



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Justice (No. 2) Bill — Part 1 - Fine Collection
and Enforcement of Financial Penalties:
Department of Justice

3 December 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Paul Frew
Mr Danny Kennedy
Mr Seán Lynch
Ms Bronwyn McGahan
Mr Patsy McGlone
Mr Edwin Poots

Witnesses:

Ms Angela Bell	Department of Justice
Ms Karen Pearson	Department of Justice
Ms Pamela Reid	Department of Justice
Mr Graham Walker	Department of Justice

The Chairperson (Mr Ross): I welcome Karen Pearson, Graham Walker, Pamela Reid and Angela Bell. You will be aware that the session is being recorded by Hansard, and a report will be on the Committee website in due course. Will whoever is leading off outline the purpose of clauses 1 to 27 and schedules 1 and 2? We will open it up to questions afterwards.

Ms Karen Pearson (Department of Justice): Thank you very much, Chair. Thank you for the opportunity to give further evidence on this part of the Bill. We were here just before the summer recess, I think. I will speak to the parts that you just mentioned, Chair, and then turn to Parts 3 and 4 later in the session, if that is OK.

The Chairperson (Mr Ross): Yes, that is fine.

Ms Pearson: With me today are policy officials who have been working on the Bill: Angela, Pamela and Graham.

Just to recap, the key principles of the fines provisions are: to improve the arrangements for collection and enforcement of fines and other financial penalties; to avoid people going to prison for non-payment wherever possible; and to civilianise fine enforcement and to remove some of the burden from police. We will focus on the Department's amendments if that is OK, Chair.

I will speak to those briefly and then take questions on any section of Part 1. When we briefed the Committee on 23 June, we said that we were planning amendments on a power of arrest for individuals who do not turn up at court for their default hearing. We were also planning an amendment on information sharing to validate an offender's benefit status for deduction-from-benefit purposes and an amendment to clause 45 in line with the debate that we had on clause 86 in the previous Justice Bill. We wrote to the Committee on 29 June to provide more detail on those proposals. You have the draft amendments before you, and we hope that it is helpful to have them at this stage.

In recognition of the comments recorded in the table of summary evidence on the information-sharing provisions, I can advise the Committee that we are still working very carefully with colleagues in the Department for Social Development on those powers. We are considering comments that they have made on the draft. We do not think that those comments will prove fatal to the amendment before you, but it is possible, probably likely, that we will need to tinker with that a little bit more, so, if you will forgive us, we may need to present a further draft of that to you as soon as we can.

Also, as a result of the Committee's very careful consideration of the Bill so far and in response to ongoing policy work, we are proposing additional amendments to improve the financial penalty provisions of the Bill. Those include two amendments to the vehicle seizure powers to address the comments that you heard from the Human Rights Commission and the comments that we had from the Examiner of Statutory Rules on the regulation-making power in clause 18; and to provide that a vehicle seizure order should be made only if the value of the vehicle as sold is sufficient to discharge the sum owed, including the charges and costs of the sale.

We also propose an amendment in relation to the costs of fine default hearings and a technical amendment, I suppose, to bring the prosecutorial fines provisions that were agreed in the last Justice Act into the new fine collection arrangements. Then we have a short series of, hopefully, minor and technical amendments. Those include ensuring that a supervised activity order cannot be considered as an option in default of a confiscation order and that a warrant of commitment to imprison for default under the Bill is treated the same as a warrant under the Magistrates' Courts (Northern Ireland) Order 1981.

We then have some new policy developments. Ronnie just mentioned the amendment that we need, with your agreement, to the courts funds arrangements. Hopefully you have a copy of that amendment as well. Then we want to offer an amendment to fill a possible — I stress "possible" — lacuna in the direct committal for trial provisions in the last Justice Act. There is an issue that we want to put beyond doubt, and we have offered an amendment on that.

We are conscious that you have taken evidence from Mr Gamble, Lord Morrow and Mr McCrea. I think that we have given you an interim response in respect of our thinking on Jim Gamble's proposals. We need a bit more thought on that before we can say that the Department could live with that proposal. In respect of Lord Morrow, we would like to draw the Committee's attention to existing legislation that we think you will want to take into account: article 57 of the Fire and Rescue Services (Northern Ireland) Order 2006, which already makes it an offence to assault or obstruct a fire or rescue officer or a person assisting them. The penalty available for that is six months' imprisonment when tried summarily or two years when tried on indictment.

We fully understand the intention behind Lord Morrow's thinking. It would also be to make provision to make it an offence to assault paramedics or other medical or healthcare workers. It is perhaps worth noting that attacks on public servants or attacks that damage emergency equipment may already be treated as aggravating factors when sentencing. We also think — it is an obvious point to make — that legislation for paramedics would probably be more for the Department of Health, Social Services and Public Safety. It would certainly have an interest in it at the very least.

In relation to Mr McCrea's proposals, the Department does not consider that a Justice Bill is the appropriate mechanism to legislate on what is clearly a cross-cutting matter — flags. It is our view that that matter would be better dealt with by the Commission on Flags, Identity, Culture and Tradition that is to be established following the Stormont House Agreement. That is where we are on that Part of the Bill. I will pause there. I am very happy to take any questions.

The Chairperson (Mr Ross): Thank you very much. General issues first. The provisions aim at increasing payment rates. It might be useful to remind the Committee of the current level of payment rates and what the expectation is following the Bill.

Ms Pamela Reid (Department of Justice): Currently, about 45% of fines are paid before the payment due date. The Court Service runs a fine collection scheme, which is a very limited reminder service. A further 9% are collected through the fines collection scheme, which leaves the remainder having to go to the default hearing process, where there is a requirement for the defaulter to be summonsed to court and for the judge to decide on the default options, which are quite limited. We want to encourage more payment options to be upfront as opposed to having to go to a default hearing. We want to increase the payment rate through the new service. Overall, the payment rate for fines is about 70%, but that takes into account warrants that go to police for execution as well.

The Chairperson (Mr Ross): Where do you expect us to be once the Bill is passed?

Ms Reid: We are trying to get the payment rate closer to 80%. We also want to improve the options that are available so that we do not have the cost of the police doing the fine report; we want that to be more for civilian fine enforcement officers, as that is more cost effective. The police collected about £11 million last year in monetary penalties, of which £8 million was paid in fines and £3 million was cleared by prison. However, we want to reduce the committal to prison rate as well.

The Chairperson (Mr Ross): Obviously, the aim is to reduce the number of committals. What is the number of committals currently?

Ms Reid: Currently, for Northern Ireland it is 73%, and we want to increase that closer to 80%.

The Chairperson (Mr Ross): I had raised in relation to clause 9 the issue of whether you could extend the powers of the court to require offenders to satisfy a fine by undertaking appropriate treatment. It is the problem-solving model of justice. If somebody was not paying fines because they had addiction or mental health problems, part of their sentence, for want of a better word, would be that they receive help for their problems, and that would help to satisfy the fine. Where is the Department's thinking on that?

Ms Angela Bell (Department of Justice): The supervised activity order might be of some assistance. If the court chose to apply a supervised activity order instead of any other default option, the Probation Board would undertake focused work with the offender to address any financial or other issues that they were facing.

The Chairperson (Mr Ross): Would that be the same as going on a rehabilitation programme for drug abuse?

Ms A Bell: No, it would not.

The Chairperson (Mr Ross): That is what I am asking you. What consideration is being given to requiring someone with a drug addiction problem to go on a rehabilitation programme to fix the problem that meant that they did not pay their fine in the first instance? What is the Department's thinking on that? It has been raised a number of times over the past year.

Ms Pearson: We will have to come back to you on that, Chair. We envisaged some difficulties at this level of court disposal with mandatory health solutions, but I will come back to you as quickly as I can on that.

Mr McCartney: I have a number of points. Clause 9B(2) seems a bit contradictory. It says:

"If the debtor enters into the recognizance specified in the endorsement to the warrant, it is not necessary for the debtor to be taken to a police station; and if the debtor is taken to a police station without having entered into the recognizance, he or she must be released from custody on entering into it."

What are the circumstances in which that would happen?

Ms A Bell: Our intention with this clause was that a person would not be detained for any longer than was absolutely necessary on foot of an arrest warrant. We have tried to craft the clause in such a way that, if the person enters into a recognizance there and then with the police when they are stopped, they will be immediately released, but, if they do not enter into a recognizance, the police will have to

hold on to them and take them to the police station. At that point they may decide to enter into a recognizance, and they would then be released. It is for the debtor to decide whether he signs the recognizance and how long he will be held for.

Mr McCartney: The second part of the clause says:

"if the debtor is taken to a police station without having entered into the recognizance, he or she must be released from custody on entering into it."

Ms A Bell: I think that it is entering into the recognizance as opposed to entering a police station.

Mr McCartney: My second point is a broad one and relates to the seizure of a vehicle and selling it only if you get the value of the fine. Will it be up to an official to decide that or will you ask an assessor?

Ms Pearson: We will need advice at official level on the value. I do not know quite how we will do that, but we can say that it will not be solely for a civil servant to determine.

Mr McCartney: Employing an insurance assessor would add to the cost. I am not saying that there is no way of doing that, perhaps by a contract, but an official in an office could, say, see a 1970 model, look in a book and decide that it was not worth pursuing. If you enter into an arrangement with an assessor, and the debtor says, "That's below the value; we need another assessor," you could end up with a cost that you do not need rather than just taking the vehicle. I am saying that without prejudice. I am not saying that it is a good idea or a bad one, but at least if you get £500, that is £500 towards the fine, rather than saying, "We don't want that because it is not enough" but it cost us £300 for the assessor.

Mr Graham Walker (Department of Justice): Absolutely. A vehicle seizure order would be granted only by the court; it would not be granted by an official. The court would weigh that up. We anticipate that a seizure order would be used sparingly and only when other attempts at payment had failed.

Mr McCartney: I understand the logic. However, sometimes you end up with a cost that you do not need, especially when the idea is to bring money towards the centre and, instead, you end up spending money that you do not want to spend. That is my only concern. In the general theory, it is better to have so much rather than nothing, but to end up with nothing and it having cost you, you are in a minus right away. That is the broad point.

Mr Walker: I take that point absolutely. One of the amendments that we are bringing forward is to ensure that the value of the vehicle should be sufficient to discharge the cost of the sale and any associated costs.

Mr McCartney: What is now usually called Lord Morrow's amendment is being quoted here as article 57 of the Fire and Rescue Services Order 2006. In not stretching that to paramedics, you can see how people might say that there is, quite rightly, protection for someone from the Fire Service but that nearly adds to the argument that paramedics are left out. It is the same for assaulting a police officer in the execution of his duty, which carries sentences of six months and two years. I did not know that article 57 covered the Fire and Rescue Service. The question has to be asked: why not a paramedic?

There is the wider argument about whether that protection should extend into hospitals and accident and emergency departments, and we had some discussion on that. You could then have a paramedic, but not a nurse, in the same circumstances and subject to the same sort of assault by the same person. Why would you not cover paramedics if we have already covered fire officers and police officers?

Ms Pearson: As I just said, that is an issue that will go wider than the Department of Justice; another Department has an interest in that. We picked up that Lord Morrow might have been intending to achieve that through an amendment to the Police Act. We just wonder whether the Police Act would be capable of carrying something to do with paramedics, so there are a few issues to be worked through there.

Mr Walker: Attacks on paramedics and medical staff would, under sentencing guidelines and guidance to judges, attract, or should most certainly attract, a higher sentence than attacks on a vulnerable person. An attack on someone in public office who is providing a service to the public is listed as an aggravating factor.

Mr McCartney: I accept that. That is fair enough, but if fire officers were not covered, you could make the same argument that it is aggravating circumstances. We had this discussion before about other aspects of justice Bills about what is normative behaviour. In other words, someone will know that, if they assault a police officer or a paramedic, it will automatically be viewed differently, never mind the aggravating circumstances. You do not even have to employ it, but would just create a climate of behaviour, because that is a hefty charge by legislation. That is the broad point.

On Basil McCrea's amendments, is the Department saying that it has no view on the principle that he puts forward but that it should be dealt with elsewhere?

Ms Pearson: It is an obvious thing to say, but it is an issue that attracts considerable cross-cutting interest. When an agreement has said that there should be consideration of it, we are just not sure that a Justice Bill is the correct place for it.

Mr Poots: I will pick up on the issues raised by the Deputy Chair. On the seizing of vehicles, I assume that basic checks will be done to see whether the vehicle has debts on it. You could seize a vehicle with £10,000 of value but £9,500 or £11,000 of debt.

Ms Pearson: You are right.

Mr Poots: That is something that will be tied into it.

Lord Morrow's point is on an issue that is close to my heart and which I have discussed with Department of Health officials on many occasions. It is wholly wrong that, tonight, nursing staff and paramedics will be attacked, mostly by people who are drunk and disorderly. They should not be subject to that type of violence. Personally, I would like to see on-the-spot fines, which take it away from the courts, for less violent behaviour: verbal abuse, a push or something like that. I would like to see people being prosecuted. While people may be angry at the time and want to take the case further, cases are very often not taken further because it is just not worthwhile several months down the line.

First — we talked about this on the Justice (No. 1) Bill — what is the potential to have a fixed-penalty notice imposed on people and administered in our hospitals or emergency services that the Department of Justice will be responsible for picking up through whatever means you put it in the Justice (No. 2) Bill? Secondly, what are the opportunities for elevating the more serious incidents for aggravated circumstances? It does not matter what part of the emergency service it is, whether the Ambulance Service, the Fire Service, the Police Service, which we have already covered, or hospital staff: all those people who are doing public service jobs should not be subjected to abuse of any kind.

Ms Pearson: I completely agree with the principle of everything that you say. We would have to look at the proposal for on-the-spot fines. Anything going into the Bill will be discussed with the Department of Health. Chair, I do not know whether that is something that you want to write to the Committee on or whether you want officials to raise it with our counterparts; maybe both.

The Chairperson (Mr Ross): We can do that.

Mr Poots: We will do that, but there is an opportunity for us all to do something here that demonstrates that we, in Government, are supportive of people providing front-line services not being abused by individuals who take them for granted.

The Chairperson (Mr Ross): One of the issues when we had this discussion before was whether nurses or hospital staff want to take on that semi-judicial role of giving out fines. There is a slight problem there. If this stuff is caught on CCTV, is there any barrier to issuing fines? It is easy enough to identify who the person is if they have reported into accident and emergency.

Mr Poots: I have always felt that it would be a useful tool in a hospital ward to be able to say to someone who is getting a bit hostile, "Settle yourself down. You have been warned. There is a fines

system in place, and a fine will be imposed on you if you do not behave yourself." That would help to bring their attention to the fact that their behaviour was unacceptable. The truth is that most people who behave badly in hospitals get away with it. That is not right; it should not be the case.

The Chairperson (Mr Ross): We will write as a Committee, but it would be worthwhile if you could have those conversations with your counterparts in Health in the meantime rather than waiting for the letter.

Ms Pearson: We certainly will.

Mr Frew: I want to add to what Mr Poots said. If you hurt a paramedic or any front-line staff, you are not only causing harm and hurt to that person but are causing a ripple effect whereby that person is off the front line. You then create more victims. Whilst none of us would be responsible for somebody else's crime, prevention of that crime could go a long way to assisting other people who need first aid. To me, it is not so much about the punishment but the deterrent, and I think that a fixed penalty is one way that will focus minds in that environment, when a person is just about to cause hurt to someone. That should be looked at with regard to fixed penalties.

Ms Pearson: We are a little bit out of the knowledge zone of the Health environment, which is why we would like to be given the opportunity to talk to officials in the Department and see what they think about that, if that is acceptable.

Mr Poots: They have always indicated that it is a Department of Justice matter and that they do not have the powers to do it.

Mr Frew: The other issue is the seizing of vehicles. Forgive me, I cannot remember the terms used in the Bill — I will find it — but you have officers who go out and advise debtors and are basically responsible for getting the fine in. "Collection officers" is the term used. How will there be interaction between a court and the collection officers in trying to establish facts on the vehicle value and any debt on it, because it could be HP'd up to the dashboard and still have to be paid for. Whilst I have a sympathetic ear with regard to being able to seize vehicles, I want to make sure that it works properly and timely. How will the mechanics work when a court decides that this is the way forward? How will it ever be able to get the information required to make that judgement?

Ms Bell: There is a provision allowing regulations to specify the matters that a collection officer must take into account before making a request, at clause 18(6). The intention is that the collection officer will investigate the debt and the debtor's circumstances and will then provide a report to the court when he makes the referral and that the court will take that into consideration before it decides whether to make the order.

Mr Frew: Right, OK. That makes sense. Do you have any indication of a timescale for that? I suppose that a timescale is not that important when you are trying to claim in debt.

Ms Bell: No, I think that every case will be different.

Mr Frew: Yes, I suppose that you cannot individualise it.

Ms Pearson: If the objective is to dispose of the fine, we need to allow a collection officer time to work with the person. As well as having the power to make regulations, we have a guidance-making power at clause 21 as well. Between those two, we will be able to set out a really robust scheme for that issue.

Mr Frew: We have been concerned about the fact that there might not be enough value in the car to seize it if it has not been paid for or it is an auld rickie of a car. Imagine if it was the other way. Imagine that, for some reason, that there is a Lamborghini sitting there and the owner owes a few hundred quid or whatever. It would be inappropriate and out of proportion to seize that vehicle.

The Chairperson (Mr Ross): Take the hubcaps.

Mr Frew: Maybe just steal the hubcaps, yes.

Ms Pearson: As a driver of a very old Nissan Micra rather than a Lamborghini, I sympathise with that. It would be extraordinary if the court were to dispose of a huge asset for a small fine, but the option needs to be there for cases where the person is wilful or if it is the only asset. Justice has to be done; so, the court ultimately has to have the option. However, we hope that we will not come across too many situations like that.

Mr Walker: When the court is deciding on whether to make a vehicle seizure order, it has to be satisfied that the making of the order is reasonable, justified and proportionate.

Mr Frew: So, there are safeguards. Justice has to be seen to be done, and, if there is a Lamborghini sitting at your front door, it is not going to be your only asset, I would imagine. Is there a cloud around asset recovery? If so, is it harmful to both mechanisms?

Ms Pearson: We have tried to keep them separate.

Ms Bell: We have. We specified that these provisions will not apply in relation to confiscation proceedings because they have their own regime under the Proceeds of Crime Act, so we have tried to keep it separate.

Mr Frew: So, it is going down a completely different path and not intermingling at any time. With regards to lifting money from someone's benefits, how will that work? I see that the benefits are defined in the Bill. How will that work when we go to universal credit?

Mr McGlone: I was going to ask something like that.

Ms Bell: We need to stay in touch with DSD to ensure that, whatever way it crafts its provisions for universal credit, we can make appropriate adjustments so that these provisions will apply in a similar way.

Mr Frew: Obviously, that will mean an amendment through secondary legislation.

Ms Bell: Yes. We had a meeting with DSD earlier this week and the officials indicated that it might be timely. They might have their provisions in place before we have our Bill through Consideration Stage. The timing might allow us to make an amendment during the process, which would be helpful.

Mr Frew: Have you looked at including a line in clause 10 that would cover a change? Clause 10 states:

*"(3) Each of the following is a relevant benefit—
(a) income support;
(b) jobseekers' allowance;
(c) state pension credit;
(d) employment and support allowance."*

You have defined them all, but is there some all-embracing phrase that could go in there that would cover you so that you do not have to amend?

Mr Walker: The difficulty is that benefits have their own titles. However, clause 10(7) enables the Department to add to or amend that list of benefits. That order would be made by way of affirmative resolution.

Mr Frew: So there is flexibility.

Mr Walker: There is flexibility in the clause to add or change the names of the various benefits.

Mr Frew: Say you were found guilty and have to pay a fine of £200, and you have three children who need school uniforms, who decides what to take off your benefits and when to take it?

Ms Reid: Once the collection officer has established that the debtor is on benefits, they would make an application to the Department for Social Development. They would then make the deduction from benefits under its existing third-party scheme. Fines are sixth on that list of priorities, so it is quite low

down the list so that other living expenses are taken into consideration. So there is a system in place that ensures that other living expenses are taken care of. There is also an appeals process through DSD on the amount. They can also consider hardship. There is a maximum amount that can be taken. Only three deductions are allowed and a maximum of £10.95 per week can be taken out of any benefits.

Mr Frew: So there is a safeguard.

Ms Reid: There are safeguards within the existing third-party scheme.

Mr Frew: Flip that over the other way: somebody owes that money and they come up with an agreement to pay 2p per week, which is no real punishment. It would probably take more to service that than the value of the fine. Is there anything to safeguard against someone who is just trying to chance their arm?

Ms Reid: In relation to benefits?

Mr Frew: Yes. Drawing off that fine from your benefits.

Ms Reid: No. Again, it would be for DSD, and the amount would not be as low as that.

Mr Frew: I am using an extreme example.

Ms Reid: Yes, I know that it is extreme.

Mr Frew: You understand the principle that someone might pay a fine over a longer period of time, with a small amount of money every week or month, so that there is no real incentive not to offend again. There would be no real punishment there, as they would not feel an effect.

Ms Reid: Yes, because you do not notice it. It is quite a low amount, but it is proportionate to the amount of their benefits and whatever other outgoings they have.

Mr Frew: So you will need a massive amount of interaction with DSD. Are there data protection issues? How much will DOJ know about people's benefits, and how do you marry that up with protecting people's rights?

Ms Reid: We are building that in under the information-sharing clause, clause 12A.

Ms Pearson: We have proposed an amendment to deal with this as well.

Ms Reid: Only the 12 collection officers will have access to the DSD system. They will be able to go into the system and establish whether somebody is on benefits to verify the information provided to the collection officer or, if the debtor has not provided the information, they can check whether the person is on benefits. That will then allow them to make an application to DSD for deduction from benefits. However, just a small number of collection officers will have read-only access to limited information.

Mr Frew: Is there such a thing as a collection officer now, or is this a brand new job created by the Bill?

Ms Reid: It is new.

The Chairperson (Mr Ross): We are talking about taking money from people's benefits. In many cases, you are dealing with people who are not great at managing their budget. NIACRO offered its money management course as a way of supporting people who are in default of fines. What is the Department's thinking on whether it is willing to take up that offer from NIACRO or have the course in addition to some of the support orders?

Mr Walker: Money management is a slightly different point, but it could be part of a supervised activity order, if a supervised activity order was the appropriate way to go.

The Chairperson (Mr Ross): Does the Bill facilitate that?

Ms Reid: Within the supervised activity order, the Probation Board is offering, as part of the pre-placement induction, money management, victim awareness and citizenship courses. They are covered by the induction part of a supervised activity order.

The Chairperson (Mr Ross): Who is delivering that?

Ms Reid: The Probation Board.

The Chairperson (Mr Ross): NIACRO's service is not being used.

Ms Reid: Not as part of the supervised activity order. It is being provided by Probation Board officers.

The Chairperson (Mr Ross): I asked earlier whether alcohol or drug rehabilitation could be attached to a supervised activity order.

Ms Pearson: That is what we need to look at, Chair.

The Chairperson (Mr Ross): I am just wondering where the block would be. Is there something that you could do in the Bill to enable that to happen in the future? How about an amendment to enable that to happen in the future?

Ms Pearson: There was a very helpful amendment from the Committee on the last Bill. It was very forward-facing and encouraging.

The Chairperson (Mr Ross): It has been ignored, of course.

Ms Pearson: I think that we will certainly be considering something like that.

Mr McGlone: Paul was exploring the theme of universal credit, and I was looking at clause 12, which deals with deductions from benefit and inquiring into a debtor's means. It covers National Insurance, details of any relevant benefit and all that. That gives you access to DSD. What if the person is in receipt of benefits, but not means-tested benefits? I am thinking about whether you can get access to HMRC. This is just by way of verification of the authenticity of the case you are being presented with. I am flipping it round on the other side. To take an extreme case, somebody could be on benefits, such as DLA or attendance allowance, and be a millionaire. Do you just take a spreadsheet from an accountant or can you get access to HMRC, VAT returns, or other declared income, say?

Ms Bell: Our intention is to make provision for access to HMRC in the same way, but we cannot do that through the Assembly because of the way the HMRC —

Mr McGlone: — is structured.

Ms Bell: We are exploring how that can be done at Westminster.

Mr McGlone: Thank you. You have clarified that for me.

Lord Morrow mentioned the emergency services. This follows a conversation I had with a social worker. The emergency person on site may be a police officer, a nurse, a doctor or someone from social services. The social worker explained to me the very difficult circumstances that she found herself in. I know that you have had dialogue or discussions with the Department of Health. You can pick out one person, or one profession, in the health service, but they may not be the person at the front line in question at a given time. The front line in question could be somebody's home, a public road or somewhere else. I can see a range of people who might fall within that category, rather than pulling one person ahead of another. Yes, it is awful. It happens in hospitals often, but it also happens on the streets and sometimes even in people's private homes involving people who are employed by health trusts or wherever, too — just not police officers. That is running through my head. You could pick out one person ahead of another when it could be the second person who is subject to the violence or whatever comes in their direction. I listened very carefully to those

mitigating or particular factors that may be taken into consideration by a judge. It is not that they "will" or "shall"; it is they "may". As you well know, it is often the sentencing by judges that, time and again, is called into question by the media. So how do you cover that?

Ms Pearson: I think that, on your first point, you are absolutely right. If anything is done in this area at all, the question will be how far we go and what classes of public servants are brought into a new arrangement; and that is where we need to take great care. However, we have been invited to think about the health service in particular at this point. As I said, if an attack is on public services or damages emergency equipment, that may already be treated as an aggravating factor when sentencing. I suppose that we have to say that it is a matter for the judge. All of the classes of people you have spoken about would be within the range of that consideration. The judge would take that into account. The big questions, if there is an amendment, are how far it goes and what groups it covers. Where do you stop? There is a big policy choice there.

Mr Walker: You have captured the difficulty in trying to cover everyone, Mr McGlone. Arguably, if you go for a long list, you may inadvertently leave some people off. As Karen says, sentencing is an exercise of judicial discretion, and it is there for the reason that individual cases will differ substantially. I know that, at the Justice seminar last Thursday, Lord Leveson was thinking about the difficulties of picking a cadre of persons, and, arguably, that is why the exercise of judicial discretion is a better way of dealing with individual cases, where there may be substantial differences. As Karen says, the current sentencing guidelines and guideline cases would indicate that those who perpetrate crimes against the individuals whom you have described as particularly vulnerable, and who are subject to quite deplorable crimes, should certainly expect to get higher sentences.

Mr McGlone: Yes, that is the point: they should expect to get higher sentences, but the theory and the practice do not sometimes work. That is the dilemma that we face. I am not too sure how we square that circle. You are highlighting the difficulty and problem. If you have a list of people who are what you would call front-line service staff and you put a minimum sentence to an attack on those individuals, that makes sense for those who fall within that list. Is there a definition used by the health service or anywhere else to determine what front-line staff are? It seems to be driven more by the situation than a location.

Ms Pearson: Our focus has been in describing the aggravating sentencing arrangements for public servants, which is much broader. We could maybe write to the Committee with more information on that point.

Mr McGlone: Yes, that would be helpful.

Ms Pearson: We are just highlighting some of the concerns that we have of our understanding of Lord Morrow's proposal.

Mr McGlone: Where are you taking Mr McCrea's suggestions around flags and the determination of that? Where do you think that might go?

Ms Pearson: There are two points. It is an issue with such wide-ranging interest; it is cross-cutting and goes beyond the interests of the Department of Justice. Secondly, we question whether a justice Bill is the correct mechanism, especially because of an agreement that recently said that it should be looked at in a particular way.

The Chairperson (Mr Ross): The answer to the question around sentencing from Lord Leveson lasted about 25 minutes. It was a great, detailed answer. That is a piece of work that I would be keen to do after Christmas. I spoke to some members of the judiciary, who are keen to do a workshop with us on how they come to determinations on sentencing, the restrictions they are under and examples they have to deal with. I am always reluctant to take cases reported in the media as examples of problems with sentencing. We will do something on that after Christmas if members are keen. I think that would be useful.

Mr Dickson: My question is about expanding the Bill to cover health service workers. A suggestion of a fixed penalty notice was made. That begs the question of who would issue the fixed penalty. Would another health worker have to be employed as a fixed penalty officer? Could a police officer do it? It takes time for people to explain circumstances before it is done. Look, for example, at the length of time it takes a traffic warden to issue a fixed penalty notice, take photographs and issue

documentation. While it is tempting to suggest that that is the way to deal, on the spot, with an unruly drunk or drug-induced individual in a hospital on a Saturday night, the reality is that, when you break it down to practicalities, it would be difficult, I imagine.

Ms Pearson: It is possible to envisage those issues, and we take what Mr Poots says with his experience but, as officials, we need to see what the Department feels about that and whether it has a fixed view. It may take longer than the lifetime of this Bill for the Department to form a fully thought-through policy position on that. If we may, we will take that issue away and discuss it. Those issues were going through my head as well.

Mr Dickson: Mr McGlone also raised the issue of where you draw the line. One can fully understand that, regrettably, the frequency of incidents in a hospital would be high at particular times. However, compare that, for example, with an assault in a jobs and benefits office when somebody gets very dissatisfied with regards to payments. That assault can be much worse than in a hospital setting. And what about a teacher in a classroom? All those public servants, regrettably, suffer violent incidents from time to time and they should not be in that position. How we deal with that is complex. While it is very tempting to include health workers in this, I think that further thought needs to be given to the issue before we come to a conclusion.

Ms Pearson: The other thought that was going through my mind as you mentioned public servants is that we are in an era where some public services have been outsourced. Do we stop at public servants who are employed by the state or do we get into the territory of private sector organisations, carers and so on? You regularly see in public spaces notices warning people not to engage in abusive behaviour. This could get very big, and I think that that needs a huge amount of thought.

Mr Walker: One of the things that we would want to consider is the scope that there might be for the imposition of a prosecutorial fine in those circumstances. We explored that a little in the last Bill. Obviously the intention behind prosecutorial fines is that they are for low-level, non-habitual offenders. However, you could envisage a situation where someone who is intoxicated assaults a health worker and then is absolutely mortified afterwards, and it is a first-time offence. There may be scope for the imposition of a prosecutorial fine that would take away the onus on the health worker to make the difficult objective/subjective decision as to culpability. It would place the PPS in the position where we would be able to take a fully informed prosecutorial decision based on the particular case.

Mr Dickson: I do not want this to sound draconian; it is only a question. It is in relation to recovering debts through benefit payments. There is already a mechanism in DSD for payments to be recovered — for example, rent arrears — although most of those things tend to be rare nowadays because most of it is deducted at source anyway. This is payment of a fine. I am just asking you the question. Should it, because it is a fine, impose an additional penalty on the individual? In other words, should the individual have to pay more back more quickly than they would because of rent default or some other issue that has got them to that stage? There is a punishment element to a fine. How is that reflected in the recovery?

Ms Pearson: You are right; the fine is the discharge of the justice issue that needs to be addressed. It is right — and I am sure that this is what you are saying — that, in the context of benefits, we do not want to leave people in too difficult circumstances. It is a question of balance. Where do you draw that line? We think that having this within the existing scheme at about point 6 on the list of issues takes care of both of those points. Justice can be served, and the person is not left —

Mr Dickson: Has the ability to repay.

Ms Pearson: Yes. We certainly do not want to further marginalise people, but justice has to be done as well.

Mr Dickson: Finally, can that be reviewed if the individual's circumstances change — for example, if they get employment or other income comes along — and the fine repayment speeded up?

Ms Reid: If they are no longer on benefits, that deduction for benefits would stop. It would go back to the collection officer to decide what the outstanding amount is and to find an appropriate way for them to repay that. They could pay it by instalments or, if they have gone into employment, we could go down the attachment-of-earnings route.

Mr Dickson: So this is not a once-and-for-all solution. The solution is flexible and open and will track the individual's ability to pay.

Ms Reid: Yes.

Mr Dickson: That is helpful.

Ms McGahan: Most of the issues regarding the health service have been raised. Unfortunately, I had to spend a night in hospital myself. What I saw staff, whether ambulance drivers, nurses or the police, having to endure from people who were intoxicated was absolutely horrendous. Some of those highly intoxicated people had attempted to take their own lives, which is absolutely tragic. Serious consideration has to be given to all of that in the policy. I talked to staff that night, and they tell you that there is an awful lot of tragedy out there. A lot of their money and resource goes on dealing with people who are highly intoxicated.

On the next point regarding benefits, you talk here about a means enquiry form request. The point about the outgoings is very important. Somebody on jobseeker's allowance gets £78 a week. You try to live on that. You could not do it. That individual might already be paying off a community care grant for a cooker, a fridge or other essentials. You are saying that the maximum is £10.78, but that is a lot for someone who is on jobseeker's benefit, and, if someone appeals, hopefully consideration will be given to bringing that down, even to £5 a week. I have had to negotiate those issues because it just was not possible for someone to pay £10.78 a week. People might think that that is insane, but it is not easy when you are trying to live on that amount of money and you get a fine for not paying your TV licence or something like that.

Ms Pearson: It is really important that we embed this in the usual way that DSD does it, because that is a not uncommon situation.

Mr Frew: A 50% ceiling, I think.

Ms Pearson: Rather than the Department of Justice or the fine collection officer taking total control of that situation, having it within the DSD system is probably the best safeguard.

Ms Reid: They also mentioned to us that they have a renegotiation framework in place. If you are in hardship or are vulnerable, they will look at lowering the standard rates. That is already there, so it would be considered by DSD.

The Chairperson (Mr Ross): Thank you very much. Pamela, I think that you are leaving us now. The rest are staying for the next session.