Northern Ireland
Assembly

COMMITTEE FOR HEALTH, SOCIAL SERVICES AND PUBLIC SAFETY

OFFICIAL REPORT
(Hansard)

Community Pharmacy

11 January 2012

NORTHERN IRELAND ASSEMBLY

COMMITTEE FOR HEALTH, SOCIAL SERVICES AND PUBLIC SAFETY

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Members present for all or part of the proceedings:
Ms Michelle Gildernew (Chairperson)
Mr Jim Wells (Deputy Chairperson)
Ms Michaela Boyle
Ms Paula Bradley
Mr Mickey Brady
Mr Gordon Dunne
Mr Mark Durkan
Mr Samuel Gardiner
Ms Pam Lewis
Mr John McCallister
Mr Kieran McCarthy

Witnesses:

Ms Emer Morelli Dr Norman Morrow	))	Department of Health, Social Services and Public Safety
Mr David Bingham	)	Business Services Organisation
Mr Joe Brogan	)	Regional Health and Social Care Board

The Chairperson:

We will now move to the evidence session on community pharmacy. I refer members to the

briefing paper from the Department, a copy of a tabled letter from Helen's Bay pharmacy, and a copy of a letter from Community Pharmacy NI (CPNI) offering to brief the Committee. I said at the beginning of the meeting and will now reiterate that Justice Treacy's full judgement on the judicial review was handed down yesterday, and a copy of that judgement has been tabled. However, the remedy for it has not yet been published, and it is likely, if that is how the line of questioning goes, that Norman cannot say what they are going to do because the remedy has not come out yet from the judge. If Justice Treacy is listening in, we are very keen to see that as quickly as possible, but we accept that there are huge pressures on community pharmacies across the North and bills to be paid. It is a very frustrating situation for all of us.

I welcome Dr Norman Morrow, the chief pharmaceutical officer from the Department. He is joined by David Bingham, the chief executive of the Business Services Organisation (BSO); Joe Brogan, assistant director of integrated care in the Health and Social Care Board; and Ms Emer Morelli, from the Department's medicines policy group. You are all very welcome; happy new year to you all. We will hear from you for 10 minutes, or, if possible, a bit less than that. I will then take questions from Committee members. Norman, I kick it over to you.

Dr Norman Morrow (Department of Health, Social Services and Public Safety): Thank you, Chairman. I reciprocate your good wishes for 2012. Thank you for the opportunity to address the Committee today. We had hoped to give evidence to the Committee at an earlier stage, but that was not possible because of the ongoing judicial review.

I want to make some preliminary comments as a lead-in to the paper that we have provided. As you said, departmental officials are joined today by David Bingham from the Business Services Organisation and Joe Brogan, the assistant director of integrated care in the Health and Social Care Board. They are here because responsibility for the various elements of community pharmacy remuneration rests with all three organisations.

The Department has a policy role and a statutory obligation to maintain and publish a drug tariff, which includes the prices that are paid for the reimbursement of prescription medicines. That tariff also lists fees to be paid for dispensed medicines and, in that respect, the board has a statutory responsibility for the setting of dispensing fees. Following an earlier judicial review, the

chief executive of the BSO was asked by the previous Administration to lead a team that would establish a process to provide fair and reasonable remuneration for the reimbursement of prescription medicines. That happened in April 2010, and in June 2010, the responsibility for negotiating a new community pharmacy contract and the community pharmacy budget was similarly delegated to the Health and Social Care Board. The three organisations are represented here today because of our different roles.

Yesterday, we received the written judgement of the court. Its implications are now under consideration, including the consideration of any appeal. We have made that judgement available to you, albeit that you may not have had sufficient time to consider its detail. In summary, it concluded that the respondents, which were the board and the Department:

"failed to carry out sufficient consultation and investigation"

by failing to:

"carry out any costs survey or any margins survey, or to use available alternative powers to establish key information about the costs and profits of pharmacy businesses in Northern Ireland."

Secondly, the judge concluded:

"The respondents failed to carry our sufficient consultation and investigation to enable them to identify the need for (and arrange for the implementation of) any necessary adjustments to the English Tariff model in light of conditions in Northern Ireland."

Thirdly, the Department was deemed to have:

"erred in failing to carry out a Regulatory Impact Assessment (RIA)".

That error:

"constituted a breach of the applicant's legitimate expectation that a RIA would be conducted in the present case and resulted in the potential loss of relevant information."

The Minister has pledged his personal commitment to the issue. Indeed, he previously advised the Assembly that, irrespective of the court outcome, he wanted to engage in constructive negotiations with pharmacists once judgement was given. That engagement will happen quickly on the back of the written judgement.

Colleagues have worked assiduously to meet the demands of the previous judicial review, and, as far as we are concerned, the current outcome is disappointing. The task was to obtain fair and

reasonable remuneration for community pharmacy while also ensuring value for money for the taxpayer. Indeed, the judgement states:

"During the currency of the Interim Agreement the Department sought to agree a new Drugs Tariff. This involved extensive consultation with the applicant, consideration of their representations and the commissioning of advice from independent external consultants."

Nevertheless, there is a continued commitment to seek to establish arrangements for primary care pharmaceutical services that meet the contemporary needs of the population and to provide fair and reasonable remuneration for those who provide such services.

That summary was to set the scene, particularly in light of the judgement having been received yesterday. I am aware that the judgement is not part of your briefing paper, as that was given to you beforehand. I will turn quickly to the issues on which you asked us to provide information and which are the subject of the paper that we provided earlier.

I will say a word about the role of community pharmacy. The Department's aim for community pharmacy is set out in the community pharmacy strategy, 'Making It Better'. That aim is:

"To have a viable, accessible and responsive community pharmacy network that is focused on the health and social care of the population."

You will be aware that community pharmacy scores highly in any departmental surveys of public satisfaction. Indeed, research that I instigated some years ago shows that 9% of our population visits community pharmacy on a daily basis. That identifies community pharmacy as having the greatest interface with the public, both healthy and ill, and it, therefore, provides an opportunity to be highly influential in the nation's health by way of prevention and treatment.

I turn to the current position on the community pharmacy contract. The financial envelope available to community pharmacists is made up of a number of elements: a practice allowance of something like £18,000 per pharmacy, which amounts to £9·5 million in total; almost £42 million of dispensing fees; £14·6 million for other services, including domiciliary options, hospice fees and so on; £3·5 million for minor ailments; £3·6 million for pre-registration training; and profit from procurement of meds from some £400 million worth of medicines that are dispensed in the health service. It is on that latter dimension that other Administrations, and, indeed, ourselves, have sought transparency in the public interest, which is very much at the heart of the issue.

Negotiations with Community Pharmacy have been ongoing for some time. Agreement has been elusive and made more complex by two separate judicial reviews. Through this process, we have endeavoured to follow the contractual model in the rest of the UK, where an element of the profits made on procurement by community pharmacy contractors has been recycled to fund new services. Clearly, agreement on the overall financial envelope could not be reached with Community Pharmacy. It was seeking some £130 million for the delivery of community pharmacy services against an available budget of about £90 million.

Mr Gardiner:

May I interject, Mr Morrow? You made a comment about pharmacy. There are some pharmacy representatives present, and while you were saying what you were agreeing to, there was a shaking of heads in the Public Gallery to say, "No, no." Are you contradicting —

The Chairperson:

We should let Norman finish, and then you can raise that point.

Dr N Morrow:

I think I said that Community Pharmacy was "seeking" £130 million for the delivery of community pharmacy services against a budget of £90 million. That £90 million is significantly more favourable on a population basis than is the case in England and Scotland.

The Department and the board will have to consider the full implications of the judge's conclusions and carry out the requirements of the court. As we sit here today, we do not know what those requirements will be, as a date has yet to be set for a remedies hearing. That might restrict discussion on some issues.

As far as community pharmacy contracts in the rest of the UK are concerned, those have been funded though the recycling of a proportion of purchase profits to fund new services. In the absence of any agreement on the recycling of profit to services in Northern Ireland, there is a limited opportunity to provide new community services. Therefore, in my view, it is a pivotal moment for community pharmacy services, not simply in remuneration terms but for the future

professional development of such services.

I will turn quickly to the issue of contingency plans, which you had asked about. As part of its routine business, the board continues to monitor the provision of all commissioned health and social care services, including commissioned community pharmacy services. The board has a statutory duty to ensure the provision of those services, including the provision of medicines and appliances prescribed by GPs. That is met through community pharmacies and dispensing doctors. In the event that a community pharmacy contractor advises of an inability to maintain services or that they plan to close their pharmacy, the board can make additional financial support available, depending on strict criteria being met. That approach will ensure that wider community services are maintained in rural areas. That is a better way of describing paragraph 3.23 of the document, inasmuch as there is not an emergency fund per se.

As far as closures are concerned, the contract requires community pharmacy contractors to give the board three months' notice of their intention to close. The board has not received any notifications of closure at this time. Pharmacy finances are, indeed, very complex, given the mix of public service and private retail work. They are further complicated by the structuring of corporate bodies, some of which are large multinational entities. In considering the financial health of the market, it is important to have a collaborative approach. The board has, therefore, been corresponding with CPNI to get a fuller understanding of the financial issues faced by some individual community pharmacy contractors.

Finally, I want to say a word about the role that is referred to in the health and social care review report. Although community pharmacy has an important role to play in the provision of primary care services, the opportunity to extend its role in health promotion and in medicines management for those suffering from long-term conditions was particularly highlighted. My analysis of that report is that there is an opportunity for community pharmacists to strengthen their role in improving medicines management for patients, helping to minimise waste, contributing to avoiding unnecessary hospital admissions due to medicines-induced morbidity and, indeed, preventing conditions from deteriorating through lack of compliance; in other words, improving concordance with medication. It is a model of care that is not based on prescription volume but on health outcomes and on working as a member of an integrated primary care team.

Given the accessibility that community pharmacy provides to the population, it is uniquely placed to support the delivery of health improvement measures. Community pharmacists have the ability to influence health and well-being because of the many public and patient contexts they encounter on their premises. However, in my view, it will take leadership from within the community pharmacy domain to adapt to a new world and new challenges.

I am conscious that the time allocation for this presentation is limited, and I suspect that I am probably over my limit. This is not an easy subject to cover with any brevity. Despite its complexity, I hope that I have been able to distil a number of salient points. I will, therefore, end at this point and invite any questions.

The Chairperson:

Thanks for the presentation, Norman; it was very interesting. I jotted down a few things. You mentioned public interest. Do you think that it is in the public interest to be in the situation where there have been two judicial reviews in two years and to have the lack of confidence that there currently is in the system's ability to deliver a new regime?

Dr N Morrow:

I think that it is unfortunate that we have had two judicial reviews. It was never the wish of the Department or, indeed, the board to be in that situation. I would have liked the Community Pharmacy negotiators to have continued in negotiations. I still think that there was an opportunity to do that.

The Chairperson:

They clearly would not have taken the decision to go for a judicial review lightly, given the expense involved in that. It seems to me that there was certainly an element of frustration and fear that the issue could not be negotiated on and that a judicial review was the only avenue open to them.

I thought that your last sentence was very interesting, Norman. You said that community pharmacy needs leadership to meet new challenges. I know that community pharmacies have

been struggling since April 2011, when this kicked in, and things have got worse every month. You said that nobody has applied for permission to close. However, many community pharmacies have had to let people go. I know of pharmacists who have sold their car just to pay the bills and to try to keep the door open. They have worked very hard not to close the door and deny a local community of the services of a local pharmacy. It is now January, and they have struggled through Christmas, which was a difficult trading period for a lot of people in the retail sector. At this stage, they are probably very frustrated. They waited for the written judgement. The judge gave his oral submission before Christmas, but they got the written judgement yesterday. Now, we are waiting for the remedy. In the meantime, they are still trying to see whether they will have a business in the coming weeks and months. I have been contacted by a number of people, some of whom have large tax implications for this month and no way of meeting them.

I am disappointed that we are in this position. Had the Department been listening and had it not gone down the route that it did, Community Pharmacy would not have had to seek the judicial review. There was no other route available. Two judicial reviews in two years means that the people who are going to be implementing the remedy are the same people who negotiated that contract previously. I do not feel that there is a lot of confidence in the Department's ability to work with Community Pharmacy in the future. I do not know how many of the Department's senior team are from a community pharmacy background. I understand that quite a number are from a hospital pharmacy background. Within the team, what understanding is there of the challenges and the difficulties around community pharmacy?

Dr N Morrow:

I am sorry to hear that. Colleagues in BSO, the board and the Department have worked to seek an agreement. As I indicated, £90 million compares very favourably with Scotland and England on a population basis.

The Chairperson:

I will stop you there, Norman. It gets my goat when we are compared with England or Scotland. The population here is more widely dispersed; it is not a like-for-like situation. Part of the problem is that you tried to impose an English model on pharmacists here, which was never going

to work. I get very offended by the use of that terminology.

Dr N Morrow:

I do not wish to offend. It was merely to point out that the amount of money that we are putting into the community pharmacy economy is at least as much per head of population — in fact, probably a little bit more — than is occurring in England and Scotland. That is the only reference I was making.

You made another point about people having an understanding of the issue. I think we have a good understanding. My staff are not exclusively community pharmacists or hospital pharmacists. Equally, people on the board come from different backgrounds. It is not a question of us not understanding; I think we understand quite well, and we continue to maintain close contact with and have discussions with community pharmacists. Some of my best friends are community pharmacists.

Mr McCarthy:

They were your best friends. *[Laughter.]*

Dr N Morrow:

I beg to differ.

The Chairperson:

I am not hearing that some of your closest colleagues are community pharmacists. It is all very well to be best friends and play golf with them; that is grand. However, we need to know whether there are people in the Department who understand and realise the challenges that are facing community pharmacists.

Dr N Morrow:

We have sufficient knowledge of that. We have our colleagues on the board and a broad team of people who appreciate that. Over the years that I have been in my job, we have done a number of things to allow and encourage the development of community pharmacy in a variety of ways. You may well be familiar with the programme of building the community pharmacy partnership,

which involves community pharmacies working with local community and voluntary groups. That has been an extremely successful programme, particularly in rural areas and in areas of deprivation. I have been involved in that programme since its inception, as has Mr Brogan. Therefore, I would not like to be accused of not having an understanding of community pharmacy or enthusiasm to see it develop and provide the clinical services in the community that I believe it can. I am quite committed as far as that is concerned.

The Chairperson:

Quite a lot of the work that has been done at community level was done by visionary individuals who took it upon themselves and took a business risk to develop their pharmacies, put in consultation rooms, invest heavily in capital work in their pharmacies and expand their services. Some pharmacists simply dispense medicines. Other pharmacists, however, have been involved for a decade in much more ambitious projects in delivering community health. Therefore, I agree that there is a difference. Much of it was done at personal risk to the owners of businesses. Certainly, I do not get the vibe from those people that it was down to the Department's drive and leadership. It was down to businesspeople who had a vision for their communities.

Dr N Morrow:

I do not want to imply otherwise, Chairman. What I am trying to say is that there has been encouragement from the Department and, indeed, the board. With regard to the example that I gave you, I was responsible for securing the money to invest in that programme and setting it up in the first instance. I would be the first to acknowledge that it was the people on the ground who have translated some of that vision into reality. However, that example demonstrates that the Department has encouraged and sought to utilise the expertise that lies in community pharmacy for the benefit of the public, as has the board in other examples. Equally, I could give the example of smoking cessation schemes through community pharmacies, which have been singularly successful. They have been taken forward by the board.

There is a lot of commitment to seeing things move on. However, one issue that we wrestle with is that we have a community pharmacy contract that is primarily volume based. It is remunerated primarily on the basis of the number of prescriptions that come through the door. That is an important element, and we all recognise that there is a volume dimension to

community pharmacy services. We have indicated the other things that community pharmacists can do with regard to the clinical dimensions of the service that actually help patients with compliance with their medication, etc, or to intervene where there is a problem. Those are the key clinical dimensions of community pharmacy practice that we would like to build into a community pharmacy contract so that it is much more a care-based contract than a volume-based one, with health-related outcomes. That is where the Compton review was going in general: to say that we need a health service that is based on health outcomes as distinct from being merely activity based.

I recognise fully that there is a volume dimension to supplying medicines. There is no argument about that. Equally, however, we want to see those highly skilled people being given the opportunity to utilise their skills in the public interest. That is why, as I said earlier, we think of some of that procurement profit money being partially developed to provide new services, which is what has happened in other parts of the UK. I just need to say that we are committed.

The Chairperson:

Other members are kittling to ask questions. I want to ask one further question. The remedy could take a while to be delivered. You could then take a considerable while to look at it and decide how you will implement it. Will emergency funding be made available to community pharmacists who need help in the interim?

Mr Joe Brogan (Regional Health and Social Care Board):

We have started to look at pharmacies that are, potentially, in difficulty. We wish to engage with representatives of Community Pharmacy Northern Ireland to understand which pharmacies are in greatest difficulty. We have funding for slippage, which we would like to apply should there be evidence that those pharmacies require support.

The Chairperson:

But they will have to provide evidence. They have been down 30% from April of last year, and any ability to absorb that left in the middle of last year. They still have to provide evidence that the banks are shouting at them before you will make that available. How much funding for slippage is there?

Mr Brogan:

Dr Morrow mentioned that we have a £90 million envelope for investment in community pharmacy services in 2011-12. Because of the ongoing judicial review dispute, we have failed to invest £8 million of that £90 million. That is a major element of the funding that is not invested currently. We wish to buy in to new services, but that was frozen. We have access to that funding to support pharmacies that are in distress. We will need to understand the levels of financial distress, but we will wish to do so collaboratively with Community Pharmacy Northern Ireland.

Ms Lewis:

I thank the panel for being here today. The Chair mentioned the fact that there have been two separate judicial reviews within two years. How much public money was spent by the Department on the first judicial review, including costs awarded by the courts? What will be the likely cost to the public purse of the second review? Given these austere times and considering the constraints that are being placed on front line NHS services, do you see that money as well spent?

Dr N Morrow:

In answer to your first question, I do not have those figures available.

Mr Wells:

You knew that that question was coming; you should have had the answer.

Ms Emer Morelli (Department of Health, Social Services and Public Safety):

The cost of the first judicial review was in the range of £100,000 to £108,000.

Mr Wells:

And the second one?

Ms Morelli:

Litigation is ongoing, so the costs have not yet been described.

Mr McCarthy:

Who paid that? Where did that go? That is £108,000 out of the pharmacy budget. That is a disgrace.

Ms Morelli:

Transparency in the pharmacy budget is one of the Department's key goals. As the judge has said, we need to know how much profit is there. No assertions of profit removal and so on can be confirmed or disconfirmed until that survey happens, and the judge has said that. In the judicial review, we had to invest taxpayers' money to find out how much taxpayers' money has been spent on procurement and profit. The Department did not take either of the judicial reviews.

The Chairperson:

The Department's actions led to the judicial reviews being brought. You cannot wash your hands of the fact that the judicial reviews were brought. The Department had the ability to change the circumstances and prevent the judicial reviews. Pam, have all of your questions been answered?

Ms Lewis:

I also asked the officials whether they see the money as having been well spent, given the times we are in and the financial constraints that exist.

Dr N Morrow:

Sorry, Chair, I did not hear that.

The Chairperson:

Do you think that it was money well spent, given the current climate and the efficiencies that we are all having to make?

Dr N Morrow:

We did not seek to get into a judicial review situation. Clearly, Community Pharmacy felt that negotiations had failed to the point where it believed that it should take a judicial review. At the same time, particularly in relation to the second judicial review, I indicated that we were obliged

to seek fair and reasonable remuneration for community pharmacy, and we have to do that within the context of value for money for the public purse. It is not only about satisfying the community pharmacy requirements or the needs for finance; I am sure that the Committee will want to ensure that the Health Department and, indeed, all Departments are prudent in their use of money for the public good. It is an attempt to balance both of those requirements, and we are held responsible for both.

Mr McCarthy:

I am totally disgusted about Mr Morrow's comment about community pharmacy. I do not know his exact words, but it will be on the record. You implied that community pharmacy had not done what it was expected to do over a number of years. My experience of community pharmacies is that they have done excellent work over a number of years. Therefore, you should look at the comments that you made in relation to that. There are some pharmacists in the audience, and they will not be best pleased to hear that comment.

You mentioned trying to encourage pharmacies to get involved in smoking cessation schemes and things along those lines, which they have already been doing, but you have pulled so much funding from them that some pharmacies may have already withdrawn that service along with other such services. That is an absolutely shocking way to treat local pharmacies.

I presented to the Speaker and the Assembly — it has probably filtered down to the Department — a petition with over 105,000 signatures to save the pharmacy; in other words, to keep the pharmacy doing what it has been doing and knows how to do best. Therefore, I hope that you can get the scale of the community disgust at what has happened. I take Pam's point, and I had it written down for a question, about the judicial review in June 2010. Was there no one sensible enough or smart enough in the Department or wherever to avoid a second judicial review? We do not know what it is going to cost, but who is going to pay for it? You have accepted responsibility. I do not know what the outcome will be, but, surely, lessons ought to have been learned from the first judicial review, but, obviously, they have not been. My concern is the continuation of the good work that the pharmacy does on our main streets. What are you going to do to bring back the confidence of those pharmacists? In John Compton's recommendations, he acknowledged the vital role that the pharmacy plays. Can you indicate to

the Committee your commitment to ensuring that that role will be sustained by the actions that you take? Some £38 million was taken out of the funding. In view of the judicial review last week — or whenever it was — are you prepared to put that funding back in so that our community pharmacies can continue to do the good work that they have done for years?

Dr N Morrow:

I will try to deal with some of those points. First, I did not impugn community pharmacy services, and I would like that on record.

The Chairperson:

Kieran, I think you probably picked him up wrongly. He did not say that he did not think they were doing a good job.

Mr McCarthy:

My understanding was that he said that there was much more that community pharmacies could do, which implies that they have not been doing something up to now. It will be on record, so we can check that out.

Dr N Morrow:

I did not impugn, nor did I wish to impugn, community pharmacy services. In fact, my view is that there is a greater opportunity for community pharmacists to exercise their skills. That is true across the United Kingdom in respect of greater use of community pharmacy skills. Indeed, the Compton report pointed to that in relation to health promotion and medicines management in long-term conditions. Therefore, it is not just me saying that; it is other people saying that. Indeed, the community pharmacy strategy, 'Making it Better', which I referred to earlier, also sets all that out. It is a pathway for future community pharmacy services.

In relation to the judicial review, the Department and the board responded to the previous judicial review and expended considerable time and resources in seeking to meet the demands of the previous judicial review. We did that assiduously and with integrity. Therefore, it is disappointing that the court has said that we have failed to meet all our obligations. That is the court's decision, but it is not for lack of trying. I have mentioned the point about Compton.

Mr McCarthy:

I cannot accept that at all. You said that it was not for the lack of trying, but you did not try hard enough. It has happened again. Somebody in the Department must have seen the possibility that this might happen again. You withdrew quite a substantial amount of funding from the pharmacies. Someone in the Department must have thought, "Wait; they might go for another judicial review", as they did. I cannot believe that no one in the Department is accountable, knew that that was coming and could not have done something about it. I have a letter from someone saying that they now at the stage where it is damaging their mental health both in and out of the workplace. Is your Department proud to hear that statement coming from a pharmacist who serves the community?

Mr David Bingham (Business Services Organisation):

Chair, I was given the task of negotiating a settlement from the first judicial review and finding a way forward for the second. We were successful in working with the pharmacists to settle the first judicial review. We were conscious throughout, and the pharmacists were very open, that, with their having been successful once, there was always a threat of another judicial review. They saw it as a totally legitimate strategy to pursue their interests, and I have no criticism of that.

The first judicial review found that the tariff arrangements were unlawful, so we had to change them. It was clear the first time around that there was a lack of consultation in bringing about those new arrangements, so when we came to negotiate, we spent many months doing so. In fact, the judge in that case said that what we did involved extensive consultation with the applicant. We worked very closely for many months, but by October or November last year, if I have got my years right, there was a huge gap between what we on the Department or management side felt was fair remuneration and what the pharmacists thought.

The first judicial review made it very clear that government have the ultimate responsibility to put a tariff in place. To maintain the status quo would have ensured that the pharmacists continued to earn what we believed to be unreasonable levels of profit. The dilemma we faced was whether to continue the existing arrangements, in which case, we would have been criticised and asked why we allowed pharmacists to earn very significant levels of profit over and above

pharmacists elsewhere. There is always some risk involved, but we worked long and hard and we took the advice we though necessary to proceed. We did not proceed without their agreement easily, and I think they would accept that both parties worked very hard during 2011 to try and achieve a settlement. However, ultimately, the gap between what we were willing to pay and what they wished to receive was too great.

The Chairperson:

David, from my discussions with pharmacists over the summer and throughout, I have learned that they did not take the decision to bring forward a judicial review lightly. It was not an easy plan B. Plan A for them was to sit down and agree a strategy with the Department. It was not the case that they thought because they were successful the first time, they would just do the same again. They did not always have the judicial review in their back pocket thinking that they would try that tack again; they wanted negotiations to work. The fact is that the negotiations did not work. There was such an obvious difference between what the Department proposed and what CPNI was seeking; so much so that CPNI said that it had no choice.

Many of us have been invited to speak to local pharmacists and to see some of the work that they do. Nearly every Committee member reported back that pharmacists in their area, whether in Strabane, Camlough, Mayobridge or wherever, said that they saw so much waste. They said that they saw money being thrown down the drain every day of the week and that they want to find ways to work with the Department to ensure that that waste stops. They are very concerned about the millions of pounds that are being wasted on dispensing drugs that will not be used. The pharmacists all pointed to that and said that they need to work with the Department to help reduce the waste. They are coming at it from a very sensible and pragmatic point of view and saying that they can make a difference but that they need to work with you on it. They certainly felt that they were not getting their voice heard and that the Department was not listening to their suggestions.

Mr Bingham:

I accept that. The dynamics are that once legal action of any sort is on the scene, it becomes more difficult. We were also trying to negotiate a new contract at that point in time. Reference was made earlier to the fact that a fund was available to invest in new services so that some of the money that we were taking out would go back in again and, in return for that, the public would

get additional services. I am not blaming anybody but the reality is that in a scenario where you have legal action, negotiations become much more difficult. That judicial review has dragged on. I cannot recall when it was first served.

Mr Brogan:

June.

Mr Bingham:

So, in effect, there have been seven months during which it has been very difficult to conduct normal relationships; that is just the way the system works. I say that without blaming anybody. It is just a reality, and I am sure that the other side would say the same.

The Chairperson:

They do. Are you finished, Kieran?

Mr McCarthy:

For the minute, madam Chair.

Mr McCallister:

I am somewhat disappointed in that there seems to be a certain amount of you saying, "We are the good guys here; we did not take the judicial review." I do not think that people take a judicial review lightly, particularly when they are independent businesses and they have to throw money into the pot to fund it. It is very different for a Department, where we collectively, as taxpayers, presumably pick up the bill for that £108,000. It is a big difference when you have to pay out of your pocket, your profits are going down, you are wondering how you will pay your bills and you still have to fund some of the legal costs. There is a huge amount of frustration there.

Norman talked about wanting to utilise all the skills that pharmacists have. We met different groups of pharmacists in Sam's office in Lurgan, and Tom Elliott came to speak to them as well, and in all those discussions we have always found that they are up for negotiation and up for doing a deal. However, that has not been reciprocated or honoured on the other side. There was a chance after the first judicial review and a sea change at that point, and there was a hope on the

pharmacy side that things would change when you took over that role, David. At one point last summer, we seemed to be very close to a deal, but that suddenly went the other way. There were disputes over the amounts of money that have been taken out and on proving how we do this.

I welcome Joe's point about the £8 million, and I strongly urge — I am sure that the Committee will support this — that you look urgently at how you can use that £8 million to support businesses. No businesses have notified you that they are closing down. However, anybody who has ever run a business will do nearly anything before they completely pull the pin on it. They will be at banks to extend credit or will do whatever they can do to try to stave that off. Pharmacists tell me that they are up for looking at the issues around prescribing, how they feed into dealing with patients and the stresses and strains on our health service. So, you should utilise that and get back around the table. I take David's point that that is difficult during the judicial review process. However, we should have found some way to conduct talks during that process; for example, by undertaking them on a without prejudice basis. Was there no legal advice to the effect that the Department was on very thin ground with that?

Mr Bingham:

Chairperson, I do not want to mislead the Committee. Talks did continue throughout that period. My point was that the threat of judicial review limited engagement. It is bound to do that, because neither side will want to prejudice their position. Lots of effort went into preparing affidavits and the whole range of paraphernalia that goes into preparing for a judicial review. Therefore, the contract process became de-energised.

Mr McCallister:

How will you re-energise it now?

Mr Bingham:

Going back to what we originally thought, we recognise that, when you implement a new tariff or way of remunerating people, there is always a risk that it could either not be effective enough in saving money or take too much money out of the system. In October 2010, we proposed the introduction of a mechanism called a margins survey, to ensure that our assumptions behind the tariff were accurate. If they were not, we would have a mechanism in place to increase or

decrease the flow of remuneration. It was technical, but there would have been a way of doing that. However, pharmacists turned down that option. They gave their reasons for doing so in the High Court, and, no doubt, they would defend their position at the time and say that they felt that implementing that mechanism was the wrong thing to do. After the new tariff came in on 1 April 2011, there could have been a mechanism to adjust the tariff that was in place, which would have meant that pharmacists were not faced with unjust losses. We may be drifting into the judicial review remedies, so I do not want to say too much. However, discussions are ongoing about how we can introduce that mechanism to ensure that our tariff is relevant to what is happening here.

The Chairperson:

Do you want to phase it in?

Mr Bingham:

We are where we are and we must find some form of remedy, but yes. We proposed a mechanism that would ensure that, ultimately, what happened was fair and reasonable.

The Chairperson:

Although, presumably, the 30% figure was never going to be agreed by CPNI. That figure was such a huge jump that phasing it in would not have taken away the pain.

Mr Bingham:

I am not sure about that figure of 30%. We may be talking about different figures.

The Chairperson:

There was still so much clear blue water between you that even phasing in the new regime would not have taken away an awful lot of the pain.

Mr Bingham:

The margins survey would have allowed us to see whether we were being too harsh or have provided evidence that pharmacists were being unreasonable. It would have provided hard evidence. That survey would have looked at the profit margins that pharmacists make on all drugs. Depending on the outcome of the survey, that information would have given further

strength to our action or would have caused us to ameliorate our action in favour of the pharmacists. We still do not have that survey.

Mr McCallister:

Is there any doubt in the Department that pharmacists are losing money?

Mr Brogan:

I want to map out the funding arrangements from our perspective. In 2010-11, our net planning assumption for investment was £96·6 million, and in 2011-12 that figure was £90 million. I have said that we have not paid £8 million of that £90 million, because we failed to put in new services that would allow pharmacists to earn that money. That is our view of the financial picture, and the £38 million is another way of looking at it. CPNI has put that forward and its representatives have talked about 30% cuts, but, within that, there are different perspectives and perceptions.

For the contractor, there is less money coming into the system for a number of reasons. We want to correct that, and obviously we must go through the remedies. However, the board wants to commission services within that envelope. We want the best pharmaceutical service that we can get in these islands with the money that is available. I want patients to be able to avail themselves of quality community pharmacy services, and I will do my utmost to deliver that.

Mr McCallister:

You said that you lifted a lot of the payment model from England. Is the £18,000 that is paid to pharmacists here not higher in England? Is it not more like double that figure?

Mr Brogan:

The payment model is slightly different. The three key areas of payments are the global sum element, which is about fees and practice allowance; there is the retain margin, which is the profit margin; and there is money for additional services. England, Scotland and Wales have cut the global sum in different ways. They have put different moneys into the practice allowance as opposed to putting it into the dispensing fee. For instance, the dispensing fee in England is 90p, whereas we are running with £1·04. They shifted money in different places. It is difficult to compare like with like because they are slightly different models. In broad terms, however, there

is comparative investment going into the pharmaceutical service. We have to come to an arrangement that gets the right level of service among our community pharmacies.

Mr McCallister:

Pharmacists probably assume that the Department took the bits from England that it liked or suited its figures and left the other bits behind. Has England ended up with two judicial reviews and the Department losing both of them?

Mr Brogan:

No.

Mr McCallister:

That is probably your answer then. You need to get back around the table with pharmacists and sort this out, and do it very quickly.

Mr Brogan:

Absolutely. I take the point. As a pharmacist, I want to try to —

The Chairperson:

Community or hospital?

Mr Brogan:

I have had a mixture of both. Mainly hospital, but I have worked in community. Two of my brothers-in-law and my wife have all worked in community pharmacy. Pharmacy is a small world.

Mr McCallister:

I am sure that you get a warm welcome at the Christmas table.

Mr Brogan:

I get a lot of heat. The profession is fundamentally at a crossroads. For years, pharmacists have been accessible on the high street; they have been stalwarts of our communities. I recognise that

from working with community pharmacists and as a pharmacist. Ultimately, our profession is changing from one that is focused on product supply to one that is about providing service and care to patients. It is a transition. Unfortunately, it is a painful one for me, in trying to commission a service that recognises that clinical supply function. That is where pharmacists do a lot, but we do not necessarily recognise it. They keep people safe and well, but we do not recognise that. We are focused at the moment on the volume element. We need to change that dynamic around.

Mr McCallister:

I think that pharmacists are well up for that. I think that they want to do more medicines management, increase the rates of generic prescribing in Northern Ireland, invest in their business and provide consultation rooms. All of that service and investment will not happen if pharmacists are struggling to pay a bill. No matter how the system works, everybody has to make a living. I realise that it is your job to get the best value for the taxpayer, but it is not good value if we have no pharmacists left.

Mr Brogan:

Absolutely.

Dr N Morrow:

It is getting the right balance between the two things.

Mr McCallister:

You have been found to be lacking twice in that regard.

The Chairperson:

Your use of the word "balance" is interesting. Is there a plan in the Department to reduce the number of pharmacies by x amount? Do you think that there are too many? Was part of this a way of ensuring survival of the fittest and getting rid of some that may be surplus to the Department's requirements?

Dr N Morrow:

I will answer that quite categorically. The Department has been accused of having a cunning plan to reduce the number of pharmacies. That has never been the case as far as these discussions are concerned. However, our community pharmacy colleagues recognise that, in Northern Ireland, we have more pharmacies per head of population than anywhere else in the United Kingdom.

The Chairperson:

Are we going down that route again?

Dr N Morrow:

Let me try to explain that: it is in the sense that we have one pharmacy for about every 3,500 people. In other parts of the United Kingdom, it is more like one pharmacy to every 5,000 people. One way of looking at that is that we provide greater access to pharmacies for the public. Another way of looking at it is that, because there are more pharmacies, the amount of money going to each one is spread a little bit more thinly.

The Chairperson:

All the more reason not to go into negotiations with the kind of heads on you that you must have had prior to the judicial reviews being brought. There is not a recognition of the facts. I am going back to what is happening across the water. We do not have huge urban conurbations like there are in England. We do not have cities the size of London, Manchester or Birmingham. Some 40% of the population in the North live in rural communities. That is almost half of the people. Therefore, we have to spread the services a bit more widely, and it will be more expensive to administer that. I can tell you about the difference that there has been in the past 15 to 20 years since the number of pharmacies in small rural villages increased. Previously, such areas would not have had any pharmacies, but their presence has made a difference to the health of the local population. That is why the Assembly debated the fact that the Minister needed to have a contingency plan for rural pharmacies and pharmacies in areas of social deprivation; we see the difference that they make. If you were coming at it from the point of view of trying to impose an English model on pharmacists here and that was your template for the negotiations, it was never going to work.

Mr McCallister:

Would you not also need to look at the licensing arrangements? Say, for example, there are three pharmacies in one town, will that be an issue? Your point about never having looked at numbers is a little strange, given some of the suggestions that the Minister has made.

Dr N Morrow:

To go back in history a little, in 1987 there were something like 700 pharmacies in Northern Ireland. I think I am right in saying that. At that stage, control of entry was introduced. In certain ways, it restricted the ability to open up new pharmacies. At that time, a number of pharmacies had an opportunity to leave the market. That meant that the number of pharmacies reduced. From then until now, we have hovered around the 500 mark. At the moment, there are 532. There are some opportunities to get into the market. For example, as you said, pharmacies have been able to open in rural communities that, traditionally, did not have one, and there has been provision for that to happen.

Equally, we have 29 appeals relating to a pharmacy being able to open or be moved. In the past couple of months, there have been at least four applications for new pharmacies to open. Similarly, we have had representation from big business to allow pharmacies to open in existing supermarkets, where they do not currently exist. There is a tension there. On the one hand, some would like to see a reduction in the number of pharmacies, albeit strategically placed, so that you could, perhaps, have greater viability. In the area in which I live, there are pharmacies adjacent to each other. Another side suggests that we should open up the whole market and let the market take its course, and asks why we cannot do that. In fact, I think that we have had representation from MLAs on that basis.

There is an issue, and one of the issues that we have had, so far as negotiations are concerned, is a needs assessment in relation to Northern Ireland. There are at least two dimensions to that needs assessment. First, it is a needs assessment in relation to what pharmaceutical care the public or patients need. Secondly, it relates to the need for the number of pharmacies and their strategic location, and I think that our community pharmacy colleagues would say that. There is a difficult tension in all of that. I have to say to the Committee that the intention in relation to the negotiation was never to reduce the number of pharmacies. I absolutely refute that.

The Chairperson:

OK. I have one comment to make on the back of that. If you revisit the idea of or think about going down the route of locating pharmacies in massive supermarkets, whose profits at the moment are immoral, I am telling you now that you will have a fight on your hands. I will fight that one tooth and nail. That is just a wee warning to you.

Dr N Morrow:

That is fine. I accept the warning. All I was saying —

The Chairperson:

If you go down that route, this will look like a bunfight in comparison.

Dr N Morrow:

All I was trying to say was that that is a reality. Big business has made representations to the Department saying that that should be the case. That is all I am saying. It is an observation, which we have heard from MLAs as well.

Mr Durkan:

I will start by saying that to lose one judicial review is unfortunate, but to lose two is careless. A lot of the points that I was going to make have already been made. I am glad to hear that all members seem to be on the same wavelength on the issue. Pam initially asked about the financial cost to the Department. As well as the financial cost of both judicial reviews to the Department, there has been a financial and human cost to individual pharmacists and their staff, who have had their hours reduced. I do not suppose that there is any way of measuring the cost to individuals without their submitting returns about that. The fact that £8 million was not able to be invested, which Joe referred to, and the vacuum that was created by the judicial review suggests that there was at least that cost to them. I take on board the point that the Department did not ask for the judicial review, but neither did it avoid it. I think that it is worth underlining that point.

As well as the financial cost, there has been a huge reputational cost to the Department. The judicial review found that, on two occasions in a short space of time, the Department basically

failed to fulfil its statutory remit. The judicial review found that it was not a small error: it was a serious failure.

Kieran touched on the question of accountability. I think that there has to be a greater degree of accountability. If we as Health Committee members or, more importantly, the community pharmacy sector, or, even more importantly, the public as a whole are to have confidence in the Department not just on this issue but on many other issues as they arise, the most important thing is to rebuild relationships. It is vital that immediate attempts are made to rebuild relationships or build new ones between the Department and the community pharmacy sector.

There is a perception in that sector — I am not saying that it is true — that there is an anti-community pharmacy bias in the Department. However, just because they are paranoid does not mean that people are not out to get them. I want to know what the Department intends to do to improve those relations, because they are vital, particularly given the enhanced role for community pharmacy that is envisaged in the Compton report. I think that community pharmacists will embrace that; those I have spoken to look forward to it. However, one would imagine that that will need to be matched with enhanced funding, and at the moment, there is absolutely no confidence that that will happen. That is more or less my question. Where does the Department go from here to achieve that?

Dr N Morrow:

I will begin and then pass over to Joe. It would be true to say that during all of this — I think that David already alluded to this point — we have attempted, at various levels, to maintain contact and relationships with our community pharmacy colleagues. Within the context of the judicial review, I met community pharmacy colleagues to try to see whether we could find some ways forward. We never lost sight of the fact that it was important to try to keep talking, albeit that the presence of a judicial review made that quite difficult. That is one issue.

Mr Durkan:

It is important to keep talking, but it is probably more important to start listening.

Dr N Morrow:

I think we did listen, but I take the point. The Minister has indicated his willingness to engage after the judicial review. We received a number of requests for meetings with the Minister that he responded to by saying that he would be happy to have those meetings once the judgement on the judicial review was given. We will move on that. The other dimension is that, in the current situation, the negotiation of a community pharmacy contract is a matter that is delegated to the board. The board has been engaging with community pharmacists to seek to identify other areas where some of the new funding can be invested. A lot of work has gone into that and to prepare some of the ground. Joe can speak more fully about that.

Mr Brogan:

As I said, my vision for community pharmacy is one in which pharmacists can use all their skills in a way that allows the board to recognise and commission quality, patient-focused services. Community pharmacies are accessible to the general public and are central to a lot of communities. A lot of patients and the general public rely upon them. My job is to try to best use that. It is brilliant to have that network out there. I absolutely do not want to see that network decimated. So I begin by saying that I want to try to protect that network. I want to build upon it and build services into it that are going to actually deliver for patients, because that is really the way the board sees it working.

The ways that I believe community pharmacy can bring forward activities fairly quickly are twofold. The first is around improvements for public health, and there are straightforward interventions that community pharmacists can make because they have that interaction. I used to be the director of pharmaceutical services in the Western Health Board. In that role, I commissioned a sexual health service. It is the only one in Northern Ireland that we actually commissioned. So I have a good grounding in that area, having looked at how I could bring a sexual health service to community pharmacies across the piece.

Targeted health promotion in the west worked really well. We built up smoking cessation schemes in the west and brought them across the whole of Northern Ireland. I have plenty of ideas around support for the misuse of alcohol and brief intervention that we could bring forward at some stage. However, we need to get the right building blocks and bring people with us.

Public health is definitely something that we will want to move forward on very quickly through harnessing our community pharmacy skills.

The second element is that pharmacists already have a lot of input through making medicines safer for patients. They intervene on a daily basis to stop patients getting the wrong medicines, thereby preventing harm. That health protection measure is not recognised at all. I want to build a service, and I made a proposal to CPNI, around a service specification that we could bring forward very quickly. All of this has to be dealt with once we go through the judicial issues, which are running in parallel. There are, though, opportunities to put in place straightforward services through which we could start to build momentum and improve the relationships. All of this is around relationships. As a commissioner, I am trying to buy services off pharmacies. At the minute, pharmacies do not really like me. I need to build a relationship where I can go to a community pharmacy and say that I want a service to be put in place because I recognise its skills and I need it to provide those services to that population.

The Chairperson:

I think they would like you if you were prepared to pay for it, Joe.

Mr Brogan:

I will do my utmost, within the funding that I have available, to try to make that work.

The Chairperson:

But you cannot expect them to do more with less either.

Does that answer your question, Mark? I still have four people who want to speak, and we have gone over the hour.

Mr Durkan:

I appreciate the feedback, but I did not ask how we could improve community pharmacy: the pharmacists know what they are doing and what they could and want to do better. It is about how the Department can give community pharmacists confidence, empower them and financially enable them to do those things.

Mr Brogan:

I described a range of services that are quick wins. Essentially, my strategy is to try to get a few quick wins. I accept the Chairperson's point that funding needs to be available for that. I appreciate that you cannot expect people to do more for less, but we will attempt to try to build in services that are affordable and will deliver additional services for patients but also recognise the value that community pharmacy can bring to the table.

Mr Wells:

I think that someone in the Department described the previous judicial review as a goalless draw: you lost this one three-nil. We have concentrated on the issue of consultation, but the judge also made clear that you should have had a regulatory impact assessment (RIA). You did not. The other issue that caused a lot of concern was that you extended the consultation period to 25 March, and then took the decision on 24 March. Did no bright spark in the Department step back and think, "Hold on a minute. Would this not look like we are treating the community pharmacy people with disdain?" You have a deadline, yet you make the decision the day before that deadline. That strikes me as someone not being very careful.

The judge's most damning comment is on page 24 of his review. You said that community pharmacists were not co-operating in providing you with the information that you required to assess the procurement profits money. You had, and knew that you had, reserved powers that you could have used to obtain that information, so that you could base your decision on sound statistics. The judge said that the reality was that the Department in Northern Ireland — like its counterparts in England and Scotland — had available reserved powers that it might have used to gather the critical information that it required to be able to regulate safely on this contentious issue. You did not avail yourselves of those powers. Therefore, as the judge quite rightly said, you did not acquaint yourself with the information that was required to make the decision. That would have been forgivable, had you not previously made such a major mistake, as exposed in the category M judicial review.

Because most of the powers-that-be in the Department are from the clinical, hospital end of the service, which is a totally different animal — its employees administer drugs whereas the

small pharmacist is a businessperson — the perception in the community pharmacy industry is that you are out of touch with what is happening on the ground in 532 establishments in Northern Ireland. You need to do something about that. You need someone at the highest level who is in touch with that crucial element of pharmacy in Northern Ireland.

Mr Bingham:

We are looking at that written judgement very carefully. However, it is interesting that, in two of those three areas on which you commented, Mr Wells, we are not sure that the facts are correctly stated. For instance, the consultation that ended on 25 March was on a different matter. There were two separate consultations.

Mr Wells:

That did not make your doing it right.

Mr Bingham:

Well it does, because the dates are intertwined when they should not be. But I may be in danger of getting into an area that I should not. Our advice was that a regulatory impact assessment applied in the scenario where a Department was considering new legislation or changing legislation. The judicial review judgement very much creates a new interpretation of the law, which may have an impact across the whole public sector. So we were very, very surprised at the decision on that.

Mr Wells:

And the reserved powers?

Mr Bingham:

Perhaps Emer will come in on that. We do not have the same reserved powers as England.

Ms Morelli:

We have the powers to ask community pharmacists to provide their invoices so as to see their profits from the purchase of drugs. We do not have the powers to seek manufacturer or wholesaler prices. The Department of Health in England has those powers. It used them in

establishing category M and that is why the rest of the countries follow the English position with the price of drugs coming from manufacturers and wholesalers. Northern Ireland does not have that specific power. We have the power to seek invoices from contractors as to what they have paid, and that is the discount survey that we have been criticised on.

Mr Wells:

Did you use those powers?

Ms Morelli:

No.

Mr Wells:

Right, well how —

Ms Morelli:

We seek to work in a co-operative way with Community Pharmacy.

Mr Wells:

That is absolutely crucial. How on earth were you in a position to make an educated decision on this massive issue — the £400 million we are talking about — if you did not use the powers that you had to obtain the information to find out what impact it would have on small pharmacists? As a result, those pharmacists lost anything between 25% and 30% of their income, and you made that decision without having the statistics to make a realistic interpretation of the impact. That is why we are around this table today.

Ms Morelli:

We relied on other evidence sources.

Mr Wells:

The judge said that you were clearly wrong to do that.

Ms Morelli:

Yes.

Mr Wells:

So, on all three counts you have completely failed, and it cost us over £100,000 to establish that. Say I were the legal adviser to Boots and gave the company advice in a case, which it lost, and which cost them £108,000. In that instance, they might have given me a dispensation. What if, a year later, I give the same legal advice and lose on all three counts? What would happen to me?

Mr Bingham:

I have explained that on two of the three items that you have raised, we do not agree with the interpretation of the facts as they are quoted. On the third one about the RIA, the advice, and I do not think this is a new interpretation of how RIA would apply in government in Northern Ireland, takes it way beyond the implementation of new legislation and new regulation.

Mr Wells:

Finally, even if you are able to contradict all that, surely if you are taking £38 million out of an industry —

Mr Bingham:

That is very much disputed.

Mr Wells:

Even if you are taking £31 million?

Mr Bingham:

That would also be disputed.

Mr Wells:

Even if it were £20 million, you were bound to know that it would have a profound impact on small pharmaceutical businesses throughout Northern Ireland and that they would not be able to sustain that. Unless every small pharmacist in south Down is spinning me a yarn, which I do not

believe for one moment is the case, those businesses are in desperate straits. I have spent more time in chemists in the past six months than I have in a lifetime, and they are all telling me the same story: the small, individual, family-run business is in desperate straits at the moment because of the amount of money you have taken out. Did nobody think about that when the decision was made?

Mr Bingham:

We did, and that is why we offered to put in the margins survey to measure the impact of that. We made that offer in October 2010, not last year. Before we introduced the drug tariff, we were able to run the two payment systems in parallel to see what the differences would be. That is not an exact science, because from month to month there are major fluctuations in drug prices. However, the impact that we estimated then — I do not have the figure in front of me — was much less than £20 million.

Mr Wells:

I am afraid, then, that the industry must be spinning us a yarn, because pharmacists are saying the impact has been far greater than that.

Mr Bingham:

Many things have happened in the past year. For instance, you will be aware that GPs changed the pattern of prescribing. In Northern Ireland, we were spending over 30% more per head on drugs than elsewhere. That was not the fault of pharmacists; it was a result of need and historical prescribing patterns, including sometimes a slowness to move to generic drugs. A significant surge of that has happened, which has also impacted on the total business of community pharmacists.

Mr Wells:

When the accounts are submitted for this year, will you believe the impact when you see the huge drop in the bottom line of most small pharmacists in Northern Ireland?

Mr Bingham:

I am not saying that there has not been a very significant drop in their income from us. That has

to be measured against what they have spent on drugs and on the overall prescribing pattern. We had recognised that we needed to measure the impact of what we were doing. We made that offer before we did it. That was turned down for, what were in their view, valid reasons. We had an unlawful tariff and felt that we had no alternative but to introduce the new tariff on 1 April 2011.

Mr Wells:

At the door of the court, you were offered a deal that would have saved the Department between £18 million and £20 million, and you refused it. Who gave the advice for that offer to be refused?

Mr Bingham:

There was a without prejudice offer made on the eve of the case. I have been advised that it would be prejudicial to refer to that.

Mr Wells:

When the remedies are announced and this case is sewn up, can we find the identity of the person who gave the advice to refuse the offer?

Mr Bingham:

I am sure you could.

The Chairperson:

A lot of the pharmacies that we talk to do not have big retail elements to their business, and there is a big difference between pharmacies that do a bit of dispensing and sell a bottle of shampoo and others that can bring in a fortune through the sale of cosmetics and perfume. Therefore, one size does not fit all.

Ms Boyle:

I am conscious of the time. Some of my questions have been answered, but I would like to take the opportunity to commend community pharmacies for their efforts in sustaining employment throughout this whole debacle. I am sure that everyone will agree with me on that. As we know, a lot of community pharmacies had to go without because of their month-on-month funding

shortfalls, and I have spoken to some pharmacists in my community who told me that it was only after the ruling on 21 December that they could prepare for Christmas in their family homes. Norman, you said that any wider implications of the judgement will have to be considered. You may not be able to answer this question, but if an individual chemist wanted to come forward now and bring a case for damages to the Department, would that be considered? What have you learned from this second time around?

Dr N Morrow:

I do not know the answer to the first question. In relation to learning, I indicated earlier that there has to be some consideration of whether there should be any appeal to the judgement, but perhaps that is for others. However, at this moment in time, we have to take what the judge has said. Therefore, there are issues about trying to obtain as much information as possible before decisions are made. In respect of the judgement as it currently stands, it seems to me that a lot of the issues are around having sufficient comprehensive information or more information. From our side, considerable effort was made to try to get such information to be able to make the decisions that were made, but, clearly, the judge considered that to be insufficient. Therefore, there is a huge issue around being able to access information.

As David said, we are more limited than colleagues across the water in respect of what we can do. We could simply ask a pharmacist for a copy of invoices, etc, but there is no requirement on him to give us those invoices, and we have no way of ensuring that we get those. On balance of the evidence, the judge said:

"I have no doubt that this applicant was less than eager to facilitate discovery of the information the respondents needed."

Therefore, there is some issue about how we can make sure we get the information that we need even from those who might be reluctant to give it.

The Chairperson:

It is very little comfort that, in a ruling that is over 20 pages long, you find a wee sentence like that. I suggest that you will probably need to find an answer to Michaela's first question pretty quickly.

Mr Brady:

It is hardly surprising that you express disappointment with the judgement, but I am sure that you were not that surprised. One of the things that you said was that this was a pivotal moment for community pharmacy. Do you think that it might also be a pivotal moment for the Department in addressing those issues in future? It seems to me and to others I have spoken to that the Department had a very cavalier attitude to all of this, and that has been borne out by what the judge has said and the elements of the judgement that you quoted to us today.

I know that this has already been addressed, but I think that it is incumbent on the Department to do its utmost to mend the damage that has been done to long-term working relationships with community pharmacists. Certainly, I have spoken to community pharmacists in my constituency and I have found them to be hard-working people. Yes, they want to make a profit, but who does not want to make a profit in business? Mark mentioned paranoia. Somebody once said that the paranoid is the person who is in possession of all of the facts. Perhaps, this time around, community pharmacists felt that they were in possession of all of the facts. Unfortunately, the Department was not. I will finish on that point.

The Chairperson:

Do you want a response, Mickey, or are you happy enough?

Mr Brady:

I am just expressing an opinion. It has been covered by other people. All of the relevant questions have been asked.

Mr Dunne:

I apologise for being late. I think that most of the issues have been covered well. As most of my colleagues have said, we are very supportive of community pharmacists' work. As a relatively new member of the Committee, I have been inundated with letters from and been lobbied by community pharmacists. We all appreciate the work that they do. They provide a front line service to the public, who trust them. That comes across very much when you visit community pharmacies and spend time observing the public coming to them. The local access is great. We all appreciate and support that.

Jim covered most of the points. In the three conclusions from the legal findings, it is mentioned that the respondents failed to carry out an impact assessment. Those conclusions have been fairly well covered. We are very disappointed that you have been found wanting on those three issues. It demonstrates starkly that procedures and processes were not followed properly. Do you feel that, overall, your method was wrong, more so than the message?

I think that, David, you mentioned unreasonable profit levels earlier. Has your objective been to try to manage that? Is it the case that what you have set out to do has damaged or has the potential to damage the smaller independent operators and has less impact on those who make huge profits, such as the larger chains that now operate in the Province? The impact on them will not be the same. Perhaps what you intended to do was overkill with regard to community pharmacists. Perhaps its effectiveness or how good it will be with regard to larger retailers and pharmacists is yet to be measured.

One other point is that a chemist's income is very much relative to its location. I met the Helen's Bay chemist David MacRae. Jim Wells could hardly believe that there is a community pharmacist in Helen's Bay. However, there is. He is very limited there because his unit has low footfall. However, if he were based on the Newtownards Road or the Bloomfield shopping centre in Bangor, his income would differ significantly. Perhaps the funding method should be somewhat based on location. Is that something that influences your thinking or, perhaps, should influence your thinking?

Mr Brogan:

With regard to the commissioning piece for which the board is responsible, we absolutely believe that the commissioning arrangements need to help us to put in place services where they are most needed, whether that is in Helen's Bay or elsewhere. I do not know the area that well. We see a distribution of community pharmacy throughout Northern Ireland that, at times, we believe could be better. We could put services in key strategic areas where there are issues of rurality, accessibility and, in particular, deprivation. We wish to look at that in the commissioning piece. Norman alluded to needs assessment, and the starting point is to understand what the needs of the population are, and then engineer it in such a way that we put in place the right facilities in key

areas that the patients and public can access, if we are going down the route of a regulated market.

You make a very good point. We need to take cognisance of that. I am currently frustrated by the commissioning process. We do not commission pharmaceutical services, they just happen because of the control of entry mechanism, which is an established mechanism. However, the Department will wish to work with us on a needs assessment piece to understand what the policy arrangements are around the control of entry.

Dr N Morrow:

That is fair enough. I think it is a fair comment in relation to the fact that different practices are involved in a different business climate. That has all sorts of ramifications. We are dealing with multinational companies and national chains, and they have, for example, a better ability to buy into the market and service loans and so on. An independent, however, will usually have to spend considerable resources to buy a pharmacy and then there is the servicing of the loan and so on to consider. You are quite right; there are all those kinds of factors, as well as the fact that there is a private part of their business as distinct from a contracted part.

The Chairperson:

They also have the ability to bulk-buy to drive down prices on the retail side, too.

Dr N Morrow:

Absolutely. I think this comes back to Michaela's point about what we have learned. One big question that was clear to us, and is now even more clear, is how to get transparency around the purchase profit on medicines. That is the contentious bit. The other bit is kind of clear; that is, the amount of money that we pay for dispensing services and practice allowances. However, a big issue for us and for Community Pharmacy is making that information transparent so that we can openly say what amount of money goes into the community pharmacy infrastructure. Of course, when you look at the different business models, some of the companies are vertically integrated and have better purchasing power than a single independent pharmacy will have. The big lesson that we have to grapple with is how we make it transparent.

Mr Brogan:

In the commissioning process, another thing we need to learn about is the financial risk. There are pharmacies that have said they are in difficulty. From a responsible commissioning perspective, we need to understand that market a lot better and we need to be able to put in place a better mechanism to support those pharmacies, particularly those in difficult, deprived rural areas. There is a degree of financial risk that we need to understand and try to manage.

Mr McCarthy:

Finally, given all that has been said today, the clear unlawfulness of the Department's actions to date, and the enormous suffering that has been foisted on not only the pharmacies but the community — as I said earlier, 105,000 individuals took the trouble to sign a petition to save community pharmacies up and down the length of Northern Ireland — is there anyone on the panel today who is brave enough to offer an apology to the people who have suffered mentally during the past while?

Dr N Morrow:

None of us had any wish that the public, and I am a member of the public, should suffer as a result of that. I have relatives who receive medication regularly, and who have continued to receive it during this period. I am sorry if any member of the public has felt that they have been disenfranchised in any way through the process. I know that a number of people wrote to the Department in fear that their community pharmacy would close. We have responded to all of those people accordingly.

I think that I have made it clear that there was never any intention to, in effect, hurt the system. Through the boards, the Department and BSO, we were trying to achieve a situation in which we could seek to meet the demands in a fair and reasonable way, and to make sure that we were getting value for money from the public purse. I think the Committee would want that as well. We have endeavoured to do that with integrity. It is a disappointment to us, maybe more than a disappointment, that we have not succeeded. We have to redouble our efforts to try to change the dynamic.

The Chairperson:

Thank you all for coming up. My last word is to advise you not to throw good money after bad by appealing the decision.