



Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT
(Hansard)

**Justice Bill: Informal Clause-by-Clause
Consideration**

18 January 2011

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Thomas Buchanan
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Ms Nichola Creagh)
Mr David Hughes) Department of Justice
Mr Gareth Johnston)
Mr Dan Mulholland)

The Chairperson (Lord Morrow):

We will start the informal clause-by-clause consideration of Part 3 of the Justice Bill, which is about policing and community safety partnerships (PCSPs). A summary paper covering the evidence received on Part 3 is included in members' papers. It was agreed that departmental officials will be at the table to give further information. They will comment as and when members wish them to.

I welcome the officials. No doubt you will be glad to see this Bill through one way or another. We have Gareth Johnston, head of justice strategy division; David Hughes, deputy director of policing policy and strategy; Nichola Creagh, policing policy and strategy division; and Dan Mulholland, policing policy and strategy division. They are here to take any queries or questions, or to provide further explanation to members.

We will start in the same format as we used to take a run at the 19 clauses before Part 3. We will go straight into clause 20, which is about the establishment of PSCPs and district policing and community safety partnerships (DPCSPs).

A question was posed regarding the choice of the title of Part 3 of the Bill. The majority of community safety partnerships (CSPs) recommended that the Justice Committee re-examine the proposed title. If any member wishes to comment, we will hear what they have to say. We will then turn to the officials to see whether they have anything to say on that point. The recommendation is that the Justice Committee re-examine the proposed title. Is there any reason why we should not do so?

Mr David Hughes (Department of Justice):

I do not think there is any strong reason why that particular title is better than others. I would offer a note of caution about whether changing it from what is printed in the Bill would send a message about the meaning of the title that was not meant when it was chosen. The act of changing it might be significant itself; we do not feel that the title itself is not as significant as that.

The Chairperson:

The paper that members have been provided with states:

“It was highlighted that, from the consultation conducted in June 2010, just under half of respondents suggested ‘Safer Communities Partnership’ as a favoured title (27 stakeholders suggested within 16 responses). Of all responses, none suggested the title of ‘Policing & Community Safety Partnership’, as outlined in the Justice Bill, however 8 stakeholders (within 5 responses) suggested ‘Community Safety & Policing Partnership.’”

There was no support for the suggested title among stakeholders. Do you wish to say anything about that, Mr Hughes?

Mr Hughes:

Nor was there a consensus around the title. There is a strong case for ensuring that both “policing” and “community safety” are expressed in the title, whether as “policing and community safety” or “community safety and policing”. I do not think that the Department has a strong view either way. However, to deliberately change it from what is contained in the Bill may be perceived to have more meaning than is necessarily the case.

The Chairperson:

The only consensus was around the fact that no one suggested the title of “policing and community safety partnerships”. You say that there was no consensus around what the title should be, but there was consensus around what it should not be.

Mr Hughes:

My colleagues will correct me if I am wrong, but the consultation document did not propose the title of “policing and community safety partnerships”, so people did not respond to that. I think that the consultation document proposed the title “crime and disorder partnerships”, which was unilaterally rejected. That is why a different title was brought forward in the legislation.

Mr Dan Mulholland (Department of Justice):

The consultation document contained a number of proposals. It is correct that that was not one of them, but it has the two key elements — “policing” and “community safety” — in the title. It does what it says on the tin. The working practice may be that, although the legislation proposes that such a body will be known as a policing and community safety partnership, a particular partnership may use “Safer” in its title, for example, “Safer Lisburn” or “Safer Moyle”. It will still be known in legislation as a policing and community safety partnership, but there is nothing to prevent a particular partnership branding itself.

Ms Ní Chuilín:

Do you think you may be overstating the significance of changing the title? The title “community

safety and policing partnerships” seems to be the preferred or favoured title. You are probably right about local acceptance, in that whatever it is called will probably be prefixed by the geographical area in which you live and whatever, but if the Department is not totally averse to the change, I do not see the big deal about it. It is just a change of title, and I think that the significance of that is being overstated.

Mr Hughes:

I do not think that the significance of changing the title is, in itself, absolute reason not to do it. I would just caution that I think that a message would go out that it was determined that policing and community safety partnership is not an acceptable title for a partnership that deals with policing and community safety. At this stage, that would seem a strange message to send, but I do not want to overstate it.

The Chairperson:

We will move on, since no one else has comments to make at this stage.

We move on to clause 20(2). It has been suggested that clarity is needed on the Belfast model. The paper states that:

“Belfast CSP, DPP and City Council seek clarity in respect of Clause 20(2) of the draft Bill which requires the establishment of DPCSPs in each Police District and asks the Committee to ensure that the legislation, guidance and codes of practice enable flexibility in the future if, for example, the Chief Constable were to bring about a change to the number of police districts in Belfast.”

Lord Browne:

I declare that I am a member of Belfast City Council. There seems to be some difficulty in getting clarification on this issue. I would be happy to receive clarification on why the four subcommittees do not correspond with the policing districts, if that is the case — even I get confused now, I have to admit.

Mr Hughes:

At the moment, there are four area command units in Belfast and four DPP subgroups. The intention of the Bill is to maintain the current arrangement in the new PCSP arrangement. That

does not mean that there is not the capacity for those four to group together in pairs or in a three and a one, for instance, or for the number of area command units in Belfast to be changed. It is not the last word; it is consistent with the current arrangement, and the same flexibility would apply in the future.

Mr McCartney:

Perhaps it is a matter of parlance, but partnerships are not referred to as subgroups anywhere in the Bill.

Mr Hughes:

I am sorry. I referred to the DPP subgroups; that is how they are referred to. It is a similar model, because there would be a PCSP and four DPCSPs in Belfast. That might be awkward.

Mr McCartney:

Sometimes people slip into the idea that they are in a subgroup, when, in essence, those groups have their own identity and are the same as the other partnerships that have been established.

Mr Hughes:

I understand your point.

Mr McCartney:

I understand why people use the term, but, in the past, it was almost as if some DPPs were less than other DPPs. That might be unfortunate, but we need to avoid it.

Mr Hughes:

But it does reflect the fact that there is a principal DPP in Belfast.

Mr McCartney:

Regardless of whether there is a principal partnership, there are no subgroups. They are policing and community safety partnerships in their own right, with the same functions as the rest. When you talk about a subgroup, it sometimes gives rise to the notion that they are different.

Mr Hughes:

In a way, that is why the Bill has the title of district PCSP for those four parts of Belfast rather than subgroup. They are deliberately not referred to as subgroups in the legislation.

Lord Browne:

How will the PCSP and, in particular, the DPCSPs integrate with the existing structures in Belfast? We have the West Belfast Community Safety Forum, Partners and Community Together (PACT) meetings throughout Belfast and neighbourhood partnership boards. There must be a relationship with those, so I am not sure where that comes into the legislation.

Mr Hughes:

The critical issue is that there does not need to be a statutorily defined relationship between PCSPs and other groups that are working in similar or related, but not the same, fields. For example, PACT groups specifically focus on a relationship between police and communities, but groups often do not cover the same ground as each other or include the same number of partners. They are not statutory organisations, so we would not, therefore, be able to plug them in for statutory means. However, it is in the interests of PCSPs to know what is already in the field. It is in the interests of the police, for example, to know how their involvement with PACT groups or community and police liaison committees (CPLCs) works with their involvement with PCSPs.

There are different ways for organisations to operate in larger or smaller areas, and that mixture of different groups and meetings is perfectly reasonable. What works can be built on, and what does not work may well not continue for any length of time. The critical issue is that we are setting up a comprehensive statutory set of arrangements, but that is not to limit the non-statutory arrangements that may exist elsewhere.

The Chairperson:

On that issue, our notes state that the Department indicated that it would be happy to provide a diagram to illustrate the text. Where are you with that? Have we got that yet? If not, when can we expect it?

Mr Hughes:

I think that that has already been provided to the Minister, but he has not passed it on.

Mr O'Dowd:

He has not worked it out yet.

The Chairperson:

Is it locked away in a closet?

Mr A Maginness:

He has got lost.

The Chairperson:

Will he let us see it sometime?

Mr Hughes:

Yes. We are aware that that is to be provided.

The Chairperson:

We will move on. Clause 21 is entitled "Functions of PCSP". Do members have any questions about it or require further explanation?

Lord Browne:

Belfast City Council submitted a serious concern about the legal status of PCSPs. That concern centred on whether PCSPs would be capable of entering into contracts themselves or whether the council would be forced to take on that role on their behalf. I seek clarification of that.

Ms Nichola Creagh (Department of Justice):

As a statutory body, the PCSP will be able to enter into its own contracts.

The Chairperson:

Are members content to move through our paper page by page? If any issues arise, members can

draw them to the Committee's attention and we will pause to consider them.

The paper flags up that the majority of CSPs recommend that the Justice Committee re-examine the proposed functions. Do members have any further views on that? That is a big question. Do officials have any comments? If not, we will move on.

Our paper states that Coleraine Borough Council recommends that the Justice Committee re-examine clause 21(1)(c) and does not restrict the function to the policing committee as it applies to the whole partnership. Does any member or official here have any views on that?

Mr Hughes:

I would just underline the point that was made in December, which was that the function in clause 21(1)(c) is specifically about obtaining the co-operation of the public with the police, rather than with the full range of those involved in policing and community safety. Therefore, it seems more appropriate that that function is given to the PCSPs.

The Chairperson:

We will move on to consultation and discussion with the public. Include Youth has concerns that clause 21(1), particularly paragraphs (c), (d) and (e), have limitations and suggests the addition of the words "and fully considering" to clause 21(1)(d) after "to make arrangements for obtaining". In that event, clause 21(1)(d) would read:

"to make arrangements for obtaining and fully considering the views of the public about matters concerning the policing of the district and enhancing community safety in the district".

Do any members have any views on that? If not, do the officials have any views on it?

Mr Hughes:

We do not have a strong view on whether that disrupts the import of the functions. That suggestion does not seem to cause a problem. It strengthens the function as it is defined.

The Chairperson:

Are you saying that officials could live with that change?

Mr Hughes:

I think so, yes.

The Chairperson:

Include Youth has fundamental difficulties with what it describes as a vague definition of behaviour and asks that the term “antisocial behaviour” be removed from the Justice Bill until there is a definition that is clear and can support the partnerships in doing something about it. I honestly think that, if we wait until we get a proper and full definition of “antisocial behaviour”, the youngest Member of the Assembly will be retired by that stage. If we hold up the Bill for that reason, the Minister will not get a Bill. Having said that, if anyone else wants to comment, we will listen to what you have to say. If no members have anything to say, we will ask the officials for their views.

Ms Creagh:

We commented on that in the previous session on 16 December. As we said then, we used the widely accepted definition of antisocial behaviour, namely the one that is defined in the community safety strategy and so on. Therefore, we do not anticipate making any changes to that at the moment.

The Chairperson:

Strabane, Derry and Limavady DPPs have proposed that, as funding can be provided to constituted groups only, “persons” should be replaced by “organisations”. Do any members have any views on that? I am very interested in whether the departmental officials have any comment on that.

Mr Hughes:

Where is that?

The Chairperson:

In clause 21(1)(h) on page 17 of the Bill.

Mr Hughes:

We would have to check whether, under the meaning in the drafting, “persons” excludes organisations.

The Chairperson:

Do you want to take that away with you?

Mr Hughes:

Yes.

Mr A Maginness:

Could we not simply say “persons or organisations”? Is that not a simple way to address the issue?

Mr Gareth Johnston (Department of Justice):

It may well be that, under the Interpretation Act (Northern Ireland) 1954, “persons” includes organisations anyway. We will check with the draftsman. We will take that away and clarify that.

The Chairperson:

OK. We will rest it there. Strabane District Council suggested that clause 21(1)(g) is rather verbose and suggested that it should read:

“to quantifiably measure the performance of the partnership in terms of reducing crime and enhancing community safety in the district”.

Did the Attorney General not give us an answer to that?

Mr Givan:

I do not think that it changes 21(1)(g) much.

The Chairperson:

Do any members have any views or do officials have any strong or moderate views?

Mr Hughes:

I cannot see that it adds anything in particular to what is already there.

Mr Givan:

It remains verbose.

The Chairperson:

Let us move on to clause 22, which deals with the functions of the DPCSP. Does any member wish to comment on anything on that in the paper? Lord Browne's point about legal status and powers is dealt with in the paper:

“Belfast City Council feel that there needs to be clarity around the legal status of the new partnership and the powers and vires it has: what will fall to the body itself and what powers and vires will fall to the councils in the future.”

Do the officials want to add to what they have already said?

Ms Creagh:

We have had extensive engagement with all councils, but particularly Belfast City Council, on all issues, and we will continue that engagement when we are drawing up guidance and so on. There will be ample opportunity to explore those issues in more depth and to give more information and guidance to councils on how things will work in practice.

The Chairperson:

We move to page 19 of the paper, which deals with clause 23.

Mr McDevitt:

Chairperson, for some reason, clause 23 is on page 18 of my paper. I do not know if it is the same for other colleagues.

Mr A Maginness:

Yes.

Mr McDevitt:

We have two page 18s and two page 19s, but we are starting on clause 23.

The Chairperson:

Yes. It is on page 20.

Mr McDevitt:

That is page 18 for me.

The Chairperson:

OK, well, I am on clause 23 if anyone wants to come with me.

The paper states that:

“The majority of the CSPs recommended that the Committee requests an evaluation of current practices, proposed for inclusion in the Bill, and that further consideration should be given to the practices of the overall partnership.”

Do members have any views or comments? If not, we will ask the officials to share anything that they want to say.

Mr Hughes:

In the preparation of the code of practice set out in clause 23, there would naturally be extensive engagement with those involved in delivery. Therefore, rather than holding back on preparing the code, issues about current practice that arise and that need to be reflected in the code of practice

would be picked up at that point.

The Chairperson:

Does any member have any views on what Mr Hughes has said?

Right, let us move on to clause 24, which is dealt with on page 22 of the Committee's paper. Mr McDevitt, are we on the same wavelength now?

Mr McDevitt:

No; clause 24 is on page 21 of my papers. If you call the clause number, I will follow the discussion.

The Chairperson:

I am not sure what is going on, but I think that we are doing all right. Clause 24 refers to annual reports. The paper states that:

“The majority of the CSPs recommended that the Justice Committee re-examine the lines of accountability so that they are simplified.”

Does any member have any further views on that? Do the officials have any further views?

Mr Hughes:

I will reiterate a point made in a previous evidence session. Although there is a lot of text around the reporting between partnerships, councils, the Department and the Policing Board, the effect is to standardise the reporting so that the same report can be sent from a PCSP to a council, to the board and to the Department. Effectively, the reports will contain the same information, because all those bodies are interested in the same information.

The Chairperson:

Do members have any views on that? We are generally in agreement.

Mr A Maginness:

Yes.

The Chairperson:

OK.

The paper also states that:

“The majority of the CSPs recommended that clause 24(5) be removed.”

Let us have a look at that clause. It must be an awkward clause if it has to be taken out. The papers states that:

“a number of CSPs, DPPs and Councils felt that the practice of providing an annual report to the policing committee in order to consult with the district commander seems inappropriate, given that it would be assumed, the area commander will be a member of the overall partnership. Therefore it would be more appropriate, in line with policing structures, for the police representative to carry out this consultation with said commander. 5 DPPs, 1 CSP and Larne Borough Council also related this issue to clauses 27 and 30.”

Does any member or official wish to comment?

Mr Hughes:

This is a carry-over of provision. It is already relevant to DPPs, and I think that we would be reluctant to remove something that is part of the structural arrangements for DPPs.

The Chairperson:

Is that the only reason that you can give to retain clause 24(5)?

Mr Hughes:

It forms part of the current arrangements, and the Policing Board would certainly express the view that, as far as possible, there should be no diminution of that.

Mr O’Dowd:

On a point of clarification, clause 24(5) includes the words “shall consult”. The report could say that the policing commander is not up to much and that it was time that he — or she — moved on, but whether he likes it or not, he cannot stop the report going forward.

Mr Hughes:

That is right. Whoever consults has to hear what is being said back to them and has to take it seriously, but it does not necessarily change the output.

Mr Givan:

Until now, has it not been the case that the area commander needs to sign off on a local policing plan? Is this the community safety plan?

Mr Hughes:

This is the annual report. It is a report on the performance of that partnership and the functions. In this case, the function is a function of the policing committee; it is not the local policing plan, which is something on which the district commander would sign off.

The Chairperson:

Let us move on to clause 25. I do not know what page it is on in your papers, but it is on page 24 in mine. It relates to the annual report by Belfast PCSP.

I do not hear anyone saying that they want to comment, so I will move on through the paper. I will not stop anywhere, unless you ask me to. The next clause is clause 31. Any comments on that?

We then move to clause 33, “Other community policing arrangements”. We are dealing with that. If members wish to comment, please do. The paper states that:

“The majority of the CSPs recommended that the Justice Committee re-examine the role of the policing committee.”

If members or officials wish to comment on that, please do. The paper also states that:

“The majority of both the CSPs and DPPs noted that this clause contradicts and undermines the spirit of the single partnership and consultation requirements will be wider than that of policing. It would be unadvisable that the policing committee should be able to establish any body.”

Mr Hughes:

As is the case with other clauses, clause 33 reflects a provision that is currently relevant to the DPPs. We believe that there is a continuing role for the policing committee in carrying out a specific set of functions that it would not be appropriate to apply to the partnership as a whole. In bringing together the functions of DPCSPs, there are certain functions that need to be conducted by the policing committee, and that is one of them. To remove it would diminish the function of the partnership.

The Chairperson:

Do any members wish to comment? No? We shall keep going.

The majority of CSPs recommended that the Justice Committee look at strengthening clause 34, so that the partnership is, in their words, fit for purpose. Again, that could be down to perception. We heard what the Attorney General had to say about clause 34. Does any member wish to comment further?

Mr Givan:

I share the Attorney General’s concern about the duty. Certainly, in line with the spirit of the clause, all of us want public bodies to do all that can be reasonably expected of them. However, given the litigious society in which we live and the perception of what is reasonable and likely to have an effect, we would be creating a charter for people to take whatever public body they want to court. Consequently, clause 34 causes me some concern. I do not know whether we should adopt the Attorney General’s proposal to include some kind of call-in mechanism for the Minister or the Attorney General, as opposed to the courts, to determine whether they feel that it has been

reasonable or whether the clause should be removed altogether. I am certainly not in favour of strengthening or adding to it, as has been suggested. In fact, I am not certain whether we should have it at all.

Mr A Maginness:

I agree to a large extent with Mr Givan. Further to the points made by the Attorney General, clause 34(3) states:

“References in this section to enhancing community safety in any community are to making the community one in which it is, and is perceived to be, safer to live and work, in particular by the reduction of actual and perceived levels of crime and other anti-social behaviour.”

That is a very strange subsection, because it combines the actuality of a reduction in levels of crime and antisocial behaviour with perceptions of them. You could, therefore, have a situation in which there was an actual reduction in crime and antisocial behaviour, established by empirical methods of assessment, but the local community’s perception might be that there has not been a reduction. Implementing that subsection could cause serious confusion and tension. Clause 34 undoubtedly needs to be reworked, because we would be imposing an additional and burdensome statutory duty on public bodies. It has not been thought through properly. I am not against it, but it has not been thought through properly, so it has to go back to the Department to be looked at again. The language used could give rise to considerable concern.

The Chairperson:

Having listened to what the two members have said, do officials wish to add anything?

Mr Hughes:

The Department is well aware of the concerns that have been raised by those who recognise the risk of litigation and the cost and time involved in dealing with challenges to organisations as a result of the duty. We are also aware of a number of ways in which that could be mitigated, and a number of options have been looked at. The Attorney General made reference to the Garda Síochána Act 2005 and the duty that is contained therein. He also mentioned his views on a filter mechanism.

The Department is also aware of the views of stakeholders, who have expressed very clearly that they want the duty to be strengthened and that any lessening of the duty could render the edifice of PCSPs not useless, but certainly weakened. There is still work and engagement ongoing on treading between those two opposing positions. Clearly, the view of the Department is that that clause should be introduced in the Bill and should be taken through the Bill. However, consideration may well have to be given to an amendment to it, bearing in mind the different views of different stakeholders.

Mr Buchanan:

It is important to note that some Departments have raised concerns about that clause and that the Executive have indicated that they will revisit it after the Committee's decision has been made. It needs to be looked at again and, perhaps, reworded or rejigged in some way because, given the amount of concerns expressed, the Bill, in its current form, will not get acceptance in the House.

The Chairperson:

If no one else wishes to comment, we will move on. Craigavon CSP suggested that the Committee should consider how the legislation will be enforced. We have already dealt with that and do not need to dwell on it any longer.

Clause 35 deals with the functions of the joint committee and the Policing Board. Belfast City Council welcomes the setting up of a joint committee and says that, if it is necessary to separate the roles in that way, it is fundamental that the wider role of the joint committee is defined in the legislation. It goes on to say that there is a need for clarity on the role of the joint committee and the role of councils and that, in particular, if it is the role of the joint committee to set strategic direction, there should be input from councils to enable them to have a say in the strategic direction of the partnerships. Do any members or officials wish to comment?

Mr Hughes:

First, it is true to say that the joint committee will have many more functions than the statutory functions that are set out in legislation. They will include the functions of the Department and the Policing Board on funding and accountability and other responsibilities for the arm's-length

bodies that the partnerships will be. It is not necessary for those to be defined in statute, because they are requirements of the two funding authorities that will establish the PCSPs. I am not sure that there is any need to include any more in the Bill in that regard. The joint committee would involve the Department and the Policing Board operating in partnership on those various functions.

Secondly, the purpose of the joint committee is to set the strategic context and direction in that field for the whole of Northern Ireland. The contribution of councils would be made at council level, and it is not clear whether the joint committee would necessarily be the mechanism by which the councils would set the strategic direction across Northern Ireland.

The Chairperson:

Does any member wish to comment? The paper states that:

“Larne Borough Council notes that Councils are not represented on the Joint Committee.”

That was on purpose, was it not? It was not just an omission.

Mr Hughes:

No. That is right. The joint committee will be the Policing Board and the Department operating together.

The Chairperson:

Does anyone wish to comment on that? If not, we will move on.

The good news is that we have finished. That is a run-through, just like the one that we did last Thursday. We will not make a decision today, but when we come back next Tuesday, we will ask members to agree a definitive position on those clauses. Members can take one of three positions: yes, no or maybe, which is normally treated as an abstention.

Ms Ní Chuilín:

Or we may amend.

The Chairperson:

We have to come back to that business at our next meeting, which will be on this day week.

I remind members that the Committee agreed to revisit Parts 1 and 2 of the Bill. Members know that, on Thursday, they have to come back with their definitive position on clauses 1 to 19. So, the clauses on victims and witnesses and live links will be considered at our meeting on 20 January, at which we will reach a decision on those clauses. That was agreed, was it not?

Members indicated assent.

The Chairperson:

I also advise the Committee that we will continue our informal scrutiny of the Bill. We will consider the schedules that relate to policing and community safety partnerships and Part 4, which is on sport. That Part stimulated considerable debate, and members will recall what the different organisations said to us on those clauses. Is everyone clear on that?

Members indicated assent.

Mr McCartney:

So, on Thursday, are we discussing the schedules on policing and community safety partnerships?

The Chairperson:

Yes, and we will adopt a definitive position on clauses 1 to 19.

Mr McCartney:

We have a number of issues with the schedules. Should we seek to highlight those or to propose amendments?

The Committee Clerk:

The first part of Thursday's meeting will be spent formally considering Parts 1 and 2 and making decisions on them. After that, assuming that there is time, we will do what we did today, but on the two schedules that relate to the policing clauses. Therefore, it will simply be a matter of going through the commentary and seeking clarification or making points. If we have time, we will also start that process with the sports clauses. The Committee will then make formal decisions on the policing and community safety clauses at a separate meeting. If the Committee is ready to do so, it can decide on the clauses and the two schedules at the same meeting.

The Chairperson:

Is everyone happy and content with that? I thank the departmental officials for their attendance.