Northern Ireland Assembly

Ad Hoc Committee on Conformity with Equality Requirements, Welfare Reform Bill

OFFICIAL REPORT (Hansard)

Agreement on Committee Position

14 January 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Trevor Lunn (Chairperson)
Mr Robin Swann (Deputy Chairperson)
Ms Paula Bradley
Mr Mickey Brady
Mr Colum Eastwood
Mr Tom Elliott
Mr Fra McCann
Ms Bronwyn McGahan
Lord Morrow
Mr Alastair Ross
Mr Peter Weir

The Chairperson: We now come to our consideration of the Committee's position, which we were always bound to come to eventually. We have to start trying to agree a few things. We have been gathering information since 26 November. I propose that we review the main aspects of our previous discussions and either come to a conclusion or make a recommendation on each of them. After the briefing from the Human Rights Commission, we will consider the main question of whether the provisions of the Welfare Reform Bill are in conformity with equality and human rights requirements. We will probably not have time to finish our discussion before that briefing session. However, we can resume afterwards.

Mr Brady: I apologise for being a bit late. I know that there was an issue last week about public and private sessions. Perhaps you are not necessarily aware that the session was not being recorded last week. I was stopped out in the corridor, but I presume that, obviously, the button is on now.

The Chairperson: We are in public session at the moment, Mickey. The confidential nature of the human rights memorandum that we have means that we are going to go into private session when the Human Rights Commission arrives. The issue last week was settled as far as it is going to be settled.

Members have been provided with the key issues under consideration. The first one is the adequacy of the equality impact assessment (EQIA), which we have returned to a number of times. As you know, a number of responses, particularly that from the Equality Commission, raised concerns about the process and its adequacy, the lack of consideration of up-to-date and relevant data, and the absence of the identification of adverse impacts or alternative policies. I could read on, but you all have the paper, and I will take it that you have read it. Does anybody have any thoughts about this? The Committee Clerks have done their best to put the information in the form of questions for consideration. Those are in bold print. We can take them one by one. The first issue that we have to

consider is whether the potential adverse impacts that are associated with the Welfare Reform Bill are reflected in the actual provisions of the Bill, rather than our being in the situation of having fears about them down the line when the regulations are published. Do you have any thoughts, folks?

Mr Brady: How can the regulations reflect something that is not in the Bill? They have to reflect something that is in the Bill. I think that that point has been made throughout, Chair.

The Chairperson: It has, but we are only considering the Bill.

Mr Brady: Exactly. Any adverse impacts have to be dealt with in the enabling Bill — the primary legislation — because the regulations flow from that. So, if the Bill is not right or adequate, surely the regulations that come from it will be flawed as well.

The Chairperson: It is surely quite possible that there will not be an adverse impact that we can highlight in the Bill but that may appear through the regulations.

Mr Brady: Issues such as the zero earnings have been raised. What about underoccupancy, the disability living allowance (DLA), personal independence payment (PIP) assessment, or the work capability assessment, which even at the moment is having an adverse effect? Those issues should be dealt with in the enabling Bill. The regulations will come from what is in the enabling Bill. If it is going to have an adverse affect, by definition, the regulations will also have to, because they come from it. That is a fact.

Mr Weir: I appreciate where Mickey is coming from, but, by the same token, I do not inherently see that adverse implications arise directly out of the Bill. I think that there are issues that will need to be examined when we get to regulation stage. I think that the concern is that, purely from the point of view of this Committee's remit, we can look only at the Bill. Although we can flag up that concerns have been raised over the implications that may arise in regulations from the Bill itself, I do not see where we can actually draw the conclusion that adverse impacts will come directly from the Bill.

Mr Brady: Just in response to that, and with respect to Peter, not one organisation that came before either the Social Development Committee or this Committee said that the Bill will not have particular adverse effects. I have yet to meet any organisation that has come before either Committee and said that this is a good Bill. Even members from your own party have expressed concern about the Bill and have said that it is not a good piece of legislation. How a bad piece of legislation does not impact adversely on people, I am not quite sure.

Mr Weir: With respect, the concerns that I have heard have been about what could arise out of the regulations, rather than directly from the Bill. We have a particular remit for this. There is no problem indicating that concerns have been expressed over what could happen in the regulations; that has been flagged up with us. However, I do not see how we can draw the conclusion that there is an adverse impact from the Bill itself. Maybe some words can be formulated to reflect that.

Mr Brady: Just to clarify, Peter is saying that if the Bill goes through in its present form and the regulations come from that, we could then change the regulations at a later stage. Is that what you are saying?

Mr Weir: With respect, the regulations will have to be voted through on their own merit. That is the whole point of what is being put forward. Indeed, that is why, for instance, we debated the circumstances by which particular regulations should be subject to affirmative resolution. I do not know whether there is maybe some form of wording that could reflect that there was a division of opinion on that, because I do not think that there is going to be a meeting of minds.

Mr Brady: Could we possibly come to an agreement on the idea that the regulations flow from the Bill? They have to, by definition.

The Chairperson: I do not think that there is any disagreement there.

Mr Brady: They cannot come from any other source. Therefore, if the Bill is flawed, and there are issues in it that have an adverse effect, how can the regulations not have the same effect? One is predicated upon the other. That is a fact. If you have an enabling piece of primary legislation, its

ultimate purpose is in the regulations that will flow from it. I thought one of the issues for this Committee was to ensure that the Bill is compliant with human rights and equality issues and that it will not have an adverse effect as a result of a lack of compliance with those issues.

Mr Weir: I have not heard any direct evidence to suggest that it is not compliant with human rights or equality issues. I cannot simply dismiss the Bill in that sense. I have no doubt that we could indicate that, clearly, regulations flow from the Bill, that there has been concern over regulations, and that, as part of the process, there will need to be close scrutiny of those regulations to make sure that they do not have an adverse effect. However, I do not think that we can condemn the Bill in that sense. That falls outside our remit. I repeat that I suspect that this is something on which there may not be a meeting of minds, to be honest with you.

Mr Brady: Could I just finish by saying —

The Chairperson: Hold on a minute, Mickey. I want to get a few more people in, if I can. I will come back to you.

Mr Eastwood: I agree with Peter on one thing: we are not going to get agreement on this. However, it is important to say that every single piece of evidence that we have had has told us that the Bill will have adverse effects on, for example, people with disabilities, which is just one section. We are not going to agree on this. That is quite obvious. For me, it is very clear that a number of things in the Bill will obviously have an impact on, for a start, people with disabilities.

The Chairperson: Do they have an adverse impact on one particular group as opposed to others?

Mr Eastwood: People with disabilities is one group. There have been so many different examples; that is only one. Children are another example.

Mr Brady: I want to make a point. Where the regulations and the Bill are concerned, we have been told that one will follow the other directly. There is going to be no space in between; it will happen almost the next day. In Britain, the regulations came out in December, so they have had a period between the two. We are talking about parity. Parity is comparing like with like. We are not getting parity on the Bill and the regulations. If the Bill is there one day and the regulations the next, and it then goes for Royal Assent or whatever it takes to put the Bill through, I am not sure that we are going to have an opportunity. That is why I am putting forward the point of view that the Bill has to be right. As Colum said, many groups, including Disability Action, have said that there will be an adverse effect on people with a disability. Now, I am not sure what the definition of the word "adverse" is. I thought that it was something that was going to have an ill effect, rather than a beneficial effect, on someone.

So far, nobody has said that the Bill will have a beneficial effect for the disabled, those who are in receipt of sickness employment support allowance or the various other claimant groups. The point about entitlement has been made repeatedly. However, I still make the point that, to get entitlement, you will have to satisfy criteria. If those criteria are changed adversely in how they impact on that person's entitlement to benefit, that is another issue.

The Chairperson: Both sides have said that we are not going to come to a meeting of minds on this; that is fairly obvious. I am slightly worried by what you said in particular, Peter. You said that the Bill does not throw up any adverse impacts that we can identify but that the regulations might. Therefore, there would need to be a very close scrutiny of the regulations. Yet last week, when we had a vote on the level of resolution that would be required to scrutinise those requirements, you voted in favour of the lesser form of resolution.

Mr Weir: With respect, our amendment on that was that if a regulation meant a policy change, it should be dealt by way of affirmative resolution. The point that we made was that the general nature of the regulations under welfare reform will mean that some will deal with policy changes and some will essentially be, for example, mechanical or technical. The record will show who voted in favour of that position and who did not. We stated very clearly that affirmative resolution should be in place for any policy change. I think that that was the wording that we suggested. That would give a degree of protection. I think that it would be an abuse of the system if we used affirmative resolution for every single thing in that regard. I do not think that the use of affirmative resolution for technical changes that do not involve any change in policy is the appropriate way forward.

The Chairperson: Can you see any discussion down the line about whether a particular change is a policy change or a technical change?

Mr Weir: As I understand it, there is a technical difference — we got correspondence on this — between affirmative and negative resolution. With negative resolution, you can pray against something, which would effectively put it on to the Assembly's schedule. The scrutiny would not be any less rigorous if we did not use affirmative resolution. However, where you do not have it, there is not the opportunity to effectively block any regulation if it is the mind of the Committee that is dealing with it to do so. I think that there is adequate protection in that.

Mr Brady: It is generally accepted by most people that this is the biggest change in social security policy since 1948. The technicalities are simply the mechanics of putting in place methods by which the policies will be implemented. It is as simple as that. The technicalities do not change the policies; they implement them. They put in place a mechanism by which the policies, benefits or whatever are implemented. However, those benefits are predicated on the changes in benefit on policy.

Policy and technicalities are two different things, because the technicalities simply implement the policies. If the policies are not right, the technicalities will not change that. They will not change the adverse effect but will simply put in place the logistics of putting the benefits out to people, whether it is universal credit or whatever.

I thought that we were here to talk about the changes and how they will affect, adversely or otherwise, the human rights and equality considerations of the various groups. I am not sure whether technical changes have anything to do with that; they will simply implement the policies.

Mr Weir: Chair, all that I will say is that there will be a range of regulations and that some of them will bring policy changes into place. The Department has indicated that affirmative resolution will be used if there are any major policy changes, and it is clearly the Committee's wish that that should be the case as a minimum. The Committee for Social Development will spend a large amount of time scrutinising the Bill and reviewing any policy changes.

Mickey is right that there will be certain things that are policy and certain things that are technical. If the issues are technical, I do not think that it will require affirmative resolution. If they reflect a policy change, it will. I think that that is a reasonable enough position to take on that. There is an argument over whether particular regulations might bring in adverse impacts, but I have not heard anything arising directly from the Bill itself that shows an adverse impact.

Mr Brady: I feel that the argument is very straightforward. The regulations will implement the policies as they go through and will reflect the enabling legislation, which is the Welfare Reform Bill.

The Chairperson: We have managed already to cross over from point a to point b, but that was probably my fault. We will not agree about this. I can only suggest that we reflect everyone's point of view and emphasise that the Committee's opinion is that anything that is remotely to be considered as a policy change should be considered under affirmative resolution in the future. I cannot see what else we can do. We have already voted on the affirmative and confirmatory situation, and I do not propose that we vote again. Are you happy enough with that? I am not saying that you have to be happy, but can you agree to it?

Members indicated assent.

The Chairperson: As you can read for yourselves, the next point is about the EQIA being a "living document". Do members have any thoughts about the extent to which a flexible, responsive EQIA could address adverse impacts that are yet to be identified? The next points are all connected, particularly that about the Equality Commission's powers.

Mr Brady: I am worried about its lifespan. It is not so much about its being a living document but about how long it will live for. Will it require resuscitation at the end of the regulations? Therein lies the problem. "Living document" is kind of a nebulous term. What does that actually mean? Does it mean that every time that something is challenged, the Department will take it into account? The bottom line in all this is that we have been told that the EQIA is flawed because of the lack of statistics and various other issues. How will this living document address that? How long will it live for?

Lord Morrow: To some degree, the document's strength is that it recognises that changes may come and that it will change to take into account the new circumstances that may arise, subject to all the procedures that it must go through. I do not have a problem with its being called a "living document". It is only in quite recent years that I heard that term. The first time that I ever heard it mentioned was by the planning office when changes were made in planning procedures. It came up with the idea of a living document, and I think that, at the time, all councils bought in to it and said that it was a good thing because we all were representing our constituents on issues but were finding it difficult to get information. So, we have it repeated here that this is a document that is likely or liable to change in response to changing circumstances. I do not have a problem with that. I would have a problem if it were otherwise.

The Chairperson: I certainly hope that it does not turn into the type of living document that the Planning Service used.

Lord Morrow: I used that only as an example.

The Chairperson: That just means that it is all things to all men and that it can be changed at any time. However, I take your point about this document.

The next point asks whether we should be advising the Department to consider extending its evidence gathering to include the data on the other four section 75 equality strands: religious belief; political opinion; racial background; and sexual orientation. Are you content that we give the Department that advice in our report?

Mr Weir: From what I understand and from what the Department has said, I think that it is trying to take on board as much information as it can. I take the view that, as has been indicated, when you are talking about benefits, you are talking about the entitlement side of things. I am not sure whether an extension to include qualitative rather than quantitative data would be particularly helpful. I would welcome efforts to widen the scope of the data and to use any such data to extend equality grounds or something of that nature. Perhaps the language has fallen short of what is in that point, but I would welcome ongoing efforts to extend the data to ensure that they are as comprehensive as possible.

The Chairperson: Some of the people who presented to us seemed to think that these data were probably available but that sufficient effort had not been made to collate them from the various sources from which they could be drawn.

I am not getting any reaction here.

Mr Brady: The bottom line in all this is that if the legislation goes through based on the current EQIA, which various organisations have told us is flawed, whether it is living or not, I am not sure how that can be changed. It can be monitored, certainly, but if it does have an adverse effect, will further legislation be introduced to change its impact?

The Chairperson: That, surely, is the idea of this: if the EQIA is living and is capable of being amended as the years go on, it will not need to be resuscitated. It will be coupled with the role of the Equality Commission, which is to examine and have powers to instigate an investigation into the effects of the EQIA. Is that a sufficient guarantee or do we feel that it should be more than that?

Mr Brady: It just seems that if you are going to do an EQIA, the point is to try to get it right at the start, and things can then flow from that, rather than get it wrong, have something put in place and try to change it afterwards. That seems to be a peculiar way of doing things.

Mr Eastwood: It seems that we are agreed that we should ask the Department to extend its data collection, in whatever form that takes. If we are saying that we should be collecting more data, maybe we have agreed, without realising it, that the EQIA was not up to scratch in the first place.

Mr Weir: I would not go as far as that. I take on board the argument that the data do not reflect all the equality grounds, and I accept that they clearly do not. I would question the relevance of some of the equality grounds, and I take on board the Department's assertion that this is based on entitlement.

I would welcome any additional or new data that could be sourced to help in this process. Surely everyone can agree on that, but it does not necessarily mean that we believe that what is there is flawed or inadequate. I would not take that position, to be perfectly honest.

I cannot remember the exact wording, but in its earlier evidence, the Department acknowledged that not all data had been reflected. Perhaps someone can remind me of the exact wording.

Mr Swann: The Department said:

"We recognised the data deficits".

Mr Weir: Yes, but having said that, it went on to say that the equality elements were adequate because there is an entitlement side. I am happy enough to reflect that the Department has acknowledged that there are data deficits. However, it also indicated that it believes that this is on the basis of entitlement and that it welcomes any efforts that are made to widen the sources of data to better inform decisions, or something of that nature.

Mr Swann: I am going back to the summary that the Committee Clerk prepared. Once the Department admitted that there were data deficits, it said that it was going to look at a policy simulation using Her Majesty's Revenue and Customs data and the family resources survey data from 2010-11. The issue is whether the Department has done that, and that goes back to Mickey's point about how long this thing keeps on living and the point at which it comes to a final conclusion.

The Chairperson: That is the point that I was making a moment ago. Some of these data are there, but the Department has not put them together yet.

Mr Eastwood: I accept Peter's point; that is his position. However, I do not think that we are in a position to pre-empt whether it would have an impact on some of the grounds that have not been looked at. The job of the EQIA is to get it right in the first place. We can decide after that whether there is an impact. The EQIA is for assessing the impact, and it obviously did not do that for a number of different sections.

Mr Weir: With respect, I contend that they are not relevant.

Mr Eastwood: My position is that we cannot tell whether they are relevant until you do the impact —

Mr Weir: With respect, I really fail to see how anyone can explain the relevance of sexual orientation, for instance, to a benefit entitlement.

Mr Eastwood: Whatever we think about it, we have had evidence that says that to the contrary.

Mr Weir: I accept the acknowledgement that there is a data deficit. There is ongoing work to try to improve those data. I also accept, although I suspect that you do not, the Department's position, which is that the thing has been covered adequately because there is an entitlement. I acknowledge and welcome the work that is ongoing, and I encourage more of it. However, I do not accept that the EQIA is inadequate. I believe that there are constant efforts to try to improve things. That is to be welcomed, but I do not regard it as inadequate.

Mr Eastwood: That is your position and opinion. Those things may not be relevant or anything else, but the whole point of an EQIA is to decide that. It is not about deciding before that and then not looking at all the issues that should be looked at.

Mr Weir: With respect, an EQIA was carried out in a perfectly reasonable fashion. You have to apply some level of common sense to it as well.

Mr Brady: An extract from the Equality Commission's response to the departmental consultation on the original EQIA states very clearly:

"We are also concerned that the Department has not taken any steps to address the existing data gaps it has identified in relation to religious belief, political opinion, racial background and sexual orientation. It is not acceptable for an EQIA to merely record that no data are available.

Furthermore, in the absence of any data no comments can be made on potential effects. It is incorrect to simply assume that 'social security benefits are paid to individuals on the basis of entitlement and conditions which are in no way affected by affiliation to any of these 75 categories.'"

It also states:

"Indeed, previous analyses suggest that characteristics like religious belief, political opinion, racial background or sexual orientation can put individuals at higher risk of exclusion and poverty which in turn could impact on an individual's need for support through social security benefits."

The Department admitted that it does not have the data on those areas, so how can it be said that you have an adequate EQIA when it is lacking in data, which may impact on those groups under section 75?

The Chairperson: We have already agreed to differ on whether the EQIA was adequate. It is a question of what riders we put on that opinion. One of them would be to advise the Department to continue its data collection on the other four section 75 equality groups. I agree with others who have spoken; for the life of me, I cannot see how membership of one of those four groups is a disadvantage in an entitlement to a benefit. We can point out to the Department that we think that it should continue to gather evidence. We can include a rider to encourage the Equality Commission to keep a close eye on what is happening and to say that if it feels that it is necessary for it to use its powers of investigation, it should do so.

The last point on the suggested response from the Committee Clerk is whether it would be appropriate to suggest a time frame for updates. Do we need to put a bit of pressure on the Department or the Equality Commission or do we just record our different views and carry on?

Mr Brady: The difficulty that I have is whether the monitoring and the living document will have any impact on or change the core elements of welfare reform, which, at that stage, may already be having an adverse effect on various claimant groups.

The Chairperson: If something comes to light, as, apparently, it already has across the water, where there is a clear possibility of that, there are various avenues for people to challenge the legislation. The European Court of Human Rights (ECHR) has instigated a complaint already.

Mr Brady: Are we talking about legal challenge?

The Chairperson: Absolutely. That is what happens with legislation.

Mr F McCann: If a number of legal challenges on aspects of the Welfare Reform Bill are outstanding, would it not be sensible to wait to see what the outcomes are?

The Chairperson: As far as our consideration is concerned, Fra, we cannot wait. We have to report.

Mr F McCann: That is an opinion that you have. What will happen if, after the collection of evidence, people come back at some stage after we have gone through the Bill — as they have the right to do — and say that they have seen clear evidence that it has impacted on people adversely?

The Chairperson: If you take the situation in which the Westminster Bill is being challenged legally through the courts, I do not think that it is reasonable for us to assume the outcome of that challenge and make some sort of a change to our —

Mr F McCann: You will not be assuming: you will be waiting to see. If it is a victory, it will have an impact here, but we will have already put people through hardship.

Mr Weir: There is a wider issue there in certain regards. If we are suggesting that the legislation be put on ice until we know the result of the legal challenge, we have already heard that if the Welfare Reform Bill is delayed, we will be out a massive amount and that a lot of the people who will lose out directly will be the claimants. There is a divergence of view on the adequacy of the EQIA, albeit general comments could be made. I may be paraphrasing this a bit, but do we agree that we should

encourage the Department to continue to seek more evidence? Do we also agree that there is an ongoing monitoring role for the Equality Commission?

Mr Eastwood: Do you mean that we are not agreed or that we are agreed?

Mr Weir: There are two assertions. We are not agreed on the adequacy of the EQIA. I would have thought that we could agree that we should encourage the Department to seek more information on the data deficits. Indeed, I thought that we could welcome the fact that there has been some work, but that we should encourage more. Broadly speaking, I thought that we would agree on that. Similarly, to say that there should be close and continued monitoring by the Equality Commission is something, presumably, that is not particularly controversial either.

Mr F McCann: Picking up from where Peter is going on this: is he saying that every single organisation and group that came here and spoke about their concerns got it wrong?

Mr Weir: With respect, given the nature of the evidence that we will be seeking, I suspect that you will not get groups — for instance, if you wanted to pull in the TaxPayers' Alliance, I am sure that it would say that its complaint about welfare reform is that it does not go far enough. My point, generally, is this: I think that it is a factual statement to say that there is not agreement in the Committee on the adequacy of the EQIA, because some of us feel that, given the circumstances, it was adequate in its nature. Clearly, however, there are those who believe that it was inadequate and that the whole EQIA is flawed as a result. There will not be a consensus on this.

Surely there could be agreement on the two other propositions, one of which is the desire to encourage the Department to keep on gathering additional data, and surely there could be agreement for an ongoing role for the Equality Commission in monitoring that. I do not see the latter two as being overtly controversial. We may need to accept that we need to reflect a difference of opinion on the EQIA.

The Chairperson: I think that this is where we are at, members. We could talk round this all day. As I understand it, we have agreed on the potential inadequacy of the EQIA to start with, and the other things flow from that. Are you content for the Committee Clerk to try to reflect that discussion in the report, which we have to agree tomorrow? This is about as far as we can take this one.

The next issue has really been covered, and it deals with the regulations.

Mr F McCann: Before we go on to that, I want to know something for my own information, because it seems a lifetime ago when we were discussing this at the Social Development Committee. I know that the Department has been mentioned quite a lot here, but everybody at the Committee raised serious concerns about some of the information that we were given by the Department. We keep talking about the Equality Commission and its ability to deal with the flaws. However, opinions differed on whether the Equality Commission had the power to challenge, deal with and tackle the Bill, and whether its authority supersedes Westminster's. Has that issue been cleared up?

The Chairperson: I do not think that it has that authority, but I am —

Mr F McCann: Section 75 specifically deals with here.

Mr Weir: I think that the commission's ability to challenge is confined to raising issues and to, potentially, take legal action. I think that there may be a case of mixing up the context of the challenge of Westminster. They are two separate issues.

Mr F McCann: We are dealing with Westminster legislation that was drawn up purely with England in mind but has been transposed to here. Section 75 would surely enable the commission to tackle what we see as any flaws that would have an adverse impact on people here.

Mr Weir: Ultimately, it would figure if courts were asked to decide on it. There is no hierarchy of clauses in constitutional law. As in any legal challenge, you have to wait to see how the court rules. It is not a question of section 75 superseding any other domestic legislation. Presumably, should people feel that there is a particular issue to challenge in court, they will take it to court and see what the judgement is.

Mr Brady: Just a point on that: I have asked the Equality Commission at least twice — in the Social Development Committee and here — which of the two has primacy. Is it the Welfare Reform Bill, as a piece of legislation, or section 75? Neither Committee has been able to establish that, or, if they have, I have not been made aware of it. Britain does not have section 75. So, which has primacy? You would assume that the Equality Commission, which deals with such issues, would have some handle on this matter. Which has primacy? This is not an issue in Britain because Britain does not have section 75. Section 75 is relevant to here under the Good Friday Agreement. If we introduce legislation that, under section 75, would have an adverse effect on groups, how does that square?

Mr Weir: It would ultimately be by way of a legal challenge and the decision taken in the courts. I suppose that this is where people have difficulty in being utterly definitive. We are talking about the court potentially having to decide to what extent which of two conflicting pieces of legislation would prevail. To be fair, that is why I think that it is probably impossible for the Equality Commission or anybody to answer that question fully. Constitutional lawyers may be better placed to give an answer.

Mr Brady: Maybe we should ask constitutional lawyers.

The Chairperson: For the purposes of our discussion, that is, perhaps, for another day.

The next section concerns the regulations. We discussed this matter fully the week before last, and we had another good go at it today. Again, we are not going to agree about this. The Committee Clerk would like us to clarify exactly what regulations we agree and disagree on.

Mr Weir: Correct me if I am wrong, and I am sure that Mickey will, but I suppose that there is consensus that, as a minimum, anything that involves a policy change brought about by the regulations should require affirmative resolution. I think that the only difference or divergence is whether that should extend to all regulations or just to those that change policy. Is that a reasonable summation of where the difference lies?

Mr Brady: With respect, the regulations flow from the Bill. So, they will be predicated on the outcome of the Welfare Reform Bill.

Mr Weir: I understand that, but my point concerns purely the regulations. The proposition that I put forward met with mixed views from Committee members. It was that we should amend the original proposal that all regulations should be subject to affirmative resolution, and make only those that effect policy change subject to affirmative resolution. What I am saying is that I presume you would accept at least that anything that is a policy change would require affirmative resolution procedure. If what we are saying is that it should be a subset of the regulations, everyone is at least agreed that any policy change in regulations should require affirmative resolution procedure. The difference, then, is whether that should extend to all regulations. That is what I am trying to say.

The Chairperson: Both of you appear to be recommending a change to the current Bill. There is no reference to affirmative resolution —

Mr Weir: I am not sure whether you actually put whether something is passed by affirmative resolution. Is that on the face of the Bill?

The Chairperson: The explanatory and financial memorandum does not indicate that any of the regulations will be subject to the affirmative procedure. It is usual for social security regulations to be subject to confirmatory resolution procedure.

Mr Weir: What I would say is that, strictly speaking, there may be a change being sought to the explanatory memorandum. That is not directly on the face of the Bill. We could certainly make a recommendation that, as a minimum, all regulations that make policy changes would require affirmative resolution, and that there is a difference of opinion as to whether it should go further than that.

Mr Brady: All the regulations will reflect policy changes that are contained in the Welfare Reform Bill. What Peter was talking about earlier were technical changes. However, those technical changes are simply mechanisms by which the policy changes will be implemented. So, all the regulations — the definitive regulations, when we get them — will reflect the policy changes and, in my opinion, should be subject to debate and the affirmative resolution procedure.

Mr Weir: I am trying to provide a summary of the position that we have reached: I do not think that there is going to be a great deal of "Oh my God." involved. Everyone agrees that where there is a policy change, it should definitely be made by way of affirmative resolution procedure. The difference of opinion is on whether that should apply to all the regulations or only some of them. We should reflect that there is a difference of opinion on the extent to which it should apply, but that at least there is acceptance of the policy bit. That should reflect the position that we came to, effectively.

Mr Brady: The only thing is that we do not know what the regulations on policy change are going to contain because we are not going to get the regulations until a couple of days beforehand. If we are making a safety net, I suggest that all the regulations should be subject to affirmative resolution procedure.

Mr Weir: I understand that position, but there is not the need for it.

The Chairperson: We have moved past that, Mickey. We are not agreeing on it. We tried to do so by way of a vote and it did not work. Well, it did work, because we took the decision not to agree. Peter's summary of the situation is pretty much my understanding of it, with appropriate reservations being expressed.

Mr Brady: Those are reservations because, at this point, we do not know what the regulations will say.

The Chairperson: We will reflect that. Can we move forward on that basis?

Mr Brady: You are the Chair, and, as you say, a vote was taken. It was a democratic vote, as far as I am aware.

The Chairperson: I am the Chair and I am not in a position to make a decision about this.

Mr Brady: No, but I think that you are reflecting what has already been discussed.

The Chairperson: That is all I can do. It is OK. The representatives of the Human Rights Commission will be here in a few minutes. The next section deals with sanctions. I will not read it out as it is in front of you.

Mr Weir: I think that this was an issue on which there was a slight difference of emphasis, but we reached a certain level of consensus on it, more or less. What the Committee Clerk has drafted probably covers the broad consensus on sanctions.

The Chairperson: There is suggested wording, Mickey and Fra.

Mr Brady: Is this in relation to sanctions, Chair?

The Chairperson: Yes.

Mr Brady: One of the issues brought up is that draconian sanctions will be imposed for up to three years. People who serve a prison term of two years and come out of jail will still have to serve a further year under the sanctions regime. Basically, we are saying that this is like a double whammy. You go through the judicial system, which punishes you, and then the social security system punishes you as well. That was also discussed in relation to lone parents. Technically, a person will be a lone parent while their partner is in prison, and this will have an effect on children.

The Chairperson: The wording talks about:

> *"amended to mitigate the impact...on lone parents, and those with mental health issues and children."*

Mr Brady: How does it mitigate the impact on the person who comes out after two years in prison and has a further year to do; the person who moves back into the family situation but whose benefit is still sanctioned for a further year?

The Chairperson: I am not sure that we can go into that level of detail with respect to a recommendation. Do you want to suggest how to widen the recommended wording?

Mr Brady: Obviously, it mentions "extreme hardship or destitution" and it would be reasonable to assume that someone who does not have benefit for a further year, and does not have the prospect of work possibly because of the situation they find themselves in, may well be a candidate for "extreme hardship or destitution". Part of the difficulty for such people is that under welfare reform, hardship payments received will have to be paid back, unlike at present. So, those will be taken out of future benefit, which will cause further hardship.

Mr Weir: I think that what we have there, from the DUP point of view, is reasonable. We would not be prepared to go further than that. I am not sure whether Mickey has suggested this, but if there were specific references to those coming out of jail, and so on, I do not think that we would be keen to amend the recommendation to include that. However, we feel that the position of lone parents, mental health issues and children is covered. I do not think that we would be supportive of any further additions to that recommendation.

The Chairperson: If we start to identify particular categories that could possibly be affected, we would have quite a long list. Could we think about adding something after the word "children", so that the recommendation might read, for example, "any sanctions imposed on lone parents, those with mental health issues, children or others potentially affected." I am just thinking aloud here. Is there some sort of slightly vague wording that would not offend anyone? I am looking at the body language, and I am not encouraged.

Mr Eastwood: The phrase, "others potentially affected" might do it, Chair.

Mr Brady: What about, "others affected by higher sanctions".

The Chairperson: It already refers to the impact of sanctions. We do not need to say that again.

Mr Weir: My preference is to leave the wording as it is.

Ms P Bradley: I agree. This is going to end up an exhaustive list.

The Chairperson: That is what I am trying to avoid.

Mr Eastwood: It will not be exhaustive if we say "others", though.

Ms P Bradley: How do we define "others"?

Mr Eastwood: You do not need to.

Ms P Bradley: We had briefings from various organisations and these are the ones that they brought to our briefings. We have paid attention to that. I do not know how we can go on any further.

Mr Brady: In defining the word "others", the regulations will deal specifically with those areas. That is the whole problem, in a sense, because we do not know what is going to be in the regulations. However, they will reflect the particular categories. Those are the specifics within the context of the regulations. The word "others" would then be defined with regard to the regulations.

Mr Weir: Our concern is that if we make reference to "and others", what will flow from that? Unless we get the wording right, there is a danger of something else flowing from it.

The Chairperson: This is only our recommendation.

Mr Weir: I appreciate that. However, personally speaking, I would not be happy with going beyond what is there.

Mr Brady: As this is only a recommendation, Chair, I do not see any difficulty in adding to it because it will be debated anyhow.

The Chairperson: Yes, it is. We can leave the wording the way it is and add in a minority opinion. We seem to be doing this in every single item.

Mr Eastwood: It could be a majority opinion, Chair.

Mr Brady: We are not going to add "Uncle Tom Cobley and all". We are just suggesting the addition of "others", are we not?

Mr Weir: Maybe the simplest thing would be to put it to a vote. If the word "others" is included in the report, I do not think that people are going to —

Whether or not it is put in, people can make reference within that. I do not know. If there were an amendment to add "and others" to it, I would vote against it.

The Chairperson: We are at 2:30 pm. Is it worthwhile shelving this for a few minutes and asking the Human Rights Commission about it?

Mr Weir: I think that it may be something that will go back and forth. If there is a proposal to put in "and others", maybe we should vote on it. If it gets in, it gets in; if it does not get in, it does not get in. It would mean that we could start afresh with item D.

Mr Swann: I have a slight concern about a paragraph in section C of the recommendations. The last section reads:

"in order to minimise the potential for extreme hardship or destitution."

I am concerned that this is still a bit weak. No sanctions should enforce destitution. I do not know whether this needs to be strengthened. Certainly, keep the phrase, "minimises the potential for extreme hardship", but I do not think that any sanction should cause destitution.

The Chairperson: Point taken.

Mr Weir: What about the phrases, "avoid destitution" or "avoid creating destitution"? I suggest that the latter wording might cover it.

Mr Swann: Or, "causing destitution"?

The Chairperson: I am open to suggestions.

Mr Swann: I would like the statement to be a bit stronger than, "minimise the potential".

Mr Weir: What about, "avoiding destitution", "avoid creating destitution" or "avoid causing destitution"?

Mr Eastwood: Does the phrase "in order to avoid extreme hardship or destitution" cover it? Take out "minimise the potential for" and put in "avoid".

The Chairperson: In the papers that we saw originally, the Department surely made it clear that, as far as it was concerned, nothing in the Bill would provoke a situation of destitution for anybody. Think of some wording that would hold it to that.

Mr F McCann: Most of the people we are dealing with are on benefits and are already paid at what is probably recognised as poverty level. Any impact creates the possibility of destitution. That is where the debate and the argument are. We raised it. As Mickey said, somebody who is found guilty of benefit fraud, or whatever, will be penalised far more severely, because they would be refused benefit.

However, somebody who may be going to jail for five years could walk out and automatically get it. That has to have an impact on a family.

The Chairperson: To me, destitution means way beyond being a few pounds a week below the perceived poverty level. To me, destitution is sleeping on cardboard in Sainsbury's porch.

Mr F McCann: Your opinion and mine —

Mr Weir: Amending it as Robin suggested, to cover the point, could be done by simply adding the words "or avoid destitution". Does that cover the point? It qualifies it in a different way to the hardship side of it.

Mr Brady: If you take benefit levels by the Government's definition, subsistence level is the lowest amount that you can live on. That always seems to have been forgotten somewhere in the mix. There is a myth that people on benefits are well off. The reason why people on benefits are sometimes better off than people who work is to do with low wages. It has absolutely nothing to do with high benefits. The point is about destitution. If the people we are talking about are sanctioned and do not have benefits, they can apply for hardship payments. Under welfare reform — this legislation — hardship payments are recoverable from benefit. Therefore, even when benefit is reinstated, that person is going to be below subsistence level, because they will have to pay back the hardship payment. It was the same in the context of the social fund. It was a case of, "We are doing you a favour by giving you an interest-free loan, but we are perhaps putting you £20 below subsistence level." In some cases, that can cause destitution. It is a concept.

I can go back 30 years, when there were surveys done about what a person needed to have a reasonable quality of life. It was having an outdoor coat, two pairs of outdoor shoes and one proper cooked meal a day. It was that kind of thing. We are talking about very, very low levels of expectation for people on benefit. It is a myth that they are all doing very well and are enjoying some sort of beneficial lifestyle. That is all nonsense, and it needs to be nailed.

When we talk about destitution, we need to clarify what it is. We are now talking about food banks, and we had a debate about them. We are back to soup kitchens. In the 1930s, they talked about the depression, destitution and soup kitchens. We have food banks now but we are not having the same kind of debate.

Mr Weir: As regards the exact wording, we are saying that there needs to be an amendment. One of the aims is to avoid destitution, so we should simply use the words "avoid destitution". That will not take away from the other bits about potential for minimisation. It makes it clear that we do not want sanctions to be such that we create destitution. We should simply add in the word "avoid", because we are already saying that they need to amend what is there.

The Chairperson: Colum suggested some time ago that we take out the phrase, "in order to minimise the potential" and replace it with, "in order to avoid".

Mr Eastwood: I think that that strengthens it a wee bit, Chair.

The Chairperson: I would not have any great issue with that.

Mr Weir: What about, "to avoid the potential"? If we take out the word "potential", we are automatically assuming that there will be destitution as opposed to there being the potential for it.

Mr Brady: The whole purpose of sanctions is punishment. That is what they are there for; they are not there to be beneficial. They are there to punish you and make you aware that you have been a naughty boy or girl, that you need to comply, and that if you do not do so, you may well be in some destitution.

The Chairperson: No. The purpose of this section of the Bill is to provide for sanctions, but it should be qualified by saying that those sanctions will not drive people into extreme hardship or destitution. I go back to Colum's suggested wording, "in order to avoid extreme hardship or destitution". Peter is suggesting, "avoid the potential for". We are playing with words here really, folks.

Mr Swann: I am still of the mindset that this is about destitution. The words, "to minimise the potential for extreme hardship", can be in there; I do not have a problem with that. However, this is about destitution.

Mr Weir: Should we leave it as it is but add the words, "or avoid destitution"? Simply including the word "avoid" qualifies it at a different level.

The Chairperson: I do not want to add to the playing with words, but it would probably be, "and avoid destitution".

Mr Weir: OK; "and avoid destitution".

Mr Swann: I am happy with that.

Mr Eastwood: OK; so it is "in order to minimise the potential for extreme hardship and avoid destitution".

The Chairperson: Is that all right?

Members indicated assent.

The Chairperson: Paragraph (d) in your papers is on the question of nominated claimants. There is suggested wording there for our consideration.

Ms P Bradley: I agree with that wording, Chair.

The Chairperson: I am getting nods of agreement from my right. Are we OK with that one?

Members indicated assent.

The Chairperson: The next paragraph is on universal credit. You have the staff's thoughts on the thrust of the discussion that we had. You also have our recommended wording for the report, and you may or may not wish to adopt that.

Ms P Bradley: I agree with that wording as well, Chair.

The Chairperson: Do we have agreement on this?

Mr Brady: One of the points raised was about the zero earnings rule. That has not been mentioned specifically. The person will lose their entitlement to mortgage interest payment if they work for one or two hours, but that will probably be covered in the overall discussion.

The Chairperson: I enquired about this earlier today. The person told me that that is already the case and that this is not a change. Is that correct?

Mr Brady: Not that I am aware of. There have been changes in the amount paid for mortgage interest and how long it is paid for. This change will mean that if someone works for one or two hours a week, they will lose their entitlement.

The Chairperson: The person whom I spoke to was involved in the formulation of the UK Welfare Reform Bill and said that that is not actually a change. I do not know.

Mr Eastwood: Either way it is bad.

The Chairperson: I would not disagree with that, but is it a breach of someone's human rights or equality rights?

Mr Brady: It is certainly a disincentive for people to look for work.

The Chairperson: But is it a breach of their human rights or equality rights? It applies to everybody.

Mr Brady: If the underlying principle of welfare reform is to encourage people to work, and you have something that discourages them from working, that is more of a policy error.

Mr Weir: A reasonable enough argument could be made that it is not a particularly sensible proposal, and that may be taken up by the Committee. There may be a little bit of debate as to how much is in place at this stage. I am not sure that it is a direct breach on human rights or equality grounds, but it may be a breach of common sense. Having said that, there might be a good reason that I have not thought of.

Mr Eastwood: I am trying to think of one.

Mr Weir: I am not sure that, directly speaking, it is a human rights or equality issue.

Mr Brady: It would be an interesting amendment to say that this is not a sensible regulation.

Mr Weir: I have every faith in the good sense of the Committee for Social Development to give suitable consideration to that when it comes to its turn.

Mr Brady: We will take that compliment when it is given.

Mr Weir: Absolutely. I am sure, Chair, that the Committee for Social Development will take it in the spirit in which it was meant.

The Chairperson: That is very important, whether it already applies or otherwise. It seems like one of the more crazy rules that I have ever come across. Could we make a recommendation in our report that the Committee for Social Development takes another look at that?

Ms P Bradley: It will do that anyway, Chair.

Mr Brady: We will certainly look at that.

Mr Weir: It is not unreasonable for it to take another look at it. The only slight complication is that, presumably, there will be quite a lot of things in the broader Bill that might be worth looking at. The only problem is that if you make a recommendation that one specific bit falls outside human rights and equality and needs to be looked at again, is that more or less an endorsement that everything else does not need to be looked at? If you pick out one thing, it can, by definition, give the impression that everything else is grand when it may or may not be.

Mr Eastwood: Could you say that it is particularly detrimental to women, given the childcare situation and given that they might want to work only a couple of hours a week? Or to carers?

Mr Weir: With the best will in the world, while tenuous, Mr Eastwood's approach is very imaginative, but we did not get any direct evidence where people said, "We do not think that this is sensible". Nobody said that, on equality grounds, it will be overly detrimental to one section. Members could bring that up in the debate, but I am not sure that it could be part of a full recommendation.

Mr Brady: To put Peter at ease, the Committee for Social Development will look at all those aspects.

Mr Weir: My faith is confirmed.

The Chairperson: It will have the Hansard report as well. Colum's suggestion was pretty inventive.

Mr Eastwood: I thought that it was pretty good myself.

The Chairperson: We are content with the wording of (e).

Paragraph (f) is on lone parent conditionality. We have the summary of our discussion and the suggested wording. I am not too sure whether the Committee is content; that would be a first.

Mr Brady: In my experience, under previous Ministers, the Department said that lone parents would not be sanctioned. I know people who were not initially sanctioned but were at a later stage. That goes back to 2007, 2008 and 2009. I am not sure that we can accept assurances from the Department. It has to be stronger than that. It has to be stated. As has been said on many occasions, we do not have a childcare strategy in place, never mind affordable or available childcare in most, if not all, parts of the North. That is a fact.

The Chairperson: The suggested wording says that lone parents have not been penalised for lack of childcare. However, you are suggesting that they have been.

Mr Brady: I am going by personal experience of people coming in. One case in particular stands out. Three children were involved, and the mother was put under severe pressure by the Department because there was no available childcare and she was not available for work-focused interviews, and so on. It did not happen initially, but it did after a period of time.

The Chairperson: Any thoughts, anyone?

Ms P Bradley: I was given to believe by the Department that there have been none, and now Mickey tells us different.

Mr Brady: It did actually, yes.

Ms P Bradley: I may be getting confused between this Committee and the Social Development Committee. In one of them, we were told that there had been no sanctions against women and lone parents in general, because of affordable childcare, but we hear differently now.

I think that the bottom part helps with monitoring the sanctions. If the Department says that it will not sanction lone parents, and we ask that this is monitored, surely that will give us feedback as to whether lone parents are sanctioned?

Mr Swann: Could we strengthen that last comment? I get a disconnect between the top two, where it says "have not and will not be", but then we ask the Department to put in procedures to monitor sanctions against lone parents. If we say in the first section that there should not be any sanctions, we should not be asking the Department to monitor them. We should put in something to the effect that "the Department must ensure".

Ms P Bradley: If we are asking for that to be monitored, we can tell from that whether the Department has breached its assurance. I know that that does not help the person who is —

Mr Brady: That is the point that I was going to make. That person will already have been affected.

The Chairperson: The only bit of it that disturbs me is what I started off with: that lone parents have not been sanctioned, when at least one member says that they have been. We do not actually need to say that at all; just something to the effect that "the Committee is content to accept assurances from the Department that lone parents will not be penalised."

Mr Weir: The other point that occurred to me is this. To take up the point that Robin Swann made, there is not quite a disconnect. Look at the wording. The first bit is very specific that lack of childcare will not lead to sanctions. That does not mean that there can be no sanctions at all against lone parents.

Ms P Bradley: For other reasons.

Mr Weir: It talks about the potential impact upon women and children with respect to the monitoring of sanctions against lone parents. Let us take an example. Mickey made the point about the jail situation. If you have someone who has conducted a very major fraud against the Department, that person may or may not be a lone parent. Say, for example, that he had defrauded the Department of £70,000. That person is going to be sanctioned. He may be a lone parent; but presumably there still needs to be some monitoring of the sanctions in those circumstances to make sure that there is no detrimental impact upon the child. That goes wider. That is not an issue of whether there is a

childcare situation. So the scope of the second part of that is wider than the childcare issue. That is where the two could marry.

Mr Swann: I accept Peter's point on that. I read it the other way. Maybe we should ask the Department to monitor sanctions against lone parents that are not associated with childcare issues?

Mr Weir: No. The complication is as follows: one of the things is that we need to ensure that someone is not penalised for that. If you say that we are not monitoring the situation, how do you know that someone has not been penalised if you are not looking at it? The second part covers both situations.

Mr Brady: The only reservation that I have is about assurances given by the Department that people have not been sanctioned. What Peter is talking about is that there are two different types of sanctions. What we are talking about is that lone parents should not be sanctioned because they cannot attend work-focused interviews, etc. You are talking about major sanctions with which no one will argue. If someone commits that level of fraud, it is obviously a serious offence.

Mr Weir: Clearly, under those circumstances, that should still be looked at. Whatever the impact on the individual who has committed the fraud, the Department should still look at the impact on, and what provision can be made for, the child or children of that lone parent. That part of it would kick in under those circumstances.

Mr Brady: My experience over the years, irrespective of who is in charge, is that the Department will have targets. I have no doubt about that. All the social security offices will have targets, teams have targets. There are good targets and bad targets; it is all part of the context of social security. If we accept assurances from the Department today, that may change next week. If the Department decides to take on a regime of targets, that is the difficulty I have.

The Chairperson: Colum, was it you next and then Fra? I am not quite sure.

Mr Eastwood: I do not know. You are the Chair.

The Chairperson: All right. *[Laughter.]*

Mr Eastwood: I think that it is very difficult to accept assurances. However, if Mickey is right and people have been penalised in the past because of this, how do we accept assurances that say otherwise? I certainly cannot, if there is a question mark.

Mr Weir: As it does not absolutely guarantee that they exist, what about saying that the Committee "welcomes" assurances? In that way, it is content, but it moves the content to accept.

Mr Eastwood: Maybe, but you would need to take out the bit about the past tense, the "have not".

The Chairperson: You could leave it in and say that the Committee "notes the assurances". It does not mean that we agree with them.

Mr Weir: Maybe, to take the reference to the past tense, we cannot change it. We can have a debate. I had not heard, but I take Mickey's word, that there may have been a rare case where something has happened in the past. What about saying that "the Committee is content to accept assurances that lone parents will not be penalised for lack of childcare"? That is looking to the future, and it does not call into question whether we do or do not accept what has happened in the past, and there may be a difference of opinion there.

The Chairperson: That was my suggestion a few minutes ago. We could say, "lone parents will not be penalised", and leave out the reference to the past.

Ms P Bradley: I agree, Chair. Take out "the past".

Mr F McCann: How can you stand over a guarantee like that? I will give an example. A few years ago, we put forward an amendment against the introduction of sanctions, and the Minister said that

sanctions would be rarely used. Since then, thousands — maybe tens of thousands — of people have been sanctioned at one level or another. Unless you have guarantees in writing —

Mr Weir: The best that you can say is "content with assurances". With regard to that, one of the assurances is that people will not be penalised for lack of childcare. That is different from saying that there will not be any sanctions. It is saying that the lack of childcare is not the cause. That, effectively, is a defence.

Mr F McCann: It does not ensure that although the Department may say that now, what happens in a year's time or two years' time? Should something be written in the guarantees that it would have to stand by?

The Chairperson: The Committee is clearly not content to accept assurances from the Department on the issue — not as a whole, anyway. Could we just say, "the Committee notes the assurances from the Department"? We are not expressing contentment, disbelief or otherwise. We are just noting the fact that the Department has given those assurances that, in future, lone parents will not be penalised.

Mr Eastwood: I do not particularly accept the assurances, but it is a fair enough point. For anybody who does not want to see the Department bring in sanctions against lone parents because of the lack of childcare, having it in writing that it has at least assured us that it will not do it will help the cause in some way. However, it does not mean that we are completely confident that it will not happen.

The Chairperson: I know, but we are not content. I want to get rid of the word "content" if we are not content. What about "notes"? Is "notes" all right?

Ms P Bradley: We need to put in "lack of affordable childcare", rather than "lack of childcare".

The Chairperson: Hold on a minute. "The Committee notes the assurances that lone parents will not be penalised for lack of childcare". What was the next one, Paula?

Ms P Bradley: Put in "lack of affordable", rather than "lack of childcare". If you are earning or whatever, childcare is available at astronomical charges.

Ms McGahan: What about saying "affordable and flexible"? Full-time day care child facilities are contract-based. People cannot afford them.

The Chairperson: Do you accept the words "affordable" and "flexible"?

Mr Weir: I do not have a particular problem in principle. I am just slightly concerned that we do not start defining a number of different aspects. "Affordable" is a very clear-cut point. I would have more concern about "flexible".

The Chairperson: What about "available"?

Mr Brady: Chair, it has to be affordable and available. I could live in Newry and have affordable childcare in Banbridge.

Mr Weir: Maybe we could say "affordable available childcare", or something of that nature.

Ms McGahan: From personal experience, we cannot get people to use contract-based childcare because it is so expensive.

Mr Weir: That relates to affordability.

Ms P Bradley: That falls under the issue of affordability as well. The issue of affordable childcare includes the matter of when you go on holiday, the school holidays and all the different things that you have to cover even when your children are not using it because of various circumstances. If they are sick, you still have to pay for their place. That all falls under the category of affordable. In an ideal world, you would only have to pay for childcare as you use it. It would be pay as you go, but that is not how it is.

The Chairperson: I have heard "affordable", and that seems to be agreed upon. I have heard "available" and "flexible". I have not heard "accessible". That is coming into my head. What about "accessible"? I have heard the term "accessible childcare" many a time. That covers the point that it might be available in Maghera but you live in Newry.

Mr Swann: If we put in too many adjectives, we will be doing the Department's job for it, and it can start to use those criteria.

The Chairperson: We are only putting in two.

Mr Swann: Four, I thought.

The Chairperson: No, I want a choice of one of those. I am going with "accessible" unless anyone contradicts me.

Ms P Bradley: I can live with that one.

The Chairperson: We will put in "affordable and accessible". OK, I think we are doing well.

Ms P Bradley: Do not even say it.

The Chairperson: We did not come to an agreement on the benefit cap. It boils down to whether we are content that there is no recommendation.

Mr Weir: There was a majority and a minority opinion on that. That covers everyone's position.

The Chairperson: What covers everyone's position?

Mr Weir: What is written down there, basically.

The Chairperson: That is not a suggested wording. It is a summary of the Committee Clerk's understanding of our discussion.

Mr Weir: I think that it does encapsulate it.

Mr Elliott: I am sure that wording similar to that can be encapsulated in the report.

The Chairperson: Are we recommending that there should be a benefit cap or not making a recommendation?

Ms P Bradley: We are recommending that we do not change what is before us.

Mr Brady: I think that that reflects the Committee thought or debate about it, without any recommendation.

The Chairperson: So, we will use the last two paragraphs as part of the report.

Mr Elliott: It does say in the minutes that the Committee is in favour of a benefits cap at the level suggested. Obviously, we came to a decision.

The Chairperson: We took a vote on this, I think. From memory, it was seven to votes to four, so there was a significant minority opinion that it could impact on a very small number of families. I think that 200 families was the figure given. That reflects that the majority was in favour of the cap, and a minority opinion was expressed. Is that OK?

Members indicated assent.

The Chairperson: The next point concerns PIP versus DLA benefit. Again, there is a recommended wording here. The Committee recommends that the Department:

"closely monitors the assessment process ... in order to identify any potential human rights implications for disabled people."

It is also suggested that the Committee recommends that the Department:

"provides legal clarity that private contractors carrying out functions that properly belong to the state are subject to the jurisdiction of the Human Rights Act 1998".

Mr Brady: Can we not recommend that the Department puts in place the process? The difficulty with the work capability assessment by Atos is that it is a flawed process. It has been monitored extensively. Professor Harrington has put out his third report without having set a foot here in the North to assess how the work capability assessments are carried out. Apparently, he went into centres in England and monitored the process very closely. He has not done that here. Whatever information he has for here, he has not come to see it for himself. Therefore, it is incumbent on the Department to put in place a process. It has monitored it closely in England, and in his third report in the space of three years, he has put in several recommendations and there is still a problem with the process. We have a different provider here — Capita — for the transition from DLA to PIP. People's indefinite awards have been put back by 21 months to 2015. That is an opportunity for the Department to put in place a process. You can monitor, but what if it is a bad process? We have talked about the primacy of medical evidence and all of that. That can all form part of the process that is put in place, and it needs to be a good process rather than a flawed one. The British Medical Association said that the work capability assessment is not fit for purpose. Those are its words, not mine.

The Chairperson: You do not think that that is covered by the first paragraph?

Mr Brady: In my opinion, no.

The Chairperson: What is the opinion of anybody else here?

Mr Weir: What sort of wording are you suggesting, Mickey?

Mr Brady: "The Department puts in place a process that ensures" or words to that effect. The wording is:

"The Committee recommends that the Department for Social Development closely monitors the assessment".

We should say that it should put in place a process. I am not sure of the exact wording and how that might pan out, but we should state that the process should be fit for purpose. It is very clear that the other process is not.

The Chairperson: The purpose, from our point of view, is contained in the last few words of that first paragraph:

"to identify any potential human rights implications".

That is our remit.

Mr Brady: I understand that, but it is not unreasonable to suggest that if the process is proper and fit for purpose, it is less likely that there will be a potential human rights breach for disabled people. I presume that the monitoring process will look at those breaches after they have been committed. It is almost retrospective.

The Chairperson: I do not hear anybody dissenting, but, at the same time, I do not hear anybody agreeing. I am still not clear about how —

Mr F McCann: I agree.

The Chairperson: Thank you, Fra.

Mr Brady: In fairness, the second paragraph states:

> *"The Committee recommends that the Department for Social Development provides legal clarity that private contractors".*

In a sense, that follows on from putting in place a proper and fit-for-purpose process, not just monitoring, if you know what I mean.

The Chairperson: It is a different issue. That is why it is separate.

Mr Swann: Taking on board what Mickey said, if we recommend that the Department establishes the process, surely it would just adapt the one that is already there.

Mr Brady: Our recommendation is that the one that is already there is flawed. We are talking about two different things, because the process for the transfer from DLA to PIP has not come in. All that we are saying is that if the process continues, you will simply have a replica of the work capability assessment. It has been accepted universally, even, I think, by people in the room, that that is a flawed process. I think that Lord Morrow gave an example of someone whose sight was apparently perfect but who was actually blind in one eye. I have heard about cases of people having dementia tests and being asked to count backwards from 400 to 350 to assess their mental health. I have been told about a case, which I have mentioned before, about somebody who had a Down's syndrome child who was asked when it started and when they felt they might get better. That is the kind of thing that is happening at the moment. I think that it is not unreasonable for the Committee to suggest a process that will avoid the potential for breaches of human rights for disabled people.

The Chairperson: What if we said, "The Committee recommends that the Department for Social Development puts in place an assessment process for the determination of entitlement to personal independence payments that will identify any potential human rights implications."? Is that along the lines of what you are thinking?

Mr Swann: You do not want to just identify them; you want to make sure that they do not —

The Chairperson: The first thing it has to do is to identify those implications.

Mr Brady: We have talked quite a lot about the primacy of medical evidence. Is that a different issue?

The Chairperson: We will get to it. What are your thoughts about what I have suggested? The wording is "The Committee recommends that the Department puts in place an assessment process ... that will identify any potential human rights implications."

Mr Eastwood: What about "in order to avoid"? You need to get to the point —

The Chairperson: OK, sure: "In order to avoid any potential human rights implications." Is that OK? I am getting nods of agreement. That is agreed.

Mr F McCann: It is only because Peter left the room.

Mr Eastwood: There is someone looking for you out there, Peter.

Mr Weir: Taxi for Eastwood.

The Chairperson: Mickey, what was your next point about the primacy of medical evidence? I am not too sure about this one.

Mr Brady: I am looking at the second paragraph, which says:

> *"The Committee recommends that the Department for Social Development provides legal clarity that private contractors carrying out functions".*

There should be something about the primacy of medical evidence being included as part of the assessment process. Essentially, what is happening at the moment is that medical evidence is only being found or dealt with at the appeal stage. I think that everybody is more or less agreed on that. The decision-maker who makes the initial decision is going by the tick-box exercise on the form, which is usually completed by a nurse. Most of the medical evidence that people take into those assessments is ignored.

Mr Weir: I want to make two points on that. First, I understand where Mickey is coming from, but again, I am not sure that there is a direct human rights or equality issue. Secondly, even under the current DLA arrangements, the decision is not based purely on medical evidence but on the impact that a medical condition has on you. That is the current legal position.

Mr F McCann: It is changing.

Mr Weir: That is what it is at the moment. Whatever way regulations may potentially shift some of the grounds, the point is that, at present, the decision is not made purely on medical evidence. It is made on the basis of how your medical condition affects you. It is impact-based rather than medical-based. Again, with the greatest degree of respect, I am not sure that that is a human rights issue in any event. I would not support a direct recommendation on that.

Mr F McCann: I thought that the goalposts were being moved. You are right to say that, at present, it is about how you cope with your illness, but under the new system, it will be about how you can work or what you can do within your illness.

Mr Weir: With respect, what you can do within your illness is what is being asked for at present. Let us look at an example of that. On the basis of what you can do at present with your current medical condition, for example, when it comes to the high rate of mobility element, it is about the distance you can walk without severe discomfort, or being unable to walk or virtually unable to walk. Similarly, one of the key elements on the care side — I appreciate that some folk sitting across the table are experts on this — is the cooked-meal test. It is based on what an individual can do. There may be shifts within those, but the primacy of medical evidence is not a key element at present. Also, from a practical point of view, it may be ill-advised or sensible where there are any shifts, but I do not believe that it is a human rights or equality issue. As such, I do not think that we should make any direct recommendations on that.

Ms McGahan: I suggest that medical evidence should have primacy and that we should have it incorporated.

Mr Weir: It is not at present.

Ms McGahan: No, but I have been at tribunals where people have had excellent medical evidence, but when it came to the questions about how their condition affected them, the appeals were being turned down on the basis of their answers. There have also been people who did not have strong medical evidence but got through because of the way in which they answered questions. So, I would strongly recommend that medical evidence is given primacy and should be incorporated into the process.

Mr Weir: The point is that that argument is based on whether there should be a change to the current law on that basis. If the situation as regards DLA is already that medical evidence is not taken as a prime source and that decisions are based on how the condition affects you, I do not think there should be a recommendation on the change to PIP on that side of it. I think that there will be highly relevant issues when you come to some of the regulations on PIP, but it is not a human rights issue, and it is not something that we should be recommending directly in the report.

The Chairperson: That is the problem that I have with it. It may be a matter for the Committee for Social Development to have a look at in the fullness of time.

Mr Brady: In fairness, I accept that. Peter is saying that it is not what is there currently, but the issue that is currently there is that, for the majority of people who appeal — something like 66% to 70% — the medical evidence is produced on appeal and those people go through their appeals without any problem in a lot of cases. The point that you are making is that, in DLA case law at the moment, it is not what causes your condition, it is how it affects you. PIP is moving a stage further to how you cope

with your condition. Most people will accept that the people who do the assessments are not necessarily objective, but subjective. If, for instance, somebody has a condition, and it is the subjective view of the assessor that they can lift weights or walk further and you have a specialist report that says that they cannot, that is part of the issue. In fairness, I think the Chair is right. The Committee for Social Development will be dealing with that. There is no point in prolonging this discussion.

The Chairperson: Are you happy enough with the amended first paragraph and the second paragraph, as it stands? Do you want me to read it out again or are you happy enough?

Members indicated assent.

The Chairperson: The next section deals with housing benefit and underoccupancy penalties, and so on. Once again, you have a suggested wording to encapsulate our thoughts. There are two aspects to it.

Mr F McCann: Chair, are you looking at it as two different elements?

The Chairperson: There are two separate elements to the response.

Mr Eastwood: I think the spirit of it is right, but the only aspect is that it states:

> *"the Department for Social Development takes into account in its calculation of housing benefit exceptional circumstances".*

I think that you are going to find it really difficult to do that, unless you have exemptions. I know that they have said that they do not want a blanket exemption, but I think that the cost of having to do this on an individual basis each time is going to spiral out of control. As it is, we are dealing with cases in which you cannot get occupational therapists out to houses to look at things; there are eight to 12-week waiting times sometimes. You are going to have to go out and assess every disabled person's house again in order to individually decide whether they are exempt. I think it is going to be a nightmare to deliver. I would rather see a blanket exemption for people with a disability.

Mr Weir: I think the purpose of the reference is to try to tie it in with the human rights of the disabled person and children. I suppose the problem with trying to square the circle with regard to the practicalities is that you may need to look at the individual circumstances, because you may have a situation in which a particular disability may have a very minimal impact on housing needs, while some disabilities may have a very strong impact.

Mr Eastwood: I understand that, but I think that the effort, time and money that it is going to cost to check every single disabled person's house in Northern Ireland is going to be a nightmare.

Mr Weir: We are making a general recommendation in that regard. Precisely how that is brought through will depend on exactly what impact that then has on the legislation. I take on board what Colum has said, but I would be a bit more cautious about that if this were a direct amendment to the Bill as opposed to simply a Committee recommendation.

Mr Eastwood: Thanks for that. There is another concern. Do people get hit first and then have to apply for the house to be checked and all that? I just think that this has the potential to be disastrous.

Mr Brady: At the moment, if someone gets DLA, it is accepted that there is a disability that has been assessed and that they have gone through a process. PIP may well be a qualifying benefit that indicates that the person has a degree of disability that is going to hinder their bodily functions or whatever. I am just —

Mr Weir: The one complication is that this reads across to housing benefit. The complication is that DLA covers a wide range of people at different levels on the care and mobility sides. In quite a few of those cases, that will have some impact on someone's housing need. In other cases, it will have no bearing whatsoever on housing need.

Mr Brady: But, again —

Mr Weir: For example, it may well be that you need levels of adaptation and care if you have a certain disability or need wheelchair access. That may have certain impacts. On the other hand, a fear of going outside, for instance, may not have any particular impact on someone's housing benefit. It strikes me as a fairly blunt instrument.

Mr Eastwood: You could base it on mobility.

Mr Weir: Let us take an example on the basis of mobility. You may have a situation in which some high-rate mobility claimants would require additional housing space, but not all would. Similarly, a lot of low-rate mobility claimants will not necessarily require any additional housing space. I do not know how much this will change under PIP, but, currently, the low rate is a little bit more to do with the mental health aspect of being outdoors and the need to be with someone; that assurance, if you like. That may not have any impact at all on someone's housing needs. Similarly, on the care side, you could have different people at different stages of care and a lot of them will have additional housing needs. For others, because of the nature of their condition, it will have absolutely no impact whatsoever.

I think that it is a very blunt instrument. You are suggesting that it should be a tick-box exercise and that, because someone gets DLA, that should automatically have a particular read-across to their housing benefit.

The Chairperson: Mickey, before you come back on that, let me get my head around this. Your original suggestion was that someone's existing circumstances and the assessment that has already been done should be taken into account.

Mr Brady: In fairness, I take Peter's point, but the reason that there are three rates of care component is that there are different degrees of disability. There are also two rates of the mobility component. Low-rate mobility is basically for people who suffer panic attacks and cannot go out alone. I am not sure how that might impact on their housing situation. With PIP, there will be enhanced rates, which would indicate a higher degree or level of disability. It is only a suggestion.

The Chairperson: I am listening to all the suggestions, but I am constantly keeping human rights and equality in my head. Little as I know about these sorts of cases, to be honest, as regards our recommendation that the Department should take into account exceptional circumstances, I do not see how having to undergo a further assessment under PIP legislation instead of DLA legislation would affect anybody's human rights. It may add to the burden of work for a lot of people, but will it affect anybody's human rights or their equality status?

Mr F McCann: Surely it would if someone is assessed differently than they were under DLA.

The Chairperson: Yes, but there is no direct connection between DLA and PIP.

Mr F McCann: Someone may have been assessed as being not fit for work or not having sufficient mobility, but, under PIP, they may be looked at completely differently. It will obviously affect and impact on the rights of people because the goalposts will have been moved.

The Chairperson: If you follow that through, what you are suggesting is that they should not be reassessed at all for PIP.

Mr F McCann: What they should do is look at the impact that medical evidence has. That is not taken into consideration at present.

Many will be affected by underoccupancy, the bedroom tax or whatever they want to call it. There are quite a number of things in there. People's disabilities, mental health problems and social problems are not being considered. This is not wide enough to allow you to deal with that.

The Chairperson: I think that Colum has a solution.

Mr Eastwood: No, I do not. I have more problems. The other difficulty is where the parents of a kid who is severely disabled have had their house adapted but the kid is no longer living there. Will they

be penalised for having a disabled child who may have died, moved out or whatever? That is another one that is crazy.

Mr F McCann: I posed a question on adaptations in Committee. If somebody has raised a family in a house where adaptations have been made for a child and if, because some people move on, there are two additional rooms, what happens to the family in the house? They said that would need to look for alternative accommodation.

The Chairperson: There may come a point when some other family's need for a house like that is greater.

Mr F McCann: But the person is still there. So, they are being penalised just because they have two additional rooms.

The Chairperson: I thought you said that people have moved out.

Mr F McCann: The premise of all this is that there are properties available to house people.

Mr Eastwood: That is the other problem. Good luck finding one in Derry.

The Chairperson: That is covered by the second paragraph.

Mr Brady: I would like to make a point about a disability. The referral for an OT assessment goes from a GP to an occupational therapist. If, for instance, you get a disabled facilities grant for a private dwelling, social housing or whatever, that goes through the grant section of the Housing Executive. So, there is a record of people who have that, and there is no reason why that could not be cross-referenced to some degree. Going back to the point made earlier about technicalities as opposed to policy, I think that we could talk about this all day, but I presume that the Committee for Social Development will debate and discuss it anyway.

The Chairperson: We can just leave it the way it is and let the Social Development Committee go into the detail.

Mr Weir: I appreciate the different ways that things can be tweaked when it comes to the exact wording of legislation. I think the one advantage of the present way in which it is drafted is the catch-all line:

"in order to respect the human rights of disabled people and children".

Purely for our remit, it is focused on the human rights side, but that may be an unreasonable position. It strikes me as an area where the Committee for Social Development will have to do a bit of work. I am not sure that we are in a position to refine that bit too much today. It is clearly something that needs to be adjusted and got right.

The Chairperson: OK. Is there any particular reason why the second paragraph refers to international human rights law? Is that wide enough?

Mr Weir: I am not necessarily disagreeing with you here. To pick up on your point, where is the direct tie-in with international human rights law? I might be wrong, but this is pretty much the only place in the recommendations where we have directly mentioned international human rights law as opposed to general human rights or whatever.

The Chairperson: Apparently, the Human Rights Commission mentioned international human rights law.

Mr Weir: Is that purely in relation to reasonable alternative accommodation? I understand the general point. There is no point penalising someone for such and such if there is absolutely no alternative available, because that would be unfair. I understand the general principle. I am just trying to work out where the international human rights law tie-in is. Obviously, it has mentioned that in some way.

The Chairperson: That is why I mentioned it. We will look it up for tomorrow.

Mr F McCann: I have made this point before: the reality of life in places like Belfast is that, for many people, there is no reasonable alternative. I used the example of lower Oldpark, where perhaps 30 or 40 houses are lying empty. If somebody from the New Lodge wanted to move there, that might be seen as reasonable, but the reality of life in Belfast is such that it would not happen.

Mr Weir: I understand that, Fra, and I think that it is a reasonable enough point. The only issue is how exactly you define "reasonable alternative". To be fair, we have all had someone come in to us about what counts as three reasonable offers. What is reasonable and what is not is probably circumstantial.

Mr F McCann: Across the North, and especially in areas of Belfast, a reasonable offer is within the confines of the areas that a person who is looking for housing has identified. Somebody from the Falls will not say that one of their areas of choice is the Shankill. That needs to be taken into consideration.

Mr Weir: I understand that. It may be that "no reasonable alternative" is the best wording that we can have. I appreciate the fact that in west Belfast or north Down, for example, someone identifies three estates in their area. They might be offered a place in a different estate, which would still not objectively be regarded as unreasonable, but there is an issue around what constitutes reasonableness. From that point of view, we are probably not going to define that, but it is perhaps reasonable enough wording for the recommendation. I understand the point that is being made, and it is a slightly double-edged sword.

Mr Brady: The Housing Executive told the Social Development Committee very clearly in its evidence that if this were to be implemented in the morning, it would not have the alternatives. The issue is downsizing. We do not have the housing stock of one- or two-bedroom properties. That is a long-term project. Even the Department would accept that, particularly with the strategy on housing. It will be a long time before suitable alternative, reasonable accommodation is available, not only in areas into which people do not want to move. People would be downsizing from a three-bedroom house to another three-bedroom house in a different area. That is the reality.

Mr F McCann: What is not being taken into consideration are the differences between here and parts of England. Huge swathes of cities in England can deal with things like this. We do not have that here. There is still the problem of the impact of people moving from one area to another.

Mr Weir: I take that on board. The lack of current housing stock is clearly a major problem, and we will refer to it in a general sense. To be fair to the folk in England, there may be a lot of big cities, but it is not just as easy as saying that people can go to one area or another. I know that there are particular problems in Northern Ireland, but we should not underestimate the fact that if people are living in a particular city in England, there may be many areas that people would not want to touch with a barge pole for a variety of reasons.

Mr Eastwood: It is the lack of housing stock. *[Interruption.]*

The Chairperson: Four people are trying to speak, and the member who indicated is not getting a chance.

Ms McGahan: There is a lot of talk about housing deficit. In Dungannon district, there are almost 1,000 people on the housing waiting list, but figures that we obtained from Land and Property Services show that there are 600 vacant properties in Dungannon town alone, so there is no joined-up approach among the agencies. That is a serious issue.

The Chairperson: Again, we are straying away from our remit.

Mr Eastwood: These are all grand ideas in theory, but there is no chance of trying to find people one- or two-bedroom properties anywhere. The difficulties in certain estates with flat-type accommodation and antisocial behaviour are completely unworkable, but that is probably more an issue for the Department for Social Development.

The Chairperson: All we can do is put in the protection that the Department should not apply sanctions in those situations. That protects people's rights under international human rights law.

Does anyone recollect whether the Department gave us an assurance that it would not apply sanctions?

Mr Eastwood: No, I do not think so.

The Chairperson: We could change the report to say that we note the Department's assurance, but we did not get an assurance. I think that it is OK the way it is.

Mr Brady: Fra said that I had not mentioned Newry today, but I intended to. To get away from the old Belfast scenario, in Newry, we do not have the sectarian divisions of Belfast and other parts of the North, and there is still no suitable alternative housing stock. The problem is not only prevalent in Belfast or Derry but right across the North, and we need to be aware of that.

The Chairperson: Good old Newry. Is the Committee content with the wording that the Committee for Social Development is content to take it forward?

Members indicated assent.

Ms P Bradley: I am still interested to know what the international human rights law is, because it seems to fit in with the "no reasonable alternative accommodation". The "no reasonable alternative accommodation" has to be related to that specifically, or is it not?

The Chairperson: The Committee Clerk's paper states:

> *"The definition of appropriate or suitable accommodation was suggested as 'reasonable' in the sense that it is currently used by the Northern Ireland Housing Executive."*

That was Michael Copeland's —

Ms P Bradley: That is quite broad.

Mr Weir: Rather than trying to define it, why do we not leave it?

The Chairperson: We can take a final look at that tomorrow.

Points were raised on one or two other issues, and it was agreed that further information and clarification would be sought.

With regard to NICCY's submission, members requested further information on the UN Convention on the Rights of the Child. Did we get any?

The Committee Clerk: Yes.

The Chairperson: Members have the full text of its submission. Are we going to delve into this or not? Can we note it?

Mr Weir: When the report is drawn up, I assume that it will include the Hansard report and the submissions that have been made. Presumably, it could be one of the submissions. UN conventions tend to be quite widely drawn. Therefore, you could debate all day on the applicability of individual references.

The Chairperson: We looked for clarification of the post-legislative monitoring arrangements advocated in the Welfare Reform Group's submission. There is a short note about that in your papers. I am not sensing a huge interest in some of these issues.

Ms P Bradley: I think that we have covered those.

Mr Weir: With regard to monitoring, the Equality Commission made specific recommendations. Have we not covered that already?

The Chairperson: Sorry, I am clearly losing the will here. A huge document is tabled today for your consideration. You asked for it, and you got it. Perhaps we are content to note that.

Members indicated assent.

The Chairperson: Members queried the term "distributional impact analysis" in the submission from the Human Rights Commission and requested a definition. Have we got a definition?

The Committee Clerk: Yes; it is in the pack.

The Chairperson: I am sorry: it is in your meeting pack.

Mr Weir: Who queried it? The paper says "members".

The Chairperson: I have a feeling that it was you.

Mr Weir: If that is the case, Mr Chairman, I have deliberately expunged it from my mind.

The Chairperson: I think that we will just have to note that as well.

Mr F McCann: I thought that Peter would have had that definition.

Mr Weir: I will perhaps do some analysis of the definition.

The Chairperson: The final item in members' papers is the Hansard report of the Law Centre briefing. Members requested clarification of the impact of income from lodgers on benefit entitlement. You should all have the departmental response. Are we all happy?

Members indicated assent.

The Chairperson: Members, we are nearly done with our consideration. Can we now consider the main question that concerns us? Are the provisions of the Welfare Reform Bill in conformity with the requirements for equality and the observance of human rights? It is a yes or no question. I know that we have talked our way round the issue and that people have reservations about some aspects. However, that is the main question to which we have to give an answer, even if it is only a majority opinion. Are the provisions of the Bill in conformity with the requirements for equality and the observance of human rights? We will have to take a vote.

Mr Swann: Is it a straight yes or no answer, considering all the concerns that have been raised from both sides? Does it have to be a straight yes or no?

The Chairperson: You may be right. Perhaps it is not a straight yes or no. Perhaps it is a yes, but with the caveats and recommendations that will be in the report. On balance, subject to those recommendations —

Mr Swann: We could say yes or no and then put forward a full report with the concerns.

Mr Elliott: Would it not be more appropriate to see the agreed final report and then answer?

Mr Brady: Tom is right. A lot of concerns have been raised. Until we see those addressed —

Mr Weir: I take what Tom says on board. There may be something in it, in that we give an answer pretty much at the end. However, on that basis, the end might be tomorrow. Can we clarify whether there is a specific implication, from the Committee's point of view, from the answer it gives, whether that is yes or no? Say, for example, the Committee agreed to say no. Does that effectively scupper the legislation? What are the implications?

The Chairperson: I do not see how we can scupper the legislation. We have been given a particular task, and we will pass it back to the appropriate authority. It will then undergo further consideration and, hopefully, what we have said will be taken into account. I take Tom's point that the question

should perhaps be asked tomorrow, but I do not think that the answer will be any different tomorrow than it is today.

Mr Elliott: Possibly not. I am not disagreeing with that.

The Chairperson: My reasoning is that we have had several issues of clear disagreement across the Committee.

Mr Brady: Whether the answer is yes or no — particularly if it is no — if the report highlights the inadequacies of the Bill in relation to human rights, surely it will be incumbent on the Assembly to right those gaps. Ultimately, it is a devolved matter. My understanding is that our purpose is to determine whether the Bill is compliant with human rights and equality issues. If there are issues in the report that say that it is not, it is incumbent on the Social Development Committee and the Assembly to ensure that those gaps are dealt with; otherwise, we are putting through a Bill that is non-compliant. Surely the whole purpose of this Committee is to ensure that the Bill is compliant.

The Chairperson: There are two ways to go about this. At some point in the process — we are very near the end of it — we could simply take a straight vote, which is perhaps six votes to four in favour of the view that the Bill is compliant with various human rights and equality provisions.

Mr Eastwood: Do you think that people will try to pre-empt the outcome of the vote?

The Chairperson: That is the first view. The second view is that we do not answer the question. In light of the number of issues that we have flagged up, I wonder whether it is sufficient to say that we do not believe that the Bill is compliant. We can issue a report that gives a balanced view of the various opinions on the Committee and does not come to any conclusion. I am not sure that that is totally satisfactory, but it can also be done that way.

Mr Weir: That seems to be the issue. One way or another, we can come to a conclusion; I suppose that we will do that tomorrow. Another question is: should we come to a conclusion? If we simply produce a report and make no comment as to whether we think the Bill is compliant, that is a bit of a cop-out, whatever the score is or whether it is likely to be a majority position. As a Committee, we might say that it is non-compliant with equality and human rights; or we might say that we have some concerns and believe that improvements could be made, but we still believe the Bill to be compliant. Something can be compliant but still be a lot of other things. It could be compliant but massively open to improvement. If we come to the conclusion that the Bill is not compliant with human rights, we are saying that it should not be passed by the Assembly.

The Chairperson: There has been one common view from all sides throughout these meetings that the Bill is perhaps compliant, but we reserve our position on the regulations that follow. Mickey has made that point over and over again. I take his point that the Bill has to be right in the first place or the regulations are bound to be wrong. However, with regard to the actual Bill, can we say that the Bill should be left as it stands? Can anyone challenge the Bill as it stands without waiting for the regulations? Let us put it that way. Can you point to something in the Bill, rather than making an assumption about what is coming down the line in the regulations that would cause a breach — an obvious or potential breach — or a potential cause for action by ECHR or whatever? That is my question.

Mr Brady: There are issues for people with disabilities. There is a whole issue around sanctions. What we are getting are not regulations that say that lone parents will not be sanctioned if they cannot find available, affordable and suitable childcare. Those issues need to be addressed in the context of the Bill, and regulations will come out of that that deal specifically with such issues. On the face of it, all the evidence that we have had, both in the Social Development Committee and here, are serious concerns expressed in relation to the Bill's non-compliance with human rights and an EQIA that falls far short of what might be expected. That has been stated on numerous occasions.

The Chairperson: However, a deficient EQIA, in itself, is not a breach of people's human rights. It is what might flow from that.

Mr Brady: We are also here to deal with equality. Surely a fundamental purpose of an EQIA is to equality proof legislation. It has been suggested to us that that could not have been done because the first EQIA and, indeed, the second EQIA that the Department carried out have been inadequate. We

are told that this organic, living document will solve all the problems, but I am not sure that that is necessarily the case; however, it is a matter of opinion.

The Chairperson: We can accept Tom's suggestion and return to this finally tomorrow. We will still have a draft report, but it will be something to be finalised, and we will run through it again.

Lord Morrow: I thought that you were going to say that it is something to look forward to.

The Chairperson: Members, thank you very much.

Mr Swann: Have we had a response from the Office of the First Minister and deputy First Minister's equality unit?

The Chairperson: No.

Ms McGahan: We raised that in Committee. The unit is following up on that.

The Chairperson: It has been raised by the staff, by me and by you in Committee. We are one day away from completion of our report and still have not received it. That is a very disappointing situation, and it perhaps needs to be taken up. However, from the point of view of our deliberations, we are perhaps beaten on that one and will not get it in time, which is very disappointing.