



**Northern Ireland
Assembly**

COMMITTEE FOR JUSTICE

**OFFICIAL REPORT
(Hansard)**

**Department of Justice Budget and
Financial Position**

24 June 2010

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Tom Elliott
Mr Alban Maginness
Mr Conall McDevitt
Mr David McNarry
Mr John O'Dowd
Mr Alastair Ross

Witnesses:

Mr Glyn Capper)	
Mr Anthony Harbinson)	Department of Justice
Mr Sean Lavery)	

The Chairperson (Lord Morrow):

I welcome Anthony Harbinson, director of resources, Glyn Capper, deputy director of finance, and Sean Lavery, head of financial planning and control. I invite you to make your presentation.

Mr Anthony Harbinson (Department of Justice):

At the end of my last appearance before the Committee, members asked for a specific session on Department of Justice (DOJ) finances so that they could consider in depth the issues that will face

the Department both in-year and in the coming years. I supplied the Committee with an advance briefing and, hopefully, that will form the basis of today's discussions.

Before making my presentation, I will introduce my colleagues. Glyn Capper is the deputy director of finance and, therefore, head of our finance function. He will have most of the details if we get stuck on any numbers. Sean Laverty is head of the financial planning and control section. Glyn appeared before the Committee recently to discuss the Department's approach to the June monitoring round. If members have any further questions on that, we will be more than happy to deal with them today as well.

The advance briefing provides details of the 2010-11 Budget allocations across our main spending areas and between the different expenditure categories. It also provides a summary of our value-for-money programme as part of the 2007 comprehensive spending review (CSR). As the Committee will be aware from the briefing that Glyn provided, the Department's June monitoring process identified no new pressures or easements other than those that were addressed in the then Prime Minister's financial package for the devolution of policing and justice powers: PSNI hearing loss claims; potential equal pay costs; legal aid funding; and PSNI security funding. I will cover each of those pressures again in a little detail.

First, I turn to the pressure of the cost of the PSNI hearing loss claims. I can confirm that, at present, the PSNI is forecasting a 2010-11 cost of £17 million, which is £3 million of an increase since I provided the advance briefing. The financial package on devolution stated that the Northern Ireland Executive would meet the first £12 million of claims in any one year. Any costs incurred above that sum will then be met through access to the UK Reserve. To assist the Executive to meet the first £12 million of pressure each year, HM Treasury has said that it will be prepared to acquire from the Northern Ireland Executive sellable assets worth up to £12 million in each year for the five years, or £60 million in total. We have, therefore, said to the Department of Finance and Personnel (DFP) that we envisage that we will need to secure from it the first full £12 million of funding and, at present, an additional £5 million from the UK Reserve.

With regard to the potential equal pay costs, work is still being undertaken to determine the extent and quantum of any potential PSNI liability in that area. Again, we have highlighted to DFP that there may be a potential PSNI equal pay cost in-year, but as work is still ongoing on that, we are not yet in a position to provide further information.

Some £39 million of funding is available from the UK Reserve for legal aid and other court pressures as a result of the devolution package, £17 million of which was accessed in 2009-2010. The majority of the balance of £22 million will be required this year. We will know exactly what that figure will be as we move forward, but it looks like it will be in the region of £19 million.

The devolution package provided £37.4 million for additional security funding in the current year, and that has now been secured. The Committee has received a breakdown of how the funding was made up. In addition to that substantive agreement, prior to devolution, the Chief Constable indicated that he would need additional funding this year beyond the £37.4 million. The decision to extend the operational duty of the full-time Reserve will also create an additional security funding requirement of approximately £9 million. However, that is likely to fall into next year, 2011-12. Those issues are currently being pursued with DFP and Treasury. At some stage, they will come back with confirmation of the figures.

I would like to turn to Budget 2010 and mention the wider economic front and issues that the Department will face over the next two years. On Tuesday 22 June 2010, the Chancellor announced details of his emergency Budget. He made it clear that the entire UK public sector would face significant funding reductions over the next four years. Those cuts will impact on all Northern Ireland Departments, including the Department of Justice. That will mean that difficult decisions on resource allocations will have to be made as part of the Budget 2010 process.

Since I sent the Committee the advance briefing, we have launched a Budget 2010 information-gathering exercise throughout the Department in line with DFP guidance. It will provide us with information that is necessary to engage DFP, and, hopefully, it will prepare us for the difficult financial position that we will face during the next spending review period. The exercise has two parts. The first is to identify spending proposals and inescapable pressures. The second part is the most difficult; we have asked spending areas to undertake a scenario-planning exercise to outline how they could deliver different levels of savings and cuts.

A key element of the Budget 2010 process for the Department of Justice will be whether the Executive determine that the Department's budget is to be ring-fenced again or treated in line with other Departments. We will write to the Committee shortly to ask its advice on how it wants to be involved in the Budget 2010 process, particularly the aspects that happen between now and

September, as we must report quite a lot of information to DFP during that period.

In conclusion, I hope that the advance briefing and my comments today have provided the Committee with some of the further information that it sought on the Department's financial position. We are happy to take any questions.

The Chairperson:

Thank you, Mr Harbinson. The justice budget is ring-fenced for the current year. There is no guarantee that it will be ring-fenced next year.

Mr Harbinson:

That is correct.

The Chairperson:

According to the figures that we have in front of us, the largest slice of the Department's budget, £529.2 million, is for the PSNI. If the justice budget were to take a 25% cut, it must be reasonable to assume that the greatest impact would be on that portion, which would mean a cutback in front line policing and, therefore, a cutback in security. Do you have any proposals on how that might be counteracted?

Mr Harbinson:

As I said, the process that I launched yesterday will tie together information from each of the spending areas, including from the PSNI, on what the likely impact of various savings will mean for them as they go forward. Obviously, it will be for the Chief Constable to determine the nature of operational cuts in the organisation. However, you are absolutely right: pain will be felt throughout the Department. As the PSNI makes up the single biggest element of the budget, it will also feel that pain. As regards where cuts would fall, at this stage, I do not have the detail to be able to tell you how they would impact on the PSNI. The Prime Minister assured us that additional money would be made available to meet the growing security threat from dissidents. Therefore, that is separate. I imagine that access to Treasury will continue beyond the end of the current year and into the next spending review.

The Chairperson:

I am not sure that the Chancellor said that on Tuesday.

Mr Harbinson:

No. However, we will want to take up that issue with DFP and Treasury. Our understanding is that we will still have access to money for a security bid, if that arises. As I said, we have identified at least £9 million that we will have to bid for as a result of the full-time Reserve costs.

The Chairperson:

I still think that there are real concerns about police numbers. Many complaints are being made about the lack of resources, not least from those of us who live in border areas and who know what is currently going on there. Having listened to what you have said and having looked at the figures, which show that 66% of the justice budget is for policing, I do not think that the situation bodes well for the future.

Mr McNarry:

Gentlemen, you are very welcome. I am grateful for the information that you have provided, but I have some criticisms to make. Three paragraphs at the start of your briefing paper state that it is too early to be specific about financial implications. Another paragraph states that issues to do with the block grant are not yet resolved, so no decisions can be taken on unallocated funding. Another paragraph states that the Department is unable to provide information on equal pay, a subject to which I shall return. The document also states that the position on Reserve funding will become clearer as the year goes on. We are now into June. A later paragraph states that the Department is pursuing with DFP and the Treasury the need for an extra £9 million, and the next paragraph states that your ideas on planning work and a savings delivery plan will be shared as soon as possible.

Your paper states that, in any one year, the Executive will meet £12 million of the costs of PSNI hearing loss claims. How many years will that be required for? Is it for the five years for which the Treasury, it appears, requires the Executive to sell assets worth up to £12 million a year, or £60 million in total? Is there a link between that five-year period and the amount of time for which the Executive will have to meet the cost of claims? What assets of up to £12 million in value will be sold annually for five years?

The Chairman mentioned the fact that when the Minister first came to the Committee, he said that he had sufficient resources and that he was confident that — I am paraphrasing — if he had

to dip in, money would be available in reserves. What are those reserves, and how can the Minister dip into them or attain them?

I heard your comments on this week's Budget, and I commend you on gathering information. It is important to know what assumptions you are making about how the comprehensive spending review of 20 October will impact on the Department. What direction are you giving on the information-gathering exercise? I want to try to tease out those assumptions.

Mr Harbinson:

You asked a lot of questions, and I am not sure where to begin. If I miss anything, please prompt me. I shall start with the hearing loss claim.

Mr McNarry:

If the Chairman will allow, perhaps we will start with the point that you have provided us with a paper that states that an awful lot of issues are in abeyance and that it is too early to be specific. The paper does not say when you might be able to be specific or when we might have the information.

Mr Harbinson:

Apologies; it is a fair point.

Mr McNarry:

You do not need to apologise; I am only asking a question.

Mr Harbinson:

Much of what we do depends on how the Executive determine that they want to deal with the impact that the first £6.2 billion of savings announced by the Chancellor will have on Northern Ireland. It is question of how they will treat that. They may decide to ring-fence the Department's budget or they may decide to treat it in line with other Departments. If the budget is ring-fenced, we will have to find out what exact share of it will relate directly to policing and justice. Once we know that, we will be able to find out how we can meet the budget, using reserves, slippage or any efficiency or cost-cutting measure that we can manage. That is where we are with that element of the budget.

Mr McNarry:

Hopefully, Chairman, the officials will come back to us with a new draft when they can answer their own questions. I hope that they will come back as soon as possible so that we can get a clear insight into the matter.

I asked about the paragraph on hearing loss in your submission.

Mr Harbinson:

The comments reflect what was said in the settlement package. At that time, the hearing loss costs were pretty much on an upward trajectory, and nobody quite knew where they would finish or how far they would go. Therefore, as part of the devolution settlement, we tried to build in as much protection as possible to cover wherever the issue might go. The feeling was that the claims that were likely to be made would come in within a five-year period and would be dealt with within a five-year period. The limit that the then Prime Minister put on the Executive was that they should be able to bear up to the first £12 million of costs in each year. If the costs rise to £100 million in one year, we would still bear only the first £12 million of costs; the other £88 million would come from the UK Reserve. That was where the figures came from.

The issue of saleable assets is connected to the hearing loss claims. To the best of my knowledge, it has not been specified what the assets would be or where they would come from. The Treasury just said that it would be willing to take on board saleable assets that the Executive would transfer to it. The Treasury would then dispose of those assets to make up the first £12 million if that amount could not be found from within ongoing resources.

Mr McNarry:

Do we know whether the Executive will be able to find the £12 million or whether they will have to flog something?

Mr Harbinson:

That is what we are discussing with DFP at the moment. I think that DFP's view would be that the Department should try to find the first £12 million itself before looking to it for assistance.

Mr McNarry:

I would be interested in pursuing the matter to find out what we have to sell, but I understand that

you do not have that information.

Mr Harbinson:

We have an assets disposal programme, which was already in train before this issue came up. I am not sure that we have identified any further assets that we could sell at this point.

Mr McNarry:

Perhaps you have supplied this information and I have not come across it, but it would be interesting to see your disposal list.

Mr Harbinson:

I am sure that we can provide that.

Mr McNarry:

I asked whether you still concur with what the Minister said about resources. I can understand why he said that. Are you all right for resources?

Mr Harbinson:

I will paraphrase what I think the Minister was saying: if elements outlined in the settlement letter are provided to the Department of Justice as it moves forward, there should be sufficient resources within the Department to get through this year without any great difficulty.

Mr McNarry:

So you can do it within budget.

Mr Harbinson:

Yes.

Mr McNarry:

You are making plans. What are you assuming will come your way that will be different from what is in the budget in front of us?

Mr Harbinson:

The budget in front of you is for this year, and we believe that we will get through this year. The

planning exercise that I mentioned is for the next four years and is part of the Budget 2010 process. We have written to staff in all our spending areas to ask them to tell us what assumptions they need to make and what actions they need to take to meet a number of savings targets. For example, if they have a 5% target, we will ask them how much that will involve and what they will have to do to deliver it. It is really for each spending area to make assumptions for its own area.

Mr McNarry:

Will you have that information by 20 October?

Mr Harbinson:

Yes. The Northern Ireland block grant is the only thing that will be known by that date. Through DFP's mechanisms and the Executive, we will have to negotiate with other Departments to get our share of it.

Mr McNarry:

I hope that that is all co-ordinated and that we will not just wake up to this issue on 20 October. Hopefully, it is not just you who is making assumptions; I hope that every Minister is doing likewise.

Mr Harbinson:

Yes; we will be feeding that to DFP throughout the summer and in the lead up to 20 October.

Mr McNarry:

I take it, Chairperson, that these gentlemen will keep us apprised of the position as it develops and as soon as possible on or after 20 October.

The Chairperson:

Undoubtedly.

Mr Harbinson:

Absolutely; we will make a presentation to the Committee whenever it needs one or whenever there is a clear shift of evidence.

Mr Glyn Capper (Department of Justice):

As Anthony said, we will write to you shortly to ask how you want to be involved during the summer months as we begin to gather information.

Mr Harbinson:

We thought that the Committee might want to discuss what the spending areas are identifying as pressures and where they see potential for savings.

Mr McNarry:

There is a fear that a consequence of this exercise could be a reduction in the number of PSNI officers on the front line. At this stage, do you share that fear, or are you saying that that may not hit us in this financial year but could hit us in future years?

Mr Harbinson:

Yes, that is where I am coming from. We should be able to get through this financial year without front line cuts.

Mr McNarry:

Without trespassing on the Chief Constable's domain, can you at least indicate where those cuts might impact on the budget calculations? It may then be for someone else to make a judgement as to where those resources are used in order to protect PSNI front line services.

Mr Harbinson:

Staff in each area will be asked to say what impact each level of cut will have on them. There will then be a discussion about which areas will be protected and which will have to take a bigger cut. For example, someone may be asked to take twice the percentage standard cut to protect something else. We have always said that back-office services will be the first area that we will tackle to try to protect front line services as much as possible.

Mr McNarry:

In co-ordinating that, your Department has to communicate with the Chief Constable and the Policing Board. That needs to be co-ordinated before we, as public representatives, and the public are made aware of a potential reduction in resources that will affect PSNI manpower.

Mr Harbinson:

Yes.

Mr Elliott:

Thank you for the briefing. Your paper states that:

“Of the £39m Reserve funding available for legal aid and other court pressures, £17m was accessed in 2009/10.”

It adds that the majority of the remainder of the funding will be accessed this year. Does that mean that there will be a change in the speed of reform of the legal aid system?

Mr Harbinson:

The reforms are in progress and are being taken forward. However, my understanding is that when a case is granted legal aid, it is granted under the conditions that apply at that time. Therefore, many cases that have started will continue under the old rules until the new rules kick in. There will, I believe, be about a two-year lag before the financial consequences of the new regulations are fully embedded.

Mr Elliott:

Surely we do not have that two-year period if the Reserve funding is to be used by the end of this financial year?

Mr Harbinson:

The Reserve funding was for last year and this year. Some of the conditions have already begun to change. That is the process. Therefore, we believe that, this year, there will be up to £19 million of additional funding. We started off with a legal aid budget of £65 million pre-devolution, which was increased by £20 million to £85 million.

It will stay at £85 million until 2013, when it will drop to £79 million. We have put in what we think are sufficient resources. I was talking to the team that headed that up, and I think that Robert has been here on a few occasions to bring you through it. We are confident at the moment that we have the resources to take us through that smoothing exercise for the reforms to be implemented.

Mr Elliott:

My concern was that the reforms that are being suggested and are being brought before us are

tying up with the financial aspect of it. I thought, as Anthony said, that the legal aid cases that were granted last year may run into 2012-13, and that there would be that overrun of budget required. Obviously, what you are saying is that you have accounted for that. Is it reasonable to say that?

Mr Capper:

I think that Anthony is saying that there are two elements to the legal aid extra funding. One is the £39 million lump sum access to the Reserve, and the other is an increased baseline, which lasts until 2013 and then falls.

Mr Elliott:

It will be interesting next year when we have it in front of us.

There were discussions about financial remuneration for former part-time Reserve RUC members. Is that included in the Department of Justice budget, or where does that finance come from?

Mr Harbinson:

Are you talking about gratuity for the part-time Reserve?

Mr Elliott:

Yes.

Mr Harbinson:

That is not part of this funding. The Treasury put aside £20 million specifically to deal with that issue.

Mr Elliott:

So that does not come through DOJ at all?

Mr Harbinson:

It will pass through the Department, but it is ring-fenced.

Mr Elliott:

So, you do not have to account for it?

Mr Harbinson:

We will account for it, but it will not come out of any existing services or resource funding. It is completely cost neutral to the Department.

Mr Sean Lavery (Department of Justice):

It is not reflected in current budget figures. It will be drawn down and used during the year.

Mr Elliott:

Have we any indication of when that will be implemented?

Mr Harbinson:

It is an operational decision, and the Department is working with the police to work out the mechanism. I can not tell you; I think the idea is that it will be somewhere towards the end of the calendar year, but I am not sure.

Mr McDevitt:

I want to ask you a bit about the planning process for 2010. The Committee for Finance and Personnel kindly wrote to us to outline the schedule. As you said, Mr Harbinson, you are expected to provide your initial returns by mid-July and to link those to the public service agreements (PSAs).

Mr Harbinson:

Yes, we are.

Mr McDevitt:

But you are not going to have your PSAs by mid-July.

Mr Harbinson:

Sorry, I think it is the end of July actually. It is mid-July internally, but they are to return to DFP by the end of July.

Mr McDevitt:

On 30 July?

Mr Harbinson:

Yes.

Mr McDevitt:

My point is that you will not have your PSAs.

Mr Harbinson:

As I said, it is a two-stage exercise. The first stage is about any new pressures that we believe are likely to arise during the next four years — the 2010 process years. In August, we will look at the cost savings and cost pressures that we can cut back on. We will report that to DFP at the end of August. When we have our budgets, we will then tie those in to the PSAs.

Mr McDevitt:

Have you got a date for the ministerial bilaterals?

Mr Harbinson:

For?

Mr McDevitt:

According the schedule provided by the Finance Committee, you will be having ministerial bilaterals between the Departments at dates to be agreed between late July and early September.

Mr Capper:

We do not yet have those dates in place with DFP.

Mr McDevitt:

It is an interesting point, because all the key decisions on the 2010 Budget will be taken during July when the Assembly is in recess.

The Chairperson:

It is a good time to bury bad news.

Mr McDevitt:

It is a great time, because, according to the schedule, by the time the Assembly sits again, the Executive will have had a discussion on the draft Budget.

Mr Harbinson:

That is why I intend to write to you in the next day or two.

Mr McDevitt:

I appreciate that, but I want to clarify that your understanding is the same as what DFP said to us. To be honest, Mr Harbinson, you are going to have a problem, because your PSAs are not going to be settled. As part of the Executive budgeting process, you have to link the departmental budget to the PSAs. What contingency plans do you have to enable you to put forward a budget that will be decoupled from the Programme for Government targets?

Mr Harbinson:

That is a good point. I will take it back to the Department to see what we can come back with. I will then write to you.

Mr McDevitt:

I have one question on the specifics. Yesterday or the day before, my colleague Patsy McGlone received a response to a question for written answer from the Department about the £1 million being spent on prison officers who were unavailable to work. Do you have any estimate of how much money is being spent on staff who are unavailable to work in other non-departmental public bodies (NDPBs), agencies and the Department?

Mr Harbinson:

I do not. We can do some evidence gathering to find that out for you.

Mr McDevitt:

That would be helpful. That was the big point that I wanted to make.

Mr A Maginness:

Is there any indication as to how many hearing loss cases are in the system? Are they all being

litigated, or is there a separate system for dealing with separate cases?

Mr Harbinson:

One of my colleagues may know the number of cases.

Mr Capper:

I do not have the total number of claims to hand, but approximately 200 cases a month were being received last year.

Mr A Maginness:

That is an extraordinary amount.

Mr Harbinson:

It started with about six claims in three, four or five years, which were followed by 20 claims a month. Following advertisements in all the police journals encouraging people who had an issue to come forward, the claims went from 20 a month to a peak, in one month, of 400. It started to tail back down again, so it is on the tail.

The PSNI is dealing with it as a strategic issue. It has teams of legal staff looking at this, and they are working in conjunction with the Crown Solicitor's Office (CSO), which is providing cover.

Mr A Maginness:

Were those individual cases started by way of a writ, for instance?

Mr Harbinson:

Yes. They are single claims.

Mr A Maginness:

Is a scale being used for loss of hearing? Harland and Wolff established a scale for its cases. A particular amount of money was awarded for particular degrees of hearing loss. Has the PSNI adopted such a scale?

Mr Harbinson:

I do not have the operational detail to enable me to go into that specifically, but I know that the PSNI is treating each claim on merit and, subsequently, it is looking for any contributory negligence. For example, it will look at whether the individual also worked for Harland and Wolff or was a farmer who drove a tractor without hearing protection. They are very much into that. All the claims are being settled within a defined range, going up to an average of about £20,000.

Mr A Maginness:

It seems extraordinary that that has just happened. Have those claims been made in the past two years?

Mr Harbinson:

The claims have come in over the past two years. Before that, there were a couple of claims a year, but there was never a big flood. The flood came in the past two years. A lot of it has to do with the aggressive advertising that was done by some of the firms to attract people who have suffered hearing loss but who may not have considered making a claim.

Mr A Maginness:

I do not want to labour the point, but it seems that this is something that could be addressed on a systematic basis rather than individually. It is extraordinary that there is no system in place to deal with them as a whole. To have such a system would mean that such additional expenses as legal costs, for instance, could be avoided. There must be some method of dealing with the cases to reduce the enormous cost.

Mr Harbinson:

I am aware that the CSO has been considering all aspects of this, including group-action style. To date, the advice has been that it is still most cost-effective to deal with the cases on an individual basis.

Mr A Maginness:

I do not understand that.

My other point is about the pay freeze in the public sector that was announced by the

Chancellor. What would the impact of that be on the Department of Justice?

Mr Harbinson:

In what way?

Mr A Maginness:

Would that provide any saving to the Department over the next couple of years?

Mr Harbinson:

No. We are going into the 2010 spending period, in which we would have put in a bid for a pay remit for each of those years. If the Chancellor had made his announcement one year into that, we would have had potential funding for three more years in our base line. However, as it is, we will not be able to bid for a pay remit. Therefore, the answer is no — it is taken as a clean break.

Mr A Maginness:

I do not follow.

Mr Harbinson:

Sorry. Perhaps I explained it poorly.

Mr A Maginness:

No, no. It is my simple mind.

Mr Capper:

The starting point for the budget going into the next spending review period will be the budget that we currently have. There are no pay increases in that budget.

Mr Harbinson:

There are no pay increases coming through.

Mr A Maginness:

I thought that pay increases would have been built into that.

Mr Harbinson:

They would have been, but at the start of the 2010 process. However, the Chancellor has said not to do that and, effectively, wiped that out. The only time that we would build in those things is at the start of a CSR period, in which a three-year plan is made.

Mr McNarry:

There are no agreements.

Mr Capper:

For example, had the pay freeze been announced from 1 April 2010, there would have been a saving, because we have factored pay inflation costs into this year's budget. Therefore, if there had been a pay freeze, the pay increase that we had factored in would have become a saving. However, because next year is a brand new spending review period and there is, in effect, no budget, there are no savings.

The Chairperson:

Have you any indication what the administrative costs are for the hearing loss cases?

Mr Harbinson:

The administrative costs were running between 80% and 90% of the settlement figure.

The Chairperson:

Did you say 90% of the settlement figure?

Mr Harbinson:

Yes. The average case cost was £20,000, which included the legal fees that went with it. Therefore, it was around £10,000 for the individual who lost their hearing and around £9,000 for the legal fees on both sides.

Mr Capper:

That includes legal fees, medical fees, etc.

Mr Harbinson:

It is the medical fees that are the difficulty.

Mr McDevitt:

For clarification on Mr Maginness's point: are you assuming a regional pay freeze?

Mr Harbinson:

Yes.

Mr McDevitt:

Why? The Chancellor has no pay jurisdiction over us. All he will do on 20 October 2010 is settle a Budget, which will be a block grant. Why are you assuming that it will mean a pay freeze?

Mr Harbinson:

We will wait, obviously, for guidance from DFP as to what will come in. However, personally, I assume that there will be a pay freeze, because it would be difficult for Northern Ireland to pay —

Mr McDevitt:

Is that not a little risky, given that the Executive have not yet decided? This is a devolved Administration. What we will get on 20 October 2010 is a new settlement. How we spend that is up to us.

Mr Harbinson:

You are absolutely right. I was giving my personal view.

Mr McDevitt:

My specific question, which is perhaps an important one —

The Chairperson:

I thought it was a supplementary question. *[Laughter.]*

Mr McDevitt:

The issue begs an important and substantial question. Is the Minister of Justice assuming a pay

freeze as a matter of policy?

Mr Harbinson:

I have no idea. That was my personal view only.

Mr McCartney:

I have two questions. Where do the hearing loss payouts feature in the budget that will be struck for the PSNI? Will it take up the cost?

Mr Capper:

Yes, the full costs of settling hearing loss claims are part of the PSNI budget.

Mr McCartney:

The Policing Board is making the decisions around how those cases are processed. However, will the Department have any role in advising the PSNI? Is there any way in which you could indemnify the Department against that through a class action?

Mr Harbinson:

As I said, when the CSO provided advice, it looked at whether a group action — as it is called in Northern Ireland — could go forward. Its view is that it is best to treat claims as individual cases. Once a class action is instigated, it effectively means that everybody is in and they would not have to go through the process of the hearing tests and all the rest. It is a double-edged sword and finely tuned. At the moment, it is still based on —

Mr McCartney:

In 10 years' time, if everybody does go through it, the assumption that was made 10 years' ago that they would not go through will be seen as false.

Mr Harbinson:

Given the projection, we think that the number of claims after the five years will be negligible: it will be de minimis. It will be back to the —

Mr A Maginness:

It will just run out of litigants. Everybody will be compensated.

Mr McCartney:

You said it yourself. The first assumption was that there might be 50 a month, and the next assumption was that there might be —

Mr Harbinson:

Yes, it was increasing. The way in which we structured the settlement over the five years is that, if all former RUC members came forward, there would probably be sufficient funds because of the recourse to the Treasury. The police changed how it operated from 1998; therefore, no claims can come forward from 1998 onwards because police officers had protections, including hearing muffs, etc. It will involve people only up to that point and people who retired at that point. We are now 12 years beyond that, and we feel that people who will have experienced hearing loss will have done so within 12 years of retirement and, therefore, that is the most likely time for them to claim. We would not expect any claims from anybody from 1998 onwards.

Mr McCartney:

I understand that, because the health and safety standards increased. Nevertheless, if you know the finite number of people who can claim and multiply that by 10,000, you might find it may be less than the imponderable. Legal costs go up. It is £10,000 this year for medical and legal bills, but in five years' or 10 years' time people will still be getting £10,000 for hearing loss, but their medical and legal costs might be a lot more. We have had presentations from lawyers, who said that there may be fewer of them working in the criminal area and they will be seeking civil actions. Somewhere along the line, the calculation must be correct or we will find ourselves in front of the Public Accounts Committee in five years' or 10 years' time explaining our actions.

Mr Harbinson:

I absolutely agree. Legal advice is commissioned and, sometimes, we just have to accept that legal advice. The legal advice at the moment is to stick to single cases.

Mr McCartney:

I do not want to make a comment about legal advice for lawyers.

Mr Harbinson:

I could not possibly comment.

Mr McCartney:

Absolutely.

Is there a breakdown of the yearly cost of each prisoner?

Mr Harbinson:

We have a make-up of how that is calculated. I do not have it with me, but I can send it to the Committee.

Mr McCartney:

It will be an issue for the Committee as it moves forward; therefore, it would be interesting to have it.

Mr O'Dowd:

I want to return to the legal funding around the hearing-loss cases. How many claims have been rejected?

Mr Harbinson:

I do not have the details with me.

Mr O'Dowd:

Can you get those figures for us?

Mr Harbinson:

You will have to ask the Chief Constable for those figures.

Mr O'Dowd:

OK. I can manage that.

Who is giving you the legal advice to continue on a case-by-case basis?

Mr Harbinson:

The legal advisers are the CSO and the Crown Counsel, whom they engage.

Mr O’Dowd:

Are any of those individuals involved in defence cases?

Mr Harbinson:

No, they could not be as there would be a conflict of interest.

Mr O’Dowd:

I suspect that, if you were to continue to go back to the British Treasury seeking more money, you would be told to settle the matter with joint action.

Mr Harbinson:

The settlement precludes us from changing the mechanism through which we are solving them at the moment. The deal is that the Treasury will pay the first £12 million. We pay and then it will pay the balance. However, that is on the condition that we do not change how we deal with the issue. Obviously, if we were to create a group action and go for it, suddenly, we might pay everybody off in one year and there would be one big payment. At the moment, we have five years of cover from HM Treasury. To be honest, it would be better from my point of view if the bill this year was not the £17 million that we are projecting, but more like £70 million, because we still pay only £12 million.

The Chairperson:

Point 7 of the briefing paper states:

“Until this approach is decided, and we know the specific level of savings, if any, required by the Department of Justice in-year it is too early to be specific about implications for policing and justice functions.”

Let us assume that there are no savings. It concerns me greatly that we could be in for a very big and nasty shock down the track. When will you be specific about all this?

Mr Harbinson:

As far as I am aware, the Executive are meeting on 28 June to discuss DFP’s proposals. When the Executive determine how they want to distribute those budgetary cuts pro rata, we will know our share and how to deal with it. I will not know until that decision is made.

The Chairperson:

I had thought that our next meeting would be our last before the summer recess. However, the more I listen to you — no disrespect to you — the more I think that we will need to have a meeting, perhaps once in July and once in August. To some extent, I am frightened by what I have been told today, and I have a real concern about the impact that it will have on policing on the ground.

Point 5 of the briefing paper states:

“As of 31 March 2010, an additional 365 officers have been deployed to response and neighbourhood policing duties. These extra officers have been involved in tackling burglary, violent crime, improving road safety and addressing incidents of anti-social behaviour.”

In the context of point 7, it seems that the presence of those 365 officers will be short-lived, because, if my worst fears are realised, they may not be there anymore.

Mr Harbinson:

Those officers are employed by the PSNI but have administrative duties. The Chief Constable is freeing up those officers by appointing administrative staff to allow those guys back on to front line duty.

The Chairperson:

I understand what you are saying. However, do the administrative people not need to be paid? Does that not come out of the policing and justice budget?

Mr Harbinson:

They are paid less than police officers. Given how much money is tied up, moving a police officer out makes an efficiency saving on the admin side of the house.

The Chairperson:

You are telling us that, if the worst comes to the worst, you will not cut front line services but that there will be fewer people behind desks rather than fewer police on the streets. Are you saying that that will happen, not as a result of police moving from a desk job to front line policing, but because the imminent cuts will mean that we cannot afford those administrative staff any longer?

Mr Harbinson:

No, I am not saying that.

The Chairperson:

I did not think that you were.

Mr Harbinson:

I am saying that, as we progress with discussions and decisions around Budget 2010, which will kick in from 2011 onwards, we will have to make tough decisions because big cuts are coming. The Chancellor mentioned a 25% cut to the public sector. When Northern Ireland and the Department know their share, we will have to respond to meet those targets and our budget reductions. Operational staff will suggest the best place for those efficiencies — or, to be honest, cuts — to fall. At this stage, I could not possibly try to guess where they will fall, even for the PSNI. The Chief Constable will put forward his proposals on that.

The Chairperson:

In the worst case scenario of 25% cuts, there is, surely, only one place that they can fall. Given that the PSNI accounts for 66% or, to quote your own figures, £529.2 million of the justice budget, there is only one place that they can fall. Will the greatest impact of the cuts be on the PSNI?

Mr Harbinson:

Being completely honest, if it was 25%, it would be hard to see how, going forward, we could sustain that without impacting on staff cost budgets.

The Chairperson:

Therefore, we are going to see fewer police on the beat.

Mr Harbinson:

That depends on the priorities.

The Chairperson:

I am following your line of thought through to its logical conclusion.

Mr Harbinson:

As I said, it will be for the Chief Constable to put forward initiatives on where he can save money going forward. I am not quite sure that that would mean fewer police on the beat, or, if it did, at what point it would mean that. However, I have no doubt that there will be tough decisions ahead.

The Chairperson:

The Chief Constable will only be as good as the money in his hand. Therefore, if you do not put money in his hand, he cannot put police on the streets.

Mr McNarry:

There is great validity in what the Chairman is saying. It is about how we cope with that in the budget process. I have the advantage of sitting on the Finance Committee, in which we have also discussed this. The intention was that the Departments would, before the summer recess, be able to brief the relevant Committees, including this one, on their plans. Clear indications were made, because — correct me if I am wrong — Departments have to make their returns by mid-July.

Mr Capper:

The guidance from the Department of Finance and Personnel sets out two stages for providing information. The first deadline is 30 July 2010 and the other is 26 August 2010. In the guidance, DFP acknowledges that each Department will have different arrangements in place as to how it liaises with its Committee over the summer period. It is left up to Departments and Committees to work out how they will engage during the summer period.

Mr Harbinson:

We are caught in a process that is not in our control and we have to respond to DFP within the timetable that it has set.

Mr McNarry:

That is the point. We are involved in a process. However, we want to know, as soon as you have the information, what you are going to say to DFP. I take it that you cannot tell us before you tell DFP. Therefore, picking up on what the Chairman said, we are now maybe looking for your advice. You were looking for our advice earlier, and now we are looking for your advice. Would you advise the Committee to prepare to meet you during the summer recess? Can you give us

any indication as to whether that would be in July or August?

Mr Harbinson:

It would be prudent for the Committee to meet me during the summer recess. As it is a two-stage approach, a meeting in August would probably be better, as we could then deal with both stages rather than have two separate meetings.

Mr McNarry:

In light of our questions, you now know what we are going to ask you when you come before us again. Hopefully, therefore, you will have some answers.

Mr Harbinson:

Hopefully I will have some more answers.

Mr McNarry:

There is no point coming if you do not have the answers. *[Laughter.]*

That is useful information, Chairman. The advice is that perhaps we should prepare — “prudent” is a bad word to use — to be on call.

The Chairperson:

Yes. Do not book any holidays too far in advance. Is that what you are saying?

Mr McNarry:

Yes.

The Chairperson:

Mr McDevitt raised a point earlier about the £1 million in salaries for Prison Service staff who have been suspended since 2005, more than £400,000 of which was paid out last year. I want to flex that issue out a bit more. Of the staff who were suspended — I suspect that there were quite given the bill — how many were dismissed from the service and how many were reinstated? Are you in a position to tell us that?

Mr Harbinson:

As far as I am aware, some of those cases are still ongoing. I am not sure about the numbers involved, but I am sure that we can write to the Committee with that information. However, the Prison Service's operational and HR side will be taking that forward. I know that not all of the cases have concluded their appeals.

The Chairperson:

So you are not sure how many cases fall into that category. Can you tell us how many officers have had their suspension lifted and been reinstated?

Mr Harbinson:

I might be wrong, but I think that around 10 people from one block were suspended in relation to night custody duty in the Colin Bell suicide case.

The Chairperson:

That was a high-profile case that we read about recently.

Mr Harbinson:

I know that some of those cases are being appealed and are, therefore, ongoing. I would not want to comment on them, because I do not have sufficient information to offer you at this point.

The Chairperson:

Those 10 officers would not accumulate salaries of £440,000, would they?

Mr Harbinson:

I think that the average salary for a prison officer is quite high. I am not sure about the salary for custody officers.

Mr Capper:

Those ten salaries would go a long way towards the £440,000-odd total.

The Chairperson:

We are talking about maybe 10 people.

Mr Harbinson:

I think that most of the money for last year is for the 10 or so people who were suspended as a result of the Colin Bell case.

The Chairperson:

You say that some of those cases are still ongoing.

Mr Harbinson:

Yes.

The Chairperson:

How long does a suspension last for? I suppose that is like asking how long a piece of string is.

Mr Harbinson:

It is a very difficult issue to take forward, as it involves the rights of the person who has been suspended and perhaps the person who is making an allegation. Account must be taken of when the hearings can take place, when witnesses can be called and when evidence can be gathered. Some cases could be completed in a week, while others could take a year or more. Answering that question is like saying how long a piece of string is — I cannot give you an answer.

The Chairperson:

What is the longest suspension that you know of?

Mr Harbinson:

The longest suspension that I am aware of is one that took place when I worked in the Health Service, when an English health authority suspended a doctor for 25 years.

The Chairperson:

It was trying to find out why it had suspended him.

Mr McNarry:

Was the doctor suspended with pay?

Mr Harbinson:

Yes, he was suspended with pay for 25 years. He retired, and that was why the case ended.

The Chairperson:

So the trick is to qualify for a position and then get suspended for 25 years on full pay. Is that it?

Mr Harbinson:

If I find out how to do that trick, I will let you know. *[Laughter.]*

Mr McNarry:

We must talk to Willie Hay.

The Chairperson:

Surely this is another area that we all could look at as part of our efforts to bring efficiency to the entire process.

Mr Harbinson:

Yes, absolutely.

The Chairperson:

We are in difficult times. Bearing in mind what the Chancellor said on Tuesday and what is perhaps ahead of us in October, it behoves not just you, but all of us, to ensure that efficiency is brought into the government system. We cannot continue with this situation. I accept that justice has to be done for both sides. I suspect that that doctor did get justice at some stage in those 25 years — at least I hope that he did. However, in the age in which we now live, it is not acceptable for things to go on and on simply because all this is coming off a broad back.

Mr Harbinson:

I know that, in its response to the figures, the Northern Ireland Prison Service announced that it is conducting a review of all its procedures in that regard to ensure that they fit into best practice as set out by the Labour Relations Agency. Chairperson, I fully agree with you; we must ensure that whatever we do is both effective and efficient and is seen to be so as we move forward.

The Chairperson:

If we build the costs that we have just talked about into the figures for cost per prisoner place, it would appear that the target of £76,500, which has been worked down from £90,298 in 2006-07, might not be a true figure. That is not a reflection on what you folk are doing.

Mr Harbinson:

Those people's costs would be part of that, because they were still being paid.

The Chairperson:

But they were not working.

Mr Harbinson:

I agree. You are correct; if the costs for those people had not existed, perhaps that cost per prisoner place would have been even lower again.

The Chairperson:

It might have been higher. The target for cost per prisoner place is £76,500, and I suspect that prison officers' wages are built into that figure.

Mr Capper:

Those costs include all the running costs of the Prison Service, which includes the costs that we have spoken about.

The Chairperson:

It is the cost of non-production. When an officer is suspended, he is not giving anything in return.

Mr Harbinson:

That is what we are saying; their costs are built in. If those officers had been working, the overtime costs for the rest of the organisation would perhaps have been reduced by a similar amount. Therefore, the cost per prisoner place would not go up.

The Chairperson:

Gentlemen, thank you for your presentation. I suspect that we will meet again in the not-too-

distant future.