



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Justice (No. 2) Bill: Northern Ireland Human
Rights Commission

5 November 2015

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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 Sammy Douglas
Mr Paul Frew
Mr Seán Lynch
Ms Bronwyn McGahan
Mr Patsy McGlone
Mr Edwin Poots

Witnesses:

Mr Les Allamby	Northern Ireland Human Rights Commission
Mr Colin Caughey	Northern Ireland Human Rights Commission
Ms Fiona O'Connell	Northern Ireland Human Rights Commission

The Chairperson (Mr Ross): I ask Les Allamby, Colin Caughey and Fiona O'Connell to the table. I welcome Fiona back to the Committee. I am used to seeing Colin at the Ad Hoc Committee on the Mental Capacity Bill, so it is a bit of a reunion here today. OK, folks, whenever you are ready, if you want to look at Part 1 of the Bill, then we will open up to questions and then move on to the other areas.

Mr Les Allamby (Northern Ireland Human Rights Commission): Thank you, Chair, for the opportunity to give evidence this afternoon. The commission welcomes the Bill. Our observations and suggestions are really designed to enhance the Bill and its overall provision rather than take away from the purpose of the Bill.

The changes to the collection of fines arrangements, which are designed to reduce, hopefully, the number of people in prison for non-payment of fines, are welcome. Prior to the legal judgement in 2013, as best as I could ascertain the figures, the number of people who were in prison for fine defaulting between, for example, 1 November 2011 and 30 June 2013 was almost 4,300 individuals. In contrast, in the last year, from 1 October 2014 to 30 September 2015, that has been reduced to the small hundreds.

Our view is that imprisoning fine defaulters has, generally speaking, seemed disproportionate. There was an earlier discussion about what I will call those who can't pay and those who won't pay and clearly have the means to pay. It seems to me that the cost of imprisoning people and the ramifications of that, not just for the individual but for others, are disproportionate.

I will make four brief points on the specifics of the legislation. First, clause 3(4) sets out what a collection order must contain by way of information. We suggest that that should include the details of the right to vary the order and the right of appeal to the order. That information should be given to the individual so that he or she is aware of what redress he or she has.

Secondly, we think that clause 12, which you briefly discussed, should be amended to include details beyond the relevant benefit that the person has. It should be put into the legislation that other income, outgoings, savings and relevant circumstances should be ascertained. I will explain one of the reasons why. One of my old guises was in social security. If you look at the deductions-from-benefits legislation, you can see that there is an increasing list of things that can be deducted from your benefit. Fuel, mortgage, rates, rent, social fund, overpayments, refugee integration loans, and child support and fines are other additions. That is a very long list, so you may well find that somebody already has a number of deductions made from their benefit. You may find that they have other debts. I think you need to have an overview of a person's circumstances to make the proper and meaningful decision under clause 12. Therefore, that should be put into the legislation.

The third point is on the interim bank account order, which allows accounts to be frozen. That is contained in clause 15. It then has the safeguard, which we welcome, of the provision for hardship payments under clause 16 if the debtor or his or her family suffer hardship. Again, it seems to us that there is a kind of prevention rather than cure there. You would be better to put something into article 15 to simply make sure that, before a bank account is frozen, some brief due diligence is done about the person's circumstances. Rather than freeze the account and then realise that it causes enormous hardship to family members, or whatever the circumstances are, why not, in the initial phase, check the person's circumstances and avoid both the time and energy that goes into having to remedy that?

Fourthly — this is my final point on Part 1 of the Bill — clause 18(6)(b) on the vehicle seizure order, says that the court should take into account the impact of a vehicle seizure order on an individual's employment, and it gives a number of circumstances. We think it should be more broadly based. For example, if somebody is driving a taxi or their car as part of their business, you should do due diligence checks before you seize the car and the person loses their employment, with, again, a set of ramifications that seem to be greater than the issue of the payment of the fine, or it leads the person into even greater financial difficulties and compounds the problem that may have caused the issue in the first place. That kind of due diligence should be built into clause 18.

Those are our key issues. We think that the greater the number of ways that we can avoid putting people into prison for fines, the better. I am happy to take questions on this or any other part of Part 1.

Mr Poots: Say we do what you suggest, and go through due diligence and identify that this person already has three or four things taken out of their account and, consequently, they do not have a lot of spare money. What then?

Mr Allamby: My view is that you should look at all the options. Are there other ways to do this? Let us assume that the person has committed an offence and admitted that they have committed whatever the offence is. Are there other arrangements that you could put somebody through other than a fine, for example?

Mr Poots: Such as?

Mr Allamby: There might be a variety of community service arrangements whereby a person might, effectively, pay off the equivalent of a fine by providing some sort of in-kind activities. You can still find a way in which the person is made to take responsibility for his or her actions without it setting them on a road which is a financial penalty that you know that they will not be able to meet in order to then imprison them. So, I am not suggesting that there should be a free pass if you are in very difficult financial circumstances, but there should be recognition that that might not be the most appropriate form of sentence.

The Chairperson (Mr Ross): I think that is important. We do not want to give the impression that there is one rule for those who have money and another for those who do not. As long as there is some sort of community sentence or something like that, as long as they are paying their debt to society, something could be arranged.

Mr Allamby: I do not think it is beyond the wit of us to invent or produce alternatives. I would find it relatively easy to pay a fine if I were placed in that position; other people would not. So the impact of

a sentence is disproportionate in that way, depending on your financial circumstances. We need to find ways in which people take some responsibility, but an action like imprisoning somebody for what might be a very minor offence seems, as I say, disproportionate.

Mr Poots: If they do not pay the fines, and they do not do the community service, what do you do?

Mr Allamby: I recognise that there might be a difference between what I call the can't payers and the won't payers. If somebody wilfully will not pay out of some point of principle, perversity or whatever, there may well come a point at which —

Mr Poots: Maybe they cannot pay because they have no money, but maybe they will not pay because they will not do the community service. What do you do with those people? If they have committed a crime, there has to be some recompense, otherwise we become a society where people can commit crime at will and ignore the consequences.

(The Deputy Chairperson [Mr McCartney] in the Chair)

Mr Allamby: I accept that, but I have to say that, in my public life and work as an adviser, I find very few people whom I would call won't-payers as opposed to can't-payers. Yes, there may be individuals who fall into that category, but my view is that those are very few and far between.

Mr Lynch: You talk about the risk of destitution. How do you define destitution?

Mr Allamby: There is a minimum standard about what people should be left with. The benefits system recognises an amount that you can have deducted and a maximum amount that can be deducted. For example, I talked about deduction from benefit, and there is a priority order, and, if you have a certain amount deducted from your benefit, it cannot go beyond that. So there are already mechanisms built into, for example, deductions from benefit. There are already other ways of recognising that there is a minimum level of subsistence. So it is quite possible to find ways of recognising that. The difficulty is that individuals' circumstances are different. You may investigate somebody's means, and they may have very few deductions from their benefit but are paying off a moneylender and a variety of other people. Somebody may have a number of deductions from their benefit without having gone to the community and looked at other ways of paying debts. Quite often what you find is that people have debts, both public debt and debt owed to moneylenders and others. It is about looking at the individual's circumstances, and that is not so difficult. Money advisors in the voluntary sector do it simply by asking, "What is your income? What are your outgoings? Are there any other circumstances that we need to know about?".

Mr Lynch: In the previous presentation, the witnesses talked about manageable repayment schemes. Do you agree with them?

Mr Allamby: We do. We think that the flexibility of the repayment scheme should reflect the person's circumstances. Somebody who is well off does not need a very long period to pay a fine. Somebody who is not well off may be willing to pay it off but says, "All I can afford is this amount a week." Providing that there is due diligence about their personal circumstances, and it is clear that this is not some kind of ruse to pay it off over as long a time as possible without good reason, that level of flexibility makes immense sense.

Mr Lynch: You would agree that the seizure of cars should be means-tested.

Mr Allamby: People may use cars for all sorts of reasons. They may have caring, family or employment responsibilities, and whether they live in a rural or an urban area and the availability of public transport all need to be taken into consideration so that you make sensible proportionate decisions about how a punishment is administered through fines and payments in lieu of fines.

Mr McGlone: Thanks very much indeed. I am just looking at paragraph 17 on the Council of Europe recommendation 1469 that custody for pregnant women and mothers of young children should only ever be used as a last resort. I am asking this question because I do not know: how big is that problem, or is it a problem or an issue here? Are there many people who fall into that category?

Mr Allamby: We know the number of females in prison. I do not know whether we have the number in prison because of fine defaulting. I had a quick look at the stats yesterday, but they do not break them down —

Mr McGlone: I appreciate that. I am talking about mother-and-child type situations, mothers and babies in prison, as referred to here. Are there many, or any, who fall into that category?

Mr Allamby: I honestly do not know. The value of putting into clause 12 something about looking at the person's means and other circumstances is that it would hopefully make it clear, for example, that if somebody was a lone parent, their going into prison would have implications for the care of a child or a young person, and that could be taken into account. It comes back to the idea of people making informed decisions about fines.

Mr McGlone: Surely it is for the defending solicitor to put the case?

Mr Allamby: Yes, and if the defending solicitor is doing his or her job with the level of diligence that you would expect, fine. A good solicitor will have a level of knowledge about the social security system and about the person's income and outgoings, but then you are relying on every solicitor having that level of diligence. If you make it a legislative requirement, it has to be done, and you are not at the mercy of whether you have a very good solicitor or one who saw you for the first time yesterday and perhaps has not had the time to do the kind of work that you would want them to do.

Mr McGlone: That is grand. Thank you.

Ms McGahan: Thank you for your presentation. I would like to focus on the power to seize vehicles. I represent the constituency of Fermanagh and South Tyrone, and 75% of people use a car to access services. Our constituency has the lowest proportion of people who use public transport, because it is so rural and we do not have much in the way of public transport services. I am sure that you will be aware that proximity to services is one of the measures of rural deprivation. It looks at access not just to employment but to GP services, which is quite important because a lot of people even have travel for an hour to access acute services. The closure of hospitals, post offices, and council and leisure centre services in rural areas is another issue. The Bill will probably need to be rural proofed. I do not think that has happened.

Mr Allamby: The kind of suggestions we have made are about ensuring that an individual's circumstances are taken into account in clause 12, clause 15 and clause 18. That at least helps to make sure that the kind of issues that you are talking about are looked at in terms of the ramifications of seizing a vehicle, making deductions from benefit or freezing a bank account. People are then making decisions with their eyes open to what those ramifications are. Those are useful and important safeguards, and it helps you to divine whether somebody is in a position where paying a fine will be extremely difficult for them as opposed to somebody who can apparently pay the fine relatively easily. It allows you to make a much better informed judgement when you are making the decisions about what orders to enforce and how you enforce them.

The Deputy Chairperson (Mr McCartney): We can move on to Part 2, which is on the Prison Ombudsman.

Mr Allamby: We welcome the placement of the ombudsman's powers on a statutory footing in Part 2. We think that it is a positive development. Again, we have a number of brief but, I hope, important points. The first is that, under clause 29, which is on the main functions of the Prison Ombudsman, we think there should be additional provision for the ombudsman to carry out an investigation at his or her own behest. That could be a thematic investigation or a specific investigation. For the record, I have no reason to doubt that there is anything less than an effective working relationship between the current postholder and the Department, but that may not hold in perpetuity. For us, this is about future-proofing the arrangements in case there is a situation in five, 10 or 15 years' time where the relationship between the Department and the Prison Ombudsman is not all it should be or there is an issue that the Department would rather not focus on but the Prison Ombudsman has recognised is worth looking at as a result of a number of complaints coming in. We think that the Prison Ombudsman should have the power and ability to launch his own investigation in those circumstances.

(The Chairperson [Mr Ross] in the Chair) Our second suggestion is to include an additional function to promote awareness and understanding of the complaints procedure to ensure that it is accessible to all prisoners. I can give a personal example of this. The commission has powers to go into prison, and, relatively recently, we visited the prison to look at some of the provisions for foreign national prisoners. When you asked them about the Prison Ombudsman and its role, very few of those prisoners were aware of what the Prison Ombudsman does. In fairness, on the day that we went, the Prison Ombudsman was there and was explaining that role, but there clearly is not absolute clarity and great knowledge amongst all prisoners about the role of the Prison Ombudsman, and that puts the onus on the Prison Ombudsman to promote the service proactively.

Thirdly, we raise the question of why the amendment to complaints in clause 30(2) can be amended by way of regulations. Clause 30(2) is the important provision on the scope of the complaints. If those are going to be changed by way of regulations, frankly we would like to be reassured that such amendments would not be made lightly. The Committee should ask the Department about why those quite significant provisions could be changed by way of regulations. That includes, as I say, reducing the scope of complaints.

It is a significant clause — a Henry VIII clause. I do not wish to suggest that David Ford has pretensions to be Henry VIII or anything else but —

The Chairperson (Mr Ross): We are well aware of the issue.

Mr Frew: We have. *[Laughter.]*

Mr Allamby: Fourthly is deaths in custody, which is an important part of the Ombudsman's brief in light of article 2 of the European Convention. The Ombudsman should have the power to compel witnesses to assist an investigation and attend an interview. The current legislation has the provision to take to court somebody who fails to assist in an investigation, but we think that an incremental approach might be preferable. In other words, you have the power, to start with, to get the person in without having to then go to court. That, as an interim stage, would be a useful power, might save the courts unnecessary time and be a useful stepping stone.

Fifth is the disclosure of information. We again suggest that a clause should be inserted to require the Prison Ombudsman to disclose to the Police Service of Northern Ireland where the report of the current ombudsman indicates that a criminal offence may have been committed. A similar provision is elsewhere in the legislation for the Police Ombudsman. An equivalent would make some sense.

The disclosure of protected information, which is in this provision, allows certain information to be made available to a number of bodies:

" for the purposes of the exercise of any functions of that office".

That includes health and social care trusts, for example. In the interests of self-interest, the Human Rights Commission should be added to that list, just for the purpose of our own functions, which include us allowing the commission to enter places of detention with respect to an investigation.

Finally, I will maybe come to the issue of sexual offences, but I will stop there on Part 2 of the Bill.

The Chairperson (Mr Ross): OK, thank you. I will ask a question similar to one that I asked the Northern Ireland Association for the Care and Protection of Offenders (NIACRO) around this independence of the office. Would you have any concerns about independence for the Prison Ombudsman given how they are appointed and funded?

Mr Allamby: It is not been an issue that has passed across our desks as a concern. I do not think there are any immediate human rights concerns. I am looking to my colleagues, but there is nothing. So, in line with NIACRO, no. In terms of what currently happens, we have no sense in which the ombudsman is being unduly inhibited. It is actually a good thing that the ombudsman is put on a statutory footing, because that means that, no matter who the Prison Ombudsman and Minister of Justice are, a statutory footing provides a useful and clear set of powers, roles and responsibilities that survive individual relationships.

The Chairperson (Mr Ross): The only element that may have been flagged up to us around the independence issue was in relation to investigations into deaths in custody and whether they are

article 2-compliant, given that there have been those issues of independence raised. However, if you are telling us that you do not have concerns, then —

Mr Allamby: The investigations into deaths in prison do not just involve the Prison Ombudsman; we move into the area of coroner investigations etc. My sense at the moment, and with my knowledge of the case law, is that there is no undue issue about the independence when you look across, provided it is properly resourced and the Prison Ombudsman and others are allowed to get on with the role in the way that they want to. It would be useful to allow the Prison Ombudsman — not so much to investigate deaths in custody, because it is quite clear the law is here — but to initiate his or her own investigations. That would be an important degree of independence from the Department. That is an element of future-proofing.

The Chairperson (Mr Ross): Before I open up to other members, you mentioned raising awareness of the Prison Ombudsman, what he does and the service that is available. In a previous role on the Committee on Standards and Privileges, I had dealings with the Commissioner for Standards, and I think that you will agree that there is always a balance to be struck between raising awareness and promoting a service, because you do not want to attract more complaints that do not have an awful lot of validity. How do you make sure that you get the right balance of ensuring that people know that the service is there but not attracting complaints that are without merit?

Mr Allamby: I have always taken the view that part of spreading the awareness of what you do can be about saying very clearly what the expectations are. That can include saying, "This is what we do. This is what we generally do not do, but you may well go elsewhere." I am not sure how you frame that, but I think that the starting point is that everybody has to understand that there is a Prison Ombudsman. It is then the Prison Ombudsman's job to say what the role involves and what it does not involve so that there are very clear expectations. I think that that can be done, and I accept that the more you make people aware of a service, the more they may use it.

In the prison population, if people were taking lots of cases that were clearly going nowhere, I suspect that they would realise very quickly that there was not much point in doing that. It is about having the awareness to ensure that the cases that should go to the Prison Ombudsman do so.

The Chairperson (Mr Ross): Members have no more questions on Part 2, so we will move on to the other issue.

Mr Allamby: The only final thing that I wanted to mention was an additional offence of disclosing private sexual photographs and films with intent to cause distress: in populist terms, "revenge porn". We suggested this in order to bring Northern Ireland law into line with the law in England and Wales. I caught the end of Jim Gamble's evidence, when he said, I think, that he thought there was already sufficient law to deal with this.

There are laws to deal with this in Northern Ireland. One interesting reason why this law was brought into play in England and Wales was that, by framing it in the way that it did, it made absolutely clear that, if, after a relationship breakdown, one party maliciously sent out photographs, he or she was committing an offence. People might not necessarily be aware of other ways in which this is framed as an offence. It was about making it very clear, before someone goes down that road, that they would be committing a criminal offence. We see some value in that, and that is the basis on which we put that forward. As I said, it also brings the law into line with that in England and Wales. I will not pretend that there are no other ways of dealing with it under criminal law at the moment, but I think that this says very clearly that this kind of thing is unacceptable in criminal law terms. It is about sending out that message.

The Chairperson (Mr Ross): Without wanting to be unfair to you by asking you to react to someone else's suggestion, I think that you are aware of the suggestions that Jim Gamble made to us about decriminalising the offence of a young person sending an explicit picture to someone else through a consensual arrangement. Do you have any view on that or any concerns about the Committee going down that road?

Mr Allamby: It is a bit difficult to comment meaningfully without having properly thought about the issues. The first of Jim Gamble's suggestions for young people is, in part, not that far away from what we are suggesting, although I think that, in our view, we could look at this as dealing much more with adults than children. At the risk of raising a hobby horse of ours in international human rights law, the age of criminal responsibility is 10. Even with the revenge porn issue, there needs to be a degree of

common sense. I have reservations about criminalising children at age 11, 12, 13 or 14 for doing this. I recognise that the way to deal with that, in an ideal world, would be to look at the age of criminal responsibility. However, that is not in the Bill and is unlikely to feature in it, so there is an issue of dealing with children as opposed to adults. The second issue was protection from harassment. Again, with the caveat of having only looked at it, my view is that it seemed to make considerable sense. I think that the third one, about masquerading online and the idea that any of that, regardless of the purpose, puts the onus on you needs a bit of thinking through. I want to go away and think about that because I think that there are some issues. That is, frankly, a relatively superficial overview. If we go away and think about it a bit more, there may well be answers to all the concerns that we might have.

The Chairperson (Mr Ross): Perhaps we will write to you seeking a more substantial response, but I appreciate your at least giving us some headline stuff. Members have no further questions, so thank you all very much. I appreciate your time.