey: I presume that, if the Department and the Attorney General start to look at your training and regulation, at a future point they could start to look at the Bar, too. There would be a whole chain of events around the self-regulation of the professions under the Lord Chief Justice and others, which could mean that we would start to get our political sticky fingers involved in the professions generally. Is that a possibility?

4466. Mr Hunter: Yes, it is about perceptions, too. A number of precedents are being set, and they will, in due course, apply across the whole legal profession, both to solicitors and the Bar. Therefore, precedents are being set here for the whole profession.

4467. The Chairperson: I have one last question, Mr Hunter, for you and your colleague. I still have some doubt as to whether you are for or against the clauses.

4468. Mr Hunter: I am grateful that you have allowed me to return to that issue, because I want to respond to Mr Maginness's point about us seeking to have our cake and eat it. As members are aware, it has not been entirely straightforward to get to the stage of having the clauses before you today. However, without that process, the society would have come to the Committee and made representations, as other bodies and organisations do. Indeed, we do that when we feel we have something to offer on matters that do not directly impact on us but that we consider to have a public interest element.

4469. It is important to note that we recognise that, if a clause is going to affect our profession, it is entirely appropriate that we come along and tell you what we think about it. However, we acknowledge that it is for the Assembly to make a final decision on it. We welcome the policy and the fact that these clauses are before you. We welcome the fact that the Assembly will have an opportunity to debate them, and we hope that they will enact the clauses. We make some fine points here, which are our observations on the clauses as they stand, as we think it is our responsibility to do that. However, in principle, we welcome that the policy will be considered by the Assembly, and we seek the Committee's support for the enactment of the clauses, subject to it taking a view on the points we have raised.

4470. The Chairperson: OK, thank you very much. We have to stop there.

4471. The departmental officials will now return to the table. We must be quite brief, because we have gone over our time, and we still have three quarters of our agenda to get through. The officials have heard what has been said. I hand over to them to hear their comments, and I will then take a few questions from members.

4472. Ms Fee: We have had sight of the paper that the Law Society submitted to the Committee last night, and it may be helpful if I try to address the points in the paper in the order in which they appear. Hopefully, I will capture them all.

4473. Mr Campbell made a technical point about the definition of legal representation. The letter refers to that definition being in a different article, but it is in new draft article 40A(1)(a). We agree with what the Law Society said about how that provision should work. However, we consider that the clause as drafted will give effect to that policy. The clause must be read as a whole to make it clear that the duty to advise in writing applies only when a solicitor orally argues before the court. However, we will take the provision away and examine it again in consultation with legislative counsel to ensure that we are all reading the clause in exactly the same way.

4474. I turn to the provision that requires solicitors to advise their clients of the advantages and disadvantages of their choice of representation. As the Committee will be aware, the aim of the

provision is to ensure that the person can make a fully informed choice. Any requirement to advise of advantages and disadvantages must be seen against that background.

4475. We note the point about the level of literacy that some clients have. In providing that the advice should be given to the client in writing, we in no way meant to suggest that that is the only way that such advice could be given. We anticipate that a solicitor would fully explain the advantages and disadvantages and give clients a copy of that information in writing, because often when things are explained to us, we go away and ask ourselves exactly what was said. We in no way meant to obviate that requirement, and we are well aware that solicitors would take into account the literacy of their clients.

4476. When we originally sought to make that provision, we looked at the Scottish model. Rule 3 of the practice rules for solicitor advocates in Scotland sets out in more detail the matters on which a solicitor would be required to advise a client. However, we listened to representations from the Law Society that it could be overprescriptive and difficult to deal with the matter in primary legislation. We moved to provide in primary legislation the key framework of what the advice would include. It would involve telling someone the pros and cons of what they were doing, but it would be left to the Law Society to develop, by regulations, exactly what that advice would be. We take Mr Campbell's point that solicitors are well practised in advising clients.

4477. We included a safeguard in the form of a requirement that there should be the concurrence of the Department, because we felt that there was a wider public interest. We have sought to stop that requirement being vague and to allow the Law Society to provide input on how the requirement should be delivered in practice. I will deal with that safeguard in more detail later.

4478. Points were also made about solicitors already being subject to a duty to act in the best interests of the client, and we fully accept those. However, we have taken on board the fact that, in providing that advice, there is a perceived conflict of interest. Therefore, we felt that it was important to state in the legislation that a duty to act in the best interests of the client also clearly applies to the provision of advice in this situation.

4479. The intention behind the duty to inform the court is to effectively reinforce consumer confidence. There could be written advice in a file, but a client might think that that advice never sees the light of day again. The intention is simply for the solicitor to notify the court that they have complied with the requirement. It will be for the Rules Committee to determine the time and the manner in which that notice is provided to the court. The Court of Judicature Rules Committee includes representatives from the Law Society, and they will have input to it.

4480. I should clarify a point that Mr McCartney touched on; the position of the trial judge. Our intention is that the position of the trial judge should remain as now. If the judge has concerns about the standard of advocacy he sees in front of him, he will, in the normal course of events, raise those concerns. He might then choose to look back through the papers to see what advice was provided to the client. There is certainly no intention to provide the court with an enhanced supervisory role in relation to the advice that is provided to the client.

4481. I turn now to the substance of the discussion about the role of the Department in rule-making. As I indicated, the desire of the Department in making that provision was to take account of the broader public interest that would be engaged in those two discrete areas relating to training for solicitor advocates and the advice that would be given.

4482. I noted the discussion on judicial independence. There is certainly no desire or attempt to undermine that in any way. We have also sought, in so far as possible, to stay true to what was decided in the Bain recommendations — that the regulation of the legal profession is for the

legal profession. The Department has not sought to take that away or to vest the regulation-making powers in itself. It has made a limited change to provide that there should be a concurrence role in two discrete and limited circumstances. I should also point out to the Committee that there is precedent for ministerial concurrence and Attorney General involvement, as the representatives from the Law Society indicated, albeit in the format of legal aid regulations.

4483. I would also highlight that the rules of conduct and the training regulations for solicitor advocates in Scotland are made by the Law Society of Scotland, with the concurrence of the Lord President of the Court of Session and with the approval of Scottish Ministers. So, although there is the idea that any kind of departmental involvement would result in interference in the profession's independence, the precedent in Scotland clearly shows that that model can work and has worked. There is still an independent Law Society and an independent Faculty of Advocates in power in Scotland.

4484. The other point I would like to make is about the role of the Attorney General. There was a suggestion that this might be the thin end of the wedge and that there might be political involvement in the profession. The Attorney General is not only legal adviser to the Executive; he also has a wider remit in that he is guardian of the rule of law. Before the Department exercises its concurrence role, it must fulfil its duty to consult with the Attorney General and to take on board the Attorney General's views. That is a good element of counterbalance to any ministerial involvement.

4485. Another point that I would like to draw out is the role of the Lord Chief Justice in the concurrence role. That role has been left undisturbed. It was recognised by Bain that the Lord Chief Justice has the confidence of the professions and the wider public. We endorse that, but, in matters of conflict of interest, we felt it appropriate for there to be departmental concurrence.

4486. I think that I have dealt with everything.

4487. The Chairperson: Thank you. I want to ask about the issue of contamination of judicial independence. Do you feel that that theory holds no water? Do you feel that there is no possibility at all of that happening? Do you feel that judicial independence will be totally protected and that there will be no cross-contamination of any shape, size or form?

4488. Ms Fee: Judicial independence is enshrined in the Justice (Northern Ireland) Act 2002, and there is no intention at all to change that. We are dealing with the regulation of rights of audience and solicitors' access to the higher courts. We are simply giving effect to a recommendation of Bain. We are trying to ensure that, as recommended by Bain, suitably qualified solicitors have access to those courts and that the client has the choice and safeguards that were recommended by Bain.

4489. Judicial independence is sacrosanct and separate. The Law Society made the point that there is, in some way, some encroachment on the independence of the Law Society. As I said, we recognise that regulation of the legal profession is for the legal profession. We have not fundamentally altered that. We have put in place in two discrete areas safeguards that are designed to maintain advocacy standards in the higher courts and to protect against perceived conflicts of interests.

4490. The Chairperson: You said that you had sight of the Law Society's paper. Its words are very clear and straightforward:

"Further the Department of Justice may not concur in the regulations unless regulations have already been made by the Society and are in operation in relation to what advice must be given."

It goes on to say:

"This is a significant departure in terms of the regulation of the legal profession."

It continues:

"The Society strongly considers that it is entirely inappropriate that the Department concurs in such Regulations.

It further states:

"It is irregular for the Attorney General to be consulted about Law Society regulations which is presently the responsibility of the Lord Chief Justice."

It goes further to say:

"The Society shall be making observations about the role of the Attorney General in Northern Ireland generally when a suitable opportunity arises."

Do you want to comment on those fairly direct comments?

4491. Ms Fee: I can only reiterate what I have said. The Department's role is not to somehow take away the Law Society's regulation of the profession. There are two discrete areas. There is precedent for departmental involvement in the making of regulations, both in this jurisdiction and in Scotland. The model that we have followed is similar to that in Scotland. It is not identical, but it is similar. The Attorney General is the guardian of the rule of law, and the Department intends to consult him before giving any concurrence regarding the rules.

4492. The Chairperson: Do I take it that you disagree with those observations?

4493. Ms Fee: Yes.

4494. The Chairperson: You feel that they are not appropriate.

4495. Mr Crawford: Reference was made to legal aid legislation. I will read from article 37 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, which governs most legal aid payments. The following matters can be taken into account in determining the level of fees: "(a) the time and skill which work of the description to which the rules relate requires;

(b) the number and general level of competence of persons undertaking work of that description;"

4496. I draw attention to the words "general level of competence". In other words, training and the level of qualification of advocates or solicitors can be taken into account in setting fees. That is already done in the Crown Court regulations, where a higher fee is paid to a solicitor advocate who has passed the advanced advocacy course. The Committee has heard how that works.

4497. There has been no criticism by the Law Society or, indeed, by the Bar of the arrangement through which a higher payment is linked to a training course. Those regulations are made after

consultation with the Attorney General, and there has never been a quarrel with that. So, as regards setting training requirements and consultation with the Attorney General, what we have at present in the Crown Court has apparently worked quite well and without criticism, and our proposal is to extend those higher fees into other courts in due course, which is a point that Lord Empey raised.

4498. The Chairperson: What legislation is that in?

4499. Mr Crawford: The 1981 Order. Since then, the complication with European law has caused some difficulty.

4500. Mr McCartney: The Attorney General is not the incumbent.

4501. Mr Crawford: The Attorney General must be consulted under the —

4502. Mr McCartney: The Attorney General that you refer to in this instance is not the current Attorney General.

4503. Mr Crawford: No. Since devolution, it applies to the Northern Ireland Attorney General. It carries across, as most references do. Those would have required, for example, the Lord Chancellor to make the regulations, but it is now the Minister.

4504. Mr McCartney: In the Scottish model, is there any scrutiny beyond the Department?

4505. Ms Fee: Yes. In the Scottish model, the rules are made by the Law Society with the concurrence of the Lord President of the Court of Session, who is the equivalent of our Lord Chief Justice, and Scottish Ministers, who must consult on the training regulations with the Office of Fair Trading. It is the same formula for the rules of conduct regulations. The Scottish Ministers must consult the Office of Fair Trading if a competition element is engaged.

4506. Mr McCartney: Does the Scottish Assembly not have a scrutiny role?

4507. Ms Fee: No. The theme is similar. It is about the regulation of the professions, and, therefore, it is normally a matter for the professions. However, Scotland has built in certain safeguards where there are competition interests etc in play.

4508. Lord Empey: If the Attorney General has a general duty to the rule of law, why should it be confined to solicitor advocacy in the High Court? In other words, what is the logic of confining the roles of the Attorney General and the Department to this one area? To carry the argument through to its logical conclusion, would it not make sense for the Department and the Attorney General to be involved in the whole operation and the full range of duties?

4509. Currently, you have the Law Society and the Lord Chief Justice. There are four fingers in the pie now, whereas previously there were not. I am not clear how the situation can ultimately be confined to this one area of activity. That is the area that still bothers me. The next time someone comes to the table, perhaps a new Attorney General or a new Minister, that person may have a different view and question why the rule of law should stop at solicitor advocacy in the High Court. That person may feel that we pay millions of pounds of legal aid and, therefore, should have a role right across the board.

4510. Ms Fee: I will first address your point about the Attorney General being the guardian of the rule of law. I emphasised that merely to underline that he was an apolitical figure with whom the Department consults before giving its concurrence in the area of the regulation of solicitors. I

have to answer your question by drawing us back to the Bain recommendations, which indicated that the regulation of the professions should remain with the professions. That has been endorsed by the Executive. As I understand it, an incoming Executive will have to decide whether legislative proposals to give effect to that should go forward.

4511. Bain made a recommendation to allow solicitors access to the higher courts. In developing those provisions, we have liaised with the professions, but we have also sought the advice of the Attorney General. The Attorney General has indicated that he feels that safeguards need to be in place to deal with the competition aspects arising in circumstances in which an area of work that was previously the preserve of one side of the profession is opened up to the other side and in circumstances in which there can be perceptions of conflict of interest. That is why this formulation has been used in this instance.

4512. I reiterate that there is precedent for that in Scotland, where a similar type of formulation has been used in the same limited circumstances. The training regulations and conduct regulations that are made in Scotland are all still the preserve of the Law Society and the Lord President of the Court of Session. There is no intention to change those arrangements. The arrangements we are dealing with here are linked to rights of audience in the higher courts. Robert might want to say something about enhanced payments.

4513. Mr Crawford: We propose to use similar standards when setting higher fees for solicitors in other courts, which again, is a point that was made earlier. We have to include the primary provision in the Bill to allow us to do that at Further Consideration Stage, when we see what goes through on solicitor advocates generally.

4514. Lord Empey: I do not doubt what Geraldine said about the intention, but I need to think about it. I wonder how or why this can ultimately be confined. Of course, competition can apply to a whole range of things. Once we get Europe involved, we are really opening a Pandora's box. We will still be dealing with this Bill at Christmas.

4515. The Chairperson: We will stop there. We thank the officials very much for their attendance.

4516. I remind the Committee that these clauses are not currently part of the Justice Bill. We might want to reflect on them and return to them next week, or members may wish to take a view on them. However, my opinion is that we should just hold off on that. Are members in agreement with that line of thought?

Members indicated assent.

3 February 2011

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Thomas Buchanan
Lord Empey
Mr Paul Givan
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Mr Tom Haire Mr Gareth Johnston Ms Amanda Patterson Ms Janice Smiley	Department of Justice
Mr Robert Crawford Ms Geraldine Fee	Northern Ireland Courts and Tribunals Service

4517. The Chairperson (Lord Morrow): We will continue with the formal clause-by-clause consideration of the Justice Bill. Today, we will focus on Parts 5 to 9 and schedules 4 to 7 and the proposed amendments and clauses. I remind members that, at the meetings on Thursday 27 January and Tuesday 1 February, the Committee informally considered the evidence received in relation to Parts 5 to 9 and schedules 4 to 7. We also received further information and clarification at that time from departmental officials and agreed to formally consider these clauses at this meeting. Copies of the summary papers have been provided, as have the Department's briefing papers on the amendments and additional information about the relevant clauses. I intend to work through each Part of the Bill in turn, starting with Part 5, which is about treatment of offenders.

4518. We welcome back Gareth Johnston, head of justice strategy division; Tom Haire, Justice Bill manager; and Janice Smiley, head of the criminal policy unit.

4519. Starting with Part 5, clauses 56 to 63, which are on the treatment of offenders, I invite members to indicate whether they are content with the clauses as drafted or whether they have issues with them and wish to discuss them further. On any clause on which there is an issue, once any member who wishes to speak to the clause has done so, I will seek the views of the Committee as to what it wishes to do at that stage.

4520. I remind members that no issues were raised by members or amendments suggested on clauses 56 to 63. Unless there are new issues today, I propose to take those as one block.

4521. Ms Ní Chuilín: Can I just ask for clarification on clause 58, please?

4522. The Chairperson: You can. Does that mean, then, that clauses 56 and 57 are OK?

4523. Ms Ní Chuilín: They are grand.

4524. The Chairperson: There is a question around clause 58. Would the member like to put the question?

4525. Ms Ní Chuilín: Yes. Sorry; my colleague John wants to talk about clause 57, but can I ask about clause 58? I asked first.

4526. The Chairperson: We will take them in order. We were going to do them in one block, but that is not going to work.

Clause 56 agreed to.

Clause 57 (Penalty for certain knife offences)

4527. The Chairperson: Mr O'Dowd wants to ask a question about clause 57.

4528. Mr O'Dowd: I raised the concern with officials before that we are imposing penalties, which are designed for adults, on children and young offenders. Can you assure me that the penalties under clause 57 are commensurate with other youth offences?

4529. Mr Gareth Johnston (Department of Justice): I can give you that assurance. The clause brings the penalties for this particular knife offence up to the same levels as those that were brought in for other knife offences under the Criminal Justice (Northern Ireland) Order 2008. Any of those other knife offences could be committed by persons under 18 if they had a knife in a public place. Indeed, this offence could be committed by anyone, for example, if a teacher or a visitor to school had a knife, they could also be charged with that offence. We are not fundamentally changing the way that those under 18 are treated; we are simply bringing one offence, which was, in all honesty, missed out last time round, into consonance with the other offences.

4530. Mr O'Dowd: Thank you.

Question, That the Committee is content with the clause, put and agreed to.

Clause 57 agreed to.

Clause 58 (Extension of maximum period of deferment of sentence)

4531. The Chairperson: You had a query, Ms Ní Chuilín.

4532. Ms Ní Chuilín: During discussions on a different part of the legislation, proposals were made about hijacking. If, for example, someone hijacked a car and was charged with that and with dangerous driving, would the more serious charge or any of the charges be deferred as a result of clause 58?

4533. Mr Johnston: It would be at the discretion of the court whether to defer one charge and deal with the other, or to defer the whole case and deal with the offences together. It would very much depend on the circumstances of the case.

4534. Mr Tom Haire (Department of Justice): It can apply to any sentencing option.

4535. Ms Ní Chuilín: So, it is for any sentencing option?

4536. Mr Haire: Yes, any sentence could be deferred for 12 months.

4537. Ms Ní Chuilín: OK. If sentences are deferred, particularly for more serious charges, that will not assist victims of crime. That has not been mentioned.

4538. Mr Johnston: It would just be a deferment of the sentence. A decision as to whether someone was guilty would be reached, which may be of some help to victims. The provision is intended to encourage offenders to rehabilitate and to address their offending behaviour, with the chance that, if they do, it may have an effect on the eventual sentence. Although I take your point and your balancing of interests, I hope that victims might take some comfort from the fact that the provision is about trying to stop people reoffending and others becoming victims.

4539. Ms Ní Chuilín: Will that apply to any charge and any sentence?

4540. Mr Haire: It is available to the court to defer sentence. As Gareth said, that could allow for offenders to make reparation or to undertake a programme, for example, to convince the court that the right sentence should be imposed. It is a general power on the deferral of sentences.

4541. Ms Ní Chuilín: Does that power already exist?

4542. Mr Johnston: It does, but it applies only to sentences of up six months. The provision will extend that period to 12 months, on the basis that the programmes that you might want an offender to engage in, such as those that allow them to address addiction or alcoholism, could take more than six months.

Question, That the Committee is content with the clause, put and agreed to.

Clause 58 agreed to.

Clauses 59 to 63 agreed to.

Clause 64 (Penalty offences and penalties)

4543. The Chairperson: Are members agreed on clause 64?

4544. Mr McCartney: At the previous session, we raised the issue of community service as an alternative to fines. Officials gave us an answer, and we are now reflecting on that. We will not obstruct the work of the Committee, but we will abstain on all the clauses that relate to the penalty notices.

Question put, That the Committee is content with clauses 64 to 75.

The Committee divided: Ayes 4; Noes 0.

Mr Givan, Mr Buchanan, Lord Browne, Lord Empey.

Clauses accordingly agreed to.

Clauses 64 to 75 agreed to.

4545. The Chairperson: Do those who abstained want it recorded in the minutes that you abstained?

4546. Mr McCartney: Yes. We may come back with an amendment, but it will not be done through the Committee.

4547. Ms Ní Chuilín: We will not obstruct you — not today anyway. [Laughter.]

Clause 76 (Conditional cautions)

4548. The Chairperson: We will take clauses 76 to 84. Does anyone want to comment?

4549. Ms Ní Chuilín: We have a problem with this.

4550. The Chairperson: Is it with a specific clause or is it a general problem?

4551. Mr McCartney: Is it clause 79?

4552. Ms Ní Chuilín: Yes; clause 79.

4553. The Chairperson: Let us hear what the member has to say about clause 79.

4554. Ms Ní Chuilín: It is about the Department issuing guidance about issuing penalty notices, particularly in the exercise of giving discretion to police officers. Is there guidance on that?

4555. Ms Janice Smiley (Department of Justice): Clause 79?

4556. Ms Ní Chuilín: Yes.

4557. Mr Johnston: Conditional cautions generally.

4558. Ms Smiley: The code of practice is a statutory code that will come before the Assembly in the affirmative resolution order. That will be prepared and agreed with the Attorney General and will be consulted on before it comes to the Assembly.

4559. Lord Empey: I am having difficulty hearing Janice.

4560. Ms Smiley: The code of practice will be prepared and agreed with the Attorney General. It will then be circulated and consulted upon. It will come back to the Assembly. There is an affirmative resolution order power to bring it back to the Assembly before it is introduced. So, there will be full consultation opportunities in regard to what will be contained in the code.

Question, That the Committee is content with the clauses, put and agreed to.

Clauses 76 to 84 agreed to.

4561. The Chairperson: We will move to Part 7, which covers clauses 85 to 91. It is about legal aid. I welcome Robert Crawford and Geraldine Fee back to the table.

Clause 85 (Eligibility for criminal legal aid)

4562. The Chairperson: I refer members to their tabled papers. I remind members that, on Tuesday, they requested an amendment to be drafted to ensure that a fixed means test for legal aid would be enacted by affirmative resolution. The Department has written proposing an amendment to clause 85 that would provide for affirmative resolution when, and if, the means test is enacted for the first time, but not for subsequent amendments to the means test.

4563. Mr Robert Crawford (Northern Ireland Courts and Tribunals Service): As we mentioned on Tuesday, one way to address the Committee's concerns may be to provide for affirmative resolution procedure the first time that a criminal legal aid means test is set so that the Committee and the Assembly could give fully scrutinise how that was being handled and arranged. We remain of the view that enacting every change to the regulations by affirmative resolution could be onerous. It could mean that the Committee and the Assembly has to carry out the affirmative resolution procedure where, for example, we change the eligibility rates based on inflation or changes in benefits. We felt that that is perhaps not the Committee's intention.

4564. To show the Committee what an affirmative resolution clause based on first instance only would look like, we tabled it for the Committee's consideration. You may want to take time to consider it. That is how it would operate if we were to adopt that approach.

4565. The Chairperson: Members, you are aware that the Department and the Committee went their separate ways on this clause at the last meeting. The Committee decided that it would draw up its own amendment. We can let you see that or perhaps you are entirely happy with what Mr Crawford said. Does any member wish to comment? Would you like to see the one that was prepared earlier?

4566. Mr McCartney: Yes, I am happy to look at it. I would not want to let all that good work go to waste.

4567. The Chairperson: Members, you have the Committee's draft amendment in front of you. You have also heard what Mr Crawford said. What do you want to do?

4568. Mr McCartney: Have the officials seen it?

4569. The Chairperson: No. The Committee Clerk will explain the subtle difference.

4570. The Committee Clerk: The draft amendment that has just been circulated to members is based on the discussion that took place on Tuesday. Under that draft amendment, all changes to that clause and any regulations had to be enacted by affirmative resolution. Every time a regulation was brought, it would have to be enacted by affirmative resolution. What the Department proposes with its amendment is that the first time that it brings the regulations, it will be enacted by affirmative resolution and, after that, it will be enacted by negative resolution.

4571. In its letter, the Department outlined the reasons why it takes that stance at the present time. The Minister has said that he will review the legal aid controls and, in recognition of the Committee's concerns, come back to the Committee following that review. The hope is that such a review will be brought to the Committee and that it will be completed before any substantive proposals emerged to amend clauses 85 and 89 by what would be negative procedure. So, I think what the Minister is suggesting is that, the first time they enact the means test, it will come through by affirmative resolution. He is giving an undertaking that the review looking at the legal aid control will be concluded before any further substantial proposals emerge relating to those rules. The draft in front of you was based on the Committee's discussions on Tuesday, and would mean that every regulation would automatically go through by affirmative resolution.

4572. The Chairperson: Do members have any comments? If there are no comments, I will formally put it to the Committee. Will you go with the amended clause as suggested by Mr Crawford, or will you go with the amended clause as suggested by the Committee and outlined by the Committee Clerk?

4573. Mr O'Dowd: Do we have to take the decision today? Can we leave it until Tuesday? There are two amendments in front of us here, and some parts are quite similar. It is one of those things that we may want to ponder on a bit further.

4574. The Chairperson: I suspect we can take it on Tuesday, but that would be the day of reckoning. If members want to give it that last consideration, I think we can do that. So, yours is still in the frame too, Mr Crawford.

4575. Mr Crawford: I want to say a few brief words about the review that the Minister mentioned in the letter. We are trying to pick up on the points raised by the Committee that

there are some areas across legal aid in general that would be appropriate for affirmative resolution. However, we would need to do quite a bit of work to separate that. We have in mind that, when the access to justice review reports — the Minister will see an interim report in early March — we might be in a position to establish in what new areas there might be radical change in legal aid. Some of those will certainly be areas where affirmative resolution would be appropriate. That is the kind of thinking that underlies that point.

4576. Ms Ní Chuilín: The Committee's amendment will not prevent you from doing that anyway.

4577. Mr Crawford: The Committee's amendment would require affirmative resolution in all cases, so any subsequent general regulation, which would normally operate by negative resolution — such as changing rates or changing the levels of income that apply — would have to be taken by affirmative resolution. What we are saying is that we would make it affirmative resolution in the first instance and, before making any further regulations on that, the review will have been completed. So, there would be affirmative resolution the first time but no further changes before the review is completed. That would allow the Committee the opportunity to determine whether it wished to operate affirmative resolution on this, or some variant that the review would produce.

4578. Mr Johnston: We just feel that, if we went with the amendment that the Committee staff have helpfully had prepared, it would mean that we could end up troubling the Assembly for an affirmative resolution when upping rates according to inflation or when the name of jobseeker's allowance changes — basically, for reasons that do not really justify getting the whole Floor of the Assembly involved.

4579. The Chairperson: Those comments are helpful. We will take it away and the Committee will give it due consideration between now and Tuesday, then we will come to a definitive decision. Is that agreed?

Clause 85 referred for further consideration.

Clauses 86 to 88 agreed to.

Clause 89 (Financial eligibility for grant of right to representation)

4580. The Chairperson: The issues raised by members about this clause are the same as those raised for clause 85. The Department's letter also referred to that. Is that right, Mr Crawford?

4581. Mr Crawford: It is indeed. The point about not making a change to clause 89 is that we anticipate that any first exercise of the new power would be under or be an amendment under the 1981 Order, because the Access to Justice (Northern Ireland) Order 2003, to which clause 89 applies, is not yet in force for the most part. Before the 2003 Order comes in to force, we will have made the regulations for the first time, or would have brought forward the review that we mentioned. What I am saying is that we did not feel the need for it to be done for the first time twice. If we had made the same amendment to the 2003 Order, a possibly minor change would have had to have been considered by affirmative resolution. That will, in effect, be overtaken in the review in the meantime.

4582. The Chairperson: That sounds logical. Therefore, as this one is similar to clause 85, I would be minded also to park that clause until Tuesday, and make the decision on clauses 85 and 89 together.

Clause 89 referred for future consideration.

4583. The Chairperson: We move then to clauses 90 and 91. Again, there were no issues raised by members on those clauses.

Clauses 90 and 91 agreed to.

4584. The Chairperson: We move to Part 8, which covers clauses 92 to 101. No issues were raised by members about clauses 92 to 94 and no amendments were suggested.

Clauses 92 to 94 agreed to.

Clause 95 (Publication of material relating to legal proceedings)

4585. The Chairperson: I draw members' attention to correspondence from the Department, copies of which are in the packs. The correspondence is in response to issues raised by the Committee on the scrutiny of court rules by the Assembly. The Department agrees that the Committee's suggestion would be preferable; however, it notes that it has implications for rules dealing with excepted matters, of which the Lord Chancellor continues to exercise responsibility. Therefore, it is unlikely that the necessary provision can be included in this Bill, but the changes will be brought forward in the next available Bill. Are members content with the Minister's proposals as outlined?

Question, That the Committee is content with the clause, put and agreed to.

Clause 95 agreed to.

Clause 96 (Membership of Crown Court Rules Committee)

4586. The Chairperson: We move to clauses 96 and 97. Again, I remind members that the Department has provided the Committee with proposed amendments to those clauses in response to issues raised by the Committee relating to the Attorney General's nominee on the Crown Court and Court of Judicature Rules Committee.

Question, That the Committee is content with the clauses, subject to the Department's proposed amendments, put and agreed to.

Clauses 96 and 97agreed to.

4587. The Chairperson: No issues were raised by members about clauses 98 to 101, nor were there any suggested amendments.

Clauses 98 to 101 agreed to.

4588. The Chairperson: We move then to Part 9, which covers clauses 102 to 108 on supplementary provisions. The Department proposed an amendment to clause 103 in relation to Ulster Rugby. However, given that the Committee decided to reject the related clause 43, that is no longer an issue, for the Committee anyway. No other issues were raised or amendments suggested on clauses 102 to 108 during informal consideration.

Clauses 102 to 108 agreed to.

4589. The Chairperson: We will move to schedules 4, 5, 6 and 7. I remind the Committee that no issues were raised or amendments suggested by members during informal consideration on paragraphs 4 to 6 of schedule 5. Are members content with paragraphs 4 to 6 of schedule 5?

Members indicated assent.

Schedule 6 (Minor and consequential amendments)

4590. The Chairperson: Correspondence from the Department providing information requested by the Committee on paragraph 6 of schedule 6, which amends the Criminal Evidence (Northern Ireland) Order 1999, points out that the amendment to that Order allows for witnesses, subject to special measures, to give video-recorded evidence. No issues were raised by members about schedule 6, nor were amendments suggested.

Schedule 6 agreed to.

Schedule 7 agreed to.

4591. Mr Crawford: Chairperson, your approval of clause 103, which states that regulations made under the Act will be subject to negative resolution, would be subject to your consideration of clause 85 because you may decide to do affirmative resolution. I apologise for the interruption.

4592. The Chairperson: Thank you very much for your attendance. We now welcome from the Department Amanda Patterson and Billy Stevenson.

Clause 14 (Live links for patients detained in hospital)

4593. The Chairperson: Clause 14 was parked by the Committee because further clarification was sought. The Department has provided clarification on an issue raised by the Committee about clause 14.

4594. Mr Johnston: The letter before the Committee is our response to the suggestion that the Bill would make provision for advocates for those who are detained in hospital and are giving evidence by live link. What I can say is twofold.

4595. First, in practice, basic support will be available for people giving evidence by live link. People providing support in the live link room will not be able to talk to or in any sense coach or advise the person. It is just about being there for someone. As the letter states, arrangements are in place for mental health nurses to be involved. The registered medical officer, the patient's consultant, will be close at hand. Shannon Clinic already has a programme of advocates for people in its care.

4596. We can say that the basic support will be available. If people have additional needs, such as those that would be addressed by an intermediary, for which there is provision in clause 12, the court can order that an intermediary be made available. That would happen if the person has a mental disorder, if he or she is unable to participate effectively in the hearing without an intermediary and if it is necessary for a fair trial.

4597. Between what is already provided and what is in the Bill, there will be two levels of support available for those who are detained in hospital.

4598. Mr O'Dowd: According to the Department's letter, whether a mental health advocate is in the room with a patient when they are going through this procedure is still down to discretion of a judge rather than being a statutory duty. It has to be asked why somebody in a mental health unit would be going through a judicial procedure in the first place, but there are always exceptions. That question was raised as well. I am concerned that the decision is down to

discretion. You could get a judge on the wrong day who, without any interference from anyone, will ask the advocates to leave the room. In such cases, there is no legal protection to keep them there.

4599. Mr Johnston: It is also down to discretion in other cases. Clause 10, where you are dealing with someone who is vulnerable or intimidated or a young person who is giving evidence, provides that a direction may provide for the presence of a supporter. That is a bit of a safeguard. In practice, that is already done. Whether it is parents or representatives of Victim Support or the NSPCC, advocates are already regularly in the live link room to support people. We are saying that we would leave the arrangements that are already available.

4600. If it would help for the Department to issue a letter of guidance to registered medical officers on that, we would be happy to undertake to do that to strengthen the provision. I can certainly make that offer.

4601. Mr O'Dowd: That would offer more reassurance.

4602. The Chairperson: That goes some way to answering your concerns, does it not?

4603. Mr O'Dowd: Yes, it does.

Question, That the Committee is content with the clause, put and agreed to.

Clause 14 agreed to.

Clause 34 (Duty on public bodies to consider community safety implications in exercising duties)

4604. The Chairperson: Clause 34 and the Department's proposed amendments to it were parked. The Department has provided further information on clause 34, confirming that it intends to bring forward further proposals for the Committee's meeting on 8 February. Since this is a further amendment, the departmental officials might want to say something on it.

4605. Mr Johnston: No, there will be an opportunity for the Department to comment on Tuesday.

4606. The Chairperson: If no member wishes to ask anything, we will park it until Tuesday.

4607. Clause 34 referred for further consideration.

4608. The Chairperson: I advise members that the Department of Justice has written to the Committee again about paragraph 10 of schedule 1 relating to the chair and vice-chair of the PCSPs. A copy of that letter is in members' packs.

4609. I remind members that last Thursday they agreed to a proposal by Mr Givan to ensure that an elected member would be the chairman of the PSCP. The Department has responded to the Committee's suggested amendment, indicating that the Minister is not minded to pursue that proposal. His reason is that he does not believe that the statutory exclusion of independent members would be acceptable to the public at large or to the many current independent members of the DPPs. That is the Minister's take on it. We now have to decide whether to agree the clause as drafted or propose an amendment to it.

4610. Mr Givan: That is fine. It is the Minister's prerogative to choose not to do that. However, I ask that the Committee drafts an amendment based on what I proposed, if the Committee is willing to do that.

4611. The Chairperson: If the Committee agrees, we will draft the amendment and bring it to the Committee. You will then get sight of it and at that stage we will make a definitive decision. Is that agreed?

Members indicated assent.

New clause

4612. The Chairperson: The Department has provided the Committee with two proposed amendments. The first concerns sex offender notification. The Minister signalled that he will bring a new amendment to the Committee to meet the Supreme Court ruling that the indefinite notification requirements attached to sex offenders who had been sentenced to 30 months' or more imprisonment are incompatible with article 6 of the European Convention on Human Rights.

4613. Mr Givan: I have a number of questions. Is 30 months stipulated in the European Convention on Human Rights?

4614. Ms Amanda Patterson (Department of Justice): A 30-month sentence has an indefinite period of notification attached. Only those offenders sentenced to 30 months or more in prison would be required to notify for an indefinite period.

4615. Mr Givan: That deals with my other questions.

4616. The Chairperson: So, at least you are now content, Mr Givan. Does the Committee generally support the new clause?

Members indicated assent.

4617. Mr Givan: I agree to its inclusion although I probably do not support it. However, we have no choice given the ruling that was made.

4618. The Chairperson: It is Hobson's choice.

4619. Ms Ní Chuilín: Just because it is in our report does not mean that we like it.

4620. The Chairperson: We hear what you say but we also hear you agree. Maybe that sounds like a contradiction.

New clause

4621. The Chairperson: The next amendment concerns assets recovery law. The Department proposes to table an amendment to give it the power, with the consent of the Department of Finance and Personnel, to allocate the proceeds of criminal assets remitted to the Northern Ireland Consolidated Fund by the Northern Ireland courts to prevent crime, reduce the fear of crime and support the recovery of criminal assets. The Minister and the Department are seeking the Committee's views on the amendment. Do the departmental officials want to say anything at this stage? No? It has all been said. Are members agreed to support the amendment?

Members indicated assent.

4622. The Chairperson: I think that that is the officials finished. I am sure that they are glad to hear that. I thank them for their attendance.

8 February 2011

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt
Mr David McNarry
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Ms Nichola Creagh Mr David Hughes Mr Gareth Johnston Mr Dan Mulholland	Department of Justice
Mr Robert Crawford Mr John Halliday	Northern Ireland Courts and Tribunals Service

4623. The Chairperson (Lord Morrow): Today is the Committee's last scheduled opportunity to consider the clauses of the Justice Bill. I remind members that a number of issues with the Bill were parked. Part 3 of the Bill on policing and community safety partnerships (PCSPs) was decided on informally by the Committee. The Department has tabled a number of additional provisions that the Committee has yet to take a view on. A paper outlining the outstanding issues is in members' packs. We will go through each outstanding clause in turn.

4624. On 27 January, members indicated that they were not in a position to formally consider the clauses in Part 3 of the Bill on PCSPs. The Committee took its decision on those clauses informally. A record of the Committee's informal decisions on clauses 20 to 25 and schedules 1 and 2 and the minutes of the meeting is in members' packs.

4625. We welcome Gareth Johnston, who is head of justice strategy division, David Hughes, who is head of the policing and policy strategy division, and Dan Mulholland and Nichola Creagh from the policing policy and strategy division. We will proceed through the issues as detailed in the Committee Clerk's memo.

4626. There has been some consideration about the definition of antisocial behaviour, as raised by Include Youth in its submission. The Department has provided a copy of the definition of antisocial behaviour as used in the Anti-social Behaviour (Northern Ireland) Order 2004. I ask members to look at the definition, although you have probably already done so, and to make any comments that you have on that issue. The departmental officials have indicated that they do not want to add anything.

Clause 20 (Establishment of PCSPs and DPCSPs)

4627. Ms Ní Chuilín: We are abstaining.

4628. Mr O'Dowd: We will be abstaining on this section.

Question, That the Committee is content with the clause, put and agreed to.

Clause 20 agreed to.

Clause 21 (Functions of PCSP)

4629. The Chairperson: The Committee agreed that clause 21(1)(d) should be amended as proposed by Include Youth in its written submission to insert "and fully considering" after "to make arrangements for obtaining". The Department has provided a draft amendment to that effect and a consequential amendment for clause. A copy of the draft amendment is attached to the Department's letter in members' packs.

4630. Ms Ní Chuilín: We abstain.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 21 agreed to.

Clause 22 (Functions of DPCSP)

4631. The Chairperson: Are there any comments on this clause?

4632. Ms Ní Chuilín: We abstain.

Question, That the Committee is content with the clause, put and agreed to.

Clause 22 agreed to.

4633. The Chairperson: We will take clauses 23 to 33 together because no issues, of substance, anyway, were raised when we did our informal consideration.

4634. Ms Ní Chuilín: We are abstaining.

4635. Mr McNarry: We are abstaining from the votes on clauses 30, 31, 32 and 33.

4636. The Chairperson: Mr McNarry is abstaining from the votes on clauses 30, 31, 32 and 33.

Question, That the Committee is content with the clauses, put and agreed to.

Clauses 23 to 33 agreed to.

Clause 34 (Duty on public bodies to consider community safety implications in exercising duties)

4637. The Chairperson: The Committee has not reached a decision on this clause. At its meeting on 27 January, the Committee considered a proposed amendment from the Department to address the concerns of members regarding the statutory duty arising from clause 34. The

Committee agreed to make a decision on clause 34 today to provide members with more time to consider the issue.

4638. The Department has now provided a further proposed amendment requiring it to seek the approval of the Attorney General before issuing any guidance as to how a public body should comply with a duty that it hopes will offer sufficient reassurance. The amendment also proposes to change the term "in any community" to "in any locality" for the sake of clarity. Perhaps we could hear from the officials on this.

4639. Mr David Hughes (Department of Justice): Since the papers were given to the Committee, the Department has heard from the Attorney General, who has seen the amendment that you have in front of you. He said that he approves the intention behind the Department's proposed amendments, particularly his role in approving the guidance. He has made suggestions about how the duty could be more firmly tied to the guidance, including one that the guidance should set out the extent to which failure to adhere to it might be relied upon in proceedings. He believes that, if the amendment is made, it will be better than the filter mechanism that he proposed and briefed the Committee on previously. We think that his approval that the amendment is heading in the right direction should offer assurance. In his view, the guidance would be sound and would offer sufficient protection.

4640. If the Committee is content to approve the proposed amendment, it will enable us to continue to take it in the direction that the Attorney General has indicated so that we can bring an amendment for consideration that continues with the movement that you see in the amendment that we have provided to date. In those circumstances, the Committee could carry out its report on the Bill to the effect that it approves the amendment on the grounds that a further amendment could be made to satisfy the Attorney General's concerns.

4641. The Chairperson: Does anyone wish to comment or to ask any questions?

4642. Mr O'Dowd: It is a bit convoluted.

4643. Ms Ní Chuilín: So, we are proposing an amendment that needs to be amended?

4644. The Chairperson: It is slightly confusing.

4645. Ms Ní Chuilín: Is that what is happening?

4646. The Chairperson: Maybe it us, rather than it being that you are not explaining it well enough.

4647. Mr Hughes: I will explain it more clearly. The Attorney General has said he approves of the way that the further amendments that you have in front of you are going and that they are beginning to meet the intention behind the Department's amendments, but he thinks that it should be taken a further step in two ways. He suggested that, instead of it just being a duty on a public body to have due regard to the likely effect of the exercise of its functions, and so on, it would be better if the duty was on the body to have due regard to guidance that sets out how antisocial behaviour can be taken into consideration in exercising its functions. The duty would be dependent on the guidance, and, because the guidance would need the approval of the Attorney General, he would then give an assurance about the nature of the guidance, and it would give sufficient weight to the way in which the duty can be exercised.

4648. When he gave evidence to the Committee, he raised a concern about the importance of preventing unnecessary and wasteful litigation as a result of that duty, and he suggests that the

guidance could set out the extent to which that failure could be relied on in legal proceedings against that public body if it failed to adhere to the guidance.

4649. It is quite complicated. We have not come to you with a draft amendment to reflect that because we are still trying to make sure that we can instruct an amendment to be drafted, which achieves what the Department and the Attorney General agree is a way forward, but it is quite complicated.

4650. Ms Ní Chuilín: I do not mean to sound facetious, but the amendment is going in the right direction but it needs to be amended. Therefore, the amendment needs to be amended. The duty is not tied into the guidelines tight enough, so they also need to be amended, and there is no suggested amendment of what needs to be amended. Is that right? So, what are they saying?

4651. The Chairperson: When are we likely to see the amended amendment, or are we likely to see it?

4652. Mr Hughes: We need to be satisfied that the amendment that we finally hope to bring forward is drafted to capture what we want to achieve. The Department and the Attorney General are looking at the same thing. We would need to ensure that the Attorney General is satisfied that it is capturing what he thinks it is trying to achieve.

4653. I know that the Bill, in all its parts, goes to the Executive, and this is the part of the Bill to that the Executive have paid particular attention to. We, therefore, want to make sure that there is satisfaction there, too. The amendment would be brought forward at Consideration Stage, but I will stand corrected on that from anyone who knows the procedure better than I do. However, we would have to have gained the satisfaction and approval that it is going in the right direction prior to that.

4654. The Chairperson: Are you finished on your point?

4655. Ms Ní Chuilín: So, it is four weeks.

4656. The Chairperson: Yes. That is a good point.

4657. Mr McDevitt: If the Department is proposing to bring forward an amendment at Consideration Stage, and the Committee cannot consider that as part of the report, it will have to take its chances in the Assembly. That is basically it. I do not mean this in a light-hearted way, but I would not feel comfortable making a commentary on any half-baked amendment. The best the report could be is silent, or it could offer some very general commentary on the context of the conversation. It would be impossible for us to be able to provide any definitive opinion at our report stage, if you are not proposing to bring it to the Assembly until Consideration Stage. That is the problem for us.

4658. The Chairperson: It certainly is. Do you want to comment on that, Mr Hughes?

4659. Mr Hughes: Would it be possible for the Committee to take a view on the amendment that is in front of you, which is moving closer to —

4660. Mr McDevitt: As a Committee member, my problem with this relates to the report that we have to agree to. If the amendment is not going to be tabled, we cannot have an opinion on it. That is the problem. We are caught in that.

4661. The Chairperson: Mr Hughes, do you take the point that is being made?

4662. Mr Hughes: I entirely understand that it is impossible for the Committee to take a position on an amendment that it cannot see and that is based on, what I admit, is a rather convoluted explanation. However, it is a convoluted suggestion and policy. We have taken the amendment that you see in front of you, and the Attorney General has seen it and has commented on it positively. At the points at which it is amending the Bill, as introduced, it is negating some of the issues that he has raised. Would it be possible, then, to take a view on this amendment? If the Committee sees that the amendment is going in the right direction, it will assist in bringing an amendment in the same direction later on.

4663. Mr A Maginness: The problem with that is that we are not sure what this means. It is convoluted; it is not crisp, clear and transparent, as far as the Committee or individuals are concerned. We discussed this. When the Attorney General discussed it, he referred to subsection 2, I think, of the Garda Síochána Act 2005. That was clear. If we are going to make law here, we have to have certainty. We have to have a public body that is able to read the law and say what we have to do in particular circumstances. That is not clear, as far as I can see. It may be moving in the right direction. I do not know whether it will hit the right point, but, at this time, it is convoluted. Furthermore, as far as the Department and the Attorney General are concerned, it is a work in progress. It is impossible for us to give a judgement on it.

4664. The Chairperson: The Committee can comment or take a position on what is in front of us, not on what might be there one day.

4665. Mr Hughes: I agree, but if the Committee is able to take a view on the amendment that is before it today, these amendments would still form the basis of the amendment that the Department would be seeking to meet the Attorney General's concerns. There would be further elaboration and further developments on it. What has been provided to the Committee amends the Bill, as published, in a useful way, and there may be some additional amendment to take it further. Nevertheless, we are still seeking the amendments on the reference to locality, the requirement for the Attorney General to give approval to the guidance, and so on. Those things would still stand.

4666. The Chairperson: Yes, but the Committee will be left with no alternative but to seek its own amendment on it.

4667. Mr McDevitt: I want to be sure that I understand Mr Hughes correctly. Is Mr Hughes saying that the current amendment — the one that is before us — will be proposed formally by the Department and that the Minister will propose the amendment at Committee Stage?

4668. Mr Hughes: No, because we want to make some changes to it. However, the changes in the amendment will still be there, although it will be more than that, as it were. It will be this amendment plus.

4669. Mr McDevitt: If the amendment were actually tabled, the Committee could form a view. Even if the Minister had every intention of scrubbing it a week later and tabling another one, the Committee could form a view at Committee Stage. If it is not being tabled, we just cannot do that.

4670. Mr Gareth Johnston (Department of Justice): For clarity: this amendment has been tabled by the Department. We are simply saying that it may not be the final answer.

4671. The Chairperson: We were going the wrong way about trying to make that point, but you have made it well.

4672. Mr Johnston: Essentially, the Department will be inviting the Committee, if it were willing, to reach a decision and to take a vote on that amendment. We have said that more will be brought at Consideration Stage in light of the further discussions.

4673. The Chairperson: Is it going to be tabled at Consideration Stage?

4674. Mr McCartney: It is like 'Blue Peter' in reverse.

4675. Mr Johnston: An amendment will be tabled at Consideration Stage.

4676. The Chairperson: I know that. You are taking me into Alice in Wonderland stuff here. [Laughter.]

4677. Mr Johnston: With respect, I wonder whether the question is not so much about what would be tabled at Consideration Stage but what is being proposed now to the Committee, which is what the Committee reports on.

4678. Ms Ní Chuilín: That is not the procedure.

4679. The Committee Clerk: The Committee will report on its consideration of the clause, whether it agrees with the clause as it stands in the Bill or whether it agrees the clause as amended. If so, it has to spell out the exact amendment that it is agreeing to. It may also reject the clause entirely. The only way that the Committee can make a decision on the Department's proposal is to know the exact wording. In the report, the Committee will have to say that it agrees to the clause as amended by the Department. If the Department does not table that amendment, it will cause a problem.

4680. Mr Hughes: If I may, —

4681. The Committee Clerk: If the Committee agrees to the clause as amended, it has to spell out in its report the amendment that it has agreed to. It will be either an amendment that the Department will table or one that the Committee will table. If the Committee agrees to the Department's amendment today, knowing that the amendment will change —

4682. Mr Hughes: The critical part is that the amendments to what was originally published and are contained in the text include the actual elements of substance that will still be followed through. The changes to the Bill, as published, are around limiting the scope to prescribed organisations, ensuring that the guidance is approved by the Attorney General, and changing the reference from "community" to "locality". There will also be a couple of other changes. All those changes will still be followed through. However, we are saying that we are looking at the possibility of taking further changes beyond that but in the same direction. We will not be stepping away from the changes that are contained in the amendment. We will still follow them through.

4683. The Chairperson: The amendment that is out there somewhere is in the making. Is that right? I suspect that you are trying to get agreement here with the Attorney General. What happens if you do not get agreement?

4684. Mr Hughes: The position is that the Attorney General has set out quite clearly what he thinks is an effective way of amending this clause. We have considered and can see precisely what he is suggesting and we think that it is a way forward. Therefore, we are working on the basis that we are heading in the same direction.

4685. Mr McNarry: In a Justice Committee in particular, one expects honesty to be the best policy, but I am afraid that Mr Hughes's policy of honesty has tripped him up. I would have abstained on clause 34, anyhow. [Laughter.] However, there is no way that I would be able to change my judgement on that based on something that I cannot even see. We can wrap this up: procedurally, we cannot go down that route. It would be the most dangerous precedent that any Committee could establish. As somebody said, it would be like 'Blue Peter' in reverse — they are saying, "Here's one I haven't prepared yet, but I am going to prepare it for you later." I think that you recognise that we are in dangerous territory, Chairman.

4686. Mr O'Dowd: As the Committee Clerk laid it out, the Committee can vote on the amendment. In the normal course of events, the Department would come back at a later stage to say that it wanted to move beyond where it was at Committee Stage. That would and can happen, though it is not the best way to do things. Alternatively, the Committee can state to the Department whether it is travelling in the right direction. I do not think "take a view of it" is the right terminology, but, for the purpose of its minutes, the Committee can tell the Department that it is in the right direction of travel — the Committee's general opinion is that the involvement of the Attorney General and so on is a better way forward — but we did not take a formal vote on the clause.

4687. Mr Hughes: Mr O'Dowd's suggestion that the Committee expresses a view as to whether we are going in the right direction helps in the work that still needs to be done. Were the Committee able to take a view on the amendment that is before it, it would give us a clear indication as to whether we are heading in the right direction away from the original clause. That amendment considerably changes the clause, as introduced. Ultimately, whatever view the Committee takes of the amendment in front of it will be helpful.

4688. The Chairperson: It does not get any simpler the more we talk about it, does it? However, I think that the Committee must make its views known. I am informed that members could, if they wish, agree that it is content with clause 34, subject — maybe with some relief to the Department — to the Department bringing forward an amendment that encompasses the issues that it has highlighted for the Attorney General. However, the Committee may state that it also wants to see the draft amendment as soon as possible. Would Thursday be too soon to ask for it, Mr Hughes? Are you waiting for an Executive meeting?

4689. Mr Johnston: We are increasingly under pressure of time and are keen for the Committee to complete its consideration of and to vote on the various clauses today so that they can be taken to the Executive on Thursday. We recognise that the Committee can work formally only with what it is presented. The Committee may reject that clause, or its members may choose to abstain or to approve it. It would certainly be helpful for the Committee to state in the text of its report that it felt that additional changes were needed. However, a definite decision from the Committee today on clause 34 would be particularly helpful to us in getting the entire Bill through.

4690. The Chairperson: We have to move on one way or the other. I will put the recommendation that the Committee is content with clause 34, subject to the Department proposing an amendment that addresses the issue that it highlighted and that the Attorney General wishes to see those draft amendments as soon as is humanly possible. Do Committee members agree?

4691. Ms Ní Chuilín: Chairperson, although we do not want to be disruptive, we will abstain. Through no one's fault, this has been a convoluted conversation. I am not content with clause 34.

4692. The Chairperson: With any part of it?

4693. Ms Ní Chuilín: Not from what I have seen. I would prefer to abstain, let it go forward and see what is there.

4694. The Chairperson: I cannot direct any Committee member on how they should vote. The position of the Committee was that it was content with most of clause 34, but that there were aspects of it that it wanted to be changed. Are members now saying that it does not matter what way the clause is amended, because they will not be content with it?

4695. Ms Ní Chuilín: No.

4696. The Chairperson: Committee members have heard what has been said and what I proposed as a possible way forward. Some members wish to abstain. What do other members feel about clause 34?

4697. Mr A Maginness: If clause 34, as amended, still creates a new statutory duty on a public body, and that statutory duty is not sufficiently qualified, the clause will not be acceptable. I, Lord Empey and others expressed the view that we do not want an additional statutory duty that will further burden public bodies. That is the essence of the argument.

4698. Mr Givan: I concur with Alban's views about creating a statutory duty. It concerns me that that new duty would be put on any public body. I do not need to elaborate, because I share the same concerns as Alban. I am content to vote down the clause or to abstain, but it is not something that I enthusiastically support.

4699. The Chairperson: Members can do all those things. They could agree, although I suspect they will not do so. They could also vote against or reject the clause. That would give the Department some time to come back on the clause at a later date, and it does not need to be told that we are running out of time. If I have read the mood of the meeting correctly, I am right in saying that different members have different problems with different aspects of clause 34.

4700. Ms Ní Chuilín: For different reasons.

4701. The Chairperson: It is up to members how they want to vote.

Question, That the Committee is content with the clause, put and negatived.

Clause 34 disagreed to.

4702. Mr McCartney: Sinn Féin members abstained.

4703. The Chairperson: OK. Clause 34 is not agreed. I am sure that the officials will take cognisance of that decision, and will come back to the Committee.

Clause 35 (Functions of joint committee and Policing Board)

4704. The Chairperson: Is the Committee content with clause 35 as drafted?

4705. Ms Ní Chuilín: We will abstain.

Question, That the Committee is content with the clause, put and agreed to.

Clause 35 agreed to.

4706. The Chairperson: We now move to schedules one and two, which are virtually the same. Is the Committee content with paragraphs 1 to 3 of schedule 1 as drafted?

4707. Ms Ní Chuilín: We are abstaining.

Members indicated assent.

4708. The Chairperson: Are members content with paragraph 4 of schedule 1?

4709. Ms Ní Chuilín: We are abstaining.

Members indicated assent.

4710. The Chairperson: Are paragraphs 5 and 6 of schedule 1 agreed?

4711. Ms Ní Chuilín: We are abstaining.

Members indicated assent.

4712. The Chairperson: We move to paragraph 7 of schedules 1 and 2. I remind the Committee that we have discussed the issue of designated organisations, and the Department has now proposed two alternative amendments for the Committee to consider. Alternative A allows for a list of specified organisations for inclusion in every PCSP to be made by affirmative resolution as requested by the Committee. Alternative B is the Department's preferred option, and it believes that it meets the Committee's concern but maintains the flexibility of individual PCSPs. I ask the officials to comment.

4713. Mr Hughes: Following extensive discussions, we thought it would be useful to put forward these two alternatives setting out the Department's preference for a system that allows for a degree of discretion on the part of local partnerships, since that underpins the value of local partnership working where circumstances in that district are taken into consideration first rather than a solution being dictated by the Department and the Policing Board. We put forward the second alternative as our preference, but we also provide the Committee with a first alternative. It sets out the conclusion of the Committee's previous deliberations, which was that an Order designating organisations that must be represented on a PCSP must be made by affirmative resolution. That is what the Committee was seeking.

4714. We want to flag that we think that the mechanism for making that Order is somewhat cumbersome. There would be a considerable issue around the timeliness of the first Order that would need to be made for the PCSPs to be in operation. We heed the clear views that the Committee has taken on this previously.

4715. The Chairperson: Does any member wish to comment or ask a question? You know what the alternatives are. Alternative A allows for a list of specified organisations for inclusion in every PCSP to be made by affirmative resolution, as requested by the Committee. That is what we asked for. Alternative B is the Department's preferred option, and the Department believes that it meets the Committee's concerns but retains the flexibility of individual PCSPs.

4716. Mr McDevitt: Although I am sympathetic to Mr Hughes's argument to some extent, alternative B fails the basic test that the Committee set; namely that we wish to see a list of core organisations that will automatically be members of PCSPs. As much as I understand the arguments about flexibility, alternative B certainly does not meet the test that the Committee collectively set some time ago.

4717. The Chairperson: Does any other member wish to comment? Are members content to adopt the Committee's original position of alternative A, under which the Order would be subject to affirmative resolution, as requested by the Committee?

4718. Ms Ní Chuilín: We abstain.

Members indicated assent.

4719. The Chairperson: Are members content with paragraphs 8 to 9 of schedule 1?

4720. Ms Ní Chuilín: We abstain.

Members indicated assent.

4721. The Chairperson: We move to paragraph 10 of schedule 1. I remind the Committee that we requested that the Department look at amending this paragraph to ensure that the chairperson of the PCSP is an elected member. The Minister indicated that he is not minded to make that amendment. The Committee, therefore, agreed to request a draft amendment to be prepared for consideration. We are told that the draft amendment is on its way to us, so we had better wait until we have sight of that. We will move on and return to paragraph 10 when we are in possession of the text of the draft amendment.

4722. We move to paragraphs 11 to 16. The Committee indicated in the past that it is content with these paragraphs. Is the Committee agreed on paragraphs 11 to 16?

The following members indicated assent:

Lord Browne, Mr Givan, Mr A Maginness, Mr McDevitt

4723. The Chairperson: The Committee indicated that it was content with paragraph 17 of schedule 1. Is that still the case?

The following members indicated assent:

Lord Browne, Mr Givan, Mr A Maginness, Mr McDevitt

4724. The Chairperson: The Committee indicated in the past that it is content with paragraphs 18 to 21. Are members agreed on paragraphs 18 to 21?

The following members indicated assent:

Lord Browne, Mr Givan, Mr A Maginness, Mr McDevitt

4725. The Chairperson: We move to schedule 2. As I said at the start, the two schedules are virtually the same. Are members agreed on paragraphs 1 to 3 of schedule 2?

4726. Ms Ní Chuilín: We abstain.

Members indicated assent.

4727. The Chairperson: The Committee intimated in the past that it was content with paragraph 4 of schedule 2. Are members agreed on paragraph 4?

The following members indicated assent:

Lord Browne, Mr Givan, Mr A Maginness, Mr McDevitt

4728. The Chairperson: We indicated that we were content with paragraphs 5 and 6 of schedule 2. Are members agreed on paragraphs 5 and 6?

The following members indicated assent:

Lord Browne, Mr Givan, Mr A Maginness, Mr McDevitt

4729. The Chairperson: We move to paragraph 7. Is paragraph 7, as amended, agreed? There are abstentions.

Members indicated assent.

4730. The Chairperson: Are paragraphs 8 and 9 agreed?

The following members indicated assent:

Lord Browne, Mr Givan, Mr A Maginness, Mr McDevitt

4731. The Chairperson: Paragraph 10 should come next, but we are waiting for the draft amendment. We will come back to that in a moment or two.

4732. The Committee indicated that it was content with paragraphs 11 to 16. Is the Committee agreed on paragraphs 11 to 16? There are abstentions.

The following members indicated assent:

Lord Browne, Mr Givan, Mr A Maginness, Mr McDevitt

4733. The Chairperson: Is paragraph 17 of schedule 2 agreed?

The following members indicated assent:

Lord Browne, Mr Givan, Mr A Maginness, Mr McDevitt

4734. The Chairperson: Are paragraphs 18 and 19 agreed?

4735. Ms Ní Chuilín: We abstain.

Members indicated assent.

4736. The Chairperson: At this stage, we would normally thank the officials for being here. However, we will perhaps retain you for a moment or two until we get a look at the amendment to paragraph 10. We will pause here for a moment or two. Do not let the officials out.

4737. We are going to have to move on. Perhaps the officials should leave the table, but not leave the room. We would like to retain you for a few moments. We will move on to our consideration of Part 7 of the Bill, which comprises the legal aid clauses 85 and 89.

4738. I welcome Robert Crawford and John Halliday from the Northern Ireland Courts and Tribunals Service. I remind members that, at its meeting on 3 February, the Committee agreed to make a decision today on clauses 85 and 89 so as to allow members more time to consider a draft amendment proposed by the Committee and an alternative amendment from the Department concerning the requirement for affirmative resolution in relation to a fixed means test for criminal legal aid.

4739. The Committee had wished to see an amendment that would ensure that all regulations on a fixed means test are subject to affirmative resolution. The Department of Justice is proposing an amendment that will allow the first rule to be subject to affirmative resolution and subsequent rules to be made by negative resolution. The correspondence from the Department sets out the reasons for that preferred approach. The relevant summary papers and the draft amendments have been tabled.

4740. I now ask the officials to comment.

4741. Mr Robert Crawford (Northern Ireland Courts and Tribunals Service): I have not seen the Committee's amendment. We are still of the view that our amendment would spare the Committee and the Assembly from having to take time to make simple changes.

4742. The Chairperson: We will have to stop you there. The Division Bells are ringing.

4743. Ms Ní Chuilín: It is for the legislation on dangerous dogs. How appropriate. [Laughter.]

4744. The Chairperson: We will check whether they are ringing for a Division or because the House is inquorate.

Committee suspended.

On resuming —

4745. The Chairperson: The meeting is reconvened. We were with you, Mr Crawford, when we suspended.

4746. Mr Crawford: I have a couple of points to make, Chairperson. As we said at the last meeting, we do not resist the principle of affirmative resolution in respect of this particular clause. However, we have been advised by legislative draftsmen that there were some complications of a practical nature, and we attempted to explain what those might be. In particular, there could well be quite a number of frequent amendments to these regulations; for example, amendments to take account of changes in social security legislation. We felt, therefore, that the Committee might be attracted to the idea of using affirmative resolution on the first occasion only, and we have offered an amendment on that basis.

4747. The Chairperson: Members, you have heard what Mr Crawford said. Does anyone wish to comment?

4748. Mr O'Dowd: I want to ask about the process. If we go for affirmative resolution for all the rules, in line with the Committee's proposal, would the rules come before the Committee for it to decide whether a vote is required? Could the rules be dealt with at Committee rather than going to the Assembly on each occasion?

4749. The Committee Clerk: Under the affirmative resolution procedure, they would have to go to the Floor of the Assembly. The amendment that the Committee is looking for would require

any proposals or changes regarding means testing to be decided by affirmative resolution. The Department has advised that its draftsman thinks that amending the clause in such a way may have consequential or knock-on effects for other legal aid regulations. Those regulations may now have to be agreed by affirmative resolution, whereas they are currently subject to negative resolution. The draftsman is saying that, from the Department's point of view — I may not be phrasing this right — it is too difficult to put it through as a draft, and that is why it is suggesting that affirmative resolution be used on the first occasion only.

4750. Mr McDevitt: Could I ask for some clarification from officials, Chairman? Would the Department's draft amendment not capture the means test? In other words, the first set of rules would have to, by definition, include the means test.

4751. Mr Crawford: That is what clause 85 does; it is all that it does. It gives us the power to set the means test, and that would involve setting the means test at a particular level or threshold. Subsequent regulations could amend that threshold, but, after that first occasion, there would be a means test in place — or not, if it were rejected.

4752. Ms Ní Chuilín: Does that mean that, if it is set once, it would be unlikely that an affirmative resolution would be ignored if we were just to go for negative resolution in any other instance?

4753. Mr Crawford: In subsequent instances under negative resolution procedure, regulations would still be subject to consultation and would still come before the Committee. So, the Committee could pray against them in the normal way under negative resolution procedure. It would still have the power to prevent a change. However, if a test were in place, that would continue unaffected. For example, if the Department's proposals were to reduce the thresholds so that more people would move out of legal aid, the Committee could reject that and leave the existing threshold in place.

4754. Ms Ní Chuilín: So, this really just sets the power to means-test legal aid?

4755. Mr Crawford: We are saying that, if the Committee were minded to accept clause 85, on the first occasion that the proposals for regulations were brought forward, there would be public consultation and Committee scrutiny of the level of that threshold. That would then go to a vote in the Assembly under affirmative resolution procedure. So, it gives maximum protection for the first time that the level is set.

4756. Mr A Maginness: Are you saying that the first set of regulations would provide the template for the threshold, and so on, and that subsequent changes would be incidental amendments to various aspects of that but would not affect the substance?

4757. Mr Crawford: They could, but they would be subject to negative resolution. The most obvious occasion that the legislative draftsman had in mind was if there was significant inflation in a particular year and there was a desire to increase fees across the board for legal aid. The power that is being amended in article 36 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 is the power that drives all the legal aid fee-setting at present. An inflationary increase would be made to all regulations under that power. If one area required affirmative resolution, that would have to be debated on the Floor of the House, even for something as simple as, for example, a 5% increase across the board. We are inviting the Committee to consider whether that is what it wishes to do or whether it is more concerned with the structure of a threshold. Members might recall the seven possible options that we presented to the Committee. The way that we go about it may be what the Committee really wants to see, in which case using affirmative resolution on the first occasion would provide that protection.

4758. Mr A Maginness: That seems OK.

4759. The Chairperson: Are you saying that the draftsman has not come up with the wording yet?

4760. Mr Crawford: The draftsman has, in fact; we put a proposed amendment before the Committee last week.

4761. The Chairperson: But there is a distance between us and you.

4762. Mr Crawford: We have not seen the Committee's amendment, but we understand that it would provide for affirmative resolution on every occasion that regulations are made.

4763. The Chairperson: Could the draftsman not draw up words to reflect that adequately?

4764. Mr Crawford: The draftsman advised against it. He said that it would create great practical difficulties. That is the advice that we have brought back to the Committee.

4765. Lord Browne: It seems that we are setting a precedent here. If we use affirmative resolution for the first set of rules, what is the difficulty in using that for future changes? Legal aid seems to be an extremely important issue that goes through not just the Justice Department but right through society. If we are setting the precedent of using affirmative procedure for the first set of regulations, I cannot see what difficulty there would be in bringing regulations to the Assembly for a vote each time. I am thinking about welfare reform and so on. I cannot see what practical difficulties there would be.

4766. Mr Crawford: The practicality that the draftsman has in mind is simply the effect that that would have; it would make the general operation of, for example, legal aid subject to affirmative resolution, because the clause would then apply to that. The question is whether that is, indeed, the contention that the Committee wishes to apply. The Courts and Tribunals Service has no objection to including affirmative resolution in that particular area. We have heard the Committee's views, and we understand the sensitivity of the situation, but the practicality is more about the time that it will take to debate every change on the Floor of the Assembly.

4767. For example, as we said the last time, if there is a change in social security and we need to change the way in which benefits are counted in, although it may be obvious that one thing changes to another, as may happen with the introduction of universal credit, the Committee might well be happy to deal with that change through negative resolution. However, if affirmative resolution is specified for every occasion, the Committee would have no choice but to use that.

4768. Mr A Maginness: What you are really saying is that the adjustments to the scheme are relatively minor and that it would be impractical to come back all the time to deal with things through affirmative resolution.

4769. Mr Crawford: We are asking for the Committee's view, because we are suggesting that, potentially, we will have to bring in regulations in that area every year to reflect, for example, social security changes. We wonder whether that will require a debate on the Floor of the House on each occasion.

4770. Mr A Maginness: If the adjustments to the scheme are relatively minor, I do not see why they have to be made by way of affirmative resolution.

4771. The Chairperson: Yes, because we could have negative resolution, as proposed by the Department.

4772. Mr McDevitt: I am sensitive to the Department's solution, because clause 85 would make a substantial policy change, namely the introduction of a means test, and that is what concerns the Committee. As I see it, the Department is proposing that we get the chance, through affirmative resolution, to express our opinion on the substantial issue in clause 85, which is the introduction of a means test, but that we do not seek to set a precedent so that every minor change to the outworkings or implementation of the means test must also be subject to affirmative resolution. The Department seems to have met us halfway, which is probably where we want to be.

4773. The Chairperson: That begs the question, Mr Crawford, of what would happen if, after the first occasion, the Department wanted to change the levels substantially.

4774. Mr Crawford: The Committee would still be able to engineer a debate on the Floor of the House by praying against a rule. However, before that could happen, we would have to come to the Committee with proposals for public consultation. At that stage, we would, in effect, find out whether the Committee has concerns, which we would have to deal with before moving to public consultation.

4775. Ms Ní Chuilín: Would you bring a prayer of annulment?

4776. The Chairperson: Yes, but there would be no obligation on the Department to come to the Committee. You could just say, "Tough; that is what you signed up to. That is the way it is, and that is the way it is going to be", although you might not adopt that attitude.

4777. Mr Crawford: We must come to the Committee when we make regulations, and we must carry out public consultation, which begins with us coming to you with proposals for the consultation.

4778. Mr A Maginness: Perhaps the Committee Clerk will tell us the difference between the Committee's amendment and the Department's amendment.

4779. The Committee Clerk: The difference is that the Department's suggested amendment would allow regulations to be subject to affirmative resolution the first time that they are brought through for means testing. Subsequent regulations would be subject to negative resolution. The difference is that matters subject to affirmative resolution would have to be debated and approved on the Floor of the House.

4780. Mr A Maginness: So, what is our amendment?

4781. The Committee Clerk: The Committee asked that any regulations relating to means testing be adopted by affirmative resolution, and that is the aim of the amendment that has been prepared. The Committee was not looking at the wider aspects of legal aid. It looked at the means test and the impact that any fixed means test is likely to have. Witnesses had suggested that that impact could be substantial. Therefore, the Committee looked at it and decided that it should be subject to affirmative resolution. The Examiner of Statutory Rules also highlighted in his report to the Committee that the Department will be taking on a substantial new power under clause 85 and that, in his view, it should be subject to affirmative resolution. That was the background to the Committee's writing to the Department initially to ask for affirmative resolution to be used. The Department has suggested that draft amendment.

4782. Mr A Maginness: If we were to adopt our own amendment, would that be permanently subject to affirmative resolution?

4783. The Committee Clerk: Yes. Any regulation to do with means testing would be introduced by affirmative resolution procedure. We asked the Bill Office to prepare a draft amendment on that basis.

4784. Mr A Maginness: It strikes me that the Department has come up with a compromise that seems to meet our concerns at first instance. I am concerned about the establishment of the means test and whether it is fair and allows people proper access, and so on. If that is established as a template — excuse the phrase — any subsequent changes would be by way of adjustments for inflation.

4785. The Chairperson: We will have to decide what way we want to go forward: do we want to go back to the position that the Committee had adopted or are we content with what we have been told today? You have heard Mr Crawford outline the clause in some detail.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 85 agreed to.

4786. The Chairperson: Thank you very much, gentlemen.

8 February 2011

Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Lord Browne
Mr Thomas Buchanan
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Ms Nichola Creagh Mr David Hughes Mr Gareth Johnston Mr Dan Mulholland	Department of Justice

4787. The Chairperson (Lord Morrow): We return to paragraph 10 of schedule 1. We now have the wording of Mr Givan's proposed amendment. The officials and Mr Givan are with us, so we will not get lost with this one.

4788. We know that the Minister is not minded to agree to the amendment. Mr Givan, do you want to comment on your thinking behind it?

4789. Mr Givan: Yes, thank you. It is a point that I raised previously, and the Committee has been content to allow it to come to this point. The rationale for what I am suggesting is based on a couple of key issues that I highlighted previously. I am suggesting that the procedure for appointing the chair and vice-chair of the policing community safety partnership should be the same as the procedure for the policing committee. There should be an elected member chairing

that body at all times, and elected using the same provision that applies to the policing committee. So, it will be the council that appoints that political member to be chair. That will be done on the basis of the four largest parties following the election. That is the way the district policing partnerships operate. Primarily, democratic accountability is a key issue for that role.

4790. The other issue is also to ensure that councils buy into the process. We are creating legislation that will mean that councils ultimately, if they choose, will not need to contribute a penny to the scheme. I think that locking in the council through an elected member holding the position of chair will put a greater degree of responsibility on the elected members, and they will therefore go to the council and make a stronger case as to why the council should be making a contribution to the role of the committee.

4791. When I was a member of the South Eastern Education and Library Board, elected members were a minority, as they will be in the proposed new bodies. There were obviously relationship problems between elected members and independents. Ultimately, the elected members of all parties — we were all on it — felt disenfranchised, and, for whatever reasons, it did not work. To a certain extent, we were able to shirk our responsibility because we were a minority. My fear is that, for whatever reason, that potential might exist if we do not ensure that an elected member is chair of the body, and those elected members may not buy into the process.

4792. My proposal will give democratic accountability and buy the council into the process by following the same procedure for the appointments of the policing committee. That is why I am proposing the amendment.

4793. Mr A Maginness: You are talking about the overall chair; would the chair of the policing committee be the same person?

4794. Mr Givan: No. It could be a different person. Under the legislation, for the first year the chair of the policing committee will also chair the community safety partnership as a whole, but in the years thereafter, it can be a different person.

4795. Mr A Maginness: It could be an independent.

4796. Mr Givan: It can be a different person, but my amendment proposes that it would be an elected representative.

4797. The Chairperson: Does anyone else wish to comment or ask a question? Can we hear from the Department?

4798. Mr David Hughes (Department of Justice): The Department is not minded to make the amendment because of the principle that setting up local partnership working is to give increased delegated authority to the local partnerships to make arrangements for themselves. We do not think it is necessarily explicable why independent members should be excluded from chairing the partnership as a whole. Although Mr Givan makes a very cogent case, it is still the Department's position that an independent member should be in a position to chair the overall partnership.

4799. The Chairperson: Thank you. Mr Givan, do you want to respond to what you have heard?

4800. Mr Givan: No. I am content that the Department can have that position.

4801. The Chairperson: Is the Committee agreed on the amendment as put before you today?

Members indicated assent.