Northern Ireland Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Briefing from the Lord Chief Justice

2 May 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Easton
Mr Tom Elliott
Mr William Humphrey
Mr Seán Lynch
Mr Alban Maginness
Ms Rosaleen McCorley
Mr Patsy McGlone
Mr Jim Wells

Witnesses:

Mr Edward Gorringe	Northern Ireland Judicial Appointments Commission
Ms Laurene McAlpine	Office of the Lord Chief Justice
Sir Declan Morgan	The Lord Chief Justice

The Chairperson: I thank the Lord Chief Justice, Sir Declan Morgan, for coming today. Obviously, you have been here before in your capacity as chairman of the Northern Ireland Judicial Appointments Commission (NIJAC), but this is the first time that a Lord Chief Justice has come before the Committee to talk about a range of areas that are relevant to the judiciary. I want to acknowledge the invitation that you made to the Committee to facilitate that; it is a very welcome step. It is a sign of maturity in our democratic process, particularly with the devolution of justice powers being a recent phenomenon. I certainly appreciate the efforts that you made to provide us with the opportunity. I invite you to make some opening remarks. Obviously, you are aware that there are five themed areas that we would then like to discuss with you.

Sir Declan Morgan (The Lord Chief Justice): I am very grateful for those remarks, Mr Chairman. Indeed, they accord with my view about the fact that it is very healthy to have dialogue between the judiciary and the legislature through this Committee. I am pleased to have the opportunity to meet you because, when I last met the Chair and Deputy Chair, I suggested that it might be helpful to us all if I were able to give the Committee some insight into what judges are doing in the areas that might be of interest to you, and I could hear what your thinking was in the areas that might be of interest to me. I hope that this meeting will result in an open exchange of views and sharing of information and perspectives between us, while respecting our different roles.

The administration of justice, in which we are all interested, involves many independent elements, all of which must mesh together if the system is to be effective and if the public are to have confidence in it. I spoke about the importance of judicial independence, without which I do not think that the public

can have confidence in the justice system, but that does not mean that the judiciary are remote from other justice agencies or that we cannot work with others to make improvements. It also does not mean that we are above criticism or that we stand aside from sensible, informed public debate on matters concerning the administration of justice.

I used the expression "judicial independence". It is a principle that I know that this Committee recognises. I would, however, welcome discussion about what it means in practice. In its most obvious sense, it means that a judge decides individual cases based on the law and the evidence that is presented, irrespective of any other considerations and free from any external influence or pressures. A judge is also independently responsible for determining when cases are to be listed for hearing. The reason for that is to ensure fairness in cases that are brought on for trial and to ensure that cases that might be challenging to the Executive are not left to the bottom of the heap — perhaps, never to be reached. However, there are other matters that are required to underpin judicial independence and which are almost conditions precedent to its existence. They include, for instance, having the right number of competent judges independently selected on merit; the availability of enough courtrooms; and the support of an efficient and effective court service. That is where judicial independence intersects with ministerial decisions, government spending priorities and other political interests. Sometimes, there can be painful rubbing points and the need for mature two-way debate. That requires the Minister and this Committee to recognise the position of judges and the pressures of court business, but it also requires me to recognise that the Minister has other considerations and that the legislature may have other priorities that must be taken into account in making difficult decisions.

Judicial independence is not there to protect judges; it is there to protect all of us in a society that is subject to the rule of law. Our democratic system depends on the recognition of the independent judicial role by the political class and informed and serious commentators. Increasingly, that understanding of the judicial role has led me to reflect on the role of the media in our society. In examining the justice system, the Executive, the legislature, the judiciary and other independent bodies, including the police, the Public Prosecution Service (PPS) and the legal profession, are central to our scrutiny. The press, however, have an increasingly important part to play. Television and newspapers are often the medium by which each of the justice agencies garners an impression of the other, and, more significantly, the press are a key source of information from which the public form a view of the justice system. In reporting judicial decisions, therefore, it is essential that the press do not just opt for the headline but that there is accurate and sufficiently complete reporting of the facts and the reasons leading to the decision. It is only in that way that a true picture of the justice system is obtained.

I realise that some judicial decisions will be unwelcome and hard to understand, and I have no objection to decisions being criticised, as long as it is informed criticism grounded in facts. That is why the role of the press and other media is so important. Sometimes, of course, a decision may just be wrong, which is why we have a system of appeals, but generalised criticisms that add nothing to our thinking should be avoided. They can only undermine public confidence in the justice system as a whole.

Tackling delay, which we will talk about, has been a top priority for me since becoming Lord Chief Justice. Bringing a criminal case to trial is a complex matter. It is also an acutely difficult time for the victim, witnesses and the defendant, who is entitled to a fair trial within a reasonable time. The Crown Court deals with about 1,600 cases a year. Every case is traumatic for the people involved and those close to them. It is right that as much of what can be done should be done to minimise the impact of the experience. The judiciary encouraged the PPS and the PSNI, as well as defence solicitors, to agree as many witnesses and as much evidence as possible before trial. Those bringing witnesses to court should keep them informed of what to expect and release them as soon as possible after their evidence is given or they are no longer required. It is also vital that cases should not be unnecessarily delayed, though sometimes we must recognise that delay is necessary in the interests of a fair trial.

The Committee will be aware of the standards that I expect to be observed. Eighty per cent of Crown Court defendants should start their trial within 18 weeks of committal. In the Magistrates' Court, 80% of adult defendants should have their case disposed of within nine weeks of first listing. Building on and improving performance against those standards is not something that a judge can achieve alone. In my view, the most effective changes are achieved by those on the ground who really understand the mechanics of how things work and how they can be made to work better. For that reason, I think that meetings between working practitioners can be more productive than strategy meetings between heads of organisations.

Last year, working in co-operation with the PPS and the PSNI, I issued pre-action protocols in respect of criminal proceedings in the Crown Court and the Magistrates' Courts. The Minister is also focused on avoiding unnecessary delay, which, of course, I welcome. One policy that he has taken up is statutory case management, and I am happy to offer my criminal case management protocols as a good working draft.

Belfast Crown Court is our busiest court venue, and, for that reason, it deserves the lion's share of our judicial resource. I put in place a new arrangement in Belfast whereby four County Court judges will deal with Crown Court business in that venue on a constant basis. The effect of that, along with the implementation of the case management protocol and the practical steps taken by the Recorder of Belfast, is a reduction in the number of cases in Belfast waiting trial after a not-guilty plea from 322 in August 2012 to 220 in April 2013, which is a reduction, effectively, of one third.

Although there has been a success story in Belfast, it has not been without tremendous effort, including judges working through court files at weekends. I also cannot rule out that focusing judicial resources in Belfast may have had some adverse impact on other divisions. The Crown Court has also dealt with an overall increase of 35% in the number of defendants sent for trial since 2007. That increase in volume, taken with the growing complexity of criminal cases in the Crown Court, has led me to identify the need for an additional County Court judge if we are to maintain and improve the throughput of Crown Court cases throughout Northern Ireland. The Judicial Appointments Commission, of which I am the chair, has therefore determined an increase in complement of County Court judges from 17 to 18. This determination, if agreed by the Minister, will allow me to maintain four Crown Court judges in Belfast, two judges to sit in each of the other six County Court divisions in Northern Ireland, and two judges dedicated to family cases throughout the Province. It is my judgement that this will allow me to secure the improvements that have been made in Belfast Crown Court and to build on good performance elsewhere.

I will say a word about sentencing as it is clearly a matter in which there is legitimate public interest. The sentencing group that I established is shortly to have two lay members. This will, I think, increase public confidence and give the judicial members a helpful external perspective on sentencing issues. To date, the group has approved 25 new Court of Appeal sentencing guideline judgements, four Crown Court sentencing guidance judgements and Magistrates' Court sentencing guidelines for 97 offences. All of these have been published on the Judicial Studies Board's website, and they are all, therefore, freely accessible to members of the public. Members of the group have also attended and given presentations to various external organisations, including the Craigavon Community Forum, the Dungannon Community Forum, the Environment Minister's environmental summit and the Institute of Professional Legal Studies. I am also pleased to note that the Minister has just launched a public consultation on a proposal to confer power on the Director of Public Prosecutions (DPP) to refer unduly lenient sentences for tax evasion, including fuel and cigarette smuggling, to the Court of Appeal. This is something that I suggested for the Minister's consideration last year, and it is another good example of how sharing information and experience benefits the system as a whole.

As you mentioned, Mr Chairman, the last time I appeared before the Committee was in respect of your inquiry into the arrangements for judicial appointments. At that time, I reflected on the steps I would be taking to encourage women to apply for judicial office. Since then, the then president of the Law Society, Imelda McMillan, with my support has had a very successful conference on women in the law. The liaison group between the legal profession and the Judicial Appointments Commission is now also well established. One of its tangible achievements is the holding of a series of lectures by women lawyers on areas of law where perhaps they have not had the profile or recognition that they deserve, such as in commercial law, judicial review, insolvency and matters of that kind. The Bar and the Law Society have been supportive in this initiative and are working closely with NIJAC. I want to encourage women to build their career in the legal profession because that will lead to an enhanced and more diverse pool of talent with a corresponding welcome impact on the judiciary.

This is a process of culture change. I believe that we have made an impact far beyond anything that has previously been achieved in this jurisdiction, but as with all culture change, it will require persistence and commitment if we are to see the fruits of our labour.

I hope that those observations have been helpful. I expect that you may have some questions on the detail, and I am happy to assist where I can. I am also interested in hearing your perspectives on the justice system in general and in respect of the role of the judiciary in particular. Thank you very much.

The Chairperson: Thank you very much. Those opening remarks are very much appreciated. The first themed area that we wanted to speak on is judicial appointments and increasing the pool of

women candidates. I will lead off on that and then some other members will come in before we move to the next area.

You will be aware of the report that the Judicial Appointments Commission asked Queen's University to carry out. That was published in January and it makes for very interesting reading. What actions have been taken following publication of that report?

Sir Declan Morgan: One needs to look at the report and see where it tells us that we can take steps to deal with the issue that has been identified, because the report undoubtedly identifies an issue about the under-representation of women. In seeking to achieve the outcomes highlighted in the report, it seemed to me that there are really three things that we have managed to try to get a handle on, which we had started before the report came out and which we are persisting with. One is the issue of the standing of women in the profession. There is a real risk that women are not perceived in the profession as being of the same value as men. That may explain why there is an under-representation of women at the more senior levels, or it may be that the fact that there is an under-representation is having the effect of reducing the standing of women.

The first thing that we did, and this was my initiative, was to organise this series of lectures by women in areas where you would not expect to see them participate in significant numbers. So, we have had a lecture on banking, on insolvency, on property and we have a lecture coming up on company law. The idea is to highlight and profile women who are involved in those areas to advance their standing and the standing within the profession. That has been ongoing since January this year.

The second thing that has worried me is that the statistics tend to suggest that there is a real issue about women, particularly those who want to have a family life, leaving the solicitors' profession or the Bar for family reasons and the issue of whether they come back in at the right level. Some come back, but do they return at the right level to ensure that they can proceed to a more senior position? That requires something of a culture change, but there are also steps that we can take on that. At our second most recent joint liaison committee meeting, I suggested to the professions that mentoring was needed to address this. In other words, you need somebody to be there to help younger women who are developing their careers and to explain the steps that they might take. Somebody should be there at more senior levels in the profession to speak up for women so that, for instance, if somebody is out on maternity leave and a partnership issue is being discussed, there is somebody protecting their backs, as it were. There should be somebody who, from the Bar point of view, will make sure that, if a woman is coming back to the profession after taking time out for a family, somebody is positively looking out to ensure that solicitors and others are aware so that the work that they get comes back in at the same sort of level. I am glad to say that, at our last joint liaison committee meeting, which was just earlier this week, Ms McMillan indicated to me that they have now taken up that idea, that they were getting some professional training organised for it, and that they were going to pursue this and persist with it as a primary way in which to protect the position of women.

The third thing that I think is an issue that we need to get at is the question of balance within the professions and within the judiciary. A lot of anecdotal evidence and some research indicates that the professions and the judiciary are putting women off because there is a fear that there is not an appropriate balance between family and work. We have to see what steps we can take to address that. That can possibly be partly achieved by making available some form of part-time opportunities. In our most recent district judge competition, we indicated that positions would be open for those who wished to apply on a part-time basis. By part-time, we are essentially looking at working either a 60% week — three out of five days — or 80%, which would be four days out of five. We indicated to the Department of Justice that we were keen to go down that route. The Department has indicated to us that we can do what we want, as long as we do not end up with more than two full-time equivalents, because we are replacing two people who are leaving. That could end up presenting a problem if the first person on the merit list wants to be, for instance, a 60%, three-day-a-week judge, and the next two on the list say, "Well, no, I am sorry, I want to be a full-time judge". We cannot have any fewer than the two full-time equivalents; we need the two full-time equivalents. The question would then become one of whether I will be able to talk to the Department and say, "Well, look, you are either with us or against us on the issue of flexible working. And if you are with us in relation to the issue, you may have to put your hand in your pocket to appoint not just two full-time equivalents but the person who is the part-timer and wants to come in on a 60% basis". That may be an indication that these are things that all of us will have an interest in. I have a clear interest, because I made this a priority at the beginning of this legal year in the speech that I made about where I wanted the judiciary to go in the coming year.

There is clear support from the Minister for the proposition that there should be proper involvement of women in the judiciary. The statute encourages the involvement of women in the judiciary. It seems to me that, if people are serious about this, we will have to think very hard about stretching a point and trying to find some money somewhere to fund a part-time role.

Those are three steps that have not been on the radar before for this issue but which represent concrete ways of trying to do something about it, rather than just beating the table and saying that it is awful that there are not enough women here. We have got to find ways of making a change, and, to some extent, I question whether the report tells us how you make the change. It tells us that there is a problem and a need for a change, but I am not sure that it tells us how we do it. What we have done is to really grapple with this problem in a way that it has not been tackled before.

The Chairperson: Thank you. I accept that, in the lower tiers of the judiciary, progress is being made. Some might say that it is at a glacial pace; nevertheless, progress is being made. It is at the higher tier, at High Court level, that there is a very clear problem in that there are no female judges in the High Court at all. That, symbolically, needs to be addressed. I fully accept that merit is the guiding principle in all of this, particularly —

Sir Declan Morgan: It is the only principle.

The Chairperson: Very much so, but how do we get people into the High Court level? I want to know what you, as the Lord Chief Justice, can do to try to make female candidates or prospective candidates apply for the job. One of the main findings of the Queen's University report is that the ethos of the back corridor of the High Court was often reported to be a negative feature, particularly for woman candidates. I am interested in your comment about what the back corridor ethos of the High Court is.

Sir Declan Morgan: The report was commissioned around the summer of 2012, or maybe slightly afterwards. I have made what I think is a very determined attempt to change the culture and the views about whether the back corridor is welcoming to women. The fact that I made the position of women within the law the centrepiece of my speech at the start of the year was highly unusual. Nobody had done that before. I have gone to each of the lectures that have been given and impressed upon people the need to address briefing policies so that women who are not being briefed by solicitors and who are not being given pass-ons need to be given that. I explained that that is because I want a pool of talented women who will come forward and be appointed into the High Court. I think that that is changing the approach.

In addition, I feel that what we have managed to do has started to give the women who I talk to confidence that they are wanted and desired in the judicial system at the highest levels. At the end of the day, the outcome of this is about whether we succeed in encouraging good female candidates to achieve the standing that they should in the profession and to come forward to take their places in the judiciary. At the end of the day, you will have to judge me on whether we manage to achieve that. Six High Court appointments will be made within the next four years, because of retirements. After the six High Court appointments are made, I am perfectly happy to come back, and you can have a go at me then.

The Chairperson: I accept that you have made strenuous efforts on this issue, but, as you would tell us, all the other judges are fiercely independent. So, it is about how you exercise the powers of your office to try to influence what this report reveals to be very much a cultural problem. It impacts not only on women but seems to indicate that there is an ethos problem beyond that. The report highlights what a solicitor said was a "fairly common view" of those whom they dealt with:

> *"The High Court still have their black balling, if I can put it like that ... all applicants have to be known to people on the High Court either personally or professionally ... whenever you have that criteria – that discriminatory criteria – that sends out huge signals that we want to keep it to ourselves or pull up the drawbridge when we have the right people on our side".*

That goes beyond whether there is an issue about having women in the High Court. The report refers to the need to be known on the golf courses and at rugby matches. Is that a fair comment?

Sir Declan Morgan: I am glad that you raised that issue because I spoke to the joint liaison committee about it at our last meeting. If you talk to members of the solicitor profession, particularly the leading members, about whether, as they put it, applicants have to be known or the High Court has a black-

balling role, it will lead into a discussion about whether High Court judges, who are often consultees in those schemes, have a role in selecting who should or should not be the judge. I have explained at enormous length to members of the solicitor profession that consultee comments are not part of the substantive process for the selection of a judge; they are simply confirmatory. In other words, if there was something that a judge had to say that required investigation, and there was a problem about a candidate, that would have to be taken up, but they have no role to play in deciding who the best candidate is. I explained that again to the president of the Law Society at our last meeting, and he accepts that we have explained that ad nauseam to the Law Society in our meetings with them.

A further meeting has been arranged with the council of the Law Society on 22 May, at which, by agreement, I have ensured that that issue will be directly on the agenda to ensure that it is spelled out in crystal-clear terms. Nobody has a black ball or a white ball on the question of who is going to be a judge. It is principally determined by a selection committee, on which there are two lay members and two legal members. Those are the only people who have to make the judgement. I accept that it is a perception among quite significant numbers of the profession. I want the Law Society to lead on dispelling that perception because if we succeed, as I hope that we will, in convincing the society that that perception is completely inaccurate — members of the society are in NIJAC to help us to do that — I hope that it would take the next step, which is to go out to its members to ensure that they also realise that it is inaccurate. I am glad of the opportunity to address that.

Mr Lynch: I will continue on the same theme. I welcome the work that you are doing. It is a huge task. Have you looked at other jurisdictions — down the road in Dublin? Statistics show that 25% of members of the Supreme Court are women. Have you set any targets — for example, in four years' time, at least one woman will have broken through? You sometimes have to take extreme measures such as positive discrimination to redress the balance.

Sir Declan Morgan: First, we cannot use positive discrimination; it would be unlawful for us to do so. Secondly, we have to appoint on merit because the statute tells us that we have to do that. Somebody could rewrite the statute, and the rules could be different. I attended the Commonwealth Law Conference in South Africa the week before last, and I spent some time talking to judges and others about their judicial appointments system. In their system, competence and transformation are the two issues, so appointment is not strictly on merit. Balances have to be changed. There was huge controversy around the selection of the Chief Justice and a number of judges, questioning whether competence was being outweighed by transformation. One issue was that people were dissuaded from applying for a judicial post in South Africa because they did not think that they were going to get a fair crack at the whip. That is the danger.

We must guard against the perception that women may have, which is that they may not get advancement on their merits. We must also guard against the perception that others, whether from a religious, gender or other background, have the same difficulties. We cannot take positive discrimination measures in that sense. We can, however, be proactive about conveying, particularly to under-represented groups such as women, that we want women to apply, and we want to ensure that we put them into a position to apply. I was conscious of another issue when I was in South Africa. There was a concern that good black lawyers were not being given the type of work that would enable them to develop their skills and show how able they were. The Chief Justice put forward that proposition. What we are doing to try to improve the standing of women is designed to start attacking the issue directly, and that is the way to go.

I will end on that point by saying that, if you talk to women about whether we should appoint women who do not come through on merit, my universal experience is that they will say, "Please do not do that", because it undermines their standing among their colleagues. When I attend conferences on the issue, that is what I am getting back.

Mr Lynch: Have you looked at what lessons can be learned from Dublin and that jurisdiction?

Sir Declan Morgan: As you can imagine, I talk to all my immediate colleagues about things that we could do. I do not think that I am talking out of turn when I say that I spoke at some length to Susan Denham, who is the Chief Justice in Ireland. We discussed the ways in which you manage to help women to come through the professions and then into the system. As she put it, it is most important to create a sisterhood, which is about people helping each other. It is about mentoring, which I have spoken about, and it has heavily influenced my view about taking practical steps to make sure that you make a difference. I expect to have some impact on that area, hopefully in the short term rather than the longer term.

Mr McCartney: If there is a vacancy in the High Court, is it an open application?

Sir Declan Morgan: Yes.

Mr McCartney: In the past, how many women have applied for High Court positions?

Sir Declan Morgan: It depends. There have been a number of competitions — three, I think — during my time, and we can get you the precise figures of the breakdown. Women candidates have applied, and certainly one woman candidate was shortlisted.

Mr Wells: The starkest comment in the Queen's report is:

> *"The failure to appoint a woman to the High Court was almost universally seen as a key factor affecting the legitimacy of the new appointment process."*

There is a clear perception that it is a huge gap in the process. I spend most of my time on the Health Committee, and exactly the same constraints on the advancement of women could have been stated 10 years ago in the health sector. Once the house was put in order and women broke through, they have done so with a vengeance. Indeed, the top performing trust in Northern Ireland has a woman chief executive and deputy chief executive, and the chairman is also a lady. Their performance is outstanding, which shows that their appointments had nothing to do with ability; it was simply a lack of opportunity. Are you learning from other senior positions, whereby this issue with women has been tackled successfully?

Sir Declan Morgan: That is precisely what I am doing about the standing of women in the profession. I agree that the appointment of a woman who is holding her place on merit in the High Court will add to and improve the standing of women in the profession generally. I expect that that will encourage other women to come forward.

I talked to Mrs McMillan, who is now the senior vice-president of the Law Society, and Ms McBride, the vice-chair of the Bar Council, and I think that they are convinced that this is the way to ensure that women are brought forward.

Mr Wells: I am someone who, for his sins, has spent quite a bit of time in the courts. I was there recently, and the legal teams in the case were entirely female. They were clearly of outstanding ability. In fact, you just named one of them. Clearly, there is a cohort of people who can do the job yet that talent is not reaching the opportunity stage to get into the top positions.

Sir Declan Morgan: I am not sure that it is just as easy as that. Part of the difficulty lies in the fact that the traditional pools for entry to the High Court are the County Court judges, of whom four out of 17 are women, and the ranks of the QCs, of whom 14 out of about 90 are women. There is significant under-representation among women in both those groups. If you are going to make a real and long-lasting difference, part of the key is to ensure that the gender composition of those talent pools is altered. That is what makes for long-term outcomes. We are taking active steps to seek to achieve that. We have people from the medical profession on NIJAC who spoke to us about the methodologies that are used, and have been used, to promote the position of women, one of which is undoubtedly the relationship between work and family life.

Mr Wells: Why would that be any different in other senior positions? All the lady chief executives whom I know have family. They all faced the same pressures yet they all got to the top.

Sir Declan Morgan: The position in the professions seems to be what needs to be addressed because those professions form the pool out of which judges will be selected. That is why, rather than sitting back and saying, "Something needs to be done", I have got into the professions, worked with them and persuaded them that they should take steps forward. If you asked the people in the case that you mentioned whether what we have done has made a difference, I have no doubt that you would get a very positive response. In fact, I invite you to do that, if you would like to.

The Chairperson: Let us move on. The next theme is avoidable delay, and Mr McCartney will lead off on that issue.

Mr McCartney: Thank you for your presence and presentation. There is an acceptance, even in your opening comments, that there is delay, which people would say could be avoided. What do you believe are the main causes of delay?

Sir Declan Morgan: There are all sorts of reasons for delay. The criminal justice system is complex, and various people play their part. Usually, cases are brought to court by the Public Prosecution Service, so from its point of view, it has to get its house in order. The police have to ensure that they carry out the investigation. The forensic services need to ensure that they have done whatever has to be done.

I am sorry to say that there has been persistent criticism of delays in dealing with forensic evidence in Northern Ireland. That is not a criticism of Forensic Science Northern Ireland because it can work only with the resource that it has. However, it draws a question mark over whether the forensic services available to the police are adequate. Forensic Science Northern Ireland is taking positive steps and looking at the availability of forensic services outside Northern Ireland to assist it.

From our point of view, our contribution is to try to make the system as efficient as possible. With the faster, fairer justice Bill, for instance, I suggested to the Minister that we should transfer all murder cases to be managed directly by a High Court judge as soon as they came in rather than waiting for potentially up to a year in committal before they go forward. I persuaded the Minister and the Department that we should transfer all indictable guilty pleas. If someone goes to a Magistrates' Court and pleads guilty, that case should be moved to the Crown Court immediately so that a judge can manage the plea. At the moment, it will sit there until the committal process has finished and could take months or even a year to do that.

The case management protocols that I have put in place have placed enormous emphasis on the need to ensure that we agree as many witnesses as possible. Of course, the more witnesses you have and the more members of the public who are affected, the longer it can take to get the case sorted because witnesses may not be available for one reason or another. We have placed a very considerable focus on that.

I am also glad to acknowledge that the Police Service of Northern Ireland, with the introduction of witness care units, is now addressing issues that are extremely important in ensuring that witnesses are alert to what they should expect. They are being given every support to ensure that they come to court, and for the least time possible.

One difficult issue for witnesses when they attend court is that they have to hang around all day. I often wonder whether they have been brought in at 9.30 am because the prosecution or the police have to consult with them. They are brought along for that purpose because the lawyers then go back into court, but a witness might not be due to be called until 2.00 pm. There are all sorts of reasons why someone can be sitting around a court, but those are some of the things that we have been trying to do to avoid that.

We are also trying to use our resources to see whether we can drive down the delays. I have looked at the charts for outstanding cases, for instance, in the Crown Courts in the period since September, when we changed things about a bit. There has been a steady downward pattern, and we are definitely making a difference.

Mr McCartney: Will your suggestions to the Minister appear in the Bill?

Sir Declan Morgan: Yes, they are in the Bill.

Mr McCartney: Will they make a significant impact?

Sir Declan Morgan: Yes; I think that they will make a big difference. A lot of cases that should be dealt with quickly will be dealt with quickly.

Mr McCartney: What about the relationship between the agencies? You mentioned pre-action protocols and strategy meetings. Does that include the PSNI and the Public Prosecution Service?

Sir Declan Morgan: Yes. As I said in my opening remarks, I have been invited to meetings at which the heads of all organisations under the sun are there, and everyone works out a strategy. Do not get me wrong: those meetings are very useful, but I want things to happen on the ground.

I want to make sure that the practicalities are sorted out, which means getting the people who have to do the job to say, "No, you cannot do that, because" or, "If you are going to do that, you will need to do something else". That has proved enormously useful in getting the case management protocols because we made sure that they are doable and that they work for the police, the prosecution, the courts and the public. That is what we have been chasing after.

We are talking here about avoidable delays in the Crown Courts and the Magistrates' Courts. In passing, I will say that there is an enormous opportunity to do an awful lot about avoidable delays in the youth courts. The interesting thing about that is that it probably depends on you. It depends on your judgement as to whether you are prepared to go for it. If you want, I will explain what I mean by that.

Mr McCartney: Go ahead.

Sir Declan Morgan: At the moment, it takes hundreds of days for us to deal with a youth case. Those cases take an extraordinary amount of time — over a year, I think. That is completely outrageous because by the time teenagers are dealt with, if they are dealt with in court, they probably have no recollection of what it is that they are being dealt with for. Who knows, there may have been other incidents in the meantime that render the whole thing meaningless to them.

Part of the reason for that is that we have not prioritised trying to deal with youth justice in the way that we could and in the way that they have done in certain parts of England and Wales. We organised a trip to Hull, as I strongly encouraged the Department and other agencies to do, to see what they do there with youths. In Hull, cases are dealt with in under 50 days. They have stopped keeping records because they are down into the 40s, and they are doing it so quickly that nobody is bothering with them. The reason why they do it is because, when a youth comes in, that youth gets proper legal advice and support and at that stage is told, if it is an appropriate case, that they can go to a diversion now but that this is their only chance, and they cannot go back in later on. We do not do that. We leave the diversion option open so people go off to a diversion for months and come back again, and the case has gone the way it does.

The police, the forensic agencies and others give priority to youth cases and decide that they will look after the youth cases. They are not dealt with not by summons. It takes eight weeks for a summons to arrive, the person has moved on and has not been served, and we wonder when we will find that person. It is dealt with by charge, which means that people are back in court in 21 days' time, by which stage the police have got their statements, and the forensic service has done its forensics. The case is then listed for trial and is done and dusted in some 40 days, if it has to be done and dusted in that way. That is what I mean about it being your decision. You have to make your mind up whether it is important enough to get cases done quickly to remove the opportunity to go back into a diversionary outcome at a later stage because, if you think that it is, you can get it done very quickly, and you have to make a decision on whether the other agencies — the police, the Public Prosecution Service and the forensic agencies — need to give priority to youths. If you do that, somebody else will probably lose priority elsewhere. You have to make a decision on that.

Perhaps the most important aspect of the Hull programme is that, if you go for a diversion, it does not appear on your record. So when people go for a job, there is nothing on their record. That is absolutely critical, because a child and his or her advisers have a real interest in ensuring that, once a child looks for a job, he or she will be in as good a position as everybody else. It is a really interesting piece of work, and it is the model for tackling youth justice in a way that we have never tried here.

Mr McCartney: One of our pre-agreed questions was: what action can the Committee take? You have pre-empted that.

When talking about the gender balance, you mentioned two full-time equivalents in the Department telling you not to go over that, yet in your presentation, you said that the fact that there are now four County Court judges in Belfast has reduced trials by one third. Has anyone done a cost analysis on avoidable delay? If you chart the steps that you outlined, by how much would the cost be reduced? Two part-time equivalents, or maybe 10 part-time equivalents, might not become an issue.

Sir Declan Morgan: I have dedicated and careful staff who help me in the office, but I am afraid that the number of bean counters is very limited. If I tried to get them, the Department would probably wonder where it would get the money to pay for them. I am afraid that I do not have the resources to carry out that sort of analysis.

Mr McCartney: It is a fair assumption that if we can do away with avoidable delay, we will save money. Even in your own Department, if you put more money in, that will reduce delay.

Sir Declan Morgan: There is absolutely no doubt that if we can tackle avoidable delay, the courts will be more efficient, and we will get more done with the same resource.

Mr Humphrey: Thank you very much for your presentation, Sir Declan. I agree wholeheartedly with your assertion about positive discrimination, not just in the area in which you work but through all aspects in life. It is unlawful, unjust and simply wrong, and if we are to build a society in Northern Ireland that is just, it needs to be a society in which everyone is judged on their merits and on nothing else.

You spoke about the availability of courtrooms and government resource spending to tackle delays. You addressed some issues in your earlier answers. The Courts and Tribunals Service attended the Committee a few weeks ago. Some of us were not convinced that the number of courts being closed and the number of courtrooms being reduced was going to help to speed up the process. To be frank, the answers that we received certainly did not give me any reassurance. With the reduction in the number of courts, and given that finance in the current economic climate is limited, do you believe that you have the resources to carry out the sorts of things that you are talking about expeditiously?

Sir Declan Morgan: I certainly recognise that there are pressure points with the availability of courts. We find, not infrequently, that even in Laganside, which in a sense is the prime criminal court in Northern Ireland, enormous pressures can arise. If, for instance, we have a difficult or long coroner's case that has to be accommodated, perhaps requiring special measures or something of that kind, there is substantial pressure on the courts.

I view your point from a slightly different approach. At present, I do not have the responsibility or authority for deciding what courts there should be and what availability there should be. I do not have responsibility for working out the whole picture. I have the picture of the judges whom I want to allocate. The Courts and Tribunals Service, through the Department, tries to work around what it will offer me in how those judges are to be accommodated. Systematically, that is probably a mistake. It should be done holistically; somebody who is in charge of providing the judicial services should also take responsibility for determining the level of support services. I realise that, when judges take on that responsibility, people become worried about issues of accountability. All that can be managed. It is being managed perfectly satisfactorily in Scotland, where that exact model is in place. It is also managed, so far as I can tell, perfectly satisfactorily in the Republic of Ireland.

Mr Humphrey: The general public do not see the difference in the role that you and the people who work with you — the Courts and Tribunals Service — play. They will obviously tar everyone with the same brush. We will come to sentencing later, but people have a confidence issue about their cases being dealt with expeditiously and without delay. They do not appreciate the lack of joined-up working. I presume that you have made those points to the Minister.

Sir Declan Morgan: I have been in discussion in general with the Minister on what is, effectively, the concept of a non-ministerial Department, which is what happens in Scotland and in the Republic of Ireland. When the devolution of justice happened in 2010, all of us had to take a deep breath and look at how that was going to work. For me to have walked in and said, "I know that that bit has been devolved to you, but actually, do you want to hand it over to me?" might have seemed a bit premature. Now that we have looked at the way in which devolution has worked, this might be the time to have the conversation about whether, systematically, there are advantages to be achieved from taking another look. That is as far as the conversation has gone.

Mr Elliott: Thank you very much, Lord Chief Justice, for the presentation. It is good that there is co-operation between you, your Department and the Committee.

I want to follow on from Mr Humphrey's points. In broad terms — I do not need anything specific — how do performance figures here compare with other parts of the United Kingdom?

Sir Declan Morgan: There are certain things that Great Britain does well. For instance, if you look closely, you will find that, in a murder case of any sort in Britain, the accused is in the Crown Court within about four or five days. In other words, the issue of competency has been dealt with, and the case is with somebody who will manage it through to trial quickly. They probably get all those cases into court considerably more quickly than we do. That is one of the changes in the Bill that is coming through, and I think that it will make a difference. The same is true for cases in which people want to accept that they are criminally responsible and plead guilty. I am sure that they also get dealt with much more quickly in England and Wales than they do here.

On the issue of getting cases dealt with earlier, my previous Crown Court judge, Mr Justice Hart, at my request, went to Liverpool, which we thought would be a comparable court, to see whether the case management systems in place there made a difference to getting, in particular, early guilty pleas. If somebody is going to plead guilty, they have an interest in doing so early because they will get a discounted sentence. If they leave it until the last minute, the discount is reduced — that is just the way that it is.

Given all that had been done in England and Wales — introducing compulsory discounts and so on— it was perhaps surprising that he came back and said that, from talking to the judges, it was the same old story. Certain groups of defendants will not face up to it until they see the jury being sworn and the case getting ready to go on. Such cases form quite a high percentage of the trials that, as they say, crack. As far as I can see, there is not so much of a difference in that regard.

Mr Elliott: I sense some frustration on your part with co-operation. You say that you cannot see the whole picture. In other words, at times, you do not control your destiny when it comes to timetabling and moving the process forward. I sense that same frustration from other departmental officials who come to the Committee to speak about similar Courts and Tribunals Service subjects. However, I cannot establish how that co-operation is being taken forward. Does the Department have a strategic approach that includes all relevant agencies — you, the PPS, and the Police Service and so on — with somebody in between co-ordinating it? I sense a lack of confidence among those who come here about giving up a wee bit of their ground in case someone else steals it.

Sir Declan Morgan: There are good reasons why the Police Service should be independent and why the PPS and we should be independent. However, there also are very good reasons why we should all work very closely together to ensure that the system works properly. In the development of case management systems, for instance, we brought the other agencies in through the door and talked to them about it, and we did the same with the youth courts. We did so to ensure the building of working relationships. We think that some of what we have done with case management protocols has been very successful. All the evidence that I have received suggests that that is the case.

One of the reasons why, from my point of view, there is public benefit in looking at responsibility for what happens in the Courts and Tribunals Service is that among the most important people there are those known as court progression officers. They keep tabs on all the relevant parties — the prosecution, the defence, the judiciary and everybody else — to ensure that cases that need to get on do get on and that, if there is a problem, it is identified in advance and, if possible, solved. That may be part of the co-ordinating role that you mentioned. It is helped by the police taking on the new witness care unit, which will also help to ensure that there is a co-ordinated approach and that information gets through at an early stage so that any problems can be identified. This is still a work in progress but it is one on which we can see a way forward. I have no complaints at all to make about co-operation from the other agencies. When, for instance, I decided to list four Crown Court judges for the year in Belfast to tackle the problems there, I had complete support from the PPS, which put four teams of prosecutors in to deal with it, and I had support from the PSNI, which identified the police divisions that the two groups of judges would deal with to ensure that the system had the best possible chance of working. Those co-operative relationships are a very positive sign and have, I think, been helped by involving those agencies in our management.

Mr Elliott: In that sense, where are on the scale of progress since you took over, or at least in the past few years? Are we getting towards one third of the way there? I assume that you would not disagree that there is still a lot of work to be done.

Sir Declan Morgan: I agree that there is a lot of work to be done, but you would be seriously underestimating the commitment of all the agencies to making the system work if you thought that we were only one third of the way there. We have come a long way in a very short time. I think that we

have picked up lots of what is, these days, characterised as "low-hanging fruit". We have to grapple with some of the more difficult issues, and we are finding ways of ensuring that everyone is comfortable that working together does not undermine their independence. So, without seeking to undermine the fact that we have a way to go, I am much more optimistic about where we are.

The Chairperson: Thank you. We will move to the next theme on which Ms McCorley will lead off.

Ms McCorley: The next theme is sentencing, which comes in for a lot of criticism. It can often be very difficult for people to understand sentences that are handed down and, indeed, those not handed down. How can you enhance community confidence in sentencing? What actions have you taken to raise awareness in the community of the issues involved? Finally, how can you ensure transparency?

Sir Declan Morgan: I will talk about some of what I have tried to do in that area. In late 2010, I set up the sentencing group because I felt that there was a need to demonstrate to the public, as best we could, how we go about sentencing. The group was given the task of ensuring that we had a public face on the internet that made available to the public information on how we should approach sentencing in various areas. To do that, the group needed to identify guideline cases that told you what was likely to happen so that, if, for instance, a sentence is given, you can look at the guideline case and see whether your case falls within, outside, above or below it. Then you are entitled to raise an enquiry about why it was one or the other. So that was the first major step that I took.

I also felt that there was a lot to be said for ensuring that this was not, and did not appear to be, solely judicial. In other words, we were not keeping people out. Although this sort of exercise has to be judge-led because of its technical aspects, involving members of the public seemed to me to be a very sensible way forward. The Minister was keen on it, and we very quickly agreed that that was the way in which we should go. Therefore, I agreed, about a year ago, that two laypeople should join the sentencing group and play a role as equal members of it. I am hopeful that, within a very short time, we will manage to do that. However, I said to you in my opening remarks that one of the difficulties is that the public understanding of what happens in the courts is usually gained through the media, whether it be television, the newspapers or news text on television, or whatever it is that they call it these days — I am never entirely sure.

I hope that I am not giving away any secrets here, but I am conscious that, if I were to write a 50-paragraph judgement setting out reasons for why I had taken a particular course, no newspaper editor, television editor or director in the wide world would give me space for it. So we have to start getting smart about that sort of thing, particularly if there are cases in which considerable public interest is expected. So, two or three years ago, I set up a system whereby we prepare a summary of judgements that we identify as being of interest to the public. At about the same time, the Supreme Court started doing that in the United Kingdom. I am not sure who got in first, but the idea is the same. To put it bluntly, we try to write the script for journalists so that all that they have to do is top and tail, and they may want to make a few adjustments here and there. It is an entirely proper course for us to take because it gives us the chance to ensure that this is written in a way that should make the decision comprehensible. It does not always work, there is not always space even for the summary and the danger is that, sometimes, the public see only the headline and not the underlying reasons. The summaries are probably the most effective way in which we make information public, although we also publish on the internet all judgements in the higher courts. So, if somebody wants to access a judgement that sets out the sentencing remarks made in a serious case, they will almost certainly be able to find it on the internet.

Ms McCorley: Thank you. May I take you back to what you said about including lay members of the community? How would they be selected? Do you feel that people at all levels in society would feel able to apply?

Sir Declan Morgan: That is, I am afraid, a difficult and slightly embarrassing question. I had agreed with the Minister that we should look for somebody who was able to look at things from a victim's perspective and somebody who was able to look at this from a more academic perspective so that we would have two laypeople with different backgrounds. We advertised, and 19 people requested the pack. I am afraid that we had no applicants, which really surprised me, given that this issue is as publicly interesting as it is. It was not that people did not know about it because, as I said, 19 people received the pack. I am not sure whether they thought that there was too much work attached to it or whether they thought that it was not their bag, but the two people for the sentencing group will come off the Minister's list. That is as much as I know. I am not trying to control who the people are. I am

delighted to have members of the public coming into the sentencing group because they are bound to enable us to think more creatively and positively.

Ms Laurene McAlpine (Office of the Lord Chief Justice): I think that the Minister is just being a bit more proactive in identifying groups or individuals with something particular to contribute to this and encourage more applications from which a selection could be made.

Mr McCartney: Are these roles for a fixed term?

Ms McAlpine: Yes, three years, I think.

The Chairperson: The Committee corresponded with you on sentencing, particularly on convictions for fuel laundering, or areas related to oil fraud. Committee members were concerned about the nominal custodial sentences handed out in this jurisdiction and made a comparison with England and Wales. I accept that we cannot always make a straight comparison and that each case is different, but that comparison suggests a clear difference. You said that, on this type of charge, the PPS does not have the power to refer to the Court of Appeal, which is the right place to provide a judgement that can then guide. Nevertheless, you have taken on a piece of work on that. Will you comment on fuel laundering? Many regard it as a serious crime, not only because it pollutes the environment but because of the cost to the Exchequer in lost revenue and the vast sums of money from which criminal organisations benefit. The public and, indeed, many politicians do not understand why there have been so few custodial sentences when people have been brought before the courts.

Sir Declan Morgan: I can do no more than read out what we said in a judgement on cigarette smuggling that we gave on 30 June 2011:

> *"having regard to the quantity of the smuggled goods, the degree of organisation involved in the enterprise and the amount of duty evaded we consider that a lengthy custodial sentence should be the norm. We are not convinced that the circumstances of these cases were sufficiently exceptional to justify the leniency shown by the sentencing judges in suspending the sentences. This type of smuggling activity represents a heavy drain on the public exchequer, involves complex and expensive investigation, and results in criminals making substantial profits at the expense of the public and legitimate trade. Accordingly, we consider that it should normally attract a substantial deterrent custodial sentence."*

I am not sure that many such cases have come to the Crown Court over the most recent period, but I do not think that there is any equivocation in that message.

The Chairperson: Mr Eastwood, have you a question?

Mr Easton: Mr Eastwood? *[Laughter.]*

The Chairperson: Sorry.

Mr Lynch: It is the week that is in it.

Mr Easton: Thank you for your presentation. Recently, there has been a bit of controversy over bail conditions. Obviously, I will not go into that, but does work need to be done to educate the public about how that type of decision is made?

Sir Declan Morgan: Yes. We have just published a guide to bail applications, and I think that it is available in all the court offices from today. The guide sets out exactly what the criteria are, what the law is, what the basis is for making decisions and how appeals on bails can come forward. That will be available in the courts and, perhaps, online, to everybody. It is a DOJ publication, and I am sure that it will be freely available to you.

I agree with you that it is important for us to think smart about ensuring that members of the public are aware of everything that we do. It seemed to us that there was some lack of understanding of everything associated with bail. That was one of the areas in which we needed to increase understanding, and we have taken steps to do so.

The Chairperson: Mr Easton, thank you very much. *[Laughter.]* That brings us to judicial independence, which is an area that I want to touch on, so I will lead. I have found it very helpful to refer, as I do frequently, to a speech that you provided to the Law Society in Dublin back in May 2012. I have it with me because I read through it this morning to remind me of some points. It gave me an insight into the judiciary's thinking on where the equilibrium is, how we find that equilibrium and how we engage in that conversation. It is, I think, an important area for politicians to get a better grasp of.

It would be helpful if you could elaborate on a point. You said in that speech and today that the judiciary is independent and not isolated and that there must be conversation with the different branches of the Executive and the legislature. You refer to how a legislature can deal with sensitive social areas. I was not going to go into particular social issues, but I will mention one: same-sex marriage. When the Assembly voted on that last week, the majority holding a particular stance increased. On that and other social issues, we are prepared to roll up our sleeves. However, other legislatures are not, and, often, it is left to the courts. I do not think that this place has ever shied away from getting involved in delicate social matters, yet you make it clear in your speech that the Human Rights Act 1998 shifted the balance and invited the courts to be more proactively involved. Where are the boundaries on this type of issue? Ultimately, where does the legislature have primacy? If this is the express will of the democratically elected Assembly and this is its clear position on a sensitive social issue, where are the boundaries that allow the courts here to be involved in what some may describe as interfering in that democratic process?

Sir Declan Morgan: I have no doubt that the Human Rights Act has made a difference to the nature of the decisions that judges have to make. The days of black letter law, which were more familiar through the 1950s and 1960s, are now gone. We are required by statute — it is a requirement that was imposed on us, not one that we took — by the Human Rights Act to make decisions in accordance with the convention. You are required to ensure that you do not pass laws that offend the convention, and, if you try to do so, you will not be allowed. So the convention applies to all of us, and it applies because that is what the law says. It is what is in the Northern Ireland Act and the Human Rights Act, and we all have to act in accordance with it.

That imposes obligations on the courts to deal with what are extremely sensitive social issues of gender, sexual orientation and other matters. I suspect that part of the tension is that we are part of the United Kingdom. However, I have often debated whether, as part of the United Kingdom, we can take a different approach from other parts the United Kingdom on the basis of our devolved status. Indeed, I discussed this only last weekend at a conference at which representatives of the four jurisdictions in the British Isles were present.

These are very difficult issues. We cannot shy away from making decisions that Parliament has said that we have to make. You may decide or take the view that those are political decisions, and they may be decisions that have an element of politics about them. However, they are judicial decisions because Parliament tells us that we have to make them. We do not have an option; we cannot stand back and say that we will not apply the Human Rights Act. I can see that the nature of the decisions that we have to take raises issues in some cases about religious and moral views that some may have. How one ensures that one takes judicial decisions completely independently of one's social view, religious view or whatever is not straightforward. It is a task that is imposed on us, and, if somebody wanted to take it away, I would have to respect that. However, I cannot possibly not do it because that is what I am required to do as a judge.

We discussed a decision of the European Court, made in January, which looked at a number of issues that concern people. The decision involved a lady who wanted to wear a small cross when working for British Airways, and the court took the view that it was inappropriate that she should be prevented from doing so when there was not good reason. It also involved a lady, a Christian registrar, who wanted to share out her work so that she did not have to perform civil partnerships as doing so would offend her religious views. She explained that she could share out the work, but the European Court said no. It stated that the commitment of the United Kingdom to equality of opportunity outweighed the interference with her religious viewpoints. Those are the types of cases in which these types of social issue arise. We will have to deal with them on the basis of the relevant legal principles.

The Chairperson: In all judgements and conventions, there are caveats to some of the European judgements based on moral considerations and so on. Indeed, I think that your paper refers to "a margin of appreciation". If I am picking you up correctly, you are telling me that, if the UK Government enter into something at a European level, you question the ability of a devolved Assembly in the United Kingdom to depart from that.

Sir Declan Morgan: No, I am just raising the question. It is a very odd position to be in. The United Kingdom Government could go to the European Court and say, "We have a commitment to this, that and the other", which should lead to there being no conscientious objection defence for those who do not want to carry out certain tasks. It would be very odd if a part of the United Kingdom was then asked to consider legislation compatible with the convention but possibly not compatible with the view of the Westminster Government on what the convention should say. I am not expressing a view about an outcome; I am simply noting that these issues create problems that we will all have to address.

The Chairperson: I am trying to elicit from you what cognisance the courts here take of the Assembly when it takes a very clear position that is not in line with that of the UK Government. No party here wants the 1967 Abortion Act to be extended to Northern Ireland. What would happen were somebody to take a case to court on the basis of their being deprived of the same rights to procure an abortion as a person in England?

Sir Declan Morgan: There is clear law that such a case would fail: it failed in Europe and would fail here as well. There is more interesting case law about whether doctors need to know what they can and cannot do. That is the ongoing debate in the Republic of Ireland and one that we have also had here.

The Chairperson: This is why we have this conversation. So far, it seems that when a Minister takes a decision, there is a court case and a judgement. That is the nature of the engagement. Without compromising anybody's independence, is there a better way to have that engagement? Currently, from what I can see, it is a rigid and formal process.

Sir Declan Morgan: I am not sure that there is. You must recognise that the difficulty is that we deal with cases as they come in front of us. We have to hear a submission from the person involved and the particular circumstances of an individual case. So we have two decisions to make: one on the principle and one on its application. I cannot see circumstances in which we could get around that process. Constitutionally, the process works. You may identify that, in this particular instance, you would prefer that it was done differently. Constitutionally, however, that is the way that we have always operated the United Kingdom. At present, I do not see any means of approaching it differently.

The Chairperson: Thank you. Does anyone want to come in on that point?

Mr McCartney: What is the process of validating judicial independence to the public?

Sir Declan Morgan: In what sense?

Mr McCartney: Sometimes, people ask what independence means. In your opening remarks, you talked about isolation. Some may mistake isolation for a lack of independence, so how do we validate judicial independence?

Sir Declan Morgan: I have tried to suggest that judicial independence is a concept. Bits of it are, for me, absolutely black letter. For example, a judge making a decision must do so with no external influences of any kind, implied or otherwise, being taken into account: the judge must make a decision a according to the law. It is as simple as that, and there is no other way round that. A judge needs to ensure that cases that need to get on do get on because you cannot have a situation in which the Executive are able to say, "Well, we'll put that case back while we think about whether we will change our mind."

As I stated in the paper, however, there are other aspects of judicial independence in which one needs to recognise that there are interests for the Executive, the legislature and the judges. Those are the areas that relate to resource. The complement of the judiciary, as you see from the papers, required a business case to be produced — and that was for very sensible and appropriate reasons. I have an involvement in that because of what I want, but the Minister also has an involvement and, as the holders of the purse, the legislature also has an involvement. Such areas include the provision of courtrooms and the staff to run them. Those are issues on which there is a discussion to be had between an independent judiciary, Ministers, you and others. I recognise, therefore, that it is not a bright line concept but one that has grey edges to it.

Mr A Maginness: Just in relation to the Human Rights Act 1998, you talked about the convention, and, in many respects, the Act incorporates the convention. That came into effect in the early part of the last decade. What effect has that had on the way that judges judge and approach cases? Can you share your views on that? The reason I say it, Lord Chief Justice, is that there are some people who would prefer it if the Act were repealed. I am not asking you to comment on the relative merits of that. If the Act were repealed, would that have any impact on the way that judges would continue to deal with cases?

Sir Declan Morgan: That is a very interesting question, because, once you train someone to approach things in a certain way, would you go back to where you were after you had repealed the Act? I am not sure that you would. If you were to repeal the Act, you might have to decide where judges should go back to because, just as the Act gave the judges obligations about what they had to do, so a repeal of the Act might well have to indicate what they should do having repealed it. That is what the statute might have to think about.

There is no doubt that the Human Rights Act 1998 has required a much more intense focus on issues such as family life. It has required a much more intense focus on the types of social issues that we have been talking about. It has had an impact on fair trial rights and on the circumstances in which people can be detained. Of course, it has had an impact on how we deal with the past, because the Act has required the legacy inquests, which are in the process of working their way through. Had it not been for that, the investigations into the circumstances of various deaths would not have occurred in the way that they have. Those have been huge issues for our society, and we have had to try to work through how all of that works into a developing constitutional democracy. Its impact has been enormous, and it has meant a very big change for us. On what the abolition of the Act would mean for us, we just have to read the statute and see.

The Chairperson: I will finish off this session, and we will then go into the last area. We cannot legislate contrary to the Human Rights Act 1998 and things like that, but the point I want to make is, on quite a number of sensitive social issues, we do not need to legislate. For a lot of people, the status quo is more than satisfactory.

Sir Declan Morgan: You need to be careful. The status quo might not be lawful. For instance, in 1996, there was a test as to whether gay people should be allowed to join the armed forces. The Court of Appeal looked very carefully at the justifications that were offered and gave it extra scrutiny and considered that that was a perfectly appropriate status quo to preserve because good reasons were advanced. The European Court of Human Rights decided that that was not sufficient. It felt that insufficient weight was being given to the rights of the individuals concerned who wanted to join the armed forces, and the effect was that there was then a change. That is all that I am pointing out.

Of course, the other thing that, I think, has been a matter of controversy is that people may suggest that the jurisprudence of the European Court of Human Rights is evolving; it is not stationary. One only has to look at its jurisprudence in relation to sexual orientation and transgender to see that after saying, "no", "no", "no", it said, "yes" and then moved on. It is a court in which precedent, of itself, does not necessarily mean that that is where we are, because if social circumstances change, the answer may change.

The Chairperson: How does that then interface with this legislature? Let me take an example, although you maybe cannot give too much commentary on this. If England and Wales legislate for same-sex marriage, given that there seems to be a majority in Parliament to do that, and the indication seems to be that Scotland will do so, but Northern Ireland does not — that is not going to come through this place — what would happen if somebody then took a case to court for discrimination, as lobby groups have indicated?

Sir Declan Morgan: Since I might be hearing it, I cannot comment. *[Laughter.]*

The Chairperson: That is why I caveated that by saying that you maybe cannot comment on it. In terms of that conversation, there may come a point where we do not want to change the law on some other issue, and a decision may be taken that is contrary to that. The courts cannot compel me or others to walk through the Lobby to vote for something that we do not agree to.

Sir Declan Morgan: Of course not. This issue has appeared in a more neutral way, if you like, with prisoners' votes and the approach that should be taken in relation to that. You are quite right: nobody can be compelled to go through the Lobby. If you want, you can just keep shelling out £2,000 or

£3,000 every time that somebody goes to Europe. Of course, if legislation were passed in this jurisdiction that was found to be contrary to human rights, it would be judged to be outside the competence of the Assembly.

The Chairperson: OK. We will leave those points there. That will be for another day.

Sir Declan Morgan: It will be a much longer day, even than this one. *[Laughter.]*

The Chairperson: Mr Maginness will lead on the final area of the County Court judicial complement.

Mr A Maginness: Thank you very much, Chair. It has been a very interesting afternoon, and some very interesting points have been raised. I suppose that, to some extent, this touches on the issue of avoidable delay. We have been in receipt of a report that, I think, originally emanated from County Court judges and which was then adopted by NIJAC.

Sir Declan Morgan: We developed it, yes

Mr A Maginness: It shows a very serious increase in the amount of work that County Court judges have to carry out. There has been a significant increase in Crown Court business. There is also the transfer of Crown Court bail applications from the High Court to the County Court.

Sir Declan Morgan: I should say that there simply is not the resource scope in the County Court to do that.

Mr A Maginness: That is not going to happen?

Sir Declan Morgan: No. Although the power is there, I could not possibly implement it, because it would be quite unfair to push that burden on to County Court judges in circumstances where they are already absolutely worked to the bone. So, although that power is there, I cannot exercise it, because there is not the resource to enable me to do it.

Mr A Maginness: Also, there is the assignment of County Court judges to deal with Crown Court murders.

Sir Declan Morgan: I talked to the Recorder about the level of that. I think that that is good for County Court judges, because it gives them a chance to take on these more serious aspects of work. It is good for diversity as well. Those are the sorts of things that, I think, will enable them to move onwards and upwards over time, and that is what we wish to do. Obviously, however, I can assign murder cases to County Court judges only if it will not have an adverse effect on their ability to do the rest of their Crown Court work. So, there are cases that I could cheerfully assign to County Court judges which, unfortunately, I cannot do, and I assign them to High Court colleagues.

Mr A Maginness: By the way, I am not objecting to any of those things; just pointing them out as matters of fact.

There is also the increase in civil business, particularly appeals to the County Court from the Magistrates' Court, and the increase in the caseload in the Belfast family care sector. It seems to be quite significant.

Sir Declan Morgan: In family work, I have changed the rules a bit relatively recently. I appointed a principal family judge in the family care centre, which is on the County Court tier. I did that because I felt that there was a need to ensure consistency in the approach to family cases. Judge Smyth took on that role just over a year ago. I have also appointed a second judge to support her. He essentially deals with family cases in the Craigavon care centre and, from this term, also the Fermanagh and Tyrone centre. If that turns out to be successful, I will expect him to take over the family work in the north-west as well so that there will be a degree of consistency in the approach to family work right throughout Northern Ireland, which would be informed by those two judges. Judge Smyth's appointment is for a period of three years. I have indicated that when that period is up, I will appoint somebody else. I think, again, it is good to have fresh ideas coming into a post such as that. So, rather than simply leaving somebody as the only person who has ever done family law in Northern Ireland, it is better to ensure that there are, if you like — apart from anything else, it gives you

succession planning and scope in the event that somebody becomes ill or something like that, to have experienced people who have done this sort of work.

Mr A Maginness: There is also the increase or potential increase in work in relation to the change in jurisdiction, which we have discussed here before. I am not sure when that comes into being.

Sir Declan Morgan: The jurisdiction change comes into being on 25 February. As it happens, earlier this week, I had a meeting with a representative of the district judges civil. I asked her what she was able to tell me about the scope of work that is coming in. She said that it is still very early days, but one of the interesting things from the stats that we saw was that there were three times as many cases going to district judges as there was to the County Count. One of the things that we have always been conscious of is that we do not feel that, at this stage, we are in a position to say that the effect of that jurisdictional increase will impinge one way or the other. It could impinge more directly on the district judges than on the County Court, or vice versa.

Mr A Maginness: I do not understand. Do people estimate the damages to be less?

Sir Declan Morgan: Their jurisdiction has gone up from 5,000 to 10,000. Therefore, the question is whether that increase in jurisdiction will increase the number of cases before the district judges quite considerably — cases which formerly went to the County Court — and whether, in fact, the County Court judge, in getting the additional increase from 15,000 to 30,000, will get a balancing increase to cover cases that go to the district judge. We just do not know. I think that it is always one of those suck-it-and-see situations where you have to be prepared to respond to what the figures are telling you. We are keeping a very close eye on the figures. At present, Judge Brownlie's assessment is that we are not yet in a position to come to any view. I imagine that we probably will not be until the autumn.

Mr A Maginness: Does that create a greater burden for the district judge?

Sir Declan Morgan: It does. That is why, on the question of judicial complement, I have always made it clear that I do not rule out coming back to look for an additional district judge. The County Court case is made on the basis of the criminal work. If the amount of civil work increased dramatically, I would have to look at coming back for a judge to deal with that. If in fact the dramatic increase happens not at the County Court level but at the district judge level, then that is the area where I would come back in to look for support.

Mr A Maginness: Further to that, there is a very substantial argument for an increase in the County Court complement. The final conclusion was one additional judge, which, I think, you support and have requested the Department to look at. Is that not a bit minimalist? Is there not a good case for more than one?

Sir Declan Morgan: I think that you have been talking to some County Court judges, Mr Maginness. I can assure you that the County Court judges think that, at this stage, going in for one is the absolute minimum that one should be looking for. As with all these things, we have agreed that, in order to satisfy the needs of the bean counters, that is the approach that we should take. If it turns out that we can justify a further increase in the numbers at a later stage, I will certainly not be slow about bringing that forward. The reason why I would have to bring it forward is because there would be no point in me setting a target for things such as avoidable delay while, at the same time, I was leaving myself without the resources to be able to deliver on that. If I have not got the resources to deliver on it, then I need to come back and tell you that my targets were now gone and that you should not make a judgement about delay on the basis of my targets. That is the balance, as it were.

Mr A Maginness: I am on your side.

Sir Declan Morgan: Thank you very much.

Mr A Maginness: I have one final point in relation to the County Court and the increase in jurisdiction. No matter whether it is the County Court or the District Court jurisdiction, it is my belief that there will be a further strain on space in the County Courts. I mean not just space in courtrooms but space for consultation and so forth. How will that be progressed?

Sir Declan Morgan: I think that you are touching on something that I spoke to Mr Humphrey about. I do not have — yet — the means of standing back and taking a look at the entirely of the court estate and deciding how best and most efficiently to use it. I can see quite considerable arguments for the view that, if I should take it on, I should not only do it but be accountable for it as well. That is one of the things that we will need to think about very carefully. However, I take your point. If you go to Old Townhall Buildings to courts 1 and 2, which can be exceptionally busy courts, you will see that there is a waiting area between the two courts along with a couple of consultation rooms. If those two courts are going full pelt, there is absolutely no way that the waiting room and the consultation rooms are sufficient for the work.

Mr A Maginness: Particularly if there are doctors involved.

Sir Declan Morgan: Yes. However, members of the public are entitled to be properly accommodated as well. It would be very difficult to accommodate members of the public in those rooms.

Mr A Maginness: My point is that, in many County Court cases, currently or previously, you would not have had that many doctors. However, as the increase in jurisdiction takes in more serious cases, doctors may be required.

Sir Declan Morgan: That is true. I know that I mentioned the consultation facilities, but I think that the waiting areas are the bigger issue. That is because, at the end of the day, both the Bar and solicitors have nearby premises in which they should be able to consult with professionals.

The Chairperson: If you give us a new courthouse in Lisburn, I will quite happily put you in charge of the court estate — if I had it in my gift. We would like one.

Sir Declan Morgan: Could I suggest five other venues to you? We might do the same.

Mr Elliott: My question is brief. You talked about the family casework. What type of liaison and co-operation is there between social services and your people to facilitate those cases? That is very important, and it has been suggested to me at times that it has not been good.

Sir Declan Morgan: I am not sure that that is right. I was a family judge from 2007 to 2008 and I worked with Mr Justice Weir, who has just stopped being the family judge relatively recently, in developing a case management protocol which he then took forward and put into final form with Mr Justice Stephens after I left. The whole point of that protocol was to ensure that there was exactly what you have mentioned, a proper working relationship between the courts and the social services as to when such cases should come to court and what should happen when they did. A lot of that was designed around the need to ensure that, if there are issues about children that need to be addressed, it is vitally important that social services identify what the issue is at an early stage, particularly if it is not an issue that leaves the child exposed to harm and where there may be the possibility of taking steps before you come to court, to make sure that the issues get resolved. The child's circumstances are improved as a result of that. That has proved to be pretty successful. So there is the pre-court area.

The second thing is that there is now a much greater emphasis on getting everyone into court, if it has to be the case, and getting them to get to grips with what the issues are right at the early stage and to begin to think about the future of the child from the word go. In my view, over the last five years there has been a sea change in the relationship between the trusts and the courts which has been much more positive in ensuring that a lot of those children are in a much better place than they would have been.

Mr Elliott: I am pleased to hear that, although it is not generally the impression that I get from some of the trust officials.

Sir Declan Morgan: I am disappointed in that.

Mr Elliott: While they do accept that there has been a moderate improvement, the trust officials suggest that they were starting from a very low base, and there is certainly a long way to go. I do not put the blame firmly on your people, but I think that there should be a lot more co-operation because we are dealing with an extremely vulnerable group of people.

Sir Declan Morgan: I need to be careful about what I say. The people we see are those who enter the court system at the end of the process. There are a lot of people who have relationships with social services and the courts see little or nothing of them. I appreciate that.

The Chairperson: That concludes our session together. Thank you very much for affording the Committee this opportunity. I do not intend that this will be a frequent event, but certainly you have set a precedent for your office and I hope that, at some future opportunity and when it is appropriate, you will come back to the Committee.

Mr Elliott: Next week? *[Laughter.]*

Sir Declan Morgan: You might want to give some to whether we should think about making this an annual event. I do a speech in September where I set out what the judiciary are doing and where we are going to go. It would not be such a bad thing, sometime in the spring, to have a look at whether I have done the things that I was going to do, or whether there are things that you want to talk to me about. So I leave that thought with you. I certainly would be more than happy to approach this on the basis that we meet up, around this time, once a year to review things.

Thank you very much for your courtesy, and I appreciate very much the opportunity to speak to you.

The Chairperson: Thank you very much.