Committee for Justice

Report on the Justice Bill (NIA 37/11-15) Volume 1

Together with the Minutes of Proceedings, Minutes of Evidence, Written Submissions and Other Memoranda and Papers relating to the Report

Ordered by the Committee for Justice to be printed 25 March 2015

Mandate 2011/16

Seventh Report - NIA 240/11-16

Powers and Membership

Powers

The Committee for Justice is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Standing Order 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Justice and has a role in the initiation of legislation.

The Committee has the power to:

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- consider relevant subordinate legislation and take the Committee stage of primary legislation;
- call for persons and papers;
- initiate inquires and make reports; and
- consider and advise on any matters brought to the Committee by the Minister of Justice.

Membership

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The membership of the Committee during the current mandate has been as follows:

Mr Alastair Ross (Chairman) [1]
Mr Raymond McCartney (Deputy Chairman)
Mr Stewart Dickson
Mr Sammy Douglas[2,3,4]
Mr Tom Elliott[5]
Mr Paul Frew[6]
Mr Chris Hazzard[7,8]
Mr Séan Lynch
Mr Alban Maginness
Mr Patsy McGlone[9]
Mr Edwin Poots[2,10]

1 With effect from 10 December 2014 Mr Alastair Ross replaced Mr Paul Givan as Chairman.
2 With effect from 1 October 2012 Mr William Humphrey and Mr Alex Easton replaced Mr Peter Weir and Mr Sydney Anderson.
3 With effect from 16 September 2013 Mr Sydney Anderson replaced Mr Alex Easton.
4 With effect from 6 October 2014 Mr Sammy Douglas replaced Mr Sydney Anderson.
5 With effect from 23 April 2012 Mr Tom Elliott replaced Mr Basil McCrea.
6 With effect from 6 October 2014 Mr Paul Frew replaced Mr Jim Wells.
7 With effect from 10 September 2012 Ms Rosaleen McCorley replaced Ms Jennifer McCann.
8 With effect from 6 October 2014 Mr Chris Hazzard replaced Ms Rosaleen McCorley.
9 With effect from 23 April 2012 Mr Patsy McGlone replaced Mr Colum Eastwood.
10 With effect from 6 October 2014 Mr Edwin Poots replaced Mr William Humphrey.

Table of Contents

Volume 1

Volume 2

Volume 3

List of abbreviations and acronyms used in the report

AG	Attorney General
AOABH	Assault Occasioning Actual Bodily Harm
APIL	Association of Personal Injury Lawyers
CLC	Children's Law Centre
CRO	Criminal Records Office
DHSSPS	Department of Health, Social Services and Public Safety
DBS	Disclosure and Barring Service
DE	Department of Education
DoJ	Department of Justice
DPA	Data Protection Act
DVPO	Domestic Violence Prevention Order
ESR	Examiner of Statutory Rules
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EQIA	Equality Impact Assessment
FSNI	Forensic Science Northern Ireland
HSCB	Health and Social Care Board
ICO	Information Commissioner's Office
JJC	Juvenile Justice Centre
LCJ	Lord Chief Justice
LSC	Northern Ireland Legal Services Commission
NDPB	Non Departmental Public Body
NICS	Northern Ireland Civil Service
NIACRO	Northern Ireland Association for the Care and Resettlement of Offenders
NICTS	Northern Ireland Courts and Tribunals Service
NIHRC	Northern Ireland Human Rights Commission
NIO	Northern Ireland Office
NIPB	Northern Ireland Policing Board
NSPCC	National Society for the Protection of Cruelty to Children
PPS	Public Prosecution Service
RPA	Review of Public Administration

RQIA	Regulation and Quality Improvement Authority
SAO	Supervised Activity Order
SCS	Senior Civil Service
SOPO	Sexual Offences Prevention Order
UNCRC	United Nations Convention on the Rights of the Child
VOO	Violent Offences Order
VOPO	Violent Offences Prevention Order

Executive Summary

1. This report sets out the Committee for Justice's consideration of the Justice Bill.

2. The Justice Bill consists of 92 Clauses and 6 Schedules and proposes to improve the operation of the justice system by improving services provided to victims and witnesses of crime, speeding up the justice system and improving the efficiency and effectiveness of key aspects of the system. In addition to the main clauses of the Bill, the Committee considered a range of proposed amendments brought forward by the Department primarily to address issues raised by the Attorney General during the pre-introductory stage and to put forward new policy proposals related to the main aims of the Bill.

3. The Committee also considered a number of new provisions unrelated to the policy areas currently covered in the Justice Bill which were brought to its attention by the Department of Justice, the Attorney General for Northern Ireland and Mr Jim Wells MLA.

4. The Committee requested evidence from interested organisations and individuals as well as the Department of Justice, the Department of Health, Social Services and Public Safety and the Attorney General for Northern Ireland as part of its deliberations on the Bill and the proposed amendments. Prior to introduction of the Bill the Committee had considered a wide range of policy proposals relating to the Bill and the views of the Committee had been reflected in a number of the provisions contained within the Bill. The provisions relating to victims and witnesses were also designed to reflect a number of recommendations in the Committee Report on the Inquiry into the Criminal Justice Services available to Victims and Witnesses of Crime.

5. Fifty two written submissions were received together with a significant number of responses from individuals, a number of petitions and almost 22,500 postcards in support of the amendment proposed by Mr Jim Wells MLA. The Committee held 18 oral evidence sessions and also explored the issues raised in written and oral evidence with Department of Justice officials both in writing and in oral briefings.

Delegated Powers in the Bill

6. The Committee sought advice from the Examiner of Statutory Rules on the delegated powers within the Bill to make subordinate legislation and the choice of Assembly control provided for each power. The Examiner was of the opinion that most of the delegated powers were appropriate but drew attention to provisions in Clause 79(2) in relation to the general duty to progress criminal proceedings and Clause 80 in relation to case management regulations. The Examiner was of the opinion that if these significant regulation making powers were to be workable in any proper and meaningful way, they would need to have a major input from those involved and there should at least be a built in statutory requirement to consult the Lord Chief Justice, the Director of Public Prosecutions for Northern Ireland, the General Council of the Bar of Northern Ireland and the Law Society of Northern Ireland. The Committee referred the Examiner's analysis to the Department of Justice and it confirmed that, in response to the concerns raised, it would bring forward appropriate amendments.

Key Issues relating to the Clauses and Schedules in the Bill

7. The Committee agreed the clauses in the Bill as drafted or as drafted with proposed departmental amendments at its meeting on 11 March 2015. Some Members expressed reservations regarding Clause 78 which places a duty on solicitors to advise a client about early guilty pleas. The Committee agreed to oppose the inclusion of Clause 86 which provides for supplementary, incidental, consequential and transitional provisions.

Part 1 and Schedule 1 – Single Jurisdiction for County Courts and Magistrates' Courts

8. Part 1 and Schedule 1 of the Bill covers a single jurisdiction in Northern Ireland for the county courts and magistrates' courts, replacing statutory county court divisions and petty sessions districts with administrative court divisions. The Department also advised of its intention to bring forward a series of further consequential amendments for inclusion in Schedule 1 primarily to remove references to 'petty sessions district' and 'county court division' in existing legislation and provided the text of the amendments.

9. Organisations that commented on this part of the Bill either welcomed the move to a single jurisdiction or indicated that they did not object in principle to the proposals. They did however raise some concerns regarding the possible impact on court users and wanted to see further information on the operational details of the proposals including the guiding principles for the transfer of business which the Lord Chief Justice has responsibility for developing and implementing.

10. The Committee recognised that a single jurisdiction for the county courts and magistrates' courts will provide flexibility but it believes that a robust set of directions/guidelines is required to ensure that the assignment of business takes account of the needs of witnesses, victims and defendants to ensure a fair process and the provision of access to justice. The Committee has written to the Office of the Lord Chief Justice requesting information on the nature of the consultation that will be carried out on the Directions and who will be consulted.

11. The Committee agreed that it was content with Clauses 1 to 6 and Schedule 1 subject to the Department's proposed amendments.

Part 2 and Schedules 2 and 3 – Committal for Trial

12. Part 2 and Schedules 2 and 3 of the Bill reforms the committal process to abolish the use of preliminary investigations and the use of oral evidence at preliminary inquiries; provide for the direct committal to the Crown Court of certain indictable cases where the defendant intends to plead guilty at arraignment; and provide for the direct committal to the Crown Court of certain specified offences.

13. There was a divergence of views in the evidence received on these proposals with the Public Prosecution Service and Victim Support NI supporting the changes but ultimately wanting to see committal proceedings abolished altogether and the Law Society believing the proposal to remove the use of Preliminary Investigations and the use of oral evidence at Preliminary Inquiries is flawed.

14. The Committee is fully aware of the concerns raised and the experiences of victims and witnesses in relation to having to give evidence twice from the Inquiry into the Criminal Justice Services available to Victims and Witnesses that it carried out in 2012. It also appreciates the length of time it takes for many cases to be completed and the need to take further measures to address avoidable delay in the system and noted the figures provided that indicated that very few defendants who were the subject of committal proceedings were not committed for trial.

15. While one Member indicated that they had some concerns regarding these provisions the Committee agreed to support Clauses 7 to 16 and Schedules 2 and 3 and the amendment proposed by the Department to allow for the direct committal of any co-defendants who are charged with an offence which is not a 'specified offence' so that, in the interests of justice, all defendants can be tried at the same time.

Part 3 – Prosecutorial Fines

16. Part 3 of the Bill creates new powers to enable public prosecutors to offer lower level offenders a financial penalty, up to a maximum of £200 (the equivalent of a level 1 court fine), as an alternative to prosecution of the case at court.

17. In the evidence received on this part of the Bill observations were made regarding the wider issue of fine collection and enforcement with comments relating specifically to prosecutorial fines focusing on how they will operate in practice.

18. The Committee agreed that it was content with Clauses 17 to 27 of the Bill but indicated that it will wish to see the draft guidance to be developed by the PPS to ensure that it adequately addresses the circumstances and frequency with which prosecutorial fines can be considered and offered to an offender. The Committee will also undertake the Committee Stage of the Fines and Enforcement Bill in due course which will provide an opportunity to consider and address the wider issues associated with the payment and enforcement of fines.

Part 4: Victims and Witnesses

19. Part 4 of the Bill improves services and facilities for victims and witnesses by providing for the establishment of statutory Victim and Witness Charters and providing a statutory entitlement to be afforded the opportunity to make a Victim Personal Statement.

20. Following the commencement of Committee Stage of the Bill the Department advised of its intention to bring forward an amendment to Part 4 of the Bill to introduce a new Clause 35A and a new Schedule 3A to create information sharing powers to provide for a more effective mechanism through which victims can automatically be provided with timely information about the services available to them in the form of Victim Support Services; witness services at court; and access to post-conviction information release schemes. The Department subsequently advised that it intended to bring forward a further amendment, to Clause 33, to allow a victim or a bereaved family member to include, in a Victim Statement, the impact a crime has had on other family members.

21. There was widespread support amongst respondents for the establishment of Statutory Victim and Witness Charters with organisations highlighting that it would ensure that victims and witnesses receive the appropriate support and services during the various stages of the criminal justice process. The placing of Victim Personal Statements on a statutory footing thus providing an opportunity for a victim to explain the impact of an offence or alleged offence was also broadly welcomed as was the proposed amendment to create information sharing powers to provide for a more effective mechanism through which victims can automatically be provided with timely information.

22. The provisions relating to victims and witnesses are a direct result of the findings and recommendations of the Report on the Committee's Inquiry into the Criminal Justice Services Available to Victims and Witnesses of Crime which was published in June 2012. The evidence which the Committee received during the Inquiry clearly demonstrated that engaging with the criminal justice system as a victim and/or witness or as a bereaved family is a daunting experience which can entail encounters with a number of criminal justice agencies and voluntary sector organisations from the time the crime is reported, through the police investigation, prosecution decision making process, court process, sentencing and beyond.

23. The evidence also illustrated the significant difficulties victims and witnesses face with the criminal justice system and the criminal justice agencies and their experience of the process is often frustrating, demoralising and on occasions devastating. The co-operation of victims and witnesses in the criminal justice process is vital to achieving convictions and ensuring that justice is done and it was the Committee's strong belief that much more could and needed to be done to redress the balance and ensure that an effective and appropriate service is provided for them. As part of the Inquiry it therefore recommended that a Victim and Witness Charter providing statutory entitlements for victims and witnesses in terms of information provision and treatment should be introduced in the next suitable Justice Bill. The Committee also recommended that a formal system for the completion and use of Victim Impact Statements should be introduced as a matter of urgency and that an "opt-out" system on being approached by Victim Support NI and the Probation Board should be developed to replace the current "opt-in" system.

24. The Committee therefore welcomed and agreed that it was content with Clauses 28 to 35 subject to the amendments proposed by the Department.

Part 5 and Schedule 4 - Criminal Records

25. Part 5 and Schedule 4 of the Bill modernises arrangements for the disclosure of criminal records by allowing for: electronic applications; portable disclosures; the issuing of single disclosures; an independent appeals mechanism; and a range of other improvements.

26. The Department also indicated its intention to bring forward a number of amendments to Part 5 of the Bill mainly at the suggestion of the Attorney General for Northern Ireland.

27. There was broad support amongst stakeholders for the measures being taken to modernise and streamline the disclosure of information and for the proposed amendment to create a review mechanism for the scheme to filter certain old and minor convictions and other disposals such as cautions from Standard and Enhanced criminal record certificates. Some children's organisations however had concerns regarding the impact of disclosure of criminal records on young people and would like to see the removal from criminal records of old and minor convictions relating to offences committed under the age of 18.

28. The Committee agreed that it is content with Clauses 36 to 43 and Schedule 4 of the Bill subject to the amendments proposed by the Department.

Part 6 – Live Links

29. Part 6 expands provision for the use of live video link ('live link') facilities in courts to include committal proceedings, certain hearings at weekends and public holidays and proceedings relating to failure to comply with certain order or licence conditions. Live links will also be available for witnesses before magistrates' courts from outside the United Kingdom and for patients detained in hospital under mental health legislation, and they will be the norm for evidence given by certain expert witnesses. The provisions do not change a patient's or defendant's entitlement to be present at a hearing nor do they alter the right to consult privately with their legal representative before, during or after a live link. As a package they are designed to increase the use of live links in courts, prisons and hospital psychiatric units providing a cost effective and secure means for patients/defendants to participate in hearings.

30. The Department also advised the Committee that it would bring forward an amendment to Clause 46 so that the same safeguard as provided for in Clauses 44 and 45 which places a responsibility on the court to adjourn proceedings where it appears to it that the accused is not able to see and hear the court and be seen and heard by it and this cannot be immediately corrected applies.

31. The comments received in relation to Part 6 of the Bill largely focused on wider issues relating to the use of live links generally, particularly with regard to children and young people, and the impact on their ability to understand and participate in proceedings and give informed consent and the ability of a defendant to access legal representation and communicate with their legal representative.

32. Having considered the issues raised in the evidence, the benefits of extending the use of live links and the Department of Justice's assurances regarding the various legal requirements set out in statutory frameworks for the use of live links which operate under the authority and supervision of the courts and judiciary, the Committee agreed that it was content with Clauses 44 to 49 and the proposed amendment to Clause 46 to ensure a consistency of approach with respect to safeguarding arrangements.

Part 7 - Violent Offences Prevention Orders

33. Part 7 of the Bill creates a new tool – the Violent Offences Prevention Order (VOPO) – to assist relevant criminal justice agencies in the management of risk from violent offending. The VOPO, as a preventative measure, will benefit offenders in terms of helping to prevent

the committal of further offences and will also benefit those affected by crime by reducing the risk of, and the fear of crime, which could lead to a potential decrease in the number of victims of crime and potential victims of crime.

34. The Department also outlined its intention to bring forward a number of amendments to the clauses relating to the verification of identity, retention of fingerprints and photographs and power of search of third party premises to reflect improvements suggested by the Attorney General and concerns he raised about ECHR compliance.

35. A number of issues were raised in the evidence on Part 7 including whether VOPOs should apply to offenders under the age of 18, the use of VOPOs in relation to domestic violence offences and whether there was also a need for specific Domestic Violence Protection Orders.

36. Having considered the issues raised in the evidence and the further information and clarification provided by the Department of Justice, the Committee agreed that it was content with Clauses 50 to 71 relating to VOPOs subject to the Department's proposed amendments.

Part 8 - Miscellaneous

37. Part 8 contains miscellaneous provisions covering Jury Service; Early Guilty Pleas; Avoiding Delay in Criminal Proceedings; Public Prosecutor's Summons; Defence access to premises; Court Security Officers and Youth Justice.

Jury Service – Clauses 72 to 76

38. Clauses 72 to 76 provide for the abolition of the upper age limit for jury service (currently age 70), to be replaced with an automatic right of excusal for those over 70 and an increase of the current age for automatic excusal from 65 to 70 and various tidy-up provisions.

39. Having sought further information regarding who is currently exempt from jury service the Committee agreed that it was content with Clauses 72 to 76.

Early Guilty Pleas – Clauses 77 and 78

40. Clauses 77 and 78 provide for statutory provisions to encourage the use of earlier guilty pleas. The provisions will provide legislative support to a (non-legislative) scheme being developed to provide a structured early guilty plea scheme in the magistrates' courts and the Crown Court. The provisions will: (i) require a sentencing court to state the sentence that would have been imposed if a guilty plea had been entered at the earliest reasonable opportunity and; (ii) place a duty on a defence solicitor to advise a client about the benefits of an early guilty plea.

41. The Department also advised the Committee that, on the advice of the Attorney General for Northern Ireland, it intended to bring forward an amendment to remove a regulatory making power in sub-section 3 of Clause 78 which has been identified as being of no practical benefit.

42. The main issues raised in relation to Clauses 77 and 78 related to the purpose of the provisions and the likely impact. Several respondents also suggested that the proposed duty on solicitors should also apply to advocates.

43. Several Members outlined concerns and reservations regarding the duty to be placed on solicitors by Clause 78. Views were expressed that it was unnecessary as in practice a solicitor would inform a client of the position anyway, it could potentially create problems and conflicts between solicitors and clients and it would not deliver efficiencies. Other Members were content with the proposed statutory duty. The Committee agreed that it was content with Clause 77 and Clause 78 subject to the amendment proposed by the Department.

Avoiding Delay in Criminal Proceedings - Clauses 79 and 80

44. Clauses 79 and 80 introduce a statutory framework for the management of cases. Through regulation, the Department of Justice will be able to impose duties on the prosecution, defence, and the court, which set out what must be completed prior to the commencement of court stages. The regulations will also allow the Department to impose a general duty to reach a just outcome as swiftly as possible on anyone exercising a function in relation to criminal proceedings .

45. The Assembly Examiner of Statutory Rules drew the attention of the Committee to the regulation-making powers in Clauses 79(2) in relation to the general duty to progress criminal proceedings and Clause 80 – the case management regulations and suggested that if the Regulations are to be workable in any proper and meaningful way they would need to have a major input from those involved and there should therefore at least be a built-in statutory requirement to consult the Lord Chief Justice, the Director of Public Prosecutions, the Bar Council and the Law Society.

46. The Committee referred the Examiner's analysis to the Department and it confirmed that, in response to the concerns raised by the Examiner and the Attorney General it would bring forward appropriate amendments to Clauses 79 and 80.

47. All the respondents to this part of the Bill recognised the serious problem of delay in criminal proceedings and the negative impact this has on victims, witnesses and defendants, especially children and young people. Support was therefore expressed for measures to address avoidable delay including statutory case management.

48. One of the issues consistently raised during the Committee's Inquiry into the Criminal Justice Services available to Victims of Crime in Northern Ireland was the adverse impact the length of time it takes for cases to go through the criminal justice system has on victims and witnesses, many of whom are unable to move on while they wait for the process to be completed. Whilst recognising the complexity of the issue the Committee noted that avoidable delay in the criminal justice system was not new and in its view had been on-going for much too long. Given the detrimental effect it has on victims and witnesses, as clearly demonstrated in the evidence received in the Inquiry, the Committee believed that substantive action was required. While delay is a common complaint with regard to the entire criminal justice process one of the key frustrations for victims and witnesses is the length of time court cases take and the number of postponements/adjournments that frequently occur.

49. The Committee was of the view that a statutory case management scheme would be beneficial and have an overall positive effect in addressing delay and ultimately the experiences of victims and witnesses and therefore recommended that this should be taken forward in the next available justice Bill. The Committee therefore welcomed and supported Clauses 79 and 80 subject to the Department's proposed amendments.

Public Prosecutor's Summons - Clause 81

50. Clause 81 will allow a Public Prosecution Service prosecutor to issue a summons to a defendant without first having to get a Lay Magistrate to sign the summons, thereby streamlining procedures and helping to speed up the process in summons cases by reducing the time taken between the decision to prosecute and first appearance in court.

51. The Committee agreed that it was content with Clause 81 as drafted.

Defence Access to Premises - Clause 82

52. Clause 82 introduces a power to fill a gap which currently exists, so that, in cases where access to premises is not agreed, the defendant will have recourse to the court in order to properly prepare his defence (or appeal).

53. The Department advised the Committee of its intention to bring forward an amendment to improve Clause 82, at the suggestion of the Attorney General, to adjust the threshold for an order allowing access to property to ensure proportionality and greater clarity in the use of the power to balance the rights of the occupier of the premises.

54. The Committee agreed that it was content with Clause 82 subject to the Department's proposed amendment.

Court Security Officers – Clause 83

55. Clause 83 closes a lacuna to enhance the security of court venues and court users by specifying that a Court Security Officer's powers to search, exclude, remove or restrain an individual is extended to include the grounds on which court buildings sit.

56. The Committee agreed that it was content with Clause 83 as drafted.

Youth Justice System – Clauses 84 and 85

57. Clause 84 amends the Aims of the Youth Justice System in Northern Ireland, articulated in Section 53 of the Justice (NI) Act 2002, to reflect the best interests principle as set out in Article 3 of the UN Convention on the Rights of the Child (UNCRC). Clause 85 makes a technical adjustment to delete transitional arrangements relating to detention orders in sub-section 10.5 of the Criminal Justice Act (NI) 2013 that are no longer needed and which it was feared may not be ECHR-compliant.

58. Those respondents who commented on Clause 84 welcomed the fact that it amends section 53 of the 2002 Act to fully reflect the 'best interests' principle as contained in Article 3(1) of the UNCRC and recommended in the Youth Justice Review.

59. The Committee also welcomed the amendment of the existing aims of the youth justice system to include the 'best interests' principle and agreed that it was content with Clauses 84 and 85.

Part 9 – Supplementary Provisions

60. Part 9 of the Justice Bill contains the supplementary provisions including powers to make regulations.

61. During the oral evidence session with departmental officials on 18 February 2015 the Committee sought clarification of the exact purpose and effect of Clause 86 and the extent of the powers that it provides to the Department. The officials stated that it is a general construction that is used in lots of legislation to cover various eventualities, particularly in a Bill of this size where there is the potential for an issue to arise in a number of areas that might need some rectification and is intended to address any minor points that might arise rather than substantive policy.

62. When pressed by the Committee regarding what limitations there is to the powers provided by the clause and whether it enabled the Department not to enact parts of the legislation passed by the Assembly the officials undertook to provide further clarification in writing.

63. The Department subsequently indicated that a power to make supplementary, incidental, consequential and transitional provision is frequently included in a Bill which deals with complex changes in law in case difficulties which have not been identified in the legislative process may arise. The power to make supplementary or consequential provision is intended to pick up missed consequentials or issues which have not been anticipated and the power to make transitory or transitional provisions may be needed because of the sequence in which clauses are commenced or because commencement of particular provisions is unexpectedly delayed. The Department described Clause 86 as "something of a safety blanket" in case the operation of the legislative changes throw up some unexpected difficulty or to address necessary consequential changes that have inadvertently been overlooked during the drafting

of the Bill. It accepted that the power provided is widely drawn to take account of the fact that the precise circumstances in which it may be called upon cannot be determined but stated that the purposes for which the power can be used are reasonably exact and drew attention to the fact that Clause 86(1) provides that the relevant orders must be used for the purposes of the Act or to make provision in consequence of, or for giving full effect to, the Act and Subsection (2) must be read in that light. It also indicated that Clause 87(6)(b) provides that any order made under section 86(1) which contains a provision which amends or repeals a provision of an Act of Parliament or Northern Ireland legislation will be subject to the draft affirmative procedure and cannot be made without Assembly approval. All orders made under Clause 86(1) will also be subject to the usual subordinate legislation procedures.

64. The Committee considered the additional information provided by the Department regarding the purpose of and powers provided by Clause 86. The Committee was of the view that, in essence, Clause 86 provides for the Minister of Justice to amend, appeal or revoke primary legislation agreed and passed by the Assembly by way of secondary legislation albeit some orders would be subject to the affirmative resolution procedure. While noting that this type of clause is a common occurrence in Bills the Committee was not content with the wide ranging powers it provides.

65. The Committee expressed the view that powers should be provided for an exact purpose rather than be broad in nature and, even though the affirmative resolution procedure would apply to some orders, as a consequence of Clause 86 parts of the Bill passed by the Assembly could be changed or potentially reversed by the Department without the level of scrutiny the Bill itself has received. The Committee therefore agreed that it will oppose the inclusion of Clause 86 in the Bill. The Committee believes that its intention to remove this type of clause will send a message to Departments to ensure that future legislation is well thought through beforehand rather than relying on extensive powers to fix things at a later stage. The Committee also noted that the Department can bring forward further primary legislation, if necessary, to deal with any unexpected consequences.

Consideration of other proposed provisions for inclusion in the Bill

66. Seven proposals for new provisions unrelated to the policy areas currently covered in the Justice Bill were brought to the attention of the Committee during the Committee Stage of the Bill. Four were proposed by the Department of Justice, two were proposed by the Attorney General for Northern Ireland and one was proposed by Mr Jim Wells MLA.

Sexual offences against children

67. In January 2015 the Minister of Justice sought the views of the Committee on his intention to provide for a new offence of communicating with a child for sexual purposes and make a change to the existing offence of meeting a child following sexual grooming by way of amendments to the Justice Bill. The new offence of communicating with a child for sexual purposes arises from a national NSPCC lobby campaign to close what is considered a gap in the law relating to 'sexting'. There is already law covering this behaviour in Scotland and the new offence will be introduced in England and Wales by the Serious Crime Bill. The Department subsequently provided the text of the proposed amendment which will include the new offence in the Sexual Offences (NI) Order 2008.

68. The Committee discussed the proposed amendment at its meeting on 14 January 2015 and agreed that it was very important to provide the same level of protection to children in Northern Ireland. The Committee therefore agreed to support the proposed amendment to the Justice Bill noting that it will allow the provision to commence in Northern Ireland within a few months of England and Wales.

69. The amendment to the existing offence in the Sexual Offences (NI) Order 2008 of meeting a child following sexual grooming would make a small, but significant, change to reduce

the evidence threshold for the offence to be engaged. Currently an adult must have communicated with a child on two occasions before meeting them, or travelling to meet them, before the offence is committed. The amendment would reduce that requirement from two occasions to one allowing the police to take action after only one contact and reducing the police burden of the collection of communications evidence even where there has been multiple contacts.

70. The Committee noted that a report by Barnardos showed how quickly contact offending can occur following just one communication or meeting and that, if amended as proposed, the grooming offence could play a much more important role in preventing such contact offending ever taking place. The Committee therefore welcomed the proposed amendment which will improve protection for children in Northern Ireland and subsequently noted the text of the amendment provided by the Department of Justice at its meeting on 18 February 2015.

New offence of causing or allowing serious physical harm to a child or vulnerable adult

71. Existing legislation in place in England, Wales and Northern Ireland under section 5 of the Domestic Violence, Crime and Victims Act (2004) allows for the joint conviction of members of a household who have frequent contact with a child or vulnerable adult, where they caused the death of that child or vulnerable adult, or:

- They were aware or ought to have been aware that the victim was at significant risk of serious physical harm from a member of the household.
- They failed to take such steps as they could reasonably have been expected to take to protect them from the risk.
- The person subsequently died from the unlawful act of a member of the household in circumstances that the defendant foresaw or ought to have foreseen.

72. The Domestic Violence, and Crime and Victims (Amendment) Act 2012 extended the above provision to enable the joint conviction of members of a household who cause or allow a child or vulnerable adult to suffer serious physical harm in the circumstances outlined above in England and Wales but not in Northern Ireland.

73. The Minister of Justice gave a commitment that he would consider extending this provision to Northern Ireland and the Department undertook a targeted consultation in September 2014. The consultation sought views on extending existing legislation and suggested sentence for the offence of causing or allowing serious physical harm to a child or vulnerable adult.

74. The offence would relate to circumstances whereby the injuries to the child or vulnerable adult must have been sustained at the hands of one of a limited number of members of the household, but there is insufficient evidence to point to the particular person responsible.

75. The Department provided the results of the consultation, which were supportive of the proposed amendment, to the Committee in January 2015.

76. The Committee, having considered the information provided and noting that it will provide additional protections to children and vulnerable adults, agreed that it was content with the Department's proposal to include provision in the Justice Bill to extend the scope of the current offence of causing or allowing the death of a child or vulnerable adult under section 5 of the Domestic Violence, Crime and Victims Act 2004 to also include cases of "causing or allowing a child or vulnerable adult to suffer serious physical harm." The Committee subsequently noted the text of the proposed provision provided by the Department.

Regulation of the Salary of the Lands Tribunal Members

77. The Department of Justice advised the Committee of a proposal for a new provision to the Justice Bill to deliver a change to the affirmative resolution procedure for the annual determination of Lands Tribunal members' salaries.

78. The Lands Tribunal and Compensation Act (Northern Ireland) 1964 ("the 1964 Act") provides that the Department may, by order, determine the salary of members of the Lands Tribunal. Such an order is subject to the affirmative resolution procedure. The Lands Tribunal consists of a President (who does not receive a salary under the 1964 Act as this post is held by a Lord Justice of Appeal) and one member. Therefore, only one individual is subject to this procedure. No other judicial salary is subject to Assembly approval.

79. During an Assembly debate in September 2013 on the Lands Tribunal (Salaries) Order (Northern Ireland) 2013, it was highlighted by the Chairman of the Committee for Justice that the use of the affirmative procedure for a 1% pay increase, which is set by the Review Body on Senior Salaries for one person appeared odd and was something the Department may wish to look at, particularly when legal aid statutory rules that relate to millions of pounds and affect the entire legal profession are largely subject to the negative resolution procedure. The Minister agreed to consider changing the procedure when a suitable legislative opportunity was identified.

80. The Committee welcomed the proposed new provision, noting that it would align the procedure for determining Lands Tribunal members' salaries with the procedure used to determine other judicial salaries and noted the text of the amendment at the meeting on 18 February 2015.

Policy Amendments relating to the Police and Criminal Evidence (NI) Order 1989 – Fingerprint and DNA Retention

81. The Department advised the Committee that it intended to bring forward a number of new policy amendments to the biometric provisions in the Police and Criminal Evidence (NI) Order 1989 (PACE) as part of the Justice Bill.

82. Departmental officials attended the meeting on 18 February 2015 to outline the purpose of the proposed amendments and answer Members' questions. The officials indicated that four of the five amendments are to address shortcomings identified through early experience of operating the corresponding provisions in England and Wales including:

- Amending PACE to allow police to retake fingerprints and a DNA sample in cases where an investigation has been discontinued and where the material originally taken has been destroyed in accordance with the new retention framework but the same investigation later recommences, perhaps because new evidence has emerged.
- Replacing existing article 63N of PACE which has been found not to achieve the intended policy outcome to make it clear that DNA and fingerprints taken from an individual may be retained on the basis of a conviction, irrespective of whether that conviction is linked to the offence for which the material was first obtained.
- Amending Article 63R to disapply the normal destruction rules for samples in cases where the sample is or may become disclosable under the 1996 Criminal Procedure and Investigations Act but makes clear that the material cannot be used for any purpose other than in proceedings for the offence for which the sample was taken and must be destroyed once the Act no longer applies.
- An amendment to correct a gap identified in new Article 63G of PACE to provide that a conviction in Great Britain for a recordable offence will be reckonable for the purposes of determining the period of retention of material taken in Northern Ireland.

83. The other amendment will add a new article to PACE to reflect the introduction in Northern Ireland of prosecutorial fines by Part 3 of the Justice Bill.

84. The Committee questioned officials further on the proposal to provide for the retention of fingerprints or DNA profiles in relation to persons given a prosecutorial fine as such fines should be for minor, lower-level offences, whether DNA retention forms part of a person's records that could be accessed through an AccessNI records search, the number of DNA and

fingerprint records that are retained and how this compares to other jurisdictions, and the current retention framework that is in place following which it agreed that it was content with the inclusion of the amendments in the Bill.

A proposal by the Attorney General for Northern Ireland for an amendment to the Coroners Act (Northern Ireland) 1959

85. During consideration of the Legal Aid and Coroners' Courts Bill, the Committee considered a proposed amendment to the Coroners Act (NI) 1959 by the Attorney General. The Committee was of the view that the proposal raised a number of issues which required further scrutiny and consideration which could not be undertaken within the timescale for completion of the Committee Stage of the Legal Aid and Coroners' Courts Bill. The Committee agreed that if an alternative Bill could be found within which the amendment could be taken forward and considered properly in the foreseeable future the Committee would support that approach. The Justice Bill allowed the Committee to consider in more detail the Attorney General's proposal.

86. At its meeting on 2 July 2014, the Committee agreed to seek further written views on the Attorney General's proposed amendment and subsequently took oral evidence from the Health and Social Care Board, the Department of Health, Social Services and Public Safety and the Attorney General.

87. To assist its consideration of the proposal the Committee also commissioned a research paper on the position in England and Wales, Scotland and the Republic of Ireland and also sought advice on including a review mechanism/sunset clause in the amendment to enable it to be reviewed on a regular basis such as every 12 months.

88. During the discussions on the Attorney General's proposed amendment some Members indicated that they were inclined to support it while others indicated that they had some concerns. Key issues discussed included the need to ensure information is provided when it should be and whether the proposed amendment would assist/support this and provide a "second pair of eyes", the process of change and new initiatives the Health Service is implementing, the fact that SAIs were introduced as a learning exercise and staff are encouraged to participate in them on that basis, the need for openness and transparency and whether the amendment would assist this or create a climate of fear/reluctance thus diminishing it and whether it would assist people in difficult circumstances to establish the truth about the death of a loved one.

89. A proposal to take forward the proposed amendment by the Attorney General to the Coroners Act (NI) 1959 with the addition of provision for a sunset clause/review mechanism as a Committee amendment was put at the meeting on 11 March 2015 but fell as it did not have the support of a majority of the Members present.

A proposal by the Attorney General to provide for Rights of Audience for Lawyers Working in his Office

90. The Attorney General asked the Committee to consider making legislative provision to confer rights of audience equivalent to those of barristers in private practice on any barrister or solicitor working in his office and designated by him. The Attorney General's view was that the proposal should apply, at the outset, to the small number of lawyers working in his office and under his direct supervision.

91. The Department of Justice advised the Committee that, whilst acknowledging the potential benefits of making such legislative provision, initial soundings indicated there may be implications for the wider legal services landscape and its regulation. The Minister of Justice recognised the potential benefits of suitably skilled lawyers in the Attorney General's office (and those in other offices) having the right to appear in the higher courts. However, he considered that this was achievable under the mechanisms already legislated for in the Justice (Northern Ireland) Act 2011.

92. When the Director of Public Prosecutions attended to give oral evidence on the Justice Bill he referred to the Attorney General's request and indicated that similar provision would significantly benefit the Public Prosecution Service as well. He requested that the Committee also consider giving the same rights of audience provision for the lawyers working in the PPS higher court advocacy unit.

93. The Committee also wrote to the Departmental Solicitor's Office to request its view on the level of staff the DSO would propose to have rights of audience for. In response, the Departmental Solicitor indicated that, if an exemption is granted to lawyers in the Attorney General's Office he would want the same right extended, initially to the 12 staff on his judicial review team and in due course for the remaining 12 lawyers in the litigation division.

94. The Committee considered the Attorney General's proposal for legislative provision for rights of audience for lawyers in his office and similar requests by the PPS and the DSO at the meeting on 25 February 2015 and agreed to request further information from the Department of Justice regarding whether it could be adapted to provide for a review mechanism after a period of time to assess the impact and a mechanism to provide rights to other organisations if considered appropriate. The Department responded indicating that it remained of the view that bespoke arrangements are unnecessary to achieve the desired outcome and would fragment the accreditation process, detracting from what should be the pre-eminent role of the Bar and Law Society, potentially to the detriment of consistency of training and standards of representation. If the proposed amendment was made the Department believed the operation of those arrangements would best be monitored on an administrative basis with further legislative provision taken as necessary.

95. When the Committee discussed the Attorney General's proposal, some Members indicated that they were minded to support it on the grounds that it is a modest change that would provide rights of audience for a small, discrete number of lawyers in his office working in a fairly restrictive area of law, primarily judicial review, which would lead to a more cost-effective system. Other Members had concerns however regarding the implications in relation to creating a precedent or widening it to include rights of audience for lawyers in other offices as it could diminish the rights of counsel to act independently within the courts which the Bar Council would have serious objections to. As there was no consensus the Committee agreed that it would not take forward the proposal.

Proposed Amendment by Mr Jim Wells MLA

96. At its meeting on 2 July 2014, Mr Jim Wells MLA (then a Member of the Committee for Justice) advised the Committee that he intended to bring forward an amendment to the Justice Bill to restrict lawful abortions to National Health Service premises except in cases of urgency when access to National Health Service premises is not possible and where no fee is paid. He provided the wording of the amendment which also included an additional option to the existing legislation to provide for a period of 10 years imprisonment and a fine on conviction on indictment to be imposed and proposed that the Committee should seek views on his amendment when seeking evidence on the Bill.

97. The Committee discussed whether it was appropriate to seek views on individual Members' proposed amendments when seeking views on the Bill and a range of views were expressed. At the meeting on 2 July 2014, the Committee agreed to seek views on the amendment proposed by Mr Jim Wells MLA when seeking evidence on the Justice Bill.

98. Following the Committee's call for written evidence on the Bill, a total of 28 written responses on the proposed amendment were received from organisations. Copies of the responses are included at Appendix 3. A total of 20 were in favour of the amendment, 7 were not in favour and 1 made no comment on whether it was in favour. In addition to the written responses from organisations, the Committee also received a number of responses from individuals, a number of petitions and almost 22,500 postcards in favour of the amendment.

99. The Committee subsequently agreed to take oral evidence from Amnesty International, CARE NI, Christian Medical Fellowship, Evangelical Alliance, NI Human Rights Commission, Precious Life, the Regulation and Quality Improvement Authority (RQIA), Society for the Protection of Unborn Children and Women's Network. The Minutes of Evidence are included at Appendix 2.

100. The views expressed in the written and oral evidence received on the proposed amendment by Mr Jim Wells MLA were divided with organisations and individuals either strongly supporting it or indicating strong opposition to it.

101. Those who strongly supported the proposed amendment included CARE, Christian Medical Fellowship, Evangelical Alliance, Precious Life, Society for the Protection of Unborn Children and Women's Network. In their written and oral evidence they indicated:

- There are no credible or compelling needs for private companies to provide abortion services in Northern Ireland.
- There are issues of transparency where private clinics are concerned including a failure to provide information on the number of abortions undertaken on their premises.
- There is no evidence that private companies or charities are needed to meet existing levels of demand.
- Life begins at the moment of conception.
- Promotion of a more liberal approach on abortion is at odds with the law, culture and values of the people of Northern Ireland.
- There are concerns regarding whether the law, as it stands, is being upheld/adhered to as it is difficult to monitor lawful terminations outside of NHS premises due to a lack of information.
- There is a responsibility to protect the life of the mother and the unborn child and this responsibility is best held with the Health and Social Care Trusts and not those actively campaigning to change the law for financial gain.
- The European Court of Human Rights gives a broad margin of appreciation to States as there is no consensus on abortion across Europe.

102. Those who opposed the proposed amendment and/or raised issues concerning it included Amnesty International, the NI Human Rights Commission and the RQIA. In their written and oral evidence they indicated:

- The proposed amendment would constitute a further significant restriction on the right to privacy in Northern Ireland and adoption of it would be contrary to ECHR, Article 8, Article 17 and ICCPR.
- The amendment would further hinder the State's ability to fulfil its positive obligation to "create a procedural framework enabling a pregnant woman to effectively exercise her right of access to a lawful abortion".
- It is not clear how the word 'urgent' is interpreted and the circumstances by which someone will be able to terminate a pregnancy outside of NHS premises in an 'urgent' situation.
- People should be allowed to decide whether they use a private provider or not and there are no other circumstances where people are forced to use only a public health facility.
- The amendment may be so broad as to include certain forms of contraception, including the morning after pill, and further clarification is required as, if the amendment is passed, there could be legal challenges to the use of the morning after pill.
- There are a range of possible unintended consequences of the amendment that require further consideration.

- There are issues relating to enforcement of criminal law regulations and any potential role for RQIA as it does not sit within its present regulatory framework.
- Access to safe abortion is recognised as a human right under the international human rights framework and a total ban on abortion and other restrictions that do not, at a minimum, ensure access to abortion in cases where a woman's life or physical or mental health is at risk, in cases of rape, sexual assault or incest and in cases of severe foetal impairment violate those rights.

103. At its meeting on 4 March 2015, the Committee agreed to include the evidence in relation to Mr Jim Wells' amendment in the Committee's Report on the Justice Bill.

104. The Committee discussed the proposed amendment at several meetings and opinion was divided with some Members indicating that they supported the amendment and others indicating that they were opposed to it.

105. A proposal to take forward the proposed amendment by Mr Jim Wells MLA as a Committee amendment was put at the meeting on 11 March 2015 and agreed by a majority of Members present.

Introduction

Background to the Bill

1. The Justice Bill was introduced to the NI Assembly on 16 June 2014 and was referred to the Committee for Justice for consideration in accordance with Standing Order 33 (1) on completion of the Second Stage of the Bill on 24 June 2014.

2. At introduction the Minister of Justice made the following statement under section 9 of the Northern Ireland Act 1998:

> *'In my view the Justice Bill would be within the legislative competence of the NI Assembly.'*

3. The purpose of the Bill is to give effect to the desire of the Justice Minister to improve the operation of the justice system by improving services for victims and witnesses, speeding up the justice system and improving the efficiency and effectiveness of key aspects of the system.

4. The Bill has 9 Parts and 6 Schedules covering a range of policy areas:

- **Part 1** creates a single jurisdiction in Northern Ireland for the county courts and magistrates' courts, replacing statutory county court divisions and petty sessions districts with administrative court divisions. Schedule 1 contains amendments consequential to the provisions on single jurisdiction.
- **Part 2** reforms the committal process to abolish the use of preliminary investigations and the use of oral evidence at preliminary inquiries, provide for the direct committal to the Crown Court of certain indictable cases where the defendant intends to plead guilty at arraignment, and provide for the direct committal to the Crown Court of certain specified offences. Schedule 2 contains amendments consequential to the abolition of preliminary investigations and mixed committals and Schedule 3 contains amendments consequential to the provisions on direct committal.
- **Part 3** creates new powers to enable public prosecutors to offer lower level offenders a financial penalty, up to a maximum of £200 (the equivalent of a level 1 court fine) as an alternative to prosecution of the case at court.
- **Part 4** improves services and facilities for victims and witnesses by providing for the establishment of statutory Victim and Witness Charters and providing a statutory entitlement to be afforded the opportunity to make a Victim Personal Statement.
- **Part 5** modernises arrangements for the disclosure of criminal records by allowing for: electronic applications; portable disclosures; the issuing of single disclosures; an independent appeals mechanism; and a range of other improvements. Schedule 4 contains amendments consequential to the provisions on criminal records.
- **Part 6** expands provision for the use of live video link ('live link') facilities in courts to include committal proceedings, certain hearings at weekends and public holidays, and proceedings relating to failure to comply with certain order or licence conditions. Live links will also be available for witnesses before magistrates' courts from outside the United Kingdom and for patients detained in hospital under mental health legislation, and they will be the norm for evidence given by certain expert witnesses.
- **Part 7** creates Violent Offences Prevention Orders (VOPOs) to assist relevant criminal justice agencies in the management of risk from violent offending.
- **Part 8** contains miscellaneous provisions in relation to Jury Service, Early Guilty Pleas, Avoiding Delay in Criminal Proceedings, Public Prosecutor Summons, Defence Access to Premises, Court Security Officers and Youth Justice.

- **Part 9** contains the supplementary provisions including powers to make regulations. Schedule 5 lists the transitional provisions and savings necessary to the Bill and Schedule 6 lists the repeals brought in by the Bill.

Committee Approach

5. At the commencement of Committee Stage of the Bill the Department advised the Committee of its intention to bring forward a range of amendments to Parts 4, 5 and 8 of the Bill at Consideration Stage which address issues raised by the Attorney General during the pre-introductory stages of the Bill or put forward new policy proposals within the core themes of the Bill.

6. At the meeting on 2 July 2014, the Committee agreed the arrangements to seek evidence on the provisions of the Bill and the Department's proposed amendments. The Committee also agreed to seek further views on a proposal put forward by the Attorney General for Northern Ireland during the Committee Stage of the Legal Aid and Coroners' Courts Bill to amend the Coroners Act (Northern Ireland) 1959. Under section 14(1) of the Act the Attorney General has the power to direct an inquest where he considers it 'advisable' to do so but has no powers to obtain papers or information that may be relevant to the exercise of that power. The Attorney General has indicated that he has experienced some difficulty in recent years in securing access to documents that he needed and his proposed amendment to the 1959 Act would confer a power on him to obtain papers and provide a clear statutory basis for disclosure. The Attorney General has indicated that the principle focus of his concern is deaths that occur in hospital or where there is otherwise a suggestion that medical error may have occurred.

7. Mr Jim Wells MLA also advised the Committee that he intended to bring forward an amendment to the Bill to restrict lawful abortions to National Health Service premises, except in cases of urgency when access to National Health Service premises is not possible and where no fee is paid and to provide an additional option to the existing legislation for a period of up to 10 years imprisonment and a fine on conviction on indictment. Mr Wells asked the Committee to also seek views on his proposed amendment in its call for evidence and the Committee agreed to do so.

8. In addition to publishing a media sign posting notice in the Belfast Telegraph, Irish News and Newsletter seeking written evidence on the Bill, the Committee wrote to a wide range of key stakeholders inviting views. In response to its call for evidence, the Committee received 52 written submissions. Copies of the written submissions are included at **Appendix 3.** The Committee also received a significant number of responses from individuals, a number of petitions and almost 22,500 postcards in support of the amendment proposed by Mr Jim Wells MLA.

9. During the period covered by this report the Committee considered the Bill and related issues at 21 meetings. The relevant extracts from the Minutes of Proceedings are included at **Appendix 1.**

10. The Committee had before it the Justice Bill (NIA 37/11-15) and the Explanatory and Financial Memorandum that accompanied the Bill.

11. At its meeting on 10 September 2014 the Committee agreed a motion to extend the Committee Stage of the Bill to 27 March 2015 to provide sufficient time to take oral evidence and carry out robust scrutiny of the detail contained in the clauses and schedules of the Bill. The motion to extend was supported by the Assembly on 22 September 2014.

12. The Committee was first briefed by departmental officials on the principles of the Bill on 18 June 2014. In addition to further briefings from departmental officials on each part of the Bill and proposed amendments, the Committee held 18 oral evidence sessions with a range of key stakeholders and organisations including the Attorney General for Northern Ireland. Prior to introduction of the Bill, the Committee had considered a wide range of policy proposals relating to the Bill and the views of the Committee are reflected in a number of the provisions

contained within the Bill. The provisions relating to victims and witnesses are also designed to reflect a number of the recommendations in the Committee's Report on the Inquiry into the Criminal Justice Services available to Victims and Witnesses of Crime. The Minutes of Evidence are included at **Appendix 2** and a list of witnesses who gave oral evidence is at **Appendix 10.**

13. The written and oral evidence raised a number of issues and concerns, particularly in relation to the proposals for a single jurisdiction for county courts and magistrates' courts, the committal for trial provisions, the proposals for prosecutorial fines and Violent Offences Prevention Orders and the proposed changes relating to early guilty pleas. The Committee explored the issues with the Department both in writing and in oral evidence sessions. Correspondence and papers from the Department of Justice are included at **Appendix 4.**

14. The Committee first considered the Attorney General' s proposed amendment to Section 14(1) of the Coroners Act (Northern Ireland) 1959 during the Committee Stage of the Legal Aid and Coroners' Courts Bill. At that time the Committee indicated that it was generally supportive of the principle of the proposed provision however it raised a number of issues which required further scrutiny and consideration which could not be undertaken within the timescale for completion of Committee Stage of that Bill. The Committee agreed that if an alternative Bill could be found within which the amendment could be taken forward and considered properly it would support that approach.

15. When considering the proposed amendment afresh the Committee took account of the views expressed in the written submissions received as part of the scrutiny of the Legal Aid and Coroners' Courts Bill and additional views provided during the scrutiny of this Bill. The Committee also held three oral evidence sessions on the proposed amendment with the Health and Social Care Board, the Department of Health, Social Services and Public Safety and the Attorney General for Northern Ireland and commissioned a research paper on the position in England and Wales, Scotland and the Republic of Ireland from Assembly Research Services. The written submissions that comment on this proposed amendment are included at **Appendix 3.** Correspondence regarding the Attorney General's proposed amendment to the Coroners Act (Northern Ireland) 1959 is at **Appendix 5** and the Assembly research paper is at **Appendix 8.**

16. In relation to the proposed amendment from Mr Jim Wells the Committee heard oral evidence from a range of stakeholders including faith based representatives, the NI Human Rights Commission and the Regulation and Quality Improvement Authority. The written submissions on this proposed amendment are included in **Appendix 3** and additional correspondence is at **Appendix 7.**

17. The Committee also considered a range of proposed provisions on issues unrelated to the content of the Bill which were brought to its attention by the Department and which:

- provide for a new offence of communicating with a child for sexual purposes and reduce the evidence threshold for the existing offence of meeting a child following sexual grooming;
- change the affirmative resolution procedure for the annual determination of Lands Tribunal members' salaries;
- provide for a new offence of causing or allowing serious physical harm to a child or vulnerable adult; and
- make a number of changes to the Police and Criminal Evidence (NI) Order 1989 (PACE) relating to the retention of fingerprints and DNA profiles.

18. In addition the Department provided a number of additional minor amendments to existing clauses within the Bill which it advised would ensure that the clauses operate as originally envisaged, enhance existing clauses to reflect ongoing stakeholder engagement post-introduction, or correct errors and close gaps in other existing legislation.

19. The Department also advised the Committee of a request from the Attorney General for Northern Ireland for provision to be provided for rights of audience for lawyers working in his office. Correspondence regarding this proposal is included at **Appendix 6.**

20. The Committee sought advice from the Examiner of Statutory Rules in relation to the range of powers within the Bill to make subordinate legislation. The Examiner considered that most of the delegated powers were appropriate but drew the attention of the Committee to the provisions in Clause 79(2) in relation to the general duty to progress criminal proceedings and Clause 80 in relation to case management regulations. The Examiner was of the opinion that if these significant regulation making powers were to be workable in any proper and meaningful way, they would need to have a major input from those involved and there should at least be a built-in statutory requirement to consult the Lord Chief Justice of Northern Ireland, the Director of Public Prosecutions for Northern Ireland, the General Council of the Bar of Northern Ireland and the Law Society of Northern Ireland. This issue is covered in the main body of the report.

21. The Committee carried out informal clause by clause deliberations at its meetings on 25 February, 4 March and 10 March 2015 and undertook its formal clause by clause scrutiny of the Bill on 11 March 2015.

22. At its meeting on 25 March 2015 the Committee agreed its report on the Justice Bill and ordered that it should be printed.

Consideration of the Provisions in the Bill

23. In response to its call for evidence, the Committee received 52 written submissions and held 18 oral evidence sessions. While there was general support for the majority of clauses in the Bill a number of specific issues and concerns were raised, particularly in relation to the proposals for a single jurisdiction for county courts and magistrates' courts, the committal for trial provisions, the proposals for prosecutorial fines and Violent Offences Prevention Orders and the proposed changes relating to early guilty pleas. The Committee explored these further with the Department of Justice both in writing and in oral evidence sessions.

Part 1 and Schedule 1– Single Jurisdiction for County Courts and Magistrates' Courts

24. Part 1 of the Justice Bill creates a single jurisdiction in Northern Ireland for the county courts and magistrates' courts, replacing statutory county court divisions and petty sessions districts with administrative court divisions. This will allow greater flexibility in the distribution of court business by enabling cases to be listed in, or transferred to, an alternative court division where there is good reason for doing so. Schedule 1 contains amendments consequential to the provisions on single jurisdiction.

25. Organisations that commented on this part of the Bill either welcomed the move to a single jurisdiction or indicated that they did not object in principle to the proposals. They did however raise some concerns regarding the possible impact on court users and wanted to see further information on the operational details of the proposals including the guiding principles for the transfer of business which the Lord Chief Justice has responsibility for developing and implementing.

26. Victim Support welcomed the move to a single jurisdiction hoping that it will result in services that are much more adaptable and responsive, particularly to the needs of victims and witnesses, and that there will be greater opportunity to ensure that the location of trials are convenient and safety issues in respect of victims and witnesses are not only considered but addressed.

27. The Public Prosecution Service (PPS) however is concerned that the ability to move cases from one magistrates' court venue to another, potentially at short notice, will have a significant impact on those victims and witnesses who wish to or are required to attend the court proceedings. It wants to see the guidance administered in such a way as to minimise the inconvenience to victims and witnesses and hopes that the circumstances where the court could depart from the guiding principles will not have priority over those that protect the interests of victims and witnesses. The PPS also highlighted that it is currently structured around the present county court boundaries and any changes will have a considerable impact on its organisation and resources. It has established a Transformation Working Group to assess the impact of the Review of Public Administration (RPA), the introduction of the single jurisdiction and the potential restructuring of other criminal justice organisations such as the courts and the PSNI.

28. The Law Society, in its written evidence, stated that it did not disagree with the principle of a single jurisdiction and had confidence in the Lord Chief Justice to ensure the fair and efficient operation of the courts system in Northern Ireland. It did however express the view that the Department of Justice should set out on the face of the Bill at Clause 2 the balance between ensuring adequate provision of court divisions to preserve access to justice and developing flexible and efficient boundaries. The Bill should also include scope for a re-appraisal and re-drawing of the administrative boundaries in light of practical experience. In its oral evidence the Society highlighted the importance of ensuring that a robust set of guidelines is introduced to make sure that the assignment of business takes into account the needs of witnesses, victims and defendants to provide for a fair process and, although flexibility is welcome, it is important

that access to justice is promoted through avoiding unnecessarily long journeys where possible for participants in the court process as this could result in adjournments and consequential costs to the legal aid fund. It also stated that there should be a provision requiring the Department, in making any directions in respect of the administration of business, to consult the Lord Chief Justice as it would not be prudent for the Lord Chief Justice to make directions in respect of court business and the Department to take a different view.

29. The Children's Law Centre (CLC) is neither in favour nor fundamentally opposed to the creation of a single jurisdiction but is of the view that the focus of the proposals appear to be about providing additional flexibility to facilitate more effective management of court business and is concerned that the main benefit may be for the Court Service and not the user who could be required to travel some distance to attend court proceedings.

30. The CLC indicated that court users who are children should be able to have full access to justice at a convenient court and highlighted that children who come into contact with the criminal justice system frequently come from economically deprived backgrounds and access to transport to attend court can be difficult. This can be exacerbated if they are to be expected to travel to a court further away but the consequences can be extremely serious if they do not attend e.g. the issuing of an arrest warrant. During oral evidence to the Committee the CLC suggested that the Department could consider providing for the cost of travel or provide travel options to mitigate against this.

31. The CLC is also concerned about how decisions will be made determining where court business will be allocated. It believes that consideration should not only be given to the facilitation of victims and witnesses in deciding to depart from normal listing arrangements but should also be given to the requests of all children involved in cases, including child defendants in criminal cases and indicated that it would welcome the administrative framework and directions for the distribution of court business being subject to further public consultation. The CLC noted that the Department of Justice has already rejected the idea of amending the framework to provide that precedence should be given to the needs of young people on the basis that developing a priority list could create an artificial hierarchy and fetter judicial discretion but emphasised that, rather than seeing judicial discretion fettered, it wished to see it exercised in a way that has the best interests of all children and young people as a primary consideration as required by Article 3 of the UNCRC. The CLC also raised concerns regarding the equality implications of Part 1 of the Bill stating the potential consequences for children may constitute a major impact on their enjoyment of equality of opportunity.

32. The Attorney General for Northern Ireland suggested that a further safeguard could be added to Clause 3 to provide for a duty on the Lord Chief Justice to have regard to the benefit of justice being administered locally similar to the duty in Clause 4(4) requiring the Lord Chief Justice, in giving a direction, to have regard to the desirability of a lay magistrate sitting in courts in reasonable proximity to where he or she lives or works.

33. The Department of Justice stated that the removal of statutory divisions for the county courts and magistrates' courts will provide flexibility and allow for the transfer of cases between administrative divisions where a good reason exists and maintaining court users' access to local justice has been a key consideration in the development of the proposals. The Department indicated that it anticipates that the Lord Chief Justice's directions on the guiding principles for the distribution (listing) and transfer of court business will take account of the importance of access to justice, will detail what a "good reason" to transfer a case will be, will reflect the need for judicial agreement to depart from usual listing arrangements and will set out the need to allow for representations, where practicable, before any decision is made to depart from the usual arrangements in any individual case. The Department also confirmed that the listing of court business is an exclusive function of the Lord Chief Justice and there are no proposals to fundamentally change this position. The Department anticipates that the Lord Chief Justice will consult interested parties on a targeted basis on the draft directions.

34. It is the view of the Department that the Lord Chief Justice's ownership of the listing directions, as well as a requirement for judicial approval, and the opportunity for all parties involved to make representations in relation to the transfer of a case, provides appropriate safeguards in relation to the change to a single jurisdiction. It also highlighted that arrangements for listing court business will remain unchanged in the majority of cases but the new arrangements will introduce an element of flexibility where particular circumstances demand it and the Children (NI) Order 1995 ensures that the needs of the child are paramount and the court would be required to be mindful of this when considering whether or not to transfer a case involving a child. The NI Courts and Tribunals Service does acknowledge that there are practicalities to be taken into consideration and anticipates that all first hearings will, more than likely, occur in the original court location and that sufficient notice will be given to all those involved in a hearing which is to take place elsewhere.

35. In relation to the new administrative court divisions the Department stated that it has always been the intention that they will share their boundaries with local government districts. The new boundaries will therefore be shaped by the implementation of the Review of Public Administration (RPA). The operation of the new administrative boundaries will be subject to post implementation review.

36. In response to the equality concerns raised by the CLC, the Department outlined that Part 1 of the Bill had been screened out as not having any adverse impacts on the Section 75 categories. The operation of the arrangements will however be monitored, following implementation, to assess any equality impact.

37. The Department also advised of its intention to bring forward a series of further consequential amendments for inclusion in Schedule 1 primarily to remove references to 'petty sessions district' and 'county court division' in existing legislation and provided the text of the amendments.

38. During the oral evidence session with departmental officials on this part of the Bill the Committee took the opportunity to explore further what protection will be in place for court users to ensure that the emphasis is not solely on administrative benefits, what consideration if any has been given to the payment of travel costs where additional journeys will be required and whether the County Court judges and Magistrates had been consulted and are content with the proposals. The Committee also questioned how the introduction of a single jurisdiction fits with the Department's current proposals to rationalise the court estate and close a number of courthouses and whether this was part of the process leading to a reduction in courthouses.

39. In relation to travel costs the officials indicated that the Department considered that any applications to transfer a case will be the exception rather than the norm and any expenses that would normally be recovered under legal aid, including additional travel costs will still be recoverable. They also stated that the single jurisdiction provisions are not part of the process to eventually reduce the number of courthouses, pointing out that under existing statutory provision changes can be made and the number reduced and the proposals are currently subject to a public consultation.

40. The officials confirmed that the judiciary, including the County Court judges and Magistrates, had been consulted on the proposals and were content with them. They also viewed the Lord Chief Justice's directions, which will set out the reasons for departing from the standard arrangements and include a requirement that the parties are consulted or given an opportunity to make representations when an application to move a case to a different division is made and will require judicial approval, as providing safeguards against placing too much emphasis on court administration to the detriment of the needs of court users.

41. **While the Committee recognises that a single jurisdiction for the county courts and magistrates' courts will provide flexibility it believes that a robust set of directions/ guidelines is required to ensure that the assignment of business takes account of the**

needs of witnesses, victims and defendants to ensure a fair process and the provision of access to justice. The Committee has written to the Office of the Lord Chief Justice requesting information on the nature of the consultation that will be carried out on the directions and who will be consulted.

42. **Having considered the issues raised in the evidence and the Department of Justice's responses the Committee agreed that it is content with Clauses 1 to 6 and Schedule 1 subject to the amendments proposed by the Department.**

Part 2 and Schedules 2 and 3 – Committal for Trial

43. Part 2 of the Justice Bill reforms the committal process to abolish the use of preliminary investigations and the use of oral evidence at preliminary inquiries; provide for the direct committal to the Crown Court of certain indictable cases where the defendant intends to plead guilty at arraignment; and provide for the direct committal to the Crown Court of certain specified offences. Schedule 2 contains amendments consequential to the abolition of preliminary investigations and mixed committals and Schedule 3 contains amendments consequential to the provisions on direct committal.

44. There was a divergence of views in the evidence received on these proposals with the Public Prosecution Service and Victim Support NI supporting the changes but ultimately wanting to see committal proceedings abolished altogether and the Law Society believing the proposal to remove the use of preliminary investigations and the use of oral evidence at preliminary inquiries is flawed.

45. Victim Support indicated that it has long been of the firmly held opinion that the abolition of preliminary investigations and mixed committals would represent a significant step in addressing some of the considerable trauma and distress experienced by victims and witnesses of crime during the court process and therefore welcomes the Department's intention to repeal article 30 of the Magistrates Courts (NI) Order 1981. Victim Support highlighted that the experience of being cross-examined is highly stressful on one occasion but to then be required to give evidence again compounds the anxiety and is contrary to the interests of justice.

46. Ultimately Victim Support wants to see committal proceedings abolished in all cases given the potentially significant benefits arising from the process of direct transfer, particularly in relation to effective case management and speeding up justice. It does however appreciate that there may be an initial need to assess the overall impact on the system of the changes and therefore has no objection to a staged and gradual transition beginning with murder/ manslaughter cases.

47. In contrast the Law Society stated that, while it understands the concerns expressed in respect of vulnerable witnesses, special rules already exist to ensure that they are not unduly subjected to the stress of having to give evidence, citing the example of provisions to ensure that in cases involving alleged sexual offences no cross-examination takes place at the PE stage. In its view these court rules could be revisited and developed whilst retaining the benefits of oral evidence in committal proceedings and a more measured approach would be for the District Judge to have limited discretion to allow the calling of key witnesses where they believe that it would be in the interests of justice to do so. This would provide some element of safeguard while mitigating any risk that the call for a mixed committal is not abused.

48. The Law Society does not support the assertion that committal proceedings slow down the process of justice indicating that such proceedings offer an opportunity for both the defence and the prosecution to assess the credibility of witnesses. It indicated that an early determination of the strength of a case can produce earlier guilty pleas and the withdrawal of charges where there is insufficient evidence to proceed on one or more counts and

highlighted that the earlier in the process such determinations can be arrived at the higher the cost savings in the longer term by avoiding a lengthier trial.

49. The Law Society believes the proposals are flawed, it should not be assumed that simply removing a step in the process will necessarily lead to cost savings and the Bill should have focused on a duty to balance the needs of vulnerable witnesses with the requirement to ensure efficient committals. It is of the view that a fundamental review of the justice system is required to identify how to maximise efficiency and access to justice and such an approach would avoid short-term policymaking. If committal is to be abolished then there has to be a fair procedure to ensure that the defendant is ultimately aware of what case they are actually facing as currently papers are served when committal stage is reached.

50. The Public Prosecution Service (PPS) welcomes the changes to the committal process in the criminal courts and in particular the abolition of preliminary investigations and mixed committals which it believes could result in an eight-to-ten week saving in the trial process. The changes are however more limited that it would like and, while recognising that reform of committal proceedings is a staged process, it remains of the view that they should be abolished altogether. The PPS highlighted that the proposed changes only removes the cross-examination of witnesses. It still leaves in place the committal procedure which, now that the right to call witnesses will be removed, in its view makes that stage of the trial process even more unnecessary. The PPS views the committal process as a luxury and a historical anomaly that no longer exists in other parts of Great Britain and which is expensive to the public purse, not only through the extra cost to legal aid but also the burden that it places on the Public Prosecution Service.

51. The PPS highlights that the new process will still allow the defence to seek disclosure, to make applications for abuse of process and to make an application to a district judge not to return the case and it will require the PPS to staff this process. There is then a second opportunity when the case is sent to the Crown Court where similar applications can be made. The PPS highlighted that one of the benefits of automatic or straight referral to the Crown Court in all indictable cases is that management at the early stages of the case would be carried out by the court of trial rather than the lower-tiered court. In its view this would concentrate the minds of all those preparing the papers much more stringently with regard to progressing the case. It also believes that abolishing committals could benefit defendants.

52. Responding in oral evidence to the issue of disclosure of papers to the defence which had been cited as a difficulty that slowed up the process, the PPS stated that the law is very clear and the prosecution has a duty to disclose anything that is of assistance to the defence and detrimental to the prosecution and it is constantly reviewed. The trigger for the second review is when the defence declares its hand therefore if this is earlier in the process then disclosure can occur earlier.

53. In relation to the provisions for direct transfer for trial of cases where an indication of an intention to plead guilty has been made and for specified offences the PPS raised concerns that the Bill, as currently drafted, does not provide for a co-defendant charged with a non-specified offence to also be directly transferred to the Crown Court to be prosecuted at the same time so that a jury can hear all the relevant evidence.

54. The PPS welcomes the provision for very serious cases to be directly transferred to the Crown Court but notes that robust case management will be essential. It is also of the view that, while currently limited to murder and manslaughter, other serious offences would benefit from immediate transfer and should be included. It notes that there is provision to expand the list of specified offences should the limited reform prove successful in reducing delay without prejudicing defendant's rights.

55. The Department, in its written and oral evidence, indicated that the proposals aim to streamline the procedure for moving business from the Magistrates' Court to the Crown Court and are expected to result in some improvement in efficiency. However, the primary driver for abolishing

preliminary investigations and mixed committals is to reduce the impact on vulnerable victims and witnesses and is a direct response to feedback from victims' organisations about the impact on victims of having to give their oral evidence in court twice. As pointed out by the Law Society, special rules already exist to ensure that vulnerable witnesses are not unduly required to give traumatic evidence, however these apply in certain circumstances and the Department believes that the giving of oral evidence at committal by persons other than the defendant should not be required and the proper venue to test the detail of the evidence is at trial. The Department also pointed out that, under Clause 7, the District Judge will retain their existing power to decide whether a prima facie case against the defendant is disclosed by the evidence and they can discharge the defendant on the basis that no such case exists.

56. The Department confirmed that, in line with the views of the PPS, the Minister of Justice's ultimate intention is to abolish committal proceedings altogether once it is clear the system has the capacity to support this. The staged abolition of committal, including the retention of a streamlined committal procedure for an interim period, is, in the Department's view, the correct approach and it highlighted the experience in England and Wales where the abolition of committal was achieved over a period of a decade within a programme of associated supporting structural reforms.

57. The Department outlined that, while the provision allowing cases to be directly transferred to the Crown Court where the defendant has indicated that he/she intends to plead guilty at arraignment will initially only apply to murder and manslaughter cases, the intention is to add to the list of specified offences over time when it is clear the system as a whole can support this and there are no capacity issues created in the Crown Court. The Department agrees that, where a person is directly committed for trial to the Crown Court the prosecution must serve the documents containing the evidence on which the charge is based on the defendant and the Crown Court upon committal or as soon as practicable thereafter and Schedule 3 of the Bill amends the disclosure provisions within the Criminal Procedure and Investigations Act 1996 to provide that defence disclosure is triggered by the service of documents on the defence by the PPS following transfer to the Crown Court. The Department, with the PPS and the PSNI, has also developed an administrative scheme which is currently being piloted in the Crown Court in the Division of Ards which will promote earlier engagement between the PPS and the defence and reduce the time taken to disclose the strength of the prosecution case to the defence.

58. The Department also indicated that, following further discussion with the PPS and the Office of the Lord Chief Justice, it was minded to bring forward an amendment to enable the direct transfer of a co-defendant who has been charged with a non-specified offence to enable both to be tried at the same time and subsequently provided the text of the proposed amendment for the Committee's consideration.

59. During the oral evidence session with departmental officials the Committee questioned how/whether the proposed reforms to committal proceedings will have the intended effect, the likely timescale for the removal of committal proceedings entirely and how such action would improve the justice system. The Committee also clarified the Assembly control mechanism that would apply to any order by which the Department can amend the list of specified offences and sought further information on how many cases are not returned for trial at committal stage.

60. In response officials advised that the main driver for the changes to committal proceedings was the impact on the victim however it also has potential to speed up the system and there are benefits not just for court time but for the police and prosecution and a reduction in the need to commission forensic exhibits, medical reports etc. They stated that very few cases are not returned for trial as a result of the committal process and subsequently provided figures in writing that indicated that in 2013 1,743 cases were committed of which 51 (2.9%) were not returned for trial and of those 8 were either mixed committal or preliminary investigation.

61. With regard to the timescale for the removal of committal proceedings altogether the officials indicated that it would depend on progress with other reforms and how the direct transfer of

murder/manslaughter cases works. They also confirmed that the list of specified offences could be amended by an Order that would be subject to the Assembly affirmative resolution procedure.

62. The Director of Public Prosecutions subsequently wrote to the Committee outlining that, while under no circumstances is the PPS seeking to dilute the fundamental right that an accused should be permitted to confront his accuser and to cross examine any witness against him, the proposals to reform committal proceedings reasonably confine the right to cross examine to trial and are a proportionate reform in the context of a changing criminal justice environment where there is now a greater understanding and recognition of the experiences of victims and witnesses within the criminal justice process. He highlighted cases where committal added considerable delay to the progress of the proceedings or impacted in a negative way on witnesses.

63. The Director also stated that very few cases are not returned for trial and indicated that, having heard the figures provided by departmental officials, was concerned that they over represented the number of cases in which a District Judge decided there was not a prima facie case to warrant committal to the Crown Court for trial. The Director outlined that the PPS figures show that in 2013 out of a total of 2,289 defendants only 6 were not committed for trial by a District Judge which represents approximately 0.3% of defendants who were the subject of committal proceedings. Of the 6 cases, 2 were cases in which the defence called witnesses to give evidence and in both they did not attend and the cases against the remaining 4 defendants were decided on the basis of legal submissions on the evidence contained in the committal papers with no oral evidence being called. The Department's reference to 51 cases appears to include cases that were withdrawn, where a caution was accepted by a defendant, where papers could not be served on a defendant and where defendants did not attend for committal. In 2014 of the 1,938 defendants who were the subject of committal proceedings only 4 were not committed for trial.

64. The Director highlighted that defendants will retain the right to challenge the sufficiency of the prosecution's evidence through the Crown Court's 'No Bill' procedure pre-trial or through the trial process itself. In his view the proposals rebalance this part of the process and provide greater protection for victims and witnesses.

65. **The Committee is fully aware of the concerns raised and the experiences of victims and witnesses in relation to having to give evidence twice from the Inquiry into the Criminal Justice Services available to Victims and Witnesses that it carried out in 2012. It also appreciates the length of time it takes for many cases to be completed and the need to take further measures to address avoidable delay in the system and noted the figures provided that indicated that very few defendants who were the subject of committal proceedings were not committed for trial. While one Member indicated that they had some concerns regarding these provisions the Committee agreed that it is content with Clauses 7 to 16 and Schedules 2 and 3 and the amendment proposed by the Department to allow for the direct committal of any co-defendants who are charged with an offence which is not a 'specified offence' so that, in the interests of justice, all defendants can be tried at the same time.**

Part 3 – Prosecutorial Fines

66. Part 3 of the Justice Bill creates new powers to enable public prosecutors to offer lower level offenders a financial penalty, up to a maximum of £200 (the equivalent of a level 1 court fine) as an alternative to prosecution of the case at court.

67. In the evidence received on Part 3 of the Bill observations were made regarding the wider issue of fine collection and enforcement with comments relating specifically to prosecutorial fines focusing on how they will operate in practice.

68. NIACRO welcomes proposals to divert people from the court process but believes that many of the people who currently receive fines for minor offences or for civil matters should be

offered the opportunity to complete a Supervised Activity Order (SAO) as a direct alternative to paying the fine rather than as an alternative to going into custody for non-payment of the fine that has been imposed. NIACRO stated that imposing repeat fines is clearly not addressing offending behaviour and there are other ways of people providing payback, highlighting schemes in the Republic of Ireland and Scotland that have been well received by the public and that offenders are engaging with positively. NIACRO was also concerned that using financial penalties in lieu of prosecution will discriminate against people who do not have the capability to pay and will be more likely to end up with a criminal record.

69. NIACRO recommended that the Public Prosecution Service (PPS) should carry out a full consultation before publishing detailed guidance for individuals on prosecutorial fines. It also wished to see clarification regarding how prosecutorial fines will be recorded, under what circumstances the information will be disclosed, whether they will be subject to the new filtering arrangements and how long the information will be disclosable for. In its view there should be a duty on solicitors and the legal profession to make the defendant aware of the potential impact of accepting a prosecutorial fine in terms of disclosure of the information and the consequences of defaulting on the fine. NIACRO also recommended that a 'low level summary offence' should be clearly defined in the guidance and reviewed regularly. NIACRO welcomes the Department's proposals to establish a civilian based approach to fine collection instead of the police arrest warrant approach which will be taken forward in the Fines and Enforcement Bill.

70. Women's Aid is firmly of the view that prosecutorial fines are not appropriate for domestic violence offences and if used could deter victims from coming forward if the result is only a fine and could send a message to perpetrators that they can act with impunity. Women's Aid also highlighted that it could also make it more difficult for 'Claire's Law' which is the disclosure law in England to be implemented in Northern Ireland because many perpetrators would not have a criminal record with which to reference for women seeking information about serial perpetrators.

71. The Children's Law Centre welcomed the fact that prosecutorial fines cannot be offered unless the alleged offender is over 18 at the time of the offence. It has in the past outlined serious concerns about the payment of money by young people for low level offending and minor offences, believing there is the potential to disproportionately impact on groups with very low incomes who are already living in socially deprived areas and who may not have the means to pay.

72. The NI Policing Board (NIPB) suggested that the notice of offer for a prosecutorial fine at Clause 17 should include a recommendation that the offender seeks independent legal advice before accepting the offer given that, by admitting to the offence out of court, a criminal conviction may be avoided but presumably the fact that they have admitted the offence means it could still be used as evidence of previous history should they go on to reoffend and it could also potentially be disclosed through an enhanced criminal record check. The notice should also clearly set out the consequences of failing to pay the fine once it has been accepted. The Board also noted that, according to departmental officials, the fines will be used for low level summary offences by non-habitual offenders but the Bill does not limit use of the fines to this category. It stated that it would be concerned if repeat offenders were continually being offered a fine and would welcome further information on how the Department intends to safeguard against this.

73. The NIPB noted that, although prosecutorial fines for adults will assist with reducing delay in the criminal justice system, they do not appear to require prosecutors to consider the causes of offending behaviour or to make referrals to appropriate support services. It believes that this is a missed opportunity and the scope to make the fines more restorative in nature should be explored. The Board highlighted that it has held discussions with relevant agencies including the Department of Justice in relation to the Hull triage model which although

developed initially for young offenders, was extended to include female adult offenders with reported positive results in relation to reoffending rates.

74. The Law Society believes that care must be taken to ensure that no inequalities arise from the issue of prosecutorial fines and, given that these penalties do not attach to an offender's record, access to them should be fair and equal to avoid injustice. In its view these issues could be resolved through published guidelines regulating the use of the fines and the inclusion in the Bill of a review mechanism and identified criteria which could be used to assess the use of them. While the Society does not object in principle to the appropriate use of discretionary disposals as a means of expediting the process of justice for less serious offences, strong accountability mechanisms should be in place to ensure the penalties are not used excessively or inappropriately and it is concerned that there is no limitation in the Bill to the number of prosecutorial fines that may be issued to a single offender. The Society suggested that evidence indicates that there has been inappropriate use of discretionary disposals in dealing with offences that are beyond their intended remit and it is important that the perception is not created that prosecutorial fines will be used to create more favourable statistics as this would damage the confidence of victims of crime in the justice system.

75. In relation to the practical application of prosecutorial fines the Law Society stated that the 21-day period should take effect from the point of service rather than the point of issue as a scenario could arise where a notice of offer is issued but the defendant has moved away, is in hospital or is incapacitated. There is also no provision for an extension of the period allowed to pay the fine which does not reflect the current situation where, if a defendant shows he is of limited means, he can seek an extension beyond four weeks. Also the enhanced sum is calculated as being one and a half times the amount of the prosecutorial fine which does not take account that it may have been paid in part.

76. The NI Human Rights Commission (NIHRC) highlighted that the Treaty bodies of the United Nations have continually recommended that the UK address the over use of imprisonment for low level offenders and further information on the impact the provision of prosecutorial fines will have upon the number of persons imprisoned in Northern Ireland each year would be useful together with how the impact will be monitored including the number of non-payments and what enforcement action has been taken.

77. The NIHRC suggested that Clause 18 could be amended to provide for payment within 28 days or "otherwise a period as deemed reasonable in the circumstances". It also indicated that consideration should be given to amending Clause 19 to provide that a public prosecutor must have regard to the circumstances of an offender and their ability or inability to pay.

78. The Attorney General for Northern Ireland highlighted that where a person is accused of a number of summary offences arising out of the same circumstances a prosecutorial fine notice can only be offered in relation to all the offences and the person cannot accept a fine for one offence and proceed to trial on others. He understands that this arrangement is to avoid a prosecution for an offence being hampered by the suggested inability to refer at trial to the evidence relating to a separate offence arising out of the same circumstances for which a fine has been accepted. He indicated that there may be some concern about a person being unduly pressured to accept responsibility for one of the offences for which they would otherwise have defended given the certainty of avoiding a conviction via a prosecutorial fine and stated that there is no reason in principle why provision cannot be made to enable relevant evidence to be used despite the acceptance of a prosecutorial fine if the person is to be prosecuted for an offence arising out of the same circumstances.

79. The PPS believes the option for a prosecutor to offer an offender a prosecutorial fine has the potential to reduce the number of cases of low level offending that go to court and result in small fines but at the same time take up valuable court and prosecutor time to no apparent benefit. However, it is of the view that if the power to offer prosecutorial fines is to be of significant benefit to the public, the PPS and the Courts then prosecutors should, in addition to being able to offer a fine and, in appropriate cases compensation, have the power to

offer penalty points to an offender in those cases where there are mandatory penalty points attached to an offence e.g. low level road traffic cases and the Bill should be amended to provide for this. It also considers that a record of the imposition of a prosecutorial fine should be recorded in the same way as cautions are.

80. In response to the issue raised by the Attorney General the PPS indicated that the decision by prosecutors either to prosecute the offender or divert him/her from involvement with the courts by using a different sanction is taken on the totality of the offences and they never make split decisions. It is accepted that there is always a possibility that an alleged offender may accept the penalty in cases where he/she is not convinced of his/her guilt to avoid the risk of conviction at court but this possibility arises in relation to single or multiple offences.

81. The Department, in its written and oral evidence, stated that by dealing with a number of low-level offences outside the courtroom by way of a prosecutorial fine it will free up police and prosecution resources, as well as court time, that could be better directed towards more serious offending. It is intended that this type of fine will be an easily managed diversion giving offenders the opportunity to avoid a criminal record by paying a fine for low level and non-habitual offending and it is therefore not considered an appropriate vehicle for restorative interventions. The prosecutorial fine will operate within detailed internal PPS guidance which will be subject to consultation and which will stipulate the circumstances in which a prosecutorial fine may or may not be issued and those offered a fine will be provided with all relevant information to enable them to make an informed choice on acceptance or refusal of the offer and the consequences of failing to pay the fine. They will also be advised that the acceptance of a fine is entirely voluntary and they may seek legal advice if they wish to. A definition of 'low level summary offence' is not provided in the Bill as the offer of a prosecutorial fine will be determined by the specific offence and the full circumstances of the case. It also indicated that a formal criminal record will not result from receipt of a prosecutorial fine however a record of the disposal will be accessible by organisations within the criminal justice system, as part of an individual's criminal history, to inform further decision making in the event of further offending by the recipient of the fine. It could only be disclosed as part of an enhanced check if relevant.

82. The Department stated that is not expected that the disposal will be suitable for offences involving domestic violence or for use with serial or serious offenders and any instances of a prosecutorial fine having been issued previously to an alleged offender will be taken into consideration when making a decision to offer one. Provision is not made for an assessment of the means of an alleged offender as inclusion of this level of complexity would reduce the usefulness of the prosecutorial fine as an appropriate disposal for low level offences and the payment system currently in place also makes no provision for part payment of the fine at that point in the process and the amount must be paid in full.

83. The Department outlined that prosecutorial fines will initially operate within existing arrangements with the broader issue of fine management being addressing in the forthcoming Fines and Enforcement Bill. That Bill will provide potential defaulters with additional ways to pay and assist people to avoid getting into arrears or default in the first instance. If arrears occur the Bill will provide ways in which debts can be cleared and imprisonment avoided including opportunities for supervised activity in the community. It will also address the issue of the length of time in which payment of a fine must be made.

84. In response to the request by the PPS to amend the provisions to enable prosecutors to offer penalty points in those cases where there are mandatory penalty points attached to an offence such as low level traffic offences the Department indicated that it recognises that this may be a valuable addition. It highlighted that responsibility for traffic penalties currently lies with the Department of the Environment. It will therefore explore with that Department the possibility of developing the suggested powers however, due to the need for cross-departmental cooperation and agreement and a potential requirement for public consultation, it is not feasible to incorporate the proposed additional powers in this Bill.

85. When departmental officials attended on Part 3 of the Bill the Committee sought confirmation that the guidance to be developed by the PPS on the operation of prosecutorial fines will be subject to a full public consultation. Members also explored a range of issues including who will impose the fines, what offences will fall within the scope of the fines, whether and how the fines could be used for low level offences against medical staff, the differentiation between a person's criminal record, which includes information that can be disclosed in various circumstances, and their criminal history which is information required to be held by the justice agencies, how the application of the fines will be monitored, the discretion available to the PPS when considering the offer of a prosecutorial fine and the implications of not paying the fine.

86. The Committee subsequently discussed the provisions and concerns were raised in relation to the possible use of prosecutorial fines for repeat offences, the on-going problems with fine payment and enforcement and whether the term 'prosecutorial fine' is appropriate. The Committee also discussed the need to address low level offences against health service staff such as verbal abuse or obstructive behaviour by way of a relatively quick penalty process and whether the prosecutorial fine could provide a method of doing this. Given the issues raised the Committee requested further information on the possibility of including a safeguard in the Bill to limit the number of prosecutorial fines that could be issued by the PPS, whether a fast-track process could be introduced for low level offences against health care staff such as verbal abuse, whether the term "prosecutorial fine" is misleading and should be changed and the timescale for the Fines and Enforcement Bill.

87. The Department's written response outlined that the guidance to be developed by the PPS for prosecutors, which will be consulted upon, will include the circumstances in which a fine can be offered. The guidance developed by the PSNI for the use of police-issued fixed penalty, which is broadly similar in concept to prosecutorial fines, provides that an individual should not be offered a fixed penalty more than once in any two year period and the Department anticipates that, while the Director's guidance will not fetter a prosecutor's discretion in how the power would be exercised in an individual case (which is an essential part of the role of an independent prosecutor), repeat fines should not be offered except in the most exceptional and meritorious circumstances. In its view covering the issue of repeat fines by way of the PPS guidance, which will form part of the code for prosecutors, rather than on the face of the Bill offers a more flexible approach and is consistent with the principle of prosecutorial independence.

88. The Department also confirmed that a prosecutorial fine could be used as a disposal in cases involving offences such as verbal abuse to health care staff and outlined the process that would be followed. It indicated however that, in terms of fast-tracking referrals to the PPS directly from Health Trusts, it would be concerned that circumventing the role of the police in a criminal investigation may make it more difficult to ensure that evidential matters are properly dealt with and that an alleged offender's rights are secured. It also believed that there could be significant issues raised in asking a health professional to make a judgement in relation to an incident and to liaise with the PPS during the progress of an individual case.

89. In relation to the terminology used the Department considered that, while the disposal is not court-imposed the underpinning arrangements on default mirror those of a court imposed fine and therefore the term 'prosecutorial fine' is appropriate. It also believes that the alternative use of the word 'penalty' could lead to confusion with fixed penalties which do not involve a legal assessment of the evidence. The timescale for the Fines and Enforcement Bill, which will contain provisions to allow unpaid financial penalties to be deducted directly from income (either benefits or wages) and in certain circumstances from bank accounts, was confirmed by the Department as June 2015.

90. **The Committee, having considered the evidence received and the additional information and clarification provided by the Department of Justice, agreed that it is content with Clauses 17 to 27 of the Bill. The Committee will however wish to see the draft guidance**

to be developed by the PPS to ensure that it adequately addresses the circumstances and frequency with which prosecutorial fines can be considered and offered to an offender. The Committee will also undertake the Committee Stage of the Fines and Enforcement Bill in due course which will provide an opportunity to consider and address the wider issues associated with the payment and enforcement of fines.

Part 4: Victims and Witnesses

91. Part 4 of the Bill improves services and facilities for victims and witnesses by providing for the establishment of statutory Victim and Witness Charters and providing a statutory entitlement to be afforded the opportunity to make a Victim Personal Statement.

92. Following the commencement of Committee Stage of the Bill the Department advised of its intention to bring forward an amendment to Part 4 of the Bill to introduce a new Clause 35A and a new Schedule 3A to create information sharing powers to provide for a more effective mechanism through which victims can automatically be provided with timely information about the services available to them in the form of Victim Support Services; witness services at court; and access to post-conviction information release schemes. The Department subsequently advised that it intended to bring forward a further amendment, to Clause 33, to allow a victim or a bereaved family member to include, in a Victim Statement, the impact a crime has had on other family members.

93. There was widespread support amongst respondents, including the Public Prosecution Service, Children's Law Centre, Include Youth, Victim Support, NIACRO and the PSNI for the establishment of statutory Victim and Witness Charters with the organisations highlighting that it would ensure that victims and witnesses receive the appropriate support and services during the various stages of the criminal justice process. A number of issues were raised in relation to the detail and implementation of the proposals and on some wider issues.

Victim and Witness Charters

94. Victim Support has actively engaged with the Department of Justice in the development of the proposed Victim Charter which, it noted, will initially be enacted on an administrative basis before being placed on a statutory footing by the Justice Bill. Victim Support views the Victim Charter as a vital step in ensuring that victims receive the highest standards of services as they progress through the criminal justice system and are made aware of what services are provided by whom and how they may seek redress should the service they receive not reach the required standard. In particular it welcomes the acknowledgement the Charter gives to the need for victims to be treated with courtesy, dignity and respect and the importance placed on the timely and accurate supply of information to victims. This is an issue frequently raised by those who access services and it will have a demonstrable impact on the experiences of victims and witnesses of crime in Northern Ireland. Victim Support strongly contends that an individual's ability to give their evidence in a confident manner and without fear can only be in the interests of justice and states that the right to be informed about special measures if called as a witness in any criminal proceedings will potentially be of considerable benefit, particularly to vulnerable and intimidated witnesses. Victim Support is also fully supportive of the development of a Witness Charter.

95. The Children's Law Centre welcomes the introduction of statutory Victim and Witness Charters, recognising their potential to improve the experience of child victims and witnesses within the criminal justice system. The CLC highlighted the need to include within both Charters a requirement that in all actions concerning child victims and witnesses, their best interests will be a primary consideration to reflect the requirements of Article 3 of the UNCRC and align with the requirements of EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

96. The Children's Law Centre noted that under Clause 28, victims will have the opportunity to make a complaint to an independent body against a criminal justice agency in relation to any provision of the Charter which has not been resolved by that agency and stated that it would be useful to also extend this right to witnesses under Clause 30. It would also welcome consideration being given at this stage as to how children and young people wishing to make a complaint will be supported and assisted in doing so and cited that the Committee on the Rights of the Child had previously commented on the need to ensure that complaints mechanisms are accessible and child friendly.

97. Include Youth also welcomed the development of the Victim Charter stating that it will be an important vehicle to ensure victims and witnesses receive the necessary information and are made fully aware of what support services exist. Include Youth stated that its work and research with young people demonstrates that those who are victims of crime are largely unaware of victims organisations, have serious reservations about reporting crime and do not have a great deal of faith in a positive outcome if they do report crime. It is therefore imperative that young people who are victims of crime are aware of what standard of service they can expect to receive and the Victim Charter will also provide a mechanism for victims to seek advice and support about how to address failings in the system and ensure their voices are heard when procedures are not followed correctly.

98. On a wider issue Include Youth was concerned about the current gap in information on the experiences of young victims and highlighted an urgent need to prioritise evidence gathering on this particularly given that the NI Victims and Witness Survey does not include under 18's.

99. Both the Police Service of Northern Ireland (PSNI) and the NI Policing Board (NIPB) welcomes the introduction of a Victim Charter as does the Public Prosecution Service (PPS). The PSNI views the Charter as a means of helping further improve victims experience of and confidence in the justice system and noted that the establishment of the Victim and Witness Care Unit provides a valuable mechanism to help deliver the Charter standards. The NIPB highlighted the need to ensure that the existence and contents of the Charter are made known to victims and witnesses and suggested that the Bill, or the Charter itself, could require the relevant criminal justice agencies, or at least the NI Courts and Tribunals Service (NICTS) to visibly display the Charter at their publicly accessible offices and on their website. It also questioned whether the Charter would be applicable to all persons (or their families) who have ever been a victim of criminal conduct regardless of when it occurred or whether it only applies to victims of criminal conduct occurring from the date of the Charter and suggested this could be made clear in the Bill. The PPS outlined that it had worked with the Department of Justice on the development of the Victim Charter for some time and considered the provisions of the Bill to be a valuable addition to the work it has been carrying out with victims and witnesses to give them a greater say in the criminal justice process, provide them with sufficient support and services in the lead up to criminal proceedings and give them access to enough information in a timely manner to allow them to be fully engaged in any case in which they are involved.

100. The NI Human Rights Commission (NIHRC) advised that the broad definition of victim in Clause 29 is compliant with the UN Basic Principles definition of victim.

101. Women's Aid raised the fact that there is no statutory entitlement per se in the Bill for specialist support services for victims. Women's Aid stated that Article 4 of the Victims Directive states that a victim must be informed about any specialist support relevant to them at first contact with a competent authority and the EU Directive and guidance specifically mentioned domestic violence in that respect. It highlighted that it is crucial that there is direction and referral to specialist services at an early stage.

102. Women's Aid also referred to the provision that "the Charter may not require anything to be done by a person acting in a judicial capacity" and was concerned that, notwithstanding the importance of judicial independence, without proper training on specialist issues such as domestic violence, many provisions of the Charter might be rendered meaningless for victims

of domestic or sexual violence if they are heard by a judge who does not have an expert understanding of the issues. Women's Aid also highlighted that Article 25 of the Victims Directive specifically calls for the specialist training of judges.

103. The Attorney General for Northern Ireland outlined that Clauses 28 (7) and 30 (6) excludes judges and members of the prosecution service (in the exercise of a discretion) from any obligations under the Victim or Witness Charter and expressed the view that an obligation for example to treat a victim with courtesy, dignity and respect would not in any way impinge on judicial independence and could be viewed as strengthening support for it. He stated that the obligations in Article 1 of the Victims Directive must apply to judges and prosecutors.

104. NIACRO welcomed the inclusion of the Victim Charter in the Justice Bill and supported in general the principles and the approach outlined. It had responded in detail to the Department of Justice consultation on the draft Charter and suggested that the Charter should also recognise the specific circumstances of victims who are family members of the defendant and the indirect victims of crime, which includes the families of the defendant who also need the guidance and support provided in the Charter when they come into contact with the Criminal Justice System. NIACRO provided examples of such situations.

105. NIACRO agreed with the definition of victim given in relation to the Victim Charter, but indicated that "an individual who is a victim of criminal conduct" could reasonably also include indirect victims and victims of the Criminal Justice System, namely the family of the defendant and therefore recommended that the meaning of victim is expanded to include all those impacted by the offence, the system's processes and the sentence.

106. In relation to the Witness Charter NIACRO also believes that it should recognise the specific circumstances and vulnerabilities of witnesses who are family members of the defendant. In relation to both Charters NIACRO recommends that stringent measures should be put in place to ensure the criminal justice agencies take their responsibility to comply with each Charter seriously and ensure the best interests of victims and witnesses are protected.

107. The Information Commissioner's Office (ICO) welcomed the proposals for a statutory Victim Charter and was pleased that one of the overall principles in the Charter relates to providing victims with relevant information, clearly setting out what they can expect as they move through the criminal justice system. The ICO stated that, in relation to the Charter, there is an opportunity through this statutory provision to clarify information with regard to privacy, what 'consent' is, how it can or needs to be given and under which circumstances under the Data Protection Act (DPA) why consent may not be required in relation to the disclosure or sharing of sensitive personal data. The ICO expressed the view that this information is of crucial importance to ensure the protection of privacy for the victim or witness. The ICO was also pleased to note the requirement for consent in relation to any referral of a victim or a witness to other appropriate services. The ICO emphasised the importance of victims and witnesses understanding what they may be consenting to, how their privacy will be respected and under what circumstances.

108. The Department outlined that the duty placed on it to issue statutory Victim and Witness Charters, which set out the services to be provided by criminal justice organisations, the standards that should apply and how victims and witnesses can expect to be treated, responds to a key recommendation in the report of the Committee's Inquiry into the Criminal Justice Services available to Victims and Witnesses. The Charters are intended to make the criminal justice process less daunting and hopefully easier for victims and witnesses to navigate. The Department highlighted that the Victim Charter has been published, is already in use on an administrative basis and the response has been positive. It plans to put it on a statutory basis by November 2015 which is in line with the timescale for transposition of the European Directive on minimum standards on the rights, support and protection of victims. All Service providers must include information about the Victim Charter on their websites and, where appropriate, make available other relevant webpages where additional information can be found. They must also include a way for victims to comment on the services they provide

under the Victim Charter. The Department will monitor compliance through the Victim and Witness Steering Group.

109. The Department explained that the Victim Charter states that, in providing services under the Charter, the best interests of a child or young person will be a primary consideration and will be assessed on an individual basis. It is undertaking research with those not covered by the NI Victims and Witness Survey to gather their experience of the criminal justice system and is aiming to carry out research with young people in 2015/16. It also highlighted that a young person's guide to the Charter is available which sets out their entitlements and information on the criminal justice process.

110. In response to the issues raised by the Attorney General, the Department stated that it is content that the necessary obligations on service providers, as set out in the Victim Charter, apply to the Public Prosecution Service. This includes Article 1 of the EU Directive, as well as a wide range of other obligations in the Charter. The exclusion in the Bill has a narrow application, and it relates solely to prosecutorial decision-making rather than general contact with the victim or witness. With regard to the judiciary, the Department stated that the provisions in the Bill relating to case management will be beneficial to victims and witnesses, in that these will take account of the need to identify and respect the needs of victims and witnesses. In oral evidence the Department stated that it is aware of work underway through the Judicial Studies Board and that the Lord Chief Justice plans to bring forward a new practice direction on vulnerable witnesses which the Department considers to be the best mechanism by which requirements involving the judiciary are set out.

111. The Department indicated that the entitlements of the Charter will apply regardless of a victim's relationship to the accused or offender and family members of the victim are also entitled to access support services. More generally, however, the Department does not consider it appropriate to extend the provisions of the Charter to an accused person and while it does not see the Charter as the vehicle for improving support for the families of defendants, it is happy to consider this issue further in consultation with NIACRO.

112. In relation to the right of complaint applying to witnesses as well as victims the Department considers that it would be more appropriate to set out in the Witness Charter itself how complaints processes would operate, given that this Charter is intended to cater for a diverse range of witnesses, including expert witnesses.

113. Responding to the issues highlighted by the ICO the Department indicated that the various bodies will ensure that the necessary safeguards are in place for holding the information securely.

Victim Personal Statement

114. Respondents including Victim Support, NIACRO and the NI Policing Board broadly welcomed the placing of Victim Personal Statements on a statutory footing thus providing an opportunity for a victim to explain the impact of an offence or alleged offence.

115. The NI Policing Board outlined that it provides the opportunity to consider the types of cases in which the statements could be better utilised than they perhaps have been to date and cited hate crime cases as an example. The Board stated that if victims of hate crime are able to express through their personal statements the impact that the perceived hate element of the offence has had upon them, and the court takes this into account when passing a sentence, it would mean that the victim might be left with a better sense that justice has been served, even if the evidential burden of the 2004 Order cannot be overcome. The Policing Board expressed the view that, for this to occur, victims would need support and assistance with preparing the statement and judges would need to explicitly state when passing the sentence that they have taken account of the impact on the victim of the perceived hate motivation.

116. Victim Support outlined that it is already actively involved in assisting victims of crime to make a Victim Impact Statement. Victim Support stated that the fact that the Charter sets out that victims must be informed about the opportunity to make this statement, should they wish to do so, is a positive step. It highlighted that it is also essential that they are fully aware of how this statement will be used and specifically who will have access to its content and when and that this is particularly relevant in light of the steps outlined in the Bill in respect of early guilty pleas and specifically the implications on sentencing.

117. NIACRO recognised the merit of Victim Personal Statements and acknowledged that they can be cathartic for the victim, as well as insightful for the judge. It recommended that clarity is provided about how the statement can and should be used by judges as this is important in relation to managing the expectations of victims and in making the process clearer to both the victim and defendant. NIACRO also see potential for the statement to be incorporated into a restorative justice approach and recommended the statement be shared with Probation if appropriate.

118. NIACRO also highlighted the vulnerability of victims in the immediate period after a crime and recommended that clear guidelines and regulations as to who can access the statement are introduced. In its view there should also be a statutory right for children of defendants to be given the opportunity to submit personal impact statements, to be taken into account in sentencing.

119. NIACRO welcomed the fact that victims have the opportunity to provide a statement "supplementary to, or in amplification of" their original statement and recommended that victims are also given the option to withdraw their statement before a certain point in proceedings, in recognition of the heightened emotions often present in the aftermath of an offence.

120. In relation to the use of Victim Personal Statements, the ICO highlighted the importance of security aspects relating to records management of this type of personal and sensitive data and indicated that the requirements of the Data Protection Act are clear - appropriate safeguards must be put in place with adequate processes for how and under what circumstances lawful and fair sharing can and should take place. The ICO noted in section 35 (20) the provision for the Department to make a copy of any Victim Statement, and requested further clarification on this, particularly with regard to how long the Statement will be kept, the security considerations about the information and the need for appropriate retention and disposal schedules to be in place.

121. Include Youth noted that providing a statutory entitlement to make a Victim Personal Statement would allow victims to describe the impact of the offence but it would guard against Victim Impact Statements being used as a means for victims to influence the sentence ordered by the Court.

122. The Department highlighted that victims are given information on the purpose and use of Victim Statements and have access to support and assistance from a range of organisations to make the Statement. It is also made clear who will see the Statement and when the statement will be used. A Victim Statement will typically not be taken immediately after, or in the aftermath of a crime and victims will be advised of the facility when there is a decision to prosecute with the Statement only used following conviction and ahead of sentencing. It does not consider it appropriate to place a duty on judges to state what account they have taken of the Statement given it will be one of a number of factors considered.

123. In response to the ICO's comments the Department indicated that necessary steps have been taken to ensure that information is held and shared appropriately and securely and Victim Personal Statements will only be shared where the victim agrees this.

Information Sharing Powers

124. In relation to the proposed amendment to create information sharing powers to provide for a more effective mechanism through which victims can automatically be provided with timely information the CLC noted that it appeared to be designed to create a system where victims

would 'opt out' of being approached regarding support rather than 'opting in'. The CLC saw the merits of this approach but wished to emphasise the need for the sharing of personal data and sensitive information to be disclosed/shared only when absolutely necessary, shared discreetly and with the minimum information disclosed in order to protect the best interests and rights of the child concerned. The CLC expressed the view that the privacy and security of child victims and witnesses must be ensured at all times and information relating to a child should only be shared when it is in their best interests.

125. The Northern Ireland Policing Board stated that it would need to see the text of the proposed amendment (which was not available at the consultation stage) in order to be able to comment or express a view upon it, highlighting that it is not clear from the letter provided by the Department the stage at which victims could 'opt-out' from their information being shared. Additionally it noted that is not clear what the 'certain information' is and who the 'specified organisations' would be. However, the NI Policing Board was broadly supportive of steps being taken to ensure that victims and witnesses are equipped with relevant information in order to make an informed decision about the services on offer to them.

126. Disability Action supported the amendment and noted that, importantly, victims would not be obliged to avail of services, and the proposed change would ensure that they are provided with the relevant information so that they can make an informed decision about the services on offer to them.

127. The Health and Social Care Board was also supportive of the proposed amendment, considering it to have potential to be of particular benefit to vulnerable children and adults and the Probation Board stated that it fully supported it as it is of the view that enabling victims to make informed decisions is important at all stages of the criminal justice process. The amendment would enable more effective and efficient working arrangements between PSNI and PBNI with regard to the operation of PBNI's Victim Information Scheme.

128. The ICO noted that at present an 'opt in' is required in order for information to be shared between specific organisations for the purpose of informing victims and witnesses about available services. The ICO stated that it would remind the Department of the importance of ensuring that fair notice is given in relation to this activity, which again needs to meet the requirements of the DPA in relation to how and why the conditions can and will be present for this provision to take effect. The ICO also highlighted the issues it had previously outlined with regard to the sharing of sensitive personal data.

129. Women's Aid supported the proposed amendment stating that there is an inherent benefit in improving the process by which victims and witnesses of crime receive information about victim support services available to them. Women's Aid stated that allowing for the sharing of a victim's information to facilitate this will result in a better victim / witness experience of the criminal justice system, and will provide better support for all victims of crime. Women's Aid also stated that an "opt out" system is a sensible means of communicating the available support to victims, while still retaining a victim's autonomy to decide whether they want to take up any of these services. In oral evidence Women's Aid stated that often, in the initial stage, victims are dealing with a lot of information and that having an opt-out system gives victims the opportunity to consider support options once the initial traumatic event has passed.

130. The NSPCC welcomed the proposed amendment stating it will help agree the provision of timely victim information and allow its Young Witness Scheme to deliver a more responsive service to victims and witnesses. The NSPCC highlighted that it has had significant difficulty because of the Data Protection Act in obtaining information from statutory agencies and suggested that it would be helpful to agree the information that is needed with the Department of Justice and to collectively develop a template for this.

131. The Department advised that information will only be shared to ensure that victims can be advised of available services - for example, the name, address, date of birth, telephone number/email address of the victim and the crime type. This will enable appropriate services

to be offered in a targeted fashion. The Department also outlined the agencies who would have access to the information which included the PSNI, the PPS, Victim Support, NSPCC Young Witness Service and Probation Board. The Department advised that discussions have been held with both the Information Commissioner's Office and the Human Rights Commission on the information sharing provisions and these have been considered in developing the legislative provisions. Information will be shared, unless a victim objects and the initial contact with victims, following the sharing of information, would be to advise them of available services so that they can make an informed decision about whether or not to avail of those services.

132. During the oral evidence session with department officials the Committee explored a number of issues further including how agencies compliance with the Victim Charter would be monitored, why any obligation on judges to treat victims with "courtesy, dignity and respect" under Clause 28 is excluded and the impact that a Victim Statement will have on sentencing.

133. In response, the Department advised that there would be a Victims and Witnesses Steering Group and a 'Victims' Champions Forum' which would provide mechanisms where feedback could be sought. In relation to the judiciary, the Department referred to the provisions for statutory case management in Part 8 of the Bill and the Clause 79 requirement to identify and respect the needs of victims, witnesses, children and especially vulnerable witnesses which it viewed as the best mechanism for setting out requirements involving the judiciary. In relation to the impact of a Victim Statement the Department stated that it is one of a number of factors that the judge will take account of in determining what the sentence is. Bearing in mind judicial independence the Department did not think it could prescribe how much weight should be placed on it. It had also not included a provision that the judge would be required to make reference to the Victim Statement as, when consulting victims, some indicated they would not want reference made to it in an open court.

134. The Committee also questioned why the term 'Victim Statement' is used in the Bill rather than 'Victim Personal Statement' which is the terminology used in the guidance documents etc and was concerned that the lack of consistency could lead to confusion. The Department clarified that a Statement may be made by someone other than the direct victim (e.g by a parent about the impact on a child victim or by a family member about the impact on a victim) and therefore the term 'Victim Personal Statement' was not an appropriate term for use in the Bill.

135. **The provisions relating to victims and witnesses are a direct result of the findings and recommendations of the Report on the Committee's Inquiry into the Criminal Justice Services Available to Victims and Witnesses of Crime which was published in June 2012. The evidence which the Committee received during the Inquiry clearly demonstrated that engaging with the criminal justice system as a victim and/or witness or as a bereaved family is a daunting experience which can entail encounters with a number of criminal justice agencies and voluntary sector organisations from the time the crime is reported, through the police investigation, prosecution decision making process, court process, sentencing and beyond.**

136. **The evidence also illustrated the significant difficulties victims and witnesses face with the criminal justice system and the criminal justice agencies and their experience of the process is often frustrating, demoralising and on occasions devastating. The co-operation of victims and witnesses in the criminal justice process is vital to achieving convictions and ensuring that justice is done and it was the Committee's strong belief that much more could and needed to be done to redress the balance and ensure that an effective and appropriate service is provided for them. As part of the Inquiry it therefore recommended that a Victim and Witness Charter providing statutory entitlements for victims and witnesses in terms of information provision and treatment should be introduced in the next suitable Justice Bill. The Committee also recommended that a formal system for the completion and use of Victim Impact Statements should be introduced as a matter of**

urgency and that an "opt-out" system on being approached by Victim Support NI and the Probation Board should be developed to replace the current "opt-in" system.

137. **The Committee therefore welcomes and agreed that it is content with Clauses 28 to 35 subject to the amendments proposed by the Department.**

Part 5 and Schedule 4 - Criminal Records

138. Part 5 of the Bill modernises arrangements for the disclosure of criminal records by allowing for: electronic applications; portable disclosures; the issuing of single disclosures; an independent appeals mechanism; and a range of other improvements. Schedule 4 contains amendments consequential to the provisions on criminal records.

139. At the commencement of Committee Stage of the Bill the Department indicated its intention to bring forward a number of amendments to Part 5 of the Bill mainly at the suggestion of the Attorney General for Northern Ireland. The first amendment would make it clear that the Statutory Code of Practice to which Chief Officers of police must have regard to, which is provided for in Clause 39, must be published. The second will facilitate the exchange of information between AccessNI and the Disclosure and Barring Service (DBS) for barring purposes and the third would create a review mechanism for the scheme to filter certain old and minor convictions and other disposals, such as cautions, from standard and enhanced criminal record certificates which came into operation in Northern Ireland in April 2014.

140. The Department subsequently provided the text of these amendments and two further amendments it intended to bring forward to give statutory cover for the storage of cautions and other diversionary disposals on the criminal history database and prevent potential Data Protection Act breaches by excluding a small number of applicants for enhanced checks for home based positions from the Update Service, where third party personal information could potentially be disclosed unintentionally.

141. The Department also wrote in January 2015 to advise of a delay in the commencement of the Update Service operated by the Disclosure and Barring Service which will provide for "portable checks" in Northern Ireland as introduced by Clause 40, due to delays with the implementation of a phase of its new IT system (known as R1) designed to modernise the service. R1 was originally planned to "go live" in Northern Ireland from August 2015 but will now be delayed until 2016. While this does not affect the content of the criminal record clauses or the policy intent behind them it does mean that AccessNI will be unable to offer "portable checks" until then.

142. There was broad support amongst stakeholders for the measures being taken to modernise and streamline the disclosure of information and for the proposed amendment to create a review mechanism for the scheme to filter certain old and minor convictions and other disposals such as cautions from standard and enhanced criminal record certificates. However, the Children's Law Centre, Include Youth and NIACRO had concerns regarding the impact of disclosure of criminal records on young people and would like to see the removal from criminal records of old and minor convictions relating to offences committed under the age of 18.

143. The Children's Law Centre stated that its main concern regarding the retention and disclosure of criminal record information in relation to children and young people is the impact it has on their ability to access education, training and employment which are vital elements in successful reintegration into society and in preventing re-offending. The Children's Law Centre is strongly of the view that information relating to cautions, informed warnings and diversionary youth conferences should only be disclosed in exceptional circumstances where the offence is sufficiently serious, is relevant and where there are concerns for public safety if the disposals were not to be disclosed. It stated that international standards are clear that diversionary disposals should not be disclosed on criminal records checks and, in its view,

the current filtering arrangements are in conflict with the proposed new aim of the youth justice system as set out in Clause 84 of the Bill.

144. Include Youth also outlined similar concerns regarding the impact of disclosure of criminal records on young people and stated that shackling young people with a criminal record for a seemingly unending period of time runs counter to the argument that we need to get young people who have been in contact with the criminal justice system into jobs and education. In its view non convictions should be 'spent' immediately and only subject to disclosure in limited circumstances.

145. NIACRO highlighted the need to ensure there is a balance between protecting the public and ensuring effective resettlement and was concerned that no measures have been put in place to gauge the extent to which the new vetting provisions have achieved their purpose. NIACRO also questioned whether the criminal record vetting regime protects the most vulnerable in society and is concerned that in recent years respect for the rights of those with criminal records has disproportionately declined. In NIACRO's view, since the introduction of vetting, evidence suggests that employers can arbitrarily use criminal record information to deny people access to opportunities without penalty.

146. The Children's Law Centre and NIACRO both welcome the proposal to issue a single certificate to the applicant recognising that it provides an opportunity for an individual to challenge any discrepancies in the information directly with the disclosure body before employers receive it. CLC did however express concerns that Clause 36 will allow the Department to indicate whether a certificate had issued and provides that certificates must be published in certain circumstances and wished to see clarity on the circumstances in which this would apply.

147. The NSPCC also highlighted a number of operational issues regarding the provision of one certificate which have arisen in England including having to chase certificates and additional administration required which could encourage employers to take shortcuts in employment decisions and suggested that it would be helpful to look at the interface between the Home Office Noticeable Occupations Scheme (NOS) and the continuous updating scheme and in particular how long it will be before information on an individual would appear on a certificate.

148. NIACRO and the NSPCC are supportive of the threshold of 16 for eligibility checks except in prescribed circumstances as provided for in Clause 37 stating that it is a proportionate and reasonable approach and both highlighted circumstances where it may be appropriate such as where childcare takes place in a domestic setting e.g. fostering, adoption or child-minding. The Children's Law Centre however raised concerns that the clause only applies to children up to 16 rather than 18 in line with the definition of a child under the UNCRC and the prescribed circumstances are not set out in the clause and so are unclear.

149. The Children's Law Centre welcomes the fact that a more stringent test is being put in place for the disclosure of information such as police intelligence and stated that such disclosure must be open, transparent and compliant with human and children's rights standards. It wished to see consultation on the Code of Practice before publication and emphasised the need for the Independent Monitor process to be entirely independent. It also wanted consideration given to how children and young people wishing to apply to the Independent Monitor will be supported and assisted and stated there should be a presumption of non-disclosure of 'soft intelligence' up to the age of 18.

150. The NI Human Rights Commission (NIHRC) wished to see details of how an individual will apply to the Independent Monitor and clarification of whether the proposals are considered sufficient to ensure full compliance with the European Court of Human Right's judgement *M.M* v *UK. The* NIHRC also stated that the process to apply to the Independent Monitor must be very widely publicised and supported a targeted consultation on the Code of Practice to reinforce the safeguards.

151. The NI Policing Board noted that police are required to exercise professional judgement when determining what information to disclose and, while the Bill tightens up the relevancy test contained within the Police Act 1997, suggested that additional wording could be added to the 1997 Act to expressly require that any disclosure must be in pursuit of a legitimate aim (as set out in Article 8(2) ECHR), necessary and proportionate.

152. NIACRO welcomes a more robust system that allows information to be disclosed in a consistent manner with clearer guidelines in place for the PSNI and recommended that any new system of a "higher test" is clearly defined. To avoid disparities NIACRO recommends that decisions should be examined and signed off by a panel of experts, the PSNI Criminal Records Office (CRO) should be adequately resourced, clear public guidance should be available on how decisions are made in releasing police intelligence and the statutory Code of Practice should be subject to full public consultation. It does however have concerns regarding the proposal to allow parties other than the applicant to dispute the accuracy on certificates and questions how this fits with Data Protection legislation. NIACRO welcomes the Independent Monitor process believing that this will provide a fairer process and remove the current difficulties.

153. The proposed amendment to make it clear the Statutory Code of Practice must be published is supported by the NSPCC, Women's Aid, Disability Action, the NI Policing Board and the ICO with views expressed that it will ensure a consistent, transparent and accountable approach to disclosure decisions by the police.

154. Respondents were also generally supportive of the concept of portable disclosure certificates indicating it will enhance the checking system whilst making the process less burdensome for individual applicants. NIACRO however had some concerns that it would potentially allow any employer to request copies of AccessNI checks and cautioned that the new arrangements should be closely monitored to ensure discrimination does not increase. NIACRO does agree that the portability of disclosures should be sector specific and where an individual moves between sectors a new enhanced disclosure should be requested. It also welcomed the opportunity for self-employed individuals to access Enhanced Checks on the basis that checks are requested and obtained for host organisation/Registered bodies.

155. The amendment proposed by the Department to facilitate the exchange of information between Access NI and the Disclosure and Barring Service for barring purposes was welcomed by a range of stakeholders including the Department of Education (DE), the Housing Executive, the NSPCC, Disability Action, Women's Aid, the Health and Social Care Board (HSCB) and the Department of Health, Social Services and Public Safety (DHSSPS) who all viewed it as providing an additional safeguard for vulnerable persons. The DE indicated that it had a particular interest in this amendment as safeguarding of pupils at school is a priority and the vetting and barring procedures play a key part in the protection of children and in the recruitment and selection of staff who work in schools. The NSPCC also highlighted the importance of legislation on vetting and barring providing consistency in operation across the UK.

156. While the Information Commissioner's Office welcomed the proposal to ensure there is a statutory basis to enable Access NI to share information with the Disclosure and Barring Service, it stressed the importance of compliance with DPA principles, particularly with regard to the fair and lawful processing of the sensitive personal data and the security measures that must be in place.

157. The Department's intended amendment to create a review mechanism for the scheme to filter certain old and minor convictions and other disposals such as cautions, from standard and enhanced criminal record certificates which came into operation in April 2014, was also supported by organisations with an interest in criminal record disclosure with the exception of Women's Aid who raised concerns that this approach may lead to serial perpetrators of domestic violence "slipping through the cracks" and facilitating their abuse of future victims. Women's Aid stated that it is vital that records remain in such cases.

158. The CLC, Include Youth and NIACRO also viewed the proposals as not going far enough and they wish to see the implementation of recommendation 21 of the Youth Justice Review for under 18s to be able to apply to wipe their slate clean of old and minor convictions.

159. Both the NI Policing Board and the ICO wished to see further information on the new filtering rules and review mechanism with the ICO again stressing the importance of DPA compliance which requires that personal data must not be kept for longer than is necessary.

160. The Department outlined that the genesis of the proposals relating to criminal records is the work and report by Sunita Mason and the measures in Part 5 of the Bill reflect many of the recommendations she made. They also take account of a number of court decisions that have highlighted human rights issues that have been considered when developing the system of disclosure, the overriding purpose of which is to provide an appropriate and efficient scheme that safeguards the public from harm. The Department highlighted that a careful balance needs to be struck to ensure that the disclosure of criminal records is relevant to the purpose for which they are sought and respects the rights of the applicant.

161. The Department referred to the recent debate regarding the approach adopted in relation to the disclosure of offences that have been committed by children which had been reflected in the evidence received by the Committee. The Department expressed the view that the provisions in the Bill take account of those concerns, achieve an appropriate balance between the need to support the rehabilitation of adults and young people who have offended while protecting those in society who are vulnerable and will ensure that AccessNI only discloses information on youth offending when relevant and appropriate. The statutory filtering scheme represented a first step in achieving a balanced approach, by ensuring that certain convictions and disposals are not disclosed after a period of time, and it also incorporates a graduated approach for younger people, with significantly shorter time frames applying to the disclosure of information relating to those under 18 when they offend.

162. The additional changes to the Police Act 1997, provided for by Part 5 of the Bill, further improve, modernise and streamline the arrangements for the disclosure of criminal records and provide additional safeguards in relation to disclosure. In particular, the introduction of a filtering review mechanism will allow individuals, in certain circumstances, to seek an independent review of their case where a conviction or disposal has not been filtered from their standard or enhanced criminal record certificate. The Department highlighted that, following discussion with organisations working in this field, including the Children's Law Centre and NIACRO, the review mechanism being proposed includes an automatic referral to an independent reviewer for those cases where disclosure relates only to offences committed under the age of 18. The detail of how the review mechanism will operate will be set out in guidance, and subject to full public consultation.

163. In relation to the issues raised by NIACRO regarding employers use of criminal record information the Department indicated that AccessNI introduced for the first time a proper legislative framework and accountability for the use of criminal records checks and that specific checks are undertaken to ensure organisations are seeking the appropriate levels of checks for employees and volunteers. Whilst acknowledging that AccessNI relies heavily on an employer's assessment that a position is eligible for a check, as part of ongoing compliance work AcessNI checks that organisations registered with it are complying with its statutory based Code of Practice.

164. The Department also outlined that the prescribed circumstances provided for in Clause 37 would be established through secondary legislation to be introduced at the same time as commencement of the provisions of the Bill which would enable further consultation to take place. The proposed Code of Practice to which Chief Police Officers must have regard in applying the relevancy test for enhanced disclosure of information such as police intelligence will also be subject to consultation and will reflect the Home Office Guidance which is currently in place and operated by police forces in England and Wales and by the PSNI to

ensure consistency of decision-making across police forces whether the applicant comes from Northern Ireland or not.

165. During the oral evidence with departmental officials on Part 5 of the Bill the Committee explored a range of issues including AccessNI performance against its targets and the current delays experienced in obtaining criminal records checks, the delay in implementing portable checks and whether once available they will speed up the process, the rationale to disclose diversionary disposals in criminal records checks, how automatic referral to the Independent Reviewer will operate in practice and the type of convictions that are likely to be removed by that process and whether the Department intends to review the Rehabilitation of Offenders (Northern Ireland) Order 1978. The Committee also requested further information on the statutory filtering scheme and the types of offences that are always disclosed on standard and enhanced criminal record certificates issued by AccessNI which the Department provided in its letter dated 9 March 2015.

166. **Having considered the issues raised in the evidence, the Department of Justice's responses and the further information it provided, the Committee agreed that it is content with Clauses 36 to 43 and Schedule 4 of the Bill subject to the amendments proposed by the Department.**

Part 6 – Live Links

167. Part 6 expands provision for the use of live video link ('live link') facilities in courts to include committal proceedings, certain hearings at weekends and public holidays and proceedings relating to failure to comply with certain order or licence conditions. Live links will also be available for witnesses before magistrates' courts from outside the United Kingdom and for patients detained in hospital under mental health legislation, and they will be the norm for evidence given by certain expert witnesses. The provisions do not change a patient's or defendant's entitlement to be present at a hearing nor do they alter the right to consult privately with their legal representative before, during or after a live link. As a package they are designed to increase the use of live links in courts, prisons and hospital psychiatric units providing a cost effective and secure means for patients/defendants to participate in hearings.

168. The comments received in relation to Part 6 of the Bill largely focused on wider issues relating to the use of live links generally, particularly with regard to children and young people, and the impact on their ability to understand and participate in proceedings and give informed consent and the ability of a defendant to access legal representation and communicate with their legal representative.

169. The Public Prosecution Service welcomes the expansion of the use of live links to a range of court hearings and to witnesses outside the United Kingdom, which presently is not available, and to make it easier for expert witnesses to give evidence by live link thus avoiding their unnecessary attendance at court.

170. The Children's Law Centre (CLC) however indicated that it has serious concerns regarding the use of live links in criminal cases which involve children and young people, believing they are potentially in breach of Article 6 of the ECHR and Articles 3, 12 and 40 of the UNCRC. It is concerned that extending the use of live links will remove any personal connection that would otherwise have been established had the child been present in court and this is also true of the child's relationship with their legal representative. The CLC highlighted that if the child is not present in court and does not have direct personal contact with their legal representative to enable them to instruct and communicate effectively with them, there may be huge implications for establishing informed consent. In its view if the child is not present in court their legal representative and the court itself are greatly disadvantaged in being able to determine the competency of the child to give instructions and understand the implications of the hearing and participate effectively.

171. The CLC indicated that the need for children to be able to fully participate in and understand proceedings in which they are involved have been identified as fundamental to guaranteeing the right to a fair trial under Article 6 of the ECHR by the European Court of Human Rights. It cited several case rulings and referred to the Practice Direction issued by the Lord Chief Justice in relation to the Trial of Children and Young Persons in the Crown Court in Northern Ireland. It also referred to evidence contained in a report commissioned by the Northern Ireland Office in 2008 regarding the use of live links and more recent research by Include Youth which, in its view, highlights concerns regarding the use of live links and their potential to adversely affect a child's ability to participate in and understand legal proceedings. CLC also highlighted that the need to ensure that a child can understand and participate in proceedings is even more acute whenever that child or young person is being treated for a mental illness and appearing in court via live link could prove to be a confusing and disorientating experience and it questioned whether the need for intensive, specialist help in order to understand and participate in criminal proceedings could be readily achieved via live link. The CLC stated that serious consideration should be given to these before decisions are taken to extend the use of live links. In its view the use of live video links must always be driven by the interests of justice and the best interests of the child and not what is considered to be more efficient or cost effective.

172. The CLC stated that Clauses 44, 45 and 46 make no reference to the need to secure the consent of the accused to appear via video link which is a major difference between this power and other powers that allow the appearance of a person in court via video link. The requirement that an accused person consent to the use of video links has been presented as a safeguard within the process in the past, allowing children and young people to appear physically in court if they so wish. CLC also outlined specific concerns regarding the lack of detail available on the enhanced procedures for young people involved in considering the use of a live link to ensure informed consent is available which the Department had undertaken to establish and the lack of clarity regarding whether legal representatives would physically attend court under these new arrangements or whether they would also be expected to appear via video link. CLC believes the use of live links with children and young people and obtaining informed consent must be resolved before the legislation is brought forward.

173. CLC also noted that the safeguard within Clauses 44 and 45 placing a responsibility on the court to adjourn proceedings where it appears to it that the accused is not able to see and hear the court and be seen and heard by it, if this cannot be immediately corrected, is not included in Clause 46 of the Bill which deals with breach proceedings for failing to comply with certain orders or licence conditions, and suggested that it should be added.

174. CLC noted that Part 2 of the Mental Health (NI) Order 1986 relates to persons compulsorily detained in hospital for assessment or treatment of a mental illness. While appreciating the rationale behind the intention to extend the use of live links in certain court proceedings to include patients detained in hospital under Part 2 of the Order CLC highlights that patients who are detained for *the purposes of being assessed* and *w*ho have criminal proceedings pending should not be required to attend court at all regardless of whether this is in person or via video link. CLC would also welcome further information on the Department's consideration of the potential impact the proposed Mental Capacity Bill will have on these proposals.

175. The Northern Ireland Human Rights Commission (NIHRC) outlined that the use of live links must not impact on the ability of a defendant to effectively participate in proceedings. It advised that an assurance should be sought from the Department in respect of this and how the Department will, in practical terms, ensure that an accused is able to effectively participate and how the confidentiality of communications is to be assured. The NIHRC also expressed the view that, in relation to live links, the legislation states "*it must not be contrary to the interests of justice"* which is a very broad test and it may be more appropriate to state "*it must not undermine the effective participation of the accused in a hearing*".

176. The NIHRC noted that since remand hearings held under Clause 45 may take place during the weekend or on public holidays it may be difficult for an individual to seek legal advice relating to bail or to prepare properly for the hearing to enable their effective participation. It therefore advised that the Department should be asked to set out what additional provision has been made to ensure that individuals participating in a first remand hearing by way of a live link are able to seek and obtain legal advice and representation to enable their effective participation. It also indicated that it would like to see a safeguard stating that regard should be given to the purpose of the first hearing, the seriousness of the charge and the implications of the particular offence when deciding whether to use a live link or not.

177. The Commission also noted that with respect to the wording of Clause 45, the court may not grant a live link hearing unless it is satisfied that it is not "*contrary to the interests of justice"* however the Explanatory Memorandum does not contain examples of scenarios where a live link would be considered not to be in the interests of justice. In addition whilst the court may adjourn a live link hearing when it appears the individual "*is not able to see and hear the court and to be seen and heard by it"* there is no obligation to ensure the individual is able to effectively participate in the proceedings. The NIHRC therefore recommended that the wording of Clause 45 should be amended to ensure that a live link should never be authorised or continue to be authorised where its use undermines the effective participation of an accused in a hearing.

178. The Department of Justice, in its written and oral evidence, outlined its belief that the live links provisions will serve the interests of defendants and witnesses by delivering a more efficient system with less scope for delay in arranging attendance at hearings, help to improve the experience of witnesses and make better use of scarce public resources more generally.

179. Responding to the issues raised, the Department indicated that it is content that live link proceedings are not detrimental to effective participation, understanding or access to legal representation and there are statutory requirements that the person must be able to see, hear, be seen and be heard for a live link to take place otherwise the hearing must be adjourned. It is for the courts and the judiciary to ensure and monitor compliance with the statutory requirements. The Department stated that it had reviewed relevant Convention Articles alongside the legislative proposals and was content that the provisions and their operation would not be in breach of Convention requirements. The Department highlighted that live links have been in operation since the late 1990s under the authority and supervision of the courts and judiciary and any Convention breaches would not have been, nor would they be, permitted.

180. The Department stated that it has in the past consulted with the judiciary about the impact of live links and the ability of children to understand and participate in proceedings. The advice received was that, from a judicial perspective, a live link facility whereby the child can speak directly and more visibly with the bench actually assists the contribution the young person can make. An on-screen, face to face exchange can be more effective than the child sitting more remotely in a busy and possibly intimidating courtroom. The Department explained that during proceedings where the defendant needs to consult with their lawyer, the court link is suspended to allow a one-to-one discussion by secure telephone link and private consultation immediately before hearings is also available. In terms of ensuring confidentiality, the live link system provides secure and confidential linkages and connections. Defendants can also see their legal representatives by way of visits whilst in detention in prisons or the Juvenile Justice Centre (JJC).

181. The Department indicated that it has also reviewed its proposals alongside the Practice Direction issued by the Lord Chief Justice in relation to the Trial of Children and Young Persons in the Crown Court in Northern Ireland. The Direction includes a series of procedures and requirements as to how the court should operate within an over-riding principle of preventing the child's exposure to intimidation, humiliation or distress and all possible steps to be taken to assist the young defendant to understand and participate in the proceedings.

Whilst it will be for individual courts to ensure compliance, the Department is content that the proposals are in accordance with the Direction and meet its requirements. The Department also consulted with the Judiciary, the Juvenile Justice Centre, prison establishments, Shannon Clinic and NI Courts and Tribunals Service (NICTS) to ensure that the services provided operate properly and compliantly.

182. The Department stated that, for nearly all live link procedures, the consent of the defendant is required in law. Although formal consent is not required for remands, parties to the proceedings must be given the opportunity to make representations and defendants can consult their lawyers. To have a statutory consent requirement for such short proceedings – many thousands of which occur each year – would result in a system whereby every defendant who did not consent would have to be physically taken to the remanding court. What might only require a two minute hearing could involve a full day's travel, which not only defeats the purpose of live link remands, but might also be difficult and unsettling for the individual.

183. In relation to the "*interests of justice test*" the Department accepts that it is a broad test but regards that as one of its strengths as it does not believe it appropriate to define in law how the interests of justice should be interpreted by the courts. The Department also highlights that it is a term used in other aspects of the criminal law and within Article 6 of the ECHR and it is therefore content with the use of that terminology. The Department also confirmed that, along with the NICTS and the Office of the Lord Chief Justice, it will undertake to produce guidance for courts, legal representatives and defendants on the new arrangements. The choice to direct or agree to a live link procedure is a matter for the Court and it will be for judges to ensure that factors such as access to legal advice, the purpose of the first hearing, the seriousness of the charge and the implications of the particular offence are taken into account. The Department is fully confident that they will be considered under the interests of justice provision.

184. In relation to live links for mentally ill patients, the Department outlined that each case is fully considered on an individual basis by way of a case review meeting before a live link decision is taken. Every patient is subject to assessment, including risk assessment, and the option chosen for the patient's court appearance. If a live link were to be chosen as the best option, medical staff can be present in the live link facilities to assist. It is also possible in any remand case involving a mentally ill patient for the hearing to proceed on the basis of a medical report and the person's legal representative if the person is too ill to participate in the hearing in any way. The Department has worked with the Department of Health, Social Services and Public Safety (DHSSPS) who requested the provisions be created for live links in respect of Part 2 patients and views the arrangements as an important step forward in the care and protection of vulnerable mentally ill patients.

185. The Committee requested further information from the Department on a range of issues including the results of any consultation the Department had undertaken with young people in the JJC about their experience of live links and the proposed changes, the estimated cost savings to be made by extending the use of live links, when guidance on the new arrangements for the use of live links at weekends and public holidays will be available, whether the delays experienced in court cases will be reduced by the use of live links for expert witnesses and whether Clause 46 needs amended to provide the same safeguard as in Clauses 44 and 45.

186. The Department responded indicating that both the staff and the 6 children interviewed in the JJC (all of whom had experience of using live links) were very supportive of the system and there was generally a high level of satisfaction with the operation of it. The reasons given for preferring live links included that they were more convenient and private, less intimidating, did not require the child to speak or stand in front of everyone and that care workers were there to help.

187. In relation to cost savings the Department has indicated that, for the use of live links for first remand for weekend and public holidays, approximately 330 judicial days would be reduced to around 52, the PSNI assert that of those officers and staff attending court, more than

75% are not actually required to give evidence which equates to around 86,250 hours or the equivalent of 10,781 shifts being lost to the frontline and Forensic Science NI (FSNI) report that, since live links became operational in December 2012, approximately 246.4 hours have been saved releasing capacity to the value of £29,321. The Department also outlined that whilst it is difficult to specifically quantify the delay in court cases that can be attributed to the attendance of expert witnesses, severe delays can be caused when scheduling their attendance in person, providing for expert witnesses is a time consuming and expensive matter and making live links the normal means for expert witnesses to give evidence will make a valuable contribution to the process.

188. The Department also confirmed that, given this is a completely new arrangement, it will develop guidance in conjunction with the NICTS and the Office of the Lord Chief Justice for courts, legal representatives and defendants on the use of live links at weekends and public holidays before the provisions are commenced.

189. The Department also advised the Committee that it would bring forward an amendment to Clause 46 so that the same safeguard as provided for in Clauses 44 and 45 which places a responsibility on the court to adjourn proceedings where it appears to it that the accused is not able to see and hear the court and be seen and heard by it and this cannot be immediately corrected applies. The Department subsequently provided the text of the proposed amendment.

190. **Having considered the issues raised in the evidence, the benefits of extending the use of live links and the Department of Justice's assurances regarding the various legal requirements set out in statutory frameworks for the use of live links which operate under the authority and supervision of the courts and judiciary the Committee agreed that it is content with Clauses 44 to 49 and the draft amendment to Clause 46 to ensure a consistency of approach with respect to safeguarding arrangements.**

Part 7 - Violent Offences Prevention Orders

191. Part 7 of the Bill creates a new tool – the Violent Offences Prevention Order (VOPO) – to assist relevant criminal justice agencies in the management of risk from violent offending. The VOPO, as a preventative measure, will benefit offenders in terms of helping to prevent the committal of further offences and will also benefit those affected by crime by reducing the risk of, and the fear of crime, which could lead to a potential decrease in the number of victims of crime and potential victims of crime.

192. A number of issues were raised in the evidence on Part 7 including whether VOPOs should apply to offenders under the age of 18, the use of VOPOs in relation to domestic violence offences and whether there was also a need for specific Domestic Violence Protection Orders.

193. The Public Prosecution Service (PPS) welcomed the introduction of VOPOs as a further means of protection for those who might otherwise be at risk from violent offenders and stated that it will work with the other criminal justice agencies to make the most efficient use of them.

194. The NI Policing Board also outlined its support for the introduction of VOPOs particularly as they may aide the police in risk managing serial domestic abusers and those who move from partner to partner and commit violent crimes. It is hopeful that VOPOs will allow the PSNI to be more pro-active in situations where a victim is too fearful to apply to court for Non-Molestation Orders as it would not necessitate the victim's cooperation.

195. The Children's Law Centre (CLC) and Include Youth both indicated that the consultation undertaken by the Department of Justice in 2011 did not specifically address the issue of the age of persons to whom VOPOs would apply, but the proposals were based on the Violent Offender Order (VOO) in England and Wales, which can only be applied to persons aged 18 and over. Following the consultation CLC outlined that it was notified by the Department that

it intended to make VOPOs available to all eligible offenders, regardless of their age, including under 18s. Include Youth stated that it appears that, following the closure of the consultation, stakeholders within the criminal justice system felt there may be children who require a VOPO in exceptional circumstances, akin to the use of the Sexual Offences Prevention Orders (SOPO) and this has brought the Department to the position where it is intended that VOPOs should apply to all people aged 10 and older who meet the "criteria" as provided for in the Bill. Include Youth asserted that this represents a significant shift in departmental thinking and the decision has been taken with no explicit consultation with regards to whether and how VOPOs should apply to children.

196. Include Youth does not support the use of VOPOs for children and the CLC stated that it is strongly opposed to the proposal that VOPOs should be made available in relation to children and young people and wants the Bill amended to clearly define that a VOPO can only be sought against a person who was aged over 18 at the time that they committed the relevant offence/offences which have led to a VOPO being sought. In its view the Department has provided no evidence that suggests that VOPOs are needed in relation to children and young people in Northern Ireland. The Department has proposed extending VOPOs to under 18s on the basis that they would only be applied for against young offenders in a very few exceptional cases, with data demonstrating that those eligible for a VOPO may be in the region of 7 per year, and that only a proportion of the 7 identified as eligible may actually have an order applied. Such information does not support the extension of VOPOs to children and young people. Include Youth also outlined that the Department has not elaborated on the definition of 'exceptional cases' nor has it given any information as to how a VOPO should be applied to children given that their maturity, needs and capacity are vastly different to adults.

197. Both the CLC and Include Youth highlighted that numerous orders currently exist that can be used by the courts when dealing with children and young people found guilty of violent offences which all contain elements of supervision or prohibition of activities e.g. Juvenile Justice Centre Orders, Youth Conference Orders and Probation Orders. Failure to comply with the requirements of these orders can result in the child being returned to court to be dealt with in an alternative manner.

198. CLC also highlighted that various orders can also be made to detain children in custody where they have been found guilty of 'serious' or 'specified' offences, which are listed in Schedules 1 and 2 of the Criminal Justice (Northern Ireland) Order 2008, and which relate generally to violent or sexual offences. It explained that before making these orders, the courts are required to consider whether there is a significant risk to members of the public of serious harm occasioned by the commission by the child of further 'specified' offences. Children and young people can only be released on license under these orders where the Parole Commissioners are satisfied that it is no longer necessary for the protection of the public from serious harm that they should be confined and licences can be revoked and individuals recalled to custody if necessary.

199. CLC also explained that Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998 provides the courts with an additional option in relation to the punishment of what it describes as certain grave crimes. This again involves releasing the child on license at some point, with the Parole Commissioners directing release once they are satisfied that it is no longer necessary for the protection of the public from serious harm that the child should be detained. The Department of Justice has the power to revoke the license and recall the child to custody.

200. Include Youth is not convinced that the application of VOPOs to children will give any added value and believes that before any decision is made to extend VOPOs to children, there must be an examination of the data with regards to children convicted of violent offences to ascertain whether any would have benefited from a VOPO and whether such a move would have afforded more protection to the public or potential victims and would have reduced the child's recidivism.

201. Given the disposals already available the CLC believes the imposition of additional conditions through the application of VOPOs in relation to children and young people is entirely unnecessary. CLC also highlighted that VOPOs are civil orders, breach of which is a criminal offence with criminal consequences which will draw young people further into the criminal justice system and which in its view are in conflict with the fundamental principles of reintegration and rehabilitation as clearly detailed in international children's rights standards. Both the CLC and Include Youth were concerned that VOPOs have not been developed with the intention of rehabilitating children who commit violent offences and reintegrating them into society with Include Youth highlighting that the Youth Justice Review Team made reference to the need to prioritise rehabilitation and reintegration.

202. In oral evidence the CLC outlined concerns regarding a potential situation where a young person is under one set of conditions through their licence and a second set through a VOPO and how those systems can interact. CLC suggested that where more conditions are imposed this can lead to a lack of understanding of the nature of the conditions and can lead to breaches.

203. Include Youth is of the view that the introduction of VOPOs to children and young people is in contravention of the fundamental principles of the United Nations Convention on the Rights of the Child (UNCRC), and in particular Article 40, and is not in keeping with a child's rights compliant youth justice system.

204. In respect of Clause 52 the CLC highlighted that the Chief Constable will have the power to apply for a VOPO in relation to persons who have been convicted of specified offences. The court must be satisfied that the person's behavior makes a VOPO necessary for the purpose of protecting the public and in deciding whether to make a VOPO, the court is required to consider whether any other statutory provision or measures are operating to protect the public from the risk of harm. The CLC suggested that it is not clear from this provision whether such applications will be decided on the civil standard of proof (balance of probabilities) or the criminal standard (proof beyond reasonable doubt). It highlighted that the Explanatory and Financial Memorandum states that VOPOs will be a civil preventative measure, which implies that the civil standard will apply which would concern it greatly. The CLC believes that this would blur the distinction between criminal and civil proceedings, as the VOPO could be granted on the civil standard of proof, but a breach would be a criminal offence with failure to comply with the requirements of a VOPO punishable by imprisonment of up to 5 years or a fine, or both.

205. Both Include Youth and the CLC also outlined concerns with regard to the Department's compliance with its statutory equality obligations under section 75 of the Northern Ireland Act 1998 in the development of these proposals. Since being notified of the Department's intention to extend the use of VOPOs to under 18s, there had been no evidence that these proposals have been assessed for their impact on the promotion of equality of opportunity. As "new policy" the proposals should have been subject to thorough equality screening and a comprehensive EQIA as well as direct consultation with children and young people.

206. The Attorney General highlighted that Clauses 51(4) and 53(3) contain retrospective provisions regarding the making of VOPOs when the offence was committed prior to the commencement of the Bill. The Attorney General outlined that a VOPO is more likely to constitute a public protection measure than a penalty and, in that circumstance, Article 7 of the ECHR is not engaged and the severity of the VOPO prohibitions or requirements can be measured by the sentencing judge to ensure Convention compliance.

207. Women's Aid expressed the view that there is a need for something akin to a VOPO as there is currently a gap in dealing with serial perpetrators of domestic abuse and violence. However given the threshold envisaged for VOPOs it is concerned that many of the cases would not be covered by them. Women's Aid highlighted the unique element of domestic violence in that it is perpetrated by a family member rather than a stranger and indicated that the elements of control and manipulation also need to be considered as part of the abuse. In its view a range

of different types of order or a more tailored VOPO, such as a Domestic Violence Protection Order (DVPO), which does not have a threshold that is prohibitive, should be available.

208. The NI Human Rights Commission (NIHRC) also highlighted that in 2010 the Criminal Justice Inspectorate recommended the introduction of Domestic Violence Protection Orders (DVPOs)[1] which allow the police to prevent the suspected perpetrator from entering the victim's residence for a set period of time. It stated that, in a follow up review in 2013, the Department indicated that it was awaiting the outcome of a pilot of DVPOs in England and Wales. NIHRC noted that, following a successful pilot, DVPOs are now available throughout England & Wales and similar systems have been found to be successful in many EU states and it questioned why legislative provision for DVPOs has not been included within this Bill.

209. In its written evidence the Department stated that the VOPO is not a sentencing or punitive disposal but instead is purely a risk management tool and a means of protecting the public and the court has to satisfy itself that a VOPO would be necessary in light of all other measures which may be in place. The VOPO has been modelled on the Sexual Offences Prevention Order (SOPO) which can be used in cases of risk or harm for those under 18. The Department acknowledged that the original consultation did not specifically address the question of age, but stated that, at that point, the proposal was based on the Violent Offender Order in England and Wales which did have a minimum age of 18. However, following consultation, key stakeholders within the criminal justice agencies, indicated their wish to include qualifying offenders under the age of 18 within the VOPOs legislative framework, similar to the framework for the SOPO, upon which current VOPO proposals have been modelled. From their experience they believe that a small number of young offenders can present a risk of serious harm and that they could benefit from such an order, which could be used to prevent them from going on to commit further, and more serious violent crime, thus public protection would be enhanced and the Youth Justice Agency considers it would have a beneficial impact on victims.

210. The Department outlined that it carried out two further targeted consultations, setting out the intention of its proposals to include under-18s in the VOPO's provisions. It stated that the VOPO will be a preventative, rather than a punitive measure, aimed at preventing children from further offending - the re-offending rate for young people (48%) is higher than that for adult offenders (42%). It also has the potential to prevent young people becoming victims of crime - young males aged 16-24 are more likely to become a victim of violent crime than any other category of victim. The VOPO is not automatically applied to all eligible offenders and there will be a high threshold adopted by the court which must be fully satisfied, based on the evidence presented to it, that the offender continues to pose a serious risk of violent harm and that the risk cannot be managed by other statutory interventions (e.g. licence conditions). The Department considers that the VOPO has the potential to have a positive impact on a young person in the prevention of future, and possibly more serious, offending which may also lead to a reduction in the number of potential victims of violent crime. The Department clarified that the provisions only come into play for reasons of public protection, not as a method of rehabilitation.

211. The Department confirmed that a VOPO is a civil order of the court. The proceedings are civil proceedings and the standard of proof to be applied by the court is the civil standard of proof. The VOPO is not a punitive sanction which will form part of an offender's sentence but rather is a civil preventative order, which will be used only to mitigate the risk posed from particular violent offenders in the community. The court will have two high thresholds to cross before an order can be made. First, the court must be satisfied, on the basis of evidence presented to it, that the offender poses a risk of serious violent harm. Secondly, it must be satisfied that it is necessary to make an order for the purpose of protecting the public from the risk of serious violent harm caused by the offender. Part of that determination will be whether the

1 CJINI 'Domestic Violence and Abuse: A thematic inspection of the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland' December 2010 Recommendation 2

court considers the risk cannot be effectively managed by other statutory interventions. The conditions or requirements of the VOPO would have to be made in proportion to the risk posed.

212. In relation to the concerns regarding the Department's compliance with its statutory equality obligations under section 75 of the Northern Ireland Act 1998, the Department considers that the proposed VOPO framework provides equality of opportunity for all violent offenders and victims of violent offences who would be protected by its conditions. It stated that the legislative proposals were subject to equality screening and the Department concluded that a full equality impact assessment was not required. The screening indicated that there would be some potential for adverse impact on young males who are statistically more likely to commit crime than any other group in the Northern Ireland offending population. However, it is their offending behaviours that attract the impact and not the result of this policy proposal. The exercise also indicated that the policy would have a positive impact on victims of violent crime, or potential victims of violent crime, across all the Section 75 groupings generally, and in particular young males who are at a higher risk of violent crime than those in the other Section 75 categories.

213. In relation to domestic violence offences the Department explained in its written response that criminal justice agencies indicated that a high sentencing threshold should not apply to the VOPO so that the order could be used to manage the risk of harm, particularly from domestic violence abusers who commit violent crimes, as domestic violence cases can attract a lower level of offence which is dealt with at the magistrates' court. The legislative proposals for the VOPO have been developed with the needs of victims of domestic violence in mind. Specifically, the VOPO has been made offence based and not sentence based and the threshold of qualifying offences was lowered intentionally to include the offence of Assault Occasioning Actual Bodily Harm (AOABH) because of concerns raised during and post public consultation around the issue of tackling domestic violence. Under the legislative proposals, no sentencing threshold is applied to the VOPO and the list of specified offences applicable to the VOPO is extended to include a broader range of offenders who continue to pose a risk of serious harm to the public. The availability of the VOPO would be extended to the lower level offence of AOABH where the offence takes place in domestic or family circumstances. In the Department's view this will make the VOPO a much better risk management tool and will help target domestic violence offenders, thereby better protecting victims of those crimes.

214. While the Department indicated that the measures were tailored to provide for better protection for victims of domestic violence following analysis and a mapping exercise it appears that whilst VOPOs will provide some additional protections for victims of domestic violence, there remains a gap for the immediate protection of victims in the short-term. Further consideration of how best to ensure this protection will form part of a broader consultation on a range of domestic violence initiatives to take place in 2015/16 as part of the implementation of the new '*Stopping Domestic and Sexual Violence and Abuse Strategy',* due to be published by the end of March 2015.

215. The Department also outlined its intention to bring forward a number of amendments to the clauses relating to the verification of identity, retention of fingerprints and photographs and power of search of third party premises to reflect improvements suggested by the Attorney General and concerns he raised about ECHR compliance.

216. When departmental officials attended on Part 7 of the Bill the Committee discussed whether the threshold for a VOPO is too high to catch domestic violence cases and whether there is an argument for the introduction of Domestic Violence Prevention Orders as well. The Committee also questioned the Department's projection that those under 18s eligible for a VOPO may be in the region of 7 per year, whether VOPOs could be tailored for under 18s and whether a VOPO would form part of information disclosed through the AccessNI check process.

217. In response the Department outlined that if the threshold for a VOPO was set any lower, thereby bringing in common assault, it would become unmanageable. The order is not totally geared for domestic violence cases but rather to deal with people who are presenting a risk

of serious violent harm to the community although it will include those convicted of serious domestic violence. The Department confirmed that it is considering consulting on DVPOs and highlighted that these would offer immediate protection to an individual as the police could serve such a notice immediately, something a VOPO does not offer. The Department also clarified that the figure was the number in one year who were convicted of a violent offence and that they had reoffended over a period of 18 months, and it is therefore suggested that they are the sort of individuals who would be covered if the VOPO applied to young people and it had not considered there is a need to tailor VOPOs specifically for under 18s.

218. The Department also outlined in a subsequent letter that, as the VOPO is a civil order, it would not be routinely disclosed on the AccessNI certificate. If a person were to breach any of the conditions of the order, the breach, as a criminal offence, would be disclosed. In relation to an enhanced check police could disclose that the individual was the subject of a VOPO however safeguards are in place for this higher level check.

219. **Having considered the issues raised in the evidence and the further information and clarification provided by the Department of Justice, the Committee agreed that it is content with Clauses 50 to 71 relating to VOPOs subject to the Department's proposed amendments.**

Part 8: Miscellaneous

220. Part 8 contains miscellaneous provisions covering Jury Service; Early Guilty Pleas; Avoiding Delay in Criminal Proceedings; Public Prosecutor's Summons; Defence access to premises; Court Security Officers and Youth Justice.

Jury Service – Clauses 72 to 76

221. Clauses 72 to 76 provide for the abolition of the upper age limit for jury service (currently age 70), to be replaced with an automatic right of excusal for those over 70 and an increase of the current age for automatic excusal from 65 to 70 and various tidy-up provisions.

222. The Commissioner for Older People welcomed the intention to abolish the maximum age for jury service stating that many of those currently precluded from jury service as a result of age have wide ranging and relevant experience that would prove invaluable to any jury panel. The Commissioner noted that the United Nations Principles for Older Persons (1991) indicated that older people should be able to seek and develop opportunities for service to the community and ensuring that as many older people as possible have the opportunity to participate in jury panels adheres to those aspirations. The proposal also compliments the strategic aims of the "Active Ageing Strategy 2014-20". The Commissioner did however suggest that the change to automatic excusal from those aged 65 and over to those aged 70 and over should be subject to a thorough Equality Impact Assessment to ensure that older people aged between 65 and 70 are not disproportionally affected by the change.

223. The Department noted the Commissioner's support for the proposal to abolish the maximum age for jury service members and agrees older persons' experience may well prove invaluable to jury panels. The Department outlined that under the existing arrangements discretionary excusal is available for those under 65 and when the age for automatic excusal is raised to 70 those aged 65 to 70 will still be able to avail of discretionary excusal. The NI Courts and Tribunals Service will also survey a sample of people attending court for jury service in each of the two years following the introduction of the age-related changes and will publish the results.

224. **The Committee agreed that it is content with Clauses 72 to 76 and, for information, requested further details regarding who is currently exempt from jury service which the Department provided.**

Early Guilty Pleas – Clauses 77 and 78

225. Clauses 77 and 78 provide for statutory provisions to encourage the use of earlier guilty pleas. The provisions will provide legislative support to a (non-legislative) scheme being developed to provide a structured early guilty plea scheme in the magistrates' courts and the Crown Court. The provisions will: (i) require a sentencing court to state the sentence that would have been imposed if a guilty plea had been entered at the earliest reasonable opportunity and; (ii) place a duty on a defence solicitor to advise a client about the benefits of an early guilty plea.

226. The main issues raised in relation to Clauses 77 and 78 related to the purpose of the provisions and the likely impact. Several respondents also suggested that the proposed duty on solicitors should also apply to advocates.

227. The Children's Law Centre outlined that it is conscious that the Department intends that these clauses will provide legislative support to a non-legislative scheme being developed to provide a structured early guilty plea scheme in the magistrates' courts and Crown Court, and indicated that it would welcome further scrutiny of the status of this scheme, with particular consideration being given to the need for adequate safeguards and protections to ensure that proposals aimed at tackling delay, such as encouraging early guilty pleas, do not interfere with the child's fundamental right to a fair trial under Article 6 of the ECHR as incorporated by the Human Rights Act 1998.

228. The CLC referred to a CJINI report on early guilty pleas in February 2013 and expressed the view that there is considerable potential for vulnerable young people to be more susceptible to pleading guilty at the earliest possible opportunity, particularly where they feel pressured or intimidated by court proceedings or wish the case to be over. It stated that it will be extremely important that the particular needs of the child are taken into account when applying these clauses and any non-legislative early guilty plea scheme, particularly in relation to children with learning disabilities, those with additional needs and/or mental health problems and those for whom English is an additional language as these needs may result in a lack of understanding of the implications of pleading guilty and may impact on the child's enjoyment of his/her right to a fair trial. The CLC wants measures to be taken proactively to protect and uphold a child's right to a fair trial.

229. NIACRO strongly disagrees with the terminology 'early guilty pleas' and the focus on encouraging them as, in its view, it creates an expectation that the defendant is guilty. NIACRO recommends that the emphasis be placed on 'efficient case resolution', ensuring justice and thereby better outcomes for victims and defendants. In NIACRO's view this approach would protect the statutory presumption of innocence and encourage greater focus on resolving cases efficiently and effectively. NIACRO advocates that there needs to be a balance between reducing unnecessary delay and achieving a just outcome and is concerned that the focus on encouraging 'an early guilty plea' to obtain a reduced sentence may put pressure on vulnerable individuals to plead guilty. It believes that the accused should be provided with a clear summary of the case against them at the earliest opportunity before entering a plea and recommends that clarification is provided in regulations and practice guidance regarding the term 'earliest reasonable opportunity'.

230. NIACRO does not believe that requiring a court in certain circumstances to indicate the sentence that would have been passed had the defendant entered a guilty plea at the earliest opportunity will effectively address the offending behaviour of the defendant and has very little merit in terms of encouraging other defendants in different circumstances. NIACRO recommends that there should be greater certainty about credit available and greater transparency in sentencing for the person accused from the outset in order to achieve efficient case resolution. It also recommends that there is a requirement on the police, solicitors, etc. to explain information in a format so that the person understands the consequences of pleading guilty or not pleading guilty or withholding a plea.

231. NIACRO also believes that there should be a restorative justice approach where the victim's journey through the criminal justice system is brought alongside that of the accused and in its view Clause 77 will not have any rehabilitative effect on the accused and will have little impact for the victim.

232. Commenting on Clause 78 NIACRO expressed the view that any legal advice given in the course of criminal proceedings needs to be governed by a statutory code of practice and recommends that there should be a statutory code of practice for solicitors in relation to the advice underpinned by a general duty when providing advice to their client about entering a plea.

233. In relation to Clause 78 the NIHRC outlined that the ECt.HR has noted: "*that it may be considered as a common feature of European criminal justice systems for an accused to obtain the lessening of charges or receive a reduction of his or her sentence in exchange for a guilty or nolo contendere plea in advance of trial…" The* ECt.HR has further ruled that by pleading guilty a defendant is waiving his/her right to have the criminal case against them examined on the merits, such a decision should only be taken when fully aware of the facts and the legal consequences and should be entered in a genuinely voluntary manner. The NIHRC noted that while a solicitor is to advise his or her client on the likely effect on any sentence that might be passed on pleading guilty at the earliest reasonable opportunity the term "earliest reasonable opportunity" is not defined in the Bill and it is unclear if a definition will be included within the required regulations. The Commission advised that the "earliest reasonable opportunity" should occur only when a defendant is fully aware of the facts of the case and the legal consequences of his or her decision.

234. In oral evidence the NIHRC stated that the defence solicitor, who has the duty to advise the defendant, should be fully aware of what the case is against the individual so that any decision made by the defendant is a properly informed one.

235. The Legal Services Commission welcomes the introduction of Clause 78 as it could serve to reduce the number of contested cases coming before the courts and will monitor if the introduction of this section results in a saving for the Legal Aid fund.

236. While giving oral evidence the Law Society queried the rationale for Clause 77 and suggested that the most likely consequence of the court being obliged to give an indication of what sentence the judge would have given had the defendant pleaded guilty at the "earliest reasonable opportunity" would be an increase in appeals on sentence, where you may have a defendant saying that he should be given the lesser sentence because he was not appropriately advised at the earliest reasonable opportunity to duly plead. The Law Society also questioned how "earliest reasonable opportunity" to plead will be determined when every case is different and it very much depends on the evidence that the defendant may have been aware of. The Law Society believes that it will be very difficult for a judge to say categorically what sentence he would have given had the person indicated a plea, say, six months ago, because, invariably, the circumstances will have moved on and views it as "an art rather than an exact science".

237. In relation to Clause 78 which places a duty on a defence solicitor to advise a client about the benefits of an early guilty plea the Law Society outlined that solicitors are under a professional obligation to provide their clients with the best possible legal advice in line with their circumstances and that this duty encompasses advising the client of the benefits of early guilty pleas in cases where the strength of the prosecution evidence suggests little prospect of a successful defence. The Law Society explained that the ability to provide appropriate advice in this context is connected to adequate disclosure by the PPS and can vary in line with different cases. It added that the role of the defence solicitor is to represent clients fairly and impartially and to safeguard the presumption of innocence in the justice system by testing the evidence of the prosecution. It suggested that, as a result, the core area of reform which will produce appropriate guilty pleas at an earlier stage is to ensure greater front-loading of evidence in criminal cases.

238. In oral evidence the Law Society stated that what is missing from the clause is any reference to the fundamental principle that a defendant's plea must always be made voluntarily. The Law Society stated that some balance needs to be added to take account of vulnerable witnesses and defendants and to introduce an overriding principle that a defendant's plea always has to be made voluntarily. The Society does not believe that creating a mandatory duty to advise of the impact of early guilty pleas will increase their frequency, as solicitors already provide this advice at appropriate stages. It suggests that, on the contrary, this clause has the potential to impact on the solicitor-client relationship for little return in terms of efficiencies.

239. The Law Society also expressed strong reservations about creating a perception that defence solicitors are acting as agents for the prosecution. It outlined that the perception that pressure is being applied to clients by defence solicitors to plead guilty irrespective of the circumstances should be avoided as vulnerable clients who may be innocent could plead guilty, particularly in cases with lesser penalties. The Law Society recommended that, in order to avoid this perception and to maintain the spirit of our adversarial justice system with independent pillars, the Bill should be amended to place a duty on the PPS to notify the client of the discount scheme for earlier guilty pleas as part of their duties in relation to summonses and charging procedures. If however a statutory obligation is to be made, it should be for the advocate and not just the solicitor.

240. The PPS noted that the provisions in Clause 77 provide for the sentencing Judge to inform a defendant who is considered not to have pleaded guilty at the earliest reasonable opportunity of the sentence they would have received had they done so. The PPS indicated that informing a defendant at this stage, when they cannot change how they have approached the case to date, on its own will have limited impact on the number of early guilty pleas. The PPS suggested that provision should be made obliging a judge to enquire of a defendant's Advocate if they have advised the defendant of the provisions of Article 33(1) of the Criminal Justice (Northern Ireland) Order 1996 – which contain those provisions around a reduction in sentence for a guilty plea entered at the first reasonable opportunity - before they have entered any plea to the charges they face. The Court can then be satisfied that the defendant would be fully informed of the benefits of entering a guilty plea at the earliest reasonable opportunity.

241. The PPS stated that the proposal outlined above in relation to Clause 77 would give the duty placed on the solicitor by Clause 78 even more significance and should assist in encouraging early guilty pleas. It suggested, however, that the duty to advise should sit with the advocate whether that advocate is a solicitor advocate or counsel and it is they who would be asked by the judge whether they had advised the defendant as suggested above.

242. In oral evidence, the PPS responded to the Law Society's assertion that there should be a duty on the PPS to notify the client of the discount scheme for earlier guilty pleas stating that it was unclear how this would work in practice. In PPS's view the Law Society would strongly object to the prosecution approaching their clients to suggest that they plead guilty early. The PPS stated that the triggers which apply in terms of advising a client on whether to give evidence could also apply in a similar way to guilty pleas.

243. The PPS also indicated that consideration should be given to a statutory provision providing an additional discount to those who avail of the early guilty plea provisions and suggested that this has been very successful in England and Wales. It stated that the latest statistics show that 28% of defendants who pleaded not guilty changed their plea before the trial and the paperwork and preparatory work triggered by the entry of a no guilty plea are considerable. In its view there needs to be a significant driver in the criminal justice process to concentrate defendants' minds on the question of the benefits of pleading guilty at the earliest opportunity.

244. The PPS also highlighted a legal aid issue which it has raised with the Department. The PPS explained that there are three types of fee in criminal cases - GP1s, GP2s and trial fees. The PPS stated that if the defendant pleads guilty to all counts, the GP1 is a respectable and modest fee for defence lawyers. The GP2 is a significantly enhanced fee and is paid if there

is an entry of a not guilty plea to any offence on the indictment. The trial fees are paid after the first day of the trial. The PPS stated that the GP2 fees are a significant financial incentive to the entry of a not guilty plea and that it might be better managed if the GP2 were not triggered until a later stage in the process where it was clearer to all concerned that this was a serious not guilty plea.

245. In its written and oral evidence the Department outlined that Clauses 77 and 78 are intended to encourage the use of earlier guilty pleas and complement the approaches being developed in parallel on a non-statutory basis. In its view the proposals strike a balance between reducing avoidable delay and achieving a just outcome.

246. The Department highlighted that under current arrangements, the sentencing judge may already indicate the level of sentence that would have been imposed for a plea at the earliest reasonable opportunity. The Department does not therefore agree that the clause, which effectively places existing practice on a statutory footing, will necessarily result in increased appeals on sentence. The Department does agree that the 'earliest reasonable opportunity' may be dependent on the circumstances of the case and this is precisely why the determination of the 'earliest reasonable opportunity' should continue to be left to the discretion of the trial judge.

247. It noted the comments by the CLC regarding the importance of taking account of the particular needs of children and upholding a child's rights to a fair trial and indicated it would be mindful of the issues raised, both in the operation of the clauses and in the context of the non-legislative scheme and gave an undertaking to engage further on any proposed new procedures for cases involving young people.

248. In relation to Clause 78 the Department outlined that, while the Bill does not stipulate the exact point at which a defendant's solicitor must notify the court that he/she has advised their client of the effect of Article 33(1), magistrates' courts rules will specify this and provide that this advice is to be given prior to the defendant entering a plea.

249. The Department stated that it recognises the importance of timely and adequate disclosure to the defence and highlighted that the Indictable Cases Pilot which is underway in the Division of Ards is trialling new arrangements for earlier disclosure of evidence, including the provision of a summary of the case to the defence. The Department accepts that early resolution of a case is often contingent upon early disclosure to the defence to enable them properly to advise their client as to a plea.

250. The Department does not believe that the clause departs from the well-established principle that a plea of guilty must always be made voluntarily. It also does not consider that requiring a defence solicitor, as part of their professional advice to a client, to make the client aware of the existing provision relating to credit for guilty pleas would create the perception that they are acting as agents for the prosecution.

251. The Department stated that it is open to the suggestion that more can be done to publicise the existence of existing arrangements for credit for a guilty plea and indicated it would be possible for enhanced arrangements (such as publicising the availability of credit on PPS documentation) to be taken forward through non-legislative means. Measures such as this can be explored through the development of the non-statutory scheme and the Indictable Cases pilot.

252. Regarding the proposal that the duty should apply to an advocate, the Department outlined that this would be possible but noted that an advocate will not necessarily be instructed in each case. In addition, requiring the advice to be given by a solicitor as well as an advocate could arguably make a vulnerable individual feel pressured to enter a plea.

253. The Department also outlined that it had sought views on the introduction of a statutory level of credit for an early guilty plea as part of its policy consultation in 2010, but it was not widely

supported by consultees who largely felt that the level of credit for a guilty plea should remain at the discretion of the trial judge. The Department supports this position.

254. In response to the issue raised by the PPS regarding legal aid fees the Department indicated that it has removed the GP2 Fee. Following extensive and robust arguments from the legal profession it was decided to introduce a Trial Preparation Fee for counsel in cases which had been prepared for trial, with significant work having been required from the defence, but which ultimately resulted in a Guilty Plea. In addition, the Department introduced another significant reform to guilty plea remuneration by reducing the amount payable in cases with higher pages of evidence. Previously a minor theft charge with a high number of pages of evidence would have attracted the same fee as a murder charge with a high page count. The Trial Preparation Fee in high page count cases is now based on the basic fee for the class of offence and therefore better reflects the complexity of the case. A number of additional fees for solicitors which were also based on pages of served evidence have also been removed and the Department is content that this particular issue has been resolved.

255. The Department also advised the Committee that, on the advice of the Attorney General for Northern Ireland, it intended to bring forward an amendment to remove a regulatory making power in sub-section 3 of Clause 78 which has been identified as being of no practical benefit.

256. During the oral evidence session with officials the Committee sought clarification on a range of issues including what protections are available for children and vulnerable adults, what assistance is provided to people with communication difficulties, the meaning of "earliest reasonable opportunity", the reason for placing the duty on the solicitor and not on counsel, the process of changing charges to a lesser charge or changing an early guilty plea in light of new evidence, the purpose of Clause 77 and what it will actually achieve, the penalties if a solicitor breaches the regulations concerning the duty to advise a client about an early guilty plea, how it would be established that a breach had occurred and whether client-solicitor confidentiality issues would arise.

257. In response the Department outlined that, in relation to children and vulnerable adults, they had been piloting a sentencing statement that sets out in detail for an accused, after a police caution but before the start of a police interview, what the implications might be of entering an early plea but also reminding them that, if they are not guilty of the offence, they should not plead guilty to it. If the police felt that someone was not able to make an informed decision, they would certainly try to ensure that they had proper legal representation or support to make sure that their rights were safeguarded. For people with significant communication difficulties, registered intermediaries or interpreters can be brought in at police investigation stage. The Department did not believe the provisions should create any additional risks for a vulnerable person, particularly as the onus is on the defence solicitor to advise their client.

258. The Department confirmed that the intention of Clause 77 is that, if a person decides to enter a plea at a very late stage in proceedings, the court can make it clear to them that they are not getting the maximum discount that may have been available to them had they pleaded guilty at an earlier opportunity. It reinforces the fact that a late plea will not, in most cases, get a person as much discount as an earlier plea might and assists with transparency in the system. It also reiterated its view that "earliest reasonable opportunity" is dependent on the circumstances of the case and should be left to the discretion of the trial judge.

259. In relation to breaches of the regulations by solicitors the Department highlighted that a person could make a complaint to the Solicitors Disciplinary Tribunal and the clause closely follows the provisions in the Justice Act 2011 on the giving of advice by a solicitor advocate.

260. **Several Members outlined concerns and reservations regarding the duty to be placed on solicitors by Clause 78. Views were expressed that it was unnecessary as in practice a solicitor would inform a client of the position anyway, it could potentially create problems and conflicts between solicitors and clients and it would not deliver efficiencies. Other Members**

were content with the proposed statutory duty. The Committee agreed that it is content with Clause 77 and Clause 78 subject to the amendment proposed by the Department.

Avoiding Delay in Criminal Proceedings - Clauses 79 and 80

261. Clauses 79 and 80 introduce a statutory framework for the management of cases. Through regulation the Department of Justice will be able to impose duties on the prosecution, defence and the court, which set out what must be completed prior to the commencement of court stages. The regulations will also allow the Department to impose a general duty to reach a just outcome as swiftly as possible on anyone exercising a function in relation to criminal proceedings.

262. All the respondents to this part of the Bill recognised the serious problem of delay in criminal proceedings and the negative impact this has on victims, witnesses and defendants, especially children and young people. Support was therefore expressed for measures to address avoidable delay including statutory case management.

263. The Children's Law Centre is very supportive of reducing delay in children's cases and welcomed Clause 79 that specifically requires any regulations to take account of the need to identify and respect the needs of persons under the age of 18. It was however concerned that no definition is provided in relation to reaching a 'just outcome' and believes that this should be further clarified in order to ensure that the duty imposed under Clause 79 is implemented consistently. It also expressed the view that a similar requirement regarding taking account of the need to identify and respect the needs of persons under the age of 18 should be included in Clause 80.

264. The Law Society stated that it is not opposed in principle to statutory case management provisions and agrees that it is the duty of practitioners, the PPS and the Department of Justice to seek to eradicate unnecessary causes of delay. The Society outlined that there are two broad aspects to a properly functioning justice system – the first is the delivery of robust and fair justice and the second is reasonable promptness of proceedings. The first of these takes precedence as the interests of justice varies with different circumstances. Whilst justice and swiftness of disposal often work in harmony in some instances justice requires prolonged proceedings. In its view the Bill should identify the interests of justice as the paramount consideration.

265. The Law Society highlighted that the Bill introduces a broad power to make Regulations in this area and Clause 79 grants the Department the right to impose a general duty on appropriate persons to reach a "just outcome" as swiftly as possible. It stated that the phrase "just outcome" recognises that a duty to expedite proceedings should not be at the expense of the interests of justice. It however preferred the term "serve the interests of justice" as this recognises that participants in the justice system should apply their minds to this at each stage of the process, rather than unduly focusing on arriving at any particular outcome.

266. In relation to Clause 80 the Law Society expressed the view that the Bill should be amended to include the phrase "serve the interests of justice" as it recommended for Clause 79. Failing that, the term "just outcome" should at least be included in both clauses for clarity and consistency of purpose. This would ensure that any Regulations are interpreted as dependent on their contribution to serving the interest of justice highlighting that the swift progression of proceedings often produces a just outcome, but there will be circumstances in which flexibility is required for the judiciary to do justice in particular cases. The Law Society also indicated that the regulation-making powers on case management should require an explicit duty to consult with the judiciary and the profession, who will be charged with implementing any changes. In oral evidence, the Law Society stated that in relation to Clauses 79 and 80, it seemed incorrect that the clauses provide that the Department make the regulations, as in its view, this is usurping the judge's judicial function and the clauses should simply refer to the Lord Chief Justice issuing Practice Directions.

267. The NI Policing Board broadly welcomed the steps being taken to reduce delay and better manage cases in the criminal justice system given the effect delay can have on the efficiency and effectiveness of the PSNI. The Board wishes to see the Regulations.

268. The PPS indicated that, whilst it has no difficulty in principle with the Department imposing, by regulations, a general duty on persons exercising functions in relation to criminal proceedings and that these regulations must take into account the needs of victims, witnesses and persons under the age of 18, it would question whether, in light of the efforts it makes on a regular basis to achieve these ends, they are necessary as far as the PPS is concerned.

269. It welcomes the provisions around Case Management Regulations believing they have the potential to mirror the positive impact on effective case management in criminal cases that the introduction of the Criminal Procedure Rules has had in England and Wales.

270. Victim Support welcomed the steps to avoid delay in criminal proceedings. It explained that, in addition to the debilitating stress and anxiety caused to victims and witnesses by unnecessary delay in the system, there are often significant financial implications. It also highlighted that delay is also cited as a key contributory factor to rates of attrition and can have an enormously detrimental effect on wider attitudes to the Criminal Justice System. Victim Support welcomed the fact that the Department may, by regulations, impose a general duty on persons exercising functions in relation to criminal proceedings in the Crown Court, or magistrates court, to reach a just outcome as swiftly as possible and was pleased to note that the regulations must, in particular, take account of the need to identify and respect the needs of victims and witnesses.

271. Victim Support also sees considerable merit in the stipulations in respect of active Case Management Regulations and that the regulations may impose duties on the court, prosecution and the defence. It fully supports some of the key components of active case management, as outlined in the Bill, but cautions that, in encouraging the participants to co-operate in the progression of the case, all due care should be taken throughout the process, to ensure the safety and well-being of the victim and witnesses involved. Victim Support also requested some clarification of what sanctions may be put in place should there be a breach of the regulations and a failure to adhere to the functions of active case management.

272. NIACRO strongly supports any efforts to reduce unnecessary delay in the criminal justice system given the detrimental impacts it has not only on the accused and the victim but on their families, witnesses, prisons, courts and the police as well as public confidence in the system. It indicated that it is aware, based on its experience of working with people going through the criminal justice system who offend and victims of offending behaviour, that they wish to see the process made more efficient however this should not be to the detriment of justice. NIACRO believes that the general duty provided by Clause 79 will allow sufficient flexibility when dealing with complex cases whilst still ensuring people are held accountable and commented in detail on action that should be taken including the introduction of Statutory Time Limits (STLs).

273. NIACRO also welcomes the placing of case management on a statutory footing and recommends that a mechanism is included to address breaches and the introduction of penalties for legal representatives who repeatedly request adjournments.

274. The Attorney General suggested that, rather than providing a power to make regulations outlining a general duty to progress cases, this duty could be placed onto the face of the Bill, perhaps as an amended Clause 79, and the duty might be phrased similarly to Rule 1.1 of the English Criminal Procedure Rules 2013.

275. The Department, in responding to the issues raised, indicated that Clauses 79 and 80 create a statutory framework for the management of criminal cases in response to the Committee's recommendation in the Inquiry into the Criminal Justice Services available for Victims and Witnesses that case management should be placed on a statutory footing

and a similar recommendation by the Criminal Justice Inspection. The Department also highlighted that it has specified that the regulations must take particular account of the needs of victims, witnesses and children. It hopes the Regulations will lead to a reduction in the number of adjournments prior to the start of the trial, fewer witnesses being called to court unnecessarily and the speedier progress of cases more generally. It is also separately bringing forward proposals for the introduction of Statutory Time Limits (STLs) in youth cases.

276. The Department indicated that it agrees that the interests of justice principle is paramount and considers that the framing of the general duty recognises this. Clause 79 is intended to strike a balance between achieving a just outcome whilst dealing with the case as expeditiously as possible. The Department is of the view that the term "just outcome" is sufficiently clear, does not require further definition and achieves the same purpose as the phrase proposed by the Law Society. It also clarified that no specific sanctions for breach of the regulations are proposed. The actions available to the judge in the event of a breach will be those already available to the court e.g. refusing the request for an adjournment etc.

277. The Assembly Examiner of Statutory Rules drew the attention of the Committee to the regulation-making powers in Clauses 79(2) in relation to the general duty to progress criminal proceedings and Clause 80 – the case management regulations. The Examiner expresses the view that these clauses are at the core of the Bill's main purposes and are significant from that point of view and also as they are likely to and intended to have a major impact on the conduct of criminal proceedings. The Examiner stated that if the Regulations are to be workable in any proper and meaningful way they will need to have a major input from those involved and there should therefore at least be a built-in statutory requirement to consult the Lord Chief Justice, the Director of Public Prosecutions, the Bar Council and the Law Society. He also considered whether the regulation-making powers in Clauses 79 and 80 should be subject to the draft affirmative procedure but was satisfied to leave them subject to negative resolution if the requirement to consult is included.

278. The Committee referred the Examiner's analysis to the Department and it confirmed that, in response to the concerns raised by the Examiner and the Attorney General it would bring forward appropriate amendments to Clauses 79 and 80. The Department subsequently provided the text of the proposed amendments.

279. **One of the issues consistently raised during the Committee's Inquiry into the Criminal Justice Services available to Victims of Crime in Northern Ireland was the adverse impact the length of time it takes for cases to go through the criminal justice system has on victims and witnesses, many of whom are unable to move on while they wait for the process to be completed. Whilst recognising the complexity of the issue the Committee noted that avoidable delay in the criminal justice system was not new and in its view had been on-going for much too long. Given the detrimental effect it has on victims and witnesses, as clearly demonstrated in the evidence received in the Inquiry, the Committee believed that substantive action was required. While delay is a common complaint with regard to the entire criminal justice process one of the key frustrations for victims and witnesses is the length of time court cases take and the number of postponements/adjournments that frequently occur. The Committee was of the view that a statutory case management scheme would be beneficial and have an overall positive effect in addressing delay and ultimately the experiences of victims and witnesses and therefore recommended that this should be taken forward in the next available Justice Bill. The Committee therefore welcomes and supports these clauses subject to the Department's proposed amendments.**

Public Prosecutor's Summons - Clause 81

280. Clause 81 will allow a Public Prosecution Service prosecutor to issue a summons to a defendant without first having to get a Lay Magistrate to sign the summons, thereby streamlining procedures and helping to speed up the process in summons cases by reducing the time taken between the decision to prosecute and first appearance in court.

281. The Law Society indicated that it remains of the view, as expressed during the consultation process, that the issuing of summonses is most appropriately carried out as a judicial function and outlined that the role of the Lay Magistrate is to act as a measured restraint on the prosecutorial power of the PPS and a safeguard against arbitrariness in decision-making. The Law Society highlighted that, under the current procedure, the Lay Magistrate determines at the point of application whether sufficient grounds exist for the granting of a summons and that the removal of this function was not originally envisaged by the CJINI Report on Avoidable Delay. It added that, moreover, the Court of Appeal in Northern Ireland has stated that the determination of whether summonses should be issued is a judicial function which cannot be delegated.

282. The Law Society noted that the Delay Action Team at the Criminal Justice Board conceded that the input of Lay Magistrates did not add a significant amount of time to the process and indicated that an important safeguard may be removed from the prosecutorial process without any significant improvement in case handling times. In its view the approach appears to increase the discretion of prosecutors without recognising the role of safeguards in protecting the system against charges of arbitrary decision-making. The reforms also have the potential to create new anomalies. The Law Society therefore recommends the removal of this clause and a review of the causes of delay from the PPS prior to applications for summonses to be carried out. The Society also outlined reservations about section 81(4) which provides that a Public Prosecutor may re-issue summonses which they determine have not been served. It indicated that time limits applied to the PPS are an important aspect of ensuring a disciplined and efficient system of prosecution and it is concerning that power for extension of these limits will reside with the PPS under the Bill.

283. The PPS welcomes the provisions which, in its view, will result in efficiencies in the initiation of criminal proceedings and, as a consequence, will facilitate the electronic submission of complaints to a Court Office without the need for the involvement of a Lay Magistrate. The PPS noted that the provision contained in Article 81(4) is limited to the power to re-issue those summons issued by a public prosecutor in the first instance and considered there would be merit in extending this power to include those summons originally issued by a lay magistrate.

284. The Department, in response to the issues raised, outlined that under existing arrangements, proceedings can already be initiated unilaterally by a prosecutor by making a complaint – the summons is simply the mechanism which tells the defendant they must attend court. Before deciding to issue a complaint, a prosecutor will have considered the same range of factors that are considered by a Lay Magistrate regarding the issue of a summons and in addition, the prosecutor must be satisfied that the evidential and public interest tests have been met. In its view the proposal provides adequate safeguards against arbitrary decision-making. The Department also advised that although the issue of a summons is currently considered to be a judicial act, it is the making of the complaint by the prosecutor that initiates proceedings. Clause 81 would provide statutory authority for the summons to be issued by the prosecutor. The Department highlighted that these proposed changes form part of a multi-agency approach to address avoidable delay which includes measures such as the introduction of statutory case management which will specifically address the timeliness and quality of case preparation and encourage earlier engagement with the defence.

285. In relation to the Law Society's comments regarding Clause 81(4) the Department suggested that it may have misunderstood the effect of the clause which replicates, for the purposes of a PPS summons, existing arrangements under Article 20(4) of the Magistrates' Courts (NI) Order 1981, to allow a new court date to be set where a summons has been returned un-served and is to be re-issued. The Department also clarified that Clause 81(4) is currently limited to those summons issued by a public prosecutor in the first instance to prevent any confusion arising between summonses which have been issued under the current arrangements and those which will be issued under the proposed arrangements.

286. **The Committee noted the issues raised and the Department's response and agreed that it is content with Clause 81 as drafted.**

Defence Access to Premises - Clause 82

287. Clause 82 introduces a power to fill a gap which currently exists, so that, in cases where access to premises is not agreed, the defendant will have recourse to the court in order to properly prepare his defence (or appeal).

288. The Department advised the Committee of its intention to bring forward an amendment to improve Clause 82, at the suggestion of the Attorney General, to adjust the threshold for an order allowing access to property to ensure proportionality and greater clarity in the use of the power to balance the rights of the occupier of the premises.

289. In oral evidence officials explained the Attorney's view is that, instead of requiring access in connection with the preparation of its defence, an application should be granted only to ensure compliance with the defendant's fair trial rights. The Committee questioned how defence access to premises would work in practice and whether access would be granted to the entire dwelling or a part of it. The Department indicated that it would be a matter for the court to direct the conditions it wanted to apply with the order and the order could allow access to the whole or a particular part of the premises. It also highlighted that there are certain safeguards built in for the occupier and it is not so much a search as a visit to view the premises.

290. **The Committee agreed that it is content with Clause 82 subject to the Department's proposed amendment.**

Court Security Officers – Clause 83

291. Clause 83 closes a lacuna to enhance the security of court venues and court users by specifying that a Court Security Officer's powers to search, exclude, remove or restrain an individual is extended to include the grounds on which court buildings sit.

292. **No issues were raised regarding Clause 83 and the Committee agreed that it is content with it.**

Youth Justice System – Clauses 84 and 85

293. Clause 84 amends the Aims of the Youth Justice System in Northern Ireland, articulated in Section 53 of the Justice (NI) Act 2002, to reflect the best interests principle as set out in Article 3 of the UN Convention on the Rights of the Child (UNCRC). Clause 85 makes a technical adjustment to delete transitional arrangements relating to detention orders in sub-section 10.5 of the Criminal Justice Act (NI) 2013 that are no longer needed and which it was feared may not be ECHR-compliant.

294. Those respondents who commented on Clause 84 welcomed the fact that it amends section 53 of the 2002 Act to fully reflect the 'best interests' principle as contained in Article 3(1) of the UNCRC and recommended in the Youth Justice Review.

295. The Children's Law Centre outlined that it has consistently raised concerns about the fact that the current statutory aims of the youth justice system are not in compliance with international standards due to the failure to include the 'best interests' principle within the Justice (Northern Ireland) Act 2002. While it welcomes the amendment to the aims of the youth justice system it highlighted that the strength of any legislation is judged by its implementation and operation and it wishes to see the translation of the best interest principle into a meaningful reality for children coming into contact with the youth justice system. In its view effective training for all professionals must be taken forward as a matter of urgency.

296. Include Youth also welcomes Clause 84 believing it will help ensure children and young people involved with offending do not offend further.

297. The NI Policing Board supports the incorporation of the UNCRC best interests principle into the 2002 Act and questioned, with regard to the criminal justice system generally, whether there is scope to introduce a similar principle whereby the best interests of vulnerable groups, e.g. older people, would be a primary consideration.

298. The NIHRC highlighted that, on publication of the Youth Justice Review, it advised the Minister of Justice that the Justice (NI) Act 2002 should be amended to fully reflect the best interest principles as espoused in Article 3 of the UNCRC and Clause 84 is therefore a positive measure.

299. The Department indicated that Clause 84 is a direct result of the Youth Justice Review recommendation 28 and amends Section 53 of the 2002 Act to fully reflect the 'best interests' principles. Each criminal justice organisation has been tasked with considering the impact of the change for their staff including the identification of potential training needs.

300. The Department also confirmed in response to the NI Policing Board's comments, that a number of strategies and commitments already exist in respect of old and vulnerable people.

301. The Committee questioned departmental officials on how the principle that all those involved in the youth justice system should have the best interests of the child as the primary consideration will be achieved, who will monitor the implementation and what role, if any, is envisaged for Criminal Justice Inspection Northern Ireland (CJINI).

302. The Department responded by indicating an assessment will be made of what is already being done and what else is needed to ensure the criminal justice agencies are ready. While the Department will monitor implementation it envisaged that CJINI would also look at it.

303. **The Committee welcomes the amendment of the existing aims of the youth justice system to include the 'best interests' principle and agreed that it is content with Clauses 84 and 85.**

Part 9 – Supplementary Provisions

304. Part 9 of the Justice Bill contains the supplementary provisions including powers to make regulations.

305. During the oral evidence session with departmental officials on 18 February 2015 the Committee sought clarification of the exact purpose and effect of Clause 86 and the extent of the powers that it provides to the Department. The officials stated that it is a general construction that is used in lots of legislation to cover various eventualities, particularly in a Bill of this size where there is the potential for an issue to arise in a number of areas that might need some rectification and is intended to address any minor points that might arise rather than substantive policy.

306. When pressed by the Committee regarding what limitations there is to the powers provided by the clause and whether it enabled the Department not to enact parts of the legislation passed by the Assembly the officials undertook to provide further clarification in writing.

307. The Department subsequently indicated that a power to make supplementary, incidental, consequential and transitional provision is frequently included in a Bill which deals with complex changes in law in case difficulties which have not been identified in the legislative process may arise. The power to make supplementary or consequential provision is intended to pick up missed consequentials or issues which have not been anticipated and the power to make transitory or transitional provisions may be needed because of the sequence in which clauses are commenced or because commencement of particular provisions is unexpectedly delayed. The Department described Clause 86 as "something of a safety blanket" in case the operation of the legislative changes throw up some unexpected difficulty or to address necessary consequential changes that have inadvertently been overlooked during the drafting of the Bill. It accepted that the power provided is widely drawn to take account of the fact that

the precise circumstances in which it may be called upon cannot be determined but stated that the purposes for which the power can be used are reasonably exact and drew attention to the fact that Clause 86(1) provides that the relevant orders must be used for the purposes of the Act or to make provision in consequence of, or for giving full effect to, the Act and subsection (2) must be read in that light. It also indicated that Clause 87(6)(b) provides that any order made under section 86(1) which contains a provision which amends or repeals a provision of an Act of Parliament or Northern Ireland legislation will be subject to the draft affirmative procedure and cannot be made without Assembly approval. All orders made under Clause 86(1) will also be subject to the usual subordinate legislation procedures.

308. **The Committee considered the additional information provided by the Department regarding the purpose of and powers provided by Clause 86. The Committee is of the view that, in essence, Clause 86 provides for the Minister of Justice to amend, appeal or revoke primary legislation agreed and passed by the Assembly by way of secondary legislation albeit some orders would be subject to the affirmative resolution procedure. While noting that this type of clause is a common occurrence in Bills the Committee is not content with the wide ranging powers it provides.**

309. **The Committee expressed the view that powers should be provided for an exact purpose rather than be broad in nature and, even though the affirmative resolution procedure would apply to some orders, as a consequence of Clause 86 parts of the Bill passed by the Assembly could be changed or potentially reversed by the Department without the level of scrutiny the Bill itself has received. The Committee therefore agreed that it will oppose the inclusion of Clause 86 in the Bill. The Committee believes that its intention to remove this type of clause will send a message to Departments to ensure that future legislation is well thought through beforehand rather than relying on extensive powers to fix things at a later stage. The Committee also noted that the Department can bring forward further primary legislation, if necessary, to deal with any unexpected consequences.**

Consideration of other proposed Provisions for inclusion in the Bill

310. Seven proposals for new provisions unrelated to the policy areas currently covered in the Justice Bill were brought to the attention of the Committee during the Committee Stage of the Bill. Four were proposed by the Department of Justice, two were proposed by the Attorney General for Northern Ireland and one was proposed by Mr Jim Wells MLA.

Proposals for new provisions from the Department of Justice

Sexual offences against children

311. In January 2015 the Minister of Justice sought the views of the Committee on his intention to provide for a new offence of communicating with a child for sexual purposes and make a change to the existing offence of meeting a child following sexual grooming by way of amendments to the Justice Bill.

312. The new offence of communicating with a child for sexual purposes arises from a national NSPCC lobby campaign to close what is considered a gap in the law relating to 'sexting'. There is already law covering this behaviour in Scotland and the new offence will be introduced in England and Wales by the Serious Crime Bill. The Department subsequently provided the text of the proposed amendment which will include the new offence in the Sexual Offences (NI) Order 2008.

313. **The Committee discussed the proposed amendment at its meeting on 14 January 2015 and agreed that it was very important to provide the same level of protection to children in Northern Ireland. The Committee therefore agreed to support the proposed amendment to the Justice Bill noting that it will allow the provision to commence in Northern Ireland within a few months of England and Wales.**

314. The amendment to the existing offence in the Sexual Offences (NI) Order 2008 of meeting a child following sexual grooming would make a small, but significant, change to reduce the evidence threshold for the offence to be engaged. Currently an adult must have communicated with a child on two occasions before meeting them, or travelling to meet them, before the offence is committed. The amendment would reduce that requirement from two occasions to one allowing the police to take action after only one contact and reducing the police burden of the collection of communications evidence even where there has been multiple contacts.

315. **The Committee noted that a report by Barnardos showed how quickly contact offending can occur following just one communication or meeting and that, if amended as proposed, the grooming offence could play a much more important role in preventing such contact offending ever taking place. The Committee therefore welcomed the proposed amendment which will improve protection for children in Northern Ireland and subsequently noted the text of the amendment provided by the Department of Justice at its meeting on 18 February 2015.**

New offence of causing or allowing serious physical harm to a child or vulnerable adult

316. Existing legislation in place in England, Wales and Northern Ireland under section 5 of the Domestic Violence, Crime and Victims Act (2004) allows for the joint conviction of members of a household who have frequent contact with a child or vulnerable adult, where they caused the death of that child or vulnerable adult, or:

- They were aware or ought to have been aware that the victim was at significant risk of serious physical harm from a member of the household.

- They failed to take such steps as they could reasonably have been expected to take to protect them from the risk.
- The person subsequently died from the unlawful act of a member of the household in circumstances that the defendant foresaw or ought to have foreseen.

317. The Domestic Violence, Crime and Victims (Amendment) Act 2012 extended the above provision to enable the joint conviction of members of a household who cause or allow a child or vulnerable adult to suffer serious physical harm in the circumstances outlined above in England and Wales but not in Northern Ireland. The Minister of Justice gave a commitment that he would consider extending this provision to Northern Ireland and the Department undertook a targeted consultation in September 2014. The consultation sought views on extending existing legislation and suggested sentence for the offence of causing or allowing serious physical harm to a child or vulnerable adult.

318. The offence would relate to circumstances whereby the injuries to the child or vulnerable adult must have been sustained at the hands of one of a limited number of members of the household, but there is insufficient evidence to point to the particular person responsible.

319. The Department provided the results of the consultation, which were supportive of the proposed amendment, to the Committee in January 2015.

320. **The Committee, having considered the information provided and noting that it will provide additional protections to children and vulnerable adults, agreed that it was content with the Department's proposal to include provision in the Justice Bill to extend the scope of the current offence of causing or allowing the death of a child or vulnerable adult under section 5 of the Domestic Violence, Crime and Victims Act 2004 to also include cases of "causing or allowing a child or vulnerable adult to suffer serious physical harm." The Committee subsequently noted the text of the proposed provision provided by the Department.**

Regulation of the Salary of the Lands Tribunal Members

321. The Department of Justice advised the Committee of a proposal for a new provision to the Justice Bill to deliver a change to the affirmative resolution procedure for the annual determination of Lands Tribunal members' salaries.

322. The Lands Tribunal and Compensation Act (Northern Ireland) 1964 ("the 1964 Act") provides that the Department may, by order, determine the salary of members of the Lands Tribunal. Such an order is subject to the affirmative resolution procedure. The Lands Tribunal consists of a President (who does not receive a salary under the 1964 Act as this post is held by a Lord Justice of Appeal) and one member. Therefore, only one individual is subject to this procedure. No other judicial salary is subject to Assembly approval.

323. During an Assembly debate in September 2013 on the Lands Tribunal (Salaries) Order (Northern Ireland) 2013, it was highlighted by the Chairman of the Committee for Justice that the use of the affirmative procedure for a 1% pay increase, which is set by the Review Body on Senior Salaries for one person appeared odd and was something the Department may wish to look at, particularly when legal aid statutory rules that relate to millions of pounds and affect the entire legal profession are largely subject to the negative resolution procedure. The Minister agreed to consider changing the procedure when a suitable legislative opportunity was identified.

324. The Department subsequently advised the Committee of its intention to bring forward a new provision at Consideration Stage of the Justice Bill to amend the Lands Tribunal and Compensation Act (Northern Ireland) 1964 to remove the use of an affirmative resolution statutory rule to determine the salary of Members of the Lands Tribunal.

325. **The Committee welcomed the proposed new provision, noting that it would align the procedure for determining Lands Tribunal members' salaries with the procedure used to**

determine other judicial salaries and noted the text of the amendment at the meeting on 18 February 2015.

Policy Amendments relating to the Police and Criminal Evidence (NI) Order 1989 – Fingerprint and DNA Retention

326. The Department advised the Committee that it intended to bring forward a number of new policy amendments to the biometric provisions in the Police and Criminal Evidence (NI) Order 1989 (PACE) as part of the Justice Bill.

327. Departmental officials attended the meeting on 18 February 2015 to outline the purpose of the proposed amendments and answer Members' questions. The officials indicated that four of the five amendments are to address shortcomings identified through early experience of operating the corresponding provisions in England and Wales including:

- Amending PACE to allow police to retake fingerprints and a DNA sample in cases where an investigation has been discontinued and where the material originally taken has been destroyed in accordance with the new retention framework but the same investigation later recommences, perhaps because new evidence has emerged.
- Replacing existing article 63N of PACE which has been found not to achieve the intended policy outcome to make it clear that DNA and fingerprints taken from an individual may be retained on the basis of a conviction, irrespective of whether that conviction is linked to the offence for which the material was first obtained.
- Amending Article 63R to disapply the normal destruction rules for samples in cases where the sample is or may become disclosable under the 1996 Criminal Procedure and Investigations Act but makes clear that the material cannot be used for any purpose other than in proceedings for the offence for which the sample was taken and must be destroyed once the Act no longer applies.
- An amendment to correct a gap identified in new Article 63G of PACE to provide that a conviction in Great Britain for a recordable offence will be reckonable for the purposes of determining the period of retention of material taken in Northern Ireland.

328. The other amendment will add a new article to PACE to reflect the introduction in Northern Ireland of prosecutorial fines by Part 3 of the Justice Bill.

329. The Committee questioned officials further on the proposal to provide for the retention of fingerprints or DNA profiles in relation to persons given a prosecutorial fine as such fines should be for minor, lower-level offences, whether DNA retention forms part of a person's records that could be accessed through an AccessNI records search, the number of DNA and fingerprint records that are retained and how this compares to other jurisdictions, and the current retention framework that is in place.

330. **Having considered the proposed new provisions and the information provided by the Department the Committee agreed that it is content with their inclusion in the Justice Bill.**

A proposal by the Attorney General for Northern Ireland for an amendment to the Coroners Act (Northern Ireland) 1959

331. The Committee considered a proposal put forward by the Attorney General for Northern Ireland during the Committee Stage of the Legal Aid and Coroners' Courts Bill to amend the Coroners Act (Northern Ireland) 1959. Under Section 14(1) of the Act the Attorney General has the power to direct an inquest where he considers it 'advisable' to do so but has no powers to obtain papers or information that may be relevant to the exercise of that power. The Attorney General indicated that he has experienced some difficulty in recent years in securing access to documents that he needed and his proposed amendment to the 1959 Act would confer a power on him to obtain papers and provide a clear statutory basis for disclosure. The Attorney

General outlined that the principle focus of his concern is deaths that occur in hospital or where there is otherwise a suggestion that medical error may have occurred.

332. The Committee first considered the Attorney General's proposed amendment to Section 14(1) of the Coroners Act (Northern Ireland) 1959 during the Committee Stage of the Legal Aid and Coroners' Courts Bill. At that time the Committee indicated that it was generally supportive of the principle of the proposed provision however it raised a number of issues which required further scrutiny and consideration which could not be undertaken within the timescale for completion of Committee Stage of that Bill. The Committee agreed that if an alternative Bill could be found within which the amendment could be taken forward and considered properly it would support that approach. The Justice Bill provided an opportunity to do so.

333. At its meeting on 2 July 2014, the Committee agreed to seek further written views on the Attorney General's proposed amendment and subsequently took oral evidence from the Health and Social Care Board, the Department of Health, Social Services and Public Safety and the Attorney General.

334. A range of organisations including the Law Society, the Association of Personal Injury Lawyers, Castlereagh Borough Council, the Law Centre, the Information Commissioner's Office and the NI Policing Board indicated they supported the amendment or agreed with it in principle.

335. The Northern Ireland Human Rights Commission, in its submission, outlined that the power of the Attorney General to order an inquest provides a safeguard to ensuring an effective investigation into the circumstances of a death is carried out. The empowerment of the Attorney General to obtain relevant papers and information should further strengthen this safeguard.

336. The South Eastern Health and Social Care Trust stated that it had no objection to the amendment which would provide a clear statutory basis for disclosure of papers to assist the Attorney General in relation to direction of an inquest under Section 14(1) of the Coroners Act (Northern Ireland) 1959. In its view the proposed amendment would assist the Trust, where required, to be clear about what documentation could be released to the Attorney General.

337. Both the Southern Health and Social Care Trust and the Northern Health and Social Care Trust indicated that, in principle, where the Coroner has decided not to hold an inquest, it would be necessary for the Attorney General to have access to relevant information to allow him to reach an informed decision as to whether to direct that an inquest be held. Both Trusts highlighted that it would be important that the legislation clearly sets out what information the Attorney General is entitled to access and also expressed concerns about duplication of process and the consequent impact on resources if the Attorney General were to exercise the power to request information while the death is still under investigation by the Coroner and a decision to hold an inquest has not yet been taken.

338. The Health and Social Care Board in both its written and oral evidence stated that it does not support the Attorney General's proposal and outlined that there is no equivalent provision in England and Wales. HSCB stated that the key phrases of the provision are "reason to believe" and "the circumstances of the death" and the key word is "advisable". HSCB's view is that in order to exercise his power, all that is required is for the Attorney General to have a reason to believe that the circumstances of the death make the holding of an inquest advisable and the use of these words and phrases seem to import a wide degree of discretion and a low threshold for taking action.

339. HSCB stated that the Serious Adverse Incident reporting system is expressly intended not to be an investigation to determine fault or blame but rather to try to facilitate learning in order to prevent recurrence. It suggests that the granting of this statutory investigatory power to the Attorney General where he has expressly stated that he would intend to exercise this power to gain access to Serious Adverse Incident documentation in order to assist him in exercising his discretion under Section 14 could well have the detrimental effect of discouraging openness and transparency during the SAI investigative process.

340. The Board expressed the view that it is unnecessary to have another party effectively carrying out the same role as the Coroner. The Coroner is the statutory authority to properly investigate unexplained deaths and the role of the Attorney General is to supervise the Coroner and to intervene if he suspects or believes that there is some sort of deficiency.

341. The HSCB stated that the duty is on trust staff to report unexplained deaths and there are sufficient safeguards in the current process. It contends that the present system is suitably robust to ensure that the interests of justice are properly served and there is no need for the Attorney General's proposed amendment.

342. The Health Minister wrote to the Committee on 4 November 2014 acknowledging the correspondence of the previous Minister and outlining that there were some matters he wished to bring to the Committee's attention relating primarily to the policy context of the proposed amendments, understanding of the Serious Adverse Incident process and the exact scope and nature of the proposed new powers.

343. Departmental officials subsequently attended to discuss the proposed amendment. The officials indicated that the Health Minister had no objection to the Attorney General having the power to access the information necessary to allow him to discharge his functions under Section 14 of the Coroners Act (NI) 1959. However, the Minister believes it would be important to have more policy clarity as to the precise intent of the proposals and how they would be used in practice. The officials outlined a range of concerns regarding the rationale for the proposed amendment, the broad scope of the power, and the implications including increased additional administrative burden on staff.

344. DHSSPS also stated that the Serious Adverse Incident process is a non-statutory based system to identify learning. It is not an investigative system for the purpose of investigating deaths. The role of investigating deaths sits with the Coroner and the police service. As a learning process, the SAI system supplements the statutory accountability reporting processes in dealing with deaths that meet the criteria for some form of formal investigative process. Not all SAIs relate to deaths or to patients, with some concerning estate type issues, the health and safety of staff, or information data breaches, all of which occur in a range of settings in and outside of hospitals.

345. The Health Department outlined a number of initiatives already being pursued to provide greater scrutiny around the process for certifying death in Northern Ireland and strengthen and improve the current process and also stated that a full review of Coronial legislation is likely which would provide a more appropriate opportunity to consider the Attorney General's proposed amendment.

346. The Minister of Health subsequently wrote to the Committee providing further information regarding the "Look Back" Exercise of Serious Adverse Incidents and the initiatives being taken forward to strengthen and enhance public assurance and scrutiny of the death certification process which includes the roll-out of a Regional Mortality and Morbidity Review system and consideration of the introduction of an Independent Medical Reviewer, similar to that being introduced in Scotland.

347. The Attorney General first wrote to the Committee on 5 March and 30 April 2014 regarding his proposed amendment as part of the Committee Stage of the Legal Aid and Coroners' Courts Bill.

348. In his letter dated 5 March 2014, the Attorney General outlined that, under section 14(1) of the Coroners Act (Northern Ireland) 1959, he has the power to direct an inquest where he considers it 'advisable' to do so but has no powers to obtain papers or information that may be relevant to the exercise of that power. He indicated that he had experienced some difficulty in recent years in securing access to documents that he has needed such as Serious Adverse Incident report forms from Health and Social Care Trusts and the proposed amendment to the 1959 Act would confer a power on him to obtain papers and provide a

clear statutory basis for disclosure. The Attorney General also clarified that the principle focus of his concern is deaths that occur in hospital or where there is otherwise a suggestion that medical error may have occurred.

349. In his letter of 30 April 2014, the Attorney General provided an amended text for his amendment. He outlined that the main change was to clearly provide a statutory basis for disclosure of papers relating to deaths, for example, in a hospital over a certain period so that he can then consider whether he should exercise his section 14(1) power to direct an inquest in any particular case. The Attorney General suggested that the text proposed initially could have been interpreted as only applying to papers relating to a specific death of which the Attorney was already aware. He outlined that the second change was designed to restrict the scope of the power to information or documents which relate to the health or social care provided to the deceased.

350. The Attorney General, when he discussed the proposed provision during oral evidence with the Committee on 28 May 2014, indicated that the text of the amendment makes it clear that it is confined to deaths occurring within a Health and Social Care setting. He did not believe it would create a burden on the Health Service and stated that the issue that the amendment seeks to address is reasonably urgent given recent media reports about deaths occurring without being referred to the Coroner. The Attorney General highlighted that there appears to be a gap in potential investigation for accountability purposes and the proposed amendment is designed to close that gap.

351. In correspondence to the Committee on 16 September 2014 the Attorney General outlined a recent and high profile incident involving a HSC Trust which served to strengthen his view that a power to obtain relevant material is crucial to the public interest in ensuring a high standard of healthcare and investigation of incidents that result in the death of a patient. In December he also provided an example of a case in which he had requested details of a death including the IR form, materials relating to internal HSC Trust investigations and specific details of any involvement of the Coroners Service and information provided to it from the relevant HSC Trust who had responded questioning the legal basis for obtaining the information.

352. Prior to his attendance on 4 February 2015 the Attorney General responded in writing to the issues raised by the HSCB and Department of Health officials in their oral evidence. The Committee also discussed these further with him on 4 February.

353. The Attorney General highlighted that an inquest is designed in our legal system to be a transparent and accessible way of discussing how death has occurred and it has much in common, in that regard, with the Serious Adverse Incident process. As a Coroner cannot offer any opinion on questions of civil or criminal liability it is important in his view that the disclosure of information is not considered a step towards apportioning blame or determining culpability. He explained that the proposed amendment seeks to ensure that one of the safeguards in place, namely his power to direct an inquest, can be improved and stated that a clear statutory basis for the processing of relevant information does not alter the scope of the power to direct but does place the gathering of the relevant information on a firm statutory footing. The Attorney General also indicated that Sir Liam Donaldson's report on the quality of care in Northern Ireland was relevant to the issue.

354. The Attorney General stated that, contrary to the misapprehension of the Board, the statutory power to direct an inquest is not limited to cases on which a Coroner has already been informed of the death or has made a decision about whether or not to hold an inquest and he is able to direct an inquest where there has been a decision not to notify the Coroner. It would not therefore be sufficient for him to simply request that the Coroner shares the documents he has received, as suggested by the Board, in order to inform his decision on whether or not to direct an inquest. The Attorney General also noted the suggestion by the Board that he may be able to direct an inquest without obtaining information and stated that, while the threshold of advisability is low, it would not be right to burden the Coronial system with unnecessary requests.

355. To assist its consideration of the proposal the Committee commissioned a research paper on the position in England and Wales, Scotland and the Republic of Ireland and also sought advice on including a review mechanism/sunset clause in the amendment to enable it to be reviewed on a regular basis such as every 12 months.

356. **During the discussions on the Attorney General's proposed amendment some Members indicated that they were inclined to support it while others indicated that they had some concerns. Key issues discussed included the need to ensure information is provided when it should be and whether the proposed amendment would assist/support this and provide a "second pair of eyes", the process of change and new initiatives the Health Service is implementing, the fact that SAIs were introduced as a learning exercise and staff are encouraged to participate in them on that basis, the need for openness and transparency and whether the amendment would assist this or create a climate of fear/reluctance thus diminishing it and whether it would assist people in difficult circumstances to establish the truth about the death of a loved one.**

357. **A proposal to take forward the proposed amendment by the Attorney General to the Coroners Act (NI) 1959 with the addition of provision for a sunset clause/review mechanism as a Committee amendment was put at the meeting on 11 March 2015 but fell as it did not have the support of a majority of the Members present.**

A Proposal by the Attorney General for Legislative Provision to provide for Rights of Audience for Lawyers Working in his Office

358. In August 2014 the Department of Justice advised the Committee that the Attorney General for Northern Ireland had invited the Minister of Justice to consider making legislative provision to confer rights of audience equivalent to those of barristers in private practice on any barrister or solicitor working in his office and designated by him. Such provision would sit outside the existing provision on solicitors' and barristers' rights of audience prescribed in legislation and the Bar Code of Conduct respectively.

359. The Attorney General also asked the Committee to consider such provision when considering the Justice Bill. The Attorney General's view was that the proposal should apply, at the outset, to the small number of lawyers working in his office and under his direct supervision.

360. The Department of Justice advised the Committee that, whilst acknowledging the potential benefits of making such legislative provision, initial soundings indicated there may be implications for the wider legal services landscape and its regulation. The Minister of Justice had therefore informed the Attorney General that he considered it appropriate to allow key stakeholders the opportunity to formally comment on the proposal. The Department issued a short preliminary discussion paper to the Departmental Solicitor, the Director of Public Prosecutions, the Director of Legal Services, the Crown Solicitor, the Bar Council, the Law Society and the Law Centre and invited views on any implications for the legal profession and whether there was a case for treating lawyers working in the Attorney General's office differently to other employed lawyers.

361. In November 2014 the Department provided the Committee with a summary of the responses to the preliminary discussion paper. The Department highlighted that many of the responses expressed concerns that such bespoke provision would fragment the rights of audience landscape, dilute the role of the professional bodies and be detrimental to the consistency of standards, training and regulation. Other organisations including the Public Prosecution Service and the Departmental Solicitor's Office requested the same rights of audience for lawyers in their offices if the proposal was taken forward.

362. Having considered the matter carefully, including the responses, the Minister of Justice indicated that he was not persuaded that it is necessary to make the legislative provision which the Attorney General has requested and which others may also seek. While the

Minister recognised the potential benefits of suitably skilled lawyers in the Attorney General's office (and those in other offices) having the right to appear in the higher courts he considered that this was achievable under the mechanisms already legislated for in the Justice (Northern Ireland) Act 2011 which confers power on the Law Society to make Regulations authorising solicitors, with the prescribed training or experience, to exercise the same rights of audience in the higher courts as barristers in independent practice. Under the current Bar Code such rights of audience would also then extend to employed barristers.

363. The Minister stated that the key to progressing the matter is the Law Society Regulations. Once the regulations are in place the lawyers employed in the Attorney General's office (and elsewhere) will be able to obtain rights of audience in the higher courts. The Minister did highlight that it is possible that the Bar may wish to amend its Code in relation to rights of audience for employed barristers but would expect any proposal that employed barristers should have fewer rights of audience than authorised solicitors would be the subject of some consultation.

364. When the Director of Public Prosecutions attended to give oral evidence on the Justice Bill he referred to the Attorney General's request and indicated he endorsed the view of the Attorney that he could not only save public money but it would be more effective for the running of his office. The Director pointed out that similar provision would significantly benefit the Public Prosecution Service as well. He requested that, if the Committee was giving serious consideration to the Attorney General's proposal, that it also consider the same rights of audience provision for the lawyers working in the PPS higher court advocacy unit. The Director expressed the view that the lawyers employed by the PPS or the Attorney General's Office could be utilised more if they had rights of audience in the higher courts and there is an uneven playing field due to the Bar Regulations that restrict the rights of audience of those lawyers.

365. The Law Society, who also provided oral evidence at the same Committee meeting, expressed concern that if the Attorney General's office, the PPS and other offices were all looking to avoid part of the regulatory framework it would result in a very piecemeal arrangement which would diminish the regulations.

366. The Committee subsequently wrote to the Departmental Solicitor's Office to request its view on the level of staff the DSO would propose to have rights of audience for. In response the Departmental Solicitor indicated that, while he does not support the proposal, if an exemption is granted to lawyers in the Attorney General's Office he would want the same right extended, initially to the 12 staff on his judicial review team and in due course for the remaining 12 lawyers in the litigation division.

367. When the Attorney General attended Committee on 4 February 2015 he expressed the view that in advance of the Law Society regulations being drafted, which would also confer rights generally on employed barristers, albeit indirectly, there would be no harm in rights of audience being extended to a small group of public sector lawyers pending the implementation of the broader change contemplated by the Justice (Northern Ireland) Act 2011. He stated that there would be a saving if he could use the very talented and skilled lawyers in his office in a junior counsel role in the higher courts and indicated that it would not damage the independent Bar given the very small number of cases that would be involved. The requests from the PPS and the Departmental Solicitor for similar rights, would however, in his view, have a potentially very large impact in relation to the independent Bar. He highlighted that the Director of Public Prosecutions is independent in the discharge of his functions, but this is not the case for the Departmental Solicitor. The Attorney General also indicated that the stakeholders had only been consulted on the proposed provision for his staff and not on any wider change. In his view provision of rights of audience should be provided to his staff and if it works, which he was confident it would, then consideration could be given to providing the same rights to the PPS in due course.

368. The Director of Public Prosecutions wrote to the Committee in response to the issues raised by the Attorney General in his oral evidence. The Director indicated that he was seeking similar facility for only three lawyers in his office who hold the position of Higher Court

Advocate and who have considerable experience and who cannot appear in the Court of Appeal on the very same cases they have presented to the Crown Court. He outlined that the lawyers were appointed following a rigorous selection procedure and their performance is monitored regularly by senior management. The Director stated that it is very much in the public interest that any special provision made in respect of increased rights of audience is extended to the PPS and this may represent the only opportunity to address this important issue for some time.

369. The Committee subsequently noted additional correspondence from the Director of Public Prosecutions in which he indicated that if the Attorney's request was favourably received by the Committee, "*it would be odd indeed that the only public legal office in respect of which court advocacy is a core function should be excluded from any statutory changes to the normal regulations on rights of audience" and* again requesting similar rights for his three Higher Court advocates.

370. **The Committee considered the Attorney General's proposal for legislative provision for rights of audience for lawyers in his office and similar requests by the PPS and the DSO at the meeting on 25 February 2015 and agreed to request further information from the Department of Justice regarding whether it could be adapted to provide for a review mechanism after a period of time to assess the impact and a mechanism to provide rights to other organisations if considered appropriate. The Department responded indicating that it remained of the view that bespoke arrangements are unnecessary to achieve the desired outcome and would fragment the accreditation process, detracting from what should be the pre-eminent role of the Bar and Law Society, potentially to the detriment of consistency of training and standards of representation. If the proposed amendment was made the Department believed the operation of those arrangements would best be monitored on an administrative basis with further legislative provision taken as necessary.**

371. **When the Committee discussed the Attorney General's proposal, some Members indicated that they were minded to support it on the grounds that it is a modest change that would provide rights of audience for a small, discrete number of lawyers in his office working in a fairly restrictive area of law, primarily judicial review, which would lead to a more cost-effective system. Other Members had concerns however regarding the implications in relation to creating a precedent or widening it to include rights of audience for lawyers in other offices as it could diminish the rights of counsel to act independently within the courts which the Bar Council would have serious objections to. As there was no consensus the Committee agreed that it would not take forward the proposal.**

A proposal by Mr Jim Wells MLA to amend the law relating to abortions

372. At its meeting on 2 July 2014, Mr Jim Wells MLA (then a Member of the Committee for Justice) advised the Committee that he intended to bring forward an amendment to the Justice Bill to restrict lawful abortions to National Health Service premises except in cases of urgency when access to National Health Service premises is not possible and where no fee is paid. He provided the wording of the amendment which also included an additional option to the existing legislation to provide for a period of 10 years imprisonment and a fine on conviction on indictment to be imposed and proposed that the Committee should seek views on his amendment when seeking evidence on the Bill.

373. The wording of the amendment is as follows:

New Clause

'Ending the life of an unborn child

Ending the life of an unborn child

11A.-(1) Without prejudice to section 58 and section 59 of the Offences Against the Person Act 1861 and section 25 of the Criminal Justice Act (Northern Ireland) 1945 and subject to subsection (2) any person who ends the life of an unborn child at any stage of that child's development shall be guilty of an offence and liable on conviction on indictment to a period of not more than ten years' imprisonment and a fine.

(2) It shall be a defence for any person charged with an offence under this section to show (a) that the act or acts ending the life of an unborn child were lawfully performed at premises operated by a Health and Social Care Trust, or (b) that the act or acts ending the life of the unborn child were lawfully performed without fee or reward in circumstances of urgency when access to premises operated by a Health and Social Care Trust was not possible.

(3) For the purposes of this section a person ends the life of an unborn child if that person does any act, or causes or permits any act, with the intention of bringing about the end of the life of an unborn child, and, by reason of any such act, the life of that unborn child is ended.

(4) For the purposes of this section 'lawfully' in subsection (2) means in accordance with any defence or exception under section 58 and section 59 of the Offences Against the Person Act 1861 and section 25 of the Criminal Justice Act (Northern Ireland) 1945.'

374. The Committee discussed whether it was appropriate to seek views on individual Members' proposed amendments when seeking views on the Bill and a range of views were expressed. At the meeting on 2 July 2014, the Committee agreed to seek views on the amendment proposed by Mr Jim Wells MLA when seeking evidence on the Justice Bill.

375. Following the Committee's call for written evidence on the Bill, a total of 28 written responses on the proposed amendment were received from organisations. Copies of the responses are included at Appendix 3. A total of 20 were in favour of the amendment, 7 were not in favour and 1 made no comment on whether it was in favour. In addition to the written responses from organisations, the Committee received a number of responses from individuals in favour of the amendment. Petitions and postcards were also received in support of the amendment. Details of the additional responses are as follows:

- On-line petition emails (organised by Precious Life on Citizen Go) – as of Wednesday 26 November a total of 6384 emails had been received.
- The Committee also received 5 petitions in support of Mr Wells' amendment with a total of 171 signatures
  - Ballynahinch Free Presbyterian Church (31 signatures)
  - Crossgar Free Presbyterian Church (26 signatures)
  - Kilskeery Free Presbyterian Church (39 signatures)
  - Newtownabbey Free Presbyterian Church (34 signatures)
  - 6 petitions from source unknown (total 176 signatures)
- Postcard Campaign (organised by Precious Life) – as of Wednesday 26 November almost 22,500 postcards had been received.
- A petition from Precious Life was also received with 1,020 signatures.
- 197 responses from St Mary's Limavady in support of the amendment.
- 134 letters received by post from individuals in support of the amendment.
- 44 emails from individuals supporting the amendment

376. The Committee subsequently agreed to take oral evidence from Amnesty International, CARE NI, Christian Medical Fellowship, Evangelical Alliance, NI Human Rights Commission, Precious Life, the Regulation and Quality Improvement Authority (RQIA), Society for the Protection of Unborn Children and Women's Network. The Minutes of Evidence are included at Appendix 2.

377. The views expressed in the written and oral evidence received on the proposed amendment by Mr Jim Wells MLA were divided with organisations and individuals either strongly supporting it or indicating strong opposition to it. A brief synopsis of the views expressed in the written and oral evidence is outlined below. The detailed views and comments can be found in Appendices 2 and 3 and other relevant correspondence is at Appendix 7.

378. Those who strongly supported the proposed amendment included CARE, Christian Medical Fellowship, Evangelical Alliance, Precious Life, Society for the Protection of Unborn Children and Women's Network. In their written and oral evidence they indicated:

- There are no credible or compelling needs for private companies to provide abortion services in Northern Ireland.
- There are issues of transparency where private clinics are concerned including a failure to provide information on the number of abortions undertaken on their premises.
- There is no evidence that private companies or charities are needed to meet existing levels of demand.
- Life begins at the moment of conception.
- Promotion of a more liberal approach on abortion is at odds with the law, culture and values of the people of Northern Ireland.
- There are concerns regarding whether the law, as it stands, is being upheld/adhered to as it is difficult to monitor lawful terminations outside of NHS premises due to a lack of information.
- There is a responsibility to protect the life of the mother and the unborn child and this responsibility is best held with the Health and Social Care Trusts and not those actively campaigning to change the law for financial gain.
- The European Court of Human Rights gives a broad margin of appreciation to States as there is no consensus on abortion across Europe.

379. Those who opposed the proposed amendment and/or raised issues concerning it included Amnesty International, the NI Human Rights Commission and the RQIA. In their written and oral evidence they indicated:

- The proposed amendment would constitute a further significant restriction on the right to privacy in Northern Ireland and adoption of it would be contrary to ECHR, Article 8, Article 17 and ICCPR.
- The amendment would further hinder the State's ability to fulfil its positive obligation to "create a procedural framework enabling a pregnant woman to effectively exercise her right of access to a lawful abortion".
- It is not clear how the word 'urgent' is interpreted and the circumstances by which someone will be able to terminate a pregnancy outside of NHS premises in an 'urgent' situation.
- People should be allowed to decide whether they use a private provider or not and there are no other circumstances where people are forced to use only a public health facility.
- The amendment may be so broad as to include certain forms of contraception, including the morning after pill, and further clarification is required as, if the amendment is passed, there could be legal challenges to the use of the morning after pill.
- There are a range of possible unintended consequences of the amendment that require further consideration.
- There are issues relating to enforcement of criminal law regulations and any potential role for RQIA as it does not sit within its present regulatory framework.

- Access to safe abortion is recognised as a human right under the international human rights framework and a total ban on abortion and other restrictions that do not, at a minimum, ensure access to abortion in cases where a woman's life or physical or mental health is at risk, in cases of rape, sexual assault or incest and in cases of severe foetal impairment violate those rights.

380. Following its evidence session the NIHRC provided further clarification of several issues discussed including to what extent the rights of a mother and a pre-birth child are linked and the status of an aborted foetus.

381. **At its meeting on 4 March 2015, the Committee agreed to include the evidence in relation to Mr Jim Wells' amendment in the Committee's Report on the Justice Bill.**

382. **The Committee discussed the proposed amendment at several meetings and opinion was divided with some Members indicating that they supported the amendment and others indicating that they were opposed to it.**

383. **A proposal to take forward the proposed amendment by Mr Jim Wells MLA as a Committee amendment was put at the meeting on 11 March 2015 and agreed by a majority of Members present.**

Clause by Clause Consideration of the Bill

384. Having considered the written and oral evidence received on the Bill, the Committee deliberated on the clauses and schedules of the Bill at its meetings on 25 February 2015, 4 March 2015 and 10 March 2015 and undertook its formal clause by clause consideration at its meeting on 11 March 2015 – see Minutes of Proceedings in **Appendix 1** and Minutes of Evidence in **Appendix 2**.

385. The Committee supported a number of departmental amendments to various clauses and schedules to address issues raised by the Attorney General during the pre-introductory stages of the Bill, bring forward new policy proposals within the core themes of the Bill and address issues raised by the Examiner of Statutory Rules regarding the regulation making powers. The Committee also supported a range of amendments proposed by the Department to introduce provisions on issues unrelated to the content of the Bill.

386. Some Members expressed reservations regarding Clause 78 which places a duty on solicitors to advise a client about early guilty pleas and the Committee agreed to oppose the inclusion of Clause 86 which provides for supplementary, incidental, consequential and transitional provisions.

387. The Committee also considered two proposals from the Attorney General for Northern Ireland, the first of which was to amend the Coroners Act (Northern Ireland) 1959 to confer a power on him to obtain papers and provide a clear statutory basis for disclosure and the second for legislative provision to provide rights of audience for lawyers working in his office, and a proposed amendment from Jim Wells MLA to restrict lawful abortions to National Health Services premises, except in cases of urgency when access to National Health Service premises is not possible and where no fee is paid.

388. As consensus was not reached the Committee agreed not to take forward the Attorney General's proposal for legislative provision to provide for rights of audience for lawyers working in his office. A proposal to take forward the Attorney General's proposed amendment to the Coroners Act (Northern Ireland) 1959 with the addition of provision for a sunset clause/review mechanism as a Committee amendment was not supported by a majority of Members and therefore fell.

389. A proposal to take forward the proposed amendment by Mr Jim Wells MLA as a Committee amendment was agreed by a majority of Members.

390. Information on the Committee's deliberations on the individual clauses and schedules in the Bill and additional provisions can be found in the previous sections of this report.

Part 1: Single Jurisdiction For County Courts And Magistrates' Courts

Clause 1 - Single jurisdiction: abolition of county court divisions and petty sessions districts

391. Agreed: the Committee is content with Clause 1 as drafted.

Clause 2 - Administrative court divisions

392. Agreed: the Committee is content with Clause 2 as drafted.

Clause 3 - Directions as to distribution of business

393. Agreed: the Committee is content with Clause 3 as drafted.

Clause 4 - Lay magistrates

394. Agreed: the Committee is content with Clause 4 as drafted.

Clause 5 - Justices of the peace

395. Agreed: the Committee is content with Clause 5 as drafted.

Clause 6 - Consequential amendments

396. Agreed: the Committee is content with Clause 6 as drafted.

Part 2: Committal for Trial

Chapter 1 – Abolition of preliminary investigations and mixed committals

Clause 7 - Abolition of preliminary investigations

397. Agreed: the Committee is content with Clause 7 as drafted.

Clause 8 - Abolition of mixed committals: evidence on oath not to be given at preliminary inquiry

398. Agreed: the Committee is content with Clause 8 as drafted.

Clause 9 - Consequential amendments

399. Agreed: the Committee is content with Clause 9 as drafted.

Chapter 2 – Direct committal for trial in certain cases

Clause 10 - Application of this Chapter

400. Agreed: the Committee is content with Clause 10 as drafted.

Clause 11 - Direct committal: indication of intention to plead guilty

401. Agreed: the Committee is content with Clause 11 as drafted.

Clause 12 - Direct committal: specified offences

402. Agreed: the Committee is content with Clause 12 as drafted.

New Clause

403. The Department proposes to insert a new Clause 12A, to allow for the direct committal of any co-defendants who are charged with an offence which is not a 'specified offence' so that all defendants can be tried at the same time.

Direct committal for trial

After clause 12 insert—

'Direct committal: offences related to specified offences

12A.—(1) Where—

(a) this Chapter applies in relation to an accused ("A") who—

(i) is charged with an offence ("offence A") which is not a specified offence, and

(ii)is not also charged with a specified offence,

(b) A appears or is brought before the court on the same occasion as another person ("B") charged with a specified offence,

(c) the court commits B for trial for the specified offence under section 12, and

(d) offence A appears to the court to be related to the specified offence for which the court commits B for trial,

the court shall forthwith commit A to the Crown Court for trial for offence A.

(2) Where—

(a) this Chapter applies in relation to an accused ("A") who—

(i) is charged with an offence ("offence A") which is not a specified offence, and

(ii)is not also charged with a specified offence,

(b) on a previous occasion another person ("B") has appeared or been brought before the court charged with a specified offence,

(c) the court has on that occasion committed B for trial for the specified offence under section 12, and

(d) offence A appears to the court to be related to the specified offence for which the court committed B for trial,

the court may forthwith commit A to the Crown Court for trial for offence A if the court considers that it is necessary or appropriate in the interests of justice to do so.

(3) Where the court commits the accused for trial for an offence under this section—

(a) it shall accordingly not conduct committal proceedings in relation to that offence; and

(b) the functions of the court then cease in relation to that offence, except as provided by—

(i) section 13; or

(ii)Article 29(2)(a)of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 or any regulations under Article 26(3) of the Access to Justice (Northern Ireland) Order 2003.

(4) For the purposes of this section an offence is related to a specified offence if a count charging the offence could be included in the same indictment as a count charging the specified offence.'

404. Agreed: the Committee is content with the new clause proposed by the Department.

Clause 13 - Direct committal: procedures

405. Agreed: the Committee is content with Clause 13 as drafted.

Clause 14 - Specified offences: application to dismiss

406. Agreed: the Committee is content with Clause 14 subject to the Department of Justice's proposed amendments as a consequence of the introduction of new Clause 12A as follows:

Clause 14, Page 8, Line 31
After 'section 12' insert 'or 12A'

Clause 14, Page 9, Line 14
Leave out '(e) or (f)' and insert 'or (e)'

Clause 15 - Restrictions on reporting applications for dismissal

407. Agreed: the Committee is content with Clause 15 as drafted.

Clause 16 - Supplementary and consequential provisions

408. Agreed: the Committee is content with Clause 16 as drafted.

Part 3: Prosecutorial Fines

Clause 17 - Prosecutorial fine: notice of offer

409. Agreed: the Committee is content with Clause 17 as drafted.

Clause 18 - Prosecutorial fine notice

410. Agreed: the Committee is content with Clause 18 as drafted.

Clause 19 - Amount of prosecutorial fine

411. Agreed: the Committee is content with Clause 19 as drafted.

Clause 20 - Restrictions on prosecutions

412. Agreed: the Committee is content with Clause 20 as drafted.

Clause 21 - Payment of prosecutorial fine

413. Agreed: the Committee is content with Clause 21 as drafted.

Clause 22 - Failure to pay prosecutorial fine

414. Agreed: the Committee is content with Clause 22 as drafted.

Clause 23 - Registration certificates

415. Agreed: the Committee is content with Clause 23 as drafted.

Clause 24 - Registration of sum payable in default

416. Agreed: the Committee is content with Clause 24 as drafted.

Clause 25 - Challenge to notice of registration

417. Agreed: the Committee is content with Clause 25 as drafted.

Clause 26 - Setting aside of sum enforceable under section 24

418. Agreed: the Committee is content with Clause 26 as drafted.

Clause 27 - Interpretation of this Part

419. Agreed: the Committee is content with Clause 27 as drafted.

Part 4: Victims and Witnesses

The Victim Charter and the Witness Charter

Clause 28 – The Victim Charter

420. Agreed: the Committee is content with Clause 28 as drafted.

Clause 29 - Meaning of victim

421. Agreed: the Committee is content with Clause 29 as drafted.

Clause 30 – The Witness Charter

422. Agreed: the Committee is content with Clause 30 as drafted.

Clause 31 - Procedure for issuing Charters

423. Agreed: the Committee is content with Clause 31 as drafted.

Clause 32 - Effect of non compliance

424. Agreed: the Committee is content with Clause 32 as drafted.

Victim statements

Clause 33 - Persons to be afforded opportunity to make victim statement

425. Agreed: the Committee is content with Clause 33 subject to the Department of Justice's proposed amendments to allow a victim or a bereaved family member to include, in a victim statement, the impact a crime has had on other family members as follows:

Clause 33, Page 23, Line 14
Leave out from 'and the provisions' to end of line 16

Clause 33, Page 23, Line 40
At end insert 'and members of the victim's family'

Clause 33, Page 23, Line 43
At end insert 'and members of the victim's family'

Clause 33, Page 23, Line 43

At end insert—

'(8A) Regulations may provide that, except in prescribed cases or circumstances, paragraphs (c) and (d) of subsection (8) are to have effect with the omission of the words "and members of the victim's family".

(8B) The provisions of the Victim Charter referred to in section 29(6)(a) apply for the purposes of subsections (2) and (8)(c) and (d) as they apply for the purposes of subsection (3) of section 29.'

Clause 34 - Supplementary statement

426. Agreed: the Committee is content with Clause 34 as drafted.

Clause 35 - Use of victim statement following conviction

427. Agreed: the Committee is content with Clause 35 as drafted.

New Clause and Schedule

428. The Department proposes to insert a new Clause 35A and a new Schedule 3A to create information sharing powers to provide for a more effective mechanism through which victims can automatically be provided with timely information about the services available to them in the form of Victim Support Services; witness services at court and access to post-conviction information release schemes.

New clause

After clause 35 insert—

'Information sharing

Disclosure for purposes of victim and witness support services and victim information schemes

35A. Schedule 3A (which makes provision for the disclosure of information for the purposes of victim and witness support services and victim information schemes) has effect.'

New Schedule

After Schedule 3 insert—

'SCHEDULE 3A

DISCLOSURE OF INFORMATION: VICTIM AND WITNESS SUPPORT SERVICES AND VIC-

TIM INFORMATION SCHEMES

Disclosure by police to body providing support services for victims

1.—(1) A police officer or member of the police support staff may disclose relevant information relating to a victim to a prescribed body for the purpose of enabling that body to advise the victim about support services provided by the body, or offer or provide support services to the victim.

(2) For the purposes of this paragraph—

"relevant information relating to a victim" means—

(a) the name and address of the victim;

(b) any telephone number or e-mail address at which the victim may be contacted; and

(c) such other information relating to the victim or the criminal conduct concerned as it appears to the police officer or member of the police support staff to be appropriate to disclose for the purpose mentioned in sub-paragraph (1);

"support services" means services involving the provision of information, advice, support or any other form of assistance to victims.

Disclosure by Public Prosecution Service to body providing support services for witnesses

2.—(1) Where the Director of Public Prosecutions has the conduct of criminal proceedings, a member of staff of the Public Prosecution Service may disclose relevant information relating to a witness for the prosecution in those proceedings to a prescribed body for the purpose of enabling that body to advise the witness about support services provided by the body, or offer or provide support services to the witness.

(2) For the purposes of this paragraph—

(a) "relevant information relating to a witness" means—

(i) the name and address of the witness;

(ii) the age of the witness;

(iii) any telephone number or e-mail address at which the witness may be contacted; and

(iv) such other information relating to the witness or the proceedings concerned as it appears to the member of the public prosecution service to be appropriate to disclose for the purpose mentioned in sub-paragraph (1).

(3) In this paragraph—

"support services" means services involving the provision of information, advice, support or any other form of assistance to prosecution witnesses in criminal proceedings;

"prosecution witness", in relation to any criminal proceedings, means a person who has been or may be called to give evidence for the prosecution in such proceedings.

Disclosure by police for purposes of victim information schemes

3.—(1) A member of staff of the Public Prosecution Service may disclose relevant information relating to a victim to the Department for the purpose of enabling the Department to provide information and advice to the victim in connection with—

(a) a scheme under section 68 of the Justice (Northern Ireland) Act 2002 (prisoner release victim information scheme); or

(b) a scheme under section 69A of the Justice (Northern Ireland) Act 2002 (victims of mentally disordered offenders information scheme).

(2) A member of staff of the Public Prosecution Service may disclose relevant information relating to a victim to the Board for the purpose of enabling the Board to provide information and advice to the victim in connection with a scheme under Article 25 of the Criminal Justice (Northern Ireland) Order 2005 (the Probation Board for Northern Ireland victim information scheme).

(3) For the purposes of this paragraph "relevant information relating to a victim" means—

(a) the name and address of the victim;

(b) any telephone number or e-mail address at which the victim may be contacted;

(c) details of the criminal conduct concerned; and

(d) such other information relating to the victim or the criminal conduct concerned as it appears to the police officer or member of the police support staff to be appropriate to disclose for the purpose mentioned in sub-paragraph (1).

Unauthorised disclosure of information

4.—(1) If a person to whom this paragraph applies discloses without lawful authority any information—

(a) acquired in the course of that person's employment,

(b) which is, or is derived from, information provided under this Schedule, and

(c) which relates to a particular person,

that person is guilty of an offence.

(2) This paragraph applies to any person who is—

(a) employed in a body prescribed under paragraph 1 or 2 or in the provision of services to such a body;

(b) employed in the Department or in the provision of services to the Department; or

(c) employed by the Board or in the provision of services to the Board.

(3) It is not an offence under this paragraph to disclose information which has previously been disclosed to the public with lawful authority.

(4) It is a defence for a person charged with an offence under this paragraph to show that at the time of the alleged offence—

(a) that person believed that the disclosure in question was made with lawful authority and had no reasonable cause to believe otherwise; or

(b) that person believed that the information in question had previously been disclosed to the public with lawful authority and had no reasonable cause to believe otherwise.

(5) A person who is guilty of an offence under this paragraph is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(6) For the purposes of this paragraph a disclosure of information by a person is to be regarded as made with lawful authority if, and only if, it is made—

(a) in the course of and for the purposes of that person's employment in a prescribed body;

(b) in accordance with that person's official duty as a civil servant or as an employee of the Board;

(c) in accordance with an authorisation given by the Department, the Board or the prescribed body;

(d) in accordance with any statutory provision or order of a court;

(e) for the purposes of any criminal proceedings; or

(f) with the consent of the person to whom the information relates.

(7) In this paragraph "employment"—

(a) includes employment as a volunteer; and

(b) in relation to a particular person, shall be construed in accordance with sub-paragraph (2).

Saving for other powers of disclosure

5. Nothing in this Schedule affects any power to disclose information that exists apart from this Schedule.

Interpretation

6.—(1) In this Schedule—

"the Board" means the Probation Board for Northern Ireland;

"prescribed" means prescribed by regulations made by the Department.

(2) Section 29 (meaning of victim and related terms) applies for the purposes of this Schedule as it applies for the purposes of section 28.

429. Agreed: the Committee is content with the new clause and schedule proposed by the Department.

Part 5: Criminal Records

Clause 36: Restriction on information provided to certain persons

430. Agreed: the Committee is content with Clause 36 as drafted.

Clause 37: Minimum age for applicants for certificates or to be registered

431. Agreed: the Committee is content with Clause 37 as drafted.

Clause 38 - Additional grounds for refusing an application to be registered

432. Agreed: the Committee is content with Clause 38 as drafted.

Clause 39 - Enhanced criminal record certificates: additional safeguards

433. Agreed: the Committee is content with Clause 39 subject to the Department of Justice's proposed amendment to make it clear that the Code of Practice must be published as follows:

Clause 39, Page 27

Leave out lines 20 to 22 and insert—

'(4A**)** The Department may from time to time publish guidance to chief officers as to the exercise of functions under subsection (4); and in exercising functions under that subsection a relevant chief officer must have regard to any guidance for the time being published under this subsection.".'

New Clause and Schedule

434. The Department proposes to insert a new Clause 39A and a new Schedule 3B to create a review mechanism for the scheme to filter certain old and minor convictions and other disposals, such as cautions, from Standard and Enhanced criminal record certificates.

New Clause

After clause 39 insert—

'**Review of criminal record certificates**

39A.—(1) The Police Act 1997 is amended as follows.

(2) After section 117A (inserted by section 39(5)) insert—

"Review of criminal record certificates

117B. Schedule 8A (which provides for an independent review of certain criminal record certificates) has effect."

(3) After Schedule 8 insert as Schedule 8A the Schedule set out in Schedule 3B to this Act.'

New Schedule

After Schedule 3 insert—

'SCHEDULE 3B

"SCHEDULE INSERTED AS SCHEDULE 8A TO THE POLICE ACT 1997

"SCHEDULE 8A

REVIEW OF CRIMINAL RECORD CERTIFICATES

Interpretation

1. In this Schedule—

"conviction" and "spent conviction" have the same meanings as in the Rehabilitation of Offenders (Northern Ireland) Order 1978;

"the independent reviewer" means the person appointed under paragraph 2;

"other disposal", in relation to a criminal record certificate or enhanced criminal record certificate issued to any person, means any caution, diversionary youth conference or informed warning relating to that person of which details are given in the certificate.

The independent reviewer

2.—(1) There is to be an independent reviewer for the purposes of this Schedule.

(2) The independent reviewer is a person appointed by the Department—

(a) for such period, not exceeding 3 years, as the Department decides; and

(b) on such terms as the Department decides.

(3) A person may be appointed for a further period or periods.

(4) The Department may terminate the appointment of the independent reviewer before the end of the period mentioned in sub-paragraph (2)(a) by giving the independent reviewer notice of the determination not less than 3 months before it is to take effect.

(5) The Department may—

(a) pay such remuneration or allowances to the independent reviewer as it may determine;

(b) make arrangements for the provision of administrative or other assistance to the independent reviewer.

(6) The independent reviewer must, in relation to each financial year and no later than 3 months after the end of that year, make a report to the Department about the exercise of his or her functions under this Schedule in that year.

(7) The independent reviewer may make recommendations to the Department as to—

(a) any guidance issued by the Department under paragraph 3 or which the independent reviewer thinks it would be appropriate for the Department to issue under that paragraph;

(b) any changes to any statutory provision which the independent reviewer thinks may be appropriate.

(8) A person may at the same time hold office as the independent reviewer and as the independent monitor under section 119B.

Guidance

3. The Department may from time to time publish guidance to the independent reviewer as to the exercise of functions under this Schedule; and in exercising functions under this Schedule the independent reviewer must have regard to any guidance for the time being published under this paragraph.

Application for review after issue of certificate

4.—(1) A person who receives a criminal record certificate or an enhanced criminal record certificate may apply in writing to the Department for a review of the inclusion in that certificate of—

(a) the details of any spent conviction; or

(b) the details of any other disposal.

(2) An application under this paragraph must—

(a) be accompanied by such fee (if any) as may be prescribed; and

(b) be made within such period after the issue of the certificate as the Department may specify in a notice accompanying the certificate.

(3) The Department must refer any application under this paragraph to the independent reviewer together with—

(a) any information supplied by the applicant in connection with the application; and

(b) any other information which appears to the Department to be relevant to the application.

Review by independent reviewer after issue of certificate

5.—(1) The independent reviewer, on receiving an application under paragraph 4 in relation to a certificate, must review the inclusion in that certificate of—

(a) the details of any spent conviction; and

(b) the details of any other disposal.

(2) If, following that review, the independent reviewer determines that the details of any spent conviction or other disposal included in the certificate should be removed—

(a) the independent reviewer must inform the Department of that fact; and

(b) on being so informed the Department must issue a new certificate.

(3) In issuing such a certificate the Department must give effect to the determination of the independent reviewer and must (in the case of an enhanced certificate) again comply with section 113B(4).

(4) If, following that review, the independent reviewer determines that the details of any spent convictions or other disposals included in the certificate should not be removed —

(a) the independent reviewer must inform the Department of that fact; and

(b) the Department must inform the applicant that the application is refused.

(5) The independent reviewer must not determine that details of a spent conviction or other disposal should be removed from a certificate unless the independent reviewer is satisfied that the removal of those details would not undermine the safeguarding or protection of children and vulnerable adults or pose a risk of harm to the public.

Automatic review before issue of certificate for persons under 18

6.—(1) This paragraph applies where—

(a) the Department proposes to issue (otherwise than under sub-paragraph (4)(b) or (6)(b)) a criminal record certificate or an enhanced criminal record certificate relating to any person; and

(b) the certificate would—

(i) contain details of any spent conviction or other disposal which occurred at a time when the person was under the age of 18; but

(ii) not contain details of any conviction (whether spent or not) or other disposal occurring after that time.

(2) The Department must, before issuing the certificate, refer the certificate for review to the independent reviewer together with any information which appears to the Department to be relevant to that review.

(3) The independent reviewer, on receiving a referral under sub-paragraph (2) in relation to a certificate, must review the inclusion in that certificate of—

(a) the details of any spent conviction; and

(b) the details of any other disposal.

(4) If, following that review, the independent reviewer determines that the details of any spent conviction or other disposal included in the certificate should be removed—

(a) the independent reviewer must inform the Department of that fact; and

(b) on being so informed the Department must amend the certificate and issue the amended certificate.

(5) In issuing such a certificate the Department must give effect to the determination of the independent reviewer and must (in the case of an enhanced certificate) again comply with section 113B(4).

(6) If, following that review, the independent reviewer determines that the details of any spent convictions or other disposals included in the certificate should not be removed —

(a) the independent reviewer must inform the Department of that fact; and

(b) the Department must issue the certificate in the form referred to the independent reviewer.

(7) The independent reviewer must not determine that details of a spent conviction or other disposal should be removed from a certificate unless the independent reviewer is satisfied that the removal of those details would not undermine the safeguarding or protection of children and vulnerable adults or pose a risk of harm to the public.

(8) The fact that a review has been carried out under this paragraph before a certificate is issued does not prevent the operation of paragraphs 4 and 5 in relation to the certificate once issued.

Disclosure of information to the independent reviewer

7. The Chief Constable, the Department and the Probation Board of Northern Ireland must provide to the independent reviewer such information as the independent reviewer reasonably requires in connection with the exercise of his or her functions under this Schedule.".

435. Agreed: the Committee is content with the new clause and schedule proposed by the Department.

Clause 40 - Up-dating certificates

436. Agreed: the Committee is content with Clause 40 subject to the Department of Justice's proposed amendment to prevent potential Data Protection Act breaches by excluding a small number of applicants for enhanced checks for home based positions from the update service where third party personal information could potentially be disclosed unintentionally as follows:

Criminal records – third party disclosures

Clause 40, Page 29, Line 44

At end insert—

'(7A) The Department must not grant an application as mentioned in subsection (4)(c) or (5)(c) if—

(a) the certificate in question is an enhanced criminal record certificate; and

(b) the certificate contains (or would contain) information which relates to an individual other than the individual whose certificate it is.'.

Clause 41 - Applications for Enhanced criminal record certificates

437. Agreed: the Committee is content with Clause 41 as drafted.

Clause 42 - Electronic transmission of applications

438. Agreed: the Committee is content with Clause 42 as drafted.

New Clause

439. The Department proposes to insert a new Clause 42A to facilitate the exchange of information between AccessNI and the Disclosure and Barring Service for barring purposes.

After clause 42 insert—

'**Disclosures by Department of Justice to Disclosure and Barring Service**

42A. In section 119 of the Police Act 1997 (sources of information) after subsection (4) insert—

"(4A) The Department of Justice may provide to the Disclosure and Barring Service any information it holds for the purposes of this Part in order to enable the Disclosure and Barring Service to determine whether, in relation to any person, paragraphs 1, 2, 3, 5, 7, 8, 9 or 11 of Schedule 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 applies or appears to apply.".

440. Agreed: the Committee is content with the new clause proposed by the Department.

New Clause

441. The Department proposes to insert a new Clause 42B to give statutory cover for the storage of cautions and other diversionary disposals on the criminal history database.

After clause 42 insert—

'Inclusion of cautions and other diversionary disposals in criminal records

42B. In Article 29 of the Police and Criminal Evidence (Northern Ireland) Order 1989 for paragraph (4) substitute—

"(4) The Department of Justice may by regulations make provision for recording—

(a) convictions for such offences as are specified in the regulations ("recordable offences");

(b) cautions given in respect of recordable offences;

(c) informed warnings given in respect of recordable offences;

(d) diversionary youth conferences in respect of recordable offences.

(5) For the purposes of paragraph (4)—

(a) "caution" means a caution given to a person in respect of an offence which, at the time when the caution is given, the person has admitted;

(b) "diversionary youth conference" has the meaning given by Part 3A of the Criminal Justice (Children) (Northern Ireland) Order 1998.".'

442. Agreed: the Committee is content with the new clause proposed by the Department.

Clause 43 - Consequential amendments

443. 443. Agreed: the Committee is content with Clause 43 as drafted.

Part 6: Live Links In Criminal Proceedings

Clause 44 - Live Links: accused at committal proceedings

444. Agreed: the Committee is content with Clause 44 as drafted.

Clause 45 - Live links from another courtroom: first remands, etc.

445. Agreed: the Committee is content with Clause 45 as drafted.

Clause 46 - Live Links: proceedings for failure to comply with certain orders or licence conditions

446. Agreed: the Committee is content with Clause 46 subject to the Department of Justice's proposed amendment to ensure a consistency of approach with respect to safeguarding arrangements provided for in other live link provisions as follows:

Clause 46, Page 36, Line 7

At end insert—

'(9A) If where the offender is attending proceedings through a live link it appears to the court—

(a) that the offender is not able to see and hear the court and to be seen and heard by it, and

(b) that this cannot be immediately corrected,

the court must adjourn the proceedings.'

Clause 47 - Live Links: expert witnesses

447. Agreed: the Committee is content with Clause 47 as drafted.

Clause 48 - Live Links: witnesses outside the United Kingdom

448. Agreed: the Committee is content with Clause 48 as drafted.

Clause 49 - Live Links: patients detained in hospital under Mental Health Order

449. Agreed: the Committee is content with Clause 49 as drafted.

Part 7: Violent Offences Prevention Orders

Violent offences prevention orders

Clause 50 - Violent offences prevention orders

450. Agreed: the Committee is content with Clause 50 as drafted.

Clause 51 - Violent offences prevention order made on conviction, etc

451. Agreed: the Committee is content with Clause 51 as drafted.

Clause 52 - Violent offences prevention order made on application of Chief Constable

452. Agreed: the Committee is content with Clause 52 as drafted.

Clause 53 - Qualifying offenders

453. Agreed: the Committee is content with Clause 53 as drafted.

Clause 54 - Provisions that violent offences prevention orders may contain

454. Agreed: the Committee is content with Clause 54 as drafted.

Clause 55 - Variation, renewal or discharge of violent offences prevention orders

455. Agreed: the Committee is content with Clause 55 as drafted.

Clause 56 - Interim violent offences prevention orders

456. Agreed: the Committee is content with Clause 56 as drafted.

Clause 57 - Notice of applications

457. Agreed: the Committee is content with Clause 57 as drafted.

Clause 58 – Appeals

458. Agreed: the Committee is content with Clause 58 as drafted.

Notification requirements

Clause 59 - Offenders subject to notification requirements

459. Agreed: the Committee is content with Clause 59 as drafted.

Clause 60 - Notification requirements: initial notification

460. Agreed: the Committee is content with Clause 60 as drafted.

Clause 61 - Notification requirements: changes

461. Agreed: the Committee is content with Clause 61 as drafted.

Clause 62 - Notification requirements: periodic notification

462. Agreed: the Committee is content with Clause 62 as drafted.

Clause 63 - Notification requirements: absence from notified residence

463. Agreed: the Committee is content with Clause 63 as drafted.

Clause 64 - Notification requirements: travel outside the United Kingdom

464. Agreed: the Committee is content with Clause 64 as drafted.

Clause 65 - Method of notification and related matters

465. Agreed: the Committee is content with Clause 65 subject to the Department of Justice's proposed amendments relating to verification of identity and retention of fingerprints and photographs as follows:

Clause 65, Page 49

Leave out lines 2 to 4 and insert—

'(4) Fingerprints and photographs taken from an offender under this section—

(a) are to be used for verifying the identity of the offender at any time while the offender is subject to notification requirements; and

(b) may also, subject to the following provisions of this section, be used for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under this Part), but for no other purpose.

(5) Fingerprints taken from an offender under this section must be destroyed no later than the date on which the offender ceases to be subject to notification requirements, unless they are retained under the power conferred by subsection (7).

(6) Subsection (7) applies where—

(a) fingerprints have been taken from a person under any power conferred by the Police and Criminal Evidence (Northern Ireland) Order 1989;

(b) fingerprints have also subsequently been taken from that person under this section; and

(c) the fingerprints taken as mentioned in paragraph (a) do not constitute a complete and up to date set of the person's fingerprints or some or all of those fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching.

(7) Where this subsection applies—

(a) the fingerprints taken as mentioned in subsection (6)(b) may be retained as if taken from the person under the power mentioned in subsection (6)(a); and

(b) the fingerprints taken as mentioned in subsection (6)(a) must be destroyed.

(8) Photographs taken of any part of the offender under this section must be destroyed no later than the date on which the offender ceases to be subject to notification requirements unless they are retained by virtue of an order under subsection (9).

(9) The Chief Constable may apply to a District Judge (Magistrates' Courts) for an order extending the period for which photographs taken under this section may be retained.

(10) An application for an order under subsection (9) must be made within the period of 3 months ending on the last day on which the offender will be subject to notification requirements.

(11) An order under subsection (9) may extend the period for which photographs may be retained by a period of 2 years beginning when the offender ceases to be subject to notification requirements.

(12) The following persons may appeal to the county court against an order under subsection (9), or a refusal to make such an order—

(a) the Chief Constable;

(b) the person in relation to whom the order was sought.

(13) In this section—

(a) "photograph" includes any process by means of which an image may be produced; and

(b) references to the destruction or retention of photographs or fingerprints include references to the destruction or retention of copies of those photographs or fingerprints.'

Supplementary

Clause 66 – Offences

466. Agreed: the Committee is content with Clause 66 as drafted.

Clause 67 - Supply of information to relevant Northern Ireland departments or Secretary of State

467. Agreed: the Committee is content with Clause 67 as drafted.

Clause 68 - Supply of information by relevant Northern Ireland departments or Secretary of State

468. Agreed: the Committee is content with Clause 68 subject to the Department of Justice's proposed amendments which provide a framework restricting the retention of information to the duration of the VOPO as follows:

Clause 68, Page 51, Line 8

After 'may' insert ', subject to subsections (3A) to (3E),'

Clause 68, Page 51, Line 13

At end insert—

'(3A) The information must be destroyed no later than the date on which the offender ceases to be subject to notification requirements unless it is retained by virtue of an order under subsection (3B).

(3B) The Chief Constable may apply to a District Judge (Magistrates' Court) for an order extending the period for which the information may be retained.

(3C) An application for an order under subsection (3B) must be made within the period of 3 months ending on the last day on which the offender will be subject to notification requirements.

(3D) An order under subsection (3B) may extend the period for which the information may be retained by a period of 2 years beginning when the offender ceases to be subject to notification requirements.

(3E) The following persons may appeal to the county court against an order under subsection (3B), or a refusal to make such an order—

(a) the Chief Constable;

(b) the person in relation to whom the order was sought.'

Clause 69 - Information about release or transfer

469. Agreed: the Committee is content with Clause 69 as drafted.

Clause 70 - Power of entry and search of offender's home address

470. Agreed: the Committee is content with Clause 70 subject to the Department of Justice's proposed amendment in relation to power of search of third party premises as follows:

Clause 70, Page 51, Line 3

Leave out 'and' and insert—

'(ca) that, in a case where a person other than the offender resides there, it is proportionate in all the circumstances for a constable to enter and search the premises for that purpose; and'

Clause 71 - Interpretation of this Part

471. Agreed: the Committee is content with Clause 71 as drafted.

Part 8: Miscellaneous

Jury Service

Clause 72 - Removal of maximum age for jury service

472. Agreed: the Committee is content with Clause 72 as drafted.

Clause 73 - Preparation of jury lists

473. Agreed: the Committee is content with Clause 73 as drafted.

Clause 74 - Persons disqualified for jury service

474. Agreed: the Committee is content with Clause 74 as drafted.

Clause 75 - Persons ineligible for jury service

475. Agreed: the Committee is content with Clause 75 as drafted.

Clause 76 - Persons excusable as of right from jury service

476. Agreed: the Committee is content with Clause 76 as drafted.

New Clause

477. The Department proposes to insert a new Clause 76A to allow police to retake fingerprints and a DNA sample in particular circumstances.

After clause 76 insert—

'Personal samples, DNA profiles and fingerprints

Power to take further fingerprints or non-intimate samples [j11]

76A.—(1) In Article 61 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (fingerprinting)—

(a) in paragraphs (5A) and (5B), for the words after "investigation" in sub-paragraph (b) substitute "but—

(i) paragraph (4A)(a) or (b) applies, or

(ii) paragraph (5C) applies.";

(b) after paragraph (5B) insert—

"(5C) This paragraph applies where—

(a) the investigation was discontinued but subsequently resumed, and

(b) before the resumption of the investigation the fingerprints were destroyed pursuant to Article 63B(2)." .

(2) In Article 63 of that Order (non-intimate samples)—

(a) at the end of paragraph (3ZA)(b) insert ", or

(iii) paragraph (3AA) applies.";

(b) in paragraph (3A)(b) for "insufficient; or" substitute "insufficient, or

(iii) paragraph (3AA) applies; or";

(c) after paragraph (3A) insert—

"(3AA) This paragraph applies where the investigation was discontinued but subsequently resumed, and before the resumption of the investigation—

(a) any DNA profile derived from the sample was destroyed pursuant to Article 63B(2), and

(b) the sample itself was destroyed pursuant to Article 63P(2), (3) or (10)." .

(3) In Schedule 2A to that Order (fingerprinting and samples: power to require attendance at police station)—

(a) in paragraph 1 (fingerprinting: persons arrested and released)—

(i) in sub-paragraph (2) for "Article 61(5A)(b)" substitute "Article 61(5A)(b)(i)";

(ii) after sub-paragraph (3) insert—

"(4) The power under sub-paragraph (1) may not be exercised in a case falling within Article 61(5A)(b)(ii) (fingerprints destroyed where investigation interrupted) after the end of the period of six months beginning with the day on which the investigation was resumed." ;

(b) in paragraph 2 (fingerprinting: persons charged, etc.)—

(i) in sub-paragraph (2)(b) for "Article 61(5B)(b)" substitute "Article 61(5B)(b)(i)";

(ii) at the end of sub-paragraph (2) insert ", or

"(c) in a case falling within Article 61(5B)(b)(ii) (fingerprints destroyed where investigation interrupted), the day on which the investigation was resumed.";

(c) in paragraph 9 (non-intimate samples: persons arrested and released)—

(i) in sub-paragraph (2) for "within Article 63(3ZA)(b)" substitute "within Article 63(3ZA)(b)(i) or (ii)";

(ii) after sub-paragraph (3) insert—

"(4) The power under sub-paragraph (1) may not be exercised in a case falling within Article 63(3ZA)(b)(iii) (sample, and any DNA profile, destroyed where investigation interrupted) after the end of the period of six months beginning with the day on which the investigation was resumed.";

(d) in paragraph 10 (non-intimate samples: person charged etc)—

(i) in sub-paragraph (3) for "within Article 63(3A)(b)" substitute "within Article 63(3A)(b)(i) or (ii)";

(ii) after sub-paragraph (4) insert—

"(5) The power under sub-paragraph (1) may not be exercised in a case falling within Article 63(3A)(b)(iii) (sample, and any DNA profile, destroyed where investigation interrupted) after the end of the period of six months beginning with the day on which the investigation was resumed.".'

478. Agreed: the Committee is content with the new clause proposed by the Department.

New Clause

479. The Department proposes to insert a new Clause 76B to correct a gap identified in new Article 63G of PACE to provide that a conviction in Great Britain for a recordable offence will be reckonable for the purposes of determining the period of retention of material taken in Northern Ireland.

After clause 76 insert—

'Retention of material: persons convicted of an offence in England and Wales or Scotland

76B. After Article 63G of the Police and Criminal Evidence (Northern Ireland) Order 1989 insert—

"Retention of material: effect of convictions in England and Wales or Scotland

63GA.—(1) This Article applies to Article 63B material which does not fall within Article 63G (2).

(2) If the material relates to a person who has been convicted under the law in force in England and Wales of a recordable offence within the meaning of section 118(1) of PACE ("an EW recordable offence") Articles 63D, 63E, 63H and 63L apply as if—

(a) references in Article 63D(2) and (14), 63E(2) 63H(1)(a)(ii) and (5) and 63L(3)(b) to a person being convicted of a recordable offence included references to a person being convicted of an EW recordable offence (and section 65B(1) of PACE (meaning of "convicted") applies for that purpose);

(b) references in Article 63D(14) to a qualifying offence included references to a qualifying offence within the meaning of section 65A of PACE;

(c) references in Article 63D(14) and 63H(2) to (4) to a custodial sentence included references to a relevant custodial sentence within the meaning of section 63K(6) of PACE.

(3) If the material relates to a person who has been convicted under the law in force in Scotland of an offence which is punishable by imprisonment ("a relevant Scottish offence") Article 63D, 63E, 63H and 63L apply as if—

(a) references in Article 63D(2) and (14), 63E(2) 63H(1)(a)(ii) and (5) and 63L(3)(b) to a person being convicted of a recordable offence included references to a person being convicted of a relevant Scottish offence;

(b) references in Article 63D(14) to a qualifying offence included references to—

(i) a relevant sexual offence and a relevant violent offence within the meaning of section 19A of the Criminal Procedure (Scotland Act) 1995; and

(ii) an offence for the time being listed in section 41(1) of the Counter-Terrorism Act 2008;

(c) references in Article 63D(14) and 63H(2) to (4) to a custodial sentence included references to a sentence of imprisonment or detention.

(4) In this Article "PACE" means the Police and Criminal Evidence Act 1984.".'

480. Agreed: the Committee is content with the new clause proposed by the Department.

New Clause

481. The Department proposes to insert a new Clause 76C to provide for the retention of fingerprints or DNA profiles relating to persons given a prosecutorial fine.

After clause 76 insert—

'Retention of DNA profiles or fingerprints: persons given a prosecutorial fine

76C. After Article 63K of the Police and Criminal Evidence (Northern Ireland) Order 1989 insert—

"Retention of Article 63B material: persons given a prosecutorial fine notice

63KA.—(1) This Article applies to Article 63B material which—

(a) relates to a person who is given a prosecutorial fine notice under section 18 of the Justice Act (Northern Ireland) 2015, and

(b) was taken (or, in the case of a DNA profile, derived from a sample taken) from the person in connection with the investigation of the offence (or one of the offences) to which the notice relates.

(2) The material may be retained—

(a) in the case of fingerprints, for a period of 2 years beginning with the date on which the fingerprints were taken,

(b) in the case of a DNA profile, for a period of 2 years beginning with—

(i) the date on which the DNA sample from which the profile was derived was taken, or

(ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.".'

482. Agreed: the Committee is content with the new clause proposed by the Department.

New Clause

483. The Department proposes to insert a new Clause 76D to provide for the retention of DNA profiles or fingerprints on the basis of a conviction, irrespective of whether that conviction is linked to the offence for which the material was first obtained.

After clause 76 insert—

'Power to retain DNA profile or fingerprints in connection with different offence

76D. For Article 63N of the Police and Criminal Evidence (Northern Ireland Order 1989 (Article 63B material obtained for one purpose and used for another) substitute—

"Retention of Article 63B material in connection with different offence

63N.—(1) Paragraph (2) applies if—

(a) Article 63B material is taken (or, in the case of a DNA profile, derived from a sample taken) from a person in connection with the investigation of an offence, and

(b) the person subsequently—

(i) is arrested for or charged with a different offence,

(ii) is convicted of a different offence,

(iii) is given a penalty notice or a prosecutorial fine notice in respect of a different offence;

(iv) is given a caution in respect of a different offence committed when the person is

under the age of 18; or

(v) completes a diversionary youth conference process with respect to a different offence.

(2) Articles 63C to 63M and Articles 63O and 63Q have effect in relation to the material as if the material were also taken (or, in the case of a DNA profile, derived from a sample taken)—

(a) in connection with the investigation of the offence mentioned in paragraph (1)(b),

(b) on the date on which the person was arrested for that offence or, if the person was not arrested, on the date on which the person—

(i) was charged with the offence or given a penalty notice or prosecutorial fine in respect of the offence, or

(ii) was cautioned in respect of the offence; or

(iii) completed the diversionary youth conference process with respect to the offence.

(3) Paragraph (3) of Article 63J applies for the purposes of this Article as it applies for the purposes of Article 63J.".'

484. Agreed: the Committee is content with the new clause proposed by the Department.

New Clause

485. The Department proposes to insert a new Clause 76E to disapply the normal destruction rules for samples in cases where the sample is or may become disclosable under the 1996 Criminal Procedure and Investigations Act.

After clause 76 insert—

'Retention of personal samples that are or may be disclosable

76E**.** In Article 63R of the Police and Criminal Evidence (Northern Ireland) Order 1989 (exclusions for other regimes)—

(a) in paragraph (5) (material that is or may become disclosable to the defence) for "Articles 63B to 63O and 63Q" substitute "Articles 63B to 63Q";

(b) after that paragraph insert—

"(5A) A sample that—

(a) falls within paragraph (5), and

(b) but for that paragraph would be required to be destroyed under Article 63P,

must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.

(5B) A sample that once fell within paragraph (5) but no longer does, and so becomes a sample to which Article 63P applies, must be destroyed immediately if the time specified for its destruction under that Article has already passed.".'

486. Agreed: the Committee is content with the new clause proposed by the Department.

Early Guilty Pleas

Clause 77 - Sentencing court to indicate sentence which would have been imposed if guilty plea entered at earliest reasonable opportunity

487. Agreed: the Committee is content with Clause 77 as drafted.

Clause 78 - Duty of solicitor to advise client about early guilty plea

488. Agreed: the Committee is content with Clause 78 subject to the Department of Justice's proposed amendment to remove a regulatory making power in sub-section (3) which is of no practical benefit as follows:

Clause 78, Page 55, Line 21

Leave out subsection (3)

New Clause

489. The Department proposes to insert a new Clause 78A to reduce the evidence threshold for the existing offence of meeting a child following sexual grooming.

'Sexual offences against children

Meeting a child following sexual grooming etc.

78A. In Article 22(1)(a) of the Sexual Offences (Northern Ireland) Order 2008 (meeting a child following sexual grooming etc.) for "on at least two occasions" substitute "on one or more occasions".'.

490. Agreed: the Committee is content with the new clause proposed by the Department.

New Clause

491. The Department proposes to insert a new Clause 78B to provide for a new offence of communicating with a child for sexual purposes.

After clause 78 insert—

'Sexual communication with a child

78B.—(1) In the Sexual Offences (Northern Ireland) Order 2008 after Article 22 insert—

"Sexual communication with a child

22A.—(1) A person aged 18 or over (A) commits an offence if—

(a) for the purpose of obtaining sexual gratification, A intentionally communicates with another person (B),

(b) the communication is sexual or is intended to encourage B to make (whether to A or to another) a communication that is sexual, and

(c) B is under 16 and A does not reasonably believe that B is 16 or over.

(2) For the purposes of this Article, a communication is sexual if—

(a) any part of it relates to sexual activity, or

(b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider any part of the communication to be sexual;

and in sub-paragraph (a) "sexual activity" means an activity that a reasonable person would, in all the circumstances but regardless of any person's purpose, consider to be sexual.

(3) A person guilty of an offence under this Article is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.".

(2) In Article 4 of that Order (meaning of "sexual") after "except" insert "Article 22A (sexual communication with a child) or".

(3) In Article 76(10)(a) of that Order (offences outside the United Kingdom) after "children)" insert "except Article 22A".

(4) In the Sexual Offences Act 2003 in Schedule 3 (sexual offences for purposes of Part 2 of that Act) after paragraph 92H insert—

"92HA. An offence under Article 22A of that Order (sexual communication with a child).".

(5) In the Criminal Justice (Northern Ireland) Order 2008 in Part 2 of Schedule 2 (specified sexual

offences) in paragraph 14A after the entry relating to Article 22 of the Sexual Offences (Northern Ireland) Order 2008 insert—

"Article 22A (sexual communication with child),".'

492. Agreed: the Committee is content with the new clause proposed by the Department.

Avoiding delay in criminal proceedings

Clause 79 - General duty to progress criminal proceedings

493. Agreed: the Committee is content with Clause 79 subject to the Department of Justice's proposed amendment to the regulation-making powers as follows:

Clause 79, Page 55, Line 31

Leave out from 'The Department' to 'on' and insert 'It is the duty of all'

Clause 79, Page 55, Line 34

Leave out subsection (2)

Clause 80 - Case management regulations

494. Agreed: the Committee is content with Clause 80 subject to the Department of Justice's proposed amendment to the regulation-making powers as follows:

Clause 80, Page 56, Line 23

At end insert

'(5) The regulations must in particular take account of the need to identify and respect the needs of

(a) victims,

(b) witnesses, particularly those to whom Article 4(2) of the Criminal Evidence (Northern Ireland) Order 1999 may apply; and

(c) persons under the age of 18.'

Clause 80, Page 56, Line 23

At end insert

'(6) Before making any regulations under this section the Department must consult

(a) the Lord Chief Justice;

(b) the Director of Public Prosecutions;

(c) the General Council of the Bar of Northern Ireland; and

(d) the Law Society of Northern Ireland.'

Public Prosecutor's summons

Clause 81 - Public Prosecutor's summons

495. Agreed: the Committee is content with Clause 81 as drafted.

Defence access to premises

Clause 82 - Defence access to premises

496. Agreed: the Committee is content with Clause 82 subject to the Department of Justice's proposed amendment to adjust the threshold for an order as follows:

Defence access to premises

Clause 82, Page 57, Line 37,

Leave out from 'in connection' to 'D's appeal' on line 38 and insert 'to ensure compliance with Article 6 of the European Convention on Human Rights'.

Court security officers

Clause 83 - Powers of court security officers

497. Agreed: the Committee is content with Clause 83 as drafted.

New Clause

498. The Department proposes to insert a new Clause 83A and new Schedule 4A to create a new offence of causing or allowing serious physical harm to a child or vulnerable adult.

After Clause 83 insert

'Causing or allowing child or vulnerable adult to suffer serious physical harm

Causing or allowing child or vulnerable adult to suffer serious physical harm

83A.(1) Section 5 of the Domestic Violence, Crime and Victims Act 2004 (offence of causing or allowing the death of a child or vulnerable adult) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a) after "dies" insert " or suffers serious physical harm ";

(b) in paragraph (d) for "V's death" substitute " the death or serious physical harm ".

(3) In subsection (3)(a) for "V's death" substitute "the death or serious physical harm ".

(4) In subsection (4)(b) for "V's death" substitute " the death or serious physical harm ".

(5) In subsection (7) after "this section" insert "of causing or allowing a person's death".

(6) After that subsection insert

"(8) A person guilty of an offence under this section of causing or allowing a person to suffer serious physical harm is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or to a fine, or to both.".

(7) For the cross-heading before section 5 substitute "Causing or allowing a child or vulnerable adult to die or suffer serious physical harm".

(8) Schedule 4A (which contains amendments consequential on this section) has effect.

New Schedule

After Schedule 4 insert

'SCHEDULE 4A

AMENDMENTS: SERIOUS PHYSICAL HARM TO CHILD OR VULNERABLE ADULT

The Law Reform (Year and a Day Rule) Act 1996 (c. 19)

1. In section 2 (restriction on institution of proceedings for fatal offence) in subsection (3)(c) for "(causing or allowing the death of a child or vulnerable adult)" substitute "of causing or allowing the death of a child or vulnerable adult".

The Sexual Offences Act 2003 (c. 42)

2. In Schedule 5 (offences for purposes of making sexual offences prevention orders) in paragraph 171A for "the death of a child or vulnerable adult" substitute "a child or vulnerable adult to die or suffer serious physical harm".

The Domestic Violence, Crime and Victims Act 2004 (c. 28)

3.(1) For the heading of section 7 substitute "Evidence and procedure in cases of death: Northern

Ireland".

(2) In section 7(5) after "section 5" insert "of causing or allowing a person's death".

(3) After section 7 insert

"Evidence and procedure in cases of serious physical harm: Northern Ireland

7A.(1) Subsections (3) to (5) apply where a person ("the defendant") is charged in the same proceedings with a relevant offence and with an offence under section 5 in respect of the same harm ("the section 5 offence").

(2) In this section "relevant offence" means

(a) an offence under section 18 or 20 of the Offences against the Person Act 1861 (grievous bodily harm etc);

(b) an offence under Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 of attempting to commit murder.

(3) Where by virtue of Article 4(4) of the Criminal Evidence (Northern Ireland) Order 1988 a court or jury is permitted, in relation to the section 5 offence, to draw such inferences as appear proper from the defendant's failure to give evidence or refusal to answer a question, the court or jury may also draw such inferences in determining whether the defendant is guilty of a relevant offence, even if there would otherwise be no case for the defendant to answer in relation to that offence.

(4) Where a magistrates' court is considering under Article 37 of the Magistrates' Courts (Northern Ireland) Order 1981 whether to commit the defendant for trial for the relevant offence, if there is sufficient evidence to put the defendant on trial for the section 5 offence there is deemed to be sufficient evidence to put the defendant on trial for the relevant offence.

(5) The power of a judge of the Crown Court under section 2(3) of the Grand Jury (Abolition) Act (Northern Ireland) 1969 (entry of "No Bill") is not to be exercised in relation to a relevant offence unless it is also exercised in relation to the section 5 offence.

(6) At the defendant's trial the question whether there is a case for the defendant to answer on the charge of the relevant offence is not to be considered before the close of all the evidence (or, if at some earlier time the defendant ceases to be charged with the section 5 offence, before that earlier time)."

The Criminal Justice (Northern Ireland) Order 2008 (NI 1)

4. In Part 1 of Schedule 2 (specified violent offences) in paragraph 30 for "the death of a child or vulnerable adult" substitute "a child or vulnerable adult to die or suffer serious physical harm".'

499. Agreed: the Committee is content with the new clause and schedule proposed by the Department.

Youth Justice

Clause 84 - Aims of youth justice system

500. Agreed: the Committee is content with Clause 84 as drafted.

Clause 85 - Amendment to section 10 of the Criminal Justice Act (Northern Ireland) 2013

501. Agreed: the Committee is content with Clause 85 as drafted.

New clause

502. The Department proposes to insert a new Clause 85A to change the affirmative resolution procedure for the annual determination of Lands Tribunal Salaries.

After clause 85 insert—

Salary of Lands Tribunal members

85A.—(I) Section 2 of the Lands Tribunal and Compensation Act (Northern Ireland) 1964 is

Amended as follows.

(2)For subsections (5) and (5A) substitute—

"(5) There shall be paid to the members of the Lands Tribunal appointed under section

1(2) such remuneration as the Department of Justice may determine.

503. Agreed: the Committee is content with the new clause proposed by the Department.

Part 9: Supplementary Provisions

Clause 86 - Supplementary, incidental, consequential and transitional provision, etc

504. Agreed: the Committee agreed that it is not content with Clause 86.

Clause 87 - Regulations, orders and directions

505. Agreed: the Committee is content with Clause 87 as drafted.

Clause 88 – Interpretation

506. Agreed: the Committee is content with Clause 88 as drafted.

Clause 89 - Transitional provisions and savings

507. Agreed: the Committee is content with Clause 89 as drafted.

Clause 90 – Repeals

508. Agreed: the Committee is content with Clause 90 as drafted.

Clause 91 – Commencement

509. Agreed: the Committee is content with Clause 91 subject to the Department of Justice's proposed amendments as a consequence of the introduction of new Clauses 35A, 78A and 78B and new Schedule 3A as follows:

Clause 91, Page 60, Line 36

At end insert—

'( ) section 35A and Schedule 3A;'

Clause 91, Page 60, Line 36

At end insert—

'( ) sections 78A and 78B;'

Clause 92 - Short title

510. Agreed: the Committee is content with Clause 92 as drafted.

Schedules

Schedule 1 - Amendments: single jurisdiction

511. Agreed: the Committee is content with Schedule 1 subject to the Department of Justice's proposed amendment primarily to remove references to 'petty sessions district' and 'county court division' in existing legislation as follows:

Single Jurisdiction

Schedule 1, Page 62

Leave out lines 4 to 28 and insert

'The Gaming Act (Ireland) 1739 (c. 8)

. In section 16 (bringing of actions) omit the words from "and shall be laid" to the end.

The Forcible Entry Act (Ireland) 1786 (c.24)

. In section 65 (indictments) for "some one or more of the justices of the peace of the county, county of the city or town where such indictment shall be made" substitute "a district judge (magistrates' courts)".

The Parliamentary Representation Act (Ireland) 1800 (c.29)

. In section 7 (writs) for "crown office in Ireland" and "crown office of Ireland" substitute "chief clerk".

The Tolls (Ireland) Act 1817 (c.108)

. In section 7 (schedule of tolls) for "chief clerk for the county court division where such custom, toll, or duty may be claimed," substitute "chief clerk".

The Tithe Rentcharge (Ireland) Act 1838 (c. 109)

. In section 27 (recovery of rent-charge) omit "wherein the lands charged therewith may be situate".

The Defence Act 1842 (c. 94)

. In section 24 (compensation)—

(a) for "two justices of the peace of the county, riding, stewartry, city or place" substitute "a court of summary jurisdiction";

(b) for "such justices" substitute "that court".

The Fisheries (Ireland) Act 1842 (c. 106)

.(1) In section 92 (byelaws) for the words from "deposited with" to "in each such petty sessions district" substitute "deposited with the clerk of petty sessions who shall publish notice of the lodgement;".

(2) In section 103 omit "in the district where the same shall be seized".

The Companies Clauses Consolidation Act 1845 (c. 16)

.(1) In section 3 (interpretation) omit "acting for the place where the matter requiring the cognizance of any such justice shall arise and".

(2) In section 161 (deposit of copies of special Act) for the words from "deposit in the office" to "into which the works shall extend" substitute "deposit in the office of the chief clerk".

The Lands Clauses Consolidation Act 1845 (c. 18)

. In section 150 (deposit of copies of special Act) for the words from "deposit in the office" to "into which the works shall extend" substitute "deposit in the office of the chief clerk".

The Railways Clauses Consolidation Act 1845 (c. 20)

.—(1) In section 7 (correction of plans) for the words from deposited with to shall be situate substitute deposited with the chief clerk.

(2) In section 8 (deposit of plans) for the words from "deposited with" to "intended to pass" substitute "deposited with the chief clerk".

(3) In section 11 (limitation of deviation)—

(a) for the words from "two or more justices" to "may be situated" substitute "a court of summary jurisdiction";

(b) omit the words from "Provided also, that" to the end.

(4) In section 59 (consent to level crossing)—

(a) for the words from "any two or more justices" to "is situate, and assembled in petty sessions" substitute "a court of summary jurisdiction";

(b) for "such justices" substitute "that court".

The Ejectment and Distress (Ireland) Act 1846 (c. 111)

. In section 16 for the words from "apply to any one" to "fixed in such summons" substitute "apply to a district judge (magistrates' courts) for the redress of his grievance, whereupon the district judge shall summon the person complained of to appear before a court of summary jurisdiction at a reasonable time to be fixed in the summons.".

The Markets and Fairs Clauses Act 1847 (c. 14)

.(1) In section 7 (correction of errors) for "the chief clerk for the county court division in which the lands affected thereby shall be situated" substitute "the chief clerk".

(2) In section 50 (annual account) for "the chief clerk for the county court division in which the market or fair is situate" substitute "the chief clerk".

(3) In section 58 (deposit of special Act) for the words from "deposit in" to "is situate" substitute "deposit in the office of the chief clerk".

The Commissioners Clauses Act 1847 (c. 16)

.(1) In section 95 for "the chief clerk for the county court division where the undertaking is situate" substitute "the chief clerk".

(2) In section 110 (copies of special Act) for the words from "deposit in" to "is situate" substitute "deposit in the office of the chief clerk".

The Harbours, Docks and Piers Clauses Act 1847 (c. 27)

.(1) In section 7 (correction of plans) for the words from "be deposited in" to "are situate" substitute "be deposited with the chief clerk".

(2) In section 8 (alterations to plans) for the words from "deposited with the said" to "is situate" substitute "deposited with the chief clerk".

(3) In section 50 (annual account) for the words from "charge, to the" to "is situate" substitute "charge, to the chief clerk".

(4) In section 97 (copies of special Act) for the words from "deposit in" to "is situate" substitute "deposit in the office of the chief clerk".

The Towns Improvement Clauses Act 1847 (c. 34)

.(1) In section 3 (interpretation)—

(a) in the definition of "justice" for the words from "shall mean" to arises" substitute "shall mean a lay magistrate";

(b) in the definition of "quarter sessions" for the words from "shall mean" to the end substitute "shall mean the county court".

(2) In section 20 (correction of errors) for "the chief clerk for the county court division in which the lands affected thereby shall be situated" substitute "the chief clerk".

(3) In section 214 (copies of special Act) for the words from "deposit in" to "is situated" substitute "deposit in the office of the chief clerk".

The Cemeteries Clauses Act 1847 (c. 65)

.(1) In section 7 (correction of errors) for the words from "deposited with" to "shall be situated" substitute "deposited with the chief clerk".

(2) In section 60 (annual accounts) for the words from "charge, to the" to "is situated" substitute "charge, to the chief clerk".

(3) In section 66 (copies of special Act) for the words from "deposit in" to "is situated" substitute "deposit in the office of the chief clerk".

The Vagrancy (Ireland) Act 1847 (c. 84)

. In section 8 (interpretation) for the words from "any justice" to "town corporate" substitute "any lay magistrate or district judge (magistrates' courts)".

The Town Police Clauses Act 1847 (c. 89)

. In section 77 (copies of special Act) for the words from "deposit in" to "is situated" substitute "deposit in the office of the chief clerk".

The Railway Act (Ireland) 1851 (c.70)

.(1) In section 4 (deposit of maps) for the words from "or so much thereof as relates" to the end substitute "with the chief clerk".

(2) In section 8 (notice of appointment of arbitrator) for the words "with the chief clerks for the county court division" substitute "with the chief clerk".

(3) In section 11 (retention of documents) for the words from the beginning to "hereby" substitute "The chief clerk is hereby".

The Fines Act (Ireland) 1851 (c. 90)

.(1) In section 6 (enforcement) for "two justices of the county" substitute "district judge (magistrates' courts)".

(2) In section 8 (penalties) for "two justices of the county" substitute "district judge (magistrates' courts)".

The Summary Jurisdiction (Ireland) Act 1851 (c. 92)

. In section 1 (jurisdiction of justices) omit—

(a) "within his or their respective jurisdictions"; and

(b) "(when the case shall be heard in any petty sessions district)".

The Petty Sessions (Ireland) Act 1851 (c. 93)

.(1) In section 26(3) (execution of warrants) for the words from "at any place" to "adjoining county" substitute "at any place".

(2) In section 28 (backing of warrants) for the words from "are not to be found" to "in any of the places" substitute "are in any of the places".

(3) In section 31 (execution of warrant) for the words from "or peace officers" to the end substitute "to execute the warrant by arrest, committal, or levy, as the case may be, and in the case of a warrant to arrest any person and convey him when arrested before any district judge (magistrates' courts) to be dealt with according to law.".

The Boundary Survey (Ireland) Act 1854 (c. 17)

. In section 12 (alteration of boundary) for the words from "transmitted to" to "way relate" substitute "transmitted to the chief clerk".

The Towns Improvement (Ireland) Act 1854 (c. 103)

. In section 1 (interpretation) omit the definition of "assistant barrister".

The Boundary Survey (Ireland) Act 1859 (c. 8)

. In section 4 (publication of order) for the words from "transmitted to" to "way relate" substitute "transmitted to the chief clerk".

The Ecclesiastical Courts Jurisdiction Act 1860 (c. 32)

. In section 3 (offenders) for the words from "taken before" to the end substitute "taken before a district judge (magistrates' courts) to be dealt with according to law.".

The Tramways (Ireland) Act 1860 (c. 152)

. In section 33 (entry to land)—

(a) for the words from "under the hand" to "not having" substitute "under the hand of district judge (magistrates' courts) who does not have";

(b) for the words from "fixed by" to "same district" substitute "fixed by a district judge (magistrates' courts)".

The Landlord and Tenant Law Amendment Act (Ireland) 1860 (c. 154)

.(1) In section 35 (restraint of waste)—

(a) for the words from "satisfy" to "of the county" substitute "satisfy a district judge (magistrates' courts)";

(b) for the words from "at the next" to "premises are situate" substitute "at the next petty sessions".

(2) In sections 63 and 69 (deposit of sums due) for "chief clerk for the county court division" substitute "chief clerk".

(3) In section 79 (view of lands) for the words from "lawful for" to "shall be situate and" substitute "lawful for a district judge (magistrates' courts)".

(4) In Schedule (A) (forms) omit "for the county of M," (wherever occurring).

The Railways Act (Ireland) 1864 (c. 71)

. In section 14 (value of crops) for the words from "determined by" to the end substitute "determined by a district judge (magistrates' courts)'.

The Dockyard Ports Regulation Act 1865 (c. 125)

. Omit section 22 (jurisdiction of justices over vessels).

The Promissory Oaths Act 1871 (c. 48)

. In section 2 (persons who may take oaths) for the words from "or at the" to the end substitute "or at the county court".

The Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1871 (c. 49)

. In section 23 (register books) for the words from "information thereof to" to "solemnized" substitute "information thereof to a district judge (magistrates' courts)".

The Public Health (Ireland) Act 1878 (c. 52)

.(1) In section 2 (interpretation) omit the definition of "court of quarter sessions".

(2) In section 269 (appeals) for subsection (1) substitute

"(1) The appeal shall be made to the county court."

The Settled Land Act 1882 (c. 38)

. In section 46(10) (payment into court) for the words from "be exercised by" to the end substitute "be exercised by the county court".

The Married Woman's Property Act 1882 (c. 75)

. In section 17 (summary decision of questions) for the words from "in a summary way" to "and the court" substitute "in a summary way to the High Court or a county court and the court".

The Explosive Substances Act 1883 (c. 3)

. In section 6(1) (inquiry into crimes) omit

(a) "for the county, borough, or place in which the crime was committed or is suspected to have been committed";

(b) "in the said county, borough, or place".

The Bills of Sale (Ireland) Act (1879) Amendment Act 1883 (c. 7)

. In section 11 (registration) for the words from "transmit" to the end of the first paragraph substitute "transmit an abstract in the prescribed form of the contents of such bill of sale to the chief clerk.".

The Local Government (Ireland) Act 1898 (c. 37)

. In section 69 (boundaries)—

(a) in subsection (3) omit the words from "provided that" to the end;

(b) omit subsections (4) and (5).

The Open Spaces Act 1906 (c. 25)

. In section 4(2) (transfer of open space) omit the words from "of the district" to the end.

The Summary Jurisdiction (Ireland) Act 1908 (c. 24)

. In sections 1(2) and 2(2) (habitual drunkards) for the words from "anyone holding" to the end substitute "any justice of the peace".'

Schedule 1, Page 66, Line 38

At end insert

'(2A) In section 18(2) (rules) after "subsection (1) above" insert "(other than paragraph (a))".'

Schedule 1, Page 75, Line 12

Leave out sub-paragraph (1) and insert—

'(1) Omit section 15(3) (interpretation).'

Schedule 1, Page 84

Leave out lines 10 to 12

Schedule 1, Page 86, Line 16

At end insert

'(1A) In section 125 (variation, renewal and discharge of orders)

(a) in paragraph (1) for "the appropriate court" substitute "a court of summary jurisdiction"; and

(b) omit subsection (7).'

Schedule 1, Page 90, Line 31

At end insert

'The Serious Crime Act 2015 (c.)

109. In Schedule 2 in paragraph 11(2)(c) omit "for the petty sessions district in which the lay magistrate was acting when he or she issued the warrant".'

Schedule 2 - Amendments: abolition of preliminary investigations and mixed committals

512. Agreed: the Committee is content with Schedule 2 as drafted.

Schedule 3 - Amendments: direct committal for trial

513. Agreed: the Committee is content with Schedule 3 subject to the Department of Justice's proposed amendments as a consequence of new Clause 12A as follows:

Schedule 3, Page 94, Line 29

After 'section 12' insert 'or 12A'

Schedule 3, Page 94, Line 37

After 'section 12' insert 'or 12A'

Schedule 3, Page 95, Line 4

After 'section 12' insert 'or 12A'

Schedule 3, Page 95, Line 12

After 'section 12' insert 'or 12A'

Schedule 3, Page 95, Line 19

After 'section 12' insert 'or 12A'

Schedule 3, Page 95, Line 27

After 'section 12' insert 'or 12A'

Schedule 3, Page 96, Line 13

After 'section 12' insert 'or 12A'

Schedule 4 - Amendments: criminal records

514. Agreed: the Committee is content with Schedule 4 as drafted.

Schedule 5 - Transitional provisions and savings

515. Agreed: the Committee is content with Schedule 5 subject to the Department of Justice's proposed amendments as a consequence of new Clauses 76D, 78A and 83A and new Schedule 4A as follows:

Schedule 5, Page 102, Line 23

At end insert—

'Part 8: DNA profiles or fingerprints

6A. The amendment made by section 76D applies even where the event referred to in paragraph (1)(b) of the substituted Article 63N of the Police and Criminal Evidence (Northern Ireland) Order 1989 occurs before the day on which that section comes into operation.'

Schedule 5, Page 102, Line 26

At end insert—

'Part 8: Meeting a child following sexual grooming etc.

7A. Section 78A does not apply in a case in which person A met or communicated with person B only once before the event mentioned in Article 22(1)(a)(i) to (iii) of the Sexual Offences (Northern Ireland) Order 2008, if that meeting or communication took place before the coming into operation of that section.'.'

Schedule 5, Page 102, Line 29

At end insert

'Part 8: Serious physical harm to a child or vulnerable adult

9. An amendment made by section 83A or Schedule 4A does not apply in relation to any harm resulting from an act that occurs, or so much of an act as occurs, before the coming into operation of that amendment.'

Schedule 6 – Repeals

516. Agreed: the Committee is content with Schedule 6 subject to the Department of Justice's proposed amendments as a consequence of the amendments to Schedule 1 as follows:

Schedule 6, Page 102, Line 35

Leave out from beginning to end of line 4 on page 103 and insert

'The Gaming Act (Ireland) 1739 (c. 8)	In section 16 the words from "and shall be laid" to the end.

The Tithe Rentcharge (Ireland) Act 1838 (c. 109)	In section 27 the words "wherein the lands charged therewith may be situate".
The Fisheries (Ireland) Act 1842 (c.106)	In section 103 the words "in the district where the same shall be seized".
The Companies Clauses Consolidation Act 1845 (c. 106)	In section 3 the words "acting for the place where the matter requiring the cognizance of any such justice shall arise and".
The Railway Clauses Consolidation Act 1845 (c. 20)	In section 11 the words from "Provided also, that" to the end.
The Summary Jurisdiction (Ireland) Act 1851 (c. 92)	In section 1 the words "within his or their respective jurisdictions" and "(when the case shall be heard in any petty sessions district)".
The Towns Improvement (Ireland) Act 1854 (c. 103)	In section 1 the definition of "assistant barrister".
The Landlord and Tenant Law Amendment Act (Ireland) 1860 (c. 154)	In Schedule (A) the words "for the county of M," (wherever occurring).
The Dockyard Ports Regulation Act 1865 (c.125)	Section 22.
The Public Health (Ireland) Act 1878 (c. 52)	In section 2 the definition of "court of quarter sessions".
The Explosive Substances Act 1883 (c. 3)	In section 6(1) the words "for the county, borough, or place in which the crime was committed or is suspected to have been committed" and "in the said county, borough, or place".
The Local Government (Ireland) Act 1898 (c. 37)	In section 69(3) the words from "provided that" to the end. Section 69(4) and (5).'
The Open Spaces Act 1906 (c. 25)	In section 4(2) the words from "of the district" to the end.

Schedule 6, Page 111, column 2

Leave out lines 23 and 24 and insert

'Section 15(3).'

Schedule 6, Page 117, Line 41, column 2

At beginning insert

'Section 125(7).'

Schedule 6, Page 121, Line 35

At end insert

'The Anti-social Behaviour, Crime and Policing Act 2014 (c.12)	In Schedule 11, paragraph 71(5).
The Serious Crime Act 2015 (c.)	In Schedule 2, in paragraph 11(2)(c) the words "for the petty sessions district in which the lay magistrate was acting when he or she issued the warrant".'

Long Title

517. Agreed: the Committee agreed the Long Title of the Bill.

New Clause

518. The Committee agreed to introduce a new clause to restrict lawful abortions to National Health Service premises, except in cases of urgency when access to National Health Service premises is not possible and where no fee is paid, and to provide an additional option to the existing legislation for a period of up to 10 years imprisonment and a fine of conviction on indictment as follows:

New Clause

'Ending the life of an unborn child

Ending the life of an unborn child

11A.-(1) Without prejudice to section 58 and section 59 of the Offences Against the Person Act 1861 and section 25 of the Criminal Justice Act (Northern Ireland) 1945 and subject to subsection (2) any person who ends the life of an unborn child at any stage of that child's development shall be guilty of an offence and liable on conviction on indictment to a period of not more than ten years' imprisonment and a fine.

(2) It shall be a defence for any person charged with an offence under this section to show-(a) that the act or acts ending the life of an unborn child were lawfully performed at premises operated by a Health and Social Care Trust, or(b) that the act or acts ending the life of the unborn child were lawfully performed without fee or reward in circumstances of urgency when access to premises operated by a Health and Social Care Trust was not possible.

(3) For the purposes of this section a person ends the life of an unborn child if that person does any act, or causes or permits any act, with the intention of bringing about the end of the life of an unborn child, and, by reason of any such act, the life of that unborn child is ended.

(4) For the purposes of this section 'lawfully' in subsection (2) means in accordance with any defence or exception under section 58 and section 59 of the Offences Against the Person Act 1861 and section 25 of the Criminal Justice Act (Northern Ireland) 1945.'

Northern Ireland Assembly

Appendix 1

Minutes of Proceedings (Extracts)

Appendix 1 Minutes of Proceedings (Extracts)

- 18 June 2014
- 2 July 2014
- 10 September 2014
- 17 September 2014
- 15 October 2014
- 5 November 2014
- 12 November 2014
- 19 November 2014
- 26 November 2014
- 3 December 2014
- 14 January 2015
- 21 January 2015
- 28 January 2015
- 4 February 2015
- 11 February 2015
- 18 February 2015
- 25 February 2015
- 4 March 2015
- 10 March 2015
- 11 March 2015
- 25 March 2015

Wednesday 18 June 2014
Room 21, Parliament Buildings

Present: Mr Paul Givan MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Sydney Anderson MLA
Mr Stewart Dickson MLA
Mr Tom Elliott MLA
Mr William Humphrey MLA
Mr Seán Lynch MLA
Ms Rosaleen McCorley MLA
Mr Patsy McGlone MLA
Mr Alban Maginness MLA
Mr Jim Wells MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Miss Leanne Johnston (Clerical Supervisor)

Apologies: None

2.05pm The meeting commenced in public session.

2.38pm Mr Jim Wells left the meeting.

5. Justice Bill 2014 – Briefing on the Principles of the Bill

2.39pm Maura Campbell, Deputy Director, and Chris Matthews, Bill Manager, Criminal Justice Development Division, Amanda Patterson, Criminal Policy and Legislation Division, Department of Justice and Tom Clarke, Operations Manager, AccessNI joined the meeting.

Ms Campbell outlined the principles of the Justice Bill 2014.

A question and answer session followed covering issues including: why proposed amendments the Department had indicated it wished to bring during Committee Stage of the Bill were not contained within the Bill before it was introduced; the need for the Department to provide more detail on its proposed amendments to enable the Committee to seek views on them; the views of the judiciary on the single jurisdiction for county courts and magistrates' courts provisions in the Bill; the number of preliminary inquiries that currently take place during committal proceedings; why the provisions in relation to early guilty pleas were not associated with the other court related provisions rather than included in a different section of the Bill; what effect placing victim statements on a statutory basis would have on sentencing considerations by Judges; how a single jurisdiction for county courts and magistrates' courts would provide greater flexibility for managing and processing court business; how the clauses relating to Youth Justice would deliver the recommendations of the Youth Justice Review; whether the Bill includes provisions in relation to community impact statements; and the outcome of the recent Supreme Court judgement relating to disclosure of cautions and convictions.

The briefing was recorded by Hansard.

The Chairman thanked the officials for their attendance and they left the meeting.

Agreed: The Committee agreed that it was content to support the principles of the Bill at Second Stage.

The Chairman advised Members that he would reflect the Committee's position in the Second Stage debate which was scheduled for 24 June 2014.

5.10pm The meeting was adjourned

Mr Paul Givan MLA

Chairman, Committee for Justice

[EXTRACT]

Wednesday 2 July 2014
Room 29, Parliament Buildings

Present: Mr Paul Givan MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Sydney Anderson MLA
Mr Stewart Dickson MLA
Mr Tom Elliott MLA
Mr William Humphrey MLA
Mr Seán Lynch MLA
Ms Rosaleen McCorley MLA
Mr Patsy McGlone MLA
Mr Alban Maginness MLA
Mr Jim Wells MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Miss Leanne Johnston (Clerical Supervisor)
Miss Marianne Doherty (Clerical Officer)

Apologies: None

2.07pm The meeting commenced in public session.

3.58pm Mr Tom Elliott left the meeting.

4.03pm Mr Alban Maginness left the meeting.

7. Proposals for Handling the Committee Stage of the Justice Bill

The Committee considered proposals for the handling of the Committee Stage of the Justice Bill including a draft Bill timetable, a draft media sign-posting notice, a draft letter seeking evidence on the Bill and a list of key stakeholders.

The Committee also considered correspondence from the Department of Justice providing a copy of the Delegated Powers Memorandum relating to the Bill and setting out information on a number of amendments it intended to bring forward for consideration during the Committee Stage of the Bill.

Mr Jim Wells MLA advised the Committee that he intended to bring forward an amendment to the Bill to restrict lawful abortions to National Health Service premises except in cases of urgency when access to National Health Service premises is not possible and where no fee is paid. He provided the wording of the amendment which also included an additional option to the existing legislation to provide for a period of 10 years imprisonment and a fine on conviction on indictment to be imposed and proposed that the Committee should seek views on his amendment when seeking evidence on the Bill.

The Committee discussed whether it was appropriate to seek views on individual Members' proposed amendments to a Bill when seeking views on the Bill and a range of views were expressed.

Agreed: The Committee agreed to seek views on the Department of Justice's proposed amendments, a provision to amend the Coroners Act (Northern Ireland) 1959 proposed by the Attorney General for Northern Ireland and first considered by the Committee during the Committee Stage of the Legal Aid and Coroners' Courts Bill and the amendment proposed by Mr Jim Wells MLA when seeking written evidence on the Bill.

Agreed: The Committee agreed a closing date of 12 September 2014 for receipt of written evidence.

Agreed: The Committee agreed a media sign-posting notice, a list of key stakeholders and a letter to issue seeking written evidence on the Bill and the proposed amendments outlined by the Department of Justice, the Attorney General for Northern Ireland and Mr Jim Wells MLA.

Agreed: The Committee agreed to forward a copy of the Delegated Powers Memorandum to the Assembly Examiner of Statutory Rules for his views/comments.

4.57pm Mr Raymond McCartney left the meeting.

5.12pm The meeting was adjourned

Mr Paul Givan MLA
Chairman, Committee for Justice

[EXTRACT]

Wednesday 10 September 2014
Room 21, Parliament Buildings

Present: Mr Paul Givan MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Sydney Anderson MLA
Mr Stewart Dickson MLA
Mr Tom Elliott MLA
Mr Seán Lynch MLA
Ms Rosaleen McCorley MLA
Mr Patsy McGlone MLA
Mr Alban Maginness MLA
Mr Jim Wells MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Keith McBride (Senior Assistant Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Miss Marianne Doherty (Clerical Officer)

Apologies: Mr William Humphrey MLA

2.08pm The meeting commenced in public session.

3. Matters Arising

iv. The Committee noted a response from the Department of Justice to issues raised in relation to Clause 84 of the Justice Bill during the oral briefing on the principles of the Bill on 18 June 2014.

3.13pm Ms McCorley left the meeting

3.18pm Mr Wells left the meeting.

3.35pm Mr McCartney left the meeting.

7. Justice Bill – Timetable for Committee Stage

The Committee considered the timetable for the Committee Stage of the Justice Bill and noted that a legislative scrutiny workshop with Daniel Greenberg to assist in scrutinising the Bill has been scheduled for 1 October 2014.

The Committee considered a motion to extend the Committee Stage of the Justice Bill.

Question put and agreed:

That, in accordance with Standing Order 33(4), the period referred to in Standing Order 33(2) be extended to 27 March 2015, in relation to the Committee Stage of the Justice Bill (NIA 37/11-15).

4.22pm The meeting was adjourned.

Mr Paul Givan MLA
Chairman, Committee for Justice

[EXTRACT]

Wednesday 17 September 2014
Room 21, Parliament Buildings

Present: Mr Paul Givan MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Sydney Anderson MLA
Mr Stewart Dickson MLA
Mr Tom Elliott MLA
Mr William Humphrey MLA
Mr Seán Lynch MLA
Ms Rosaleen McCorley MLA
Mr Patsy McGlone MLA
Mr Alban Maginness MLA
Mr Jim Wells MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Keith McBride (Senior Assistant Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Miss Leanne Johnston (Clerical Supervisor)

Apologies: None.

2.08pm The meeting commenced. in public session.

3.23pm Mr Patsy McGlone left the meeting.

4.10pm Mr Alban Maginness left the meeting.

5.01pm Mr Raymond McCartney left the meeting.

5.07pm Mr Tom Elliott left the meeting.

7. The Justice Bill – Update on the Delegated Powers Memorandum and Written Evidence

The Committee considered a report from the Assembly Examiner of Statutory Rules on his scrutiny of the delegated powers contained within the Justice Bill in which he raised an issue regarding the regulation-making powers in clauses 79(2) and 80 and noted an update on the written submissions received in relation to the Bill and the proposed amendments.

Agreed: The Committee agreed to refer the issue raised by the Examiner of Statutory Rules to the Department of Justice for a response.

Agreed: The Committee agreed to publish the written responses received on the Justice Bill and the proposed amendments on the Committee's webpage.

5.09pm Mr Tom Elliott joined the meeting

5.23pm The meeting was adjourned.

Mr Paul Givan MLA
Chairman, Committee for Justice

[EXTRACT]

Wednesday 15 October 2014
Room 21, Parliament Buildings

Present: Mr Paul Givan MLA (Chairman)
Mr Sammy Douglas MLA
Mr Tom Elliott MLA
Mr Paul Frew MLA
Mr Seán Lynch MLA
Mr Alban Maginness MLA
Mr Edwin Poots MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Miss Marianne Doherty (Clerical Officer)
Miss Anna McDaid (Assembly Bursary Student)

Apologies: Mr Chris Hazzard MLA
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Patsy McGlone MLA

2.08pm The meeting commenced. in public session.

3.19pm Mr Tom Elliott left the meeting.

3.34pm Mr Sammy Douglas left the meeting.

7. Justice Bill – Proposals for Oral Evidence Sessions

The Committee considered proposals for oral evidence sessions on the Justice Bill.

Agreed: The Committee agreed the oral evidence sessions on the Justice Bill and proposed amendments that would be scheduled from November 2014 onwards.

4.03pm The meeting was adjourned.

Mr Paul Givan MLA
Chairman, Committee for Justice

[EXTRACT]

Wednesday 5 November 2014
Room 21, Parliament Buildings

Present: Mr Paul Givan MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Stewart Dickson MLA
Mr Sammy Douglas MLA
Mr Tom Elliott MLA
Mr Paul Frew MLA
Mr Chris Hazzard MLA
Mr Seán Lynch MLA
Mr Alban Maginness MLA
Mr Edwin Poots MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Keith McBride (Senior Assistant Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Miss Marianne Doherty (Clerical Officer)
Miss Anna McDaid (Assembly Bursary Student)

Apologies: Mr Patsy McGlone MLA

2.45pm The meeting moved into public session.

4. Matters Arising

ii. The Committee noted an updated Forward Work Programme for November 2014 and discussed the Justice Bill oral evidence sessions.

Agreed: The Committee agreed that arrangements should be made for the Department of Health, Social Services and Public Safety to provide oral evidence on the Attorney General's proposed amendment following receipt of its written submission.

Agreed: The Committee agreed to write again to the Regulation and Quality Improvement Authority and indicate that it wants representatives of the body to attend to give oral evidence on Jim Well's proposed amendment and the letter should be copied to the Minister of Health, Social Services and Public Safety and the Permanent Secretary of the Department.

8. The Justice Bill – Response from the Department of Justice on issues relating to the Delegated Powers

3.43pm Mr Chris Hazzard left the meeting.

The Committee noted a response from the Department of Justice indicating that it was receptive to the issues raised by the Examiner of Statutory Rules in his Report on the delegated powers within the Justice Bill in relation to the regulation-making powers in clauses 79(2) (the general duty to progress criminal proceedings) and clause 80 (case management regulations) and was minded to bring forward amendments at Consideration Stage of the Bill.

Agreed: The Committee agreed to consider the wording of the Department of Justice's proposed amendments to clauses 79 and 80 before completion of Committee Stage of the Bill to ensure that they adequately address the issues raised.

3.56pm The meeting was adjourned.

Mr Paul Givan MLA

Chairman, Committee for Justice

[EXTRACT]

Wednesday 12 November 2014
Room 21, Parliament Buildings

Present: Mr Paul Givan MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Stewart Dickson MLA
Mr Sammy Douglas MLA
Mr Tom Elliott MLA
Mr Paul Frew MLA
Mr Seán Lynch MLA
Mr Alban Maginness MLA
Mr Patsy McGlone MLA
Mr Edwin Poots MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Keith McBride (Senior Assistant Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Miss Marianne Doherty (Clerical Officer)

Apologies: Mr Chris Hazzard MLA

2.07pm The meeting commenced. in public session.

4. The Justice Bill – Oral Evidence from the Children's Law Centre

2.13pm Ms Natalie Whelehan, Policy Officer and Mr John Patrick Clayton, Assistant Policy Officer, the Children's Law Centre joined the meeting.

2.16pm Mr Stewart Dickson joined the meeting.

Ms Whelehan and Mr Clayton outlined the key issues in the Children's Law Centre's written evidence on the Justice Bill.

A detailed question and answer session followed covering issues including: potential drawbacks of a single jurisdiction for the County Courts and Magistrates' Courts; the reasons why the single jurisdiction proposals may have a differential adverse impact upon children; measures to mitigate against the potential adverse impact upon children; the current position regarding the proposed administrative framework; the barriers to childrens participation in court; support for child victims and witnesses; the need for Clauses 28 and 30 to reflect rights relating to the best interests of the child; mechanisms to ensure that the criminal justice statutory agencies comply with the Victim Charter; whether there should be particular reference to victims and witnesses who are children in the Victim Charter; the definition of a victim in the Charter; the impact of the disclosure of criminal record information in relation to children and young people; the importance of young people making informed decisions about whether to accept a diversionary disposal; understanding the disclosure implications of diversionary disposals; provisions to have a criminal record 'wiped clean' when a child reaches the age of 18; AccessNI new filtering arrangements; the recommendation of the Youth Justice Review that diversionary disposals should not be disclosed; the definition of a child; what offences committed by young people should continue to be disclosed in a criminal record check; the purpose of the proposed independent review mechanism and how this could address some of the issues relating to disclosure; whether the extension of live link facilities could have a detrimental impact on the participation and understanding of a child in court proceedings; whether the Lord Chief Justice's Practice Direction would provide sufficient protection to safeguard the participation of children in court proceedings; the application of Violent Offences Prevention Orders (VOPO) on all eligible offenders regardless of age and whether such an order should not apply to under 18s; the restriction of the application of Violent Offender Orders in England and Wales to persons ages 18 or over; the protection offered by a VOPO; and whether a Sexual Offences Prevention Order applies to persons under 18.

3.12pm Mr Tom Elliott left the meeting.

The briefing was recorded by Hansard.

The Chairman thanked the representatives from the Children's Law Centre for their attendance and they left the meeting.

5. The Justice Bill – Oral Evidence from the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO)

3.20pm Ms Olwen Lyner Chief Executive, Ms Anne Reid, Jobtrack Senior Practitioner and Ms Julia Kenny, Policy and Research Coordinator, NIACRO joined the meeting.

3.20pm Mr Alban Maginness left the meeting.

Ms Lyner outlined the key issues in NIACRO's written evidence on the Justice Bill.

3.31pm Mr Patsy McGlone left the meeting.

A detailed question and answer session followed covering issues including: the impact of prosecutorial fines upon those who do not have the financial capability to pay; alternatives to prosecutorial fines; whether prosecutorial fines could be more restorative nature and make use of Supervised Activity Orders; whether a definition of low level summary offences should be set out in the legislation; the assessment of a person's financial capability to pay a fine; the payback scheme operating in Scotland; NIACRO's recommendation that the definition of a 'victim' is expanded to include 'indirect victims'; whether the use of criminal records checks are being monitored to ensure consistency and fairness; measures to gauge the extent to which the new filtering arrangements have achieved the purpose of increased protection in Northern Ireland; whether AccessNI should be more customer focused and the application of the Rehabilitation of Offenders legislation in England and Wales and whether the Rehabilitation of Offenders Legislation in Northern Ireland requires revision.

The briefing was recorded by Hansard.

The Chairman thanked the representatives from NIACRO for their attendance and they left the meeting.

6. The Justice Bill – Oral Evidence from the Northern Ireland Human Rights Commission

3.56pm Mr Les Allamby Chief Commissioner, Dr David Russell, Deputy Director and Mr Colin Caughey, Policy Worker, Northern Ireland Human Rights Commission joined the meeting.

Mr Allamby outlined the key issues in the Northern Ireland Human Rights Commission's written evidence on the Justice Bill.

4.04pm Mr Patsy McGlone joined the meeting.

4.13pm Mr Sammy Douglas left the meeting.

A detailed question and answer session followed covering issues including: whether the Bill should be amended to reflect that a Prosecutor must have regard to the financial circumstances of an offender when considering a prosecutorial fine; the Independent Monitoring Mechanism regarding the relevancy of information to be provided in an enhanced criminal record certificate and how this would work in practice; whether the extension of live link facilities could have a detrimental impact on the participation and understanding of a child in court proceedings; the need for safeguards to ensure 'informed consent' has been given; the application of VOPOs to persons aged under 18; measures to ensure informed decisions can be taken in relation to early guilty pleas; the need for a mechanism to monitor the outworkings of the provisions in the Bill regarding use of live links and encouraging earlier guilty pleas once introduced to assess the impact; and whether Domestic Violence Protection Orders similar to those in England and Wales should be included in the Bill.

Mr Allamby agreed the Human Rights Commission would provide its opinion on the application of VOPOs to persons aged under 18 to the Committee.

The briefing was recorded by Hansard.

The Chairman thanked the representatives of the Northern Ireland Human Rights Commission for their attendance and they left the meeting.

4.57pm The meeting was adjourned.

Mr Paul Givan MLA

Chairman, Committee for Justice

[EXTRACT]

Wednesday 19 November 2014
Room 21, Parliament Buildings

Present: Mr Paul Givan MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Stewart Dickson MLA
Mr Tom Elliott MLA
Mr Paul Frew MLA
Mr Chris Hazzard MLA
Mr Seán Lynch MLA
Mr Alban Maginness MLA
Mr Edwin Poots MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Keith McBride (Senior Assistant Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Miss Marianne Doherty (Clerical Officer)

Apologies: Mr Sammy Douglas MLA
Mr Patsy McGlone MLA

2.05pm The meeting commenced in public session.

2.33pm Mr Alban Maginness left the meeting.

2.46pm Mr Stewart Dickson left the meeting.

5. The Justice Bill – Oral Evidence from the Public Prosecution Service

2.58pm Mr Barra McGrory QC, Director of Public Prosecutions, and Mr Ciaran McQuillan, Assistant Director, Policy and Information, Public Prosecution Service (PPS) joined the meeting.

3.02pm Mr Stewart Dickson joined the meeting.

Mr McGrory and Mr McQuillan outlined the key issues in the Public Prosecution Service's written evidence on the Justice Bill.

A detailed question and answer session followed covering issues including: the implications of a single jurisdiction for County Courts and Magistrates Courts on the delivery of services by the PPS; the potential advantages and drawbacks of the single jurisdiction proposals; the cost implications for the PPS; the need for appropriate safeguards to protect victims and witnesses; the guidelines necessary to support the single jurisdiction proposals; whether there is a requirement for committal proceedings at all; the original intention of committal proceedings; whether the changes to committal proceedings were being driven by cost saving considerations; changes to the disclosure process; how much time would be saved if committal proceedings were removed altogether; the beneficial effect on the system if changes are made to committal proceedings; the types of penalty point cases that proceed to court; the types of cases that will be referred to the PPS for consideration of prosecutorial fine; how the prosecutorial fine system would work; the benefits of including penalty points in the prosecutorial fine process; how to ensure consistency in relation to prosecutorial fines; how the penalty points system for motoring related offences operates; the potential use of prosecutorial fines for those who commit low level offences against front-line delivery public sector workers; potential budget pressures for the Victim and Witness Care Unit in 2015/16; whether the extension of live link facilities could have a detrimental impact on the participation and understanding of a child in court proceedings; whether there are implications for a defendant if the first remand hearing is made by live link;

4.00pm Mr Stewart Dickson left the meeting.

4.11pm Mr Alban Maginness joined the meeting.

responsibility for advising a defendant about early guilty pleas; the statistics regarding the points in the process defendants change their pleas; what safeguards are required in the system in relation to encouraging earlier guilty pleas; whether there was a role for the PPS in advising defendants in relation to early guilty pleas; the role of the judge; how a victim's voice is heard if a guilty plea is made; the application of VOPOs to persons under the age of 18; the PPS view of Domestic Violence Prevention Orders; the lack of rights of audience of employed solicitors and barristers in the courts; and whether rights of audience should be extended to PPS staff.

The briefing was recorded by Hansard.

The Chairman thanked the representatives from the Public Prosecution Service for their attendance and they left the meeting.

6. The Justice Bill – Oral Evidence from the Law Society of Northern Ireland

4.21pm Ms Arleen Elliott, Junior Vice President, Mr Alan Hunter, Chief Executive, and Mr Peter O'Brien, Deputy Chief Executive, Law Society of Northern Ireland joined the meeting.

Ms Elliott outlined the key issues in the Law Society's written evidence on the Justice Bill.

4.32pm The Chairman left the meeting and the Deputy Chairman took the chair.

4.32pm Mr Tom Elliott left the meeting.

A detailed question and answer session followed covering issues including: the implications of a single jurisdiction for County Courts and Magistrates Courts; whether the single jurisdiction proposals are driven by cost saving considerations;

4.46pm The Chairman rejoined the meeting and resumed the chair.

the drawbacks to the single jurisdiction proposals and how they could potentially adversely affect defendants, victims and witnesses; whether safeguards are required; the implications of the single jurisdiction proposals upon County Court and Magistrates Court judges; the benefits of oral evidence in committal proceedings; the benefits of mixed committal proceedings; the numbers of PEs and PIs conducted each year; whether a district judge could stop a case based on the quality of the evidence presented at committal; whether removing committal proceedings would decrease delay in the criminal justice system; the Law Society's proposals for a balanced approach to mixed committals; responsibility for advising a defendant about early guilty pleas; the Law Society's concern regarding the proposals and its view that the current system works well; the role envisaged by the Law Society for the PPS; plea bargaining; and the Law Society's view on granting rights of audience to the Attorney General's and PPS staff.

5.17pm Mr Chris Hazzard left the meeting.

5.29pm Mr Raymond McCartney left the meeting.

The briefing was recorded by Hansard.

The Chairman thanked the representatives from the Law Society for their attendance and they left the meeting.

7. The Justice Bill – Oral Evidence from Women's Aid Federation Northern Ireland

5.37pm Ms Louise Kennedy, Regional Policy and Information Co-ordinator and Ms Sharon Burnett, Management Co-ordinator, Causeway Women's Aid, Women's Aid Federation NI joined the meeting.

Ms Kennedy outlined the key issues in the Women's Aid Federation's written evidence on the Justice Bill.

A detailed question and answer session followed covering issues including: whether the Bill provides sufficient clarity regarding how a Victim Statement can be used by judges; whether a child's criminal record should be 'wiped clean' when they reach the age of 18; what types of crime should never be removed from a person's criminal record; why domestic violence related offences should not be covered by prosecutorial fines; and the need for VOPOs.

The Committee agreed to consider Agenda items 8 and 9.

6.06pm Mr Alban Maginness left the meeting.

10. The Justice Bill – Oral Evidence from the Women's Aid Federation Northern Ireland (cont'd)

6.06pm The question and answer session with the representatives of the Women's Aid Federation for Northern Ireland resumed.

The issues covered included: delays within the criminal justice system; the role of the Victims Charter; the need for specialist training in relation to domestic violence offences for the criminal justice organisations; the low rates of conviction relating to Domestic Violence and whether the Bill should make provision for Domestic Violence Prevention Orders.

The briefing was recorded by Hansard.

The Chairman thanked the representatives from Women's Aid Federation NI for their attendance and they left the meeting.

6.21pm The meeting was adjourned.

Mr Paul Givan MLA
Chairman, Committee for Justice

[EXTRACT]

Wednesday 26 November 2014
Room 21, Parliament Buildings

Present: Mr Paul Givan MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Stewart Dickson MLA
Mr Sammy Douglas MLA
Mr Tom Elliott MLA
Mr Paul Frew MLA
Mr Seán Lynch MLA
Mr Alban Maginness MLA
Mr Patsy McGlone MLA
Mr Edwin Poots MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Keith McBride (Senior Assistant Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Ms Alison Ferguson (Clerical Supervisor)
Ms Anna McDaid (Assembly Bursary Student)

Apologies: None.

2.06pm The meeting commenced in closed session, the Deputy Chairman in the Chair.

2.08pm The Chairman joined the meeting and took the Chair.

2.46pm The meeting moved into public session.

5. The Justice Bill – Department of Justice Proposed Additional Amendments

The Committee considered information provided by the Department of Justice on a number of proposed additional amendments that it planned to bring forward in relation to the Justice Bill 2014 and noted that there would be opportunity to consider them further when departmental officials provided oral evidence on the Bill in early 2015.

19. The Justice Bill – Proposed Amendment by Mr Jim Wells MLA Oral Evidence from Amnesty International UK

4.13pm Ms Grainne Teggart, Northern Ireland Campaigner, Amnesty International UK joined the meeting.

Ms Teggart outlined the key issues in Amnesty International's written evidence on the proposed amendment by Mr Jim Wells MLA to the Justice Bill.

A detailed question and answer session followed covering issues including: whether the amendment changed existing legislation in relation to access to abortion in Northern Ireland; whether the amendment changed the grounds on which legal abortion can be sought in Northern Ireland; levels of access to abortion in NHS facilities; when the right to life begins; what European and International Human Rights Standards and Conventions state in respect to the right to life and when this begins; whether Amnesty International considers Northern Ireland to be a hostile place for women who wish to avail of legal abortion services; Amnesty International's position regarding extending the 1967 Abortion Act to Northern Ireland;

4.34pm The Chairman left the meeting and the Deputy Chairman took the Chair.

The role of the Department of Health, Social Services and Public Safety and RQIA in inspecting and monitoring private abortion service providers in Northern Ireland; the need for the Department of Health, Social Services and Public Safety to publish its Guidance in

respect of lawful termination of pregnancy in Northern Ireland; the rationale for Amnesty International's opposition to the 10 year imprisonment option provided by the amendment; whether in the view of Amnesty International, the amendment restricts what is already a very restricted choice for women in Northern Ireland; whether the EU Convention on the Rights of a Child affords any protections pre-birth; whether the rationale for the International Convention preventing the execution of pregnant women is about preserving the life of the foetus; whether the European Court of Human Rights has confirmed the rights of a woman to have access to abortion services; the 2007 ECHR case Tysiac v Poland; whether a European State has the right to prohibit abortion; the difference between International Human Rights Standards and ECHR Rulings;

4.53pm Mr Alban Maginness left the meeting.

whether Amnesty International supports abortion in any circumstances; whether human rights extend prenatally; why Amnesty International did not cover child's rights in its written submission; an explanation of Amnesty International's view that the amendment is gender discriminatory; examples of other countries that have restrictive laws;

4.59pm The Chairman rejoined the meeting and took the Chair.

5.00pm Mr Raymond McCartney left the meeting.

The view of Amnesty International on when life begins; whether Amnesty International would support a women's right to have access to abortion services beyond 24 weeks; whether a women's reproductive rights should override the rights of the unborn child; whether there should be a wider debate on the rights of the unborn child; the financial cost of administering an abortion; whether private companies are needed and whether Amnesty International had any concerns regarding the regulation and monitoring of such of private companies that provide abortion services; whether there is a conflict of interest for private companies who offer abortion services; and how to ensure that the criminal law is being upheld in Northern Ireland through proper accountability and regulation.

The briefing was recorded by Hansard.

The Chairman thanked Ms Teggart for her attendance and she left the meeting.

20. The Justice Bill – Proposed Amendment by Mr Jim Wells MLA Oral Evidence from CARE, Evangelical Alliance Northern Ireland and Christian Medical Fellowship

5.23pm Mr Mark Baillie, Public Affairs Officer, CARE, Mr David Smyth, Public Policy Officer, Evangelical Alliance NI and Ms Philippa Taylor, Head of Public Policy, Christian Medical Fellowship, joined the meeting.

Mr Baillie, Mr Smyth and Ms Taylor outlined the key issues in their respective organisations' written evidence on the proposed amendment by Mr Jim Wells MLA to the Justice Bill.

5.41pm Mr Tom Elliott joined the meeting.

A detailed question and answer session followed covering issues including: the Department of Health, Social Services and Public Safety's responsibility for inspecting and monitoring private abortion service providers in Northern Ireland; the reasons for objections to the provision of abortion services by the Marie Stopes Clinic; whether there was a need for abortions to be exclusively delivered by the NHS; whether the law should allow a woman to choose between medical provision in an NHS or private facility; an explanation for the increase in the number of abortions carried out in GB; whether human rights exist prenatally; at what stage life begins; pregnancy as a result of rape or incest; the campaigning role of the Marie Stopes organisation to change the law relating to abortion and make it more freely available;

6.17pm Mr Patsy McGlone left the meeting.

whether restricting abortion services to NHS facilities would ensure consistency of application and compliance with the legislation; whether it is reasonable for the State to restrict abortion; the lack of availability of information regarding the operation of the Belfast MS Clinic; the lack of regulation of the Belfast MS Clinic; and the inability to ensure that the Clinic is not breaching the criminal law relating to abortion in Northern Ireland, hence the need for the amendment.

The briefing was recorded by Hansard.

The Chairman thanked the representatives from CARE, Evangelical Alliance NI and the Christian Medical Fellowship for their attendance and they left the meeting.

6.26pm The meeting was adjourned

Mr Paul Givan MLA

Chairman, Committee for Justice

[EXTRACT]

Wednesday 3 December 2014
Room 21, Parliament Buildings

Present: Mr Paul Givan MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Stewart Dickson MLA
Mr Sammy Douglas MLA
Mr Paul Frew MLA
Mr Chris Hazzard MLA
Mr Seán Lynch MLA
Mr Alban Maginness MLA
Mr Patsy McGlone MLA
Mr Edwin Poots MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Keith McBride (Senior Assistant Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Ms Alison Ferguson (Clerical Supervisor)
Ms Marianne Doherty (Clerical Officer)

Apologies: Mr Tom Elliott MLA

2.04pm The meeting commenced in public session.

3. Matters Arising

Mr Stewart Dickson MLA provided clarification of comments that he had made during an evidence session on the Justice Bill with CARE NI, Evangelical Alliance Northern Ireland and the Christian Medical Fellowship on 26 November 2014 and placed on record his concern that his comments had been misrepresented by Mr Edwin Poots MLA later in the same evidence session.

2.07pm Mr Alban Maginness joined the meeting.

4. The Justice Bill – Oral Evidence on the Jim Wells MLA amendment from the Northern Ireland Human Rights Commission

2.07pm Mr Les Allamby, Chief Commissioner, Dr David Russell, Deputy Director and Ms Kyra Hild, Researcher, Northern Ireland Human Rights Commission (NIHRC) joined the meeting.

Mr Allamby outlined the key issues in the Northern Ireland Human Rights Commission's written evidence on the proposed amendment by Mr Jim Wells MLA to the Justice Bill.

A detailed question and answer session followed covering issues including: the rights conferred by Article 8 of the European Convention on Human Rights (ECHR) in relation to access to abortion; whether the European Court of Human Rights (ECtHR) has confirmed the rights of a woman to have access to abortion services; the implications of the ECtHR case P. and S. v Poland; whether the P. and S. v Poland case highlighted in the NIHRC's written submission was a suitable comparator to Northern Ireland in respect of access to abortion services; whether Mr Well's amendment changed existing legislation in relation to access to abortion in Northern Ireland; views on the 10-year imprisonment option provided by the amendment; an explanation of the 'chilling effect' of criminal provisions regarding abortion on the medical consultation process; the appropriateness of criminal provisions; the NIHRC's views on whether the circumstances in which abortions can be performed should be extended; when the right to life begins; what European and International Human Rights Standards and Conventions state in respect to the right to life and when this begins; the

scope of discretion for each European region to determine its domestic law in relation to the provision of abortion services;

2.44pm Mr Edwin Poots joined the meeting.

the limitations on the 'margin of appreciation' exercised by individual states in relation to domestic policy; the outcome of the ECtHR case A, B, and C v Ireland; the NIHRC's position regarding the 1967 Abortion Act; why the NIHRC's draft Bill of Rights did not address the issue of abortion and whether there was a failure to reach consensus on this issue; whether there are examples of limitations on provision of private medical services in other European Member States; the areas of the amendment which the NIHRC believes requires greater clarity; whether the NIHRC believes the existing legislation has a 'chilling effect' on the clinical decision of medical practitioners;

3.12pm Mr Seán Lynch joined the meeting.

whether the NIHRC is usurping the role of the Assembly and the Executive by initiating legal action against the Department of Justice; the role of the NIHRC; the legally available forms of contraceptive the NIHRC believe may be restricted by the amendment; whether the rights of the unborn child can be separated from the rights of the mother; the rights of the deceased; whether human rights extend prenatally; whether a women's reproductive rights should override the rights of the unborn child; at what point a child is considered to be conceived; the distinct and separate roles of the Legislature and the Judiciary; and the need for a Regulatory Framework in respect of the provision of abortion services.

4.16pm Mr Sammy Douglas left the meeting.

Mr Allamby outlined the Northern Ireland Human Rights Commission's further assessment of clauses 50 - 71 of the Bill which make provision for Violent Offences Prevention Orders (VOPOs) and in particular, the application of the proposed VOPOs in relation to children.

A question and answer session followed covering issues including clarification of the age at which the proposed VOPO could apply to a child; whether the NIHRC should have advised the Department of Justice of its concerns in relation to the application of VOPOs to children before the introduction of the Bill; and the age at which the NIHRC believe criminal responsibility should be set.

4.21pm Mr Alban Maginness left the meeting.

4.22pm Mr Chris Hazzard left the meeting.

The briefing was recorded by Hansard.

The Chairman thanked the representatives from the Northern Ireland Human Rights Commission for their attendance and they left the meeting.

5. The Justice Bill – Oral Evidence on the Jim Wells MLA amendment from Precious Life, Women's Network and SPUC

4.29pm Ms Bernadette Smyth, Precious Life, Ms Caitriona Forde, Women's Network and Mr Liam Gibson, Northern Ireland Development Officer, Society for the Protection of the Unborn Child, joined the meeting.

Ms Smyth, Ms Forde and Mr Gibson outlined the key issues in their respective organisations' written evidence on the proposed amendment by Mr Jim Wells MLA to the Justice Bill.

A detailed question and answer session followed covering issues including the position of European and International Human Rights Standards and Conventions in relation to the rights of the child; the European and International Human Rights Standards and Conventions in relation to abortion; whether the rights of the unborn child can be separated from the

rights of the mother; the position of the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) on the right to an abortion and the legal jurisdiction of CEDAW; whether the organisations supported the existing legislation regarding the provision of abortion services in Northern Ireland; the benefits of restricting the provision of abortion services to NHS facilities; the reasons for objections to the provision of abortion services by the Marie Stopes Clinic; concerns regarding the Marie Stopes Clinic and lack of regulation; whether a women's reproductive rights should override the rights of the unborn child; the views of the organisations on the 'morning after pill'; and whether the proposed amendment could cover the 'morning after pill'.

5.25pm Mr Paul Frew left the meeting.

The briefing was recorded by Hansard.

The Chairman thanked the representatives from Precious Life, Women's Network and the Society for the Protection of the Unborn Child for their attendance and they left the meeting.

5.43pm Mr Patsy McGlone left the meeting.

6.06pm The meeting was adjourned

Mr Paul Givan MLA

Chairman, Committee for Justice

[EXTRACT]

Wednesday 14 January 2015
Room 21, Parliament Buildings

Present: Mr Alastair Ross MLA (Chairman)
Mr Stewart Dickson MLA
Mr Sammy Douglas MLA
Mr Tom Elliott MLA
Mr Paul Frew MLA
Mr Chris Hazzard MLA
Mr Seán Lynch MLA
Mr Alban Maginness MLA
Mr Patsy McGlone MLA
Mr Edwin Poots MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Keith McBride (Senior Assistant Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Ms Alison Ferguson (Clerical Supervisor)
Ms Marianne Doherty (Clerical Officer)

Apologies: Mr Raymond McCartney MLA (Deputy Chairman)

2.02pm The meeting commenced in public session.

4. The Justice Bill – Proposed Amendment by Jim Wells MLA – Oral Evidence from the Regulation and Quality Improvement Authority (RQIA)

2.07pm Mr Glenn Houston, Chief Executive and Mrs Kathy Fodey, Director of Regulation and Nursing, RQIA joined the meeting.

2.11pm Mr Tom Elliott joined the meeting.

Mr Houston outlined the key issues in RQIA's written evidence on the proposed amendment by Mr Jim Wells MLA to the Justice Bill.

A detailed question and answer session followed covering issues including: the role of the RQIA; whether the RQIA can scrutinise and question clinical decision making; RQIA's role in relation to independent clinics including the Marie Stopes Clinic; the powers of inspection and regulation of abortion clinics in England and Wales; RQIA's view that the amendment may have possible unintended consequences; how the amendment could be changed to address these; why RQIA viewed the amendment as problematic; the wording of the 1967 Abortion Act; what lawful activities the RQIA believes the amendment would criminalise; the use of abortion drugs outside a clinical setting; what information the RQIA had regarding how many abortions had been carried out in the Marie Stopes clinic; whether RQIA could confirm that any abortions that take place in the Marie Stopes clinic are being carried out within the law as it currently stands in Northern Ireland; what other premises in Northern Ireland offered terminations outside the NHS; the information required to be provided by private clinics; whether RQIA had received legal advice on the amendment; the actions of the RQIA if it suspects a breach in criminal law; whether RQIA's role is different for private and public facilities; the level of RQIA's powers of investigation; whether the RQIA had ever received a complaint in relation to the operations of the Marie Stopes Clinic; and the outcome of the last RQIA inspection of the Marie Stopes Clinic in Belfast.

2.54pm Mr Chris Hazzard left the meeting.

The briefing was recorded by Hansard.

The Chairman thanked the representatives from RQIA for their attendance and they left the meeting.

6. The Justice Bill – Proposed Amendments by the Department of Justice and the Attorney General for Northern Ireland

The Committee considered correspondence from the Department of Justice regarding proposed amendments to the Justice Bill relating to sexual offences against children. The Committee also considered further information from the Attorney General for Northern Ireland regarding his proposed amendment and noted there would be an opportunity to explore any issues regarding it during the oral evidence sessions scheduled for later in the month.

Agreed: The Committee agreed that it was content with the Minister of Justice's proposed amendments in relation to sexual offences against children.

4.25pm The meeting was adjourned

Mr Alastair Ross MLA

Chairman, Committee for Justice

[EXTRACT]

Wednesday 21 January 2015
Room 21, Parliament Buildings

Present: Mr Alastair Ross MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Sammy Douglas MLA
Mr Tom Elliott MLA
Mr Paul Frew MLA
Mr Seán Lynch MLA
Mr Alban Maginness MLA
Mr Patsy McGlone MLA
Mr Edwin Poots MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Keith McBride (Senior Assistant Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Ms Marianne Doherty (Clerical Officer)
Ms Anna McDaid (Assembly Bursary Student)

Apologies: Mr Stewart Dickson MLA
Mr Chris Hazzard MLA

2.01pm The meeting commenced in public session.

4. The Justice Bill – Proposed Amendment by the Attorney General for Northern Ireland – Oral Evidence from the Health and Social Care Board

2.06pm Mrs Fionnuala McAndrew, Director of Social Care and Children, Mr Alphy Maginness, Director of Legal Services, and Ms Ann Kane, Governance Manager, Health and Social Care Board joined the meeting.

Mr Alban Maginness MLA declared an interest as one of the witnesses was a close family member.

Ms McAndrew outlined the key issues in the Health and Social Care Board's (HSCB) written evidence on the proposed amendment by the Attorney General for Northern Ireland.

A detailed question and answer session followed covering issues including: the difference in the views expressed by the HSCB and the South Eastern Health and Social Care Trust in relation to the proposed amendment; why the HSCB did not believe the amendment would provide clarity regarding the provision of papers; whether the Attorney General should have to make an application to the High Court to exercise the power if the proposed amendment was accepted; examples of the unintended consequences that the HSCB believed may occur if the amendment was accepted; how the coroner is assured that he has received all the necessary information and what safeguards exist to ensure this happens; the criteria used to determine a serious adverse incident;

2.25pm Mr Sammy Douglas joined the meeting.

the roles of the Attorney General and the Coroner in relation to Inquests; whether public concern could potentially trigger the Attorney General's interest in a case; the types of reports that must be shared with the Coroner;

2.40pm Mr Patsy McGlone left the meeting.

the intention of the law in relation to the powers of the Attorney General to direct an inquest; the policy intent of the proposed amendment; the purpose of serious adverse incident reports; the potential detrimental impact if reports are used for a purpose for which they

were not intended; the difficulties the amendment would present to the Trusts and the Health and Social Care Board; and what difference the amendment would make to the provision of information to the Attorney General.

2.54pm Mr Tom Elliott left the meeting.

The briefing was recorded by Hansard.

The Chairman thanked the representatives from the Health and Social Care Board for their attendance and they left the meeting.

Agreed: The Committee agreed to commission a research paper on the arrangements in other jurisdictions.

5.15pm The meeting was adjourned

Mr Alastair Ross MLA

Chairman, Committee for Justice

[EXTRACT]

Wednesday 28 January 2015
Room 21, Parliament Buildings

Present: Mr Alastair Ross MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Stewart Dickson MLA
Mr Sammy Douglas MLA
Mr Tom Elliott MLA
Mr Paul Frew MLA
Mr Alban Maginness MLA
Mr Patsy McGlone MLA
Mr Edwin Poots MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Keith McBride (Senior Assistant Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Ms Anna McDaid (Assembly Bursary Student)

Apologies: Mr Chris Hazzard MLA
Mr Seán Lynch MLA

2.01pm The meeting commenced in public session.

3. Matters Arising

i. The Committee noted correspondence from the Northern Ireland Human Rights Commission providing additional information in relation to Mr Jim Well's proposed amendment to the Justice Bill.

2.03pm Mr Alban Maginness joined the meeting.

2.12pm Mr Patsy McGlone joined the meeting.

6. The Justice Bill – Proposed Amendment by the Attorney General for Northern Ireland - Oral evidence from the Department of Health, Social Services and Public Safety

4.27pm Dr Paddy Woods, Deputy Chief Medical Officer, Mr Fergal Bradley, Director of Safety, Quality and Standards Directorate and Mr David Best, Head of Learning, Litigation and Service Framework Development Branch, Department of Health, Social Services and Public Safety joined the meeting.

Dr Woods outlined the key issues in the Department of Health, Social Services and Public Safety's written evidence on the proposed amendment by the Attorney General for Northern Ireland.

4.50pm Mr Edwin Poots left the meeting.

A detailed question and answer session followed covering issues including: why the Health Department viewed the Attorney General's proposed powers as unnecessary; the current powers of the Attorney General to access papers; the types of improvements the Health Department is undertaking with regard to the reporting of deaths; whether there should be full disclosure of papers in cases referred to the Coroner; the nature and purpose of a Serious Adverse Incident Report; possible unintended consequences of the proposed amendment; the system in Scotland in which a percentage of deaths are randomly selected and referred for Review to provide checks and balances; whether the Health Department had discussed the proposed amendment with the Attorney General; the need for further clarification of the rationale for the Attorney General's proposal; the wide scope of the

proposed amendment and the need to consider what information is necessary; and whether the proposed powers are proportionate.

The briefing was recorded by Hansard.

The Chairman thanked the officials for their attendance and they left the meeting.

5.31pm The meeting was adjourned

Mr Alastair Ross MLA
Chairman, Committee for Justice

[EXTRACT]

Wednesday 4 February 2015
Room 21, Parliament Buildings

Present: Mr Raymond McCartney MLA (Deputy Chairman)
Mr Sammy Douglas MLA
Mr Tom Elliott MLA
Mr Paul Frew MLA
Mr Chris Hazzard MLA
Mr Seán Lynch MLA
Mr Alban Maginness MLA
Mr Patsy McGlone MLA
Mr Edwin Poots MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Keith McBride (Senior Assistant Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Ms Marianne Doherty (Clerical Officer)
Ms Anna McDaid (Assembly Bursary Student)

Apologies: Mr Alastair Ross MLA (Chairman)
Mr Stewart Dickson MLA

2.04pm The meeting commenced in public session, the Deputy Chairman in the Chair.

4. The Justice Bill and Proposed Amendments – Oral evidence from the Attorney General for Northern Ireland

2.06pm The Attorney General for Northern Ireland, Mr John Larkin QC, joined the meeting.

The Attorney General briefly outlined his views on the Jim Wells MLA proposed amendment to the Justice Bill and then went on to outline his proposed amendment to the Coroner's Act (Northern Ireland) 1959 and the issues raised in the written and oral evidence received by the Committee.

2.21pm Mr Patsy McGlone joined the meeting.

2.23pm Mr Edwin Poots joined the meeting.

2.42pm Mr Tom Elliott joined the meeting.

A detailed question and answer session followed covering issues including: whether the proposed amendment was necessary to provide additional safeguards; whether the amendment would provide access to an individual's private papers; whether there would be unintended consequences for clinical staff and families; whether the amendment would discourage medical staff in participating in Serious Adverse Incident Reviews; what added value these additional powers would provide; whether the Attorney General's existing powers are sufficient; what documents would be covered by the amendment; the use of legal professional privilege; examples of when a request for information from the Attorney General has been refused; the types of information to which the Attorney General wishes to gain access; how wide the degree of discretion is for the Attorney General to direct an inquest; current procedures regarding when deaths should be referred to the Coroner; whether the current procedures are being applied properly; the clinical duty to maintain medical records; how the Attorney General would be alerted to the existence of cases in which he would use his powers to request information; whether as a result of the new power work would be displaced from the Coroner's Office to the Attorney General's Office; whether the amendment would place an additional burden on health professionals; how often the Attorney General anticipated using the proposed powers; how often the Attorney General is approached by

individual members of the public and families in relation to deaths; whether the amendment will further impede openness and transparency in the Health Service or discourage it; the accountability of medical practitioners; and the rationale for the amendment and whether the power it provides is proportionate.

3.15pm Mr Patsy McGlone left the meeting.

The Attorney General outlined his proposals for legislative provision in relation to Rights of Audience for Lawyers working in his office.

A question and answer session followed covering issues including: the mechanism currently provided for by the Justice (Northern Ireland) Act 2011; the reasons for the delay in the production of the Law Society Regulations; the importance of the independence of the Bar; whether the proposal covered both solicitors and barristers in the Attorney General's Office; the number of lawyers within the Attorney General's office to whom the provisions would apply; the number of cases in which the rights of audience for his staff would be used; the Attorney General's views on extending the same rights of audience to the Public Prosecution Service; whether the proposal if adopted would result in a piecemeal approach to the provision of rights of audience and whether this was the correct way to proceed; the benefits and disadvantages of the proposal; whether there was any downside for the public; raising standards of advocacy; and whether the extension of the rights of audience to the Attorney General's office would result in cost savings.

The briefing was recorded by Hansard.

Agreed: The Committee agreed to write to the Attorney General on any issues/questions Members wished to raise with him in relation to the Justice Bill.

3.49pm Mr Seán Lynch left the meeting.

7. The Justice Bill – Oral evidence from the Department of Justice on Part 4 – Victims and Witnesses and Part 6 - Live Links in Criminal Proceedings

3.50pm Ms Maura Campbell, Deputy Director, Criminal Justice Development Division, Veronica Holland, Head of Victims and Witnesses of Crime Branch, Tom Haire, Head of Criminal Law Branch and Graham Walker, Acting Head of Speeding up Justice and Equality Branch, Department of Justice joined the meeting.

Ms Campbell outlined the purpose of Clauses 28 to 35 of the Bill which cover the Victim Charter and Witness Charter and Victim Statements and Clauses 44 to 49 of the Bill which cover Live Links in Criminal Proceedings and the main issues raised in the written and oral evidence received by the Committee.

A question and answer session followed covering issues including: the legislative mechanism to bring into operation the Victims Charter and Witnesses Charter; how the compliance of each of the Criminal Justice organisations with the requirements of the Victim Charter will be monitored; what sanctions if an organisation fails to comply with the Charter; why the duties set out in Clauses 28 and 30 do not extend to the judiciary; whether a judge should be required to acknowledge and make reference to a Victim Statement; the weight given to a Victim Statements by a judge when considering sentencing; whether Victim Statements can be made in relation to all offences; what difference placing Victims Statements on a statutory footing will have compared to the current position; the reason for the difference in the terminology used in relation to Victim Personal Statements in the guidance provided by the Department and in the legislation.

The briefing was recorded by Hansard.

The Chairman thanked the officials for their attendance and they left the meeting.

Agreed: The Committee agreed to request a written response from the Department of Justice on questions that were not covered during the briefing.

4.14pm Mr Sammy Douglas left the meeting.

4.40pm The meeting was adjourned.

Mr Alastair Ross MLA

Chairman, Committee for Justice

[EXTRACT]

Wednesday 11 February 2015
Room 21, Parliament Buildings

Present: Mr Alastair Ross MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Stewart Dickson MLA
Mr Sammy Douglas MLA
Mr Tom Elliott MLA
Mr Paul Frew MLA
Mr Seán Lynch MLA
Mr Alban Maginness MLA
Mr Patsy McGlone MLA
Mr Edwin Poots MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Keith McBride (Senior Assistant Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Ms Marianne Doherty (Clerical Officer)

Apologies: None.

2.04pm The meeting commenced in public session.

3. Matters Arising

i. The Committee noted an Assembly research paper on the powers of the Attorney General (or equivalent) to direct an inquest in England and Wales, Scotland and the Republic of Ireland and the provision of statutory powers to obtain papers in such circumstances.

ii. The Committee noted a response from the Departmental Solicitor's Office (DSO) providing further information in relation to the Attorney General's proposal for legislative provision for Rights of Audience for Lawyers employed in his office and, if provided, how this should apply to lawyers in the DSO.

iii. The Committee noted correspondence from the Director of Public Prosecutions regarding the Attorney General's proposal for legislative provision for Rights of Audience for Lawyers employed in his office and, if provided, how this should apply to lawyers in the Public Prosecution Service.

2.24pm The meeting was suspended.

2.59pm The meeting resumed.

Present: Mr Alastair Ross MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Stewart Dickson MLA
Mr Sammy Douglas MLA
Mr Tom Elliott MLA
Mr Paul Frew MLA
Mr Seán Lynch MLA
Mr Alban Maginness MLA
Mr Patsy McGlone MLA

3.19pm Mr Stewart Dickson left the meeting.

6. The Justice Bill – Oral evidence from the Department of Justice on Part 3 – Prosecutorial Fines

4.05pm Ms Maura Campbell, Deputy Director, Criminal Justice Development Division, Mr Graham Walker, Acting Head of Speeding up Justice and Equality Branch, and Mr Paul Black, Speeding up Justice Branch, Department of Justice joined the meeting.

Ms Campbell outlined the purpose of Clauses 17 to 27 of the Bill which cover Prosecutorial Fines and the main issues raised in the written and oral evidence received by the Committee.

4.15pm Mr Sammy Douglas left the meeting.

A question and answer session followed covering issues including: whether the PPS guidance in relation to prosecutorial fines will be subject to a public consultation exercise and whether the guidance will be published; who has the power to propose prosecutorial fines; whether such fines could be used for incidents of crimes against staff in the Health Service; why the Bill does not define the range of crimes for which prosecutorial fines can apply; the difference between prosecutorial fines and cautions; the disclosure implications in relation to prosecutorial fines; the application of discretion by the PPS to offer prosecutorial fines; whether there is potential for regional disparity in the application of prosecutorial fines; monitoring the regional application of prosecutorial fines; whether an individual can request a prosecutorial fine for a particular offence; whether there are different levels of fines that can be applied; anticipated difficulties for individuals in relation to the payment of fines; whether a separate system should be designed for the collection and payment of prosecutorial fines; whether there is a limit to the number of prosecutorial fines that can be given to an individual; whether prosecutorial fines will add to the record checking workload of AccessNI; whether the PPS will seek the views of the police in individual cases; constraints and safeguards in relation to the application of prosecutorial fines to a repeat offender; the recording of offences which attract a prosecutorial fine; circumstances in which a prosecutorial fine would be disclosed in an enhanced criminal records check; the use of the term 'fine' rather than 'penalty' and whether this was potentially confusing; whether the Department had considered making prosecutorial fines more restorative in nature to address offending behaviour; and whether the non-payment of a prosecutorial fine would result in a criminal record.

The briefing was recorded by Hansard.

The Chairman thanked the officials for their attendance and Mr Walker and Mr Black left the meeting.

7. The Justice Bill – Oral evidence from the Department of Justice on Part 5 – Criminal Records

4.37pm Ms Maura Campbell, Deputy Director, Criminal Justice Development Division was joined by Mr Simon Rogers, Deputy Director, Protection and Organised Crime Unit, Mr Tom Clarke, General Manger, Access NI, and Ms Mary Lemon, Protection and Organised Crime Division, Department of Justice.

4.44pm Mr Sammy Douglas joined the meeting.

Mr Rogers outlined the purpose of Clauses 36 to 43 and Schedule 4 of the Bill which covers Criminal Records and the main issues raised in the written and oral evidence received by the Committee and the five amendments the Department intends to bring forward at Consideration Stage.

A question and answer session followed covering issues including: the delay in the introduction of 'portable checks' in Northern Ireland and the new timescale; an explanation of the 'prescribed circumstances' set out in clause 37; practical operational issues in relation to AccessNI checks; whether the update service will ease the delay in enhanced checks; the differences in carrying out checks for volunteers and private individuals; whether there will be changes to the AccessNI fees as a result of the update service; current AccessNI targets in

relation to standard and enhanced checks; the reasons why certain cases are passed to the PSNI; the reasons for the disclosure of diversionary disposals; how the automatic referral for an independent review panel will work in practice; retention of information on an individual's criminal record; and whether there are plans to review the Rehabilitation of Offenders Order.

The briefing was recorded by Hansard.

The Chairman thanked the officials for their attendance and they left the meeting.

8. The Justice Bill – Oral evidence from the Department of Justice on Part 8 (clauses 84 and 85) – Youth Justice

5.01pm Mr Graham Walker, Acting Head of Speeding up Justice and Equality Branch, Ms Kiera Lloyd, Reducing Offending Policy Unit, Department of Justice, and Mr Declan McGeown, Chief Executive, Youth Justice Agency joined the meeting.

Mr McGeown outlined the purpose of clauses 84 and 85 of the Bill which cover Youth Justice.

A question and answer session followed covering issues including: how implementation of the aims introduced by clause 84 would be monitored and who would be responsible for this; liaison with the Children's Law Centre in relation to these clauses; and the impact on an individual's life as a result of involvement with the criminal justice system as a child.

The briefing was recorded by Hansard.

The Chairman thanked the officials for their attendance and they left the meeting.

5.19pm The meeting was adjourned.

Mr Alastair Ross MLA
Chairman, Committee for Justice

[EXTRACT]

Wednesday 18 February 2015
Room 21, Parliament Buildings

Present: Mr Alastair Ross MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Stewart Dickson MLA
Mr Sammy Douglas MLA
Mr Tom Elliott MLA
Mr Paul Frew MLA
Mr Seán Lynch MLA
Mr Alban Maginness MLA
Mr Patsy McGlone MLA
Mr Edwin Poots MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Keith McBride (Senior Assistant Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Ms Marianne Doherty (Clerical Officer)

Apologies: None.

2.03pm The meeting commenced in public session.

4. The Justice Bill – Oral evidence from the Department of Justice on Part 1 - Single Jurisdiction, Part 7 - Violent Offences Prevention Orders, and Part 8 - clauses 72 – 76 (Jury Service), and clause 82 (Defence Access to Premises)

Ms Karen Pearson, Deputy Director, Criminal Justice Policy and Legislation Division,

2.08pm Ms Angela Bell, Jurisdictional Redesign Branch, Ms Amanda Patterson, Head of Criminal Justice Policy Branch and Mr Graham Walker, Justice Bill Manager, Department of Justice joined the meeting.

Ms Pearson outlined the purpose of clauses 1 to 6 and Schedule 1 of the Bill, which cover a Single Jurisdiction for County Courts and Magistrates' Courts, the main issues raised in the written and oral evidence received by the Committee and proposed amendments the Department intends to bring forward at Consideration Stage.

2.11pm Mr Paul Frew joined the meeting.

A question and answer session followed covering issues including: the potential impact of the provisions on the Public Prosecution Service and work being undertaken to address this; whether travel costs for young people would be provided and if not, why not; whether implementation of the single jurisdiction proposals are linked to the proposed reduction in the number of courthouses; whether courthouse closures could be a consequence of the proposals; whether the single jurisdiction proposals place too much emphasis on administrative savings rather than court users; what safeguards will be put in place for victims, witnesses and defendants; the views of the judiciary and in particular the Magistrates' and County Court Judges on the proposals; the requirement for robust guidance that protects the needs of victims, witnesses and defendants; the purpose of the Directions to be provided by the Lord Chief Justice and the Department of Justice; whether the Attorney General's suggestion to include in the Bill a duty to have regard to the benefit of justice being administered locally would provide an additional safeguard; issues relating to the fact that County Court Judges will not have a jurisdiction under the proposals and could be allocated any area; the possible impact of the proposals on judicial independence; how the Lord Chief Justice currently gives direction regarding the distribution of court business; whether

precedence/ priority will be given to particular types of cases such as family cases; and the nature of the consultation that will be undertaken on the Lord Chief Justice's Directions.

Agreed: The Committee agreed to request information from the Office of the Lord Chief Justice regarding the type of consultation exercise that will be undertaken on the Directions detailing the arrangements for the distribution of business among the County Courts and Magistrates' Courts and for the transfer of business from one court to another.

2.32pm Mr Seán Lynch joined the meeting.

2.38pm Mr Edwin Poots joined the meeting.

Ms Pearson outlined the purpose of clauses 50 to 71 of the Bill which cover Violent Offences Prevention Orders (VOPOs), the main issues raised in the written and oral evidence received by the Committee and proposed amendments the Department intends to bring forward at Consideration Stage.

A question and answer session followed covering issues including: concerns that the threshold for VOPOs will exclude many offences relating to domestic violence; whether there is a need to introduce Domestic Violence Prevention Orders as well as VOPOs; how VOPOs will prevent children from becoming victims of crime; patterns of reoffending for children aged under 18; the reasons for including children aged under 18 within the scope of VOPOs; whether there is scope to apply VOPOs differently for those aged under 18; and whether VOPOs will be disclosed on a criminal record check.

The departmental officials agreed to provide clarification regarding whether a VOPO would be considered and/or disclosed as part of a criminal record check.

Ms Pearson outlined the purpose of clauses 72 to 76 of the Bill which cover Jury Service and clause 82 that covers Defence Access to Premises, the main issues raised in the written and oral evidence received by the Committee and a proposed amendment the Department intends to bring forward at Consideration Stage.

A question and answer session followed covering issues including: how the provisions relating to Defence Access to Premises would work in practice; whether the provision would provide access to the relevant part of a dwelling or the entire dwelling; and what limitations if any would apply.

The briefing was recorded by Hansard.

The Chairman thanked the officials for their attendance and Ms Pearson, Ms Bell and Ms Patterson left the meeting.

5. The Justice Bill – Oral evidence from the Department of Justice on Part 2 - Committal for Trial, Part 8 clauses 77 and 78 - Early Guilty Pleas, clauses 79 and 80 - Avoiding Delay, clause 81 - Public Prosecutor's Summons, clause 83 – Court Security Officers and Part 9 – Supplementary Provisions

2.43pm Mr Graham Walker, Justice Bill Manager, was joined by Ms Maura Campbell, Deputy Director, Criminal Justice Development Division, Department of Justice.

Ms Campbell outlined the purpose of clauses 7 to 16 and Schedules 2 and 3 of the Bill which cover Committal for Trial and the main issues raised in the written and oral evidence received by the Committee.

3.05pm Mr Sammy Douglas joined the meeting.

A question and answer session followed covering issues including: the Assembly control mechanism that applies to the Order enabling the Department to amend the list of specified

offences; when the criminal justice system will have the capacity to support the removal of committal proceedings entirely as proposed by the Director of Public Prosecutions; how the Department's long term goal to abolish committal proceedings entirely will enhance access to justice and improve the criminal justice system; whether committal proceedings provide an effective filtering mechanism for cases; whether the provisions in the Bill will ensure cases are dealt with more speedily; what impact in terms of reduced delay and cost savings the Department expects as a result of these changes; whether the Department anticipates an increase in applications for a 'no bill'; what other processes are in place to filter cases; the purpose of committal proceedings; current numbers of preliminary investigations and preliminary inquiries; levels of attrition in relation to committal proceedings; existing protections for vulnerable witnesses and victims of sexual offences during committal proceedings; the value in retaining a mixed committals process; whether there will be an increase in applications for 'no bill' in the crown court; whether there is an opportunity to call witnesses at 'no bill' stage; and the resource requirements for the PPS in preparing for the committal process.

The officials agreed to provide further clarification regarding the number of cases that go to preliminary investigation and of those cases how many in which the trial did not proceed.

Ms Campbell outlined the purpose of clauses 77 and 78 of the Bill which cover Early Guilty Pleas, the main issues raised in the written and oral evidence received by the Committee and a proposed amendment the Department intends to bring forward at Consideration Stage.

3.37pm Mr Patsy McGlone left the meeting.

A question and answer session followed covering issues including: what protections and safeguards there are to ensure that children and vulnerable adults make informed decisions in respect of early guilty pleas; the use of registered intermediaries; support available for people who do not speak English; the purpose of the court being required to state the maximum discount it could have awarded when imposing a sentence if a guilty plea had been lodged "at the earliest opportunity"; the regulations to be provide by the Law Society; the penalty to a solicitor who contravenes the provisions; whether the issue of client/solicitor confidentiality arises; whether the provisions provide for plea bargaining; the definition of 'earliest reasonable opportunity' in which to submit an early guilty plea; whether a defendant can change their mind in respect of an early guilty plea; whether an early guilty plea prevents an injured party from having their 'day in court'; whether there are issues for victims and their families with the court indicating the possible sentence if a guilty plea had been made at an earlier stage; and whether the duty should be placed on the advocate rather than just the solicitor.

Ms Campbell outlined the purpose of clauses 79 and 80 of the Bill which cover Avoidable Delay in Criminal Proceedings, Clause 81 that covers Public Prosecutor's Summons, Clause 83 that covers Powers of Court Security Officers and Part 9 that covers Supplementary Provisions, the main issues raised in the written and oral evidence received by the Committee and the proposed amendments the Department intends to bring forward at Consideration Stage.

A question and answer session followed covering issues including: the purpose of clause 86; in what circumstances the Department would use the provision; what limitations apply to the power provided to the Department by Clause 86; whether clause 86 gives the Department the power not to enact certain provisions or parts of the Bill; and in relation to clause 79 what was meant by "just outcome" and what would be examples of an "unjust outcome".

The officials agreed to provide further information in respect of the powers contained within clause 86 of the Bill.

The briefing was recorded by Hansard.

The Chairman thanked Ms Campbell for her attendance and she left the meeting.

6. The Justice Bill – Oral evidence from the Department of Justice on new policy amendments relating to PACE (NI) – Fingerprint and DNA Retention

3.54pm Mr Graham Walker, Justice Bill Manager, was joined by Mr Ian Kerr, Policing Policy and Strategy Division, and Mr Gary Dodds, Police Powers and HR Policy Branch, Department of Justice.

Mr Kerr outlined the proposed amendments relating to the Police and Criminal Evidence (NI) Order 1989 (PACE) and Fingerprint and DNA Retention.

4.02pm Mr Alban Maginness left the meeting.

A question and answer session followed covering issues including: how many people in Northern Ireland have their details held on the DNA and fingerprint databases; how many of those for whom records are held have not had any conviction; who has responsibility for destroying records in accordance with the retention scheme; why the Department intends to make provision for the retention of biometric material taken from persons who have accepted a prosecutorial fine; whether the retention of a DNA sample would be disclosed on a criminal record check; the percentage of the population for which DNA records are held and how this compares to Great Britain; maximising the ability of the police to retain as many DNA records as possible; the rationale for removing the indefinite retention of DNA samples; the position regarding the use of a DNA sample in relation to a second unrelated offence to that for which the DNA sample was originally obtained; processing costs associated with obtaining DNA samples; the use of dental records; the potential impact on investigatory capability of the loss of indefinite retention; the purpose of the amending provisions; whether the operation of the National Crime Agency will result in an increase in the number of DNA records and fingerprints; and access to the DNA records of individuals who have committed offences overseas.

The briefing was recorded by Hansard.

The Chairman thanked the officials for their attendance and they left the meeting.

The Committee noted the Department of Justice's proposed amendments relating to Lands Tribunal Salaries, the creation of an offence of causing or allowing serious physical harm to a child or vulnerable adult and sexual offences against children.

4. 34pm The meeting was adjourned.

Mr Alastair Ross MLA

Chairman, Committee for Justice

[EXTRACT]

Wednesday 25 February 2015
Niacro, Amelia Street, Belfast

Present: Mr Alastair Ross MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Stewart Dickson MLA
Mr Tom Elliott MLA
Mr Chris Hazzard MLA
Mr Seán Lynch MLA
Mr Alban Maginness MLA
Mr Patsy McGlone MLA
Mr Edwin Poots MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Keith McBride (Senior Assistant Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Ms Marianne Doherty (Clerical Officer)

Apologies: Mr Sammy Douglas MLA
Mr Paul Frew MLA

2.40 p.m The meeting commenced in public session.

2.43 p.m. Mr Raymond McCartney left the meeting.

5. The Justice Bill – Informal Consideration of Part 3 – Prosecutorial Fines, Part 4 – Victims and Witnesses and Part 5 – Criminal Records

The Committee considered clauses 17 to 27 which cover Prosecutorial Fines, clauses 28 to 35 of the Justice Bill which cover Victims and Witnesses, and clauses 36 to 43 and Schedule 4 of the Justice Bill which cover Criminal Records.

Agreed: The Committee agreed to seek clarification from the Department of Justice on a number of issues raised in relation to Part 3, Part 4 and Part 5 of the Justice Bill.

6. The Justice Bill – Informal Consideration of Proposed Amendments by the Attorney General for Northern Ireland to the Coroners' Act (NI) 1959 and to Provide for Rights of Audience for Lawyers in his office

The Committee considered the proposed amendments by the Attorney General for Northern Ireland to the Coroners' Act (NI) 1959 and to provide for Rights of Audience for lawyers in his office.

The Chairman advised the Committee that the Minister for Health, Social Services and Public Safety had indicated he would be providing further information on the Review of the Handling of Serious Adverse Incidents.

Agreed: The Committee agreed to give further consideration to the Attorney General's proposed amendment to the Coroners' Act (NI) 1959 at its next meeting when the additional information would be available.

Agreed: The Committee agreed to seek clarification from the Department of Justice regarding the potential to include a review mechanism in the proposed provision to provide for rights of audience for lawyers working in the Attorney General's office to inform consideration of extending the rights to lawyers in other offices such as the Public Prosecution Service in due course.

4.30 p.m The meeting was adjourned.

Mr Alastair Ross MLA
Chairman, Committee for Justice

[EXTRACT]

Wednesday 4 March 2015
Room 21, Parliament Buildings

Present: Mr Alastair Ross MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Stewart Dickson MLA
Mr Sammy Douglas MLA
Mr Tom Elliott MLA
Mr Paul Frew MLA
Mr Chris Hazzard MLA
Mr Seán Lynch MLA
Mr Alban Maginness MLA
Mr Patsy McGlone MLA
Mr Edwin Poots MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Keith McBride (Senior Assistant Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Ms Marianne Doherty (Clerical Officer)

Apologies: None.

2.03p.m. The meeting commenced in public session.

4.54 p.m. Mr Tom Elliott left the meeting.

4.54 p.m. Mr Chis Hazzard left the meeting.

7. The Justice Bill – Informal Consideration of Part 1 – Single Jurisdiction, Part 2 – Committal for Trial, Part 6 – Live Links, Part 7 – Violent Offences Prevention Orders, Part 8 – Miscellaneous and Part 9 – Supplementary Provisions

The Committee considered clauses 1 to 6 and Schedule 1 which cover Single Jurisdiction, clauses 7 to 16 and Schedules 2 and 3 which cover Committal for Trial, clauses 44 to 49 which cover Live Links, clauses 50 to 71 which cover Violent Offences Prevention Orders, clauses 72 to 85 which cover Miscellaneous Provisions and clauses 86 to 92 which cover Supplementary Provisions and additional information provided by the Department of Justice.

Agreed: The Committee agreed to it was content for the Department to bring forward an amendment to enable the direct transfer of a co-defendant who has been charged with a non-specified offence.

Agreed: The Committee agreed to give further consideration to the necessity of Clause 86 of the Bill.

8. The Justice Bill – Informal Consideration of Proposed Amendments by the Attorney General for Northern Ireland and Jim Wells MLA

The Committee considered the proposed amendment by the Attorney General for Northern Ireland to the Coroners' Act (Northern Ireland) 1959 and related correspondence from the Minister of Health, Social Services and Public Safety regarding a Review of the Handling of Serious Adverse Incidents between 1 January 2009 and 31 December 2013.

Agreed: The Committee agreed to request advice on whether a review mechanism could be included in the amendment proposed by the Attorney General for Northern Ireland.

The Committee considered the proposed amendment by Mr Jim Wells MLA to the Justice Bill.

Agreed: The Committee agreed to give further consideration to the proposed amendment by Jim Wells MLA.

The Chairman advised the Committee that a meeting would take place on Tuesday, 10 March 2015 at 12.30pm to complete the informal consideration of the Justice Bill and proposed amendments and that formal clause by clause consideration would take place at the meeting on Wednesday 11 March 2015.

5.40p.m The meeting was adjourned.

Mr Alastair Ross MLA

Chairman, Committee for Justice

[EXTRACT]

Tuesday 10 March 2015
Room 21, Parliament Buildings

Present: Mr Alastair Ross MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Sammy Douglas MLA
Mr Tom Elliott MLA
Mr Paul Frew MLA
Mr Seán Lynch MLA
Mr Alban Maginness MLA
Mr Edwin Poots MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Keith McBride (Senior Assistant Assembly Clerk)
Mrs Sinead Kelly (Assistant Assembly Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Ms Marianne Doherty (Clerical Officer)
Ms Anna McDaid (Bursary Student)

Apologies: None.

12.40 p.m The meeting commenced in public session.

2. The Justice Bill – Informal Clause-by-Clause Consideration

The Committee noted additional information provided by the Department of Justice in relation to Parts 3, 4 and 5 of the Justice Bill.

12.44 p.m. Mr Sammy Douglas joined the meeting.

The Committee considered the clauses, schedules and related proposed amendments to the Justice Bill apart from Part 9 – Supplementary Provisions.

Agreed: The Committee agreed to request further information from the Department of Justice in relation to clauses 72 – 76 and the categories of people who are currently exempt from jury service.

The discussion was recorded by Hansard.

3. The Justice Bill – Informal Consideration of Proposed Amendments by the Department of Justice, the Attorney General for Northern Ireland and Jim Wells MLA

The Committee considered new policy amendments by the Department of Justice relating to PACE – fingerprint and DNA retention.

The Committee noted further information provided by the Department of Justice in relation to the proposal by the Attorney General for legislative provision to provide for rights of audience for lawyers in his office.

The Committee considered the proposal by the Attorney General for Northern Ireland for legislative provision to provide for rights of audience for lawyers in his office.

1.00 p.m. Mr Raymond McCartney joined the meeting.

The Committee noted further correspondence from the Attorney General for Northern Ireland in relation to his proposed amendment to the Coroners' Act (NI) 1959.

The Committee agreed to move into closed session to receive advice from the Assembly Bill Clerk.

1.04 p.m The Committee moved into closed session.

1.05 p.m. Mr Alban Maginness left the meeting.

1.13 p.m. Mr Alban Maginness joined the meeting.

The Committee received advice from the Bill Clerk in relation to the Attorney General's proposed amendment to the Coroners' Act (Northern Ireland) 1959 and on Clause 86 of the Justice Bill.

1.24 p.m The Committee meeting moved into public session.

The Committee considered Part 9 of the Justice Bill.

The Committee considered the proposed amendment by the Attorney General to the Coroners' Act (Northern Ireland) 1959.

The Committee considered the proposed amendment by Mr Jim Wells MLA.

The Committee noted the revised text provided by the Department of the proposed amendment to enhance the existing offence of meeting a child following sexual grooming to correct a typographical error in the original draft amendment.

The Chairman advised the Committee that formal clause by clause consideration of the Justice Bill and proposed amendments would take place at the meeting on Wednesday 11 March 2015.

The discussion in public session was recorded by Hansard.

1.31 p.m The meeting was adjourned.

Mr Alastair Ross MLA

Chairman, Committee for Justice

[EXTRACT]

Wednesday 11 March 2015
Room 21, Parliament Buildings

Present: Mr Alastair Ross MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Stewart Dickson MLA
Mr Sammy Douglas MLA
Mr Tom Elliott MLA
Mr Paul Frew MLA
Mr Chris Hazzard MLA
Mr Seán Lynch MLA
Mr Alban Maginness MLA
Mr Patsy McGlone MLA
Mr Edwin Poots MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Keith McBride (Senior Assistant Assembly Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Ms Marianne Doherty (Clerical Officer)
Ms Anna McDaid (Bursary Student)

Apologies: None.

2.00 p.m The meeting commenced in public session.

3.36 p.m Mr Chris Hazzard left the meeting.

3.44 p.m Mr Raymond McCartney left the meeting.

3.51 p.m Mr Edwin Poots left the meeting.

6. The Justice Bill – Formal Clause by Clause Consideration

The Committee commenced its formal clause-by-clause consideration of the Justice Bill.

Part 1 – Single Jurisdiction for County Courts and Magistrates' Courts

The Committee considered Clauses 1 to 6 as drafted.

Agreed: The Committee agreed to group Clauses 1 to 6 for the purpose of putting the question.

Question: "That the Committee is content with Clauses 1 to 6, put and agreed to".

Part 2 – Committal for Trial

The Committee noted additional information provided by the Director of Public Prosecutions.

The Committee considered Clauses 7 to 16 as drafted and amendments proposed by the Department of Justice to enable the direct transfer of a co-defendant who has been charged with a non-specified offence so that all defendants can be tried at the same time.

Agreed: The Committee agreed to group Clauses 7 to 12 and Clauses 15 and 16 for the purpose of putting the question.

Question: "That the Committee is content with Clauses 7 to 12, put and agreed to".

Question: "That the Committee is content with new Clause 12A, as proposed by the Department to allow for the direct committal of any co-defendants who are charged with an offence which is not a 'specified offence' put and agreed to."

Question: "That the Committee is content with Clause 13, put and agreed to".

Question: "That the Committee is content with the proposed amendments by the Department which are a consequence of the introduction of new Clause 12A to Clause 14, put and agreed to."

Question: "That the Committee is content with Clause 14, subject to the Department's proposed amendments, put and agreed to".

Question: "That the Committee is content with Clauses 15 and16, put and agreed to".

Part 3 – Prosecutorial Fines

The Committee considered Clauses 17 to 27 as drafted.

Agreed: The Committee agreed to group Clauses 17 to 27 for the purpose of putting the question.

Question: "That the Committee is content with Clauses 17 to 27, put and agreed to".

Part 4 – Victims and Witnesses

The Committee considered Clauses 28 to 35 as drafted and amendments proposed by the Department of Justice to enhance Victims Statements and create information sharing powers.

Agreed: The Committee agreed to group Clauses 28 to 32 and 34 and 35 for the purpose of putting the question.

Question: "That the Committee is content with Clauses 28 to 32, put and agreed to".

Question: "That the Committee is content with the proposed amendments by the Department to Clause 33, to allow a victim or a bereaved family member to include, in a victim statement, the impact a crime has had on other family members, put and agreed to."

Question: "That the Committee is content with Clause 33, subject to the Department's proposed amendments, put and agreed to".

Question: "That the Committee is content with Clauses 34 and 35, put and agreed to".

Question: "That the Committee is content with new Clause 35A and new Schedule 3A as proposed by the Department to create information sharing powers to provide for a more effective mechanism through which victims can automatically be provided with timely information about the services available to them in the form of Victim Support Services; witness services at court; and access to post-conviction information release schemes, put and agreed to."

Part 5 – Criminal Records

The Committee considered Clauses 36 to 43 as drafted and five amendments proposed by the Department.

Agreed: The Committee agreed to group Clauses 36 to 38 and 41 and 42 for the purpose of putting the question.

Question: "That the Committee is content with Clauses 36 to 38, put and agreed to".

Question: "That the Committee is content with the proposed amendment by the Department to Clause 39 to make it clear that the Code of Practice provided for in the clause must be published, put and agreed to."

Question: "That the Committee is content with Clause 39, subject to the Department's proposed amendment, put and agreed to".

Question: "That the Committee is content with new Clause 39A and new Schedule 3B as proposed by the Department to create a review mechanism for the scheme to filter certain old and minor convictions and other disposals, such as cautions, from Standard and Enhanced criminal record certificates, which came into operation in Northern Ireland in April 2014, put and agreed to."

Question: "That the Committee is content with the proposed amendment by the Department to Clause 40 to prevent potential Data Protection Act breaches by excluding a small number of applicants for enhanced checks for home based positions from the Update Service, where third party personal information could potentially be disclosed unintentionally, put and agreed to."

Question: "That the Committee is content with Clause 40, subject to the Department's proposed amendment, put and agreed to".

Question: "That the Committee is content with Clauses 41 and 42, put and agreed to".

Question: "That the Committee is content with new Clause 42A as proposed by the Department to facilitate the exchange of information between AccessNI and the Disclosure and Barring Service for barring purposes, put and agreed to."

Question: "That the Committee is content with new Clause 42B as proposed by the Department to give statutory cover for the storage of cautions and other diversionary disposals on the criminal history database, put and agreed to."

Question: "That the Committee is content with Clause 43, put and agreed to".

Part 6 – Live Links for Criminal Proceedings

The Committee considered Clauses 44 to 49 as drafted and an amendment proposed by the Department to ensure a consistency of approach with respect to safeguarding arrangements.

Agreed: The Committee agreed to group Clauses 44 and 45 and 47 to 49 for the purpose of putting the question.

Question: "That the Committee is content with Clauses 44 and 45, put and agreed to".

Question: "That the Committee is content with the proposed amendment by the Department to Clause 46 so that the same safeguard as provided for in Clauses 44 and 45 which places a responsibility on the court to adjourn proceedings where it appears to it that the accused is not able to see and hear the court and be seen and heard by it and this cannot be immediately corrected applies, put and agreed to."

Question: "That the Committee is content with Clause 46 subject to the Department's proposed amendment, put and agreed to".

Question: "That the Committee is content with Clauses 47 to 49, put and agreed to".

Part 7 – Violent Offences Prevention Orders

The Committee considered Clauses 50 to 71 as drafted and amendments proposed by the Department.

Agreed: The Committee agreed to group Clauses 50 to 64 and 66 and 67 for the purpose of putting the question.

Question: "That the Committee is content with Clauses 50 to 64, put and agreed to".

Question: "That the Committee is content with the proposed amendment by the Department to Clause 65 relating to verification of identity and retention of fingerprints and photographs, put and agreed to."

Question: "That the Committee is content with Clause 65, subject to the Department's proposed amendments, put and agreed to".

Question: "That the Committee is content with Clauses 66 and 67, put and agreed to".

4.09 p.m Mr Raymond McCartney re-joined the meeting.

Question: "That the Committee is content with the proposed amendments by the Department to Clause 68 which provide a framework restricting the retention of information to the duration of the VOPO, put and agreed to."

Question: "That the Committee is content with Clause 68, subject to the Department's proposed amendments, put and agreed to".

Question: "That the Committee is content with Clause 69, put and agreed to".

Question: "That the Committee is content with the proposed amendment by the Department to Clause 70 relating to power of search of third party premises, put and agreed to."

Question: "That the Committee is content with Clause 70, subject to the Department's proposed amendment, put and agreed to".

Question: "That the Committee is content with Clause 71, put and agreed to".

Part 8 – Miscellaneous

Jury Service

The Committee considered Clauses 72 to 76 as drafted and noted further information provided by the Department on exemptions from jury service.

Agreed: The Committee agreed to group Clauses 72 to76 for the purpose of putting the question.

Question: "That the Committee is content with Clauses 72 to 76, put and agreed to".

Early Guilty Pleas

The Committee considered Clauses 77 and 78 as drafted and an amendment proposed by the Department to remove a regulatory making power.

Question: "That the Committee is content with Clause 77, put and agreed to".

Question: "That the Committee is content with the proposed amendment by the Department to Clause 78 to remove a regulatory making power in sub-section (3) of the clause, identified as being of no practical benefit, put and agreed to."

A number of Members expressed reservations in relation to Clause 78.

Question: "That the Committee is content with Clause 78 subject to the Department's proposed amendment, put and agreed to".

Avoiding Delay in Criminal Proceedings

The Committee considered Clauses 79 and 80 as drafted and amendments proposed by the Department to reflect comments and advice from the Examiner of Statutory Rules, following his scrutiny of the Delegated Powers.

Question: "That the Committee is content with the proposed amendments by the Department to Clause 79, put and agreed to."

Question: "That the Committee is content with Clause 79, subject to the Department's proposed amendments, put and agreed to".

Question: "That the Committee is content with the proposed amendment by the Department to Clause 80, put and agreed to."

Question: "That the Committee is content with Clause 80, subject to the Department's proposed amendments, put and agreed to".

Public Prosecutor's Summons

The Committee considered Clause 81 as drafted.

Question: "That the Committee is content with Clause 81, put and agreed to".

Defence Access to Premises

The Committee considered Clause 82 as drafted and an amendment proposed by the Department to adjust the threshold for an order.

4.14 p.m Mr Edwin Poots re-joined the meeting.

Question: "That the Committee is content with the proposed amendment by the Department to Clause 82 to adjust the threshold for an order allowing access to property to ensure proportionality and greater clarity in the use of the power, put and agreed to."

Question: "That the Committee is content with Clause 82, subject to the Department's proposed amendment, put and agreed to".

Powers of Court Security Officers

The Committee considered Clause 83 as drafted.

Question: "That the Committee is content with Clause 83, put and agreed to".

Youth Justice

The Committee considered Clauses 84 and 85 as drafted.

Question: "That the Committee is content with Clause 84, put and agreed to".

Question: "That the Committee is content with Clause 85, put and agreed to".

New Provisions

Sexual Offences Against Children

The Committee considered amendments proposed by the Department to provide for a new offence of communicating with a child for sexual purposes and to make an adjustment to the existing offence of meeting a child following sexual grooming.

Question: "That the Committee is content with new Clause 78A as proposed by the Department to reduce the evidence threshold for the existing offence of meeting a child following sexual grooming, put and agreed to."

Question: "That the Committee is content with new Clause 78B as proposed by the Department to provide for a new offence of communicating with a child for sexual purposes, put and agreed to."

Offence of Causing or allowing Serious Physical Harm to a Child or Vulnerable Adult

The Committee considered amendments proposed by the Department to create a new offence of causing or allowing serious physical harm to a child or vulnerable adult.

Question: "That the Committee is content with new Clause 83A and new Schedule 4A as proposed by the Department to create a new offence of causing or allowing serious physical harm to a child or vulnerable adult, put and agreed to."

Lands Tribunals Salaries

The Committee considered an amendment proposed by the Department to change the affirmative resolution procedure for the annual determination of Lands Tribunal salaries.

Question: "That the Committee is content with new Clause 85A as proposed by the Department to change the affirmative resolution procedure for the annual determination of Lands Tribunal Salaries, put and agreed to."

New Policy Amendments relating to PACE - Retention of Fingerprints and DNA Profiles

The Committee considered amendments proposed by the Department to address shortcomings identified through early experience of operating the corresponding provisions in England and Wales and add a new article to PACE to reflect the introduction in Northern Ireland of Prosecutorial Fines.

Question: "That the Committee is content with new Clause 76A as proposed by the Department to allow police to retake fingerprints and a DNA sample in particular circumstances, put and agreed to."

Question: "That the Committee is content with new Clause 76B as proposed by the Department to correct a gap identified in new Article 63G of PACE to provide that a conviction in Great Britain for a recordable offence will be reckonable for the purposes of determining the period of retention of material taken in Northern Ireland, put and agreed to."

Question: "That the Committee is content with new Clause 76C as proposed by the Department to provide for the retention of fingerprints or DNA profiles relating to persons given a prosecutorial fine, put and agreed to."

Question: "That the Committee is content with new Clause 76D as proposed by the Department to provide for the retention of DNA profiles on the basis of a conviction irrespective of whether that conviction is linked to the offence for which the material was first obtained, put and agreed to."

Question: "That the Committee is content with new Clause 76E as proposed by the Department to disapply the normal destruction rules for samples in cases where the sample is or may become disclosable under the 1996 Criminal Procedure and Investigations Act, put and agreed to."

Schedules

The Committee considered Schedule 1 as drafted and amendments proposed by the Department primarily to remove references in existing legislation.

Question: "That the Committee is content with the proposed amendments to Schedule 1 primarily to remove references to 'petty sessions district' and 'county court division' in existing legislation, put and agreed to".

Question: "That the Committee is content with Schedule 1, subject to the Department's proposed amendments, put and agreed to."

The Committee considered Schedule 2 as drafted.

Question: "That the Committee is content with Schedule 2, put and agreed to".

The Committee considered Schedule 3 as drafted and amendments proposed by the Department as a consequence of the proposed new Clause 12A.

Question: "That the Committee is content with the proposed amendments to Schedule 3 which are a consequence of proposed new Clause 12A, put and agreed to".

Question: "That the Committee is content with Schedule 3, subject to the Department's proposed amendments, put and agreed to."

The Committee considered Schedule 4 as drafted.

Question: "That the Committee is content with Schedule 4, put and agreed to".

The Committee considered Schedule 5 as drafted and amendments proposed by the Department which are a consequence of proposed new Clauses 76D, 78A and 83A and new Schedule 4A.

Question: "That the Committee is content with the proposed amendments to Schedule 5 which are a consequence of proposed new Clauses 76D, 78A and 83A and new Schedule 4A, put and agreed to".

Question: "That the Committee is content with Schedule 5, subject to the Department's proposed amendments, put and agreed to."

The Committee considered Schedule 6 as drafted and amendments proposed by the Department which are consequential to the proposed amendments to Schedule 1.

Question: "That the Committee is content with the proposed amendments to Schedule 6 which are consequential to the proposed amendments to Schedule 1, put and agreed to".

Question: "That the Committee is content with Schedule 6, subject to the Department's proposed amendments, put and agreed to."

Part 9 – Supplementary Provisions

The Committee considered Clauses 86 to 92 as drafted and amendments proposed by the Department to Clause 91 which are a consequence of the introduction of new Clauses 35A, 78A and 78B and new Schedule 3A.

Agreed: The Committee agreed to group Clauses 87 to 90 for the purpose of putting the question.

Question: "That the Committee agreed that it is not content with Clause 86, as drafted".

Question: "That the Committee is content with Clauses 87 to 90, put and agreed to".

Question: "That the Committee is content with the proposed amendments to Clause 91 which are a consequence of proposed new Clauses 35A, 78A and 78B and new Schedule 3A, put and agreed to."

Question: "That the Committee is content with Clause 9, subject to the Department's proposed amendments, put and agreed to".

Question: "That the Committee is content with Clause 92, put and agreed to".

Long Title

The Committee considered the Long Title of the Bill as drafted.

Question: "That the Committee is content with the Long Title put and agreed to".

Other Proposed Amendments

Provision for Rights of Audience for Lawyers working in the Office of the Attorney General

The Committee considered the Attorney General's proposal for legislative provision for rights of audience for lawyers working in his office.

The Committee noted further correspondence from the Director of the Public Prosecution Service requesting similar provisions for a number of staff in the Public Prosecution Service.

Some Members indicated that they were minded to support the Attorney General's proposal on the grounds that it was a modest change that would provide rights of audience for a small, discrete number of lawyers in his office working in a fairly restrictive area of law which would lead to a more cost-effective system. Concerns were however raised regarding the wider implications in relation to creating a precedent or a situation where it would be difficult to refuse other requests.

Agreed: The Committee agreed that, as there was no consensus on the proposal, the Committee would not bring forward an amendment on this issue.

Attorney General's Proposed Amendment to the Coroners' Act (NI) 1959

The Committee agreed to move into closed session to receive advice from the Assembly Bill Clerk.

4.36 p.m The Committee moved into closed session.

The Committee received advice from the Bill Clerk in relation to possible amendments to the Attorney General's proposed amendment to the Coroners' Act (NI) 1959.

4.51 p.m The meeting moved into public session.

The Committee discussed the Attorney General's proposed amendment and options to amend it. Some Members supported the proposal viewing it as an additional safeguard while others had concerns regarding its possible impact on and implications for the Health Service, transparency and record keeping.

Mr McCartney proposed that the Committee took forward the Attorney General's proposed amendment to the Coroners' Act (NI) 1959 with the addition of provision for a sunset clause/ review mechanism as a Committee amendment.

The Committee divided: Ayes 5; Noes 5

Ayes:	**Noes:**
Mr Elliott	Mr Dickson
Mr Lynch	Mr Douglas
Mr Maginness	Mr Frew
Mr McCartney	Mr Poots
Mr McGlone	Mr Ross

The proposal fell.

Agreed: The Committee agreed to seek clarification as to what information could be withheld in civil proceedings that could be disclosed in criminal proceedings.

Mr Jim Wells MLA Proposed Amendment

The Committee considered the proposed amendment by Mr Jim Wells MLA in relation to restricting abortions to NHS premises and changing the criminal penalty.

Mr Poots proposed that the Committee took forward the proposed amendment as a Committee amendment.

The Committee divided: Ayes 7; Noes 3

Ayes:	**Noes:**
Mr Douglas	Mr Dickson
Mr Elliott	Mr Lynch
Mr Frew	Mr McCartney
Mr Maginness	
Mr McGlone	
Mr Poots	
Mr Ross	

Agreed: The Committee agreed to take forward Mr Jim Wells MLA amendment as a Committee amendment.

The Chairman advised the Committee that the draft report on the Bill would be prepared for consideration and approval at the meeting on 25 March 2015.

5.13 p.m The meeting was adjourned.

Mr Alastair Ross MLA
Chairman, Committee for Justice

[EXTRACT]

Wednesday 25 March 2015
Room 21, Parliament Buildings

Present: Mr Alastair Ross MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Sammy Douglas MLA
Mr Tom Elliott MLA
Mr Paul Frew MLA
Mr Seán Lynch MLA
Mr Alban Maginness MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Keith McBride (Senior Assistant Assembly Clerk)
Mrs Roisin Donnelly (Assistant Assembly Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Ms Marianne Doherty (Clerical Officer)

Apologies: Mr Stewart Dickson MLA
Mr Chris Hazzard MLA
Mr Patsy McGlone MLA
Mr Edwin Poots MLA

2.07pm The meeting commenced in public session.

5. The Justice Bill – Consideration and Approval of Committee Report

The Committee considered the final draft report on the Justice Bill.

Title Page, Committee Membership and Powers, Table of Contents and List of Abbreviations

The Committee considered the Title page, Committee Membership and Powers, Table of Contents and List of Abbreviations.

"Question: That the Committee is content with the Title page, Committee Membership and Powers, Table of Contents and List of Abbreviations as drafted put and agreed to".

Introduction

The Committee considered the Introduction section of the report.

"Question: That the Committee is content with the Introduction (paragraphs 1 to 22) as drafted put and agreed to".

Consideration of the Provisions of the Bill

The Committee considered the Consideration of the Bill section of the report.

"Question: That the Committee is content with the Consideration of the Bill section of the report (paragraphs 23 to 309) as drafted put and agreed to".

Consideration of New Provisions for Inclusion in the Bill

The Committee considered the Consideration of New Provisions for Inclusion in the Bill section of the report.

"Question: That the Committee is content with the Consideration of New Provisions for Inclusion in the Bill section of the report (paragraphs 310 to 383) as drafted put and agreed to".

Clause by Clause consideration of the Bill

The Committee considered the Clause by Clause consideration of the Bill section of the report.

"Question: That the Committee is content with the Clause by Clause consideration of the Bill section of the report (paragraphs 384 to 518) as drafted put and agreed to".

Appendices

The Committee considered the Appendices section of the report.

"Question: That the Committee is content with the contents of the Appendices to be included in the report put and agreed to".

Executive Summary

The Committee considered the draft Executive Summary of the report.

"Question: That the Committee is content with the Executive Summary as drafted put and agreed to".

Agreed: The Committee agreed that it was content for the Chairman to approve the extract of the Minutes of Proceedings of today's meeting for inclusion in Appendix 1 of the report.

Agreed: The Committee agreed to order the Report on the Justice Bill (NIA 37/11-15) to be printed.

Agreed: The Committee agreed that an electronic copy of the Bill report should be sent to all organisations and individuals who provided evidence to the Committee on the Bill.

Mr Alastair Ross MLA

Chairman, Committee for Justice

[EXTRACT]

Appendix 2

Minutes of Evidence

Appendix 2: Minutes of Evidence

18 June 2014	Oral evidence from the Department of Justice and AccessNI
12 November 2014	Oral evidence provided by: - Children's Law Centre NIACRO NIHRC
19 November 2014	Oral evidence provided by: - Public Prosecution Service Law Society of Northern Ireland Women's Aid Federation Northern Ireland
26 November 2014	Oral evidence provided by: - Amnesty International UK CARE NI Christian Medical Fellowship Evangelical Alliance Northern Ireland
3 December 2014	Oral evidence provided by: - NIHRC Precious Life Society for the Protection of Unborn Children Women's Network
14 January 2015	Oral evidence from the RQIA
21 January 2015	Oral evidence from the Health and Social Care Board
28 January 2015	Oral evidence from the Department of Health, Social Services and Public Safety
4 February 2015	Oral evidence provided by: - Attorney General for Northern Ireland Department of Justice
11 February 2015	Oral evidence from the Department of Justice, AccessNI and Youth Justice Agency
18 February 2015	Oral evidence from the Department of Justice
25 February 2015	Informal Clause-by-Clause Consideration
4 March 2015	Informal Clause-by-Clause Consideration
10 March 2015	Informal Clause-by-Clause Consideration
11 March 2015	Formal Clause-by-Clause Consideration

18 June 2014

Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Stewart Dickson
Mr Tom Elliott
Mr William Humphrey
Mr Seán Lynch
Mr Alban Maginness
Ms Rosaleen McCorley
Mr Patsy McGlone
Mr Jim Wells

Witnesses:

Mr Tom Clarke	*AccessNI*
Ms Maura Campbell	*Department of Justice*
Mr Chris Matthews	
Ms Amanda Patterson	

1. **The Chairperson**: I welcome Maura Campbell, deputy director in the criminal justice development division; Chris Matthews, Bill manager; and Amanda Patterson and Tom Clarke from the Department and Access NI. As usual, this session will be recorded by Hansard and then published in due course. Maura, I hand over to you to take us through the Bill.

2. **Ms Maura Campbell (Department of Justice)**: Thank you very much, Chairman. As you said, we are here to take you through the key principles of the Justice Bill, which was introduced in the Assembly on Monday. We are very pleased to have got to this point, which marks an important new stage in a large and ambitious programme of work to create a faster, fairer justice system.

3. The main purpose of the Bill is to reshape the system to improve victims' experiences and improve the general effectiveness of the justice process. We aim to do that by improving services and support for victims and witnesses, speeding up criminal case progression, enhancing public protection and safeguarding arrangements, and streamlining the criminal records disclosure regime.

4. As you can see, this is a substantial Bill which runs to 92 clauses, is split into nine parts and has six schedules. I will give a very short overview of each section, and we can provide further detail, as required, during questions.

5. Part 1 will create a single jurisdiction for County Courts and Magistrates' Courts. That will allow us to be more flexible in how court business is administered and distributed, and it should assist our efforts to speed up justice and help meet the needs of victims by, for example, providing for the use of special measures. Part 2 will enable us to reform the committal process. That was identified by victims' groups as a key area for change to avoid victims having to undergo the ordeal of giving evidence twice. This section should also speed up the process by allowing for the direct transfer of certain cases, starting with those where there is an early guilty plea and also murder and manslaughter cases, with our ultimate aim being to remove committal in its entirety.

6. Part 3 will create the new disposal of prosecutorial fine, which will help us to divert appropriate business from court and provide a more proportionate response to offending. These new fines will be used for low-level summary offences by non-habitual offenders who admit responsibility in cases that would currently go to court and, most likely, result in a fine in any event.

7. Part 4 responds to the Committee's call for a statutory victim and witness charter, which was a key recommendation in the report of your inquiry into services for victims and witnesses, which was published in June 2012. We intend to bring forward separate charters for victims and witnesses, and the Bill sets out

what they must contain. The detail of the charters will be in the charter documents themselves, which will be secondary legislation. We recently shared with you the draft victim charter, which we have now issued for public consultation.

8. This part of the Bill also gives a legal entitlement to victims to make a statement about the impact the crime has had on them. You might recall that we introduced new administrative arrangements for personal statements by victims in December, and our intention is to build on those by giving victims legal rights.

9. Part 5 of the Bill will improve the arrangements for criminal record disclosures. Most notably, it provides for the introduction of portable disclosures, as recommended by Mrs Sunita Mason in her part 1 report on the criminal records regime. It also makes the disclosure regime more efficient and transparent.

10. Part 6 will allow us to expand the use of live links, which will speed up criminal proceedings and let us make more efficient use of capacity within the system.

11. Part 7 will introduce violent offences prevention orders (VOPOs), which are new civil orders, similar to the existing sexual offences prevention orders. They are intended to help protect the public from the risk of serious violent harm. Having extended the scope of the public protection arrangements to encompass violent offenders as well as sex offenders, we want to equip those who are tasked with protecting the public with the same range of preventative measures.

12. Part 8 encompasses a range of miscellaneous reforms to improve the operation of the justice system. First, it abolishes the upper age limit for jury service and replaces it with an automatic right of excusal for those over 70. It also contains three further new measures to speed up the justice system. The first of those is in relation to encouraging earlier guilty pleas and requires the court to state the sentence that would have been imposed if a guilty plea had been entered at the earliest reasonable opportunity. It also places a duty on defence solicitors to advise their clients about the benefits of an early guilty plea. You might recall that that came about from a suggestion made by the Committee during an evidence session on our consultation exercise into these provisions.

13. The second speeding-up-justice measure relates to the introduction of statutory case management of criminal cases. Again, that was another issue highlighted in your inquiry report. These provisions will allow the Department to build on existing practice directions from the Lord Chief Justice by imposing duties through regulation on the prosecution, the defence and the court. That should help ensure that cases come to court in a state of readiness and allow us to avoid unnecessary adjournments, which are another source of frustration for victims of crime.

14. Thirdly, we are removing the requirement for lay magistrates to sign summonses. Public prosecutors will do that instead. That should also reduce the time taken from the decision to prosecute to the first appearance in court.

15. Part 8 also includes a power to allow defence solicitors to apply to the court to gain access to premises. It extends the powers of court security officers to court grounds and amends the aims of the youth justice system to place the requirement to meet the best interests of the child on a clear statutory footing. Finally, it contains a number of other minor and consequential provisions.

16. We thought that it might also be useful today to highlight some amendments that we may wish to bring forward during the passage of the Bill. The first of these is to allow the exchange of information between Access NI and the Disclosure and Barring Service in GB. This was part of the policy intent of the criminal records provisions that are already in the Bill. The Minister has given a commitment to apply a fix to a problem that was identified

by colleagues after the Bill had been finalised for introduction. In addition, as advised by the Attorney General and accepted by the Minister, we propose to introduce a mechanism to enable those whose convictions or diversionary disposals have not been filtered from Access NI checks to ask for a review of such decisions.

17. The Attorney General also raised a point with us on the provisions relating to defence access to premises. He has suggested amending the threshold for granting an order, so that it would be made only where access to premises is necessary to ensure a defendant's right to a fair trial. We see merit in this suggestion and have agreed to consider it.

18. We also hope to bring forward an amendment to provide for the sharing of victim information for the purposes of offering victims access to services. You may recall that this was highlighted as an issue in your inquiry report and that we agreed to look at the scope for moving from opt-out to opt-in arrangements for certain victim support services.

19. On VOPOs, we would like to mention a couple of points that we may wish to raise with you during Committee Stage. First, we may wish to look at minor amendments to cover possible European Convention on Human Rights (ECHR) compliance issues on the retention and destruction of information collected by the police under the current draft provisions. There is also a similar point on entry and search provisions. Secondly, we are aware of concerns raised by organisations representing children on the availability of the order in respect of offences committed by under-18s. We are likely to want to take the Committee's mind on that point also. Given the size of the Bill, of course, there may well be other potential amendments that we will wish to consider with you, including as a result of your scrutiny of the Bill.

20. In conclusion, as you will have seen, the content of the Bill overall has been strongly influenced by the Committee, especially in relation to the provisions that respond to your inquiry report on victims' services. The provisions have also been shaped by extensive engagement with stakeholder organisations through a series of consultation exercises, and you will have received a number of briefings on the core policy content on various occasions. We commend the Bill for your consideration and we are happy, as I said earlier, to elaborate on any particular areas of interest.

21. **The Chairperson**: Maura, thank you very much. We are certainly pleased to be starting the process, and we look forward to the next six or seven months of detailed work. It strikes me that you plan to bring a considerable number of departmental amendments. There is no problem with that, although it would usually be for members to bring amendments as opposed to the Department. Once a Bill is on its journey, the Department would usually go through the Executive to put amendments in a Bill. Why were the amendments that you talk about the Department wanting to bring not put into the Bill in the first instance?

22. **Ms M Campbell**: There are a number of reasons for it. In some cases, it is just that new issues have arisen, and given that we have the legislative vehicle available and that they are issues that fit with the theme of the Bill. For instance, the sharing of victim information is something that the Committee indicated was desirable and the Department thinks that if there is an opportunity to do that, it would like to. We did not have the detail of that worked through in advance of the Bill being introduced, but we thought that we could try to pick it up at Consideration Stage. The alternative is to wait for the next legislative vehicle, which will be the Fines and Enforcement Bill. However, that is also going to be a substantial Bill, so, as a Department, we need to take a view on whether we do things now or wait until later.

23. A couple of the points, as well, were issues that, when we were seeking approval for introduction, the Attorney

General had raised with us. Having considered those, we thought that we should indicate now that we were minded to accept those.

24. **The Chairperson**: The Attorney General raised an issue with the Committee during the Legal Aid and Coroners' Courts Bill. Given how broad this Bill is, I am going to assume that this one would be within his scope to bring that amendment again, which would allow us to do the detailed scrutiny work that the Committee felt it could not do in that short time frame. So that was one aspect, and he mentioned rights of audience as well. I know that there are a number of amendments that he has been flagging up to the Committee that he would be keen on. From a Committee perspective, we will obviously go out to public consultation. If you are minded that a range of amendments are going to come forward, it would be helpful if we were able to put as much information in that as possible. If we consulted solely on the Bill, we would not be consulting on the amendments — you would just bring them forward at Consideration Stage. It would be useful if we had a little bit more information about the nature of the amendments so that, at least, we can invite some initial commentary from interested stakeholders in the public during our consultation process.

25. **Ms M Campbell**: Certainly, we would be happy to write with more detail on those amendments. We thought it best, since we had the opportunity today, to at least flag up that there were some issues that we were considering, not all of which will necessarily come forward by way of amendment. We thought that if there were a likelihood that it would, we should indicate that now. Certainly, we can write with more detail on that. It would provide a good opportunity to test views on them as part of the consultation. There may have been consultation on some of them already; for instance, on the information-sharing provisions, which were included in the consultation on the victims' strategy. Certainly, we are happy to say more about that in writing.

26. **The Chairperson**: OK. Well, obviously, we will scrutinise that, so I will not get into too much detail today. At this stage, I want to welcome in particular what has been incorporated from the Committee's inquiry, the victims' charter and those issues. It has been an example of where the Department had a plan — a strategy to take forward, allowed the Committee to do a piece of work and has now put it into legislation. It has been a good example of when the Committee and the Department have worked well. I will be particularly keen to get that issue over the line. I appreciate the relationship that we have been able to develop to do that.

27. **Mr A Maginness**: Thank you very much for your presentation. I agree with the Chair that a lot of what the Committee has suggested has been incorporated into the Bill. That is to be welcomed. I have a couple of very quick questions. One is about the single jurisdiction for County Courts and the Magistrates' Court. Does that meet with the approval of the judiciary?

28. **Mr Chris Matthews (Department of Justice)**: Yes.

29. **Mr A Maginness**: There are no problems with that? In relation to committal for trial — it is a point of detail and you may not be able to answer it now — is there any indication of how many actual preliminary inquiries take place to go through the evidence, as opposed to being a paper exercise of serving the papers at committal stage?

30. **Mr Matthews**: We have some figures for the past few years. In 2013, there were 42 preliminary investigations, 31 mixed committals and over 1,600 preliminary inquiries.

31. **Mr A Maginness**: There were 1,600 preliminary inquiries. That really is a paper exercise, is it?

32. **Mr Matthews**: Yes. Primarily, it is paper-based.

33. **Mr A Maginness**: Yes. So the other two categories that you identified would have been looking at the evidence in court or hearing some of the —

34. **Mr Matthews**: Taking oral evidence.

35. **Mr A Maginness**: Yes, OK. I think that the committal procedure needs to be reformed. However, I am not certain that the absolute abolition of committal is the right way to deal with that. That matter will obviously be open to discussion further on.

36. **Ms M Campbell**: Taking out committal and leaving the existing process untouched in terms of what happens up to the point of committal would be risky. That is why, under the speeding-up-justice programme, we have been looking at what procedural improvements we can also make in anticipation of the removal of committal so that we can reduce the risk that cases end up in the Crown Court that are not in a state of readiness. Some of the Bill's provisions will help with that as well, obviously — things like statutory case management. The reason we are taking a staged approach to taking out offences that would be subject to committal is to allow us to build the capacity within the system to manage that.

37. **Mr A Maginness**: I suppose this is really a technical question in a sense. At chapter 2 you have:

"Direct committal for trial: guilty pleas",

38. **at clause 11 you have**:

"Direct committal: indication of intention to plead guilty"

39. and then, further on, at clause 77, you have "Early guilty pleas". Why is that not taken as a whole within the Bill? Is there some reason for that?

40. **Mr Matthews**: Ultimately, it is down to the draftsmen who decide what bits run together. As Maura said, we see a lot of the provisions on speeding up justice running together as part of an overall strategy that we have, but in terms of committal, I guess that it is because those provisions will obviously only apply to cases going to the Crown Court, whereas the guilty pleas will apply to sentencing in any case. I guess there is a sort of separation of jurisdictions between the different court tiers. I think you are right that, in practice, a lot of those measures are going to run together, but the structure of the Bill is essentially the way that the draftsmen saw the provisions going together.

41. **Mr A Maginness**: So there is no great significance in it.

42. **Mr Matthews**: They are connected in the sense that they come out of the same discussion. The provisions on committal are probably more fundamental and more complex. It probably makes sense to consider them as a piece because they are very complicated. The guilty pleas provisions in the miscellaneous part of the Bill are relatively minor. There is not actually a great deal of new law in them. They are new duties, one on the judge and one on the defence, and they are quite small at a clause each. So, in that sense it could possibly complicate discussions around committal to bring those in, but you are quite right that, in practice, those things will often run together. Think about the advice given by the defence to their client: if they are in a case that could proceed through committal to the Crown Court, it is obviously going to be a very relevant consideration if you say that you can be directly transferred and have your case heard earlier if you admit your guilt at that stage. Obviously there is a link between those two. In Committee we would like to discuss a lot of those speeding-up-justice provisions as a piece and make clear the linkages between them, even though they have not necessarily been put together in the draft.

43. **Mr A Maginness**: OK. Just one final point, Chair, with your indulgence. The victims' charter and the witness charter are to be welcomed. On persons being afforded the opportunity to make a victim statement, I know that that is happening at the moment, but this is putting it on a statutory basis. Can you inform the Committee what effect that

might have on the judge's consideration of sentence?

44. **Ms M Campbell**: I do not think whether the entitlement to make a statement is statutory or not will change the extent to which a judge will place weight on the statement, because I think that will vary from one case to another depending on the circumstances in any event. The reason for making the entitlement is just to try to ensure that victims are given that opportunity in the first instance to participate in the proceedings by indicating to the court the impact that a crime has had on them. It will help us to publicise and promote the availability of that if victims choose to do it — we do not want them to feel under any compulsion to do that, either — and also to make them aware of the support that is available to them in doing that.

45. **Mr A Maginness**: So the weight of the statement is dependent on the judge's assessment of it.

46. **Ms M Campbell**: It is entirely up to the judge to decide what weight he will place on that statement. As I said, it is going to have to be case-specific and it is going to depend on the circumstances in that particular case.

47. **Mr Elliott**: Thank you for the presentation. I just have one quick question as someone who perhaps does not know their way around the courts system so well. Explain a wee bit to me about the single jurisdiction for County Courts and Magistrates' Courts.

48. **Mr Matthews**: It is really to bring them into the same position as the Crown Court and the High Court, which is essentially that there is a single jurisdiction and all business can be heard equally in any court. In practice, what that means is more flexibility about where business will be heard depending on the needs of justice. So, for example, if you have five witnesses who live in Belfast and the offender lives in some other part of Northern Ireland, it could be that the business is moved for the convenience of the witnesses, or if you have special equipment in one courtroom you might move the hearing to there. In all cases, it is up to the judge to decide what is in the interests of justice and what the needs of the case demand. It is to move away from the situation where the case has to be heard in the specific jurisdiction of the event. That can cause issues, albeit not in all cases. It is just to give the Magistrates' Court the same flexibility as the Crown Court to move business around.

49. **Mr Elliott**: So it gives more flexibility, but the decision is still in the hands of the judge.

50. **Mr Matthews**: Yes. The provisions relate to how the boundaries will be set and how the LCJ will administer the business. The judges will have complete control over that aspect of it. It is to give them more flexibility to manage their business.

51. **Mr McGlone**: Clause 84 deals with the aims of the youth justice system. There appears to be a doubt about its compliance with the terms and proposals of the youth justice review and, indeed, with the United Nations Committee on the Rights of the Child (UNCRC). Have you done any read-across on that? Have you done any cross-referencing to see whether it is compliant?

52. **Ms M Campbell**: I think that there will be further provisions in the fines and enforcement Bill, so this will not be the limit of what we do legislatively in response to the review. This provision simply reinforces the centrality of the best interest principle, which we see as enhancing the implementation of the UNCRC. I do not think that there would be particular concerns on the part of children's organisations about this provision. Any issues raised by them might be about how they would like other aspects of the review to be implemented.

53. **Mr McGlone**: May I take you back and quote Kathleen Marshall of the youth justice review team? Her rights analysis of the recommendation on the aims of

the youth justice system and the UNCRC states:

54. "Compliance with the convention requires that article 3.1 is reflected in legislation as a principal aim with the same status as the current aim rather than a second level concern restricted to welfare."

55. Will you reflect on that and possibly come back to us at a later stage? I am not 100% clear whether there will be compliance or whether it is consistent with the reflections of the youth justice review team.

56. **Ms M Campbell**: We will certainly check that with policy colleagues before coming back to you, but our reading of it is that it comes very close to the intention of the UNCRC.

57. **Mr Lynch**: On persons being afforded the opportunity to make victim statements, have you considered including impact statements?

58. **Ms M Campbell**: We have been referring to those as victim personal statements, but it was the draftsman's view that it was better to refer to victim statements. Outside of the legislation, in practice and in the guidance that we use, we refer to them as victim personal statements to clarify their purpose.

59. **Mr Lynch**: Have community statements been included?

60. **Ms M Campbell**: We decided at an earlier stage that we would not put community impact statements on a legislative footing because it could be quite challenging to try to define in legislation what we mean by "community". It would be a much more difficult proposition to define that than to define what we mean by "victim".

61. **Mr Dickson**: Briefly, Chair, I want to go back to the point that you made.

62. Thank you very much for the explanation of all Parts of the Bill. With the Committee going out to consultation, many of the amendments that you propose are positive and will, I think, be welcomed by stakeholders and others who wish to comment. So I join the Chair in encouraging you to provide as much clarity as you can on those in the consultation. That would be very helpful.

63. **Ms M Campbell**: We will undertake to do that, yes.

64. **Mr A Maginness**: There was a report in the media that there might be a House of Lords decision on access to convictions. Has that been delivered?

65. **Mr Tom Clarke (AccessNI)**: Yes, the Supreme Court judgement delivered this morning said two things. First, it reaffirmed the Court of Appeal judgement on the disclosure of costs and convictions, in that they should not always be disclosed forever. It also upheld the Home Office's appeal against the Court of Appeal's finding that the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 was ultra vires. It upheld the Department's appeal.

66. **Mr A Maginness**: I do not know where that leaves us. On the latter point —

67. **Mr Tom Clarke**: What we did recently, by introducing a filtering scheme, reaffirms that and means that we are ahead of that game. If we had not done so, we would definitely have been in breach of the court's findings on costs and convictions. Introducing that increases the chances of our current legislation being more compliant with the Supreme Court judgement. The amendment that we are considering, on the advice of the Attorney General, is to introduce a review mechanism for people unhappy with what has been disclosed. So, even after we have applied the filtering rules, there will be an opportunity to ask for a review, which probably puts us in a better position than our counterparts in England and Wales.

68. **Ms M Campbell**: I understand, Tom, that the judgement will not have an impact on the specific provisions on criminal records in the draft Bill.

69. **Mr A Maginness**: Thank you very much.

70. **The Chairperson**: Thank you very much, and I look forward to seeing a lot more of you. *[Laughter.]*

12 November 2014

Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Sammy Douglas
Mr Tom Elliott
Mr Paul Frew
Mr Seán Lynch
Mr Alban Maginness
Mr Patsy McGlone
Mr Edwin Poots

Witnesses:

Mr John Patrick Clayton	*Children's Law Centre*
Ms Natalie Whelehan	

71. **The Chairperson (Mr Givan)**: I welcome Natalie Whelehan, policy officer, and John Patrick Clayton, assistant policy officer, from the Children's Law Centre (CLC). As is normal practice, the evidence session will be covered by Hansard and will be produced and published in due course.

72. At this point, Ms Whelehan, I will hand over to you. I appreciate your coming to the Committee today to elaborate on your written submission. We have the written report, so if you want to cover it briefly, we will ask questions based on the sections into which it is broken down. However, if you want to cover it all in your opening, we will proceed.

73. **Ms Natalie Whelehan (Children's Law Centre)**: Thank you very much, Chair, and thank you to the Committee for inviting us to give evidence today. Given the length and scope of the Bill, we are just going to give a summary of our concerns, before proceeding to answer your questions.

74. As a bit of background, the Children's Law Centre is a children's rights organisation, and we are founded on the principles of the United Nations Convention on the Rights of the Child. We provide free legal advice and representation for children. We have a dedicated Freephone legal advice line for children, parents and carers called CHALKY, as well as a youth advisory group called youth@clc. We offer training and research on children's rights and make submissions on law, policy and practice affecting children. Within our policy, legal and representation services, we deal with a range of issues to do with children and the law, including the law as it pertains to some of our most vulnerable children, such as looked-after children, children in conflict with the law, children with special educational needs, and those with disabilities and mental health problems.

75. The United Nations Convention on the Rights of the Child is a set of legally binding minimum standards and obligations for all aspects of children's lives, which the Government have ratified. The Northern Ireland Executive, as a devolved Administration, has the obligation to deliver all the rights in the convention to children and young people. Legislative and policy developments in Northern Ireland should be taken forward in compliance with the rights enshrined in the convention.

76. Part 4 of the Bill deals with victims and witnesses. We are broadly supportive of that part, and we believe that it has the potential to improve the experience of child victims and witnesses in the criminal justice system. That is particularly important for children and young people, given that it is well acknowledged that they are more likely to be the victims, rather than the perpetrators, of crime.

77. Criminal records are dealt with under Part 5. We have a number of concerns about the divergence of the current criminal records regime from the main rehabilitative recommendation of the youth justice review. Recommendation 21 states:

"Policy and legislation relating to the rehabilitation of offenders should be

overhauled and reflect the principles of proportionality, transparency and fairness … diversionary disposals should not attract a criminal record or be subject to employer disclosure … young offenders should be allowed to apply for a clean slate at age18".

78. In the interests of ensuring that the correct balance is struck with the protection of the public, it recommends:

"for those very few young people about whom there are real concerns and where information should be made available for pre-employment checks in the future, a transparent process for disclosure of information, based on a risk assessment and open to challenge, should be established."

79. We believe that that approach is in line with international children's rights standards, strikes the right balance between the rights of young people who offend and the protection of other children and young people, and has the rehabilitation and reintegration of young people at its core.

80. Our main concern about the retention and disclosure of criminal records is that their disclosure can prevent children and young people from accessing education, training and employment, which are vital elements in successful reintegration into society and in preventing reoffending. The seriousness of excluding children and young people from education and employment opportunities must be recognised. Youth unemployment in Northern Ireland is at almost 20%, and there are currently 32,000 young people aged between 16 and 24 here who are not in education, employment or training (NEET). Research has found that long-term unemployment is having a dramatic, detrimental impact on the mental health of our young people, with a recent study finding that a third of long-term unemployed young people have contemplated taking their own life and 40% of jobless young people have faced symptoms of mental illness as a direct result of unemployment.

81. We therefore have concerns about the current filtering arrangements, which have been in place since April of this year. Under those arrangements, Access NI will filter some old and minor convictions and other criminal information, such as cautions, from standard and enhanced criminal records checks. However, all informed warnings, cautions, and details of diversionary youth conferences and convictions held on criminal record databases will be considered for disclosure in the first instance. Not since April 2011 has Access NI routinely disclosed diversionary disposals on certificates. Although some cautions, diversionary youth conferences or informed warnings for certain offences will be filtered after a time, some will not be. We are therefore very supportive of the Department's intention to bring forward amendments to the Bill to provide for an independent review mechanism, which aims to make the current filtering regime more compatible with article 8 of the European Convention on Human Rights (ECHR). We are engaging with the Department on that review mechanism, and we wish to see it reflecting recommendation 21 of the youth justice review, including non-disclosure for diversionary disposals and disclosure of criminal records information relating to the offending of children and young people in exceptional circumstances, where the offence is sufficiently serious and relevant and where there are concerns for public safety were the information not to be disclosed.

82. Clause 37 provides that children under the age of 16 should not be subject to criminal records checks except in prescribed circumstances. We welcome any limitation of the circumstances in which criminal records checks can be sought against children. However, we wish to see that extended to the age of 18, in line with the definition of a "child" under the United Nations Convention on the Rights of the Child.

83. We also welcome the proposed amendments to the test that is applied by the police when deciding whether information should be included on an enhanced criminal records certificate in order to make the test for disclosure of information such as police intelligence

more stringent. Decisions about the disclosure of police intelligence must be consistent, transparent and compliant with international children and human rights standards. As with diversionary disposals, we wish to see the non-disclosure of soft intelligence up until the age of 18.

84. We support the intention to produce a code of practice for PSNI criminal records staff to ensure consistency in decision-making and also to publish the code of practice, which we believe must be subject to public consultation, in line with section 75 of the Northern Ireland Act 1998.

85. My colleague John Patrick Clayton will now take the Committee through the remainder of the Bill.

86. **Mr John Patrick Clayton (Children's Law Centre)**: Thank you, Natalie.

87. Part 6 of the Bill proposes the extension of the use of live video links in court proceedings. We have a number of serious concerns about the use of live links in criminal cases that involve children and young people, including the impact that their use may have on the child's right to a fair trial and to be heard in judicial and administrative proceedings affecting them. We are concerned that extending the use of live links in children's criminal cases has the potential to remove any personal connection that would otherwise have been established if the child had been present in court, including with the child's own legal representative, which has implications for establishing informed consent. It is recognised that effective communication with children who come into contact with the criminal justice system is challenging and that barriers can exist. If the child is not present in court, his or her legal representative, and the court itself, will be disadvantaged in being able to determine the competency of the child to give instructions, understand the implications of the hearing and participate effectively. The need for children to be able to participate fully in and understand proceedings in which they are involved has been identified as being fundamental to guaranteeing their right to a fair trial under article 6 of the European Convention on Human Rights.

88. Several of the new scenarios in which live links may be employed under the Bill require the consent of the accused person. The Department has undertaken to establish enhanced procedures for young people involved when considering the use of a live link to ensure that informed consent is present, but we are somewhat disappointed that those firm safeguards had not been put in place before bringing forward the legislation. Given the importance of a child's right to a fair trial, we wish to see the Department urgently commissioning independent research into the use of live links in proceedings involving children in order to examine the impact on the child's ability to participate and understand the court proceedings, including a comparison of the outcomes of children and young people's cases that have been heard via live link and those where the child was present in court.

89. We also wish to emphasise the need to ensure that the use of live video links is always driven by the interests of justice, and not by what is cost-effective. It is vital that administrative ease or financial expediency never take precedence over the rights of often extremely vulnerable children and young people.

90. Part 7 proposes the creation of violent offences prevention orders (VOPOs). Those will be civil orders that will allow the courts to place conditions on the behaviour of those convicted of violent offences. Breach of a VOPO, as we have been calling them, will be a criminal offence that may result in up to five years in prison. That will draw young people further into the criminal justice system and is in conflict with the principles of reintegration and rehabilitation, as clearly detailed in international children's rights standards. We believe that the imposition of additional conditions through the application of VOPOs to under-18s is unnecessary, as violent young offenders who are released from custody should already be subject to conditional

release on licence. Moreover, the Parole Commissioners will have directed the release of the young person only when satisfied it is no longer necessary, for the protection of the public from serious harm, that the young person should be confined. Similar provisions in England and Wales do not apply to under-18s, and we do not believe that the Department has provided any evidence to suggest that VOPOs are necessary for children and young people in Northern Ireland.

91. Clauses 77 and 78 relate to the issue of encouraging early guilty pleas in Northern Ireland. The CLC wishes to see adequate safeguards and protections being put in place to ensure that proposals aimed at tackling delay, such as encouraging early guilty pleas, do not interfere with a child's right to a fair trial and that safeguards and protections are put in place to ensure that young people plead guilty only where appropriate and appreciate the consequences of doing so. We think that that is particularly important for vulnerable young people, such as children with learning disabilities, those with additional needs and/or mental health problems, and those for whom English is an additional language.

92. The CLC supports the proposed amendments to the aims of the youth justice system to include the best interests of the child as a primary consideration.

93. Thank you for allowing us the time to provide evidence to you today. We are happy to answer any questions that Committee members may have.

94. **The Chairperson (Mr Givan)**: Thank you very much, Natalie and John.

95. Members, the Committee Clerk has a good paper that breaks down each part of the Bill and contains the information from the Children's Law Centre. What we will do is take each section in turn. If members want to ask a particular question, they should indicate. We will try and curtail it to that particular section.

96. The first section is to do with the single jurisdiction issue. A general question that I will put to you is around the potential drawbacks that may flow from having a single jurisdiction that may need to be addressed.

97. **Mr Clayton**: Those proposals seem to be quite driven towards efficiency in the courts system. As such, our concern is the interests of young people who may be appearing in court. Some of the concerns that we have raised are around, for example, young people possibly having to travel quite large distances to attend court. We have previously suggested to the Department that it needs to consider how that can be mitigated, perhaps by providing for the cost of travel or by providing travel options.

98. The other concern that we have is how decisions will be made around determining where court business will be allocated. Those are really our two broad concerns about that proposal around the single jurisdiction.

99. **The Chairperson (Mr Givan)**: OK. Mr Maginness?

100. **Mr A Maginness**: My question is really on a later section, so perhaps I should not.

101. **The Chairperson (Mr Givan)**: I will come back to you. Is your question on the single jurisdiction, Mr Lynch?

102. **Mr Lynch**: You mentioned that you had concerns about the video links in cases with young people. Can you elaborate on that?

103. **The Chairperson (Mr Givan)**: Seán, I will come back to the live links as well.

104. **Mr McGlone**: I am seeking a wee bit of clarity around this. In your submission, you refer to the number of those who may be disadvantaged as a consequence of this:

"Even if the numbers affected will be small, as suggested by the DoJ, the potential consequences for children who may not be able to attend court are so grave that they constitute a major impact on their enjoyment of equality of opportunity."

105. Can you tell me what you mean by that? It is just that I am picturing a

situation. There are courts closing in a lot of the local towns. A court can be an intimidating place anyway, even to go along to present to a social security commissioner on something that is not criminal at all. I am trying to establish whether, or why, children and young people would think that their local courthouse was less intimidating than, say, one in Antrim, Belfast or Dungannon. That is the first thing.

106. To flip it around to the second thing, if a young person has such major issues that he or she cannot attend court — disability issues, or whatever it might be — is there such a thing as a domiciliary hearing that can be considered in those really exceptional cases? I do not know the answer to that second one.

107. **Ms Whelehan**: I suppose that our major concern here is that we see real potential for adverse impact to be suffered by young people as a result of a lack of income that would facilitate their paying for transport to attend court. That is the main thing. We were expecting, in the consideration of the proposal by the Department, to look at measures that mitigate that adverse impact. We do not feel that that has been done effectively. We are talking about provision of transport or paying for transport to get young people to court. I do not think we are suggesting that any court is more or less intimidating than any other. Court is fairly intimidating for all young people, regardless of where it is. It is really about making sure that young people have access to justice and that, where there are barriers to that access to justice, those barriers are addressed by the Department.

108. I am not sure about the domiciliary court. That is not something that has been raised. Really, from our perspective, it is about mitigating that adverse impact, because we do not want to see young people getting into more trouble or being drawn further into the criminal justice system because of a failure to facilitate their attending court. That is our main concern. We would like to see access to justice across the board, for all children and young people, and a facilitation by the Department where there are barriers to that.

109. **Mr Clayton**: The proposals that were initially consulted on some years ago discussed the possibility of the arrangements being underpinned by some sort of administrative framework or some sort of policy to determine how court business would be distributed. The concerns that you are talking about, Mr McGlone, are certainly the relevant issues that have to be considered. If one of the parties to the proceedings had a disability or an issue that made travelling to a certain location very difficult, that would have to be considered. To our mind, we would like a little bit more information about where the proposal is at around creating a policy or administrative framework to determine how the cases will be allocated.

110. **Mr McCartney**: Thank you for your presentation. Your last comment may have answered my question. As I read it, you are not opposed to the idea of a single jurisdiction, but, where there are barriers and access issues, you believe that they should be addressed.

111. **Ms Whelehan**: Yes. For us, the issue is fundamentally about access to justice. It is about identifying any barriers to ensuring equality of opportunity in the enjoyment of access to justice for all children and young people and about recognising the types of young people who are in conflict with the law. The fact is that the majority of young people who come into contact with the law are from socially and economically deprived areas and may not have the ability or means to pay for transport, etc. This is to ensure, if this decision is taken, that children do not suffer as a result and are not drawn into the criminal justice system through no fault of their own and that mitigating measures are put in place to guarantee access to justice for all.

112. **The Chairperson (Mr Givan)**: OK, no other members have questions on the first section. The next section is on prosecutorial fines. Does any member have a question on that? No?

113. The next section is on victims and witnesses. Is there anything in that section that members want to pick up on?

114. **Mr McCartney**: As I read it, you feel that there are issues that need to be addressed. Are you saying that those should be in the Bill or that provision should be made to deal with them administratively?

115. **Ms Whelehan**: Both. We feel very strongly about victims and the need to support child victims and witnesses. The United Nations Committee on the Rights of the Child, in its concluding observations in 2008, was very clear about the need to support child victims and witnesses. We are very broadly supportive, as I said in the oral evidence on this part of the Bill, because we think that there is the potential in this part to improve the experience of victims and witnesses in the criminal justice system.

116. We think that it is a welcome move also to address some of the concerns expressed by the Committee on the Rights of the Child. On the issue of whether there should be something in the Bill, we would support an amendment to clauses 28 and 30 to make specific reference to the best interests of child victims and witnesses. We would like to see that included in the victims and witnesses charter, which would be in keeping with article 3 of the United Nations Convention on the Rights of the Child and the EU directive on the minimum standards for the victims of crime.

117. That would be our main concern when it comes to putting something in the Bill. Obviously, implementation will be key, and we will be working with the Department to make sure that children and young people are given information that they understand and child-accessible information in line with the United Nations Convention on the Rights of the Child and that there is adequate attention paid to the care and recovery of victims, etc. We would monitor the implementation of that.

118. **Mr McCartney**: As far as compliance with the charter is concerned, are you happy that the provisions are robust enough and that compliance issues regarding the statutory agencies are in there?

119. **Mr Clayton**: We put in a separate response to the consultation on the victims charter, which was going on at the same time as the Committee was seeking evidence on the Bill. As Natalie said, some of the issues that we raised were around, for example, ensuring that information provided by agencies is accessible to children and young people and that they can understand what is going on at all stages in the process. Those obligations flow not only from the United Nations Convention on the Rights of the Child but from the EU directive. We made some comments to the Department around that mainly in our response. It is about ensuring that those issues are addressed by the agencies that will be implementing the charter.

120. **Mr McCartney**: I know that we will be hearing other presentations. Do you have any issues with the definition of a victim for the charter?

121. **Ms Whelehan**: It is not something that we have raised.

122. **The Chairperson (Mr Givan)**: Do members have any other questions on this section? The next section is on criminal records.

123. **Mr McGlone**: If I picked it up right, in your opening remarks you mentioned that cautions, informed warnings and diversionary youth conferences are now disclosed routinely, which may not have been the case previously. Do you have any concerns that choosing that route might impact on young people in the future?

124. **Mr Clayton**: We do have some concerns around that. Our sense, broadly, in the youth justice system at the moment, is that the use of diversion and the measures that you have just referred to is on the rise. The youth justice review picked up that there are concerns about children and young people understanding fully the implications of accepting those

diversions. We are also conscious that the Department is doing a lot of work on a fairer, faster justice programme. Part of that is based around rolling out youth engagement clinics. The idea is that cases suitable for diversion will be diverted out of the formal court system more quickly. Our concern is about making sure that young people are fully aware of the implications of accepting a diversion. From the information we have received about the youth engagement clinics pilots, we are concerned that maybe that is not always the case. The information that we have received is that, in the vast majority of cases going through the clinics, young people do not have a legal representative there. We have some concerns about whether young people always fully understand the implications of accepting a diversion and the fact that it can be disclosed in future. Our worry is that that could potentially undermine the purpose of diversion generally.

125. **Mr McGlone**: I hear your concerns very clearly, but how would you do it differently to ensure that people and their rights are protected?

126. **Ms Whelehan**: We are concerned that recommendation 21 of the youth justice review has been moved away from in the current arrangements. That struck the correct balance between the rehabilitation and reintegration of young people who offend and the protection of the public. The Children's Law Centre is a children's rights organisation, so, obviously, we are supportive, first and foremost, of the need to protect vulnerable children and young people. We believe that the best way to protect children and young people and the public in general is to ensure the rehabilitation and reintegration of young offenders. That is the best way to protect the public from reoffending in the long term.

127. The review mechanism is really welcome because there needs to be a system in place for decisions to be taken about whether something genuinely needs to be disclosed, where there is an issue of public protection. Those decisions need to be taken in line with international standards and the recommendations of the youth justice review. That would bring us back further towards international children's rights standards and better outcomes for all.

128. **Mr McGlone**: So, really, what you are saying is that there should be some sort of mechanism in place before details are routinely disclosed?

129. **Ms Whelehan**: Yes. We do not think that anything should ever be routinely disclosed. There should be a weighing up of whether the offence is serious enough, whether it is relevant and whether there are genuine concerns for the safety of the public if it were to be disclosed.

130. The issue for us is that young people are being denied access to employment and training opportunities in Northern Ireland. That is having major impacts on the ability of young people to be able to progress with their lives. It is working in conflict with preventing reoffending, and that, in itself, is having an impact on public protection. In order to strike the correct balance, there needs to be a system in place so that young people's minor offending, where there is no risk to public safety, is not disclosed unless disclosure can be justified.

131. **Mr McCartney**: I want to have this clear in my head. From what you say in bold type at point 6.5 of your presentation, I gather that you feel that recommendation 21 of the youth justice review is not reflected in the Bill, and you feel that it should be.

132. **Ms Whelehan**: It is not reflected in the Bill at the moment. The current filtering arrangements have been in place since April of this year. We welcome the proposal to bring forward clauses that will introduce an independent review mechanism. We would have liked to have seen those clauses. Ideally, we would have liked to have been consulted on what those clauses would look like. There is real potential in the review mechanism to bring it much closer to what recommendation 21 said. We would like to see the non-disclosure

of diversionary disposals and the disclosure of conviction information in exceptional circumstances for under-18s where the offence is sufficiently serious, it is relevant and there are concerns for public safety if the information were not to be disclosed.

133. **Mr McCartney**: Are you saying that a proper and efficient independent review could bring us into line and —

134. **Ms Whelehan**: We believe that it has the potential to do so. We are working with the Department on that, and we have had very positive engagement. We believe that those elements have to be central to the review mechanism to bring it in line with recommendation 21 of the youth justice review and international children's rights standards.

135. **Mr McCartney**: In relation to clause 37, your position is that the definition of a child should be extended up to the age of 18.

136. **Ms Whelehan**: Yes. We think that that is more in keeping with children's rights standards.

137. **Mr McCartney**: You mentioned in your presentation the application for people to have what you refer to as their slate wiped clean at 18. How many people at 18 progress with their slate not cleaned? Is it a large number of people?

138. **Ms Whelehan**: At the minute, there is no provision in place to allow for children to apply to have their slate wiped clean. The filtering mechanism at the minute is a framework; some will be filtered out and some will not, depending on whether they are on a list of specified offences.

139. **Mr Clayton**: Obviously, different periods of time apply depending on the nature of the disposal.

140. **Ms Whelehan**: The majority of young people who offend, unless it is a non-specified offence or just one conviction, will continue to have that on their record.

141. **Mr McCartney**: Do think that there should be some provision to tighten that?

142. **Ms Whelehan**: Yes. The potential is in the review mechanism. We are working with the Department. We see a real opportunity to draw some of that back so that there is not a detrimental impact on the ability of young people to be able to access employment, training and education, all of which are massively important in terms of their progression and the reduction of offending.

143. **Mr McCartney**: Do you know of any instances of where people are denied access to, specifically, training as a result of, say, a conviction?

144. **Ms Whelehan**: Yes. We take calls on all issues that impact on children's lives through our CHALKY advice line. It has numerous examples of young people, particularly at this time of year, who phone up about courses that they cannot get on to or training that they are not able to access because something has come up on a criminal records check. They look to us to provide advice to them as to how they challenge that and what they should do about that.

145. **Mr McCartney**: Is that in further and higher education institutions?

146. **Ms Whelehan**: In all courses and in all kinds of education.

147. **Mr Douglas**: Thanks very much for the presentation so far. I come back again to what Raymond said about young offenders being allowed to apply for a clean slate at age 18. In my constituency, over the past couple of years, particularly because of the rioting and all, I see, far too often, parents coming in because a young person has been arrested, and it is a mark on them for the rest of their life. Maybe Raymond mentioned this, but do you have any idea of the number of young people, even in the last couple of years, who have fallen into that category across Northern Ireland, never mind east Belfast?

148. **Ms Whelehan**: I do not have any numbers in relation to that, but the point that you raise is really important. It is about how young people can be drawn into the criminal justice system for something that, ordinarily, they would not have been

involved in. That is a real concern of ours. One of the issues in relation to filtering is that, if a young person has more than one conviction, that will never be filtered out, regardless of what those convictions are for. If, for example, something happens with a young person on an off-night that is not characteristic of that young person's behaviour, that will always be disclosed on an enhanced criminal records check. We do not think that that is fair. That is what the review mechanism can do; that is its potential. It will allow for the circumstances of each individual case to be considered and a decision taken on whether the child poses a risk to public safety. That is why it is really important that we work on the review mechanism to try to ensure that young people do not bear the burden of foolish mistakes or misdemeanours for the rest of their life.

149. **Mr Douglas**: Where would this stand at an international level if we were to agree that there should be a clean slate at age 18? Over the years, I have been involved in programmes taking kids to the likes of Canada and America. Once they get a record, they have not a chance of going. That could be a young lad or young girl who threw one stone and who had a clear record up until they were 16 or 17 or whatever. So, where would this stand internationally with the likes of Canada and the United States?

150. **Mr Clayton**: I think that we look more to the international standards such as the United Nations Convention on the Rights of the Child (UNCRC) and other international standards. Those are very in favour of the ability to attempt to wipe the slate clean. We are guided more by that than specific systems that may exist in other countries.

151. **Ms Whelehan**: It is difficult to say about America in particular. Its immigration legislation may ask questions that you have to answer that do not reflect whether something will appear on an enhanced criminal records check. I suppose that that is the difficulty. Based on compliance with international children's rights standards, it would be compliant to wipe the slate clean.

152. **Mr Poots**: What does the Children's Law Centre believe should be disclosed?

153. **Ms Whelehan**: Our view is that the position on under-18s should be that of the UNCRC. That is that anything that should be disclosed should be serious enough, it should be relevant and there should be a threat or a risk to the public if it were not disclosed.

154. **Mr Poots**: What is meant by "serious enough"?

155. **Ms Whelehan**: That is a good question. On serious offending, I am not sure how I can answer that.

156. **Mr Poots**: Mr Douglas raised the issue of people who are engaged in unlawful activity around demonstrations. If someone were to get a caution for having been in attendance at that and for some participation, that might be one thing. If someone had thrown petrol bombs at police, that would be a completely different matter. I have a degree of sympathy with what you are saying in that it is important that you ensure that young people can move on and you do not push them back towards criminality, but I would like some clarity. If we are to produce legislation, we need clarity.

157. **Ms Whelehan**: Obviously, the independent review mechanism will have a role in determining what is serious enough. It is our view that decisions would need to be taken on a case-by-case basis and that the independent review mechanism would make those decisions. Obviously, there will be scope, and guidance will need to be produced. We will be talking to the Department about what that guidance might look like, and we will be feeding into that. Obviously, that will not be in the Bill.

158. **Mr Poots**: We need to be very cautious here, because if a young person had been involved in sexual offences, for example, and that was not disclosed, and, consequently, they ended up perpetrating another action against someone through employment or elsewhere —

159. **Mr Lynch**: Are we talking about diversionary issues here?

160. **Mr Poots**: We are talking about the disclosure of criminal records.

161. **Ms Whelehan**: Form our perspective, first and foremost is the protection of children and young people and the public. As a children's rights organisation, that is our main priority. We do not envisage any circumstances where somebody would be in a position where something was not disclosed because a mistake had been made and for them to go on to further offend. I certainly imagine that sexual offending and young people who pose a threat to the public, as in the example that you have given, would be a case for disclosure of the information because, obviously, there would be a threat to the public.

162. **Mr Poots**: It may have been a low-level sexual offence from when they were younger, but it may indicate that there is an issue with that particular person. It may not be a high-level offence that was committed at the early part, but it may be someone who is leading up to doing something much more significant.

163. **Mr Clayton**: Obviously, there are concerns about those kinds of issues. Obviously, there can be a very difficult decision to be made in certain cases. I think that that is right. It would be very much done on a case-by-case basis, and I think that it would have to be based on an individual risk assessment being undertaken. So, it is difficult, at this stage, to be definitive, but it is absolutely right to be aware of those concerns and be mindful of them. As Natalie says, those kind of issues, hopefully, can be addressed through an independent review mechanism.

164. **Mr A Maginness**: I want to ask about the point that was raised by Mr Poots and in Mr Lynch's intervention. We are talking about criminal records, but I thought that the main focus of your submission was in relation to diversionary issues with young people. Am I right in coming to that conclusion?

165. **Ms Whelehan**: Yes, one of our major concerns is that, prior to 2011, diversionary disposals were not routinely disclosed on criminal record certificates, and now, with the introduction of the filtering arrangements, all disposals are considered in the first instance for disclosure. Some of those will be filtered out and some will not be filtered out. It is our view, and the international standards are clear, that diversionary disposal should not be disclosed on criminal records checks.

166. **Mr A Maginness**: Yes, and the point is that they are increasingly used in the new regime of dealing with young offending and, therefore, there is a greater volume of those issues arising. But your basic position is that there should be no disclosure whatsoever in relation to diversionary measures?

167. **Ms Whelehan**: Yes.

168. **Mr A Maginness**: You would not make any distinction in relation to any diversionary measures?

169. **Ms Whelehan**: We are founded on the United Nations Convention on the Rights of the Child, and that is its position. All our policy positions are informed by what the convention says. Where there are genuine concerns about public safety, that will be for the independent monitoring mechanism to consider in relation to disclosure.

170. **Mr A Maginness**: So, you are saying that there is a failsafe mechanism, whereby, if there is some sort of risk to the public, that could be disclosed in certain circumstances.

171. **Ms Whelehan**: We have to remember that the police have the ultimate say. If something is relevant and ought to be disclosed, the police will decide that it should be disclosed regardless.

172. **Mr Clayton**: That test will be amended under the Bill. Natalie is absolutely right; that mechanism already exists.

173. **The Chairperson (Mr Givan)**: Mr Maginness, you indicated that you want to comment on live links.

174. **Mr A Maginness**: I think that Mr Lynch is first, Chair.

175. **Mr Lynch**: You mentioned concerns about live links in your presentation. Could you elaborate on that?

176. **Ms Whelehan**: Our major concern in relation to live links is that we are worried that the removal of young people from being present in court may have a detrimental impact on the ability of young people to participate in and understand proceedings in which they are involved. As we said in our presentation, the twin concepts of participation and understanding are so vital to ensuring that the child enjoys the right to a fair trial under article 6 of the European Convention on Human Rights. The European Court of Human Rights has also identified those as vital elements.

177. We are concerned because of the profile of children and young people who come into contact with the criminal justice system and the higher proportion of young people who have special educational needs, learning difficulties, mental health problems and communication problems. That was raised with the Committee by the Youth Justice Agency and the speech and language therapists in September 2013, and 54% of young people who were assessed by the Youth Justice Agency were found to have communication problems, and 22% of those were found to need the help of a speech and language therapist to communicate. So, our issue is that removing young people even further from participation in their own court case may further hinder their ability to participate in and understand the proceedings in which they are involved.

178. The European Court of Human Rights has been clear in case law about the need for courts to put in place additional measures to ensure that the child receives a fair hearing, can participate and understands, and we have seen that replicated in Northern Ireland as well. The Lord Chief Justice here has issued a practice direction about the need to assist young defendants to participate in and understand the proceedings that they are involved in, and he has also reminded the courts about the continuing duty on them to explain each step of the trial to the young person in a way that a young person can understand.

179. In our written submission, we have referenced research about some concerns about live links, such as technical difficulties and young people feeling that they have been removed from the process and have not been able to communicate effectively with their legal representatives. Some of them felt confused by the outcomes of the cases. That causes us major concern, and we think that independent research needs to be commissioned by the Department to tell us, once and for all, the impact on a young person's ability to participate in and understand the proceedings in which they are involved and also in relation to the outcome of the case. There needs to be some comparison, we believe, between the outcomes of cases where young people have participated in cases via live link and where young people are present in court. It raises serious question marks around the ability of a young person to give informed consent to appearing via a live link if they are unaware of what the likely impact will be on the outcome of their case.

180. While we understand that live links are more cost-effective, more efficient and more convenient, our concern is that the use of live links should never be driven in the interests of expediency or convenience but should be about the best interests of the child and in the interests of justice.

181. **Mr A Maginness**: The Lord Chief Justice's practice direction, which obviously carries a lot of weight, means that the judges and the courts are aware of the difficulties that you have quite properly highlighted. Is that not sufficient protection for young defendants in courts? Is your approach not a belt-and-braces exercise in terms of you maybe being overly concerned about the issue?

182. **Ms Whelehan**: The research shows that the use of live links can impede a young person's ability to participate in proceedings. They have felt removed from the case, have not been able to fully understand what has been going on and have sometimes not been able to communicate with their legal representative. Our concern is that the use of live links will impede the ability to properly consider and properly comply with the Lord Chief Justice's practice direction. Our concern is about the removal of young people from the court case, and the fact is that we do not know what the impact is. We need to know.

183. **Mr A Maginness**: If a young person is physically in the court, access to counsel or a solicitor is limited in any event, and, even if they are in the court with their solicitor nearby, they do not necessarily understand what is going on anyway. So, what is the difference?

184. **Mr Clayton**: You have to consider that, up to now, live links have been used in certain proceedings, and, whilst issues have been highlighted in their use involving children and young people, our concern is that there may be a decision to extend the use of live links to perhaps cover differing forms of proceedings that they have not been used in before. One example is breach proceedings. If my memory serves me correctly, I think that a young person may be brought back before a court for breaching probation requirements, for example. Before you look to extend it into other realms of the youth justice system, we want to be more satisfied that it is not having the kind of impacts that we fear it could have, and some of the information indicates that it is having, in certain cases.

185. You are right that it is welcome that there is a recognition by the Lord Chief Justice and in case law that you have to make sure that the young person can participate and understand. We are concerned that we are not entirely clear, in the absence of independent authoritative research, about the level of impediment that currently exists, and we think that should be established and benchmarked before you look to put live links into other areas.

186. **Mr A Maginness**: This is my last point, Chair. Some people would argue that the use of live links is better than the young defendant being physically present in court, because it is less intimidating, less frightening and less traumatic for the young person. What do you say about that?

187. **Ms Whelehan**: I think that is right. We do not disagree with that. It has to be about informed consent and a young person agreeing to participate in proceedings via a live link. The key is that, until we have research that compares the outcomes of cases of young people who are physically present in court and young people who participate in their cases via a live link, we do not believe that informed consent can be given. If it is the case that there is no difference and the research tells us that, that is fine. We have no problem with that at all. It is a young person's decision and it is entirely up to them, but it is about making sure that, when a young person gives informed consent, they know what they are consenting to, and it is not just about it being less intimidating. If there is going to be a serious impact on the outcome of their case, we need to be aware of that.

188. **Mr McCartney**: In the earlier discussion around a single jurisdiction, you were right to say that you do not want people to be dragged unnecessarily to far-off places, with the cost in travel, and live links are one way of trying to prevent that in some circumstances, but the issue is informed consent. So, you are not opposed to live links as long as the young person, and, obviously, their legal representatives, are satisfied that the interests of justice are not undermined?

189. **Ms Whelehan**: Yes. If it is in the best interest of the child, the child is happy to do it and we know that it is not going to have a detrimental impact on the outcome of their case, that is fine, but we are not in that position at the moment. That is our concern. We do not know what the impact is on participation

and understanding, and both of those are absolutely vital to ensuring that the child's right to a fair trial is upheld. That is where we are. I think it is too soon for live links. We think that there is serious potential for that to impact on the child's right to be heard under article 12 of the UNCRC and on the child's right to a fair trial. Those are pretty serious considerations.

190. **Mr Clayton**: It is also a concern, as outlined in our written evidence, that it appears to us that some of the proposals will not actually require consent. That would cause us some concern.

191. **Mr McCartney**: If there is informed consent, the issue of live links is — I will not say taken care of — less of a concern?

192. **Mr Clayton**: Provided it is informed consent, I think it goes some way to address the issue.

193. **Mr Elliott**: To be fair, most of the issues around my queries have been addressed, although I am still a wee bit confused about whether you would be content with live links or not. There are a couple of issues. How do you suggest that they may not be able to communicate with their legal advisers properly with live links?

194. **Mr Clayton**: Part of the concern around that is based on some of the experience that we have heard of issues with the live links connecting and some of the technical issues that might occur. We envisage that it could be easier in some circumstances if the child was physically present and transported to the court. If they were in custody, for example, you could only see live links being used in those circumstances. If they were transported to the court, they would have the opportunity to consult with the legal representative in person. Some young people, when asked, have expressed a preference for that. That is where that concern comes from.

195. **Mr Elliott**: OK. I think you prefaced the rest of it when you said that it is based on research and you need more research around it. I agree with Mr Maginness, and it has been suggested to me, that some people would be more content not being in the court. I assume that research would say that some people are more content and some people are not. I think you are going to get a mixed bag there. Just because a young person would agree to a live link or going to court, that does not always mean that that is the best for them; they may find the opposite whatever way they do it.

196. **Ms Whelehan**: That is right. That is what we are trying to get at.A young person may think that they want to appear via live link because of how intimidating the courtroom is, the length of time it takes, the transport, the hanging about, etc. However, we are not sure about the impact that appearing via live link will have on the outcome of a case or the ability of a child to participate and communicate, and we need to be aware of all those factors before we can say, one way or the other, what should be done and what is in the best interests of the child in that particular set of circumstances. So, I think that that is right.

197. **The Chairperson (Mr Givan)**: No other members want to speak on the live link issue. Let us turn to violent offences prevention orders.

198. **Mr Lynch**: John, you mentioned that those orders do not apply in England and Wales to under-18s. What is the rationale for the Department proposing to introduce them here?

199. **Ms Whelehan**: As we stated in our evidence, VOPOs are civil orders, and they allow the courts to place conditions on the behaviour of violent offenders. Those conditions will instruct somebody to do something or refrain from doing something, and the breach of a VOPO is a criminal offence that can result in a sentence of up to five years in prison. Our concern is that it will draw young people further into the criminal justice system, and that it is in conflict with rehabilitation and reintegration.

200. As you say, similar provisions in England and Wales do not apply to under-18s. You ask what the Department's rationale

is in proposing to apply VOPOs to under-18s. We certainly have not seen any evidence to suggest that VOPOs are necessary in Northern Ireland, and we say that for a number of reasons. We understand that there would be a very small number of young people each year who would be eligible for a VOPO in the first place and, secondly, the Department has told us that VOPOs would be sought for only for a very small proportion of that small number of under-18s, if any.

201. There was the consultation in 2011, wherein the Department outlined its intention to introduce orders similar to those that exist in England and Wales which, as I said, apply only to adults. It was not proposed in that consultation to extend the orders to under-18s and we are unaware of any respondents to the consultation exercise who asked or requested the extension of VOPOs to under-18s.

202. After the consultation, we were notified that the Department intended to extend VOPOs to under-18s. It is our understanding that the Department's rationale for that is that some of the criminal justice agencies suggested it. One of our concerns is that, because the consultation did not envisage extending VOPOs to under-18s, we do not think that young people have been adequately considered in that consultation.

203. Obviously, we are concerned that these are civil orders, the breach of which is a criminal offence, so it will blur the lines between civil and criminal law. At this stage it is unclear, because this is a civil order, whether, for example, hearsay evidence and the evidence of professional witnesses would be admissible. We are not sure but we think it is the case that the lower, civil standard of proof will apply. Also, we foresee circumstances where, potentially, a child would be afforded anonymity for the criminal act, but that reporting restrictions might not be guaranteed in the granting of a VOPO, which could lead to the identification of the child. So, there are quite a lot of issues.

204. **Mr Clayton**: I will just add to what Natalie has said. One thing we tried to tease out in our written evidence is that we think that VOPOs are unnecessary and somewhat disproportionate, because there are already orders that courts can impose when young people are found guilty of violent offences, and we have outlined some of those.

205. Certainly, with some of the orders that are specifically for violent offences under the Criminal Justice (Northern Ireland) Order 2008, the courts have to decide whether to impose that sentence, on the basis that the young person, once the Parole Commissioners are satisfied that they no longer pose a serious risk, will be released on licence and on conditions anyway.

206. One of the issues we raised with the Department previously was how those systems can interact. Our concern is that you could have a situation where a young person is under one set of conditions, through their licence, and have a second set of conditions imposed on them through a VOPO. Experience in other areas, such as bail, has shown us that, where more and more conditions are imposed on young people — mainly due to issues around their understanding of the nature of the conditions given and the multitude of conditions involved — that it can lead to them breaching those conditions. We would be similarly concerned about VOPOs, given some of the consequences that Natalie has outlined for being found in breach of one.

207. **The Chairperson (Mr Givan)**: What is the alternative to using the VOPO?

208. **Mr Clayton**: Alternatives are already available. That is one point that we have tried to make in our written evidence. If there are circumstances in which a young person, or any person, is found guilty of a violent offence, under the Criminal Justice (Northern Ireland) Order 2008, then the courts can impose an indeterminate custodial sentence or an extended custodial sentence, for example. With those sentences, there is a licence requirement on the person's

release; so, they would be released on condition in any event. As I understand it, if they are found to have breached those conditions, they can be recalled to custody. So, we think that there is already an alternative available.

209. One other point we have also tried to highlight is that the person would only be released from custody once the Parole Commissioners have decided that it is no longer necessary for the protection of the public from serious that they should be confined. We think that there is already a framework in place that could assist in those circumstances.

210. **Mr McCartney**: I have a number of questions. Who makes the application for the VOPO?

211. **Mr Clayton**: As I understand it, under the Bill, I think that the Chief Constable of the PSNI would mainly make the applications. He is certainly one of the parties that can make an application.

212. **Mr McCartney**: If there is a situation where a 17 year old is convicted of domestic violence, are the probation conditions enough to restrict them from access to the person that they first offended against?

213. **Mr Clayton**: First, it would depend on the nature of the offence for which they were convicted. To qualify for a VOPO, the offence has to be on one of the lists under the 2008 Order. They are quite serious violent offences. That is the first consideration.

214. Secondly, it would depend on the nature of the punishment that the young person was given in court. If, in the circumstances you talk about, there is probation, then there would be conditions attached to that probation. If it was found that the young person was not abiding by those conditions, they could be brought back to court to be dealt with alternatively. That would be the same with a host of other orders, such as a youth conference order or a juvenile justice centre order; an element of supervision is built into the young person's release back into the community, even short of the orders that I have mentioned under the 2008 Order for the very serious violent offences.

215. **Mr McCartney**: So, if there was a conditional release, say, in relation to a case of domestic violence, there would be restrictions, or the possibility of restrictions, being placed on a person that could have the effect of a non-molestation order.

216. **Mr Clayton**: It is interesting that you mention the non-molestation order. That is potentially an avenue that a person in that domestic violence scenario could go down as well.

217. **Mr McGlone**: I am trying to get my head around what a VOPO delivers that the courts do not. I understand that there can be some very violent people out there. If someone is at the stage of being so violent that society in general, but maybe specifically an individual who they have assaulted often persistently in whatever shape or form, requires protection, then what protection does a VOPO provide that the courts do not provide already? Where are VOPOs currently in use, and can you share any experiences of how well or otherwise they have worked where they are in use at the moment? Perhaps you cannot do so.

218. **Mr Clayton**: To answer your last point first, I think that, as Natalie said, the violent offender orders that exist in England and Wales do not apply to under-18s. The point that you make overall, if I understand your question, which is what will these add, is something that we are quite unclear about ourselves because the nature of the conditions that could be attached to a VOPO is not really in the Bill. I think that it would exclude people from certain places or locations, for example.As we said, we think that this can be dealt with, possibly, through other avenues that already exist. That goes back to our point that we think that VOPOs, potentially, are very unnecessary in Northern Ireland. As Natalie said as well, the Department indicated to us that extremely small numbers of young people would be eligible in the first place and that, within

that number, the number of young people to whom a VOPO would be applied would be very small again. It goes back to our point that we are not convinced that the case has been made to extend them to under-18s.

219. **Mr Frew**: We now have a VOPO, and we have had a sexual offences prevention order (SOPO). Do those apply to under-18s?

220. **Mr Clayton**: As I understand it, SOPOs do apply to under-18s?

221. **Mr Frew**: What is your view on them?

222. **Mr Clayton**: I am not as familiar with SOPOs as I am with the proposals being made under the VOPO, so I am not in as qualified a position to comment on them on the same level of detail as I am on the VOPO. I am not as familiar with what measures might be in place in cases involving sexual offences.

223. **Mr Frew**: Are VOPOs just an alternative tool for a different type of offence?

224. **Ms Whelehan**: My understanding is that one of the reasons why the intention is to extend VOPOs to under-18s is because of the operation of SOPOs and because they apply. To be honest, we have not looked at SOPOs in any real detail. Our view on VOPOs is that they will impose additional requirements that may be conflicting in relation to restricting behaviour or imposing conditions.

225. We are concerned, because we do not think that these are necessary, because the Parole Commissioners will make a determination, and because there will be licence conditions, etc. Our concern is that this is maybe setting young people up for a fall, similar to unrealistic bail conditions, in that they may well want to get their lives in order and move on but may not be able to do so because of this additional raft of conditions on top of those they are already under in relation to their licence. That is one of the issues.

226. **Mr Frew**: I understand that your aim was not the sexual offences prevention orders and that you are not here to talk about them. I appreciate that. Would it be logical for this Committee to look at them and see how they have operated and worked and use that to judge a VOPO?

227. **Mr Clayton**: It is certainly something that the Committee might want to examine. Going back to the point Natalie made earlier, there is possibly a difference already, although the Committee would need to look into it. The Department indicated that an extremely small number of people would be eligible for a VOPO, and then there would be an extremely small number again, within that, who VOPOs would possibly be applied to. So, that may be a point of difference already, and it immediately makes us question whether VOPOs are actually required to deal with young people who commit violent offences.

228. **The Chairperson (Mr Givan)**: The final section is on early guilty pleas. Do members have questions on those? There is then a general duty to progress criminal proceedings. No members have questions. Natalie and John, thank you both very much for coming to the Committee. It is much appreciated.

12 November 2014

Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Sammy Douglas
Mr Paul Frew
Mr Seán Lynch
Mr Alban Maginness
Mr Patsy McGlone
Mr Edwin Poots

Witnesses:

Ms Julia Kenny *NIACRO*
Ms Olwen Lyner
Ms Anne Reid

229. **The Chairperson (Mr Givan)**: I welcome Olwen Lyner, chief executive; Anne Reid, Jobtrack senior practitioner; and Julia Kenny, policy and research coordinator; all from NIACRO to the meeting.You are all very welcome. This session will be recorded by Hansard and published in due course. It will follow the same format as the last one. Please take us through briefly the general issues on which you have made a submission to the Committee. Then, I will go through each section in questions afterwards.

230. **Ms Olwen Lyner (NIACRO)**: Thank you very much for the opportunity to be here today. I am the chief executive of NIACRO.

231. Anne Reid is a senior practitioner on our employability programme Jobtrack. She is responsible for promoting fair recruitment for people with criminal records. Over the past period that we have been looking at that, there has been a 260-fold increase in the number of enquiries that we deal with year on year. So, Anne has some experience.

232. Julia Kenny has responsibility for our policy and research work. Hopefully, some of the questions that we respond to will draw on the research that we have undertaken or some that we are currently undertaking.

233. This session obviously supplements our written evidence and gives you the opportunity to ask us questions. We will look forward to that.

234. I will just take a moment to brief you on the work of the organisation and outline a couple of the points that are key to our concerns at the moment. We have three key concerns. Despite recent changes to the current criminal record regime, there are still many instances that prevent people with a record being reintegrated back into society and the workplace. So, a mechanism that allows people to apply for old or minor convictions to be removed from their criminal record is needed to promote better resettlement and therefore reduce reoffending rates. This is in line, particularly, as you have heard from others, with recommendation 21 of the youth justice review, which is still yet to be implemented.

235. Our second concern comes from the fact that we need to move to a situation where we formally end the option of imprisoning people for the non-payment of a fine. We know that we have a stay in that process at the moment. We need to formally end that process.

236. Finally, while we recognise that it may be beyond the scope of the Bill as it currently stands, we want to draw your attention to the fact that crime has both direct and indirect victims. From our experience, the families and children of people who offend or are accused of offending also suffer as a consequence of crime.

237. NIACRO is a voluntary organisation that has been working for more than 40 years to reduce crime and its impact on people and communities. We work with people in prison and their families, adults in the community, children and young people. The nature of our day-to-day work means that we provide

services to and are aware of the issues affecting people who have offended, young people and adults who may be at risk of offending, victims of crime or antisocial behaviour and their families.

238. Over the years, we have gathered most of our evidence from listening to the people whom we work with. We understand the lasting damage of a criminal record. This, alongside the importance of helping people to avoid entering the criminal justice system in the first place, is something that we raised with you in our written evidence. We know that being able to access education, employment and training generally greatly reduces the risk of reoffending and is a key factor in helping people to stop offending altogether. However, too often, a criminal record or even unofficial non-conviction information that is held by the police acts as a barrier to employment or training and therefore undermines efforts for effective resettlement. In effect, the criminal justice system can, at times, be seen to be working against people who are attempting to integrate back into society and stop offending behaviour. We strongly believe that the way in which the system works, the way in which people in the media think and the way in which the law is implemented can amount to barriers to accessing sustainable education, employment and training. These barriers need to be minimised for us to see a reduction in reoffending, which will, in turn, create a safer society.

239. We have concerns that the current criminal record regime does not protect the most vulnerable in society and can actually prevent effective rehabilitation and resettlement while the existing structures can be misused. Our experience is that some employers use criminal record information, including very old and minor convictions, as a means to deny people opportunities without penalty. While Access NI does have a code of practice, our evidence suggests that this is not always being effectively implemented and that registered bodies are not regularly being held to account. We believe that this needs to be addressed urgently so that employers cannot use the disclosure of convictions to weed out applicants at the shortlisting stage. Legislation for this fair recruitment practice would help to reduce reoffending and make communities safer.

240. While the new filtering arrangements for criminal records that were introduced earlier this year mean that some convictions are now not disclosed to employers after a certain time, our experience is that they still do not go far enough. For example, if somebody comes to the attention of the police for a traffic offence and then there is evidence of an invalid licence because they have not changed their name — for example, a woman who got married — or their address, this becomes two offences and neither will be filtered. We find that this affects people who have moved house or women who have changed their surname after marriage. We consider those to be minor offences. That is something that we can explore later on. Those convictions could not be filtered.

241. As a society, we need to ask ourselves whether keeping that person in the criminal justice system, subject to the record-keeping processes, forcing them to declare that conviction for the rest of their lives, denying them opportunities both for travel and work and, therefore, increasing their dependency on the welfare system is really acting to protect the public. This is not what the justice system or the criminal record system was designed for, yet these are everyday occurrences that are being referred to our helpline. We therefore welcome a proposal to build in an appeals mechanism to the new filtering system. We recognise that this should come in the Justice Bill and we wish to be consulted on that.

242. We are deeply concerned that recommendation 21 of the youth justice review has not been implemented. We strongly recommend that this be reconsidered and a mechanism put in place for people to apply for old or

minor convictions that were received when they were under the age of 18 to be removed from criminal records. To continually punish and stigmatise anyone for a minor offence committed when they were a child can ruin their life chances and affect their mental health, again creating barriers to employment, education and training.

243. You will probably be familiar with the stories of Simon Weston, a Falklands war hero, and Bob Ashford. Simon Weston went forward to stand as a Conservative candidate and Bob Ashford as a Labour candidate for police and crime commissioner roles. Both were required to withdraw because of minor convictions which they acquired under the age of 18. We frequently hear stories from young people who have been denied opportunities to study to become a nurse or a teacher or for other professions due to minor convictions that were received in their youth which are not actually relevant to their chosen career pathways. We all know young people who have been influenced by their peers. Too often, young people who enter the youth justice system have been in the care system and may have had a troubled start to life. We do not want to continually punish them for an unwise decision that they made as a child. This is an issue that we hope to discuss with you in more detail in the coming months, though of course we are happy to answer any questions today.

244. Our response to the clause that relates to fines outlines a number of concerns. We are clear that the defaulting of fines imposed for minor matters should not result in imprisonment and this is clearly a disproportionate punishment. We welcome that the practice of this is currently paused. We are disappointed that the policy has not yet been formalised. Maybe that is something that should be included in this legislation. We know that we are not the only people who are concerned. We regularly hear stories of police and prison officers who actually act to pay off small fines to stop people going into prison. With regard to the proposed prosecutorial fine, it is critical that the circumstances for disclosure of these fines be clarified. This is, at heart, a diversionary measure to take people away from the criminal justice system. Any form of a record of that fine that would in the future be disclosed to employers would, in fact, undermine the diversionary aspect of the disposal.

245. We raised a number of other points in our responses, including the importance of avoiding unnecessary delay but, critically, without compromising justice, as well as recommending that the families of those who offend, or are alleged to have offended, are recognised as silent victims. Consideration must be given to all of those who are affected by the criminal justice system including indirect victims who are left to navigate the system alone. We are particularly concerned about the impact of the justice system generally and imprisonment particularly on the children of defendants. We recommend that these children be given the opportunity to submit personal impact statements to the court alongside the victim's personal impact statement to be considered by the judge when sentencing. This is already being explored in England and Wales and has been well trialled in Scotland. We work with families affected by imprisonment, and we recognise the impact it has on those left behind. Therefore, we call on the Committee to recognise those families as indirect victims of crime. They have a similar need for information and support to cope with the justice system.

246. In conclusion, we welcome the opportunity to share our views and experience of our service users with you today. The current criminal records system is not working as well as it could. A mechanism to remove old and minor convictions from the record is needed. We highlight that imprisoning people for fine default should be formally stopped. Crime has indirect victims, too, namely the families and children of defendants. A number of concerns are outlined in our response, although we welcome many

elements of the Bill. We recently wrote to the Committee to invite you to hold one of your meetings in our Belfast office. I hope that that will provide an opportunity for you to meet some of our staff and service users and to learn a little bit more about the variety of the work that we do. In the meantime, I hope that our comments assist you in your considerations. We are happy to answer any questions.

247. **The Chairperson (Mr Givan)**: Thank you. NIACRO did not comment on some of the sections that we previously covered, so we will focus on those that NIACRO has commented on. The first one is section 3 around prosecutorial fines. You made the comment about trying to keep those who do not pay fines out of custody. I think that that is something that most people share. Do you have any thoughts on how the fines could be more restorative in nature?

248. **Ms Lyner**: That is exactly the point. Very many fines, as you know, are quite small. It is not the amount of money that is so important; it is the measure of trying to regulate behaviour and say what is acceptable and what is not. In our view, if we have passed the first fine and we are now starting to write a pattern of behaviour for which fines will continue to be given, we think that it would be appropriate to have something else. A supervised activity order is a useful model to look at ways in which people can pay back something to society in a different way. I absolutely recognise that the restorative approach is what is required.

249. In situations where people are evidencing that they are struggling with paying back their fines or whatever the issue around behaviour is, there are many things that we can do, such as money management schemes, that would help people to order their behaviour in a different way. The notion is that we have very many people who default on fines. The majority of people do not default; the majority pay the fines. Where we have a pattern of that not being the case, we do not think that it is patterning out good behaviour to allow those things to continually default, because prison will become the option. We have a pause in the system. It seems to be an appropriate time to try to draw in an amendment to make that change.

250. **Mr McCartney**: You state in bold type in your presentation that:

"We recommend that a low level summary offence is clearly defined".

251. Is it not currently defined well enough?

252. **Ms Lyner**: It states:

"no definition has been given in the legislation".

253. We feel that that is clearly a piece of work that needs to be done.

254. **Mr McCartney**: Is there none listed? In the fixed-penalty notice, there is, but there is not in this. That is fine.

255. I agree with the initial comments and the Chair's comments around the fines and how we approach them. Should something be put in place so that someone is not given a prosecutorial fine if it is known that they are not in the position to pay it?

256. **Ms Lyner**: It does not seem very sensible to us to waste the time of the criminal justice process by going to something that is not going to have a good outcome. In terms of trying to help people to move towards better behaviours, we want to have something that they can achieve. That would be a positive.

257. **Mr McCartney**: So, running alongside it, there should be some provision for the supervision —

258. **Ms Lyner**: Absolutely. The supervised activity orders have a model, although I am not saying that we have had an extensive enough trial to be sure that they are the correct model. We need to think about something that has a restorative element to it that is diversionary and keeps people out of the high-cost end of prison.

259. **Mr McCartney**: The prosecutorial fine process has to be accepted by the person, so that it is not an imposition.

260. **Mr Dickson**: Thank you for your presentation. I very much agree with your line on prosecutorial fines. The traditional scene in court is that the judge listens to the evidence and the solicitor says, prior to the judge passing sentence, that his client does not have any money to pay the fine. In the past, traditionally, the judge just awarded the fine. What is the role for organisations such as yours and others in providing background information to the court so that the judge will not simply say that he has heard this from every solicitor who has passed through his court and that he needs hard evidence to demonstrate that the person does not have the resources to pay the fine? I suggest that this will put an additional burden on those who have to provide such evidence and background information to the court. I think that it is a good thing, but it is a burden on organisations such as yours, and others.

261. What is the alternative to fines? How can society, in a sense, be satisfied that the fine has been paid?

262. **Ms Lyner**: There are two points. Over the years, we and others have looked at various models whereby you would be able to make a referral to somebody who had a duty in court, a third-party provider, to assess means and incomes. I do not think that that should be too burdensome. Clearly, cost would be an issue.

263. On the alternative to fines, you could look at other ways of people providing payback. The Republic of Ireland and Scotland are running quite significant payback schemes that seem to be going down particularly well with the public, and offenders are engaging very positively with them. I think that we need to look outside the box.

264. **Mr Dickson**: That is very helpful.

265. **Mr Frew**: I have some sympathy with this trend and this argument. You talked about supervised activity orders. Are you suggesting that they should be applied more often than fines? Are you also suggesting that they should be applied if the fines are not paid?

266. **Ms Lyner**: There are two elements. As we know, and as evidence shows, many people pay the fine, regardless of whether we have gone through a process, as Mr Dickson suggests, of testing financial capability. Possibly, paying the fine, and we know that they are relatively small fines, does not have as much impact as community payback. It is important in this process that, if we are trying to move to people's behaviour improving and being less of an issue to society, it is important that that process is available. I do not think that there is anything particularly restorative about a fine. There is something much more restorative about a community payback situation.

267. **Mr Frew**: Is it enough community payback simply to refer someone who has been involved in an alcohol-related offence to an alcohol awareness course? Do you think that we need more than that? Obviously, it would help, but is there a punishment involved in that?

268. **Ms Lyner**: Also, will it change behaviour? No. We would probably have to look at what the programme comprised. It is perfectly reasonable for us to have a conversation with people who supply programmes at the moment and look at the components. In that situation, looking at one's own alcohol management may not be enough. We need something more testing. If we end up putting someone in prison for three, four or five days for defaulting on a payment, we cost the system £3,000. Let us look at what we could do, probably for a lot less, that might have a much higher impact.

269. **Mr Frew**: Is there a scale or range of supervised activity orders? Excuse my ignorance on this.

270. **Ms Lyner**: We have trialled some elements here, but I do not think that, as yet, the trials have been extensive enough.

271. **The Chairperson (Mr Givan)**: No other members wish to speak on this section.

272. Do members have any comments on victims and witnesses?

273. **Mr McCartney**: I have a number of points on your submission. We spoke earlier about the types of offences and how they are defined. I have broad sympathy for what you say, but what is meant by a victim can be difficult. When does the victim become defined? The wording "indirect victims" can lead to a situation that would be very hard to put into legislation. How do we pin that down?

274. **Ms Julia Kenny (NIACRO)**: Every time that somebody is accused of an offence or goes to court, their family members are impacted just as much by the criminal justice system, so they would be indirect victims. We recognise that a victim charter will come from the EU directive, so we realise that it may not be possible to include the notion of indirect victims in its scope. However, the charter outlines a list of provisions for direct victims of criminal conduct. We are saying that many of those provisions would be just as applicable and just as needed by indirect victims: for example, being treated with courtesy and respect, being updated on processes and having the court system explained to them. In our experience, the families of people in prison and the families of people going through court could also benefit from that kind of advice.

275. **Mr McCartney**: Would the families make it known that they wished to be so informed or would there be an assumption that you have to inform them?

276. **Ms Kenny**: Under the victim charter, easy-to-read leaflets are being compiled, and every time that somebody reports a crime, they are given a leaflet. There is no reason why a similar leaflet could not be given to the family or partner of somebody who has been arrested to explain what happens next. We had an instance of a father being arrested, and the wife and children were left not knowing when they would see him again, where he had been taken or how they could visit.

277. **Mr McCartney**: You recommend that "stringent measures" be put in place in the event of non-compliance. What type of measures do you think should be put in place to make people comply with the charter?

278. **Ms Kenny**: That needs to be explored further. We recognise that no criminal or civil proceedings would be brought against any agencies for non-compliance but that it may come up in court. We are saying that it needs to be emphasised that it is important that all agencies know that it is not enough just to have a charter; it has to be implemented properly.

279. **Mr McCartney**: On impact statements, your submission states, in bold:

"It is for this reason that we recommend the DOJ introduces clear guidelines and regulations as to who can assess the Statement."

280. Do you think that access is too narrow at present or too broad?

281. **Ms Kenny**: I think that it is too vague. There needs to be a duty of care to the victim, and we propose also that children of defendants have an option to submit an impact statement. To protect the victim, there needs to be a finite list of agencies and people with whom that can be shared

282. **Mr McCartney**: Thank you very much.

283. **Mr Douglas**: Thank you for your presentation. Raymond mentioned the meaning of a victim, and this is a follow-on from that. At this point, Julia, you say that you agree with the definition of a victim.

284. **Ms Kenny**: Yes, but we want it to be expanded. We believe that indirect victims should also be acknowledged as victims of criminal conduct.

285. **Mr Douglas**: During the Troubles, I knew a lot of people, including family members, whose son or father went into prison, and you could see that they also served the sentence. You say that you want to include all those impacted by the offence. What do you mean by all? I read that as my mother, my father or my

brothers and sisters, but what do you mean by all?

286. **Ms Kenny**: Specifically, family members of the person in prison or the defendant. We use that terminology because the individual may not be living with their family; they may be living with a friend or a partner. Therefore, we did not want to limit it to blood relatives.

287. **Mr Frew**: Can we expand that argument or logic? I understand the rationale, but where is the line drawn? Obviously, if a father is arrested, those affected are the children and the wife; for an 18- or 19-year-old living at home, their brothers and sisters. However, a 30-year-old's brothers and sisters will not be impacted to the same extent as if they were in the same household. Where do you draw the line around the extended family? Where do you stop?

288. **Ms Lyner**: We are talking about people for whom having a relative in prison would have a serious impact. You are right to say that as people grow older, their relationships may lessen. We are balancing two key things. The first is that we are really thinking about children. An approach being trialled in England, Wales and Scotland takes account of the research that suggests that outcomes for prisoners' children are poor, and the breakdown of their relationship is an unhelpful element of that. The second is that we also know from research that the outcomes for the person in prison, be it mum or dad, are better if they stay in contact. So we have a "child at the heart" approach, but we are also being a little more selfish and saying that we also want to know that this is about a good resettlement outcome and that relationships will be sustained over the period in prison, through good visiting arrangements, good contact visits and maybe special arrangements made for children who find it hard to travel, or whatever. The impact would be about trying to maintain the contact. It does not necessarily change the sentence, but it asks questions: what about the circumstances of the sentence could be made better, and can we keep somebody at Maghaberry or transfer somebody to Magilligan so that visiting is easier?. Those are the types of outcomes that we are thinking of.

289. **Mr Frew**: Thank you for that.

290. A massive issue is the spiral of crime that occurs when young people follow in the footsteps of their parents. We met the Probation Board a couple of weeks ago and heard about the cycle whereby children commit crime and end up in prison, alongside their father or mother in some cases. Is there any way in which to try to deal with it in the Bill?

291. **Ms Kenny**: We have found that communication is an important first step. It is important to update the family, who, in turn, can update the children on, for example, where their mother or father has gone, when they are coming back and when they can visit. We can also, if appropriate, help to facilitate those visits. As Olwen said, we find that such visits not only help the person who is in prison to desist from crime and stop their offending behaviour but can prevent the young person developing that offending behaviour. When a parent goes into prison, a young person is more likely to suffer poorer educational outcomes, mental health problems, stigma and bullying at school. They also show a tendency to withdraw generally. So, by providing that communication and the kind of provisions outlined in the victim charter to indirect victims as well, we can start to break that cycle, support those families and remove some of that stigma so that the families and children can seek support.

292. **The Chairperson (Mr Givan)**: No other members wish to speak on that point. Part 5 is about criminal records.

293. **Mr McCartney**: On clause 36, a lot of people see the benefit of portability, but you seem to have some concerns about it and discrimination. Perhaps you would talk about that.

294. **Ms Anne Reid (NIACRO)**: Yes. We would certainly welcome portability, if its use by employers, or "registered bodies", as they are known with

Access NI, is managed and audited properly. The current process means that the registered body applies on an applicant's behalf for a standard or an enhanced criminal record check.As part of that process, there is a code of practice requirement that those bodies must adhere to. Our concern is that, as and when portability is introduced, that may not be as tight. It is not that we are saying that it is particularly tight at the minute, but there could be opportunities for those employers perhaps to disregard that code of practice and just use it, probably more than it is used already, to discriminate against people unnecessarily because of a particular disclosure. An example of that would be one caution appearing on an enhanced disclosure check. That may weed somebody out of a job as a health-care worker for a minor offence that is not filtered out at that stage or later. Our concern about portability is that it must be managed, monitored and audited by Access NI to ensure that it is used fairly.

295. **Mr McCartney**: OK. I think that you have some concerns about the enhanced checks in clause 39 as well.

296. **Ms Reid**: We find that any applicant going through the enhanced or standard check for a job that requires that experiences quite a lot of unnecessary discrimination. Our line is always about risk management and making sure that everyone is at least afforded the opportunity to apply for employment. The employer then looks at risk in terms of the duties of the job and the nature of that disclosure, whether it is a caution, an informed warning, a diversionary youth conference or a conviction. We find that the code of practice is not being audited in its full sense by Access NI. That means that employers are using disclosures as a means to disregard very good and capable people. They are not really looking at the business case. Our advice to employers is that they should see that disclosure as part of the greater holistic recruitment process, but, unfortunately, that is not happening.

297. As Olwen referred to earlier, in the last 12 months, there has been a marked increase in calls to the advice line, mainly by applicants but also by employees experiencing difficulties in how an employer is using or interpreting the disclosure of the information in the check to dismiss someone or rescind a job offer. That is the type of case that we deal with daily.

298. **Mr McCartney**: One of your recommendations is that Access NI needs to be more customer focused.

299. **Ms Reid**: Yes. We receive quite a lot of referrals to our advice line through Access NI's helpline, but the difficulty that many applicants experience is that they just cannot get the answers that they are looking for, such as how long it takes a check to come back. Perhaps, if they have a query about their enhanced disclosure check, there is the feeling that they do not get the customer focus that they are looking for. Quite often, Access NI refers the individual to NIACRO for advice, so, unfortunately, that is where we pick those cases up. We could probably sit here until next week and cite many examples of people, including employers, experiencing difficulty with the whole regime.

300. **Mr McCartney**: I am aware that there have been changes to the Rehabilitation of Offenders Act in England and Wales. Have you done any work on its impact and whether it would be a good provision to bring across?

301. **Ms Reid**: Olwen may want to pick up some of this, but, particularly in the six or seven months since that legislation was introduced in England and Wales, people have been phoning our advice line and asking whether they can avail themselves of that same system. We have anecdotal evidence and evidence through the advice calls to demonstrate that people want to know why, for instance, in Northern Ireland, their fine is disclosable for four years longer than it would currently be in England and Wales. They do not think that fair, and we have made the argument to the Department and the Minister that we need to have a debate on the rehabilitation of offenders legislation

in general. It does not do what it is supposed to do, which is to move people away from the criminal justice system. In fact, in many cases, it is used by agencies to discriminate — I keep using the word "discriminate" — and to deny people the opportunities that they are entitled to. So, yes, we certainly call for a root-and-branch review of the rehabilitation legislation here.

302. **Mr McCartney**: Were the changes in England and Wales by regulation or primary legislation? Do you know?

303. **Ms Reid**: That was pushed through by way of a private Member's Bill.

304. **Ms Lyner**: We have been meeting NACRO and SACRO over the past few months to look at our different criminal record regimes and the differential impacts. We intend to do work on that early in the new year and try to pull out where there is something that is really useful and where there is something that seems to be lagging behind. The overall perspective is that the rehabilitation of offenders legislation was introduced in the 1970s and requires revision, as do most things that have been around for that length of time.

305. **The Chairperson (Mr Givan)**: Members have no questions on the early guilty pleas or the general duty to progress criminal proceedings, so thank you very much for coming before the Committee.

306. **Ms Lyner**: Thank you for that. I will just remind you of our invitation to you: we would really like to see you, if we can, early in the new year.

307. **The Chairperson (Mr Givan)**: Thank you.

12 November 2014

Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Sammy Douglas
Mr Paul Frew
Mr Seán Lynch
Mr Patsy McGlone
Mr Edwin Poots

Witnesses:

Mr Les Allamby	*Northern Ireland*
Mr Colin Caughey	*Human Rights*
Dr David Russell	*Commission*

308. **The Chairperson (Mr Givan)**: I formally welcome from the Northern Ireland Human Rights Commission (NIHRC) Les Allamby, chief commissioner, David Russell and Colin Caughey. As with the other evidence sessions, this will be recorded by Hansard and published in due course. Les, I invite you to outline the areas in your written submission that we are dealing with today, and we will then go through it section by section.

309. **Mr Les Allamby (Northern Ireland Human Rights Commission)**: Thank you. I will ask my colleagues briefly to introduce themselves, and we will then go straight into the key areas of our evidence to the Committee.

310. **Mr Colin Caughey (Northern Ireland Human Rights Commission)**: I am the policy worker at the Human Rights Commission.

311. **Dr David Russell (Northern Ireland Human Rights Commission)**: I am the deputy director.

312. **Mr Allamby**: I should start by saying that our evidence is part of our statutory duty to provide advice to the Assembly on legislative measures and their implications for human rights. I will concentrate on the key areas in our submission. I will briefly introduce them, but we are happy to take any and all questions on those areas. I welcome the acknowledgement that we will be back with you in a fortnight's time to deal with particular issues.

313. I will kick off, then, with prosecutorial fines. We have no issue in principle with the idea. I heard the evidence earlier about a restorative approach, and that seems eminently sensible. The one key issue that we want to focus on is a recognition of this scenario: I do not wish to tempt fate, but, if, for example, I suddenly behaved very badly and found myself facing a prosecutorial fine, I probably would find it easier to find the money than my counterpart next door who was on means-tested social security benefits. I can see some difficulties with the idea of creating levels of fine depending on financial need, but it strikes me that you could, as a Committee, suggest an amendment to section 18, for example, which looks at the 28 days to pay, and add words to the effect of "or otherwise a period as deemed reasonable in the circumstances". It clearly makes no sense, financially or otherwise, to send someone to prison for fine defaulting or prosecutorial fine defaulting. It seems to me to be disproportionate. For those who rely on a social security means-tested benefit, there is a provision to make a deduction based on 5% of that benefit, which is currently £3·65 a week. I do not suggest that that is necessarily the benchmark, but it gives you an idea of the difference between paying £200 for criminal damage within 28 days following a 21-day notice period and how the social security system deals with this. The former might put somebody off the prosecutorial fine route and send them into the arms of a loan shark or the payday lenders that just get somebody out of one problem and into another. Therefore, we think that it makes sense to look at that kind of amendment.

314. We welcome the victim charter and witness charter. We think that the refinements to the earlier version mean that the victim charter now meets the UN's basic principles of justice for victims of crime and the abuse of power. It is a step forward. We also think that the provisions to "have regard" to witness statements are welcome.

315. We have a few observations on the criminal records clause, which is an issue that I know you have scrutinised considerably. The first is that it is clearly an improvement on where we have been. By that I mean that there are some administrative improvements. We think that portability, if handled right, makes sense. It is very important that there is now a right of redress to an independent monitor. The filtering mechanism that has been introduced makes sense, as does a more effective definition of the relevance of information and certificate. Those are all welcome.

316. This has been the subject of a lot of litigation in the UK courts and beyond. There is Northern Ireland case law from the European Court of Human Rights in MM v UK, which we hope has now been remedied here, in that there was no effective remedy if you were to argue against how your caution was treated, as in that case. So, judicial review, for example, was not considered an effective remedy in those circumstances. At the time, the Information Commissioner gave guidance on how to deal with the case law as it stood then. It seems to me that some of those areas have now been looked at and that this is a much better set of proposals.

317. We suggest that the Committee might want to focus some of its attention on the fact that there is a code of conduct to come on how you might manage these issues. In the past, frankly, very limited discretion has been given and the judicial decisions, in the early stages, often seemed to back that up. So, I think that the code of conduct is quite important, and it strikes us that this is one of the areas that might be amenable to the idea of a targeted consultation so that some key organisations — the kind of people whom you asked to give evidence today, for example — could have an opportunity to look at and comment on that before it comes into place. That might be one way of, hopefully, bolstering the safeguards around the disclosure of criminal records. That is our key comment on that area.

318. On live links, we think that the important issue is that the accused is properly included, in any event, in his or her trial and understands what is going on. That is a fundamental principle of justice and good practice. We do not say that live links cannot achieve that or will make it impossible, but, in some circumstances, they might make it more difficult. We understand all the administrative and financial advantages and the notion of weekends, bank holidays or in certain prescribed circumstances, but we think that you need to look at that very carefully if it is to be introduced. The legislation says that it must not be contrary to the interests of justice. That is a pretty broad test. We think that it might be better to look at some test that is bolstered to say that, for example, it must not undermine the effective participation of the accused in a hearing. That would move the focus a little more to the idea that we emphasise the importance of the person, who has been accused of something and who may well be facing a live link, knowing exactly what is going on. We note the technological safeguards and welcome those, but, as I suspect everyone round this table knows, you can have everything from technological problems that are so severe that you absolutely know that there is no way that you can carry on — it is clear that those kind of safeguards are in there — to the lower-level problems of not quite hearing what is going on or the picture coming and going that are perhaps not to the severe end of the scale but still impair the person's involvement in the proceedings. We want to see and be sure that those kind of lower-level gremlins are also provided for in safeguards. For us, that is important.

319. The commission does not have any difficulty with violent offences prevention orders as a concept. Interestingly, our issue is that we still fail to understand why the equivalent provision to introduce domestic violence protection orders has not been included in the Bill. They were recommended by Criminal Justice Inspection in 2010. There have been pilots in England and Wales. The evaluation of the pilots was broadly positive in that the practitioners and victims and survivors viewed them positively as a way of providing some additional safeguards against domestic violence. They were introduced in England and Wales in March 2014. One of the interesting things in the evaluation was that they reduced further victimisation when they were used in chronic cases. Interestingly, the perpetrators seemed to respond reasonably well to them. I cannot for the life of me see why we should not introduce that in Northern Ireland. Given the prevalence of domestic violence, it seems to me that it would be sensible, wise and prudent. We have an evaluation, and it is difficult to see what circumstances in Northern Ireland would make a major difference to the evaluation outcomes in England and Wales. Therefore, while we have no difficulty with what is in the Bill, we think that it should go further. It is about time that DOJ dealt with that. It would not be too difficult to have done it in the Bill.

320. I am going at breakneck speed, but I am conscious of your time. Again, as a concept, we can see the administrative and financial advantages of early guilty pleas and recognise that it must be weighed against any concerns about an individual making an ill-informed or ill-considered decision. There is nothing wrong in principle with the idea that the accused must be advised at the earliest possible opportunity, but we think that, if that happens, the defence solicitor who has to do that should properly know what the case is against the individual so that any decision that is made by the defendant — the accused — is a properly informed one.

321. Our one comment on the general duty to progress criminal proceedings, which is in the clause after that, is that it is long overdue. Criminal Justice Inspection set out in 2010 a recommendation that there should be statutory time limits for dealing with issues. While we welcome the idea of progressing criminal proceedings more quickly — there are considerable and serious delays in criminal proceedings — we think that the recommendations starting with some statutory time limits in the youth court and then perhaps expanding from there is a good idea, and I am happy to answer questions on that. I should say that my observation is that — this goes beyond justice issues — when you try to ask Departments to impose time limits on claimants, tenants and others, they are more than willing to do so but, when it comes to doing the same thing on their own services and provision, they are much more reluctant to do so. It seems to me that it would impose a discipline and, as long as the time limits are reasonable — there are some ramifications — I cannot see any reason why that concept could not be adopted, and this Bill might be the place to do it.

322. I now come to the amendment to the Coroners Act. I have had the opportunity to read the evidence of the health and social care board and the Attorney General's submissions. On balance, I think that the commission would support the amendment suggested by the Attorney General. I think that it strengthens article 2 safeguards, which clearly cover deaths caused by alleged medical errors. It seems to me that, on balance, it would be immensely more sensible for the Attorney General to make an informed decision on whether to refer an inquest. The idea that the Attorney General refers an inquest and then more evidence comes to light and then the Attorney General says, "If I had had all that before me, I would not have referred it in the first place" does not seem the most sensible way to proceed in terms of the best use of administrative, financial and other resources. So, on balance, we think that it is better that the Attorney General has

the information that he needs and then can make, hopefully, a proper and an informed decision. The coroner can then proceed from there.

323. Finally, I have one other small plea on something that, again, is not in the Bill. That is an amendment to the Criminal Justice (Children) (Northern Ireland) Order 1998 to remove the provision that allows children to be placed in Hydebank with adult prisoners. My understanding is that it does not happen at the moment, but the provision is still there to do it. I think that it is time that that provision should be removed. There is an important principle here that under no circumstances should children be placed in prison with adults.

324. On that basis, I shall draw breath, and I and colleagues are happy to take questions.

325. **The Chairperson (Mr Givan)**: Thank you very much, Les. The first section that we will deal with is prosecutorial fines. Does any member wish to ask anything on that?

326. **Mr McCartney**: I think that your view is that clause 45 should be amended and that the prosecutor should have regard to the circumstances of the offender. I take it that that refers to the financial circumstances.

327. **Mr Allamby**: Yes. I might ask my colleagues to come in on this. I think that there are two parts to this. There is that change, but it struck me that, if you have only 28 days to pay this, you need to put something in there about the level of time to pay. What we are saying is that, if you decide to choose to go down the road of prosecutorial fines, the impact that it has on somebody who has a very reasonable income is relatively limited; the impact that it has on somebody who has not is much more substantial. If you have the flexibility to allow the person to pay that back over a longer period, doing that might be much more attractive to the person. There are probably two sets of amendments there.

328. **Mr McCartney**: If the prosecutor makes a decision on that and they are charged in the open court system, they might feel that they are being disadvantaged simply because someone has made a judgement that they have not got the means to pay. How do we protect ourselves against that?

329. **Mr Allamby**: This is a voluntary provision, so I have to say that I had not thought of it those terms. That is why the amendment to article 18 might be useful too. I had seen it more in terms of being able to say to somebody that there is an option here and not to not offer it because they are on benefit. It is to say that we can be flexible here. Not that they would have an interminable period to pay, but it is a recognition that we can offer something instead of saying to someone that this is their option and they have only 28 days to pay when they have no savings and are on benefit. How they are going to find that money? Unless they have family or some other support, they will struggle to pay it. It seems that, on balance, that is a better way of dealing with it.

330. **Mr McCartney**: It would allow the person the choice. We should not take that choice away.

331. **Mr Allamby**: This is not attempting to say that, hypothetically, only the middle classes should be offered that provision. We are not coming at it from that standpoint.

332. **The Chairperson (Mr Givan)**: Do members have any questions on victims and witnesses? Are there any questions on the criminal records aspect?

333. **Mr McCartney**: This is in relation to your recommendation in bold type in paragraph 17. It is to do with the independent monitor and how an individual will apply. The paragraph states:

"The Commission advises the Committee to ask the Department to provide details on how an individual will apply to the Independent Monitor."

334. What do you think is the best way for a person to apply for independent monitoring?

335. **Mr Allamby**: There are two or three things that strike me immediately about making that meaningful. First, it must be very clear that you have the option. It must be very widely publicised, and it must be clear to the individual so that he or she is aware of the provision available. Secondly, you would need to see what powers you are giving the independent monitor and the terms of reference that he or she has. There is devil in the detail in terms of how an independent monitor is potentially a really important safeguard. How effective a safeguard it is depends on exactly what powers the independent monitor has, how he or she is allowed to exercise them, the degree of discretion and the resources to deal with the cases properly. I do not expect to see thousands of them, but it is those kinds of issues.

336. **Mr Caughey**: To echo the chief commissioner's initial comments, the person has to apply in writing to the independent monitor. If the person has a disability, for instance, they might need some assistance with writing. It is about making sure that there is some advice and assistance available to persons who wish to make an application.

337. **The Chairperson (Mr Givan)**: Are there any questions on the live links issue?

338. **Mr McCartney**: One of your sentences states:

"there is no obligation to ensure the individual is able to effectively participate in the proceedings."

339. I think that you were here when the Children's Law Centre talked about informed consent in all aspects of live links. What is your view on that?

340. **Mr Allamby**: I was not here when the evidence was given earlier, but my immediate reaction is that it makes immense sense. The question then becomes about how you would make that genuinely informed consent and what you would do to do that. It seems to me that that would make a great deal of sense. One of our concerns is about it being a weekend or a bank holiday. How easy is it to have all the resources to get you to court to do a face-to-face hearing? So live links are looked at. How easy will it be for the person to get to see a solicitor at weekends or bank holidays? It is not impossible, but it is much more difficult. If a live link in some of those circumstances means that you have not had access to proper legal advice and you have barely met your lawyer, it strikes me in very quick terms that it is better to have a face-to-face engagement, for example, with your legal representative at the start of proceedings. I do not quite know how it works in a live link. It strikes me that informed consent is really important. The other kinds of safeguards that go with that are essential as well. While we are not against live links as a concept, we think that you have to make sure that all the safeguards are there.

341. I look to my colleagues for comments on that.

342. **Dr Russell**: Obviously, it is the Children's Law Centre's advice, but I guess that it probably comes from article 12 of the UN Convention on the Rights of the Child. The participation element of the treaty is quite clear about the evolving capacity of the child being central to their participation. The concept of informed consent flows directly from that. Anything that did not take due cognisance of the informed consent of the child, according to his or her evolving capacity, would risk being in violation of the treaty.

343. **Mr McCartney**: Going by the Öcalan v Turkey judgement in the European Court, which states:

"to ensure that arrested persons are physically brought before a judicial authority promptly."

344. are you saying that the first remand should be held in open court, rather than through live links at the weekend?

345. **Mr Allamby**: I am going to extemporise here. I do not think that our position is that that would be an absolute, but I would like to see a safeguard stating that you should have regard to the purpose of the first hearing, the

seriousness of the charge and the implications of the particular offence, when deciding whether to use a live link or not. There might be some circumstances where, rather than the broad-brush approach, even within the prescription in the legislation, you might look further at whether it really is appropriate. That is why we suggest that the idea of ensuring proper participation and involvement of the individual in the proceedings might be a further safeguard.

346. **Mr McCartney**: We were given an explanation about not wanting people to be left in police cells over the weekend and the availability of judges at the weekend. You can see the common sense of a judge in a single place who does two or three remands in different places on a single day. Is there room for someone appearing on their first remand to say that they have not seen a legal representative, and, therefore, maybe the remand should not take place by live link?

347. **Mr Allamby**: It is one of the things that you might want to raise with the Department. For example, if the person has not had access to a solicitor, that might be one of the circumstances in which you look very carefully at whether a live link is appropriate. That might be one of the ways of providing a further safeguard. I am not saying that it should be an absolute, but it ought to be one of things that are taken into account.

348. **Mr Lynch**: The Children's Law Centre said that it was concerned about that, but it also said that independent research should be carried out before it is introduced. Do you agree with that?

349. **Mr Allamby**: I am not sure whether it should be researched before it is carried out. What I think is quite important — it is not confined to this issue but also applies to early guilty pleas, for example — is that there ought to be a way in which we can monitor how it rolls out in practice. This issue and early guilty pleas are two areas where, I think, it would be very useful to have a look at the overall cost-benefit advantages, because, while I can see the benefits, from the Department's position, in terms of economics and administration etc, you want to make sure that it is proportionate to its impact and that the safeguards are there to make sure that it is balanced and sensible. I would be more inclined to say that we should probably look at some of the key areas, and monitor and evaluate those by research, rather than saying that it should not happen until that research has happened.

350. **Dr Russell**: I am not commenting on the Children's Law Centre. Obviously, the more evidence you have about how the thing works, the better. The central point of principle in the commission's advice is that, without legal representation and advice having been provided to somebody, that remand hearing really should not take place through a live link. It is not the principle of the live link in itself, because, obviously, that would move to fulfil the article 5 duty that came out of the Öcalan case. It is the article 6 provision with regard to a fair trial and legal representation. The two things are balanced, and one should not be at the expense of the other.

351. **The Chairperson (Mr Givan)**: I noted that you indicated that you were content with violent offences prevention orders being brought in. The Children's Law Centre has indicated that they should not be applicable to under-18s.Does the commission have a view on whether it should be applicable for under-18s?

352. **Mr Allamby**: Again, I am going to extemporise here, so I should look to my colleagues on this. My instant reaction is to agree with the Children's Law Centre. I think that there is a different issue between adults and children and young people on this. On balance, I would be inclined to say that it probably should be a provision for adults. We have not addressed it in our submission. I do not know whether we looked at the issue specifically/

353. **Mr Caughey**: No.

354. **Mr Allamby**: It appears that we have not, so, you are getting very much a kind of first flush personal view, but that is my instant reaction.

355. **Dr Russell**: Without having looked at it, I say that it is a general point of principle — again, this is probably where the Children's Law Centre is coming from — that provisions like this, in placing restrictions on children, should effectively be a measure of last resort. If the Committee were to ask us to go away and look at it and come back, it would probably be our starting point, with the Committee on the Rights of the Child (CRC), that, in a proportionate response for children, that should always be a measure of last resort. That is clearly why it is indicating that it may not be appropriate in this circumstance.

356. **Mr McGlone**: Chair, you covered most of what I was going to say.

357. First, Les, my apologies for coming in late; I was taken out on other business. Secondly, congratulations on your elevation, promotion or whatever you choose to call it. It is well deserved.

358. **Mr Allamby**: Thank you.

359. **Mr McGlone**: To pick up on the Chair's point about violent offences prevention orders, are you likely to formulate a view on that?

360. **Mr Allamby**: Sorry, you mean —

361. **Mr McGlone**: I mean the issue and concern about the under-18s.

362. **Mr Allamby**: If it would help, I am happy to go away and reflect on that. We are coming back in two weeks' time, and I am happy to give you a much more considered view then, if that would be helpful.

363. **Mr McGlone**: Chair, I think that that would be helpful; certainly to me, anyway.

364. You support the introduction of the domestic violence protection orders. Forgive my ignorance of this, but, would they apply to people under 18 years of age?

365. **Mr Allamby**: I am not sure whether they do in England and Wales. Again, this is a first flush reaction, but I think that I would predominately take the same line, in that we think that they should be introduced, but they would be introduced for adults who —

366. **Mr McGlone**: Perhaps it is unfair to ask. You may want to reflect on that, maybe draw on further information and come back to us on it.

367. I am trying to get a handle on the appropriateness or otherwise of the violent offences prevention orders and the domestic violence protection orders, because, as you rightly pointed out, that is a very big issue irrespective of the age of the perpetrator. I would appreciate further reflection or information from you on that, Les.

368. **Mr Allamby**: Putting aside for a second the issue of whether they should apply to people under the age of 18, as I understand it, the evaluation of the domestic violence protection orders said that they gave a measure of reassurance and, in some cases, in the pilot, a measure of additional protection for the victims of domestic violence. They are designed to do exactly the same thing as the VOPOs do in practice. As I understand it, the domestic violence equivalent is pretty much designed to meet the same sets of issues that the violent offences protection order is designed to do. It is not a move that is very different in principle around domestic violence. It still starts from a position that says that you have to determine the level of cases for which you will decide to deal with domestic violence by using this additional tool in your toolbox. I cannot see any fundamental issue of principle that means that, if you think that VOPOs are a good idea, you would not extend it to domestic violence.

369. **The Chairperson (Mr Givan)**: Are there any questions on early guilty pleas?

370. **Mr McCartney**: I have just a small point on the definition of "earliest reasonable opportunity" and the legal

consequences of his or her decision. It is how we put in protections for that. Your point is noted, and we will give that some care and consideration.

371. **Mr Allamby**: Yes. It is about making sure that the rights of the person who is accused of something are properly respected. It is about that person making a genuinely informed decision — understanding what the case against him or her is, so that when the person makes the decision, it clearly is an informed decision. While I can see all the sensible administrative, financial and other reasons for doing it, such as addressing all the delays in the court, it needs to be balanced against the proper safeguards, so that the person does not feel, in some way, pressured into making a decision that is not appropriate or is making an uninformed decision. If we can make sure that those are built in, it is reasonable to take the approach that is being taken in the Bill.

372. **The Chairperson (Mr Givan)**: Do any other members wish to say anything? No. Do any members want to ask the Human Rights Commission about the Attorney General's amendment to do with the inquests? I know that you corresponded with us on that and that you were generally supportive of the Attorney General's proposal.

373. **Mr Allamby**: Yes.

374. **The Chairperson (Mr Givan)**: OK. There are no questions. Thank you very much for coming. I look forward to seeing you again in a couple of weeks' time.

375.

19 November 2014

Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Tom Elliott
Mr Paul Frew
Mr Chris Hazzard
Mr Seán Lynch
Mr Alban Maginness
Mr Edwin Poots

Witnesses:

Mr Barra McGrory QC	*Public Prosecution*
Mr Ciaran McQuillan	*Service*

376. **The Chairperson (Mr Givan)**: I formally welcome Barra McGrory QC, director of the Public Prosecution Service (PPS), and Ciaran McQuillan, the assistant director of policy and information from the Public Prosecution Service. You are both very welcome. As normal, we will record this for Hansard, and the report will be published in due course. Barra, I hand over to you.

377. **Mr Barra McGrory (Public Prosecution Service)**: Thank you very much. Mr Chairman and other Committee members, I thank you for the opportunity afforded to the PPS to give you our view of the proposed reforms in the Justice Bill. I want to take you through some of the proposed reforms and suggest ways that, from the PPS's perspective, they might be improved. There are a couple of other matters that I want to touch on, if you do not mind. One arose out my reading of the Attorney General's submission to the Committee on rights of audience for employed lawyers, and the other is on some of the issues that Mr Poots raised on two counsel in cases. I would like to say something about that.

378. I will begin with the issues in the Bill. You may recall that I was here two and a half years ago, when, I think, the second Committee Stage or something was reached. It is some time ago. I was looking through the Hansard report of that meeting, and I can say that my views have not changed significantly from those that I outlined then. I said then that I felt that the administration of Crown Court cases would greatly benefit from a suite of reforms that, if interlinked, could be very effective. Those reforms included, in the review of the Public Prosecution Service, the abolition entirely of the committal stage in Crown Court cases; some statutory measures on the incentivisation of early guilty pleas; case management rules; and some specific changes to legal aid, which I feel would complement the other reforms to make them more effective. I welcome the reforms in the Bill, but in my view and that of the PPS, they do not go far enough. I will say why now.

379. I will begin with committals. The Bill abolishes a defendant's right to call to give evidence a complainant or a witness cited in the prosecution papers. That is to be welcomed, because the existence of that measure at the moment not only contributes to significant delay but adds to the stress and trauma of victims and witnesses in the criminal process. It affords to defendants two opportunities to cross-examine and examine witnesses, which, in the Public Prosecution Service's view, was never really an essential component of the right to a fair trial because that is afforded, of course, to a defendant in the principal trial process. So, I welcome that reform.

380. However, it is limited in two significant ways. It applies only to the question of cross-examining witnesses and leaves in place the committal procedure. In our view, we cannot see why the committal procedure is left in place in a situation where the right to call witnesses is being abolished. While that is significant, by not abolishing committals altogether, there is remaining in place an

additional process in the trial procedure that we believe is, ironically now that they have abolished the right to call witnesses, even more unnecessary than it was when that right existed. Since that was the principal evil — I hope that is not too strong a word — or principal mischief, which might be a better word, in the committal process, having done away with that, why not go the full hog and do away with committals altogether?

381. By leaving the paper process in place, the Public Prosecution Service is still required to prepare a set of papers for the Magistrates' Court. It requires a Magistrates' Court process, which requires the receiving of the papers and the listing of the case in the Magistrates' Court. It may then still be subject to adjournments and other delays in the Magistrates' Court process. There is a financial tier there, of course, because the defence gets paid for representing its clients in that process, albeit that it is not examining witnesses. It also has to be referred on to the Crown Court, which creates another delay. So, we consider that, by leaving in place the paper committal process, you are creating an eight-to-10-week delay in the criminal trial process that, in our view, is unnecessary.

382. Of course, the other aspect of it is that the Bill contains a provision for the direct transfer of cases in very limited circumstances. Those in which the defence has indicated that it is willing to plead guilty can be directly transferred, and that is welcome. That can happen in murder and manslaughter cases but with a schedule that will allow for categories of cases to be added. That, of course, is welcome, but, as I said, it is of limited value. Those are very serious cases that can now be directly transferred to the Crown Court judges, but they do not include other very serious categories such as rape or child sex abuse or other serious cases that, in our view, would benefit from immediate transfer to the Crown Court. On the proposed reforms of the committal procedure, it is the Public Prosecution Service's view that those in the Bill are welcome but could go further.We also welcome the measure on early guilty pleas, but I am concerned that it does not nearly go far enough. The Public Prosecution Service is of the view that there needs to be a significant driver in the criminal process to concentrate defendants' minds on the question of the benefits of pleading guilty at the earliest possible opportunity. The proposed measures are that the Crown Court judge, when sentencing, will say what the sentence would have been had the person pleaded guilty at an early stage. There is a view that that is closing the door after the horse has bolted, because the damage is done at that point. I would rather see a judicial intervention at an earlier stage, such as at arraignment, where there is a requirement on the court to ascertain from the defendant or his lawyers whether that advice has been given.

383. The Bill places an onus on the solicitor to give the advice, and I have personal misgivings about that as well. That is because I think it would be difficult to police. There is an issue of privilege between solicitor and client, so I can envision problems with the Law Society in policing that. Why is the responsibility being put on the solicitor only? In my view, if there is any responsibility, it should be on the advocate, whether it is counsel or solicitor, appearing in the court to confirm to the court that advice has been given. Or, indeed, the court, as many judges do anyway, could ask in open court, "Are you aware, before you make your plea at the arraignment stage, that there may be significant benefits to pleading early rather than later if you ever intend changing your mind?" The court setting those out earlier in the process would have, I think, the potential to be more effective.

384. There is also a legal aid issue. I do not want to get bogged down in the minutiae of legal aid, but we have raised this with Department of Justice officials. There are three types of fee in criminal cases. There are GP1s, GP2s and trial fees. If the defendant pleads guilty to all counts, the GP1 is a respectable and modest

fee for defence lawyers. The GP2 is a significantly enhanced fee and is paid if there is an entry of a not guilty plea to any offence on the indictment. The trial fee, of course, is paid after the first day of the trial.

385. We see the GP2s as a significant financial incentive to the entry of a not guilty plea. I am not saying that it is abused unprofessionally, but I think that it might be better managed if the GP2 were not triggered until a later stage in the process where it was clearer to all concerned that this was a serious not guilty plea. We must always account, of course, for occasions when not guilty pleas become guilty pleas. It is in the broader interest of justice that there will be a provision for payment of lawyers in circumstances where there is an unforeseen change in the plea. However, as I said, I think that that GP2 could be re-examined and perhaps triggered further down the process once the case has been listed for trial and the issues identified. I have asked my officials to raise that with DOJ officials, so perhaps the Committee will bear that in mind when those amended Crown Court rules are tabled. That is another factor.

386. Those are the issues in the Bill that I wanted to specifically comment on. There are statutory case management provisions in the Bill that I welcome. The Lord Chief Justice has already introduced, by way of practice direction, significant measures that have proven to be very effective in the speeding up of Crown Court cases. I certainly welcome that they be given a statutory footing. As I said, I hope that those who are responsible for the drafting will bear in mind some of the other points that I made about tying in the various points in the management process of cases with the early guilty plea provisions and legal aid provisions. If we combine all those measures, I think that we could have a very effective and significant reform of the criminal justice process. This Bill goes a good measure of the way towards that, and I certainly commend the Department and the Minister for the measures they proposed, but I think that there is an opportunity here that I do not want to lose. Given the timescale during which we have been talking about these reforms — the past three years — I fear that it might be a long time before we get another opportunity and that we should put into the Bill what we can now.

387. I mentioned two other points at the beginning. One concerns statutory rights of audience. In his submission, the Attorney General asked the Committee to consider giving higher rights of audience to his employed lawyers. You may be a bit puzzled by that. The background is that a barrister's rights of audience are restricted once a barrister becomes an employed lawyer rather than remaining in the self-employed Bar. A self-employed barrister has a right of audience, by nature of a qualification, right through to the High Court and even the Supreme Court, but once that self-employed lawyer takes a job and gets paid a wage, whether it is in the Attorney General's office or, indeed, the Public Prosecution Service, he or she loses the higher court right of audience. The Attorney General has flagged that up in the sense that, if he could permit his employed lawyers, of whom there are a limited number, to go into court not only could he save public money but it would be more effective for the running of his office. I have endorsed that view with DOJ, which is carrying out a consultation, but I have also pointed out that it would significantly benefit the Public Prosecution Service as well. I do not mean every lawyer in the Public Prosecution Service. One of the initiatives I have started since I came in is the creation of a higher court advocacy unit. I have a body of lawyers in the office who take Crown Court trials, for the first time ever in the history of prosecution, and those who are barristers have their right of audience restricted. If the Committee is going to give serious consideration to the Attorney General's proposal, I would like you to also consider that in the context of the PPS higher court advocates.

388. The final point addresses the issues that Mr Poots raised in the previous

evidence session. I was listening, Mr Poots. The PPS is concerned about the disparity in the funds that are available to the defence for services of counsel and those that are available to the Public Prosecution Service. DFP very tightly monitors my budget, which will come as no surprise to anybody, and it monthly regulates the employment of counsel and asks questions about it. The guidelines that we have, approved by DFP, allow us to instruct only senior counsel, that is, two counsel, in cases of death, serious sexual offences or very serious fraud. We can instruct senior counsel in only 6% of the cases we take in the Crown Court. As you heard, the defence has reduced its level of two counsel from 50% to 22%. In my view, there remains a significant disparity in the equality of arms afforded to the prosecution compared with the defence. The structure is that the defence acquires two counsel certificates by applying to the court. I have suggested to DOJ that it might consider, as is the case in England and Wales, removing the authority to the Legal Services Commission, which could take into account whether the prosecution has also instructed senior counsel. That is not to say, of course, that the defence should get senior counsel only in cases where the prosecution has it, but it would nevertheless at least give us a better chance of evening out the current disparity. That is just something that I picked up in your remarks, Mr Poots.

389. Those are my general observations on some of the bigger issues in the Bill. Mr McQuillan has his own observations to make as well, so I do not know whether you want to hear from him before you talk to me about mine.

390. **The Chairperson (Mr Givan)**: No, we are happy, because there are a few things that I want to pick up on anyway.

391. **Mr Ciaran McQuillan (Public Prosecution Service)**: Thank you, Mr Chairperson. In addition to the matters that the director mentioned, the main aspects of the Bill from a PPS perspective are the provisions dealing with single jurisdiction, prosecutorial fines, prosecutor summonses and victims and witnesses, particularly the victim and witness charters.Dealing with them in that order, we acknowledge the benefits that could flow from abolishing the present County Court and petty sessions district to create a single jurisdiction, as the Bill proposes. Criminal cases in the Magistrates' Court could be moved to suit victims' and witnesses' needs, and best use could be made of limited court resources. We do not, however, consider that business needs should take precedence over victims' and witnesses' needs when these decisions are being made. In addition, criminal cases require not just civilian witnesses but police officers and, on occasion, doctors, engineers and forensic scientists. Prosecutors and defence representatives need to prepare all the cases that will appear in court on any given day, and arbitrary movement of the cases could disrupt the efficient preparation of a case and inconvenience a range of witnesses who provide important services to the public. We hope that the guidelines on how court business will be listed will ensure that that does not occur. Furthermore, when the PPS was set up, it was considered a priority that it be a regional service. We have offices throughout Northern Ireland to provide a link with local communities and proximity to the regional courts. Should the introduction of a single jurisdiction reduce the number of criminal cases that are heard in a particular region, it could be difficult for us to sustain our present regional structure.

392. The introduction of prosecutorial fines allows for low-level offending to be dealt with fairly and efficiently without having to resort to court proceedings. They provide potential savings of court and prosecutor time whilst maintaining a regime of condign penalties for minor offences. Whilst there will be understandable concern that the process for administering prosecutorial fines should be carefully regulated, it is for that reason that the legislation proposes that the director issue guidelines to his prosecutors on how the scheme will operate. The PPS will

consult on that guidance before it is introduced. The PPS is already testing the operation of prosecutorial fines, and a careful analysis of the results of our research will be carried out and will inform any draft guidance. Our own research has shown that many of the cases that would be suitable for prosecutorial fines would normally carry penalty points, such as low-level road traffic offences. The Bill is silent on this aspect, but were we given the power to offer penalty points in addition to a fine, we would be able to handle those cases, and it would make the operation of the scheme all the more effective. Implementing prosecutorial fines would involve costs for those criminal justice organisations affected and would need to be cost-effective as well as fair.

393. We appreciate that the proposal to allow prosecutors to issue summonses is a departure from the established position that the issue of summonses is a judicial function that is presently carried out mainly by lay magistrates. It is important to note that a summons is only a means by which a person is required to attend court. The decision whether to prosecute an individual is already made by a prosecutor and will continue to be so. That decision is made only after careful consideration of the evidence and in accordance with our code for prosecutors. Any prosecution that is directed is, of course, open to challenge through the court process.

394. The power to issue a summons will bring greater efficiencies, as it will no longer be necessary to attend before a lay magistrate to have a summons signed to allow them to issue. In addition, the difficulties in the service of summonses and the need to reissue those that go unserved has been a cause of delay in the criminal justice system for some time, and it is hoped that allowing prosecutors to both issue and reissue summonses will help to reduce delay. The power vested in prosecutors will, however, be discharged in the same carefully considered way in which decisions on prosecution are and with the protection that all cases initiated by summons will be decided on ultimately by the courts.

395. The PPS welcomes the introduction of the victims charter, which will be given statutory force by the Bill. We have worked with the Department on the development of the charter, and it reflects many of the practices that we already have to provide an enhanced service to victims and witnesses. A particularly important development has been the establishment of our victim and witness care unit, where the PPS and PSNI staff work together, along with members of Victim Support, to provide victims and witnesses with a single point of contact for information about their case, to assess any special needs they may have and to keep them updated about developments in the case that affects them. This unit has been the product of several years' close cooperation between a number of criminal justice organisations, and it means that we are confident that the commitments in the victims charter can be delivered in a way that improves how victims and witnesses experience the criminal justice system.

396. I am happy to take any questions.

397. **The Chairperson (Mr Givan)**: Thank you very much. We will go through the Bill Part by Part. The first Part is on the single jurisdiction aspect. I suppose my question is this: how efficient and effective would a single jurisdiction be for the PPS and its delivery of the responsibilities that you have?

398. **Mr C McQuillan**: As I said, it will really depend on how it is operated. There are guidelines that are proposed. Were cases moved — I understand from the Department that that is not, by any means, the intention — in a way that would disrupt normal business, moved at short notice or otherwise moved in a way that made it difficult to prepare them, that would obviously be a difficulty. However, we can see advantages in a single jurisdiction. As I said, it allows for victims' and witnesses' needs in a case, if they perhaps do not reside in the area where the offence occurred. The general

principle is that cases will be heard in the area in which they occur, but if, for instance, the majority or all the victims and witnesses were from another area, the case could be moved to that area. It may also mean, without impinging on any victims' or witnesses' rights, that if there was spare capacity or good business reasons for moving a case to utilise scarce court resources, that could be done. We would welcome all those. We do not think that there is any reason why having a single court jurisdiction cannot be advantageous, but we just caution against how it may operate.

399. **The Chairperson (Mr Givan)**: Certainly, the PPS would need to reorganise how it operates to accommodate that. What would be the implications specifically for the PPS?

400. **Mr McGrory**: It is less to do with the single jurisdiction than the location of courthouses in juxtaposition to our offices. At the moment, the offices are located around major court centres. I know that there are discussions ongoing with the Court Service about potential courthouse closures and relocations, so it certainly knows our views on that. Everything is up in the air at the moment pending the budgetary considerations, but certainly the PPS is structured in the way it is around the jurisdictions. We are less concerned about the single jurisdiction in that regard than we are about the relocation of certain courthouses, but we will worry about that when the time comes.

401. **Mr C McQuillan**: The Court Service is undergoing a consultation on how it will reorganise administrative divisions, and we will obviously partake in that consultation.

402. **Mr Frew**: Would it be conceivable, if you had a court that was bunged full of work and very, very busy, that a trial that was to take place in, say, Ballymena would be moved to County Tyrone just by the sheer fact of the level of work and if there was spare capacity in another court? Would that be conceivable?

403. **Mr C McQuillan**: Guidelines are proposed about how this will operate, and there have to be good reasons to depart from the guiding principle, which is that cases, if you like, that occur in Ballymena will be heard in Ballymena. There are a number of proposed good reasons, and people will be given an opportunity to make representations. If parties to a particular case had objections about a case being moved, they could go to the judge and make representations, as I understand it from the Department's proposals. If it was appropriate to do so within the guidelines, cases could be moved, although you would like to think that where they would be moved to would take into account witnesses' ability to travel.

404. **Mr Frew**: There could be a balance here. Would it be the case that, if you moved, you could be heard sooner? Is that right?

405. **Mr C McQuillan**: It may be one of the considerations. The efficient use of courts and the efficient discharge of court business is one of the considerations that will be taken into account.

406. **Mr McCartney**: From what I am hearing, you are not opposed to the idea of a single jurisdiction; the issue is how it is managed.

407. **Mr C McQuillan**: That is right.

408. **Mr McCartney**: How do we put in place management structures that do not allow it to become this idea that there is a single jurisdiction and that it does not matter where a case takes place?

409. **Mr C McQuillan**: The proposals that the Department makes — when they speak to you, they will be able to give you more detail on them — really allow for any party to make representations. If it was, for instance, we or a victim or witness who wished to say, "You are intending to move this case, but I have very good reason why you shouldn't", that should be a check on arbitrary movement.I was cautioning on the concerns that I raised, rather than necessarily saying that they would happen. I would like to think that the guiding principle would be

that the vast majority of cases will be heard in the area where they occur. If they are moved, it would have to be for good reason, and parties could make representations about that.

410. **Mr McCartney**: Who has the final say? If someone makes a case —

411. **Mr C McQuillan**: The judge. That is my understanding of the guidelines.

412. **Mr McCartney**: People might have the suspicion that a number of court buildings are under pressure. If you do away with a court building, you will automatically do away with the ability to have a case heard in a particular place. You might see a slide towards that, and it is about how you protect yourself against that. We do not want to end up with a system that has the protection of witnesses and victims at its core, but, through other procedures, we lose court buildings and the ability to have it closer to —

413. **Mr C McQuillan**: That is a concern, and that is why we raised it. As I said, the guidelines, which the Department will maybe be able to expand on, will hopefully guard against that.

414. **Mr Elliott**: I have one brief question on that. Are there any cost implications for the PPS in having a single jurisdiction system?

415. **Mr McGrory**: Not really. It is more about the location of the buildings and how it will affect travel and the location of local staff.

416. **Mr C McQuillan**: If it were to cause a reorganisation, it might have an impact. We do not know at this stage. The consultation still has to occur.

417. **The Chairperson (Mr Givan)**: Committals seem to be a big part of it. Barra, from what you indicated, it seems that the Bill could be go much further. Indeed, my take on what you said is that it will still require a process, but it will have even less meaning than it currently has, as you would only remove one element of it, so why keep it at all.

418. **Mr McGrory**: It is now a paper process. Up to now, it has afforded the defendant the right to cross-examine witnesses. It is a right that has not been widely used, but, when it is, it can cause considerable disruption and delays. We have examples of a number of cases that have been in a Magistrates' Court process for over a year and, as you know, Mr Chairman, there have been some recent quite controversial cases in which it has been a feature.

419. The removal of the right of the defendant to ask the questions is a significant development. Let us not take away from that. The Department has proposed leaving in place the paper process, but I am puzzled as to why, when it has removed the right to cross-examine witnesses. There will now be no oral evidence and no preliminary investigation, but the preliminary inquiry will continue to exist. That will allow the defence to seek disclosure, to make applications for abuse of process and to make an application to a district judge not to return the case. It will require the Public Prosecution Service to staff a lawyer to go through that process, and it will take time. There is also another process in sending it to the Crown Court, where it will begin all over again, applications for abuse of process can be renewed, applications for disclosure can be renewed and an application for a no bill, for example, can be made. So, defendants will effectively get two bites at the cherry.

420. I am aware of the argument that will come from the defence side that it is an essential part of the trial process. I agree, but I do not know of any construction of human rights jurisprudence that allows you to have it twice. It is a luxury and a historical anomaly that no longer exists in the GB jurisdictions. It is also expensive for the public purse, not only with the extra cost to legal aid but with the burden that it puts on the Public Prosecution Service. I see no value in keeping it.

421. **The Chairperson (Mr Givan)**: What about the argument that it helps to

produce earlier guilty pleas and the withdrawal of charges?

422. **Mr McGrory**: Show me the evidence.

423. **The Chairperson (Mr Givan)**: So, you are not aware of evidence that would sustain that point of view.

424. **Mr McGrory**: No, but there is a helpful provision in the Bill that allows for that process to be skipped if a defendant wants to enter a guilty plea during that process, and it would mean that they would automatically go to the Crown Court. That is a very helpful provision, but why not have that with everybody? I have not seen any empirical evidence of people wishing to plead guilty at the Magistrates' Court stage of the case.

425. **Mr McCartney**: We were on abolition; I will move slightly forward. What was the original intention of the committal proceedings?

426. **Mr McGrory**: It is a historical procedure that probably dates back to the days of the grand jury, when there was a very intricate process that allowed for the examination of witnesses at various stages of the process and for the holding of a grand jury to decide whether there was a true bill and all of that. That was done away with in the late 1960s because it was seen as a very cumbersome third tier. The Magistrates' Court stage and the committal procedure is a historical procedure that has remained in place in this jurisdiction. It was done away with in England and Wales quite a few years ago because it was seen as a cumbersome and unnecessary additional element to the process.

427. It harks back of the days when there was a view that all those procedures were necessary to afford people their rights. However, they are expensive and they are costly for victims and witnesses' experience of the justice system. In the modern world in 2014, given the victims and witnesses issues that are coming into focus and the issue of cost, we have to ask whether it is a necessary part of the process. I can see no strong argument to keep it. Others may argue differently, but from a prosecutorial point of view, we can give people a fair trial without it.

428. **Mr McCartney**: You see —

429. **Mr McGrory**: The courts are the people who give people a fair trial. Let me make that clear. I am not claiming that that is our responsibility necessarily, but we play a significant part in that.

430. **Mr McCartney**: On a lot of what the Committee has done on that type of issue, the backdrop has always been the high cost of the criminal justice system, like legal aid and all that contributes to it. One of the strong arguments promoted by the Department for many of the measures is that they will save money. If you look at all the layers — we will get into it later on — such as early guilty pleas and doing away with committal, we see that it will streamline the justice system, but really the imperative is to save money rather than to preserve the quality of justice. How do we protect ourselves against that? Everything that you said is about saving money, but missing from that seems to be whether a person gets fairness. On the early guilty plea, many of those who present to courts are very vulnerable. We have seen the prisoner statistics, and their literacy and numeracy skills are very low. They are being put into situations in which someone tells them that, if they do not plead guilty, they will get a heavier sentence. If they are vulnerable and do not have the full ability of a thinking person, they could be bamboozled or practically coerced, in a gentle way, into making a decision that is not in their best interests or that of the justice system.

431. **Mr McGrory**: I appreciate that, but, like everything else, it is about getting the balance right. If you build in sufficient safeguards to the system, you will balance out those concerns. I would never want to go, for example, with the American system of plea bargaining, in which the prosecution comes along and says that you will get 20 years if you plead not guilty but they will give you a deal for 10. That is not what we are

talking about. Instead, we are talking about very measured reforms that would simply put in place procedures that would remind defendants that, if they are going to change their mind down the line and plead guilty, they would be better off doing it sooner rather than later.

432. The last statistics that we have are for 2012, and they show that something like 28% of defendants who pleaded not guilty changed their plea before the trial. That is a very significant number. If they changed their plea to guilty before their trial, they knew that they were guilty when they pleaded not guilty. Those are the people who you are talking to. Of course, you must have in place provisions for legal advice at the point at which they are being asked to make their plea, and those measures that remind them of the consequences of a subsequent guilty plea where they have pleaded not guilty need to be done in a measured way. That is why we have taken the view that the proposals in the Bill that require the solicitor to do it will, on balance, not be enough. So, you could maybe require the court to mention it or require the court to ask the advocate whether the statutory advice has been given.

433. I am reminded that the Law Society, which is coming in next, is suggesting in its written submission that it is the prosecution's responsibility to do that. With respect to the Law Society, its members would be screaming blue murder if the prosecution tried to approach any of their clients to suggest to them that they should plead guilty early. So, I do not know how that one will work in practice. In our view, it should be the defendant's lawyer's responsibility to give the advice, if not in conjunction with the court. For example, with the decision on the part of a defendant on whether to give evidence, there are provisions that trigger the advice and the potential taking of adverse inferences at a certain stage in the process, and those are governed by regulation. So, I see no reason why we could not do that in a similar way with the guilty pleas, bearing in mind your concerns, Mr McCartney.

434. **Mr McCartney**: I will return to early guilty pleas. Sorry for straying into that, Chair. With regard to the committals, it says application for disclosure at committal and then application for disclosure at trial. It strikes me that, in a good prosecuting system, if material evidence were to become available that would prove a person's innocence or would assist in a defendant's case, the Prosecution Service would hand it over immediately to the defence. The suspicion has always been that that does not happen. Maybe, increasingly, that is changing. How do we get to a situation where applications for disclosure will perhaps become a thing of the past?

435. **Mr McGrory**: If you were to abolish committals, that would solve a lot of the problems because, at the moment, the structure on disclosure is that primary disclosure is given at the committal stage and the secondary disclosure is not triggered until after the defence statement comes in, but that is after committal. That is between the committal and the arraignment. So, the issues are in play and the prosecution reviews the issue of disclosure. I think that removing the committal process altogether would work in the defendant's favour, and you could then look at disclosure from the point of view of delivery of the papers and bring forward the point at which the defence say what their issues are. The law is very clear on disclosure. Absolutely, the prosecution has a duty to disclose anything that is of assistance to the defence and detrimental to the prosecution, and it is constantly reviewed that the trigger for the second review is when the defence declares its hand, so to speak, on the issues. So, if that is earlier in the process, we can get disclosure earlier. I think that there are ways in which an abolition of committals could benefit defendants as well as prosecutors.

436. **Mr C McQuillan**: As prosecutors, we are under a continuing duty to review the prosecution. If we were to be provided with a piece of evidence that meant that the case no longer met the evidential test, we would not be prosecuting the

case. Our duty is to apply the test for prosecution, and we do that throughout a case.

437. **Mr Poots**: I take it, with your reference to committal, Mr McGrory, that there are things that you can give absolute clarity on: that equality will not be diminished; that efficiency will be improved; and that effectiveness will be improved.

438. **Mr McGrory**: I realise that, in advocating the abolition of committals, I am putting pressure on my own organisation, because there is an argument that, by going through the committal process, where we issue papers and send them over to the Magistrates' Court and issue them to the defence, we buy time. If you abolish that, we are going to be under pressure to be ready to go to trial earlier, potentially. I am very well aware of that. That may be the reason, partly, for the incremental approach taken by the Justice Department. The Department may take the view that, if we abolished that, the system would not be able to cope with the pressure. I think we would just have to get ready for it. In response to your question, Mr Poots, I have to say that it would put us under pressure, but we would have to tool up and be ready to respond.

439. **Mr Poots**: But for those tests that I put to you, is my view of them, as you have elucidated today, correct or wrong?

440. **Mr McGrory**: Sorry, I think this is my fault. I have not listened to your question properly.

441. **Mr Poots**: OK. I said equality would not be diminished —

442. **Mr McGrory**: No.

443. **Mr Poots**: — efficiency would be improved and effectiveness would —

444. **Mr McGrory**: I think it would be, yes. Sorry, I misinterpreted what you were saying.

445. **Mr Lynch**: How much do you think it would speed up justice? How important would it be in the process of speeding up justice?

446. **Mr McGrory**: As I say, the committal process adds about eight to 10 weeks to the process. Take it out of the picture, and that would put us under pressure to be ready to go to trial quicker. I think we could do that if the committals were abolished. We would have to reorganise completely, as would a lot of other people. In terms of the average time it takes to get a case to court, there is at least an eight- to 10-week saving, in our view.

447. **The Chairperson (Mr Givan)**: No other members on that point? We will move to prosecutorial fines. Does any member want to raise —

448. **Mr McCartney**: I do not think we said this the last time. Ciaran made the point that, if there are points involved, at present that is not covered.

449. **Mr C McQuillan**: At present, the Bill is silent on the issue of points. It does not mention that. It may be that points could be available to a prosecutor when they are issuing a fine, either through the Bill itself or through a different arrangement that may fall to be discussed with the Department. However, at the minute, the power is not contained in the Bill, so the Bill is silent on it.

450. **Mr McCartney**: If the Bill, as written, went through, would that reduce the number or just leave it unsaid, so to speak?

451. **Mr C McQuillan**: Our view is that a large number of the low-level cases, which is really what we are talking about for prosecutorial fines, would be low-end road traffic offences. A number of them — for instance, driving without due care and attention — carry a mandatory three points. If we did not have the power to impose penalty points, we could not offer a fine. Well, we could offer a fine, but we could not offer penalty points with it if we did not have that power. That would preclude it from being one of the offences we could use. So, yes, it would reduce the number of cases where we could use prosecutorial fines.

452. **Mr McCartney**: Has the Department given you an indication, or is this the first time it has been raised?

453. **Mr C McQuillan**: To be fair to the Department, our position on this has probably evolved over time. We have raised it with the Department in more recent times. It is not a straightforward matter by any means, and it is something that we have raised with the Department in the last 12 months, but, as I say, to be fair to the Department, it is something that we may have taken a new view on more recently. Having looked at it, and having carried out some of the research ourselves by looking at the sort of cases that we might look to offer prosecutorial fines on, we thought that this might be a useful addition.

454. **The Chairperson (Mr Givan)**: Just for my benefit, to be clear on that, this is for an offence where you are going to get your three penalty points, but you need to go to court to get them. The PPS can have the power to say, "Take your three penalty points from us. You don't need to go to court to do it", in essence.

455. **Mr C McQuillan**: Yes, that is it in essence, in addition to a fine. We will obviously seek to fine at a level that is appropriate to the offence and reflects the sort of practice that the courts presently do. That is the proposal.

456. **The Chairperson (Mr Givan)**: Could you have the scenario where you are able to dispose of the fine element of a road traffic incident, but you still need to go to court to get your penalty points?

457. **Mr C McQuillan**: I do not believe that could happen under the Bill as currently drafted. You offer a prosecutorial fine. If that is paid, it is the end of the matter. I do not think that there could be a twin track of prosecution plus fine.

458. **The Chairperson (Mr Givan)**: I am trying to think of the type of cases where you need to go to court to get penalty points. I got penalty points, and I did not need to go to court for them.

459. **Mr C McQuillan**: There is a range of cases that the police dispose of —

460. **Mr Elliott**: Resign.

461. **The Chairperson (Mr Givan)**: It was long before I was Chair of —

462. **A Member**: Major disclosures. *[Laughter.]*

463. **A Member**: It is good you clarified that, Chair. *[Laughter.]*

464. **Mr McCartney**: It could be a resignation matter. *[Laughter.]*

465. **A Member**: We are not going on that subject. *[Laughter.]*

466. **The Chairperson (Mr Givan)**: They are now spent. I have served my time, so surely I am allowed to continue.

467. **Mr Frew**: I think you would find that you would not have a Committee if you went down that road.

468. **Mr C McQuillan**: There is a range of offences where the police can issue fixed penalty notices without you having to go to court, and that would be the sort of thing we are talking about: no seatbelt or low-level speeding cases. Then there is a range of cases — sometimes the same cases, if somebody has already had a fixed penalty notice — where the police choose not to impose the on-the-spot fine where you send your licence off and get the points on it, and they send them to us for prosecution. At the minute, we only have the option of prosecuting the case through the courts. We have some non-court diversions, but generally, where points are involved, because points should be imposed for those offences where they are mandatory, our only option is to prosecute that through the courts. There are a large number of cases that go to court for relatively minor road traffic offences. Of course, if somebody denies the offence, they are entitled to go to court to defend themselves and to be acquitted, if that is what the court decides. However, there are other cases that come in to us at a relatively low level, and those are the sort of cases that we are looking at: those that, at the minute, we send to the courts, and the courts impose a relatively modest fine and the mandatory points. We envisage that those sort

of cases could be taken out of the court, thereby saving court time and prosecutor time and allowing everybody to dispose of the case quickly. Those are what we have in mind.

469. **The Chairperson (Mr Givan)**: I pleaded guilty early and avoided a court case.

470. **Mr Frew**: We can not be talking about many cases. If you are not going to take your penalty points off the police officer, in effect, and their hand is forced to send it to the PPS, the offender is not going to then say, "OK, you give me them, then."

471. **Mr C McQuillan**: No, sorry. The guidance that I mentioned earlier that we will issue will really try to target those cases where we believe that they will be accepted. If somebody has denied the offence, we do not believe that there will be much reason, really, to offer them penalty points if they have already been offered a fixed penalty notice by police and refused it. There is a class of cases in which they are not offered a fixed penalty and that the police send to us where the person has not turned down a fixed penalty notice or is not denying the case. They just have to come to us, maybe because of previous disposals. For instance, if the police do not believe in their fixed penalty notice — which is, I believe, £80 — and three points for certain offences, they may feel that the case is too serious. Or perhaps the speed was too high in a particular case, so they will send it to us. Those are not cases where we can necessarily say that the individual would refuse the offer of a prosecutorial fine.

472. **Mr Frew**: There is a groundswell of opinion that I am aware of, from people coming into my office, that sentencing around this sort of low-level crime can be very lenient. How would you, as the PPS, guard yourself against that accusation if you were administering points?

473. **Mr C McQuillan**: If we were administering points or, indeed, fines without points, we would be very conscious of the fact that we are, if you like, not imposing a sentence, because only courts can do that, but that we are imposing a penalty for wrongdoing. The guidance that the director would issue, and which we would consult on, would assist prosecutors when they were assessing what to do with any case, whether it was a simple prosecutorial fine case or if points were made available. It would attempt to achieve consistency amongst prosecutors, who would take heed of this guidance.

474. **Mr Frew**: So that guidance would basically fix it for you, or would you be able to —

475. **Mr C McQuillan**: One of the things that we will consider when we are drafting the guidance is whether there should be bands of fines, fixed fines or how flexible the regime will be. A magistrate who hears a case has quite wide discretion, and we will seek to achieve consistency. To give guidance to our prosecutors, one of the things we would consult on is how much flexibility there should be within the fines scheme. It may be that, as I say, there are bands or particular amounts and particular considerations.

476. **Mr Frew**: You state in your paper:

"To this end we feel that for prosecutorial fines to be effective, prosecutors should, in addition to the provisions to offer a fine and in appropriate cases compensation to an offender, have the power to offer penalty points to an offender in those cases where there are mandatory penalty points".

477. What does "appropriate cases compensation to an offender" mean?

478. **Mr C McQuillan**: At the moment, the Bill provides that, in cases of criminal damage, there is provision to make an offer of not only a fine but a compensation order. It is restricted to those cases where there has been damage. Very often, if there is an offence of criminal damage, a window will be broken, and that window will cost £100 to fix, or however much it costs. When a court deals with that case, as well as imposing a penalty on the person who is guilty of the offence, it will make a compensation order — a restitution order, as it is often called

in court — for the amount of damage. The Bill, as it stands now, allows for there to be a compensation order with a prosecutorial fine in those cases.

479. **Mr Frew**: It allows that at the minute.

480. **Mr C McQuillan**: It does.

481. **Mr Poots**: Why are penalty points for motoring offences always done in bands of three? Why can you not get two points, four points or five points? They always appear to be in threes. You could be doing 34 in a 30 mph zone and get three penalty points; you could be doing 44 in a 30 and still get three penalty points. If you do 46, then you go up to six.

482. **Mr C McQuillan**: There are certain offences that do not carry a band of points; they just carry points. In answer to your question, I do not know off the top of my head why they tend to be awarded in threes. I could —

483. **Mr Poots**: Elsewhere, it is done differently.

484. **Mr C McQuillan**: I do not know. Personally, I am speculating, but I do not think that it has to be in threes. My experience in practice is that it does tend to go up in threes, but I cannot answer why that is.

485. **Mr Poots**: So, if someone had had three offences over two and a half years and was caught doing 35, there could be the discretion to give them two points.

486. **Mr C McQuillan**: No, there is a minimum of three points.

487. **Mr Poots**: Yes, I know there is a minimum of three points, but that discretion could be brought in if you really wanted to.

488. **Mr C McQuillan**: If points were made available to us, it would have to be on the same basis that they are available to the courts. I do not think that we would seek to have it on any other basis.

489. **Mr Poots**: I am just talking about the system in general.

490. Besides that, I had a particular interest, in a previous role that I had, in having fixed penalty fines brought in for people who behaved in particularly bad ways. I am thinking of key workers here, whether it be people who abuse Fire and Rescue Service workers, ambulance drivers, nursing staff in our hospitals or, indeed, police, and I am talking about the more moderate cases. I think that it is an opportunity to nip some of this stuff in the bud before it gets out of hand. If someone did come into a particular place — an emergency department or, indeed, an emergency vehicle — and kick off, they would be told immediately that there was a fine system in place, and that it would be instituted if they did not settle themselves down. If their behaviour goes to another stage, obviously it should be prosecution. I think that a lot of people are not prosecuted because people do not want to go through the prosecution process, but they should be punished because of their behaviour, and there should be zero tolerance for this. Is there, in your view, an opportunity in the Justice Bill to do something on that front?

491. **Mr C McQuillan**: It would depend on what the behaviour was. If the behaviour was —

492. **Mr Poots**: Foul language.

493. **Mr C McQuillan**: If it was perhaps defined as disorderly behaviour, which it could be if it was in a public place in the hospital, that is the sort of case in which we anticipate using prosecutorial fines.

494. I should say that, in offences, even low-end offences, the involvement of public-service workers is an aggravating factor as far as we are concerned. Even though we could impose a prosecutorial fine, we may seek to prosecute through the courts because they also take a serious view of offences involving public-service workers in the health service and elsewhere.

495. **Mr Poots**: I want to know whether that is possible rather than your opinion.

496. **Mr C McQuillan**: It is possible.

497. **Mr McGrory**: We could deal with it in the guidelines. It would be an aggravating

factor that prosecutors could take into account in determining whether that was an appropriate disposal in the circumstances; I agree, Mr Poots. We can certainly look at that.

498. **Mr Poots**: For us to do something about that, we would not need to do anything with the legislation. It could flow from the legislation.

499. **Mr McGrory**: It provides for that, yes.

500. **Mr Poots**: Thank you.

501. **The Chairperson (Mr Givan)**: I welcome the PPS's welcome of the victims and witnesses aspect and the ongoing work of the victim and witness care unit. Barra, are there any implications for the unit as a result or the budget pressures that you face?

502. **Mr McGrory**: Not this year. We intend to protect it as much as we can. As you know, it is jointly staffed by the police and us, so we do share the whole burden, although both are located on PPS premises. As things stand, there are no specific pressures on it, but that is not to say that something different might occur as a result of the forthcoming discussions on reallocations to the various Departments, of which we are one. It might not come under pressure — let us put it that way — but we are in discussion with DFP, as every other Department is at the moment.

503. **The Chairperson (Mr Givan)**: You had no comment to make on the criminal records aspect, and no member wishes to ask about that.

504. The PPS welcomes the provisions for live links. Do any members wish to ask about that?

505. **Mr McCartney**: We heard last week from a number of bodies, and there was some concern about the use of live links for children. Do you have an opinion on that?

506. **Mr C McQuillan**: The guardians of the applications for live links and the rights of people subject to them will be the courts, and they have particular regard for the rights of young people, as do we when dealing with young witnesses and young defendants.

507. **Mr McGrory**: It will probably be to their benefit, Mr McCartney, and is to be welcomed in that regard.

508. **Mr McCartney**: One of the points made was that people who are distant from something may not fully grasp what is happening. I accept what you are saying and that, in some settings, the cross-examination of a young witness is better done via a live link. However, in some cases, when young people are not in the room, they may not get the gravity of what is happening around them.

509. **Mr McGrory**: Not only that but prosecutors prefer witnesses to be live and want the jury to see and hear them first-hand. However, that, too, is a balancing exercise that has to be engaged in by the court and the lawyers involved in an attempt to get the best evidence, which is the principle on which these decisions are made. It is all balanced out, but I think that it is a useful provision.

510. **Mr McCartney**: Finally, the Law Centre or the human rights people made a point last week about the first remand hearing being by live link. They said that there should be a protection and that that should happen only if a person has had legal advice; not if they have had no legal contact prior to the first hearing. Do you have an opinion on that?

511. **Mr McGrory**: It is in our interests that all defendants get legal advice at every stage, so we have no difficultly with that.

512. **Mr Lynch**: My point was the same.

513. **The Chairperson (Mr Givan)**: No members want to raise questions on the violent offences prevention orders, so we move on to the miscellaneous element and early guilty pleas.

514. **Mr McCartney**: I note that, in your presentation, you expressed reservations about who should make guilty pleas and when. We will look at this as more witnesses come before the Committee to discuss the Bill. In the

interests of justice, people should do the right thing at the right time.

515. I have a concern that someone might not know the difference between actual bodily harm and grievous bodily harm and could plead guilty to grievous bodily harm, whereas, if it was contested and went to trial, the charge could be reduced to actual bodily harm and attract a lesser sentence. Someone could be unwisely put in the position of making a decision at the wrong time. What protections can we put in place to ensure that that does not happen?

516. **Mr McGrory**: Legal advice. If the defendant has his or her legal adviser available at the point at which the decision on the plea is being made, which he or she really must have, there should be no issue. There should be no difficulty with pressure; it is a gentle indication that, if they intend to plead guilty at some point, it would be better to do so early.

517. Pleas should not come before the point in the proceedings at which all the material is available. I have no difficulty with that. However, it should be available by the time of arraignment. Those safeguards can be put in place.

518. At the moment, all practising criminal lawyers know that defendants will benefit from an early plea. I am concerned that, in the case management or procedural structures, there is no real focus on that and no driver or trigger to focus the mind on that. Really, what we are trying to do is to put something into the system to focus defendants' minds on an inescapable fact of the law: if they are going to plead guilty to an offence, they will do better with their sentence by doing so earlier than by leaving it until a later stage in the process.

519. There are too many reversals of pleas in the statistics to ignore the fact that we could do something to avoid them. Like everything else, it has to be balanced and weighed against the rights of individuals, and you certainly would not want to do anything that put anybody under undue pressure. I could not agree more. However, I think that the proposed measure does not quite get there.

520. **The Chairperson (Mr Givan)**: You touched on the statutory provision for additional discount.

521. **Mr McGrory**: At the moment, no specific statutory provision requires a court to give a discount for an early guilty plea. There is a statutory provision that requires the court to take into account the stage at which the plea is given, but maybe consideration could be given to a statutory discount that the court must give. I do not think that I mentioned that in my opening remarks. Some might argue that that gets closer to putting pressure on a defendant than they would like, so I am not necessarily advocating that. Rather, we were advocating that there be points in the process that require a defendant and his or her advisers to address the fact that, if they plead not guilty and change their plea to the same offence later, they would be at serious risk of receiving a longer sentence.

522. The provision of requiring solicitors to give the advice is unlikely to be effective. Solicitors ought to give that advice anyway, and it would be difficult to police, so why not bring it upfront in the court process? As I said, it should be an advocate rather than a solicitor who does that, as it lets counsel off the hook by putting the pressure on the solicitor and not the advocate at the point of the plea. I do not know why the responsibility was put on solicitors' shoulders. I certainly do not think it should be for the prosecution to do.

523. **Mr C McQuillan**: Our written submission refers to the success of schemes in England and Wales, where a very early guilty plea has allowed cases to go to the Crown Court very quickly. This Bill provides for that where there is an indication of an early guilty plea. That has proved a great success in England. Even before the arraignment, where early guilty pleas are indicated, as the Bill provides for, that should be recognised.

524. **The Chairperson (Mr Givan)**: For clarification, Barra, did you say that it was at the point of arraignment that 28% of defendants who plead not guilty then plead guilty?

525. **Mr McGrory**: Subsequently? That is among the 2012 statistics in the consultation document.

526. **The Chairperson (Mr Givan)**: At what point do the 28% change their plea? Is that before the trial commences?

527. **Mr McGrory**: It could be right up to the day before the trial. The problem for the prosecution is that, once a not guilty plea is entered, we have to be ready to run that case, so it triggers considerable preparation that could have been avoided had the plea been entered at the earliest opportunity. That applies to a significant volume of cases.

528. **The Chairperson (Mr Givan)**: So all 28% who changed their plea did so before the trial; not when the trial had started.

529. **Mr McGrory**: I am afraid that I cannot tell you whether some changed their plea a week later — well before the trial — or some did so at the door of the court. Obviously, the later the change, the more work done by the Public Prosecution Service. The paperwork and other preparatory work triggered by the entry of a not guilty plea are considerable. Counsel have to be instructed and then start preparing the case. We have to prepare papers and go through a disclosure exercise. All of that work on cases could be avoided by an early guilty plea. I do not think that we do as much as other jurisdictions on that point.

530. **Mr McCartney**: Could we see a breakdown of the statistics? Is there a scenario in which people face a more serious charge and then plead guilty to a lesser charge?

531. **Mr McGrory**: We will try to provide that. I think that the statistic that I gave you was for the same charge.

532. **Mr McCartney**: OK.

533. **Mr McGrory**: I will check that, Mr McCartney.

534. **The Chairperson (Mr Givan)**: You are saying that, around the point of arraignment, there needs to be a much greater onus on the advocate, on behalf of the defendant, to engage in the early guilty plea. I want to tease out the responsibility of judges to ask advocates whether they have spoken to defendants about that, or could there be a double lock of both advocates and judges reminding defendants?

535. **Mr McGrory**: I would prefer the double lock: a judge simply asks an advocate whether he or she has given the statutory advice. That is all that a judge need do. That would concentrate the mind of advocates, and it is a statutory requirement. A lot of judges do that anyway at arraignment. In fact, one judge has put up all over his court inescapably obvious notices stating that, if you plead guilty now, it will be beneficial in the long run. However, not all judges do that. I am not in any way being critical of judges. I am just saying that, if we put in place the requirements, there would be consistency across the board. In our view, it would help.

536. **Mr Elliott**: I was going to ask Mr McGrory about the Law Society's assessment that it should be up to the Public Prosecution Service to advise clients, but that has been answered. To what extent are the views of the victims taken into account in the discount option for an early guilty plea? How much account do you think should be taken? I think that, quite often, the victims are set aside in the process. Victims have come to me and said that they did not have the opportunity to have their day in court and explain what happened.

537. **Mr McGrory**: There are provisions in place for victim impact reports to be made available to courts during the sentencing process. It is difficult to see how the victim could be engaged in the decision to plead, which is really the defendant's decision. There are other issues with the representation of victims.

538. **Mr Elliott**: I am thinking about the level of discount that is available.

539. **Mr McGrory**: If a defendant decides to plead guilty at the earliest opportunity, having been reminded of all of that by the lawyer, the court and so forth, obviously, the judge would have to weigh in the balance the level of discount given by that early plea and whether or not that early plea was really forced by overwhelming evidence or otherwise against the interests of the victim in terms of the sentencing principles. I think there is enough there to balance that out, Mr Elliott.

540. **Mr Elliott**: There are no more safeguards that can be —

541. **Mr McGrory**: I do not think so; not that I can think of.

542. **Mr C McQuillan**: One of the reasons why a discount is given for an early plea is that it takes from the victim the concern that they may have to give evidence in a case. That has been recognised, and victims have said that the prospect of giving evidence is one of the things about the criminal justice process that they find difficult, so taking away that concern is —

543. **Mr Elliott**: Although there are some victims who have said, "I have not got my day in court. I would like to have stood there in front of that person who caused damage to me and my family".

544. **Mr C McQuillan**: In addition to victim impact reports, we now have victim personal statements, since the start of the year.

545. **Mr McGrory**: I would say, though, that, if you were to canvas most victims, the relief of not having to give evidence —

546. **Mr Elliott**: I totally accept that.

547. **Mr McGrory**: — would outweigh the desire to face the other person in court. The prosecution frequently relays to the court the level of relief to the victim. In particular types of case — most notably sex abuse cases, but it applies to all sorts of cases — the degree of relief can be much higher.

548. **Mr Elliott**: Thank you.

549. **Mr McGrory**: A point has occurred to me that I forgot to mention earlier on the committal point. Do you mind if I mention it, Mr Chairman?

550. **The Chairperson (Mr Givan)**: I will finish this section and then come back to committal, if that is OK.

551. **Mr McGrory**: Yes.

552. **Mr Frew**: I just want to go back to the prevention orders, Chair, if that is OK. Do you have a view on the debate around under-18 or over-18 with regard to the allocation of violent offences prevention orders?

553. **Mr C McQuillan**: I do not think we do, no. It is really a matter for *[Inaudible.]*

554. **Mr Frew**: With regard to the domestic violence protection orders in the rest of the UK, do you see a need for a specific prevention order for domestic violence?

555. **Mr C McQuillan**: One of the things that we saw — I tried to reflect it in the document — is that violent offences prevention orders seem to be suitable in certain domestic violence cases if they meet the qualifications for those, because they might provide that extra protection for a vulnerable victim, which is so often the case in domestic violence cases. Whilst we do not have a view on whether the English scheme should be expanded, that is one of the reasons why we welcomed their introduction as a further means of protection for victims.

556. **Mr A Maginness**: First of all, apologies; I had to attend talks down at Stormont House. I want to ask the director about early guilty pleas, is that permissible at this stage?

557. **The Chairperson (Mr Givan)**: Yes, that is the section that we are finishing.

558. **Mr A Maginness**: OK. Clauses 77 and 78. I do not know if anybody else has asked this question but the Law Society —

559. **Mr McGrory**: We may have dealt with this.

560. **Mr A Maginness**: I am sorry if I repeat this.

561. **Mr McGrory**: Not at all.

562. **Mr A Maginness**: The Law Society has suggested that the Bill be amended to place a duty on the PPS to notify the client of the discount scheme for earlier guilty pleas as part of their duties in relation to summonses, charging procedures and disclosure. Have you any view on that?

563. **Mr McGrory**: Yes. *[Laughter.]*

564. **Mr McCartney**: We all know.

565. **The Chairperson (Mr Givan)**: To be fair, we did not tease out exactly why, because I am pretty accepting of what —

566. **Mr A Maginness**: You are kinder to me than the vice-Chair.

567. **Mr McGrory**: I do not think that it would make a dot of difference whether the prosecution includes in the summons, charge papers or committal papers a clause that reminds the defendant of the potential benefits of pleading guilty early. It really is their responsibility. We could not do it any other way because, if we were to try to approach them, we would be held accountable for interfering with the Law Society's clients. It is really a function for their own lawyers, advocates as well as solicitors. I have suggested that the court could play a role in this as well.

568. **Mr A Maginness**: Of course, they say that it is not really appropriate for us to do that.

569. **Mr McGrory**: Well, the legislation puts the responsibility solely on the shoulders of the solicitor, which, I agree with the Law Society, is not quite right in a number of respects. The burden should be shared between the solicitor, counsel and the court, frankly. I do not really think that it is a matter for the —

570. **Mr A Maginness**: Should it just simply be an obligation placed on the court?

571. **Mr McGrory**: I have mooted that.

572. **The Chairperson (Mr Givan)**: We want to wrap up the meeting. You wanted to mention committal.

573. **Mr McGrory**: It is only a minor point on the committal issue. It is a double-edged point really. One of the benefits of automatic or straight referrals to the Crown Court in all indictable cases is that the management at the early stages of the case will then be carried out by the court of trial rather than the lower-tiered court. Now, that will have advantages and disadvantages. Obviously, in the current state of affairs, a lot of time is spent at the Magistrates' Court case waiting for materials to come from the police and for the prosecution to make the decision to prosecute in cases that have been immediately charged. There might be a view coming from certain quarters that, by elevating the management of the cases at that stage to the higher tier, you put a burden on the Crown Court that it would rather not have. I think that the benefits, though, would outweigh the disadvantages because it would concentrate the minds of all of those preparing the papers much more stringently if the court of trial is the court putting on the pressure with regard to progress. In the longer run, while there would be teething problems, it would be beneficial. That is just a minor point that I neglected to mention.

574. **The Chairperson (Mr Givan)**: Finally, you had mentioned the right of audience issue and said that currently only self-employed lawyers have that and that, once you become an employee, you lose that right of audience. Are there any clear reasons why that has been the case? What is the historical reason for that change once you become employed?

575. **Mr McGrory**: I will articulate as best I can my understanding of the Bar's reasoning. Mr Maginness might be in a better position if he agrees with it. It is that the self-employed Bar carries a degree of independence over and above that of barristers who are employed, whether they be employed by the Public Prosecution Service, the Attorney General or some other body. I would draw a distinction between barristers who work for, say, a company — as legal

adviser to Norbrook or an insurance company or something — and lawyers who are in daily practice in the courts, like those who work for the PPS. The Attorney General would like to include his lawyers in that as well. I think that a distinction can be drawn.

576. As we progress, more and more barristers may seek to become employed barristers. The PPS is a classic example. We have a mixed economy between employed lawyers going to court and members of the Bar whom we instruct through the panel system. I would like to increase the number of employed lawyers whom we send to court, but I am inhibited from doing that because they do not have as good a right of audience. In my view, there is a bit of a turf war going on here, a bit of protection. I do not want to say that it is anti-competitive, but the reality is that that is what is happening. The less we are able to send our lawyers into the higher courts, the more we have to use the Bar. I have no axe to grind with the Bar other than I think that it is an uneven playing field when it self-regulates in a way that restricts the right of audience of the lawyers who are in my employment.

577. **The Chairperson (Mr Givan)**: So, those who are employed by the PPS or indeed the Attorney General's Office could be utilised more.

578. **Mr McGrory**: Absolutely.

579. **The Chairperson (Mr Givan)**: Are they currently then not being fully utilised in a way that —

580. **Mr McGrory**: Absolutely. I have 160 lawyers, many of whom are barristers. They have a right of audience up to the Crown Court, but they cannot go into the High Court or Court of Appeal. That is an inhibiting factor. Now, I have now created an in-house advocacy tier at the higher level, so they go into the Crown Court, but they are not allowed to do their own appeals because of the Bar regulations. That then affects the way in which I can use them. The Bar also recently moved to ensure that those lawyers do not wear the barrister robing and so forth as well in any court, which, again, sends out a message that is discriminating against employed lawyers. I am very disappointed by that. I would certainly join the Attorney General in asking that consideration be given to statutory intervention there.

581. **The Chairperson (Mr Givan)**: OK. Thank you both very much for coming to the Committee. It is much appreciated.

19 November 2014

Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Tom Elliott
Mr Paul Frew
Mr Chris Hazzard
Mr Seán Lynch
Mr Alban Maginness
Mr Edwin Poots

Witnesses:

Ms Arleen Elliott	*Law Society of*
Mr Alan Hunter	*Northern Ireland*
Mr Peter O'Brien	

582. **The Chairperson (Mr Givan)**: Joining us today is Arleen Elliott, the junior vice-president; Alan Hunter, the chief executive; and Peter O'Brien, the deputy chief executive, all from the Law Society. You are all very welcome to the Committee. As normal, the meeting will be recorded by Hansard and a transcript will be published in due course. We will follow the same format as before. I will open it up to you to briefly take us through your submission and then we will ask questions based on the relevant sections that you have commented on. If members are clear, I will hand over to you, Arleen.

583. **Ms Arleen Elliott (Law Society of Northern Ireland)**: Thank you very much, Chairman. I appreciate that the Committee has had a very long afternoon, so I intend to make just a couple of opening comments and maybe just go on to specific sections if everybody is happy with that.

584. Overall, the society is broadly supportive of the Bill and many of its provisions, including the portable criminal records disclosure, expansion of live video links where appropriate, introduction of violent offences prevention orders, the victims and witnesses charters and the abolition of the upper age limit for jury service.

585. I will start with matters that we have specifically responded to in writing, the first being that of single jurisdiction for the County Court and Magistrates' Court business. We are generally supportive that the Lord Chief Justice may distribute and transfer business across the administrative court divisions to allow greater flexibility than exists at present. However, I think that Mr Frew and Mr McCartney mentioned the issue of how you balance that in a measured way so that effectively there is not inaccessibility to courts for victims, witnesses and defendants. I suppose the easiest example of a scenario that might arise would be a youth court, which could easily be established perhaps in Belfast and would require ultimately young people from around the country to travel to that court in Belfast. Whilst I suppose that, on the one hand, that would be very cost-efficient for the Court Service, it would be very difficult for young people to make those travel arrangements. It can result in adjournments and consequent costs in respect of the legal aid fund and other areas. I suppose that, overall, the society's suggestion, in essence, is that the provision be strengthened to allow that, where the Lord Chief Justice or the Department, where relevant, makes directions in respect of the administration of business, that it is balanced or, certainly, in the exercise of those directions, the decider takes account of accessibility for court users. It also seems a matter of practical common sense that, in any reappraisal or redrawing of administrative boundaries, there is consideration or learning gained throughout that period in respect of how accessible courts have been to their respective users, to better transfer business around Northern Ireland.

586. I have a couple of more minor points in relation to the drafting. First, in respect of clause 3(7), I would think it

sensible for a provision to be provided that required the Department, in making any directions in respect of the administration of its business, to consult the Lord Chief Justice. You would not want the Lord Chief Justice to make directions in respect of where court business goes and the Department perhaps taking a different view.

587. Finally, another point of detail is in respect of clause 5(2), which details that justices of the peace be appointed by the Department by instrument. As I understand it, justices of the peace had carried out effectively judicial functions that lay magistrates have carried out since 2002. It seems to me that, if there are justices of the peace still in existence and still carrying out some sort of judicial functions, their appointment should be made by the Northern Ireland Judicial Appointments Commission (NIJAC) and not by the Department, as would be normal. If there are any questions in respect of that section, I will do my best.

588. **The Chairperson (Mr Givan)**: Do you want to take us through the rest of your sections, and then I will come back to each section, if that is OK?

589. **Ms A Elliott**: Yes, if that is more convenient.

590. In respect of the abolition of preliminary investigations and mixed committals, you will see that clauses 7 and 8 provide for abolition of, essentially, oral evidence being provided. I think that the Committee is very au fait with the fact that the presenting of oral examination is, on the whole, unusual. There have been 93 over a three-year period from 2011 to 2013. Of those 93 preliminary investigations (PIs), 16 did not proceed to trial. I take on board what Mr McGrory has commented in respect of that, and I am most aware of how difficult it is for witnesses to have to give evidence twice, in essence, but there is an element of sifting, if you like, that will prevent cases that should not really proceed — sifting them out at an earlier stage — and thus avoiding what may be an expensive and unnecessary trial. A more measured approach would be if the district judge had limited discretion to allow the calling of key witnesses where he believes that it is in the interests of justice to do so. That would still allow some element of safeguard but would mitigate any risk that the call for a mixed committal is not abused.

591. I was also very interested to hear Mr McGrory's comments in relation to the abolition of a committal — that, if you simply abolished a committal, it would effectively reduce delay, put greater pressure on the Public Prosecution Service and would bring cases on more quickly and more efficiently. If that is to be the case, there has to be a fair procedure within that structure to ensure that the defendant is ultimately aware of what case he is actually facing. The way the committal works at the moment is that, from when a defendant enters the Magistrates' Court to when he effectively leaves it at the end and is committed to the Crown Court, the prosecution gathers its evidence and the defence waits to see what might emerge at the very end of that process. When you get to the stage of committal, papers are served so that the defendant is actually aware of what case he faces. From the prosecution's point of view, if you like, the evidence from the prosecution has effectively been completed. The committal procedure itself is to confirm that there is, on the face of it, a case to answer, and, at that stage, the case is moved forward to the Crown Court. So, whether you abolish the use of the word "committal" or seek to put in a different procedure, I think that you have to be sure that, whatever procedure is put in place, it ensures that the defendant is aware of what evidence he faces. I noted with interest Mr McGrory's comments that maybe that could more effectively be carried out in the Crown Court than in the Magistrates' Court. I cannot really comment on that. I think that you would have to look at the respective costs and look more deeply into the elements of delay. Certainly, it would be perceived that much of the delay that arises in prosecution cases

is often where the police are gathering evidence and forensic evidence has to come in. All those types of issue are rarely swift.

592. I move on to prosecutorial fines. In essence, the society has no particular objection or otherwise. They are essentially another element in the armoury of discretionary disposals that help to get rid of business in a manner that helps to ensure that court time is not ineffectively used. I have a couple of points on how the procedure works. The first is that, when a notice of offer is issued, there are 21 days for the defendant to indicate his acceptance of that notice. I think that care has to be taken, or consideration given, to the 21-day period taking effect from the point of service, rather than the point of issue, because you could have a scenario where the Public Prosecution Service is essentially issuing a notice of offer but the defendant has moved away, is in hospital or is incapacitated. A number of different things could occur so that the person is actually not aware that the notice of offer has been issued. I think that the Committee might want to take that on board.

(The Deputy Chairperson [Mr McCartney] in the Chair)

593. Another element in respect of the prosecutorial fines is an extension of time to pay. Essentially, there is a sum of up to £200 that the public prosecutor can effectively detail as the appropriate amount that is payable. There is no provision in the legislation that allows for any extension of time to pay that. That would not reflect the current situation, if somebody is fined as a result of appearing in court. The defendant, at this time, can, if he shows that he is of limited means, look for an extension beyond four weeks. I think that that is something that should be embodied in this clause.

594. Another element in respect of this clause is in relation to the enhanced sum. The enhanced sum is the amount that becomes payable in the event that somebody does not meet the fine on the face of the prosecutorial notice; but the enhanced sum is calculated as being one and a half times the amount of the prosecutorial notice, and that does not take into account that somebody may actually have paid a part of it. Potentially, you could have a scenario where somebody has paid 95% of the prosecutorial amount but has not been able to pay the last 5%; and, if the prosecution ultimately proceeds to have that registered, it would be the entire amount plus one and a half times. So, I think that, in view of section 75 equality issues, the Committee might want to consider recommending a change to that.

595. In general, in respect of discretionary disposals, I understand that the Criminal Justice Inspection is looking at how discretionary disposals are being utilised. I know, Mr Frew, that you raised the issue of when those disposals are utilised. I was interested to hear that the Public Prosecution Service is basically saying that there will be guidelines on how those notices are utilised. I suppose that, in all, care has to be taken that these notices are not considered something akin to paperwork; there are only so many that any person can actually receive before they lose all credibility.

596. I move on to early guilty pleas. In respect of clause 77, the court is basically obliged to give an indication of what sentence that judge would have given had the defendant pleaded guilty at the "earliest reasonable opportunity". I query two things in respect of that: first, the point of the exercise. The most likely consequence, I think, would be an increase in appeals on sentence, where you may have a defendant saying that he should be given the lesser sentence because he was not appropriately advised at the earliest reasonable opportunity to duly plead. The second issue that I have is, obviously, how you determine when is the "earliest reasonable opportunity" to plead. You will have heard Mr McGrory discuss a number of different time periods that may be considered as the earliest

reasonable opportunity. It is difficult, I think, to be very prescriptive about that because every case is different. It very much depends on the evidence that the defendant may have been aware of.

597. Aside from all those very practical issues, I think that it is also very difficult for a judge to say categorically what sentence he would have given had the person indicated a plea, say, six months ago, because, invariably, the circumstances will have moved on. The defendant may have shown no remorse, in which case it is unlikely that there would be any discount; the defendant may have made reparations; or there may be mitigating factors. The Probation Service's view would obviously have been sought on whether this person is a risk to the public and whether there is a continuing risk. All those things make it an art, rather than an exact science. So, for a judge to be definitive about what sentence he would have given six months ago would be a very difficult task.

598. In respect of the duty of a solicitor to advise a client about early guilty pleas, I am in agreement with Mr McGrory that it does not make sense that the burden, if it is to be made a statutory obligation, sits with the solicitor only. It seems to make more sense that it is with the solicitor advocate, the solicitor or the counsel. In any event, I think that it is wrong in principle that a statutory obligation is put in place for a solicitor to advise the client in respect of an early guilty plea. At present, a solicitor's duty is to advise the client in their best interests, and that duty is ongoing. In criminal cases, it usually commences in the police station. When a solicitor is fully informing their client and giving proper advice, that solicitor needs to be aware of exactly what case is facing the client and to be fully au fait with the entirety of the circumstances. That, ordinarily, does not come to light until some considerable time down the line.

599. In the procedure as it is at the moment, the defendant starts in the police station, moves into the Magistrates' Court and continues to the point of committal.At the point of committal, primary disclosure is effectively provided by the prosecution. That primary disclosure is basically the evidence that the prosecution is holding that would make a prima facie case to answer, but it is no more than that. Then, when the case has shifted to the Crown Court, you are into a circumstance where the defendant is arraigned, and, at that point, he has to determine whether he will plead guilty or not guilty. If he does not plead guilty, he has to make a defence statement and, on the basis of that statement, he makes an application for secondary disclosure. It is the information that is provided at that stage, which the prosecution may be holding, that would actually undermine the defendant's case. So you are a considerable number of steps down the line before you are aware of the evidence that is held by the prosecution against the defendant and the evidence that the prosecution may hold that would undermine the defendant's case.

600. Determining when the earliest reasonable opportunity arises is quite a difficult task. It seems to me that, perhaps, the easiest way of dealing with it is the judge giving a warning in respect of it, and, as you have already heard, that is really what happens on a common basis.

601. In respect of the case management provisions at clauses 79 and 80, you have already heard Mr McGrory mentioning that the Lord Chief Justice has issued practice directions in relation to case management. That is correct and as it should be. There is a duty on all of us to make sure that there is as little delay as possible. It also seems incorrect that the clauses provide that the Department make those regulations. That is usurping the judge's judicial function, and clauses 79 and 80 should refer to the judge issuing those practice directions.

602. Finally, in relation to the public prosecutor's summons, I have to confess that I am not entirely sure to what extent the issuing of the public prosecutor's summons reduces

delay. However, Mr McGrory has given evidence that, in his view, it will reduce delay. In any event, it appears that a summons still has to be laid before a lay magistrate, but it depends on what the lay magistrate can do. If the lay magistrate disagrees, it is essentially nothing. It seems a pretty toothless check, if you like.

603. That is the height of it.

604. **The Deputy Chairperson (Mr McCartney)**: OK. Thank you very much. I will go through the running order. Have members any questions in relation to single jurisdiction?

605. **Mr Frew**: This is just on the point that I raised in the last session, and which you brought up, Arleen. It is with regard to the balance that needs to be struck for the jurisdiction. In the Bill, it states:

"The directions may specify different administrative court divisions for different courts and for different purposes of the same court".

606. Can you explain to me what that means, if there is one jurisdiction?

607. **Ms A Elliott**: As I understand it, because it is a part of his judicial function, the Lord Chief Justice can effectively determine where work essentially resides around the respective courts. At present, if you commit a crime or there is a cause of action that occurs in County Down, only courts in County Down can actually hear that issue. This facility basically allows for that issue to be heard in County Tyrone or somewhere else. It is to build flexibility into the system and allow the shifting of work. In clause 2, the Department can, accordingly, make administrative changes to allow the chief clerk-type functions to be carried out in a way that would similarly be cost-efficient.

608. **Mr Frew**: So clause 2(2) is actually just tidying up the administrative side of things.

609. **Ms A Elliott**: It is more than a tidying-up, because at the minute certain functions are carried out, for instance, by the chief clerk or the clerk of petty sessions. Again, that has to occur in the relevant jurisdiction; it really cannot be shifted. Liquor licensing is one example. In Newry, the functions of the chief clerk in respect of liquor licensing have moved to Armagh — maybe they have moved to Newry, whichever way around — but, arguably, when this provision becomes effective, that entire function could take place in Laganside.

(The Chairperson [Mr Givan] in the Chair)

610. **Mr Frew**: I know that you do not disagree in principle with the single jurisdiction, but you seem to suggest — forgive my ignorance — that more could be done on clause 2 to tighten it up now, as opposed to waiting for guidelines.

611. **Ms A Elliott**: With a fairly simple amendment we could detail that the Department, after consultation with the Lord Chief Justice and taking into account accessibility for court users, can make X, Y and Z amount of directions. I suppose that it just puts an onus and premise on the idea that not everything should be cost-driven from the Court Service point of view.

612. **Mr Frew**: How do you get that down in writing? What will X, Y and Z look like in your opinion? What should they look like?

613. **Ms A Elliott**: I would put in "taking into account the accessibility of courts to ensure access to justice" or something along those lines. It just highlights the view that —

614. **Mr Frew**: Can you put a mileage on it, if you know what I mean? A long journey here is totally different from a long journey in America.

615. **Ms A Elliott**: Yes.

616. **Mr Frew**: How do we get robust and secure guidelines that will secure that balance, with regard to having an efficient court system and allowing flexibility? How do we get the balance on paper to safeguard that?

617. **Ms A Elliott**: If you are talking about guidelines, I would imagine that it would

be for the Lord Chief Justice to basically detail guidelines. I am sure that it is something that will be done in any event, to ensure that, if there were any massive changes in respect of courts, it is done in a measured and sensible fashion.

618. **Mr Frew**: How hard is it for your members who practice in an office based somewhere in a town to go to a different County Court to practice or serve their customers or whatever?

619. **Ms A Elliott**: I suppose that it is not that it is difficult to travel, but it is the additional time spent in getting from A to B. Difficulties arise when you have defendants sent to a court that is exceedingly outside their area because they become very dependent on the public transport system. For example, the family care centre for County Down is actually in Craigavon and it covers a huge area, and you might have people from south Down or south Armagh who find it hugely difficult to get buses X, Y and Z to get to Craigavon Court at 10.30 am. Quite often, there are difficulties with people coming late or not coming at all. That obviously has a consequent impact on the court's time.

620. **Mr Lynch**: Arleen, the director said that we should go full hog and just abolish. You said that the district judge should have some sort of discretion. Can you elaborate a little on that?

621. **Ms A Elliott**: Is this in respect of committal?

622. **Mr Lynch**: Yes.

623. **Ms A Elliott**: What I am trying to suggest is a measured approach, so that there is not overkill when dealing with the concern about mixed committals. At this minute in time, you could say that the ability to call oral evidence provides a safeguard or a sifting exercise that prevents cases moving into the Crown Court that really should not move into the Crown Court — that should effectively stop dead. But I have to take it on board that it is stressful for witnesses and victims to feel obliged to give evidence twice.

624. I suggest that a balanced approach would be to provide some sort of discretion to the district judge to grant a mixed committal where he believes it is in the interests of justice. I would imagine that an application of that nature to a district judge would be unlikely to be frequent. As I said, mixed committals are not very common anyhow. I would similarly imagine that any district judge would take a very narrow view on the exercise of that discretion. It would be more than just "I do not agree with the contents of their statement as presented on paper"; it would have to be much more than that.

625. **Mr A Maginness**: I have just one point. First, does the common jurisdiction mean that County Court judges and magistrates really have no fixed position? What are the consequences of that?

626. **Ms A Elliott**: I would imagine that under clause 3 the Lord Chief Justice could effectively move magistrates or County Court judges around —

627. **Mr A Maginness**: At will.

628. **Ms A Elliott**: At will.

629. **Mr A Maginness**: So the County Court judge for Fermanagh and Tyrone could be notionally that, but he could be anywhere?

630. **Ms A Elliott**: I know that the movability of judges is of particular concern in continental jurisdictions, where they have the notion that to ensure the independence of the judiciary you cannot really move them from their position, because you would be subjecting them to undue pressure, if you like.

631. **Mr A Maginness**: I have asked the question before. Sorry for interrupting you. I have asked officials the question before. Has the judiciary expressed any concerns about this? I am told that they have not expressed any concerns — either the Magistrates' Court bench, district judges, or County Court judges. I do not know what the situation is, but I would like reassurance from the Department that the position is that

they are not concerned about this and are quite happy that they can be moved about at will and have notional titles or maybe no titles whatsoever, which I think would be regrettable. That is by way of comment.

632. I take the view that mixed committal proceedings should remain and — I agree with you — be at the discretion of the district judge or magistrate. It is a good way of weeding out bad or weak cases, where the evidence is questionable. There should be an opportunity for the court to hear that evidence and deal with it. Would you agree?

633. **Ms A Elliott**: Absolutely.

634. **Mr A Maginness**: Vulnerable witnesses, particularly women who may have been the victims of sexual crime, should not be forced to give evidence in circumstances where this gives rise to trauma or retraumatisation. That should be made very plain. Would you agree with that?

635. **Ms A Elliott**: I do not disagree, but I think that a very narrow approach can and should be taken to the exercise of any discretion by a district judge, if he were minded to agree that oral evidence be provided

636. **Mr A Maginness**: You referred to 93 PIs over three years.

637. **Ms A Elliott**: From 2011 to 2013.

638. **Mr A Maginness**: That is roughly 30 a year. How many PEs have there been?

639. **Ms A Elliott**: In the last year, there were roughly 1,600.

640. **Mr A Maginness**: In any event, you are dealing with a small number of cases?

641. **Ms A Elliott**: Yes.

642. **Mr A Maginness**: That leads me to a question that you may be able to answer. Do you have any observation to make about where the savings are in time, avoided delay or cost?

643. **Ms A Elliott**: It is the Department's view that the Bill may improve the administration of justice, but I do not believe that it sees it as producing cost savings as such.

644. **Mr A Maginness**: Thank you very much. There are other issues that we will come to.

645. **The Chairperson (Mr Givan)**: Yes, there are.

646. **Mr A Maginness**: Thank you, Chair.

647. **The Chairperson (Mr Givan)**: We started with single jurisdiction issues and then moved on to committals.

648. **Mr McCartney**: I will follow on from Alban's point. Your position is that committal proceedings should take place only at the discretion of the district judge.

649. **Ms A Elliott**: That is for mixed committals. I was interested to hear Barra McGrory advocating that committals be abolished in their entirety. Whilst I have no objection to the word "committal" being abolished, a fair procedure still has to be in place to ensure that the defendant is aware of the case that he is ultimately facing.

650. It is very hard to get around the procedure that has built up over the years. Effectively, a serious case ends up in the Crown Court. In essence, the prosecution's case is put together when you are at the Magistrates' Court stage. Whether you get rid of committals or not, there has to be a fair procedure to ensure that the defendant knows the case that he is to face.

651. **Mr McCartney**: What sort of system should we have in place to ensure that it is fair? Some of these cases can just be the serving of papers; there is no real examination, but we move on. In some cases, there might be a need to examine the strength and quality of the evidence. The fact that something might have been built up over a number of years does not preclude the need to change it.

652. **Ms A Elliott**: No, absolutely not. As I read the provisions in the Bill that allow direct committal for murder and

manslaughter, it still appears from the body of the clauses that the prosecution must serve its papers at the end of that person's appearance in the Magistrates' Court.

653. You still need a process so that the defendant ultimately has a block of papers, and the legal representative can look through it and give advice accordingly. I do not really know how you dispose of that in a manner that ensures that a defendant can actually meet a case.

654. **The Chairperson (Mr Givan)**: How do you answer the charge that Barra made: why have it twice?

655. **Ms A Elliott**: I think that Barra was making a point about the position whereby someone might have to give evidence twice. I am firmly of the view that, if somebody gives oral evidence, that should be at the discretion of the district judge only and should be very limited. In response to Barra's comment on why somebody needs to get papers twice, you get your primary disclosure at the end of the case in the Magistrates' Court, and, when you move to the Crown Court, you are predominantly served the same set of papers, plus the charge sheet on which you will be arraigned. Perhaps there is a method of doing that in a simpler fashion and not duplicating paperwork. However, a defendant still has to be aware of what he is ultimately facing.

656. **The Chairperson (Mr Givan)**: What about the 93 PIs? There are so few. If PIs and PEs are so fundamental to fair trials, why is everybody not engaged in them?

657. **Ms A Elliott**: It is not fundamental in every single circumstance. In the vast majority of cases — you heard the figure of 1,600 — it will be evident from the papers that are served that there is a case to answer. So there are very limited circumstances in which, as a legal representative, you need to go beyond that and raise oral evidence at that stage. It is used infrequently, but what I am saying is that it is not abused. That is my point. If it provides a safeguard in getting rid of cases that really should not be going forward, I do not see a need to get rid of it.

658. **Mr Poots**: How would you make it more efficient?

659. **Ms A Elliott**: In relation to everything?

660. **Mr Poots**: I asked Mr McGrory about three principles. I asked whether it would diminish equality, and he said that it would not; I asked whether it would improve efficiency, and he said that it would; and I asked whether it would be more effective, and he said that it would. So you have come along and said that what he says does not stack up. So how would you make it more efficient? It is not good that it takes eight to 10 weeks to go through. That is not effective, and I assume that there are more effective systems in other jurisdictions that you have studied and that you will be able to give us something on that.

661. **Ms A Elliott**: I cannot say that I have studied enough to be able to say whether anybody else is doing it significantly better than us. I think that, by and large, the Public Prosecution Service gave a very measured account to the Justice Committee of efficiencies and delays. I was equally interested to hear that, in the PPS's view, if you got rid of committal, it would reduce delay by six to 10 weeks. I think that that is what Mr McGrory said. If you are getting rid of the word "committal", you still have to ensure that a fair process is in place and, if something can be put in place that is quicker and ensures that the defendant is still aware of the case that he has to meet, I do not think that any of my members would have a particular objection to it. In fact, we would welcome a reduction in delay in hearing criminal cases.

662. **Mr Poots**: I see. Would you welcome amendments to the Bill along the lines that Mr McGrory suggested?

663. **Ms A Elliott**: He made a number of suggestions, so it depends on what specifically you are asking me to agree with.

664. **Mr Poots**: Would you work with us, if some of us tabled an amendment to that effect? If it was not of the quality or standard that you would like, would you work with us to refine it?

665. **Ms A Elliott**: Absolutely.

666. **Mr McCartney**: Does the district judge at the committal have the power to stop a case?

667. **Ms A Elliott**: Unless you make an application for abuse of process —

668. **Mr McCartney**: What about the quality of evidence? I will give you an example. I do not know how this case proceeded, but the case that included the two Stewart brothers went to trial. The way in which they were then exposed makes you wonder. Had there been a very efficient mixed committal hearing, their lack of credibility should have been spotted then. The case should have been struck out, and all the savings made. How do we put that type of protection into the system in such a case? Is there a situation in which the defence would not apply for mixed committal and let it run to trial?

669. **Ms A Elliott**: Invariably, the defence does not apply for mixed committal but will look at the papers and see that there is a case to answer. As I said, it is very rare for a mixed committal to be sought by the defence, and, when it does, the judge really has no power to prevent it from proceeding on that basis.

670. **Mr McCartney**: In the case of the Stewart brothers, could the district judge not have said that they were bad witnesses and that, if that was the basis of the prosecution, it should not have gone any further?

671. **Ms A Elliott**: I cannot comment on a particular case.

672. **Mr McCartney**: Right.

673. **Mr A Maginness**: Ms Elliott will not comment on an individual case, and that is quite proper. However, theoretically, the defence can apply to dismiss the case at that stage, and the district judge has the power to dismiss it.

674. **Ms A Elliott**: Yes.

675. **Mr A Maginness**: That is an important power that the district judge has at that stage.

676. I want to add one further point about delay. The provision may expedite the process to the Crown Court, but it will not necessarily make the trial at the Crown Court any faster. It could delay it, because, at the Crown Court, the counsel or solicitor will maybe apply for the case to be dismissed on the grounds of a deficiency in the case. The beginning of a trial could be encumbered with a whole series of applications that could have been dealt with during a preliminary enquiry or investigation.

677. **Ms A Elliott**: The provisions on moving a case by direct committal for murder or manslaughter would appear to allow for an application to be made prior to arraignment before the Crown Court judge to seek dismissal in the interests of justice. The Crown Court judge will make a determination prior to arraignment at that point. Is it correct that that, at that point, power should be moved from the Magistrates' Court to the Crown Court? There would need to be —

678. **Mr A Maginness**: In a sense, it will not eliminate delays that could be caused in the trial process.

679. **Ms A Elliott**: I can only say that, when the Bill becomes operative, and there is direct committal for murder and manslaughter, you could have a scenario in which, effectively, what should have been argued at the Magistrates' Court will be argued in the first instance in the Crown Court. Is that a good use of court time?

680. **The Chairperson (Mr Givan)**: OK. No member wishes to ask anything further about that section of the Bill or the prosecutorial fines.

681. On the miscellaneous element and the duties of solicitors to advise clients about early guilty pleas, will you elaborate a little on why you think that

that should be done by the PPS and not you?

682. **Ms A Elliott**: I will comment on when it is determined that a duty becomes operative. The clause states that it should be done at the "earliest reasonable opportunity". For the professional, who is obliged to meet a statutory obligation, when is the earliest reasonable opportunity? Is it in the police station? Is it during the first appearance in court, at committal, at arraignment or at the provision of secondary disclosure? It seems to be vague. In reality, solicitors have an ongoing duty to their clients to ensure that they are fully advised. It is really a matter of professional judgement how and when you explain that to somebody.

683. Quite often and quite usually, defendants who find themselves in the criminal justice system are vulnerable. They often have literacy problems, addiction issues and a variety of difficulties. So it can be quite an art — art is the wrong word. It can take some deal of work on the part of a solicitor to ensure that that person understands entirely what is happening and that the solicitor is fully aware of the case that that person is facing so that he or she can give appropriate advice.

684. I query whether putting in a statutory obligation that solicitors must advise at the earliest reasonable opportunity about early guilty pleas is taking a sledgehammer to crack a nut. I am also concerned that that would enter into client–attorney privilege and that the balance is effectively being changed so that solicitors are not independently advising their clients but are, if you like, carrying out a function of the state. On balance, it should be the judge who gives a warning about proceeding to trial when perhaps that person needs to be aware of the risks that will arise if he is ultimately found guilty.

685. I go back to the issue that Mr McGrory raised about whether there should be a statutory reduction in sentencing if someone enters an early guilty plea. To be frank, I would be concerned if such a statutory reduction were put in place. Again, a myriad of circumstances can arise in any court, and you could have a defendant who has absolutely no remorse, is extremely proud of doing what he or she did and says so from the get-go. It absolutely seems to fly in the face of good justice that that person would be provided with a statutory reduction in sentence for an early guilty plea.

686. **The Chairperson (Mr Givan)**: Would that be the norm? Would that not be an exception to the rule? Is it not really people who are guilty as sin but who will try to use the system to see whether all the i's have been dotted and all the t's have been crossed? Some 28% of people who plead not guilty before the case goes to trial change their plea because the state has been able to provide evidence that is obviously pretty irrefutable, so they change their pleas. Is that not normally the type of people whom we are dealing with?

687. **Ms A Elliott**: It would be useful to look deeper into the percentage of 28%. I imagine that a number of factors bring about somebody's change of plea prior to trial or on arraignment. That could be an amendment of the charges or an agreement or understanding about the facts. It is not uncommon to have a defendant who says that he did a, b and c but did not do x, y and z as was alleged. On the face of it, that person is pleading guilty, but it is not on the facts that the prosecution would seek to persuade the court are the case. You sometimes have hearings before a court about the facts only, with an understanding that the defendant will plead guilty to a certain factual scenario. It is too simplistic to say that 28% of people change their plea at the last minute and should have pleaded much earlier.

688. **The Chairperson (Mr Givan)**: We asked for those figures. However, Barra seemed to indicate that it related to exactly the same charge and was not a case of accepting guilt on a charge that had been amended. You are right; we do need to get it. I have some sympathy for

the judge having to do it. However, surely if you are going to give the best advice to your client, there is a responsibility on the advocate to say to the client that, in all likelihood, he is going to be found guilty and should consider pleading guilty because that will be taken into account in sentencing.

689. **Ms A Elliott**: That is sometimes — not always — a conversation that you have. The issue is when you have it. Ordinarily, it would be after you have obtained secondary disclosure. So there will have been further exploration into the instructions that have been given to you by the client. Maybe, on the provision of that secondary disclosure, there are anomalies that are not sensibly explained. Again, it is very difficult to be entirely prescriptive, because every circumstance is different. However, when a client gives a set of instructions that just do not in any respect match the paperwork, or there is nothing to assist in what he or she is saying, a solicitor would have a conversation about whether the evidence is likely to be believed.

690. **The Chairperson (Mr Givan)**: This is my ignorance, but would an advocate ever ask a client, "Are you guilty?" Am I naive to think that people who commit a crime would tell their solicitor right from the start that they are guilty but want to know what the solicitor can do to get them to a point at which they might get off or get a reduced sentence?

691. **Ms A Elliott**: Clients will sometimes say that they are guilty or that they did x, y and z. A solicitor's ethical obligation is to represent that person on the basis of the information or instructions that he has given to you. If the person says that he is guilty of theft, a solicitor will then proceed ultimately to enter a plea for that person. However, that person may say, "I am guilty of theft but don't want to plead guilty", in which case the prosecution has to prove its case. However, you can never call perjured evidence nor make a case on behalf of that person that they did not do it.

692. **The Chairperson (Mr Givan)**: However, if there is a requirement in the Bill for a judge to ask the advocate, as Barra indicated, whether he has advised the client about pleading guilty early and the impact that that could have on sentencing, does a solicitor need to take instruction from the client to be able to answer that, if the client has told the solicitor that he is guilty but is not going to plead guilty?

693. **Ms A Elliott**: I have to stress that it would be most unusual for people to say that they are guilty but want the prosecution to prove its case. However, if people did want to go down that avenue, a solicitor would put very strong advice to them about the risks that they are running.

694. **Mr McCartney**: Paragraph 23.1 of your submission states that it is part of the professional obligation to provide clients with the best possible advice. The issue seems to be legislating for that and deciding when the most appropriate time is. How do we square that? Do you think that it should run as is? The idea of "encouraging" someone is, I think, the wrong terminology. It sounds almost like pushing people into a position that they should not be in. At the same time, it is about giving people full appraisal of the facts; in other words, in the scenario you outlined, there might be situations in which a person has done a, b or c but feels that it is not f, g or h. How do we frame the system so that people are getting justice, but it is not unnecessarily clogged up by people hanging on in the hope that they might get something extra?

695. **Mr Alan Hunter (Law Society of Northern Ireland)**: There are a couple of things about that. It can sometimes be missed in statistics that these are all individuals who are entitled to justice in our system, and it is our collective responsibility to ensure that we have a system in which each of us has confidence. What appears to me to be missing from the clause is any reference to the fundamental principle that a defendant's plea must always be made voluntarily. That is entirely missing.

Think about vulnerable defendants and vulnerable children. Where is there any specific provision as to how children or young people might be treated differently?

696. I am also thinking about the system and a person's right to a defence and to proper access to an adequate and compliant justice system. How will that defendant feel, particularly a vulnerable defendant, about being advised by his or her solicitor, "There are advantages, you know, if you plead guilty"? What we have at the moment is, as the vice president said, a very balanced, measured and appropriate system that works quite well in practice. If it is the Department's and the Assembly's will to introduce a provision of that nature — I think that the society would oppose it in its current form — at the very least, some balance needs to be added to the clause to take account of vulnerable witnesses of all descriptions and vulnerable defendants and to introduce an overriding principle that a defendant's plea always has to be made voluntarily. The suggestion that the duty might fall on the judge at a particular point would make it, at the very least, a procedural requirement that would ensure that a defendant was aware and might remove any undue pressure from people who were vulnerable or who might inappropriately plead guilty to a set of circumstances that is not relevant, as the vice president said.

697. **Mr McCartney**: Is there a process in place whereby a defence lawyer can go to the prosecution service and say, "My client will plead guilty to actual bodily harm rather than grievous bodily harm"?

698. **Mr Hunter**: I will defer to the practitioner.

699. **Ms A Elliott**: There is not a process in place as such, but, in the ordinary course of a case, prosecution and defence will quite often have a discussion about what can be agreed and what is not agreed. That is entirely common. Plea bargaining does not happen. You cannot have a scenario in which the defence says to the prosecution, "We will plead to this if we get that".

700. **Mr McCartney**: I am aware of a particular case, and I know that, with actual bodily harm, the sentence cannot be appealed but, with grievous bodily harm, it can.

701. **Ms A Elliott**: I defer to your better knowledge of it.

702. **Mr McCartney**: It is about the interests of the victim. My reference was to a domestic abuse case. So a person can be convicted of actual bodily harm, and there is no provision for the prosecution service to appeal it.

703. **Ms A Elliott**: Do you mean if the prosecution reduces it?

704. **Mr McCartney**: Yes — leniency of sentence. Alan talked about the voluntary plea, but in terms of a witness and a victim, what is the process that protects someone when the prosecution service feels that it has, in the first instance, evidence to go for grievous bodily harm? People talk about agreement, but, when you look at it from the outside, it is a short step from plea bargaining, and sometimes it is not in the interests of justice for people who have suffered that grievous bodily harm, particularly when they are told afterwards, "This cannot be appealed because it was actual bodily harm, but, if it had been grievous bodily, you could have". How do — [Inaudible.] — at that end of it as well?

705. **Ms A Elliott**: The victim has an opportunity to make a victim impact statement, and, as you heard, the victims' charter may help to ensure that victims feel more part of the process. The issue that you raise is in relation to victims feeling that the prosecution has not fully represented their position. The victims' charter might assist in how issues like that arise in future. I suppose that that is a different issue from the defence.

706. **Mr McCartney**: I do not think — Barra McGrory said this — that any of us want to see a plea bargaining situation, but,

sometimes, when you have provision — it might be well placed in the framers of this issue — you get an early guilty plea that saves everybody costs and all that goes with it. However, I think that you are starting to build it into the system because someone might come along and say, "My client will plead guilty early if it is reduced from grievous bodily harm to actual bodily harm". In one sense, the system might be saying that it is good justice and it is fair, but the victim is looking on and saying, "How are we protected from plea bargaining and from using one provision that might look good on paper and in theory, but, in another way, it can be used as part of the plea bargaining?". We can call it whatever we want, but, in essence, it becomes plea bargaining.

707. **Ms A Elliott**: In essence, fundamentally, how a case proceeds from a prosecutorial point of view will always reside with the prosecutor. You naturally would have issues where victims do not agree with an approach taken by the prosecutor, but, ultimately, it has to be the prosecutor's decision to assess the evidence available to them and the likely outcome if it proceeds to court.

708. I can imagine that victims can sometimes feel excluded from the process and from the thinking behind it, but it is very difficult to get away from the prosecution having the ultimate say in how a matter progresses.

709. **Mr A Maginness**: In relation to part 8 and clauses 77 and 78, the proposed duty would rest with a solicitor; it would not rest with a barrister. Would it rest with a solicitor advocate? There would be a question mark there.

710. **Ms A Elliott**: The clause refers to the solicitor. I suppose that the concern that the intention is possibly that "the earliest reasonable opportunity" is the police station.

711. **Mr A Maginness**: If it gets to court and the solicitor says to the client, "I think that you should plead guilty here. An early plea will get you discount, and, by the way, I am going to instruct counsel to conduct a plea in this case". If counsel receives the papers for the case and says, "By the way, you are not guilty of this offence or these offences. I have looked at the papers and have discovered that you could not be guilty in the circumstances". Take, for example, road traffic offences, counsel could say, "This was not a public highway; it was not a public place. Therefore, you are not guilty of any road traffic offence". So, you could have a very peculiar situation in which there is a conflict between counsel's assessment of the case and what the solicitor has advised the client. I know that that might be far-fetched, but there is a potential conflict there. Is that not true?

712. **Ms A Elliott**: Yes, absolutely.

713. **Mr A Maginness**: I am uncomfortable with this because it all conspires to force people into pleading guilty in circumstances in which they may be innocent of the charges facing them.

714. I think that we are now establishing a process in which, more and more, because of the efficiency and expediency of justice, dealing with trials and so forth, people will plead guilty when they should not.

715. **Ms A Elliott**: I am going back a little now, but the right to silence has effectively been limited and reduced to an extent that when you are providing advice to a client in a police station, it can become quite difficult to give proper, full advice. The additional statutory need to advise in respect of an early guilty plea is the next step. There is no doubt.

716. **Mr A Maginness**: At paragraph 25.1, you said:

"It is notable that in Scotland the procedural reforms to the system of encouraging appropriate early guilty pleas focused on disclosure from the prosecution service."

717. Is there an issue in relation to disclosure from the Prosecution Service? I apologise that I was not here when the director gave his evidence.

718. **Ms A Elliott**: I do not have the evidence for it, but it is believed that we would

find much greater difficulty in Northern Ireland in taking evidence that, ultimately, requires a number of different applications for disclosure ultimately being made in the Crown Court. However, it is something that would have to be looked at in a statistical fashion.

719. **Mr A Maginness**: I have one final point, Chair. There is an inherent duty on any solicitor to advise their client if he comes to the conclusion that it would be advisable for them to plead guilty. Leaving aside that duty, which is a professional duty as opposed to a statutory duty, should the real duty not lie on the court and the judge to say to the defendant that if they enter an early plea, there would be a discount in sentencing?

720. **Ms A Elliott**: Yes, absolutely. That would cover any concern that a defendant is not aware of the benefits of an early guilty plea in sentencing. It will have been said in an open court, and all can be assured that a defendant has heard it. I think that that is a more appropriate way of doing it than placing a statutory obligation on a solicitor.

721. One small point that I did not raise was that the final clause details that any person can make a complaint in a solicitor's disciplinary tribunal in respect of breach of that solicitor in failing to advise. I would be concerned that that procedure would be abused by somebody engaged in criminal proceedings to undermine a solicitor simply carrying out their professional obligations.

722. **The Chairperson (Mr Givan)**: Finally, do you have a view on the rights of audience, which was discussed earlier?

723. **Ms A Elliott**: I was interested to hear the view of the Public Prosecution Service. The society would be very concerned that if you have the Attorney General's office, the Public Prosecution Service office and a multitude of other offices looking to avoid part of the regulatory framework, you will end up with a very piecemeal framework, which would not be healthy, for want of a better word.

724. It also seems to me that the Attorney General's representations that somebody simply working in his office should not have to go through those regulatory hoops would centre around the personality of the Attorney General. That does not seem to be a sensible way to regulate. So, I would be opposed to piecemeal exemptions being made across the board.

725. **The Chairperson (Mr Givan)**: If the Attorney General or, for that matter, the PPS, has to use a self-employed legal professional, surely they will be acting under the instructions of the PPS and the Attorney General anyway. So, for want of a better phrase, the personality issue surely does not stand.

726. **Mr Hunter**: There seem to be two separate issues emerging. Prohibition, which I heard discussed this afternoon, is a prohibition of rules, as I understand it, from the function of the Bar rules that if you are an employed barrister, you may not appear. There is a different issue in relation to solicitors because that prohibition does not apply. As you know, we are putting in place a regulatory structure that would enable solicitors to exercise rights of audience in the higher courts. What we are saying is that solicitors who are employed by the PPS or anyone else would not have that prohibition. The prohibition for solicitors comes from the prohibition on the rights of audience in the higher courts, not from any internal rule. It appears to me, from this afternoon's conversation, that there may be two different issues.

727. **The Chairperson (Mr Givan)**: Thank you very much for coming to the Committee; it is appreciated.

19 November 2014

Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Paul Frew
Mr Seán Lynch
Mr Alban Maginness
Mr Edwin Poots

Witnesses:

Ms Sharon Burnett	*Women's Aid Federation*
Ms Louise Kennedy	*Northern Ireland*

728. **The Chairperson (Mr Givan)**: We are joined by Ms Louise Kennedy, regional policy and information coordinator; and Ms Sharon Burnett, management coordinator in Causeway Women's Aid. You are both very welcome. As with previous sessions, this session will be recorded by Hansard, and the transcript will be published in due course. Please briefly outline the key issues in your document, and then members will go through it section by section and ask questions. If everyone is clear, we will proceed, and I will hand over to you.

729. **Ms Sharon Burnett (Women's Aid Federation Northern Ireland)**: We want to start by giving a brief summary of the services delivered across Northern Ireland because many people do not understand the extent of the services that we deliver and the necessity for victims to have them. We provide refuges across Northern Ireland, as well as support; outreach services; a 24-hour domestic and sexual violence helpline; training; support for women engaging with the criminal justice system from the very initial interaction with the PSNI and the whole way through the court process; children's services; and engagement in arenas such as the Committee.

730. We have been very encouraged by the extensive work undertaken by the Justice Committee and the Department of Justice to make the justice system more victim-focused because, in our experience, it is justice agency-centred as opposed to victim-centred. We would like to preface our comments by saying that, for victims of domestic violence, criminal justice is only a small part of the picture. For most victims, protection and support are gained through a civil system, through non-molestation orders, multi-agency risk assessment conferences (MARACs), and through support organisations such as ours.

731. While non-molestation orders are a civil issue, they are the very first contact that the vast majority of victims will have with the courts system; it is often a very negative experience that subsequently taints their view of the criminal justice system.

732. When victims of domestic violence seek criminal justice, they face a number of barriers and revictimisation by the system, in that they are asked to repeat very traumatic experiences time and time again. They risk more abuse from perpetrators by way of reprisals or intimidation for issues like withdrawing complaints and suffer significant delays in cases going through courts with adjournment after adjournment. We talked a bit about that earlier.

733. There are mixed messages about special measures. Some people say that they were never told about them; others say that they were told about them but were advised not to access them because it would be detrimental to the outcome of the case. It is not uncommon for victims to be told that. The criminal justice system that we see time and time again does not have sufficient understanding of domestic violence. There is a real need for criminal justice staff to be trained in relation to it.

734. The last thing that I will say before I pass you over to Louise is that many components of domestic violence are not, in fact, criminal. Therefore the system does not deal with the spectrum

of abuse; it deals with a particular incident, but victims very much see that particular incident as part of a full spectrum. That can taint their view of the criminal justice system as well. In the view of Women's Aid, there are real merits in having a crime of coercive control to reconcile the reality of domestic violence. However, I accept that that is a discussion for another day. I will pass you over to Louise.

735. **Ms Louise Kennedy (Women's Aid Federation Northern Ireland)**: With all that in mind, we would like to share our views on the different aspects of the Bill. We are aware that, in our submission, we commented mostly on the amendments, but we are aware that when we were called for oral evidence, we were asked to comment also on the main clauses of the Bill, so we are willing to do that if the Committee sees fit.

736. **The Chairperson (Mr Givan)**: In respect of what?

737. **Ms L Kennedy**: In respect of the victims' charter, the violent offences prevention orders and prosecutorial fines.

738. **The Chairperson (Mr Givan)**: Please do.

739. **Ms L Kennedy**: First, we welcome the victims' charter and the work done to get it this far and the fact that it has been placed on a statutory footing. We note, however, that there is no statutory entitlement per se in the Bill for specialist support services for victims or the charter. Article 4 of the victims' directive states that a victim must be informed about any specialist support relevant to them at first contact with a competent authority. The EU directive and guidance specifically mentioned domestic violence in that respect.

740. We have worked with victims who have dealt with police, solicitors, barristers and more general support services that do not have domestic violence expertise. Many victims have come to us midway through the process and said that they have been left feeling frustrated about the process and misunderstood and that the advice that they had been given to that point might have been inappropriate in relation to domestic violence. When they were pointed to Women's Aid much later in the process, they said that if they had received the right expert support from the beginning, their experience and interaction with the system might have been much better.

741. It also links in to the importance of identifying vulnerable victims at the earliest possible stage to ensure that they are offered things such as special measures. That assessment is often done at a very early stage when police are involved. Therefore, it is crucial that, at that early stage, there is the direction and referral to the special services and that victims are subsequently treated appropriately throughout the rest of their engagement with the criminal justice system.

742. Very quickly, I want to mention that the Bill says:

"The Charter may not require anything to be done by a person acting in a judicial capacity".

743. Notwithstanding our appreciation of the importance of judicial independence, our concern is that, without proper training on specialist issues, such as domestic violence, many provisions of the charter might be rendered effectively meaningless for victims of domestic or sexual violence if they are being heard by a judge who does not have an expert understanding of the issues.

744. Article 25 of the victims' directive specifically calls for the specialist training of judges. We say that not to damn the judicial profession, by any means, but because we see inconsistencies across Northern Ireland in expertise. Expert training is vital.

745. Moving on to violent offences prevention orders, serial domestic violence perpetrators are a huge problem; it is a serial perpetration issue. Some mechanism is needed to prevent serial perpetrators from being able to move from one victim to the next with impunity.

746. Since the introduction of MARACs, which Sharon mentioned, it would be easy to identify serial perpetrators. Even if

there has been no criminal conviction — which, often, there is not — we recognise that those victims are victims, and they are recognised as such in MARACs and by the agencies involved.

747. So, it is disappointing that, with regard to the orders, the threshold may render them effectively unusable in many cases against serial perpetrators of domestic violence. The reason is that, throughout our discussions with the panel and the victims' advisory subgroup, it became clear to us that the orders may not be of practical use in domestic violence cases, as most individual instances of domestic violence crime may have quite a low threshold. For example, you might have an instance of criminal damage or something that would be considered a "minor crime", yet that does not take into consideration the months or even years of psychological and emotional abuse or other instances of physical abuse that have not been reported. It is said that it takes 35 instances of physical abuse or attack before a woman will come forward . Domestic violence is a hidden social problem, and incidences of violence are not being reported. It is common for a case to go to court where a woman has been abused for many months or years, and what is being dealt with is something that does not bear any resemblance to the reality of the situation. We do not feel that these orders will do anything to help because of the low threshold of occasions of actual bodily harm.

748. Very briefly, on delay, we welcome the statutory framework being put in place to manage criminal cases. The consequences of protracted proceedings would be enormously damaging to victims of domestic and sexual violence, particularly the ability of the victim to retain confidence in the system and to continue in the process.

749. It is well established that perpetrators of domestic violence will often attempt to use a legal process or any opportunity to further exact power, control and manipulation and to continue to abuse the victim by delaying, frustrating or subverting the justice process and trying to put pressure on a victim to withdraw evidence. We are of the opinion that all criminal justice issues should have systems in place to recognise that that takes place and, when it happens, to try to guard against it.

750. Moving on to prosecutorial fines, we wanted to bring up the point that it might be worrying if crimes with a domestic motivation fell under this. If such cases were dealt with using prosecutorial fines, it might send a message to perpetrators that they can act with impunity or the "It's just a domestic" myth that society holds dear. It could also make it more difficult for something like Clare's law in England, which is the disclosure law, to be implemented in Northern Ireland because many perpetrators would not have a criminal record with which to reference for women seeking information about serial perpetrators. It would reinforce the myth that it was "just a domestic", and it might deter victims even from coming forward in the first place to report such crimes since, most likely, the very high risk of doing so would not be worth it if it is just going to be a fine at the end of the day. In short, it could put women's lives in danger.

751. It could also punish victims, particularly if finances are shared and there is financial abuse in a relationship. For example, someone might have to pay a fine, but the person who is ultimately paying is the victim because the finances are coming from that party.

752. Moving to the Department of Justice amendments, we support the change to an opt-out system for victims receiving information about support services. Often, in the initial stage, victims are dealing with a lot of information, they have had a very traumatic experience, and it may take some time for them to process exactly what is happening and what has happened to them. Having an opt-out system gives victims the opportunity to consider support options, once the initial traumatic event has passed, with a clearer head. The choice will remain whether they avail themselves of the services in the end.

753. With regard to the amendment on criminal records, Women's Aid is in favour of a better exchange of information, since, as we explained, "minor crimes" do not reflect the true gravity of an abuser's situation. Given what we said about that, there are difficulties in securing convictions and a likelihood of more criminal convictions being "minor", even though the perpetrator in question might be dangerous and violent. We therefore have reservations about a system that may remove any cautions or minor convictions relating to domestic violence from a perpetrator's record. That would especially be the case if, for example, a perpetrator's modus operandi had been to target vulnerable young people or adults and then go into a job or voluntary role to work with such people.

754. We appreciate the provision about having discretion regarding that kind of review. However, having no domestic violence-related criminal convictions in a very long time, perhaps 10 years, does not mean that that person has not been a perpetrator. No conviction does not mean that it is not still happening; MARACs are evidence of that. That is the gist of our comments; we are happy to take questions.

755. **The Chairperson (Mr Givan)**: Thank you very much. There are a couple of points that I want to raise. Do you believe that the Bill provides enough clarity on how victims' statements would be used by judges?

756. **Ms L Kennedy**: We are very happy to see that a victim's impact statement can be used. However, it also requires someone getting to court. If prosecutorial fines are taken away from them, you are depriving the victim of the impact to make a statement in the first place. Those situations are vital for the victim to be able to say to the judge, "They are a danger to society. This is the full extent of the abuse that has occurred against me". They are very useful, as it is very cathartic for a victim to be able to make a statement and to go beyond the very narrow construction of criminal offences relating to domestic violence.

757. **The Chairperson (Mr Givan)**: On the criminal records aspect, do you have a view on wiping the slate clean when a child reaches the age of 18? The point has been raised with us that, once you reach the age of 18, criminal records should be wiped clean.

758. **Ms L Kennedy**: Maybe Sharon will take that question.

759. **Ms Burnett**: Children with criminal records is not something that we specifically looked at because we were looking at adult offenders and perpetrators, although we do significant work with children and young people. My personal view is that there has to be some serious consideration as to the point where you look at a complete wiping of the slate or at the level of conviction prior to that to see what should and should not be removed. I assume that that is for you to decide. However, significant crimes prior to 18 should be on the record, but minor crimes should not be carried forward into adult life.

760. **Mr Frew**: May I ask a supplementary question?

761. **The Chairperson (Mr Givan)**: I am going to let members cover all the aspects; I am not going to do it section by section.

762. **Mr Frew**: I do not mean to butt in if you are not finished.

763. **The Chairperson (Mr Givan)**: No, I am finished.

764. **Mr Frew**: You talked about serious crimes. What about types of crimes? If a minor is involved in domestic or sexual violence, is there merit in keeping something like that on the record or should we wipe the slate clean on that or other types of offences?

765. **Ms Burnett**: I suppose that I should have been clear. In my mind, when I was talking about minor and more serious crimes, I was thinking about types of crime. Violence and sexual issues jump out at me as things that would have to involve serious consideration if we wanted those to disappear for somebody

at the age of 18. That is my personal view, but, when we looked at the issue, we looked at it more with regard to adult perpetrators of domestic violence.

766. **Ms L Kennedy**: It is also pertinent to say that you would be hard-pressed to find a young person in the offender system who has not experienced domestic violence within the family. A lot of the work we do with children and young people recognises that, even if a child is not directly abused in the home but has witnessed abuse, there will be trauma. Their education, well-being and health and their ability to function in society, form relationships at school and excel at school and so forth are seriously impacted. Some of that acting out or reacting to the very grave situation that they are in within their family can sometimes spill out and result in them being in some level of criminality. There is a rounder view to be taken on that with regard to how it can impact on children.

767. **Mr Frew**: I know you have a list there. I will go to the end of the list, and you can move on.

768. **Mr A Maginness**: Chair, I have to leave in a few minutes. Does that matter in relation to the quorum?

769. **The Chairperson (Mr Givan)**: The meeting can go on, but we cannot action anything. That would be a difficulty.

770. **Mr Frew**: We would be lost without you, Alban.

771. **Mr A Maginness**: I know you would.

772. **Mr Lynch**: You got in before me.

773. **Mr A Maginness**: Sorry.

774. Thank you very much for your contribution. It was very interesting and helpful. I pay tribute to the good work that you do. You want domestic violence to be exempted from prosecutorial fines. Is that your bottom line?

775. **Ms L Kennedy**: I think so, yes.

776. **Mr A Maginness**: And it is a red line for you, if I may put it that way. Is it?

777. **Ms L Kennedy**: Yes, because of the absolute disparity that there is between what can end up in court and be convicted — the amount that it takes for a victim to be able to get to that point — versus the reality of what the abuse is. We have people in MARACs who are high-risk offenders and real threats to victims, but they do not have a blemish on their record, or perhaps they have something very small. If it has a domestic motivation, it could, sometimes, be the difference.

778. **Mr A Maginness**: So it is a hidden thing.

779. **Ms L Kennedy**: Absolutely.

780. **Mr A Maginness**: And that is the danger they are in. Do you see VOPOs as a necessary tool in combating domestic violence?

781. **Ms L Kennedy**: We certainly see something along those lines as being necessary. At the moment, there is a gap in dealing with serial perpetrators. We know that a lot of perpetrators move on from one person to the next person to the next. Sharon could maybe talk about that in more detail. We know that that happens. At present, while we can refer a woman to a MARAC, something else needs to be there in order to prevent that impunity and that serial perpetration, to break that habit for more victims to continue to be abused. Something needs to be there. Given the threshold, we do not think that, in their current form, those orders will cover a lot of the cases they will probably be needed for, where there are serial perpetrators in Northern Ireland.

782. **Mr A Maginness**: Chair, I am afraid I have to go. Sorry.

783. **The Chairperson (Mr Givan)**: Have you five minutes?

784. **Mr A Maginness**: Yes.

785. **The Chairperson (Mr Givan)**: I am going to stop this session. There are two legislative consent motions that we need to put through.

786. **Mr A Maginness**: I will stay.

787. **The Chairperson (Mr Givan)**: If you are happy to stay at that end of the table, we will come back to this.

The Committee suspended at 5.59 pm and resumed at 6.06 pm.

On resuming —

788. **The Chairperson (Mr Givan)**: Sorry for that interruption. I appreciate that that has slightly upset proceedings.

789. **Mr Lynch**: You do not want to be on the Justice Committee. I think that you mentioned delays, Louise. Where do you think that the causes of the delays lie? Is it with the court process or with the PSNI? You said that training needs to take place in the criminal justice system. You intimated that they see as it incidents, while it is often a pattern. The conviction rate is very low. I do not know what it is here, but it has a very low rate of reporting, a low rate of charging and an even lower rate of conviction.

790. **Ms L Kennedy**: Do you have any comments on what you are finding with delay in your area?

791. **Ms Burnett**: There are two things that happen. One is, as the Law Society mentioned, the length of time to investigate and the length of time to get forensics. There are those practicalities, but there is also the issue of perpetrators not attending court etc. That comes up on a range of occasions. Before I came here today, I spoke to one of my staff to see about a couple of examples. One case of assault occasioning actual bodily harm that happened in January is coming to court in November, and it has been adjourned since May. So that goes on and on and on. An attempted murder case happened in April, and, seven months later, there is not even a date set for court, so it has not even got to the point of being adjourned. It is even the processes of the court itself before it even gets to the opportunity for a perpetrator to potentially not turn up and provide difficulties along the way. Put the two of those together and you can have significant delays and significant negative impacts on victims attending court, and it is significantly more likely for them to get to the point where they say, "Do you know what? I am withdrawing," and that is it.

792. **Ms L Kennedy**: Every delay gives a perpetrator the opportunity to exert control, manipulation and coercion in order to frustrate the case and see that justice is not done. We believe that delay is not just a victims' issue; it is also a best evidence issue. The more confidence that the victim feels that they have in the system and the safer that they feel, the better they are able to give evidence. Delays do impact negatively on that, for all of the reasons that Sharon mentioned.

793. **Ms Burnett**: One of the things that we said at the very start was that the criminal justice system was justice agency-centred rather than victim-centred. You get regular examples of court cases at some quite considerable distance for victims to travel. Those are known about for weeks and weeks and weeks, and you can be told on a Monday that you were supposed to be in court on Friday but that it is being brought forward to Thursday. That impacts on the victim, solicitors, barristers and support agencies. Do not forget that an individual may have four or five children whom she has gone to considerable lengths to have looked after etc. Moving something forward a day makes a huge difference, and there is no leniency for victims, as far as we can see. Once things are changed, they are supposed to be there. That is why we are very clear that the first thought is not, "How will this impact upon the victim?" It is: "How can we as a system make sure we use up an empty spot? Somebody has take the Friday off or something has happened". Of course, we do not want it to be adjourned and adjourned, but it is the attitude, even with those type of things —

794. **Mr Lynch**: Do you see the victims' charter as having a positive role to play in that process?

795. **Ms Burnett**: I think it should, as long as we are clear that we try in every single

instance to look at victims in two ways: one, how this is going to have an impact on any victim; and, two, having a better understanding of the actual nature of domestic violence, so that we are not treating all victims as one homogeneous group.

796. **Ms L Kennedy**: In answer to your question about training needs, yes, a lot of the criminal justice agencies, police, and so forth tend to look at domestic violence as incidents rather than as part of a whole pattern. It is fair enough in the sense that police are there to deal with an incident, but we would say two things. With training, all criminal justice staff, agencies, judges and police can be enabled to understand the pattern of abuse and the fact that it is not just criminal incidents or physical incidents. There is psychological coercion and control. It is not bad all the time. There is a reason why victims stay. Also, they stay because they are not necessarily safe if they go. I believe that if all those things are understood, everyone is able to do their job more effectively, confident in the knowledge that they know what they are dealing with.

797. We appreciate that police are not social workers; they have a job to do. That is why we say that, at the earliest possible opportunity, there should be referral to specialist services who are able to round off that square and to pick up the rest of those aspects to make sure that the victim is getting all the aspects of support that they need and that the whole picture is understood. That is why that is particularly important.

798. You had a question about rates of conviction being very low. Yes, like we said, we sit at MARACs, and there are a lot of high-risk victims. MARAC is only for people at serious risk of injury or death. The perpetrator might not have any criminal convictions at all.

799. As we have already said, it takes an awful long time for something to be reported. Anecdotally we have found that even those who are supported in our services or on the 24-hour domestic and sexual violence helpline may never be able to speak about the most serious aspects of the abuse, for example, sexual violence within an intimate relationship. There are some things that are just so horrendous and have had such a traumatic impact that people cannot talk about it for a very long time, or perhaps ever.

800. We need to recognise that the criminal justice system as it is now, and just having those physical crimes as the crimes, is not covering everything, and that there is a government-recognised other side to domestic violence. If you look at the strategy, there is recognition of psychological and financial abuse as well. We have to understand that there are other elements, and it spreads out not only to the civil courts, with regard to non-molestation orders, but also to the family courts, through contact proceedings, divorce and separation. Domestic violence does impact there, and there needs to be support and understanding there, as well.

801. **Mr Frew**: With regard to the VOPOs, is it your thinking that we need more defined prevention orders for domestic violence or sexual offences? Should we have a range of prevention orders or, rather, one violence offence prevention order to do everything?

802. **Ms L Kennedy**: For one to do everything, you would have to look seriously at the thresholds. Obviously, sexual violence is per se a serious crime. Domestic violence incidents are not. As we have said, not everything is covered there. I suppose the Committee would probably know better than I. You would need to either rework the VOPOs to be able to take into consideration all those different elements or have something that is more tailored to domestic violence put in place.

803. The issue that we have always found is that there is a unique element to domestic violence with that relationship. It is not a stranger committing a crime against a stranger. There are repercussions and there are differences, and there are also differences in the way victims may react, because, at the

end of the day, they are in a relationship, or it is a family member. Those things need to be taken into consideration, and that element of abuse. Control and manipulation need to be taken into consideration as well, and that victim protected even more. I do not think I would have a particular preference for one or the other, but definitely something would have to be tailored to be able to take into consideration all the circumstances.

804. **Mr Frew**: You could have a range of prevention orders that do different things and carry lesser or serious consequences. Would you be happy with that?

805. **Ms Burnett**: That is not what I heard you say. Is that fair? I apologise if I have picked you up wrong, because one of us has. You were talking about a range of different VOPOs.

806. **Ms L Kennedy**: Either a range of different types of order or a more tailored VOPO, which is widened to encompass it and does not have that threshold that is prohibitive.

807. **Mr Frew**: Does that necessarily mean a change of name or a set of different initials for a face of a Bill? How do you get that nailed down? To me, you need to have specifically different orders to cater for the different aspects of crime that you talk about.

808. **Ms L Kennedy**: I suppose not every criminal activity that has a domestic motivation is a violent crime. There are things like criminal damage; there are other things that are wider than that. Obviously, assault is a massive one. If it is a matter of the name of it reflecting something, perhaps it is the case that there should be something about domestic violence in there, but we have not thought through the particular detail beyond what we have discussed with a panel of victims' advisers.

809. **Mr Frew**: I heard what you said about the impacts of domestic violence and that an act might be perpetrated once, and then other minor things that are not breaking the law after that will be the threat, which could impact just as much, then, as the initial act of violence towards a person. So it would be bullying, threatening or an action that will not lead to a crime being committed but will impact the same. How do we nail that?

810. **Ms Burnett**: That is why we mentioned the hope that in the future a course of control would be something that would be seen as criminal. That is not the position that we are in right now, but it is something that Women's Aid will be advocating for in the longer term. The other things in relation to VOPOs were, one, repeat abuse within a single relationship but then, secondly, the serial offenders that Women's Aid has had experience of over the last 40 years. That has been brought into stark relief with the MARACs that happen across Northern Ireland every month, and the realisation that there are extremely dangerous perpetrators who have appeared and appear time and time again with different victims. There are very serious incidents there — some with criminal convictions, some not.

811. For us, it will also be a case of how we look at somebody who does not reach the threshold for the VOPO but has repeated low-level offences that are all linked to domestic violence, in the knowledge that the nature of domestic violence is that it is not one instance in a relationship and is repeated etc and has a significant impact. We, as a society, as Women's Aid, as the PSNI, as social services, as probation, as everybody who sits around the table at the MARAC might be worrying, once a particular name is said, how long it will be before it happens again. We know that it is highly likely that that individual will be on MARAC again because they are in a new relationship. If all the statutory organisations and voluntary organisations such as ourselves can see that but their criminal convictions are too low-level to have a VOPO, we have to look at it and say, "What is the threshold for how many times it happens before we say that it is enough to meet the

threshold for a VOPO?" That would be another way of looking at it at this time.

812. **The Chairperson (Mr Givan)**: Thank you both very much for coming to the Committee. Apologies for the delay and then the interruption. That is the nature of Committee business sometimes.

26 November 2014

Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Sammy Douglas
Mr Paul Frew
Mr Seán Lynch
Mr Alban Maginness
Mr Patsy McGlone
Mr Edwin Poots

Witnesses:

Ms Gráinne Teggart	*Amnesty International UK*

813. **The Chairperson (Mr Givan)**: I formally welcome Ms Gráinne Teggart, Northern Ireland campaigner for Amnesty International UK to the meeting. As normal, this session will be recorded by Hansard and published in due course. I will hand over to you at this stage. If you will take us through your key issues, I am sure that members will have some questions.

814. **Ms Gráinne Teggart (Amnesty International UK)**: Thank you, Chair. I will begin by thanking you and the Committee for the opportunity to present Amnesty International's evidence on Jim Wells's proposed amendment to restrict lawful abortions to NHS premises and to provide an additional option to existing legislation of up to 10 years' imprisonment. I will outline the key points from our submission, and I will then be happy to take any questions. If there are questions for which I do not have the information to hand, I will be happy to take note of them and revert to the Committee in writing.

815. We are deeply concerned by the proposal to introduce further barriers to women accessing abortion in an already highly restrictive environment where abortion is governed by outdated, gender-discriminatory legislation. We are further concerned that this is proposed in the context of the Department of Health's continuing failure to publish guidance for medical practitioners that is enabling and focused exclusively on health-care provision, so that it is fit to serve the needs of medical practitioners and, by extension, women.

816. Access to safe abortion is recognised as a human right under the international human rights framework. That is because women and girls have a legally recognised right to life, a right to health and a right to live free from violence, discrimination, torture and cruel, inhumane and degrading treatment. A total ban on abortion and other restrictions that do not, at a minimum, ensure access to abortion in cases where a woman or girl's life or physical or mental health is at risk, in cases of rape, sexual assault or incest and in cases of severe fetal impairment violate those rights.

817. Governments have an obligation to ensure access to abortion and to ensure that the right, where legal, is not theoretical but is practical and effective. Governments should not impose burdensome or discriminatory requirements on access to abortion, including but not limited to medically unnecessary restrictions to access. Where abortion is legal, Governments must create a regulatory and legal environment to ensure its accessibility.

818. As drafted, the proposed 10 years' imprisonment could apply to health professionals and women. What we have here is a proposal to amend laws to sentence women, doctors, midwives and nurses to imprisonment and/or to punish them via a fine. No United Nations or European human rights body has ever recommended that a state party restrict access to abortion. UN treaty bodies have consistently called on state parties to amend legislation criminalising abortion to withdraw punitive measures imposed

on women who undergo abortion. Criminal penalties are also recognised by the European Court of Human Rights as impeding women's access to lawful abortion and post-abortion care. In places like Northern Ireland, where there are severely restrictive laws, medical providers and women are reluctant to deliver or to seek service and information where there is a threat of prosecution and imprisonment. The proposed amendment is therefore in direct contravention of human rights standards that protect the dignity, autonomy and rights of women.

819. The amendment seeks to structure the legal framework in a way that further limits a woman obtaining an abortion. Human rights standards are clear that access to abortion should not be hindered, that abortion should be accessible and of good quality and that states have a responsibility to eliminate, not introduce, barriers that prejudice access, including conditioning that access to hospital authorities. That is especially important in a context such as Northern Ireland, where, in addition to women's bodies being governed mainly by laws dating back to 1861, our medical practitioners have no guidance clarifying that law in practice. The most recent guidance from the Department of Health served only to reinforce a climate of fear and the threat of criminal sanction and has therefore contributed to limiting access to abortion.

820. We object to the criminalisation of women and medical professionals and the implications that that has for the provision of abortion services. The European Court of Human Rights has said that, where states allow abortion, they must ensure its access and not structure the legal framework in a way that limits the real possibilities of obtaining it. Health care and accompanying laws should be designed to improve health care, as outlined by the United Nations Committee on Economic, Social and Cultural Rights in its general comment 14.

821. The United Nations committee that oversees the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has stated unequivocally in its guidelines on the implementation of convention provisions that:

"laws that criminalise medical procedures only needed by women punish women who undergo those procedures"

822. and therefore are counter to the convention. Members will be aware that the UK is a state party to that convention. It is therefore incumbent on our Assembly and Executive to withdraw punitive measures against women who undergo abortion.

823. The Parliamentary Assembly of the Council of Europe has stated that the final decision on whether to have an abortion should be a matter for the woman concerned, who should have the means of exercising that right in an effective way.

824. Being able to make decisions about our health and reproductive life is a basic human right, yet all over the world, women, including women in Northern Ireland, are prevented from doing so. The reality is that women in Northern Ireland do not enjoy those rights fully. Women are denied access to abortion except in highly restricted circumstances where there is a threat to life or a long-term risk to the woman's physical and mental health. Even then, access is not guaranteed. No guidance means that no clear pathway into health care exists.

825. It is 2014, and we have women in Northern Ireland who have been raped, are victims of incest or whose pregnancy has lethal fetal abnormalities, yet they are unable to access abortion in Northern Ireland. That is unacceptable. Women finding themselves in the most distressing of circumstances should not have to undertake difficult, costly and traumatic steps to avail themselves of health-care services. That, of course, refers only to those who are lucky enough — I use that term loosely — to find the funds to access this service across the water.

826. In addition to that which has been outlined, I invite members to reflect on the World Health Organization's recommendations on the issue, which concur with human rights standards. In its 'Safe Abortion: Technical and Policy Guidance for Health Systems', the World Health Organization states:

"all countries can take immediate and targeted steps to elaborate comprehensive policies that expand access to sexual and reproductive health services, including safe abortion care."

827. The World Health Organization also comments on the negative effects of legislative restrictions on abortion, which is particularly relevant to limited environments such as Northern Ireland:

"Legal restrictions on abortion do not result in fewer abortions nor do they result in significant increases in birth rates. Conversely, laws and policies that facilitate access to safe abortion do not increase the rate or number of abortions. The principle effect is to shift previously clandestine, unsafe procedures to legal and safe ones ... Restricting legal access to abortion does not decrease the need for abortion, but it is likely to increase the number of women seeking illegal and unsafe abortions".

828. On behalf of Amnesty International, I strongly recommend that this Committee and/or the Assembly reject the amendment and act to remove existing barriers to abortion services, including publishing guidance and removing criminal penalties against women and medical practitioners. Given the chilling effect of criminalisation and its negative impact on women's rights, it is preferable that a state tackles gender inequality and regulates health care through means other than recourse to criminal law. Amnesty further recommends that the Assembly and Executive place a gender perspective at the centre of all legislation, policies and programmes affecting women's health and that they involve women in the planning, implementation and monitoring of such legislation, policies and programmes.

829. Thank you for listening. I am happy to take questions.

830. **The Chairperson (Mr Givan)**: Thank you very much, Gráinne. I will ask a few questions, and then I will invite members to come in. Does Amnesty regard the amendment that was put out for consultation as changing the law on the grounds on which a termination is allowed in Northern Ireland?

831. **Ms Teggart**: I think the amendment as drafted — I appreciate that amendments can be further amended — seeks to provide an additional option to existing legislation of up to 10 years' imprisonment that could apply to women and health professionals.

832. **The Chairperson (Mr Givan)**: You know that the grounds on which a termination is currently permissible concern the mother's physical life or long-term, permanent mental welfare. Do you regard the amendment, which was consulted on, as changing the grounds on which a termination may be granted in Northern Ireland?

833. **Ms Teggart**: As things sit, there are no restrictions on providers such as Marie Stopes carrying out lawful abortions. Their operations are up to the first nine weeks of pregnancy. This proposal would amend existing legislation to restrict that access to the NHS.Amnesty rejects that, because at the minute we do not have a clear pathway for women across Northern Ireland into health care. If we do not have guidance for our medical practitioners and women clarifying exactly what the law is and which abortions are and are not lawful, that creates a situation where access has been and is being hindered.

834. **The Chairperson (Mr Givan)**: OK. I would like a very clear answer, and you are getting there. Amnesty International does not believe that the medical reasons allowing a defence for taking the life of an unborn child are changed by the amendment; it is solely about whether it is accessed in the private sector or the public sector. That is Amnesty's position.

835. **Ms Teggart**: That is correct.

836. **The Chairperson (Mr Givan)**: What is the opposition to allowing the Public

Prosecution Service (PPS) to imprison someone for a lesser sentence of 10 years rather than for life? Why is Amnesty opposed to that?

837. **Ms Teggart**: We do not think that there should be any criminal sanction. We do not think that it is appropriate to deal with a health-care and women's rights issue primarily through criminal justice legislation and the criminal justice system here. We think it would be much more helpful and beneficial to women's rights if that was done via health-care policy and legislation. As things sit, for example, if a woman presents — actually, I think that I answered the question, unless you want me to expand.

838. **The Chairperson (Mr Givan)**: Obviously, you are elaborating on Amnesty's view that it should not be a criminal offence at all, but currently it is, and currently the penalty is life imprisonment. Would Amnesty not take a more pragmatic view and say, "Well, you know what, rather than someone getting life imprisonment, it would be better if they got the option of 10 years"? To me, Amnesty might want to consider that; otherwise, we keep it at life.

839. **Ms Teggart**: I appreciate your point, but let me say unambiguously that we do not think that sentencing women for a maximum of 10 years is doing them any good service or justice on the issue. We would say that there should be no threat of sentencing to women who use these services; instead, we should have clarification of the law. We should also have human rights standards upheld. That means that minimum human rights standards dictate that access should be available on the current grounds but also where a woman has been a victim of sexual violence, rape or incest and where there are severe, lethal abnormalities to the fetus.

840. **The Chairperson (Mr Givan)**: The Minister is obviously taking that consultation forward, and there is danger that this amendment will be debated in the other, broader consultation. That is why I am trying to keep exactly to what is before us, rather than elaborating on things that are not being consulted on.

841. **Ms Teggart**: May I add another point? Amnesty sees that there is a climate of fear and a real threat of criminal sanction both to our medical practitioners and women in Northern Ireland. As it stands and as we are having these discussions and this has been out for consultation, the amendment serves only to reinforce that climate of fear, which we do not think is helpful or human rights-compliant.

842. **The Chairperson (Mr Givan)**: You said somewhere in your contribution that difficult and costly steps need to be taken. Do you think it is right that vulnerable women who meet the criteria to provide a defence on the basis of their physical life and mental welfare should have to pay for that in the private sector, rather than have it provided in the NHS?

843. **Ms Teggart**: I have two points to make in response to that. First, I will go back to a point that I have made: if we had adequate pathways into health care and guidance clarifying the law so that women in Northern Ireland could access lawful abortion, there would not be a need for providers such as Marie Stopes. The issue of cost brings it back to choice. There may be reasons why a woman chooses to opt for a service. At times, there is a rural/urban dimension to the issue. A woman might, for example, choose not to go to her GP, who could be a family friend; she may choose to go private and have the matter dealt with privately because that is a choice that she wants to make. Ultimately — you are absolutely right — Amnesty thinks this should be available via the NHS.

844. **The Chairperson (Mr Givan)**: How many cases have you dealt with where that has been the case?

845. **Ms Teggart**: We are not service providers, but we have a report coming up on the issue. We know through anecdotal evidence that, in effect, we have a postcode lottery in Northern

Ireland. A woman in the Belfast Trust area has much more chance of availing herself successfully of a lawful abortion than a woman in, for example, Fermanagh or south Tyrone.

846. **The Chairperson (Mr Givan)**: Amnesty supports the extension of the 1967 Act to Northern Ireland. Is that correct?

847. **Ms Teggart**: That is incorrect. Amnesty does not endorse any particular piece of legislation, including the 1967 Act. We adhere to international human rights standards and what they say access should be. In Northern Ireland, health is devolved, and we make our own laws. We need to bring in laws that are human rights-compliant. We do not call for the extension of the 1967 Act, nor are we doing that through the My Body, My Rights campaign, which is under way at the moment.

848. **The Chairperson (Mr Givan)**: When would Amnesty International believe that an abortion should not be carried out?

849. **Ms Teggart**: Again — I am sorry to be repetitive — where there is a risk to the life of the woman or to her physical or mental health, we think that it should be available, obviously. Ultimately, each state will decide on things like the time up until which a woman can access abortion. We do not get into restricting it to certain time limits. However, we are aware of and support the current time limit of 24 weeks, because science and medicine have shown that, after 24 weeks, the fetus can survive outside the womb. We would advocate for what is in the law here.

850. **The Chairperson (Mr Givan)**: Amnesty's view is that the unborn child acquires that basic human right — the right to life — at 24 weeks.

851. **Ms Teggart**: No. Let me be clear and unambiguous about this: as things sit, no international human rights standards and no European court has ever extended the right to life prenatally. As things stand, there is no right to life for the fetus, and we adhere to those international human rights standards. We appreciate that, in the UK context, the limit is 24 weeks, and we are not going to call for anything further.

852. **The Chairperson (Mr Givan)**: In your view, Amnesty's position, according to international human rights, is that the basic right to life is acquired only at birth.

853. **Ms Teggart**: The Universal Declaration of Human Rights and the human rights instruments that have stemmed from it state that all human beings are born free and equal. Those issues were tested in the European Court in 2007 in Tysi c vs Poland. I hope that I pronounced that right. At no point has the European Court, the European Commission or any international human rights treaty or body ever extended the right to life prenatally.

854. **The Chairperson (Mr Givan)**: Is that Amnesty's position?

855. **Ms Teggart**: That is Amnesty's position as well.

856. **Mr Dickson**: Thank you for your comments, Gráinne. Given the conversation we have just had, do you consider Northern Ireland to be a hostile place for women in these matters, particularly on the issue of where they choose within the legal framework that we have? You said that you were not talking about going outside any legal framework or attempting to extend that legal framework. Do you think that Northern Ireland appears a hostile place to women who find themselves in need of the legal services that are available in Northern Ireland?

857. **Ms Teggart**: I suppose the short answer is yes. By way of elaboration, I have referred to the climate that we have at the minute, which is not enabling for women seeking to access lawful abortion services. It includes things like the lack of guidance from the Department, meaning that pathways into health care are not clear.

(The Deputy Chairperson [Mr McCartney] in the Chair)

858. We recommend that a gender perspective be put at the centre of all

legislation, policies and programmes, because we do not see women's rights being adequately reflected in either policy or laws as they stand in Northern Ireland. We think that women's rights have to be respected, and, when we talk about reproductive rights, we mean that women in Northern Ireland do not have access to those rights in the same way as other women do. So, yes, I think that there is a hostile environment for women in Northern Ireland, but, in fact, it is within the power of our Assembly and Executive to change that. One way to do so is to place that gender dimension or perspective at the centre of policies, laws and programmes. Of course, the other way that we could do that is to look at the state responsibilities in Northern Ireland. International human rights standards are unambiguous about those, including sexual and reproductive rights and access to safe abortion. So, yes.

859. **Mr Dickson**: The amendment effectively restricts any choice to an NHS facility. I appreciate that this is probably not the business of this Committee, but, instead of having this restrictive amendment to the legislation, would it not be better if there were guidance and regulation — in this case, we are probably talking much more about regulation — through which the Department of Health could take on its responsibility and regulate all the private facilities or all the charitable facilities that are available?

860. **Ms Teggart**: Yes, absolutely. Amnesty has publicly stated and will continue to state that with each passing day the Department of Health is in breach of a court order. It should not have got to the point where health guidance for women needed to be the subject of a court order. However, we are where we are. The Department of Health can and should publish that guidance as a matter of urgency, and, without getting into the detail of the Department of Justice consultation, if and when the legislation has changed, the Department of Health should update its guidance to reflect changes in the law to ensure that every medical practitioner out there, from those on the front line like GPs to the specialists in our hospitals, are fully aware of the laws here on where and when women can access abortion.

861. **Mr Dickson**: What prospects do you think there are of the Department producing those guidelines, given the queue of matters like adoption and blood donation?

862. **Ms Teggart**: As things stand with the court order, someone will ultimately, either in court or otherwise, have to decide what constitutes a reasonable time in which to publish those guidelines. We wrote letters very recently to the Department of Health asking for clarification of when the guidance would be published, and the response was that the Minister was aware of the need to publish the guidance and would bring it back to the Executive before it is published. I am happy to be corrected on this, but I do not think that legally they have to do that, although I appreciate that, given the difficult subject matter, that may be the case. The Department of Health and our Assembly and Executive need to take their human rights responsibilities and women's rights responsibilities seriously. We need to understand the reasons why a woman might need abortion. Those needs are very complex, and, as things stand, we do not see our Assembly and Executive adequately considering them.

863. **Mr Dickson**: I appreciate that your organisation does not represent any particular provider in these circumstances. We have background information that Marie Stopes, for example, charges £450 for these services. That is a lot of money for someone who may not be able to pay and arguably should be able to avail herself of that free of charge through the NHS. However, there are people who are not only able to pay that amount but may even be in a position to pay more. A lot of concentration in this issue is directly pointed at that one provider, but there are other providers in Northern Ireland, including the Ulster Independent Clinic. Is that not true?

864. **Ms Teggart**: That may be the case; I cannot clarify that.

865. **Mr Dickson**: Most people would be availing themselves of insurance to gain medical assistance.

866. **Ms Teggart**: You are right to raise the socio-economic dimension to the issue in the context of the £450. You are also right that that is a lot of money, and there are plenty of women in Northern Ireland who may need access to abortion services who cannot afford that. That is why our Department of Health and the Assembly and Executive are failing women in Northern Ireland. Without getting too much into the Department of Justice consultation, although there is some overlap where there are, for example, lethal abnormalities with the fetus and they have to travel, it throws up a raft of issues, not least cost, bearing it in mind that it will be at the 20-week scan when a woman is given such unfortunate news, but also with the prospect of there being a lethal abnormality with a subsequent pregnancy. Those women cannot necessarily and automatically bring those fetuses back home for post-mortems, for example. There is a range of issues that demonstrate how our Department of Health and our Assembly and Executive fail women.

867. **Mr Dickson**: However, given that we are dealing only with the current law as it applies, does your organisation believe that the amendment restricts what is already a very restricted choice on the matter?

868. **Ms Teggart**: If the amendment were to be made, I think that the only thing that it would achieve would be a reinforcement of a climate of fear for our medical practitioners. In the ongoing absence of Department of Health guidance, that means that our practitioners would not have the security of providing lawful abortions, because they simply would not know what they were until they have it in black and white.

869. **Mr Dickson**: Is it the case that the woman who seeks that medical service is also putting herself at risk of being jailed?

870. **Ms Teggart**: Absolutely. I have to make it clear that that flies in the face of every international human rights standard going, which are very clear that health care, such as abortion, should not be subject to criminal sanction.

871. **Mr Dickson**: The very same medical professional who provides the current lawful service — I do not know about Marie Stopes — inside, for example, somewhere like the Ulster Independent Clinic can also provide that service and will also provide that service inside the NHS. Therefore, this would create a place where it is lawful for that individual to do it, as well as a place where it would be unlawful for that individual to conduct exactly the same procedure.

872. **Ms Teggart**: I think that it would further confuse an already confusing situation for practitioners and women, yes.

873. **Mr A Maginness**: Thank you very much, Gráinne; you are very welcome. The preamble to the Convention on the Rights of the Child says:

"Bearing in mind that, as indicated in the Declaration of the Rights of the Child, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth'".

874. What is your comment on that?

875. **Ms Teggart**: My comment on that is that international human rights standards, including the Convention on the Rights of the Child, do not extend rights in such a way to trump the rights of the woman, who, obviously, already exists. Where this has been tested in court, no court has ever upheld the rights of the fetus, which legally do not exist, over the rights of the woman.

876. **Mr A Maginness**: This question is related in a sense. Under article 6(5) of the International Covenant on Civil and Political Rights and article 10 of the International Covenant on Economic, Social and Cultural Rights, there is a prohibition on the execution of a

pregnant woman. What do you make of that? Why do you think that that is prohibited?

877. **Ms Teggart**: Obviously, the focus there is on preserving the life of the woman. Again, at the risk of sounding repetitive —

878. **Mr A Maginness**: Sorry. Is it an emphasis on the right to life of the woman, or is the emphasis not on the right of the child in the woman's womb?

879. **Ms Teggart**: There are no human rights standards that extend the right to life and the protection of the right to life prenatally.

880. **Mr A Maginness**: Are you saying that Amnesty would not support the right of the child in those circumstances and that a woman could be executed in those circumstances?

881. **Ms Teggart**: Again, at the risk of sounding repetitive, Amnesty International is very clear that it upholds international human rights standards, which clearly state that those rights to life do not extend prenatally. That includes those circumstances.

882. **Mr A Maginness**: What I am saying is that it is not just a straightforward matter of a woman's right and there is a grey area that could develop institutionally and in a jurisprudential sense. It is not just a straightforward right of the woman to an abortion; there are rights that the child in the womb could at least acquire. As an international humanitarian organisation, do you not allow for that?

883. **Ms Teggart**: The best answer I can give is that, where these issues have been raised through the European Court of Human Rights and other courts, those rights have not been upheld. Where these cases have been tested, an attempt to provide rights to the fetus has not been granted. As it stands, human rights standards and human rights rulings through the European Court and others have not been extended prenatally. That is what we as an organisation subscribe to.

884. **Mr A Maginness**: When did the European Court of Human Rights grant a woman the right to an abortion?

885. **Ms Teggart**: The right to an abortion is in several international human rights instruments, including —

886. **Mr A Maginness**: Sorry. When did the European Court of Human Rights say that a woman is entitled, under the convention, to an abortion as a legal right?

887. **Ms Teggart**: I will refer to one case, and, again, I will have to step back from giving the exact detail of this case. The 2007 case of Tysi c v Poland was a court case that, in the way that you have described, tested the extension of those rights to the foetus. In those circumstances, it upheld the right of the woman. Because I do not have that information in front of me, I am happy to revert to you in writing.

888. **Mr A Maginness**: I suggest to you that the European Court of Human Rights has never confirmed the right of a mother, of a woman, to abortion. The European Court has never come to that conclusion. Do you accept that as a statement of fact, or do you disagree with that? If you disagree with that, tell me.

889. **Ms Teggart**: I disagree with that on the basis of what I currently understand. I am happy to revert to you in writing when I have looked at the range of court cases that have been before the European Court. I should say that, with a focus on the European Court of Human Rights, we also need to keep a focus on conventions that the UK is a state party to. That includes CEDAW.

890. **Mr A Maginness**: I understand the argument that you have made about CEDAW — you have made it very robustly — but the reality is that CEDAW is not justiciable in this jurisdiction, whereas the European Convention on Human Rights is. If what is you say is correct — that there is a right to abortion — any woman from Northern Ireland could go to the European Court and demand that right, so you are wrong in relation to that. The European Court

of Human Rights allows any state that is a signatory to the European Convention to legislate in relation to the prohibition of abortion. That is the legal position.

891. **Ms Teggart**: I will address two points there. Did you say that CEDAW does not apply in this jurisdiction?

892. **Mr A Maginness**: No, I said that it is not justiciable. You cannot go to the court and say that CEDAW says x, y and z, therefore please grant whatever relief I am seeking.

893. **Ms Teggart**: Where states, including regions like Northern Ireland, are outside human rights standards, including those contained in CEDAW, they can be and have been challenged, not here but in other jurisdictions, so there is a right to do that. On the wider matter of the European Court, as I said, to the best my knowledge, the European Court of Human Rights has never upheld the rights of the fetus or introduced the rights of the fetus over the woman. But —

894. **Mr A Maginness**: Sorry, Gráinne. I am not arguing that point. That might happen in the future, but it has not happened up to now. Throughout your submission to the Committee, you said that there was a right to abortion. I am saying to you that there is no justiciable right to abortion within the context and confines of the European Convention on Human Rights. The court has never acceded to that, and it allows a margin of appreciation to all the signatory countries or states in relation to the convention. That is fact.

895. **Ms Teggart**: I have heard the point that you have been making there, and apologies for misinterpreting that. I have heard it loud and clear there. It possibly came down to how I worded that in my introductory remarks. I should have separated what the European Court of Human Rights has said and what international human rights standards say.

896. **Mr A Maginness**: Can we take it, then, that there is a difference between what you term international standards on human rights and the European Court of Human Rights, which is directly applicable to our jurisdiction? Is there a difference?

897. **Ms Teggart**: International human rights standards apply here obviously through the conventions that we have, which the UK is state party to and has signed up to. In terms of the jurisprudence and the extension of the European Court in Northern Ireland, I take that point.

898. **Mr A Maginness**: I just reiterate the point that there is no conferring of a right to abortion by the European Convention, or, indeed, by any treaty of the European Union, which is quite separate from the European Convention. I make that point to you. In terms of the jurisprudence, there is no right.

899. **Ms Teggart**: But, where cases have been brought before the European Court of Human Rights and it has found violations of the right to health, the right to freedom from discrimination and so on, it has found in favour of women accessing abortion. I probably should have said that at the outset.

900. **Mr A Maginness**: That is in the context where abortion is permitted in a signatory state.

901. **Ms Teggart**: I did say in my opening remarks that, where abortion is legal, states have a responsibility to ensure access and that that access is of good quality.

902. **Mr A Maginness**: But any state or territory within a state that has the legal power can have a prohibition on abortion; is that not right?

903. **Ms Teggart**: I would need to look into the legalities of that a bit more.

904. **Mr McGlone**: Alban covered quite a bit of what I was going to raise. Gráinne, the wording of your document, at the top of page 5, bugs me:

"Human rights standards are clear that access to abortion should not be hindered, should be easily accessible and of good quality and that states should eliminate, not introduce, barriers which prejudice access to abortion services".

905. What do you mean by "human rights standards"? My standards are certainly not akin to what is stated there. Do you mean —

906. **Ms Teggart**: Convention standards.

907. **Mr McGlone**: Human rights standards can be quite a different thing.

908. **Ms Teggart**: I am referring to human rights conventions.

909. **Mr McGlone**: I am glad you clarified that. Alban teased out the issues around that, so we do not need to go into that any further. Is your organisation in favour of abortion by demand?

910. **Ms Teggart**: Define "abortion on demand".

911. **Mr McGlone**: Sorry, just in any circumstance.

912. **Ms Teggart**: We are fully supportive of a woman accessing abortion services in a way that protects her human rights. We do not subscribe to the term "on demand". We ask that international human rights standards are upheld, which includes, at a minimum, where a woman has been a victim of sexual violence or there is a risk to her physical and mental health and so on.

913. **Mr McGlone**: So, if a woman asks, she can have an abortion, according to your organisation.

914. **Ms Teggart**: In any circumstance?

915. **Mr McGlone**: Yes.

916. **Ms Teggart**: The legal framework in Northern Ireland currently would not permit that.

917. **Mr McGlone**: Sorry, I am not asking about the legal framework. Does your organisation have a position in regard to a woman going in and saying, "I want an abortion"?

918. **Ms Teggart**: If I may, I will just refer to our policy and what it does and does not say. Amnesty's policy is very much focused on the decriminalisation of abortion. That refers to the removal of criminal penalties against women and medical practitioners.

919. **Mr McGlone**: That is not what I am asking. Does your organisation have a position on abortion by demand?

920. **Ms Teggart**: My difficulty in answering that question is that we do not accept the "on demand" terminology. We do not think that a woman will demand an abortion willy-nilly.

921. **Mr McGlone**: Let us say "abortion by request", if you want to go in that direction.

922. **Ms Teggart**: A woman should have access to abortion as dictated by international human rights standards, which I outlined. That is what we are supportive of.

923. **Mr McGlone**: That is a yes.

924. **Ms Teggart**: It is a yes.

925. **Mr McGlone**: OK. I am glad that we got there.

926. On a final point, I hear "human rights standards". In my mind, the pre-birth child has rights. I listened to what you said and looked at your document. Maybe deliberately or otherwise, there is no mention of the child or even a nod in that direction.

927. **Ms Teggart**: We in Amnesty come at it from the point of view of women's rights, because, as I said, as things stand in international convention and law, there are no rights that extend prenatally. What you are referring to there is that you believe that there should be rights for the fetus.

928. **Mr McGlone**: Ethically and morally, I do.

929. **Ms Teggart**: We, as Amnesty, do not treat this is as a moral or ideological issue; it is a health and human rights issue. We come at this from the point of view of the woman's rights. We do not adhere to the notion of extending those rights prenatally.

930. **Mr McGlone**: So, it is exclusively women's rights.

931. **Ms Teggart**: Exclusively the woman's rights.

932. **Mr McGlone**: So, to your mind, the pre-birth child has no rights.

933. **Ms Teggart**: Well, as things stand in international human rights standards, those rights are not there.

934. **Mr Lynch**: I have a quick point, Gráinne. At the outset, you said that you had deep concerns. Could you summarise them in relation to the amendment?

935. **Ms Teggart**: Our concern with it is the restriction to NHS facilities. We think that, given the very restrictive context that we are operating in in Northern Ireland in terms of legislation and practice, it is potentially damaging to women who will need these services. We do not see it as being medically necessary to restrict access to abortion to NHS premises. We think that the absence of guidance from the Health Department, which would and should provide clear pathways into health care for women here, has given rise to a need for alternative providers, including Marie Stopes.

936. **Mr Douglas**: Thank you for your presentation, Gráinne. You state in the paper that Amnesty:

"takes this opportunity to remind the Justice Committee that restrictive abortion laws and practices and barriers to access safe abortion are gender-discriminatory".

937. Could you elaborate a wee bit on that?

938. **Ms Teggart**: Yes, I can explain that quite simply, although tell me if you want further detail. What we mean by "gender-discriminatory" is that these are services that will be needed only by women. Therefore, there is obviously a gender dimension to this. The laws against abortion in these circumstances are discriminatory against women.

939. **Mr Douglas**: You state:

"The European Court of Human Rights has said where states allow abortion they must ensure its access."

940. You also referred to the case of Tysi c v Poland. Is your organisation saying clearly that we are infringing on those rights set down by the ECHR?

941. **Ms Teggart**: As things sit, Northern Ireland does not meet international human rights standards. We are in breach of conventions including CEDAW. We need our laws amended to enable women, at the very minimum, to be able to avail themselves of and access abortion services where there are lethal abnormalities with their foetus and where they have been a victim of sexual violence such as rape or incest. As things stand, we are in breach of convention rights, yes.

942. **Mr Douglas**: Are there any other examples of countries that have breached the rights of the ECHR?

943. **Ms Teggart**: There are many. I would be happy to provide further information on that in writing. Countries like El Salvador also have highly restrictive laws. We do not have to look too far. The South of Ireland also has laws that are gender-discriminatory, illegal in terms of international human rights standards, and do not uphold, protect and promote the rights of women.

944. **Mr Douglas**: If we, as an Assembly, implement this amendment, what would the penalties be? Are there examples of other countries that have been penalised?

(The Chairperson [Mr Givan] in the Chair)

945. **Ms Teggart**: If you are asking whether it could be challenged legally, the answer is yes. We are in breach of those standards. If this amendment were to be passed, it would be very damaging. It would affect greatly women availing themselves of those services. We, as Amnesty, have documented that, in countries like Nicaragua where abortion access is subject to criminal sanction, medical practitioners are often reluctant to provide either information or these services for fear or threat of imprisonment. We have seen that the world over.

946. **Mr Douglas**: I know that you responded to Patsy along these lines, but I

was recently in discussion with two Christians. They were talking about when a foetus becomes a baby. One of them said that it is at the moment of conception, and the other one said that it is when the heartbeat starts. Are you saying that the baby is not a baby until it is actually born? Is that your interpretation?

947. **Ms Teggart**: When we talk about when life begins, it takes us into the religious and moral dimension. We, as a human rights organisation, do not, therefore, take a position on when life begins. What we do is subscribe to the human rights framework and uphold the emerging legal consensus that human rights are applied from the point of birth.

948. **Mr Poots**: Thank you, Gráinne. Gráinne, you indicate that your view of human rights is that the unborn child has no rights until it is actually born. So, in theory, abortion at 24 weeks could be abortion at 26 weeks or 28 weeks, because there are no rights.

949. **Ms Teggart**: We recognise that, where there is a risk to a woman's life, for example, that risk to life could happen at any point during pregnancy. You are right that that could happen beyond 24 weeks. We think that, in those circumstances, the duty is on the state and, therefore, medical providers to uphold the life and the rights of the woman. They should take steps to protect that life, which already exists.

950. **Mr Poots**: That is the position of quite a lot of us. The protection of the life of the woman in the first instance is the priority. However, there have been seven million cases of abortion in the United Kingdom over the last 45 years. Quite clearly, there were not seven million women whose lives were at risk over that period. So, we should stick to the questions that are asked. Under your reading of the rights of the child, in theory, abortion can go well beyond 24 weeks in circumstances that are not related to protecting the life of the woman.

951. **Ms Teggart**: Apologies if I am sounding repetitive after answering Sammy's question, but the rights of the child apply from the point of birth.

952. **Mr Poots**: So, in theory, Amnesty International could have abortion taking place until 37 or 38 weeks.

953. **Ms Teggart**: Again, it is quite complex. You present it as straightforward that abortion could be granted at 36 weeks. There would be circumstances that would give rise to a woman needing or requiring access to abortion at 36 weeks. Forgive me for using these terms, but you are presenting it as black and white that, up to 36 weeks, a woman could access abortion. I find it highly unlikely that a woman would be asking for an abortion at 36 weeks if there were not those other considerations. It would not be a flippant decision such as, "I am 36 weeks' pregnant. I do not want this pregnancy. Therefore, I want a termination". It is not quite that straightforward.

954. **Mr Poots**: It is much less likely as a pregnancy goes on; I do accept that.

955. You quoted a number of grounds for abortion, but you, as Amnesty International, are not restricting it to that in reality. If a pregnancy is unwanted because, for example, the woman who falls pregnant is a student and her final exams are coming up, or the woman is in a marriage, has had a family, and falls pregnant later, you would view it as entirely reasonable to have an abortion.

956. **Ms Teggart**: This might not be particularly helpful regarding that question, but Amnesty policy, as it is currently drafted, refers specifically to decriminalisation of abortion. What we, as an organisation, concern ourselves with is the removal of criminal penalties against women and practitioners. So, we uphold the rights of the woman first and foremost. We think that those rights should be respected first and foremost. However, as an organisation, our focus is on decriminalisation. It is also on ensuring that minimum human rights standards are met, which, as things sit in Northern Ireland, are not being met.

957. **Mr Poots**: So, essentially, Amnesty's view is that a woman's reproductive

rights will always trump the rights of an unborn child.

958. **Ms Teggart**: I think that I have been very clear on this. Reproductive rights are human rights. They are women's rights in these circumstances when we talk about access to abortion. That is what Amnesty upholds.

959. **Mr Poots**: Yes, but the reproductive rights will always trump the rights of the unborn child.

960. **Ms Teggart**: That is not just —

961. **Mr Poots**: You are saying that the unborn child or foetus, as you describe it, does not have a right until it is born and you are saying that a woman has reproductive rights, so I am taking it very clearly from what you say that the reproductive rights of the woman will always trump the rights of the unborn child.

962. **Ms Teggart**: Yes, I think that I have stated that reproductive rights are women's rights and that it is her rights that should be upheld. I have to stress that that is not just an Amnesty International position; it is an international human rights standard through the convention rights that it recognises also. Where these cases have been presented to courts, including the Poland case, the European Court of Human Rights has never extended these rights prenatally. It is not just Amnesty that is saying this; it is not just our position. We, as an organisation, work to the human rights framework.

963. **Mr Poots**: So, you are saying that Amnesty International could live with considerably more lax abortion laws than the 1967 Act, in theory.

964. **Ms Teggart**: As things stand, without getting into a discussion around the 1967 Act — it in itself is not fully human rights-compliant — we do not endorse any specific piece of legislation. What we endorse are women's rights and human rights standards.

965. **Mr Poots**: Do you accept that the Health Department has brought forward guidelines twice and that those have been overturned in court twice?

966. **Ms Teggart**: The last guidelines that were issued were less helpful than previous iterations, including the 2009 ones. The most recent, which have just been published in Northern Ireland for consultation, did nothing to put the focus on health care and did nothing to put the focus on women's reproductive rights. It is a very legalistic document and very heavy on the threat of criminal sanction. In those circumstances, those guidelines are not helpful to medical practitioners or women here.

967. You are right in the sense that, yes, what Amnesty understands is that the Health Department has heard the resounding rejection of those guidelines and we await publication of ones that are enabling for women and medical practitioners.

968. **Mr Poots**: You would accept that the issue of abortion is controversial.

969. **Ms Teggart**: Absolutely. Let me be very clear: we appreciate as an organisation that this is a very difficult issue and that there are strongly held views at either end of the spectrum. We appreciate that it is a difficult issue for our legislature to grapple with. However, we point it to the various conventions and recommend taking the steer from them as to what should be in guidance.

970. **Mr Poots**: Consequently, it has to be an issue that goes to the Northern Ireland Executive and cannot be a decision taken by the Health Minister in that circumstance.

971. **Ms Teggart**: I know that previously —

972. **Mr Poots**: That goes back to the 1998 Act.

973. **Ms Teggart**: Others have stated that this issue would be brought back, and recent correspondence from the Health Department stated that, once the Health Minister, Jim Wells MLA, has considered the current draft of guidance that is before him, he will bring it back

to the Executive, who will then agree to publication.

974. **Mr Frew**: I want to tease out some of the questions and answers with regards to the rights issues for the baby or the foetus, depending on how you describe the human life that is within the womb. You have been asked this, and again, this is a very sensitive and difficult issue, so we can understand why we would all struggle to answer and even to ask question on this. You keep referring to the human rights in that there are no rights for the fetus and rights really only begin once you are born. Does Amnesty International think that there should be rights for the unborn?

975. **Ms Teggart**: No. We adhere to what the conventions state. As a human rights organisation, that is where we take our lead. They do not extend those rights prenatally, so neither do we.

976. **Mr Frew**: It is not that they are against human rights for the unborn; it is just that they are mute on them. Do you agree?

977. **Ms Teggart**: No. Amnesty as an organisation considers the human rights dimension to this and the focus to be on the rights of the woman. We do not consider human rights to apply pre-birth. Again, I have to stress that this is not just an Amnesty International position; this is what conventions and other rulings have stated. That is where we as an organisation are on that matter.

978. **Mr Frew**: Is there even a debate happening within Amnesty International about campaigning for a change in human rights on this?

979. **Ms Teggart**: No, because conventions have not changed. Conventions uphold the rights of the woman.

980. **Mr Frew**: Does the organisation not think that it should or could campaign for the human rights of the unborn?

981. **Ms Teggart**: No. I appreciate that, for this debate, there are those who hold the view that human rights should extend to the rights of the unborn. It goes back to what you said, Paul, about the issue being very difficult and emotive. However, I must stress that, while abortion is a very difficult subject for us to grapple with, it is not half as difficult as it is for women in circumstances in which they are faced with the prospect of needing or requiring an abortion. There is a host of reasons and circumstances that give rise to a woman needing this. Therefore, while we can talk and have emotive discussions and debates about the rights of the unborn, they should never trump and have never, when tested in court, trumped the rights of the woman. It is the woman who is pregnant, and it is the woman who is faced with going through with the termination of a pregnancy for medical reasons or any other reason.

982. **Mr Frew**: Has there been any case throughout the history of a human life in which a person has been wronged, and Amnesty International stepped in and supported and campaigned for the individual. I will expand on that. You mentioned the woman who was, unfortunately, raped. Say something like that happened and she chose to keep the baby if she happened to fall pregnant, that is a life, and we have heard from people whose mother was a rape victim. That child growing up has nothing to do with the incident — that crime of rape. Even with the fallout, that human being will not experience anything around the incident, yet that human being's life could have been terminated if Amnesty International and its belief structures had had their way.

983. **Ms Teggart**: In those circumstances, Amnesty says that the decision on whether to carry on with a pregnancy that is the result of rape must rest solely with the woman herself. Should a woman choose to continue with a forced pregnancy if it is the result of rape, of course we absolutely think that that woman should be supported not only medically but emotionally, because she has been doubly traumatised. Not only has she had her body violated in the most violent way but she is faced with continuing with a pregnancy that

she had not planned for and that has been forced on her. The physical and mental harm that women and girls face when they are forced to continue with a pregnancy that is the result of rape or other forms of sexual crime is well documented. To go back to the human rights standards, the minimum human rights standards are clear that women should have access to abortion in those circumstances.

984. **The Chairperson (Mr Givan)**: Sorry to intervene: what about women who are forced to have an abortion by men?

985. **Ms Teggart**: Amnesty works on that issue globally. In places like China, where there is the unofficial enforcement of the one-child policy and there are forced abortions, Amnesty has been very vocal, because the decision on whether to have an abortion should always rest with the woman. When that is forced, either by a spouse, a man or a government, we absolutely object to it.

986. **The Chairperson (Mr Givan)**: Surely the decriminalisation focus of Amnesty would only encourage men to use that more frequently when there is such a disincentive? As it is a criminal offence, women are being protected by the law from forced abortion, which, as you say, is a real issue not just in China but across the world.

987. **Ms Teggart**: I do not accept that. When we refer to decriminalisation, that is the removal of criminal penalties against women and medical providers. So I do not accept that point.

988. **The Chairperson (Mr Givan)**: I am sorry. I know that we have strayed way off the amendment.

989. **Mr Frew**: I know that we have. I will get back to the amendment. Do we need private companies offering and administering abortions? Have you any concerns about registration, safety aspects, monitoring and the standards of private companies offering and administering abortions?

990. **Ms Teggart**: I do not. I think that women should be able to access abortion services in Northern Ireland via the NHS. The situation that we have of there being no guidance is enabling that provision, which has given rise to the need for private providers. However, it will always come back to the issue of choice. There may be reasons why a woman will choose to go to a private provider. As an organisation, we have not heard anything that would give rise to our having concerns about the provision of that care. In fact, as far as I am aware — I am happy to be corrected — Marie Stopes in Northern Ireland entered into voluntary regulation. Under the law, it did not have to be regulated, but it did so to have openness and transparency about its service provision. Nothing has arisen that has given me cause for concern. Ideally, women should have access through the National Health Service, because they are paying for that service to be upheld but are not accessing services here in a way that their counterparts are able to. In the absence of that and in the absence of guidance from the Health Department and their taking that necessary action, women will need and will continue to need these services.

991. **Mr Frew**: I do not even like talking in this way, but do you have a financial cost for administering an abortion?

992. **Ms Teggart**: I do not like to personalise the issue, but one case that has been to the forefront of all our minds in recent months, I am sure, is Sarah Ewart. In other cases like that, when women are given the news at 20 weeks that there is a lethal abnormality and that they have to pay for those services, it is anything up to £2,100, which is an extreme amount of money to which, I am sure that we will all agree, not every women will have ready access. That reinforces the point of why women need such access here. Amnesty sees that as a further infringement of that woman's rights, because it throws up a socio-economic dimension and socio-economic issues. Not every woman can afford to travel across the water to avail herself of services that her counterparts are taking for granted.

In those circumstances, we are failing those women today.

993. **Mr Frew**: Does that figure include the cost of travel and accommodation? Do you know specifically how much it costs to administer an abortion? If we take away all the costs of travel and charges, is there a cost to administer an abortion? Does a sum of money need to be paid before anybody makes a profit, anybody gets to travel or anybody books an appointment?

994. **Ms Teggart**: I do not have those figures to hand, but my understanding is that it can range from £400 up to £2,000. The issues that that presents go back to what we discussed about the restrictions that that will put on enabling women to access that service provision. On profit, I should say that we are aware of service providers who waive those fees at times, because women find themselves in such desperate situations. We are also aware that organisations like Marie Stopes are not private enterprises but social enterprises, so those fees go to their work on reproductive rights in developing countries.

995. **The Chairperson (Mr Givan)**: You referred to the regulation of private industry and said that private companies can be regulated voluntarily. What is the nature of the regulation.

996. **Ms Teggart**: I raised that point in the context of Paul having asked whether we had concerns about private providers with reference to Marie Stopes in Northern Ireland. I made the point that we did not have information that had given us cause for concern. Amnesty does not get into the debate on private health care.

997. **The Chairperson (Mr Givan)**: You did get into the debate because you said that Marie Stopes voluntarily went into regulation. What regulation of Marie Stopes actually takes place?

998. **Ms Teggart**: I would need to see the extent of what the regulation looks like, but I understand that it falls under the Regulation and Quality Improvement Authority (RQIA), which looks at doctors who provide that provision. That is the situation as far as I understand it. I did not get into the debate on private health care and the rights and wrongs of that. I made that point in the context of whether we had concerns over what provision was available. I made the point that we did not have any information that would give rise to us having those concerns.

999. **The Chairperson (Mr Givan)**: You talked about social enterprise and private enterprise. Without going into specific companies, is there any concern on Amnesty's part that there is a conflict of interest in any financial transaction that deals with a life-and-death decision, be that from a social economy-type model or a profiteering-type model?

1000. **Ms Teggart**: Amnesty's position is that these services should be available to women here via the NHS. It so happens that the situation in Northern Ireland at the minute is that there is no automatic access to lawful abortions because there is a climate of fear due to the guidance from the Department of Health.

1001. **The Chairperson (Mr Givan)**: So the private sector should be allowed somehow to circumvent the law. You are saying that we have this scenario in Northern Ireland because of the law preventing the NHS —

1002. **Ms Teggart**: No. I am not a spokesperson for any clinic, nor do I want to get into a situation in which I am doing that. All clinics here have to operate within the law, regardless of whether they are private or at the Royal.

1003. **The Chairperson (Mr Givan)**: This probably gets to the heart of what the amendment is about: how do you ensure that criminal law — you clearly disagree that it is a criminal law matter, but it is — is upheld in Northern Ireland in a way that you can be satisfied, through proper regulation and accountability, that it is being enforced, other than saying, "They said they obey the law, so we'll take their word for it"?

1004. **Ms Teggart**: It may not be helpful with the question that you have just posed, but Amnesty's concern is about the rights of women in accessing these services. It is not for Amnesty to dictate how medical care providers should demonstrate that they are within the law. To be frank, that is a matter for the Assembly, the Executive and possibly but not necessarily others, but it is not a matter for Amnesty. Our concern is women's rights and how they are upheld. I am saying that the right to private provision here and access to the NHS is not protected in law and is not automatic because of the vacuum and the absence of guidance.

1005. **The Chairperson (Mr Givan)**: There are no more questions. Gráinne, thank you very much for coming to the Committee meeting. It is much appreciated.

26 November 2014

Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Stewart Dickson
Mr Sammy Douglas
Mr Tom Elliott
Mr Paul Frew
Mr Seán Lynch
Mr Alban Maginness
Mr Patsy McGlone
Mr Edwin Poots

Witnesses:

Mr Mark Baillie	*CARE NI*
Ms Philippa Taylor	*Christian Medical Fellowship*
Mr David Smyth	*Evangelical Alliance Northern Ireland*

1006. **The Chairperson (Mr Givan)**: I welcome Mark Baillie, the public affairs officer for CARE; David Smyth, the public policy officer for the Evangelical Alliance Northern Ireland; and Philippa Taylor, the head of public policy for the Christian Medical Fellowship (CMF). As was the case with the previous session, this session will be reported by Hansard and published in due course.

1007. At this stage, I hand over to you. You can briefly take us through your submissions, after which members will have questions. I do not know who is leading off.

1008. **Ms Philippa Taylor (Christian Medical Fellowship)**: I am starting.

1009. **The Chairperson (Mr Givan)**: Ladies first.

1010. **Ms Taylor**: That is not actually how we decided it, but anyway.

1011. **The Chairperson (Mr Givan)**: The authoritative figure first. Is that better? The expert?

1012. **Ms Taylor**: That is right. I have the last word.

1013. I represent the Christian Medical Fellowship. We are an interdenominational registered charity that was founded in 1949 and represent about 4,000 British doctors in all branches of medicine. We are linked to about 70 similar bodies in other countries around the world. Approximately 350 of our members are in Northern Ireland: they are doctors, nurses and midwives. Our aim is to unite, equip and resource Christian doctors. In our public policy work, we make submissions to government and official bodies on bioethics and health-care issues.

1014. CMF welcomes and fully supports the proposed amendment. I will give four reasons why. First, we believe that there is no evidence that private companies or charities are needed to meet existing levels of demand for the necessary abortion services in Northern Ireland. The National Health Service (NHS) here has sufficient capacity in Northern Ireland.

1015. Secondly, we are concerned that private abortion providers are charities but are operating as businesses. I will take Marie Stopes as an example, although I could do the same for similar charities. They all have a clear — some might say aggressive — marketing strategy, and they operate with a business ethos. The ethos is to grow their business — abortions — and double their total income, much of which is from governments. Marie Stopes's plan for achieving its ambitious health goals include wanting to:

"forge enduring connections with governments and other institutions that influence policy, funding and practice for family planning, both at the country level and globally."

1016. Its mission is:

"to work to transform policy environments globally and increase access to safe abortions and reduce policy restrictions [in countries]".

1017. In its 2013 financial report, Marie Stopes clearly states that one of its

goals is to make connections in order to demonstrate:

"reduction in restrictions on family planning and safe abortion service in at least 10 countries".

1018. One of my questions is this: is Northern Ireland one of the 10 countries that it is targeting?

1019. As I said, it is a business as well as a charity. As a business, it will inevitably have a vested interest in providing abortions and, as it does in the UK, rely heavily on taxpayer money to fund it through NHS contracts. I am concerned that this promotion of a more liberal policy on abortion is utterly at odds with the law, culture and values of people in Northern Ireland.

1020. Thirdly, there are real concerns regarding the transparency and accountability of private abortion providers. As I am sure you well know, no figures have been published regarding how many abortions Marie Stopes has performed, not only here but in the countries it operates in, or on the breakdown of revenue generated from various charitable activities, whether abortion or family planning clinics. It is very difficult to find explicit published figures for all those countries, as well as for Northern Ireland. It is very difficult to find out exactly how many medical and surgical abortions have been performed in the Belfast clinic, how many referrals have been made to Marie Stopes International in the UK mainland primarily, or how much money that clinic makes from the procedure.

1021. There are two major problems with that concern about accountability. The first is that we cannot be sure that the law, as it stands in Northern Ireland, is being upheld in a Marie Stopes clinic. The second problem is that we have no way of tracking women who have terminations in these clinics for health-care and research purposes. I will expand on that, because it is an important point. After a termination, the recording of a woman's administrative health and care number here, or the NHS number in England and Wales, is voluntary, so it is very rare for it to be routinely recorded in most private clinics in England and Wales, because there is no force. It is a voluntary recording. There is, therefore, no record of those terminations for future hospital stays if a woman goes back for another medical procedure or any other medical treatment or care. Neither is there any opportunity in the long term to carry out linkage research to follow up outcomes of abortion on the women. Recording the NHS number or the health and care number is fundamental to improving safety outcomes across all care settings. In Scotland, interestingly, abortions are largely undertaken in the NHS, so there is a good record linkage for women. Since 64% of abortions are carried out in private clinics in England and Wales, there is a very poor record linkage. I will briefly quote from a fact sheet for NHS staff. It states that the NHS number is:

"key to sharing patient information safely, efficiently and accurately between NHS organisations and its partners; including wrist bands, patient records, referrals, correspondence and results across GP, community, secondary and social care for every care episode and pathway for each patient.

[It is] an efficient and effective tool used to integrate health records and help clinicians form a complete set of clinical

information for every patient."

1022. That is in contrast to nearly every other procedure that is commissioned by the NHS: for nearly every private procedure, except abortion, the NHS number is required. It could be argued that the problem is that women need complete confidentiality and privacy protection in this area and might be identified if we collect all their data through the NHS number. However, a lot of research is confidential, including outcomes of abortion linkage with female health records. That linkage has been done in Finland and Denmark, and there have been no breaches of confidentiality.

1023. My concern is that, by not keeping and recording the numbers for abortions

in private clinics, providers are not held accountable for the health-care outcomes of their patients, linkage to future hospital stays or health-care needs is not enabled, and there is no chance of doing a follow-up from routine research. That is a real problem that arises from using private clinics and not NHS provision. I suggest that that is worth the Committee's consideration.

1024. Fourthly and finally — this will not come as a surprise — I am a woman, so it seems that I have more right to speak about abortion than my colleagues. I have the right gender perspective, according to some people. That is a completely spurious argument. Do you have to have a self-interest in something to have a legitimate opinion on it? I am not black, for example, so does that mean that I cannot express my views on racism? Can I not argue for better provision for the homeless because I live in a home and have never been homeless? Do those who argue that men should have no voice think that David Steel had no right to introduce the Bill that led to the Abortion Act 1967? Can a female Member of the Assembly not argue for better resources for prostate cancer because she will never have it herself? This is clearly a spurious argument. We all have an equal right to make our views known, whether we are male or female.

1025. I thank you for giving me the opportunity to express my views and doing the same for my male colleagues.

1026. **Mr Mark Baillie (CARE NI)**: CARE's position on the amendment can be set out quite simply: we support Jim Wells's amendment for three main reasons.

1027. First, as Philippa indicated in her first point, we see no need for abortion to be provided by private charities or companies in Northern Ireland. As all members are fully aware, the number of abortions in Northern Ireland is low, and the legislation here allows only for abortion in rare circumstances. We have seen no evidence that the NHS in Northern Ireland does not have the capacity to provide for the requisite number of abortions that legally occur in Northern Ireland. In response, it may be argued that we allow patients to receive medical care privately for other conditions, such as a knee replacement. CARE has no objection to private medical care per se, but many in our society — indeed, probably a number of members around this table — accept that provision for abortion is very different from provision for a knee replacement.

1028. As the law stands, abortion is allowed only in cases that involve the ending of the life of the unborn child to save the life of the mother, which all here will agree is a desperately tragic situation. It seems, therefore, entirely appropriate that abortions are restricted to National Health Service properties.

1029. The second main reason why we support the amendment is on the grounds of transparency; Philippa mentioned that. The private provider at the centre of the Committee's attention is Marie Stopes International. The Assembly did not expressly pass legislation in this area to prevent private companies and charities providing abortion services, and Marie Stopes shrewdly exploited the vacuum. However, as I understand it, no one other than Marie Stopes International knows whether a single abortion has taken place in its clinic. That should be a major issue of concern, regardless of an individual's position on abortion in general.Currently, there is some transparency in Northern Ireland with regard to the circumstances in which abortion occurs on the NHS. The number of abortions taking place can be considered by Members and the public. However, the public can have little or no confidence as to whether Marie Stopes International is operating within the law. I am not implying or suggesting that any illegal abortions have taken place at the clinic; I have no evidence on which to base such a claim. However, it seems significant to me that Members do not know precisely what is going on inside the clinic. The RQIA regulation referred to earlier, as I understand it — I am happy to be corrected — does not

consider how many abortions are taking place, which is significant to our minds.

1030. The third and final reason that we support the amendment relates to Marie Stopes International itself. I will not go over what Philippa, who knows a lot more about Marie Stopes than I do, said. It seems to me that if there was a capacity problem and Members decided to make express legal provision for private providers with appropriate regulation, those regulations would be very clear that it is not appropriate to permit a campaigning organisation such as Marie Stopes to perform the role.

1031. Marie Stopes International does not hold a neutral view on abortion — neither does my organisation — I am not attacking them for that. However, they do not hold a neutral view on abortion; they want to see the law in Northern Ireland significantly liberalised. They are entirely entitled to that opinion, and they have a right to campaign for it. However, if a private provider was required to offer abortions in Northern Ireland, and at this point there does not seem to be any need for such an organisation, then it should not be one that openly campaigns for the law to be made more liberal.

1032. I will close my presentation with one further remark. This amendment would not, as I read it — I am open to correction — shut down the Marie Stopes International clinic. They could, of course, continue to operate in Belfast and provide other services, as they currently do. Indeed, in a free society they are fully entitled to campaign for a change in the law, and my organisation opposes any harassment of their clients or staff. That said, we believe that they should not have the right to offer abortions in Northern Ireland. Thank you for listening.

1033. **Mr David Smyth (Evangelical Alliance Northern Ireland)**: Thank you, Chair and Committee members, for the opportunity to present to you today. I will start by outlining our basic approach to the issue. Then I will explain why we broadly support the amendment and make a few comments on the phrasing of it before I draw to a close.

1034. Evangelical Alliance seeks the life, health and well-being of both the mother and child in a pregnancy crisis. In fact, we seek the life, health and well-being of the wider family and community. We refuse to buy into the harmful dichotomy that pitches the rights of women against their unborn children. That is artificial, abstract and unnatural.

1035. You will hear a lot of evidence about human rights, and these are vital, but our position is based primarily on the human dignity of both the mother and the child. “Inherent dignity” comes up in the first six words of the Universal Declaration on Human Rights before the word “rights” is even mentioned. The inherent dignity of each human being is what the very concept of human rights is based on. Attempts to progress human rights are completely undermined when in that process inherent human dignity is not accorded to the most vulnerable human members of our families and our communities.

1036. One of the key arguments that you will hear from those opposing the clause is that women should have access to safe and legal abortion. Ironically, our first concern about abortions happening outside the health service is precisely that: they might be unsafe and illegal. As Mr Dickson states, there are other private health providers apart from Marie Stopes, and I do not want to focus on just one organisation. There is no regulation other than of basic standards of cleanliness; no way of knowing how and why abortions are carried out; no way of compelling information about the number of abortions; and no accountability. In England and Wales, where private organisations provide 64% of all abortions, this type of information is publicly available and publicised every year by the Department of Health.

1037. These concerns about unsafe and illegal abortions, transparency, and accountability were highlighted and furthered when a private abortion provider appeared before this very Committee on

10 January 2013. They refused to give information to the Committee or to the Department of Health on the number of abortions that they had carried out or the reasons for them. Should this amendment fail, it is clear that there is an urgent need for the accurate, mandatory recording of every abortion in Northern Ireland, whether on health and social care trust property or elsewhere.

1038. Generally, we are very cautious when it comes to the state restricting personal freedoms and choice; we are also hesitant about the state attempting to reserve certain activities within its control. However, in this case we certainly see an argument for limiting the provision of abortions to health and social care trusts. As my colleague Mark said, abortion, or the ending of human life, is a unique category of medicine and law. It does not belong to the same category as private cosmetic surgery or private-health care. Attempts to reduce the ending of a human life to a reproductive right, a good, a service, or just another medical procedure, should concern us all. Let us be clear: abortion is euthanasia — perhaps at a very early stage, but it is still the premature ending of the life of another human being. There are differences arising from bodily autonomy and consent, but the principle remains.

1039. Granting a licence to a private clinic to end the life of another human being is the wrong decision. In England and Wales, where there is an open market for abortion providers, market forces apply. This is the ultimate consumer choice. In 1991, 10% of abortions in England and Wales were carried out by private clinics. Last year, it was 64%. Only 2% were paid for privately. With competition come ploys to increase demand and, ultimately, revenue.

1040. As you steward the law that will shape generations of families and communities to come, I urge you never to forget that we are talking about the life, health and well-being of women and their unborn children. We make the simple point that this amendment is not proposed in a vacuum. Private specialist providers of abortion and their supporters are not seeking just to provide abortions under the existing law. In its submission Amnesty International supports the full decriminalisation of abortion, and Marie Stopes and others seek abortion on demand as the ultimate consumer choice. It is vital that this broader context is appreciated as we consider the amendment.

1041. We welcome the provision in the clause that in urgent circumstances no fee will apply. Abortions are already provided in Northern Ireland where there is a medical necessity; they are provided free of charge and to the strictest levels of care and patient confidentiality, as throughout the health service. There is a glaring ethical conflict of interest when a private clinic provides abortion counselling and then receives revenue when they go on to provide an abortion to that same woman.

1042. Chair, before I draw to a close, I will make a few comments on the language and phrasing connected with ending the life of a child at any stage of its development. There are potentially two issues with the wording that I want to raise. There was some debate in the Chamber the last time this clause was put forward about whether it would affect medication such as the morning-after pill or intrauterine devices (IUDs), which can prevent implantation after conception. It is still not clear enough whether a pharmacist or medical practitioner could fall foul of the law in prescribing medication that has a dual role as contraception or contragestion. I take the point, which was raised in the Chamber, that no prosecution could occur because at that stage of giving the medication it could not be proven whether conception had occurred and whether there was a human life. However, taking that application a stage further, what if someone purchases or supplies an online or over-the-counter abortifacient pill? Would prosecution in that case be possible only where it is proved that an unborn child exists, or is the supplying or taking of an abortifacient where there is a belief that there is an unborn

child, whether proven or not, enough to constitute and offence?

1043. We believe that the word "urgency" needs further clarity. We suggest "circumstance of urgency where the physical life of the woman is at immediate risk". Otherwise, there could be great ambiguity if the term is applied to cases outside a health trust's property.

1044. Thirdly, we welcome the wording:

"If that person does any act, or causes or permits any act".

1045. With the sale and distribution of online abortifacients, we need to enlarge our thinking of abortions outside trust and clinical properties to people's homes. We suggest a more detailed enquiry into the legality of the sale, distribution and taking of online abortifacients.

1046. Finally, the unique law that we have in Northern Ireland strikes a very delicate balance between the life, health and well-being of the mother and her unborn child. We have a backstory here of death and violence; we aspire to a future of peace and good relationships. There is a real opportunity in the years ahead for this place to pursue a different narrative. Allowing a private enterprise to increase revenue from an activity that ends life rather than affirms it is not the sort of economy or culture that we wish to grow here. The amendment will not threaten the health, life or well-being of women who need an abortion for medical reasons under the existing law in Northern Ireland. However, if the amendment is coupled with tailored pathways of care for women in a crisis pregnancy, it could play an important part in the creation of a culture that truly cherishes the life, health and well-being of women, their unborn children, families and communities.

1047. **Mr Dickson**: I have a comment rather than a question to start off with. We do not know the statistics and the safety levels of the Marie Stopes clinic because the Health Department will not regulate it. That issue needs to be addressed. It is there, and, presumably, whatever service we allow it to deliver, surely anyone who uses it has a reasonable expectation that it will be appropriately regulated. I encourage you to call on the Health Department urgently to ensure that it has that appropriate regulation.

1048. I heard somebody say that this is such a niche area of medical ethics that it can be provided only by the National Health Service. Are you all opposed — particularly your medical organisation, Philippa — to private medicine services in the United Kingdom?

1049. **Ms Taylor**: Not private medicine services per se; the focus here is purely on private abortion or termination provision. It is not about family planning services; it is about abortion provision.

1050. **Mr Dickson**: To be absolutely clear, your objection does not include only Marie Stopes; it includes the other private clinics that have been practising within the law for many years in Northern Ireland. Has this issue arisen just because Marie Stopes came to Northern Ireland? Other clinics have been providing that service within the law for many years, and nobody has raised an issue about it before.

1051. **Mr Baillie**: The difference is that Marie Stopes is a campaigning organisation, unlike, say, the Ulster Clinic, which is a private clinic.

1052. **Mr Dickson**: It is primarily funded by insurance companies, which do lots of advertising, as far as I can see.

1053. **Mr Baillie**: Yes, but they do not campaign specifically to —

1054. **Mr Dickson**: I have looked at the BUPA website and have seen the description of the services that it provides. That is campaigning in my book.

1055. **Mr Baillie**: Campaigning to liberalise the law on abortion?

1056. **Mr Dickson**: No; campaigning for the services that it delivers.

1057. **Mr Baillie**: That is what we mean. Marie Stopes has a particular view, which it is entitled to, to —

1058. **Mr Dickson**: So, it is because it campaigns rather than because it delivers the service.

1059. **Mr Smyth**: I also have an issue with its delivering the service, as there is no compulsion to provide figures for showing how and why abortions have been carried out.

1060. **Mr Dickson**: Yes, and that is because the Department of Health will not require them to give that information, because the Department of Health, effectively, does not want to talk to them.

1061. **Mr Baillie**: CARE would prefer if it was restricted to the NHS, but, if that fails, that is what we would like to happen.

1062. **Mr Dickson**: So you would support equal regulation of their clinic with the NHS if that was the case?

1063. **Mr Baillie**: Yes, if the Assembly refuses to take the path that is articulated in the amendment. A major concern of mine is the transparency issue. I think, regardless —

1064. **Mr Dickson**: I wholeheartedly agree with you about transparency; the problem is attempting to get the regulator to provide it. In fact, I would be happy to go even further on transparency than one might require.

1065. **Mr Baillie**: Which I completely respect. We feel that the NHS should provide it, but, if that fails, we absolutely agree that regulation should be brought in to check for transparency.

1066. **Mr Dickson**: Although I made a comment, which I thought was a point well made, actually, in respect of those who can comment on various things, given that this room of full of pale, stale, grey-haired males — I am speaking for myself —

1067. **The Chairperson (Mr Givan)**: Stale and grey anyway.

1068. **Mr Frew**: I think "blond" is the term.

1069. **Mr Dickson**: Nevertheless, it is disappointing that we do not have the voices of all genders on this subject, which is, effectively, gender-specific, whatever way you want to deal with it: I cannot get pregnant.

1070. **Ms Taylor**: I feel very strongly that, just because someone does not have a specific self-interest does not mean that they cannot speak out on an issue. Moreover, we are not just talking about a woman; we are talking about a baby and about a father as well.

1071. **Mr Dickson**: Of course.

1072. **Ms Taylor**: So there are actually three involved.

1073. **Mr Dickson**: In that sense, you are allowing me to have my voice. There are others who are not terribly keen on me having my voice, even though I may take a different view from my colleagues.

1074. **Ms Taylor**: I think that everyone has a right to speak. I am very concerned that people are shut down from speaking, but I suspect that the issue is not so much who is speaking as what they are saying, which is why I gave the example of David Steele.

1075. **Mr Dickson**: Can we address the need to deliver it exclusively in the NHS? The very few people who, by law, can access that service in Northern Ireland come from a range of backgrounds. Amnesty and others made reference to those who cannot pay and who should rightly have that service delivered to them in the appropriate confidence of the NHS. However, there are others who can pay and who know, because they have made the comparison between the NHS and a private-sector provider, that they do not want to sit in a queue in a public clinic, and that they genuinely wish to have the service delivered privately, not to hide from the law in any respect — we have dealt with the issue of transparency — but simply because they wish to avail themselves of that service in a different way. I put the same question to you that I put to Amnesty: is it reasonable to suggest that the same clinician or doctor would be acting unlawfully in the

Ulster Clinic and lawfully in the Royal Victoria Hospital?

1076. **Ms Taylor**: It would be nice if we knew the answer to that. It comes back to the problem: we do not actually know for sure what is going on in the private clinic.

1077. **Mr Dickson**: If you did know, would you then be opposed?

1078. **Ms Taylor**: If we knew absolutely that a private abortion clinic was operating within the law, then, lawfully, we would agree that a woman — in effect what you are saying, — can choose where she goes for a termination.

1079. **Mr Dickson**: Provided we are, to use that horrible term, "on a level playing field", with public information.

1080. **Ms Taylor**: Yes. With all the caveats in place, yes, absolutely; but they would have to conform and uphold the law, and if the law were being upheld in a private abortion clinic —

1081. **Mr Dickson**: In an open and transparent way so that we could check the facts and figures.

1082. **Ms Taylor**: It is exactly the same as in England and Wales. We are not out to shut down all abortion clinics. We say: please make sure that there is transparency and accountability and that there is no conflict of interest where abortion clinics not only do termination but also try to offer counselling, advice and options when they clearly have other vested interests. As long as you can separate that out, and a private clinic is simply offering an abortion and not doing all the other pathway and care work that we talked about previously, then yes.

1083. **Mr Dickson**: Bear in mind that the pathway to legal abortion in Northern Ireland is very restricted. You are not doing all that other counselling; that is not why you are there. You are there because you have a —

1084. **Ms Taylor**: A specific need.

1085. **Mr Dickson**: — very specific need. Just to make the comparison, much of what you said was very relevant to England, Scotland and Wales, but none of it is relevant in Northern Ireland.

1086. **Mr Smyth**: I take a slightly different view on that, Mr Dickson. If someone is working for both the public sector and privately, there are two different contracts of employment; they may be entitled to do certain things under public contracts of employment that they cannot do privately. There are also other instances where certain acts are legal in some areas and illegal in others.

1087. **Mr Dickson**: Urgency is an issue for people; I know that because I have had experience of it. I knew an individual who received a cancer diagnosis in the NHS and immediately said to the consultant: "Can I have that removed?" The consultant said, "Well, under NHS guidelines, I can do it within four or five weeks, but I can see you tomorrow at the clinic." And the person said "Yes" because they wanted whatever it was removed. So people act and react in that way.

1088. **Ms Taylor**: And if the law permits it, they have every right to.

1089. **Mr Dickson**: And should the law not permit that? A woman who has had a diagnosis in the NHS asks: "When can the abortion take place?" And the doctor says : "Well, it will be in a couple of days." And she says: "Can I have it done tomorrow?" And he says: "Yes, you can have it done in the private clinic tomorrow." Is that an unreasonable choice for an individual to make?

1090. **Ms Taylor**: Technically, yes, she could be allowed that, legally.

1091. **Mr Dickson**: This law would restrict that.

1092. **Ms Taylor**: However, the problem that I see immediately with that example is that I do not see how you can fit in the prior care that she needs. Is that really giving her time to have all the sufficient information and resources?

1093. **Mr Dickson**: I was shortening the period just to make the contrast. There is, I think, a perception that people can have those procedures, any procedure that is available and safe, in a private clinic and have it done in a shorter period.

1094. **Mr Smyth**: Let me come back to a point. I do not see this as just a medical issue —

1095. **Mr Dickson**: I understand that.

1096. **Mr Smyth**: — or just an issue of a woman's reproductive right, to use that language. I also want to point to the figures. In 1991, 10% of abortions in England and Wales were carried out in private clinics; today the figure has jumped to 64%.

1097. **Mr Dickson**: There is no suggestion that that can happen in Northern Ireland because the law does not permit it. I am not arguing, and I do not think that anyone has argued today, for an extension or a change in the law. This is about a further restriction in it.

1098. **Mr Smyth**: The law has not changed substantively in that period in England and Wales, yet private providers now make up the bulk of the provision.

1099. **Ms Taylor**: It brings in a broader issue: just because there is no change in the law does not necessarily mean that there will be no change in practice. That is an example. The fact is that, just 22 years ago, only 10% of abortions were carried out in private clinics, and now it is 64%. There has been no change in the law; there has simply been a change in practice. Much of that comes back to the campaigning tactics and policy of abortion clinics, which work really hard —

1100. **Mr Dickson**: That would require Marie Stopes to enter into a contract with the NHS in Northern Ireland, and I cannot see that happening, to tell you the truth.

1101. **Ms Taylor**: Yes, but it is not even just about whether the —

1102. **Mr Dickson**: It may happen, but it is highly unlikely that there would ever be a contract for the delivery of any services between Marie Stopes and the NHS in Northern Ireland. So how can it expand for them?

1103. **Ms Taylor**: Because they are very effective at campaigning.

1104. **Mr Dickson**: So you predict that Marie Stopes will persuade the NHS in Northern Ireland to —

1105. **Ms Taylor**: I think that you will have a fight on your hands because they are pushing very hard, both to remove public policy restrictions and for funding. They have a very clear goal of achieving as much funding as they can from public bodies internationally. They have been very successful. One of their policy goals is to double their income.

1106. **Mr Dickson**: If Marie Stopes is that successful, what difference will this change make?

1107. **Mr Smyth**: I think that, without the regulation and transparency that we are talking about, we do not know whether abortions are happening, what their numbers and reasons are, whether they are unsafe or illegal — all of that. What you could have developing — because we just do not know at this stage — is a dual market where, if you go legal, you will get an abortion on the NHS in certain circumstances but if you go to a clinic there may be practices which we just cannot know about. I do not mean to cast aspersions on any, but we just do not know. So, what I am saying is that, if a provision like this fails and does not pass, there should be some sort of transparency and a mandatory reporting of the numbers of abortions.

1108. **Mr Dickson**: Those private-sector providers, as I understand it, have cried out for that regulation, but it has been denied them.

1109. **Mr Smyth**: They could provide the information voluntarily at this stage, but they will not.

1110. **Mr Baillie**: They refuse to do so.

1111. **Mr Dickson**: I am not defending those people; I am just asking questions about how a service should be delivered.

1112. **Mr McGlone**: Thank you for your presentation. I am just reading through your documentation. There has been quite a massive increase in the number of abortions in the UK. By my quick calculation, we are looking at an increase of up to 120,000, to judge from these figures, counting both the private and public sectors.

1113. **Mr Smyth**: There were 189,000 last year in England and Wales.

1114. **Mr McGlone**: These were the figures that I had in front of me. We heard earlier from Amnesty International. I would just like your commentary on that, because some of it annoyed me. First, I think that, obviously, a lot of these are lifestyle choices or social abortions; that is my clumsy way of describing them. There has been quite a huge growth in that. Can we have your commentary on that, please? What is your opinion on what we heard from Amnesty International — that they are pro-choice, for abortion on request or whatever they choose to call it? We got that from them eventually. What is your opinion on the view that human rights do not apply to the pre-birth child? What is your opinion, view or perspective on that, please?

1115. **Mr Smyth**: I will put it into a local context through two very brief pieces of case law. I am a lawyer by background, and I cannot get away from the law at times. In R versus McDonald, it was said that if the fetus has:

"a real chance of being born and existing as a live child, breathing through its own lungs, whether unaided or with the assistance of a ventilator and whether for a short time or for a longer time"

1116. it should then be considered "capable of being born alive".

1117. Then, just last year, the Attorney General gave judgement in the case of Axel Desmond. That was a groundbreaking case because it gave personhood to the stillborn child and meant that an autopsy could be carried out on that child. It gave the child legal personhood. I wonder whether, in applying these cases, there is a particular situation in Northern Ireland, given our unique law, the way our case law has developed and the fact that it is different from the rest of the UK, whether there is a legal right for the unborn child. Ethically, morally and in all other ways, I would say that there is. I would also talk about human dignity and the right to life, which were not mentioned in Amnesty's thing. There is also the ruling in A, B and C v Ireland case, which stated that there is no right to an abortion, nor is there a consensus to when life begins. A wide margin of appreciation is given to member states, and I think that we are perfectly entitled to assume a right to life if we choose to take that path under a different narrative.

1118. **Mr McGlone**: I am glad to have a person of legal bent here. I want to go back to that paragraph on page 5. I will read that out to you. You were over there and heard it when I put it to representatives of Amnesty International. It states:

"Human rights standards are clear that access to abortion should not be hindered, should be easily accessible and of good quality and that states should eliminate, not introduce, barriers which prejudice access to abortion services, such as conditioning access to hospital authorities."

1119. What is your take on that? We very clearly heard a strong view from Amnesty International about what its perception of the law is. Do you have a particular perception or a particular informed view about those human rights standards?

1120. **Ms Taylor**: Our organisation is very supportive of the law in Northern Ireland. We want to uphold the law, and fully support it from a legal perspective. From a moral perspective, we are very clear as an organisation that all humans have value, inherent dignity and worth from the moment of conception to the moment of death. The pre-born have equal rights to any human who is born. We strongly believe that.

1121. We are also very concerned to make sure that we care for the welfare of women, and, in cases of abortion, there are often two patients to consider.

However, morally, a human has rights from conception.

1122. **Mr McGlone**: I am totally on the same message as you morally and ethically, and about the care and compassion that needs to be shown to the woman who finds herself in that situation, and her child. I was looking for a perspective. Morals or ethics really did not concern Amnesty International, and they cited international case law, and said that it was their view because of that case law. We heard that.

1123. Do you have a perspective or an informed view on the legal aspects from where you are coming from?

1124. **Mr Baillie**: I wholly agree with the line of reasoning that your colleague Alban McGuinness gave when he was here, particularly about the ECHR and the margin of appreciation of states. We firmly believe that Northern Ireland and the Northern Ireland Assembly has a right to have the law that it has, and we understand that a number of international rights bodies have taken a contrary view. As Alban noted, CEDAW is not justiciable in Northern Ireland, and there is no international treaty that will force the Northern Ireland Assembly to change its law. Westminster could of course legislate over the top of Northern Ireland, but that is unlikely to happen. From my organisation's understanding — I am sure that it will be the same for the CMF and EA — Northern Ireland is completely within its legal rights to hold the position it does.

1125. **Mr Smyth**: The law in Northern Ireland strikes a very delicate balance, and it is actually an incredibly progressive law. It may seem a strange parallel, but the Wildlife and Countryside Act 1981 allows for the protection of wild bird eggs. Ironically, the pre-born hawk has more legal protection than the pre-born human in England and Wales. When you think about it in certain terms, it jars with you that there is something not right in the rest of the UK. I am very proud of the laws we have here.

1126. **Mr Douglas**: Thank you for your presentation. Will you define from your point of view at what stage life begins in a womb? I said earlier that I was talking to some people this week who said that it is at conception, while others said that it is when the heart starts to beat. Do you have a view on that?

1127. **Mr Baillie**: As Philippa said, my organisation takes the view that life begins at the moment of conception.

1128. **Ms Taylor**: Yes, I am absolutely very clear that conception is the start. As an organisation made up of a lot of members, our main line is conception, and the majority of our members hold to that view. However, I acknowledge that some Christian doctors and health care professionals might argue for implantation, perhaps, although there would not be any who would argue beyond implantation. I reiterate, as I am sure many of you will be aware, that our belief is that conception is the least arbitrary point and, scientifically and medically, the point that is certainly most credible.

1129. **Mr Smyth**: That would be our organisation's position as well.

1130. **Mr Douglas**: Obviously, this is a very delicate situation, and it is very difficult for many people. This has been referred to before, but in light of someone being raped or where there is incest in a family, what is your view on that in terms of abortion?

1131. **Ms Taylor**: That is incredibly difficult. We have a terrible crime, and a lot of trauma will result from the terrible crime of rape. However, I believe that abortion, as a consequence of that, is just going to simply add another trauma on to an already traumatic situation. It is important to separate out the two issues. The crime is the rape, and what the woman does and the choice that she makes after that should be separate to that decision. It is an incredibly difficult situation. When you look at the research, you see that a lot of women who have had an abortion after rape regret that decision. They

have not had a chance to come to any sense of healing after the rape, and that is compounded by the abortion.

1132. It is rare that much research is done on interviewing women who have been raped and kept the child. However, research was done in the US on about 120 women, and nearly all of those who kept their child were very grateful, and it actually helped the sense of healing and recovery from the trauma of the rape itself. Obviously, any kind of research is going to be very difficult to carry out, and a lot of it is anecdotal; therefore, I cannot say for definite to women that it is best to do one or the other. Certainly, anecdotally, it appears that the best alternative is to help and support women through a pregnancy and whether she requires adoption or keeps the baby afterwards. There is a problem of assuming that abortion is the easy answer after a rape. There is an assumption that, "OK, let us just get rid of the problem," but actually that is not the easy answer. That causes another problem. It is very difficult, but I would not support abortion after rape. I would throw everything at the woman to really support and help her.

1133. **Mr Smyth**: There are some figures from the Rape Crisis Network Ireland that you may find interesting. A very recent and very local study in 2013 found that in 90 cases of pregnancy through rape, only 17 women and girls chose to have a termination, which is 15%. I think the perception is that most people choose a termination as "the right thing to do", but we challenge that assumption. We believe in redemption, and that out of something horrendous — one of the most grave human rights abuses, to use that language — something good, positive and life-affirming can result. Again, we want to see pathways of support for the women in that situation.

1134. **Mr Baillie**: I would rather wait until the consultation response to outline my organisation's view, if that is all right. We will make it clear at that point.

1135. **Mr Douglas**: Mark, you mentioned Marie Stopes. One of the problems that you have is that it campaigns, as such. Would there be any circumstances where, if Marie Stopes changed, you would support its work?

1136. **Mr Baillie**: I imagine that there are aspects of what Marie Stopes does that would not be objectionable — not in terms of carrying out abortions, obviously. As I understand that it offers a number of other areas of care, although I could be completely wrong about that. However, I do not think that everything that it does is wrong per se. I made the point earlier about it being a campaigning organisation, and it is entitled to be. We have no complaint with that. My organisation is a campaigning organisation, and Marie Stopes respects our right to campaign as well, and that is right in a free and democratic society. We support the amendment because we simply do not see the need. The one concern I have is this: is it a simple matter of the Health Department just regulating this, or would new legislation have to be brought through? That would take a lot more Assembly time. To be honest, we do not even know whether Marie Stopes has conducted a single abortion. Why should the Assembly spend all this time creating a new regulatory framework when perhaps it is not necessary? It is up to MLAs to come to their own view on that. I do not imagine that we would support Marie Stopes's right to conduct abortions unless it changes its position dramatically.

1137. **Mr Poots**: I am sorry that Mr Dickson is not in the room right now. I was absolutely appalled that he made the comparison between extinguishing the life of an unborn child and removing a piece of cancer that is likely to take someone's life. One is governed by the law, and the other is governed by good practice and protocols as established by medical consultants over and again. The comparison is wholly wrong; it should never have been raised in the first instance.

1138. Marie Stopes is operating a very secretive organisation in Belfast city centre. It does not want the Health Department to be involved. The Department does not have the legal

authority to do it. RQIA can go in and look at issues around cleanliness, but nobody outside Marie Stopes knows how many abortions, if any, have taken place in Belfast. The problem is that nobody knows precisely whether Marie Stopes is abiding by the law. We have the potential for unregulated abortion outside the law taking place in Northern Ireland. That is why the amendment is useful and helpful.

1139. You said that 64% of abortions in England have been carried out by groups outside the National Health Service. Is it your view that, if you want a consistency of service, the best means of providing that while operating within the law is to have it carried out by the National Health Service? Do we enable a greater degree of inconsistency and perhaps deviation from the law by allowing private practices to engage in that legally regulated procedure?

1140. **Ms Taylor**: It absolutely does. If they are all carried out under the NHS, we have the opportunity for much better regulation, accountability and transparency, and for the proper follow-up of women. Coming back to one of the points I made in my first statement, my concern is that, once you start going outside the NHS, we lose the ability to keep track of women undergoing terminations through its health care numbers. That is a very important point. In the NHS, we have a proper tracking of women, and we can follow up if there are any future health care concerns or if she presents for another issue that may, in the long term, be related to a prior termination. If you cannot link women, we will never be able to work out what the long-term effects of abortion are. It is absolutely essential for the care of individual women that we have not just proper regulation of the clinics but proper follow-up of women after the abortion. We cannot guarantee that in the private sector because there is no proper follow-up and regulation in care, whereas, in the NHS, that is much more likely to happen, and there is much more consistency in provision. In England and Wales, it is incredibly concerning that so many terminations are carried out in the private sector. In addition, 98% of those are funded by the Government.

1141. **Mr Poots**: Is it also the case that abortions that are carried out in Northern Ireland seek to remove the baby whole? Many of the clinics in England inject the baby with a poison and vacuum it out, and the baby is, more often than not, dismembered when it comes out.

1142. **Ms Taylor**: Bit by bit.

1143. **Mr Smyth**: There was a very, very strange scenario in England and Wales where there was an outcry over the remains of 15,000 aborted and miscarried babies being used as fuel for a hospital incinerator. The irony is that there is outrage over how the body of a dead baby is used, when the law does not accord dignity in life to that child. There is an uproar about how the body is treated after death, which shows a strange cultural problem.

1144. **The Chairperson (Mr Givan)**: I want to try to bottom out the view about the reasonableness of restricting abortion to the state. When this was debated in the Assembly when I tabled the amendment previously, I cited examples across Europe where the state has restricted the provision of services on a range of issues because it was deemed to be in the interests of wider society. It was an important issue, so they did that. This is where I come to on the issue for Northern Ireland. Is it right that this issue should only be under state control, or is it something that the private sector should be allowed to engage in? Some will have the view, which I share, that you should never allow a financial incentive to be involved in decision-making on the ending of a life. Where are the three organisations in respect of the reasonableness of the state restricting abortion to the NHS and not allowing private clinics to carry out that type of service?

1145. **Mr Baillie**: As I said in my opening remarks, it is entirely reasonable for the state to do that. Our position is that the

Assembly should pass the amendment. If it does not, and only if it does not, the Department of Health should enter and regulate, because our major concern is about transparency, as was mentioned earlier.

1146. **Ms Taylor**: I fully support that view.

1147. **Mr Smyth**: I am generally very cautious when the state tries to restrict the personal freedoms and choices of its citizens, but this is an exceptional circumstance. We are talking about the ending of a human life, so I have no problem with the state reserving unto itself in such reasonable circumstances certain functions.

1148. **The Chairperson (Mr Givan)**: Is there a concern that the private industry involvement in abortion could be the Trojan Horse when it comes to abortion in Northern Ireland? Is that a real concern? Philippa, you touched on that earlier when you said there are organisations that have a very clear objective and stated view on what the law should be on the issue. You alluded to how changes have happened through practice. Is there a concern that that could happen in Northern Ireland?

1149. **Ms Taylor**: I spent some time looking at a lot of the papers and publications of abortion providers, and it is clear that they have a twofold agenda. First, they want to increase the number of abortions and abortion provision; they call it "safe abortion provision". That is understandable as they are abortion providers and it is their job. My concern, when I was looking through their literature, is that they state too many times that they also want to reduce or remove restrictions on any abortion provision in countries. So they actually want to change policy, and it is quite clear that they want to do that internationally, which will therefore include Northern Ireland. They want to remove restrictions to abortion, so they have an agenda to change policy. That is where I have real concerns.

1150. **Mr Baillie**: On the Marie Stopes International website, there is mention of a policy and partnerships team, the aim of which is to work to:

"transform policy environments and increase access to safe abortion and family planning services globally. As a team they do this through developing and strengthening relationships with key high profile and relevant stakeholders and support our programmes to develop their own strategic partnerships, reduce policy restrictions and maximise in-country donors."

1151. That is a very clear view, and Marie Stopes are open about wanting to reduce policy restrictions. Coming back to the clinic in Belfast, we have no evidence that they are breaking the law. The problem is that nobody can go in and find out. Until that is solved, there is going to be a significant concern there. I am not accusing them of anything: I am simply saying that that is not a tenable situation. Something must be done, either through this amendment or another road.

1152. **Ms Taylor**: It is only fair that, if a clinic is operating in this country, we ask questions of that clinic and its agenda. It is important that we start looking at those clinics. Some of their staff are paid far more than government Ministers; they are paid huge amounts of money. There is an awful lot of money involved in running these clinics, and they get a lot of money. It is quite a lucrative trade, and it would seem, certainly in England and Wales, that, despite operating within a shrinking health budget, they are being paid huge amounts of money while operating under charitable status. We can start asking questions about non-democratic decision-making, vested financial interests, good governance and priorities in government spending and their right to speak out on issues other than abortion provision — for instance, in terms of changing policy.

1153. **The Chairperson (Mr Givan)**: Thank you very much. I appreciate your time.

3 December 2014

Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Sammy Douglas
Mr Paul Frew
Mr Chris Hazzard
Mr Seán Lynch
Mr Alban Maginness
Mr Patsy McGlone
Mr Edwin Poots

Witnesses:

Mr Les Allamby	*Northern Ireland*
Ms Kyra Hild	*Human Rights*
Dr David Russell	*Commission*

1154. **The Chairperson (Mr Givan)**: I welcome the chief commissioner of the Northern Ireland Human Rights Commission (NIHRC), Les Allamby; Dr David Russell, deputy director; and Kyra Hild, a researcher at the commission. As was the case with previous evidence sessions, this session will be recorded by Hansard and published in due course.

1155. You are very welcome to the meeting. At this stage, I will hand over to Mr Allamby to outline briefly the commission's key issues in respect of the amendment. If you can, will you also deal with the application of violent offences prevention orders (VOPOs) for children. If you want to separate the two issues, I am happy to do that.

1156. **Mr Les Allamby (Northern Ireland Human Rights Commission)**: Yes.

1157. **The Chairperson (Mr Givan)**: You can begin with the Jim Wells amendment.

1158. **Mr Allamby**: Chair, I hope that you and your colleagues have received the correspondence that we sent to you after the previous meeting.

1159. **The Chairperson (Mr Givan)**: Yes, we have it.

1160. **Mr Allamby**: Let us deal with this afternoon's main issue. Thank you for inviting us. My two colleagues will introduce themselves, and then I will go straight into our submission. Chair, we are obviously happy to take questions from you and colleagues on the issue.

1161. **Dr David Russell (Northern Ireland Human Rights Commission)**: I am deputy director of the Northern Ireland Human Rights Commission.

1162. **Ms Kyra Hild (Northern Ireland Human Rights Commission)**: I am a researcher with the Northern Ireland Human Rights Commission.

1163. **Mr Allamby**: This afternoon, I intend to set out which international law and court decisions are relevant to the issue and the current state of play and, having established those principles, to look at the amendment to the Justice Bill that is before the Committee.

1164. Ending the life of an unborn child and the right to a termination is currently prohibited, absolutely, in statute, as you know. It is available in common law, but in very restricted circumstances. In effect, termination is allowed where the continuation of the pregnancy threatens the life of the woman or where there is a real and serious impact on a woman's mental or physical health, and that impact must be permanent or long term. Currently, any breach of the law under the Offences Against the Person Act 1861 can lead to a criminal sanction of up to life in prison.

1165. As we see it, the amendment to the Justice Bill that is before you seeks to further restrict access to support in the limited circumstances in which a termination would be lawful. Our submission, which you have, is based on the current state of international human rights law and, in particular, around article 8 of the European Convention on

Human Rights (ECHR), which is the right to respect for private and family life.

1166. A similar provision is also to be found in article 17 of the International Covenant on Civil and Political Rights (ICCPR). Our response reflects our understanding of the legal position and the case law. It is probably important to say that the convention is a living instrument. It moves with the times, and there have been considerable developments in the case law in recent years.

1167. The starting point for us is that the court has recognised that the right to respect for private life is a broad concept. It encompasses a person's physical and psychological integrity and includes the decision whether or not to have a child or to become parents. Article 8's essential object is to protect the individual against arbitrary interference by public authorities, but it is important to say that that is a qualified right. Therefore, any interference must be in accordance with the law, necessary in a democratic society or, for example, for the protection of health and morals and the rights and freedom of others. The right is not absolute; it is qualified. In practice, if there is to be an interference with the right to private life, it must meet a pressing social need, must be proportionate and must be in pursuit of a legitimate aim. The right to private life is also a positive obligation to secure the effective right of that physical and psychological integrity.

1168. It is important to say that the European courts have also recognised that there is no consensus among convention states on the scientific and legal definition of the "beginning of life", although there is a consensus among a substantial majority of contracting states of the Council of Europe on allowing abortion in certain circumstances. Therefore, there will obviously need to be, on occasions, attempts to resolve the conflict between the rights of the fetus on the one hand and the mother on the other.

1169. What the courts have done is recognise that those rights are inextricably linked. In the absence of a common approach among states, a fair balance must be maintained between individual rights and the public interest. There is normally a narrow margin of appreciation where an individual's existence or identity is at stake, but, in the absence of a consensus, the European Court has said in a number of judgements that there is a broader margin of appreciation in dealing with the issues. That discretion is not unlimited, but there is discretion in how you deal with that.

1170. Having talked about the broad margin of appreciation that is given to a state as to the circumstances in which a termination is permitted, I will say that, once there is a decision and some legal framework, that framework must be devised in a way that is coherent and that allows the different legitimate interests to be taken into account adequately and in accordance with the positive obligations derived from the convention. Again, it is important to say that there are no explicit procedural requirements, but those procedural requirements must be sufficient to safeguard the positive obligation.

1171. The court has taken the view, in some jurisdictions and some countries, that those legal restrictions on termination, or abortion, when combined with the risk of incurring criminal responsibility, can have a chilling effect on doctors and clinicians when dealing with an individual case. It is also important to say that the courts have held that provisions regulating the availability of lawful abortion should avoid having that kind of chilling impact. Therefore, there need to be effective procedural mechanisms capable of determining when the conditions for a lawful abortion exist. The court has said that that should not be something that is normally left to domestic courts to decide. Those kinds of clinical decisions should not be readily pushed over to courts to decide. There should be sufficient clarity to allow the clinicians to make decisions, knowing whether they are lawful or not. Finally, the rights guaranteed by the convention must be practical and effective, not theoretical

and illusory. The positive obligation of the right to a private life must be enacted in a way that is meaningful.

1172. Having said all of that as a kind of preamble — I recognise that that was a rather lengthy preamble — I want to turn to the proposed amendment in hand today and apply some of those principles in practice. The purpose of the amendment, as the commission reads it, is to propose to make it an offence to end the life of an unborn child at any stage of that child's development, with the sanction of a fine and up to 10 years in prison if a person commits an offence. There are a number of defences provided to that. Where the act — or acts — that ends the life of the unborn child is lawfully performed on the premises by a health and social care trust, that is a defence. If the act — or acts — ending the life of the unborn child is lawfully performed without fee or reward in circumstances of urgency when access to premises operated by a health and social care trust is not possible, that is also a defence.

1173. We have a number of difficulties with the amendment. We have outlined them in our submission to you, but I will set them out very briefly, and then we can move to questions. The first is that the proposed new clause is so widely drawn. There are a number of terms in the clause that are not defined. It could encompass almost anything, including certain forms of contraception, such as the morning-after pill, that are legally available in Northern Ireland. The amendment states:

"act or acts ending the life of the unborn child".

1174. That is a very widely drawn term.

1175. In our view, the amendment lacks clarity, yet it intends to create a criminal offence punishable with up to 10 years in prison. Applying the principles that I annunciated earlier, although you are entitled to interfere with a woman's right to physical and psychological integrity, it is a qualified right — there is a margin of appreciation — it must be applied proportionately, and the courts have regularly held that criminal sanctions that have a chilling effect on doctors and other clinicians are to be avoided. It seems to me that the amendment falls completely into that trap.

1176. It is interesting that, for example, in the A, B and C v Ireland judgement, the court looked at the uncertainty created by the 1861 Act, albeit in Ireland, modified by a number of provisions, including constitutional ones. It felt that the 1861 Act did have a significant chilling factor for both women and doctors in the medical consultation process, regardless of whether those prosecutions had been pursued in reality.

1177. I will finish with a quotation from the court in the A, B and C v Ireland case. It stated that there is:

"a striking discordance between the theoretical right to a lawful abortion in Ireland on the ground of a relevant risk to a woman's life and … its practical implementation."

1178. In the A, B and C case in particular, where the threat was to a woman's life, it was held that that lack of clarity was contrary to article 8 of the convention. It dealt in a different way with the issue of abortion being sought for health and well-being. Therefore, we think that, if the amendment were to be taken up by the Department of Justice, it would be contrary to human rights standards and, in particular, article 8.

1179. **The Chairperson (Mr Givan)**: OK, thank you very much. There are just a couple of points that I want to raise. In the example that you use — the judgement in the A, B and C v Ireland case — paragraph 214 states:

"Article 8 cannot … be interpreted as conferring a right to abortion".

1180. Paragraph 241 states that the prohibition of abortion for health and well-being grounds did not exceed the Irish state's margin of appreciation in article 8. How do you counter those elements of the judgment?

1181. **Mr Allamby**: The starting point of my understanding is that the convention does not create an absolute right

to abortion. A state does not have to legislate and create rights to termination, but, where it does, and in Ireland and in common law in Northern Ireland there are rights to termination in very limited circumstances, but they must be regulated in accordance with the right to private life in article 8. I would not disagree that the convention does not say there must be a right to termination, but, where there is, it must then be regulated in a way that is coherent, is clear to women, clinicians and those involved, and is provided in a way that makes the right real. I do not think that that is incompatible with what we have said about paragraph 214.

1182. **The Chairperson (Mr Givan)**: The issue, as I see it, is that the previous, very restrictive abortion law in Ireland was able to sustain challenge on the basis of the ECHR. There was an issue when it came to exceptions for life and health.

1183. **Mr Allamby**: The answer to that is yes and no, inasmuch as, where you were dealing with health and wellbeing but there was no threat to life, the court held that it was not going to interfere and declare it incompatible with article 8. C was faced with a threat to her life, as the facts were known at the time. In that case, the lack of certainty and clarity in the law as it stood in Ireland for the circumstances involved was at that point contrary to the European Convention. There is not a straightforward yes or no answer.

1184. **The Chairperson (Mr Givan)**: Was it contrary because it was not clear? C had a life-threatening cancer. Was it because there was no clear procedure to determine the outcome in that scenario that the court found against Ireland?

1185. **Mr Allamby**: My understanding is that the arrangements and the framework that had been set in place were so lacking in clarity and coherence that effectively what the court said was that the article 8 right could not be properly enacted by the woman, and therefore it was contrary to the convention. What was needed was a very clear setting-out of the position so that clinicians and women could understand and know the circumstances in which termination was lawful and when it was not. I look to my colleagues to see whether that is an accurate summary.

1186. **Ms Hild**: The criminal aspect was obviously considered by the court as an additional concern because of the impact on women and practitioners, as mentioned previously by the chief commissioner.

1187. **The Chairperson (Mr Givan)**: I refer to P and S v Poland. Is it not the case that Poland conferred a very positive right to abortion?

1188. **Mr Allamby**: There is a right to abortion in Poland, but in rather restricted circumstances. Therefore, the issue in the Polish cases has been how you then enact the rights that have been given. There have been a number of Polish cases, and they have often been about what happens in practice when somebody appears to fall within the legislation. It is a little bit like this amendment. How do clinicians deal in practice with a situation in which the termination appears to be lawful? Again, the issues have often been about the lack of clarity as to how the law operates in practice in Poland.

1189. **The Chairperson (Mr Givan)**: The commission is trying to draw a parallel with Poland, but that is misleading. In the case that you reference, the state had conferred a positive right to abortion. There was a case on how to access the right to abortion that was provided for by the state. Northern Ireland does not provide any positive pathway for abortion. It is only a defence, as you know. I suggest that the parallel that is drawn would be hard to sustain.

1190. **Mr Allamby**: I am not sure that I agree with you. In Northern Ireland, your right to a termination comes essentially from common law rather than statute. I accept that that is different from the situation in Poland, where the limited rights that you have come from legislation, but, nonetheless, there is a right in limited circumstances in

Northern Ireland to a termination. They have been established in common law. It is judge-made law, and that is the law of the land. In those circumstances, there is a need for a proper regulatory framework and the coherence to make sure that those rights that have been set by judges can be properly exercised. That means that the same principle applies in Northern Ireland as in Poland.

1191. **The Chairperson (Mr Givan)**: In what way would the amendment change in law the right to have an abortion? You used language suggesting that it was a barrier or impediment. In what way would the amendment change the law on the grounds for a defence?

1192. **Mr Allamby**: Let me give you a couple of examples. Under the 1861 Act, if you commit an offence, you face up to life in prison. This amendment starts without prejudice to that and creates a new offence of up to 10 years in prison. I am not sure how you can do that without prejudice to the 1861 Act, if you are saying that you are not attempting to modify it in any way. It is not clear to me that, if you committed an offence under the amendment, you would face 10 years imprisonment as opposed to life imprisonment. That might seem slightly specious, because, in our view, criminalisation is inappropriate in any event.

1193. My second example is perhaps more relevant. You can manifest a defence only if, for example, you can show that it was urgent and that the health and social care trust could not have provided care. There are other organisations, such as NGOs and private organisations, that provide those services in Northern Ireland, and I think that it is probably important that we realise that we are not talking about one organisation. There are a number of organisations that provide alternative services, and I assume that they exist because people use those services, for whatever reason. I do not want to impute a motive for someone deciding to use a service other than the one provided by the health and social care trust, but, nonetheless, people do. Frankly, how do you interpret the amendment if somebody chooses to use a private service for her own reasons? Perhaps the person is worried about her privacy or personal needs, for whatever reason. If her clinician is in the private sector or an NGO, and she does not wish to avail herself of the health service, wishing instead to avail herself of the other service, and it is urgent, is that sufficient for a defence to the amendment? I do not know the answer to that, but I do not think that it is clear. Has it got to be so urgent that the health and social care trust facilities are all closed and are not going to open for a period? There is not the clarity that you need to make a decision as, for example, a clinician, a midwife or a nurse or, indeed, anyone else involved. If you are going to say, "If you get this wrong, you make a judgement and you can face up to 10 years in prison", the idea of the chilling effect of the amendment, to me, is pretty clear.

1194. **The Chairperson (Mr Givan)**: Is it not chilling that it is life imprisonment?

1195. **Mr Allamby**: Creating any criminal sanction of up to 10 years or life clearly has a chilling impact. I do not think that 10 years will make much difference between whether you face life in prison or 10 years, but the earlier point that I made is simply that it does not seem to me to be clear whether you would face 10 years or life imprisonment if the amendment as drafted, which talks about "without prejudice" to the 1861 Act, were applied. If you asked me candidly, "Does the chilling impact really matter?", I would have to say that I do not think that 10 years in prison will have any less chilling an impact on someone trying to have the wisdom of Solomon and make a decision about these issues than life imprisonment.

1196. **The Chairperson (Mr Givan)**: You made a comment that criminalisation is inappropriate. What do you mean by that?

1197. **Mr Allamby**: I mean that our law should be sufficiently clear that, if a clinician or somebody in the private or public sector has to make a decision about whether it is appropriate to assist somebody or

undertake a termination, that person should know and be clear that they are acting within the law. There should not be any uncertainty. Nobody should feel that they were acting within the law and it turns out that, in their genuine and honest belief, they have stepped the wrong side of the line. It should be absolutely clear.

1198. In my view, the law as it stands in Northern Ireland at the moment, with or without the amendment, is not clear on what that position is in all circumstances, except that, in some circumstances, it may well be clear. If clinicians take certain decisions, it may well be beyond the line where you can say, "I simply did not realise what the law said". I do not think that the law has the clarity that we need to ensure that people understand. I take some reassurance in that view from earlier Department of Health consultations around the guidelines, and we have read that the Royal College of Midwives and the Royal College of Nursing have said that it is not clear. If those people are not clear about what the law says — they are expected to abide by the law — there is a problem with our current framework.

1199. **The Chairperson (Mr Givan)**: It is not that the commission is opposed to criminalisation as a way to regulate the issue of abortion?

1200. **Mr Allamby**: Any criminalisation needs to be proportionate and clear in respect of action taken. I do not think that the commission's position is that there are no circumstances in which it would be unreasonable to create a criminal offence. What I am saying is that, in the present law, there is no proportionality and a lack of clarity, and, in our view, the chilling impact is contrary to article 8 of the convention.

1201. **The Chairperson (Mr Givan)**: We could have a long discussion about the issues of clarity and proportionality. Is it the commission's view that the law just needs to be very clearly outlined or that the law needs to change?

1202. **Mr Allamby**: Our position — we have made this clear in correspondence to the Department of Justice — is that there are certain circumstances in which termination should be allowed beyond the current law. That includes circumstances in which there is a serious malformation of the fetus, where there is a lethal malformation of the fetus and in circumstances where people are victims of sexual crimes, for example, rape and incest. In those circumstances, we think that case law and what CEDAW has said mean that our legislation should be extended to allow for termination in those specific circumstances.

1203. **The Chairperson (Mr Givan)**: The issue about the balance of rights leads you into that debate.

1204. **Mr Allamby**: It does.

1205. **The Chairperson (Mr Givan)**: I think you described the unborn child as a fetus, which I assume means "unborn child" when you translate it.

1206. **Mr Allamby**: Yes.

1207. **The Chairperson (Mr Givan)**: I noted you chose the word "fetus". When does the commission believe that rights are ascribed to the unborn child? At what stage?

1208. **Mr Allamby**: The commission starts from a position of, "What does human rights law say on this?". It has been clarified, once again, relatively recently in the ent rk v Turkey case. It is a long-held position. I will quote it, because it is important to put it on the record:

"The Court reiterates that in its judgment in the case of Vo v. France [...] the Grand Chamber held that, in the absence of any European consensus on the scientific and legal definition of the beginning of life, the issue of when the right to life begins comes within the margin of appreciation which the Court generally considers that States should enjoy in this sphere. The Grand Chamber thus found that 'it is neither desirable, nor even possible as matters stand, to answer in the abstract the question whether the unborn child is a person for the purposes of Article 2 of the Convention'

Since then, the Grand Chamber has had an opportunity to reaffirm the importance of this principle in the case of A, B and C v. Ireland […] in which it pointed out that the rights claimed on behalf of the foetus and those of the mother are inextricably interconnected […]

In the circumstances of the present case, the Court sees no reason to depart from the approach adopted in those cases, and considers it unnecessary to examine whether the applicants' complaint as regards the foetus falls within the scope of Article 2 of the Convention."

1209. I think that the court is not prepared to make a clear statement of when and if the right of an unborn child commences. It is a matter for the contracting states to decide, in the absence of any consensus, and, importantly, the rights claimed on behalf of the fetus and those of the mother are inextricably linked. In other words, you cannot decouple them and simply say, "There's a right here and a right over here"; the two are linked.

1210. **The Chairperson (Mr Givan)**: So, you accept that it is entirely a matter for the Northern Ireland Assembly to determine.

1211. **Mr Allamby**: I accept that, beyond the existing rights — they have to be regulated — and in the circumstances that I have outlined in our correspondence with the DOJ, for example, on sexual crimes and in matters of lethal —

1212. **The Chairperson (Mr Givan)**: With respect, that is your view as a commission. The commission is not the legal authority. The margin of appreciation falls to the state. Abortion law is entirely devolved, so it is for the Northern Ireland Assembly to deal with. Does the commission respect that it is for politicians to determine the issue, which current law is very clear on?

1213. **Mr Allamby**: Yes, I do, with the caveat that the margin of appreciation is not unlimited. It is broad, but it is not unlimited. Therefore, international human rights law plays a role in this, but it does not create an absolute right to abortion in a vast set of circumstances. That is a matter. There are also the caveats of how it is regulated, the circumstances within that margin of appreciation, within what we already have and within some of the parameters I have outlined. Sorry, that is a lot of caveats, but, within those, the politicians can, obviously, decide where the legislation sits.

1214. **The Chairperson (Mr Givan)**: And you accept that it should be for politicians to deal with.

1215. **Mr Allamby**: Providing they meet the international —

1216. **The Chairperson (Mr Givan)**: That means you are standing in judgement. That is the problem with all of your caveats. You say that politicians can deal with this so long as you think that that is what they are doing. Otherwise, I take it that the commission is considering being a Trojan Horse when it comes to abortion and trying to change the law through the back door.

1217. **Mr Allamby**: With respect, I do not think it does. When I say that it should be within international human rights law, I do not mean that somehow I am the arbiter of the circumstances. The UK Government and the Irish Government have signed up to international human rights conventions. They have ratified them, and they have to live within them. In some cases, they are justiciable; in other cases, they must report to the treaty monitoring bodies. We are talking about a set of standards that Governments have signed up to, and, in this case, to which the UK Government have signed up. It is not me who signed up to it; you have got to act within what the UK has signed up to.

1218. **The Chairperson (Mr Givan)**: Again, you are wrong in that respect. When we visited the European Court of Justice and questioned its vice-president, he made it explicitly clear that Northern Ireland, within the United Kingdom as a devolved region, would attract the same margin of appreciation that would be afforded to the United Kingdom as a whole. You made the comment that we need to fulfil what the United Kingdom is signing up to, but that is

not how the European Court of Justice considered it when I asked. Specifically on the amendment, we asked if it was reasonable for a state to determine that this service, if you want to call it that, should be restricted to the state. That is ultimately what the amendment is about: should the private sector be involved in the ending of life? This is a serious issue. It is not going to the private hospital for a knee replacement or some other operation; it involves the ending of life. Is it proportionate for the state to decide, "We are going to restrict that to the state being in control."? Again, the vice-president — and it might get to his chamber at some point — made it clear to us that, yes, it was reasonable for us to do that.

1219. **Mr Allamby**: I will make two points. The European Court of Justice takes into account the European Convention on Human Rights, but it normally deals with a different set of issues. I will go back to the A, B and C v Ireland case, because I think it helps answer this question. In Ireland, you had the Offences Against the Person Act 1861; you then had the constitutional amendments around the issue of termination; you had a number of referendums around various aspects of this; and you then had a lack of clarity on the state of the law in respect of how clinicians behaved within it. The European Court felt that it had the right to deal with whether a termination for health and well-being reasons or where the life of the woman was at risk fell within the domain of the court. So, I do not think that I am asserting a personal view. All that I am saying on behalf of the commission is that this is where the law stands. The Offences Against the Person Act 1861 is Ireland-wide, and we have had examples of where it has been looked at and other developments behind it. I do not think it is an untrammelled right for politicians to decide this, but I do say that there is a considerable margin of appreciation.

1220. **The Chairperson (Mr Givan)**: Members, I appreciate that I have taken up a fair amount of time, so let me bring other members in.

1221. **Mr A Maginness**: I understand your arguments in relation to the amendment. You say that, in the belief of the commission, there is a common law right to abortion. I do not accept that, but that is the basis on which you are presenting your proposition. You go on to say that, because of that, article 8 can be engaged in relation to the amendment. I think that is your basic argument. You go on to say — and I think this is a huge leap — that the commission is also of the view that the right to abortion is something that could arise out of article 8. That is my understanding. I hope I am following your argument accurately. To my mind, there is a big leap from criticism of the amendment to saying, "By the way, in terms of the wider consideration of these matters, a right to abortion could arise out of article 8." That is how I understand your argument. I disagree with your conclusion, but that is your argument, and I want to try to understand it.

1222. **Mr Allamby**: It is in our submission, so —

1223. **Mr A Maginness**: I have read your submission, and I have tried to follow it. Most of the authorities that you quote are Polish authorities, and, as the Chair has said, there is a very clear situation in Poland, where abortion is clearly regulated by law. There are restrictions in Poland in relation to abortion, and I suggest to you that Northern Ireland is quite different from that situation.

1224. **Mr Allamby**: It is probably a similar question to the one that the Chair asked. I accept that, in Northern Ireland, the circumstances in which a termination is allowed have been developed by the common law, not by statute. In Poland, that was developed by statute. I think that the principle then is that, once you have a right in certain circumstances, article 8 is engaged. I think that in the European Court of Human Rights in both the Ireland case, where the legislation is not significantly different, albeit that it is augmented in a different way in terms of constitutional amendment from the position in Northern Ireland, article 8 is engaged.

Interestingly, even in circumstances where the case was about the A and B part of the A, B and C case, in other words where termination is about the health and well-being of the woman, the courts held that article 8 was engaged. They decided that it was the circumstances in which a person could deal with the issue, including travelling across the Irish Sea to Britain for an abortion in the case of A and B, was such that there was a sufficient qualified right there. Article 8 is engaged. I do not think that there is any dispute about the engagement of article 8.

1225. **Mr A Maginness**: I do dispute that because I do not think that there is a right under law in Northern Ireland to an abortion. That is a difference of opinion that we have. If there is no right, article 8 cannot be engaged. That is my view. To reiterate the point further, I am very clear that, in the A, B and C case, article 8 cannot be interpreted as conferring a right to abortion. That is why I talk about the big leap that you have made. Throughout the European cases, it is clear that there is a margin of appreciation given to the state and that article 8 as of itself does not create a right to abortion.

1226. **Mr Allamby**: I do not think that the commission is arguing that article 8 creates a right to abortion. What we are saying is that the common law —

1227. **Mr A Maginness**: But, sorry —

1228. **Mr Allamby**: As I discussed at the beginning, the courts have set out certain circumstances where termination would be lawful. Therefore, where there are circumstances where termination is lawful, a regulatory framework and a woman's right, in this case to a private life, is engaged. That is the position of the commission.

1229. **Mr A Maginness**: Maybe I am misunderstanding what you are saying. I thought that you went on to say that you believed that there should be the right to abortion under restricted circumstances and that that is the view of the commission.

1230. **Mr Allamby**: The view of the commission is that, having regard to what the CEDAW committee has said and having regard to the jurisprudence, there are certain additional circumstances where we believe —

1231. **Mr A Maginness**: Do you mean the jurisprudence based on article 8?

1232. **Mr Allamby**: Yes. On the issue of sexual crimes, rape or incest, for example, or where there is a lethal or serious malformation of the fetus, our position is that, in those circumstances, termination should be lawful.

1233. **Mr A Maginness**: You referred to CEDAW. Leave CEDAW aside and forget about it for the time being because it is not justiciable in this jurisdiction as such. Obviously, if article 8 is engaged, you can. I understood that the premise of your argument on abortion — in restricted circumstances, I understand the point that you are making — was based on article 8.

1234. **Mr Allamby**: It is based on articles 8, 3 and 14 in terms of the absence of termination in circumstances of lethal and serious malformation and sexual crimes. It is beyond article 8.

1235. I am quite happy to put on record that, if you were to ask me, for example, whether there is some kind of legal requirement for the Northern Ireland Assembly to enact the exact equivalent of the 1967 Abortion Act, in human rights terms, the answer to that would be no. I understand the position that the 1967 Act cannot be replicated. I cannot make an argument that says that, under human rights law, the 1967 Act must be enacted in Northern Ireland based on a human rights argument. I understand that. That is not me then saying that there is a kind of position of absolute autonomy of the Northern Ireland Assembly to decide the circumstances. In our view, there are some legal and human rights issues about when termination should be lawful. It is not about imposing the 1967 Act on the Northern Ireland Assembly, and that is putting aside views on it. That is a

straightforward legal position rather than a personal one.

1236. **Mr A Maginness**: One of the principle provisions of the 1967 Act relates to a fetus that is suffering from some form of difficulty in terms of malformation and that sort of condition. There is provision there for abortion, practically right up to birth. Are you saying that the Assembly should consider that provision?

1237. **Mr Allamby**: The commission's position is clear. International human rights standards do not require the Northern Ireland Assembly to enact the 1967 Act. We think that that is clear.

1238. **Mr A Maginness**: Forgive me —

1239. **Mr Allamby**: The commission does not take a position on what the abortion law should be in Northern Ireland. The commission's role is to determine what international human rights standards and jurisprudence say about this issue. We think that they say that this amendment would be proved to be unlawful — that is our considered view — and contrary to article 8. I think that I have come back to where we are with what we are discussing today. That is our position. The commission does not take a specific view on the issue of the law on abortion other than to look at what international human rights standards have to say.

1240. **Mr A Maginness**: Leaving aside the 1967 Act, you are saying that there ought to be provision for abortion here in Northern Ireland, arising out of article 8.

1241. **Mr Allamby**: I am saying that, considering articles 3, 8 and 14, the commission's position is that, in circumstances where a woman has been a victim of a sexual crime, for example incest or rape, or where there is a serious malformation of the fetus, termination should be lawful. That is the commission's position, and that is the correspondence that we have had with the Department of Justice.

1242. **Mr A Maginness**: In the draft bill of rights that the commission presented to Parliament, was there any provision in relation to abortion?

1243. **Dr Russell**: There was a provision on reproductive healthcare in the advice, but there was no specific provision on abortion.

1244. **Mr A Maginness**: Can you tell me why there was no provision?

1245. **Dr Russell**: It was a decision made by the then commissioners.

1246. **Mr A Maginness**: Yes, but you inherited that commission. You cannot say, "Well, that was somebody else." It is the same commission.

1247. **Dr Russell**: The commission's mandate under the draft bill of rights was very specific. They were provisions that would supplement the European Convention on Human Rights to address the particular circumstances in Northern Ireland. It was a narrow mandate. It was not a broad mandate. It was not a free-for-all on human rights and what provisions the commission might have liked to have put forward and recommended for a possible bill of rights for Northern Ireland. It was very particular to the mandate arising out of the agreement. In the commission's view at that point, some of the issues that are being raised at the minute probably go beyond the mandate of the commission.

1248. **Mr A Maginness**: Is another reason not that there was no consensus on this issue?

1249. **Dr Russell**: Amongst the then commissioners?

1250. **Mr A Maginness**: No, not amongst the commissioners but amongst the forum that was dealing with the draft bill of rights.

1251. **Dr Russell**: That is correct. As you know, the forum is very separate from the commission.

1252. **Mr A Maginness**: Absolutely, and I am not saying that you were in charge of the forum or anything like that. However, the forum failed to reach any consensus on this particular issue.

1253. **Dr Russell**: That is my understanding, yes.

1254. **Mr McCartney**: Most of the main issues have been teased out. However, in your earlier comments, you mentioned the idea that the law should be the theoretical position adopted by the legislator. You went on to say that the practical application of it is sometimes unclear and incoherent. Is that your position in this case?

1255. **Mr Allamby**: Perhaps I should make it absolutely clear. What I am saying is that what the courts have said, not just on this issue but on a number of issues, is that, in convention terms, where a right is engaged, that right should not be theoretical or illusory; it should be practicable and effective. That is the lack of clarity point. In other words, if there is a right — in our view, article 8 is engaged in these terms — you have to make that right meaningful. If, for example, there is a right of physical and psychological integrity of a woman, in this case, the lack of clarity means that she and clinicians are not able to make sure that that right can be enacted in practice. In other words, we are saying that the rights must be effective and practical once they are established. So, it must not be a right that you cannot actually exercise. That is the point that we are making. The right must be exercisable in a reasonable way.

1256. **Mr McCartney**: I know that we are dealing today just with the amendment. However, in terms of the amendment being an extension to or part of the 1861 Act, your position is that it is not coherent and clear because of a lack of guidelines.

1257. **Mr Allamby**: As the legislation stands, if you were a clinician, whether a clinician in a private clinic or a clinician in an NGO setting or elsewhere, it is not clear what the parameters are. Our position is that the legislation is unclear for the reasons that I have outlined. However, it continues to have a chilling impact because there is a criminal sanction of up to 10-years' imprisonment. For those two reasons alone, the amendment, in our view, would be unlawful if enacted.

1258. **Mr McCartney**: OK, so it is the sanction, the proportionality and the chill factor all run together.

1259. **Mr Allamby**: Yes.

1260. **Mr McCartney**: Notwithstanding the points that you made around clarity and coherence, would you make any distinction in relation to whether, in the limited circumstances, there is a difference between a termination in a public health facility and a private health facility?

1261. **Mr Allamby**: The point that I am making is that there is a recognition that, if nobody ever used a private clinic or an NGO service, clearly there would not be a need for this kind of amendment. However, people do use those services for, I suspect, a variety of reasons. I am sure that some of the reasons why people use those services are perfectly legitimate and proper.I struggle to think of any other healthcare treatment where we decree that you should go only to a public health provision. People can decide to avail themselves of the private health sector or not. They can decide to avail themselves of the NGO sector that provides health services or not. I am not sure that we are prescriptive anywhere else in the law and are saying, "You must only use a public health facility". It is an unusual amendment, to put it mildly, that says that. In these circumstances, as far as I can see, the attempt is to say that people must use a publicly funded health facility rather than a private facility. However, if you choose to go to accident and emergency on the Lisburn Road and pay, you are perfectly entitled to do that. Nobody says that you must go to the emergency department at Altnagelvin or the Royal, for example, as a matter of law.

1262. **The Chairperson (Mr Givan)**: I would certainly expect a good socialist to want it to be restricted to public service though.

1263. Is it not fair to say that other European member states have decreed that there are certain activities that will be carried out exclusively by the state, including medical activities? In France,

for example, pharmaceuticals cannot be dispensed outside of a pharmacy. You cannot get them in a supermarket or shop. You can get them only in a properly registered pharmacy licensed by the state. You are saying that this is unusual, and that may well be the case, but is it illegal?

1264. **Mr Allamby**: I am not suggesting that it is illegal. The point I am making is that it is very unusual. Chair, I have to confess that I am clearly not as well acquainted as you with the laws of other European countries and access to their services in a public and private sphere. All I am saying is that, in a UK context, I am struggling to think of examples where healthcare, whether treatment or provision, is confined to the public sector.

1265. **The Chairperson (Mr Givan)**: I accept that that is the case in a UK setting. However, for the purposes of European law and European human rights, Northern Ireland is just a region in the European Union. Therefore, we can have laws on a Northern Ireland basis. That is why I am a devolutionist. We do not need to follow slavishly what happens in Westminster.

1266. What is actually unclear in the amendment? You say that it needs to be clear and practicable. However, what is unclear in trying to put a provision into law that says that it is only the public sector that can do this and, in effect, only the NHS? Surely the medical profession, when it reads this, will say, "Absolutely and without a shadow of a doubt, this cannot be done in a private clinic. It has to be done on the NHS". There is nowhere in the amendment where that is not clear. You might not agree with it, but surely it is clear.

1267. **Mr Allamby**: With respect, I am not sure that it is. Subsection 2(b) is the defence that it is lawful to be involved in:

"the act or acts ending the life of the unborn child … lawfully performed without fee or reward in circumstances of urgency when access to premises operated by a Health and Social Care Trust was not possible."

1268. A woman may say, for whatever reason and in whatever the circumstances that she is not prepared to go to a public facility and that that is her position. A clinician may then try to persuade her by saying, "I think you should use a trust facility", and the person reiterates that they cannot and will not do so, for x or y reasons. If the clinician takes it that the person has genuinely made the decision, and then takes some action, is that a lawful defence under the proposed new clause 11A(2)(b)? The answer is that I do not know. If I were the clinician in that position and the person had convinced me that they were not prepared to go to a health and social care trust facility; is that sufficient to constitute a lawful defence for me? I might have a view, and you might have a different view. I do not think that it is clear what the answer would be in those circumstances.

1269. **The Chairperson (Mr Givan)**: Proposed new clause 11A(2)(b) is saying "without fee or reward". Therefore, there should never be a monetary exchange when it comes to the ending of a life. Therein lies another reason why I think it is necessary to restrict it to the NHS. How can you deal with the perceived conflict of interest, real or not, when there is a financial interest for private service initiatives in this? So, this deals with that. You cannot go somewhere where you will have to pay for it.

1270. Say someone rings 999, and the ambulance is on its way to the hospital. I cannot envisage the circumstances in which subsection (2)(b) would be necessary, but say the ambulance could not get to the hospital in time. I do not know whether they are able to carry out a termination in those circumstances, but if it were to be carried out, there would be a defence allowed under clause 11A(2)(b). It is very difficult to envisage how you could not avail yourself of an NHS hospital in these circumstances. I cannot imagine how, but this deals with the potential exception that I cannot envisage. That is really what 11A(2)(b) is about.

1271. **Mr Allamby**: It is interesting; we could almost have a table tennis match, batting it back and forth. Whether your view or mine is the correct view of clause 11A(2)(b) is neither here nor there. The issue is that if, eventually, the matter goes to court and it turns out that my view is right or wrong, then apart from an "I told you so", there are no real ramifications for me or you, Chair. On the other hand, if I am a clinician, and I have to make a decision about whether to do something in some circumstances, and I may face up to 10 years in prison as a result of it, the stakes are very different. The point I am making is that, interestingly, we have two views about what might be covered by clause 11A(2), for example, but clinicians have to make decisions that have ramifications for their own liberty, and that is a very different situation.

1272. **The Chairperson (Mr Givan)**: Your point is that the prevailing law in Northern Ireland has a chilling effect on clinicians, and so, whether this amendment is passed or not, the commission's view is that Northern Ireland's law, as it stands, has a chilling effect for clinicians.

1273. **Mr Allamby**: As you know, the issue of guidance about where we are with the existing law has exercised the courts on several occasions. I am certain that we do not have sufficient clarity about the position, and that is deeply unsatisfactory. The current situation is not, in my view, clear and unequivocal, and it should be made as clear and unequivocal as possible.

1274. **The Chairperson (Mr Givan)**: Some might say that it is actually very clear, but that there has just been an adverse reaction because it has been so clear and because some do not agree with the law as it is in Northern Ireland.

1275. **Ms Hild**: I will just note that, even if you look at the judgements on the guidance issue from 2004, you can see that the judges in the Court of Appeal were very clear that there is lack of clarity. They also spoke about the impact of penalisation and the criminal effect here. Again, that has been carried through. It was outlined very clearly by those judges that there is a need for guidance, that there is uncertainty among doctors and practitioners and that they were concerned by that. It is something that is widespread. They spoke about the fact that judges also felt that there was a lack of clarity.

1276. **The Chairperson (Mr Givan)**: The difficulty I have with the guidance issue is that it is guidance on criminal law. You may not want abortion to be regulated by criminal law, but it is and has been in Northern Ireland since 1861. This amendment deals with the criminal law, because that is how abortion is dealt with in Northern Ireland. The guidance will only ever be a guide to criminal law. It cannot be — and I used the phrase earlier — the Trojan horse when it comes to abortion law. The guidance cannot do that. It has to be dealt with through criminal law. Do you accept that?

1277. **Mr Allamby**: I accept that that is the current position we are in, but, as I said earlier, the Royal College of Midwives and the Royal College of Nursing have made it clear that the current position in unsatisfactory for their members. Whatever their members' views are on the legal position, they need clarity on decisions that they may have to make in carrying out their profession. They are saying that it is unclear, and I have to say that, in those circumstances, I understand entirely why that is completely unsatisfactory.

1278. **The Chairperson (Mr Givan)**: Are they not satisfied with the clarity because they do not like the law?

1279. **Mr Allamby**: I cannot speak for either the Royal College of Midwives or the Royal College of Nursing and give their position.

1280. **The Chairperson (Mr Givan)**: I have heard from a number of their spokespersons, and they would certainly like a change in the law. There is no question about that. My problem with what the commission is saying is this: setting aside this amendment, it is saying that the law in Northern Ireland

has a chilling effect. You clearly do not like the law. That is why you are writing to the Department of Justice. You are highlighting issues of rape and foetal abnormalities. You do not like the law, so you are hostile to this amendment from the get-go. Everything is chilling and unclear. Where there is absolute clarity, and you do not agree with it, these are the arguments that are being advanced.

1281. **Mr Allamby**: It is not that we do not like the law. That is not how I would characterise it. The question for us as a commission is whether it meets international human rights' standards and jurisprudence. Our view is that in certain circumstances it does not do so. That is the position. It is not a matter of whether the commission likes or dislikes the law.

1282. **Dr Russell**: The role of the commission is not to like or dislike. It is to advise the Assembly on compliance with binding human rights' standards. We do not deviate from that. This is not a question of what the commission may or may not like. It is the role of the commission to advise the Assembly in accordance with the human rights' standards that have been ratified and that bind the Assembly and the Executive.

1283. **The Chairperson (Mr Givan)**: It is your interpretation of those human rights' standards and court judgments. All of this is subjective. The Human Rights Commission is not an expert or an authority on human rights. It is not the Human Rights Commission that would decide when the Assembly is in compliance. Ultimately, the courts would decide. When it comes to legislation, it is the role of the Advocate General, the Secretary of State and the Attorney General. Legislation in Northern Ireland does not go to the Human Rights Commission as part of a tick-box exercise.

1284. **Dr Russell**: The Human Rights Commission is a national human rights' institution established under the agreement. All legislation introduced to the Assembly is passed to the Human Rights Commission by statutory requirement so that it can provide its advice. The Human Rights Commission is considered to be an expert with regard to human rights' standards in Northern Ireland. Undoubtedly, some issues are justiciable and can be disputed in the courts, but, ultimately, the commission has a formal, functional role to advise the Assembly.

1285. **The Chairperson (Mr Givan)**: Did the Assembly get it wrong when it voted by a majority to pass this amendment?

1286. **Mr Allamby**: It is not about whether it got it right or wrong.

1287. **The Chairperson (Mr Givan)**: If there had not been a petition of concern, this would be the law.

1288. **Mr Allamby**: The Assembly is entitled to pass laws. Ultimately, those laws may then be challenged, and it is up to the courts to decide.

1289. You are quite right: the commission could not strike down this amendment, if the Department of Justice decided to implement it. We, or somebody else, might well decide to take a legal action, and then, ultimately, it would be for the courts to decide.

1290. The commission is a national human rights' institution. It does have a role. It has been accepted that we have statutory duties and powers under the Northern Ireland Act 1998. I think there is then a recognition, under the Paris principles, about the pluralism of the commission and that it is expected to have expertise in areas of human rights, and I think we have that. However, we do not have a monopoly on wisdom. Not everything we say will automatically be followed by the courts any more than everything that the Assembly enacts will automatically be upheld by the courts. It would be a matter for the courts to decide in a legal challenge. That is the role of the courts. They are independent of the executive. It is not a matter for us. All we can do is ask the courts whether something is lawful or not.

1291. **The Chairperson (Mr Givan)**: With respect to the correspondence with the Department of Justice, is the

commission threatening potential legal action in respect of these issues?

1292. **Mr Allamby**: Yes, we are considering legal action on those issues.

1293. **The Chairperson (Mr Givan)**: Do you not think that it should be a matter for the Northern Ireland Assembly, and that the Human Rights Commission should not usurp the democratic responsibilities that we have on behalf of the people?

1294. **Mr Allamby**: I do not think that our role usurps the role of the Assembly. Our role is to examine human rights' international standards and laws and decide whether to offer advice, as in the circumstances where we have offered advice to the Department of Justice. It is then up to the Department of Justice whether to take that advice on board. It is within our statutory remit to ask the courts for a decision if we choose to do so. That will almost certainly happen here on the issues that have arisen in our correspondence with the Department of Justice.

1295. **The Chairperson (Mr Givan)**: So, David Ford might as well put his consultation in the bin. What is the point of having a consultation or seeking legislation through the Assembly? The Human Rights Commission is just going to bypass the Assembly and go to the courts. If the Assembly rejects what David Ford wants to do, you are not going to respect the will of the Assembly. You are going to go to the courts. You are usurping the mandate of democratically elected politicians to deal with these issues.

1296. **Mr Allamby**: With great respect, our role is to uphold, and to offer advice on meeting, international human rights' standards. The commission does not act lightly. It is perfectly proper for the commission to consider a legal challenge to a democratically elected body — and I have great respect for the democratically elected body that is the Assembly — if it chooses, in our view, to breach international human rights' standards and jurisprudence. It is perfectly proper for us to ask the courts to adjudicate on that matter. We are not seeking to traduce, in some way, the Assembly's democratic mandate. Our mandate is to promote and protect human rights. Frankly, we would not be doing our job if we did not do that.

1297. **The Chairperson (Mr Givan)**: There is no point in me repeating what I said earlier. I take exactly the same view that I took a few minutes ago on your threatened legal action, which, to be honest, I find astounding. I find it astounding that, during a consultation exercise that has been commissioned by the Department, the Human Rights Commission has decided to put in a letter threatening legal action. When politicians are having to deal with this, the Human Rights Commission is, behind the scenes, pulling the strings and threatening legal action. I just find it utterly unacceptable that the commission would conduct itself in this manner. It undermines what David Ford is doing, and it undermines the authority of the Assembly to deal with it. In effect, you are saying that if the Assembly does not deal with it in the way that you believe it should be dealt with, you are going to go to court and try to bypass the Assembly. I am repeating myself, but I do find it astounding that the commission has acted in the way it has.

1298. **Mr Allamby**: I will repeat myself, but I will be very succinct. The role of the commission is to uphold, protect and promote human rights. It is within the international framework. The framework has not been set by the Human Rights Commission, it was set by international treaties that have been ratified by the UK Government and, therefore, these are not standards that have been set up by the Human Rights Commission. They are international standards that have been signed up to by the UK Government. Part of our role is to promote and protect those rights, and that is what we will do.

1299. **Mr McGlone**: I have just two points, and I will be brief. Paragraph 46 in your submission says the following about the proposed amendment:

"The Commission notes that the restriction in the amendment may be read as being so broad as to include certain forms of contraception which are legally available in Northern Ireland."

1300. Will you elaborate on what types of contraception are meant?

1301. **Mr Allamby**: One example is the morning-after pill. As far as I can see, this amendment is so widely drawn that administering or distributing certain forms of contraception that are legally available in Northern Ireland could be contrary to it. I am not suggesting that this is what is intended, but it could be interpreted in that way.

1302. **Mr McGlone**: Thank you. I will take you back to something you said earlier about the right to life. I refer to paragraph 53 of your submission on taking the appropriate steps to ensure that the life of the patient is protected. I listened very carefully to what you were saying earlier about the rights of the fetus, or pre-birth child, and the mother being inextricably linked. In your interpretation of the interpretation, is the pre-birth child a patient? If they are inextricably linked, their rights are inextricably linked.

1303. **Mr Allamby**: The first thing to say is that it is not my interpretation. What we have said to you this afternoon in our submission is that it is the interpretation of —

1304. **Mr McGlone**: Absolutely. Maybe I should say that it is your articulation of the interpretation.

1305. **Mr Allamby**: — of human rights. I have attempted to be fair minded, measured and objective about what the courts have said. It is not my interpretation or the commission's particular interpretation; it is what the courts have said, and I am keen to stick to that. I am not sure that I know the answer to whether an unborn child is a patient. I do not think that it is an issue that I can fall back on and say, "The court considered this, and here is the answer".

1306. **Mr McGlone**: That is fair enough. The paper states:

"The positive obligations imposed on the State by Article 2 of the Convention imply that a regulatory structure be set up, requiring that hospitals, be they private or public, take appropriate steps to ensure that patients' lives are protected."

1307. You said that the rights of the fetus, or pre-birth child, and the mother are inextricably linked. I am just seeking some sort of clarity around everything that had been said before in your document around the rights of the mother. Perhaps you want to come back to us if there is something in international law that expands on that or clarifies that.

1308. **Dr Russell**: We could look at it and come back. The short answer is that you have asked a legal question that probably has not been considered by the courts.

1309. **Ms Hild**: I can speak specifically to the quote you are referring to. It relates to a case where the mother and the fetus died. The chief commissioner read a quote from the report earlier. The court looked at the situation of the fetus because it was asking about article 2 rights for the fetus in that situation. The court held that it was not something that it needed to consider at that time in that particular case.

1310. In this context, in respect of the right to life, the issue is whether the amendment is clear enough in order to ensure protection for circumstances in which a woman's life may be endangered and that additional threat of prosecution in circumstances where —

1311. **Mr McGlone**: I understand entirely where you are coming from, but it is where the rights of the fetus, or pre-birth child, are inextricably linked with those of the mother and the interpretation of the "patients' lives are protected". I note that the plural is used there.

1312. **Mr Allamby**: As I understand the position, in respect of article 2 and the right to life, the court has never said that you look at the right of the mother and the right of the unborn child separately. They are inextricably linked. So, the answer to the question

of whether the unborn child has a separate right based on being a patient, on the basis of the jurisprudence of the European court, is no, in my view.

1313. **Mr McGlone**: Why did they use the plural when they talked about the "patients' life?" That, to me, is taking us into a different area. You are the legal people. Maybe you want to come back on that if there is some sort of legal information.

1314. **Dr Russell**: We can certainly come back, but when we talked about the margin of appreciation and restrictions that can be put legitimately by the state on access to termination of pregnancy, the state may well be restricting access to termination of pregnancy in order to protect and provide domestic protections for the unborn child. So, there is a balance there around what will be protected by domestic law. Clinicians may well have a view with regard to that.

1315. **Mr Allamby**: In that particular case, I do not know why the word "patients'" was used, but the court said:

"It considers that the life of the foetus in question was intimately connected with that of Mrs entürk and depended on the care provided to her."

1316. So, I do not think, in the particular case that the quote comes from, that there is a separate assessment of, in that case, a child that was being carried that they knew was not going to come to term because there was a lethal malformation. I do not think the courts were saying that there are two separate sets of rights recognised in article 2. It remains the position that they are inextricably linked.

1317. **Mr McGlone**: I am not talking about two separate sets. It appears to me, from the logic of being inextricably linked, that, to my simple mind, with the use of the plural again, there are co-existing rights linked between mother and child. You may well want to clarify that. As you spoke and as I read it last night I was sure. You may want to clarify if there is any previous law around that. There may well not be, but it has been raised as an issue today here.

1318. **Ms Hild**: I think I can provide a little bit more clarity for you. Basically, what usually happens in European Court of Human Rights judgements is that you have a set of general principles that set out the requirements on the state. This is one of those general principles. All patients who go to private and public hospitals have to be protected in that way, so the regulatory system has to be set up. This is setting out the general principles at that part of the judgement, and then, later on, those principles are applied to a particular case. So, this does not actually relate to that particular issue. It is simply all patients.

1319. **Mr McGlone**: But, you agree that it raises a bit of an anomaly in interpretation? It can, depending on the context in which you read it. As I read it last night, I was not reading the rest of the case.

1320. **Mr Allamby**: I am not sure, if you read the rest of the case, that it does.

1321. **Mr McGlone**: Maybe so, but —

1322. **Mr Allamby**: I am happy to take it away and have a look at the issue if that is helpful.

1323. **Mr McGlone**: Alright, thank you.

1324. **Mr Dickson**: I will say at the outset that I wholly value the role that the Human Rights Commission plays in Northern Ireland in respect of its relationship with this establishment. It is important that you exist and that the Assembly recognises the role that you have to play. I certainly recognise your role as an appropriate body under the legislation to provide us with the advice, guidance and concerns that you have in respect of this and any other matters.

1325. I turn specifically to the concerns you have that the amendment would have the potential to widen the net to include the morning-after pill. I just want to test how realistic you believe that is. Is it a scaremongering tactic on your behalf or do you have a genuine and real concern? What would the effects of that be? Could we find an organisation that might feel that the morning-after pill is a step too far and takes legal action

against someone who either prescribes it or who hands it over at the chemist's counter?

1326. **Mr Allamby**: I do not think it is scaremongering. What we are saying is that the amendment, as drafted, would allow someone, if they wish to and for whatever reason, to take a legal challenge against somebody who was providing access to the morning-after pill. I do not think that is scaremongering. I do not think the intent of the amendment is to do that. To use the Trojan Horse analogy, I do not think it is a Trojan Horse for that purpose, but that does not mean that it could not happen. That is our concern. I do not think that is scaremongering; it is a genuine objective assessment.

1327. **Mr Dickson**: And it is not unreasonable to suggest that there are organisations out there that would wish to take that type of action. Even though it is not a Trojan Horse and the proposer is not suggesting that, there are nevertheless those out there who could draw on that part of the amendment and pursue the matter.

1328. **Ms Hild**: We would certainly refer to the Smeaton case, for example, which was a 2002 case in England that tried to make that argument about the morning-after pill, saying that it in fact fell under the 1861 Act. In that case, the court felt that it did not, and the case did not succeed. It is certainly the case that, as you point out, there are organisations that would take such a case. Furthermore, the issue is that the language that is used in this amendment says:

"the life of an unborn child at any stage of that child's development"

1329. is not language that is used in the existing legislation and is not language that has been considered. That argument could be made.

1330. **Mr Dickson**: So, in a sense, we are not even debating what we have debated for some time around this table, which is when life begins and things like that. It is quite simply "at any stage", and that has to be at the point where someone knows that they are either pregnant or are likely to be pregnant and takes the morning-after pill.

1331. **Mr Allamby**: We are saying that it leaves itself open to that kind of challenge. Although that may not be its intent, it is drafted in a way that means that that kind of challenge would be open to someone or an organisation to take. It is drawn very widely indeed.

1332. **Mr Dickson**: I will take you back to the other point that you referenced, which was on the actions of a clinician acting outside the health service in dealing with the situation. You painted the scenario of an individual refusing or not wishing under any circumstances to use a health service facility. The clinician would then be torn between acting and potentially breaking the law and acting and not taking a fee in the hope that that will protect them, but they will have done it in premises that are not prescribed. All those doubts exist. That is referred to as the chill factor. I understand the concern that that could cause. The question is this: what happens if the clinician says, "I am sorry, but I really cannot help you. I am refusing. I will not help you in these circumstances. There is only one place that you can go to, and that is a health service facility"? Remember that the areas under which this can be permitted include the mother's mental state. In those circumstances, if the mother's mental state led her to walk out of that advice centre and commit suicide or simply refuse any further treatment, what effect could that have on the clinician who refused?

1333. **Mr Allamby**: It is interesting that, in at least one of the Polish cases, for example, there was a statutory law, and the question was on how clinicians treated the individuals in those circumstances. Ultimately, there was a set of professional ramifications as a result of not providing treatment in a way that allowed the termination in the circumstances under the Polish law. It seems to me that you have to have the wisdom of Solomon as a clinician in this kind of case to decide what you are expected to do in

these circumstances. It also seems to me that that is an unfair burden to place on a clinician who may have to make an extremely difficult decision with ramifications that that person cannot foresee. As I said, it does not seem to me to be particularly satisfactory. Going back to the jurisprudence of the European Convention, I do not see how this amendment meets the notion of clarity and proportionality, bearing in mind that, in our view, article 8 is engaged in this case.

1334. **Mr Dickson**: On the one hand, the clinician is left open to legal action if they take action. If, on the other, they refuse and there are fatal consequences as a result of that refusal, could the survivors or family take legal action against that clinician?

1335. **Mr Allamby**: I think that the question might become about whether that person was individually liable or whether the state was liable.

1336. **Mr Dickson**: Indeed. Could the state be liable as well?

1337. **Mr Allamby**: I think that the answer is that some positive obligations are imposed on the state and that, therefore, there would be legal consequences in those circumstances. We quoted the entürk case in our submission, saying:

"The positive obligations imposed on the State by Article 2 of the Convention imply that a regulatory structure be set up, requiring that hospitals, be they private or public, take appropriate steps to ensure that patients' lives are protected."

1338. So, in my view, one has to act within the law on the legal position and when the criminal law applies. Bearing in mind the common law situation, that is not currently clear.

1339. **Mr Frew**: You made an argument on the morning-after pill, and given that it is not in the amendment, you could argue that that is basically pure speculation on your part. Having said that, from listening to your commentary, it seems that we are being told that human rights do not apply to the unborn child. What is your comment on that?

1340. **Mr Allamby**: I do not think that the phrase "human rights do not apply the unborn child" is an accurate characterisation of the position. Our understanding of the position on article 2 of the convention, as it has been interpreted by the court, is that the human rights of an unborn child and the mother are inextricably linked. The issue is one in which there is a margin of appreciation in how states deal with this matter, but, once you set some provisions, whether in common law or statute, that say that there are circumstances in which a termination is lawful, it must be effectively regulated to make that right effective and not illusory, because it engages rights in the convention. What the court has not done is make clear exactly what the rights of the unborn child are under the convention.

1341. **Mr Frew**: What is your comment on the fact that it is unclear?

1342. **Mr Allamby**: I think that the court has taken the view that there is not a consensus across the contracting states on the issue. It has made clear that the substantial majority of Council of Europe members have some statutory provision for abortion, but there is nonetheless not a consensus about when the rights for an unborn child commence. The court is not prepared to, effectively, make that decision in the absence of a broad consensus. What I or the commission think about that is probably neither here nor there; our role is simply to articulate the current position. That is the position.

1343. **Mr Frew**: Yet, the commission sees fit to challenge this Government and the actions and the laws that they would pass, yet you will not challenge or make comment other than to say that it is neither here nor here when it comes to an unborn child's rights.

1344. **Mr Allamby**: I understand that. If there is to be a challenge, it is likely to be under articles 3, 8 and 14. We have offered our advice to the Department of

Justice. The Department of Justice is perfectly entitled to accept or reject that advice. If we think that it is in breach of human rights law, our statutory position is that we as a commission are, I think, entitled to make the judgement that the courts should clarify that.

1345. **Mr Frew**: You have a right to comment, but do you have a right to challenge?

1346. **Mr Allamby**: We have a right to take legal action. It clearly must be where we genuinely believe that there has been a breach of human rights law, and that is what we genuinely believe. Ultimately, it will be a matter for the courts to decide.

1347. **Mr Frew**: This may sound like an oxymoron, but what human rights does a dead person have?

1348. **Mr Allamby**: There is a set of issues about other immediate family matters. I do not have an obvious and pat answer to a dead person's rights. Frankly, I would need to reflect on that.I do not think it would be helpful if I tried to extemporise on that.

1349. **Mr Frew**: Does the right to a burial or the right to be treated with respect fall within their rights?

1350. **Dr Russell**: The rights transfer to the next of kin.

1351. **Mr Allamby**: We might engage family members, as opposed to the dead person, on a right to a burial. There might be a set of issues about the person's wife, husband or partner, for example, rather than the individual who has died.

1352. **Mr Frew**: I asked because I am wondering whether you, as a commission, have any concerns about the treatment of a child after the abortion.

1353. **Dr Russell**: I will go back to the initial judgement that Les mentioned about the rights of an unborn child and the rights of a mother. In the instance that you are highlighting, it is clearly the article 8 rights of the mother that are engaged.

1354. **Mr Frew**: So, there are no rights of a child in the womb, or after the event of an abortion.

1355. **Mr Allamby**: The rights of the unborn child are inextricably linked with the rights of the mother. The court has said that you cannot decouple those rights. They are not separate rights; they are interlinked. I do not think it is accurate to say that the unborn child has no rights whatsoever. I do not think that that is what the court has said. I do not think the court has ever gone to the extent of saying that it is a right that is separate from the right of the mother. I think that that is reflected in domestic court judgements as well.

1356. **Dr Russell**: There are issues in public policy that have, obviously, been outside human rights law. They include the retention of organs and such things that happen as a result of medical procedures. They have been well versed in the UK. I am not clear about that offhand, but I would have to consider whether human rights matters were brought to bear in those cases. Certainly, article 8 rights of parents and family members are engaged when it comes to a death, regardless of whether it is a child or an adult.

1357. **Mr Frew**: I ask this question genuinely, because I do not know the answer, Chair. After an abortion, is the child a dead person?

1358. **Dr Russell**: You are asking a straight legal question now rather than about a human rights matter. We would have to go away and look at what the law says.

1359. **Mr Allamby**: I do not know, in legal terms. I could speculate, but I do not think that that would be helpful. If it would be useful, I would be happy to go away and write to the Committee with a more considered view.

1360. **Mr Frew**: That would be useful, Chair.

1361. **Mr A Maginness**: May I make one point on that? The Attorney General for Northern Ireland and Siobhan Desmond brought a case against the senior coroner for Northern Ireland. The Court of Appeal allowed an appeal by the Attorney General and ruled that the coroner can carry out an inquest into the death of a stillborn child who had

been capable of being born. In other words, personhood was given to the stillborn child. So, Mr Frew raised a very interesting question about whether an aborted child has personhood or could acquire personhood in the way that the Court of Appeal gave a stillborn baby personhood. Of course, it is interesting that, in our legislation, the baby, to use that term, in the womb is referred to as a "child". That is a significant statement in legislation. Perhaps you could explore that when you come back to the Committee on this, because it is very important.

1362. My other point is that rights develop. In the middle of the 19th century, slaves were slaves; they had no rights. Then, of course, they were granted the right to be people — to be citizens. Could there not be an evolving situation in the jurisprudence of the European Court that could lead to a situation where you would have that separation between mother and child and in the womb and that the fetus could acquire rights?

1363. **Mr Allamby**: I am not sure that there is great value in me trying to speculate on where this issue will go next as a living instrument. I am familiar with the Attorney General's challenge to the coroner. I have not got the Court of Appeal decision here. I think that it would make much more sense for us to go away and to give you something more considered, and I am happy to do that. That is probably the right way to address Paul Frew's point.

1364. **Mr Poots**: At the outset, Chair, may I say that we get less evasiveness from our Ministers than we are getting from Mr Allamby today? It really is not conducive to getting to the crux of the issues and dealing with them appropriately. Mr Allamby is dancing around on the head of a pin, as opposed to trying to answer questions, and that limits any benefit to his coming to the Committee to give evidence. Perhaps he will reflect on that.

1365. Last week, we received evidence from Amnesty International and heard its views on human rights law. It was very clear that the unborn child or fetus had no rights until it was born. Do you have a different interpretation of human rights law than Amnesty in that instance?

1366. **Mr Allamby**: I think that today we have set out our understanding of the legal position from the European Court. I am not in a position to comment on Amnesty International's evidence. I have not heard it or read it. Our position is our view on the position in law, based on the jurisprudence of the court.

1367. **Mr Poots**: Which is that the unborn child has rights, but they are associated with the rights of the mother.

1368. **Mr Allamby**: They are inextricably linked with the rights of the mother, yes.

1369. **Mr Poots**: But they have no independent rights.

1370. **Mr Allamby**: In our view, in looking at the jurisprudence of the court, they do not have a separate existence. That is our understanding of the law, and I think that that is reflected in domestic and international law.

1371. **Mr Poots**: OK. There was a case in the United States in which cancer was identified on the lip of an unborn child. They were able to remove that cancer pre-birth. Would a child in that circumstance here in Northern Ireland be entitled to that sort of care from the health service?

1372. **Mr Allamby**: Off the top of my head, I cannot give you a satisfactory answer. I would have to reflect on that.

1373. **Mr Poots**: These are legitimate questions, Mr Chairman. I am not asking —

1374. **Mr McCartney**: The Human Rights Commission is here to answer questions on the amendment. We are being very liberal with our questioning. People have come here to talk about a particular clause and an amendment and have been briefed on that, but they are being asked questions that they are not briefed on. They are being honest by saying they do not know.

1375. **Mr Poots**: The amendment is about unborn children.

1376. **Mr McCartney**: No, it is about whether a certain aspect of law can be extended to prohibit something happening in a private clinic. It is nothing to do with the rights of the unborn child. That might be for another day in another debate; I have no issue with that. People have come to the Committee today to talk about a particular clause and then to answer questions. Paul Frew asked legitimate questions and was given the considered answer that the witnesses would come back to him. In fairness, you cannot accuse people of not answering questions that they are not briefed to answer.

1377. **The Chairperson (Mr Givan)**: In fairness, the commission talked quite widely around the issue of abortion. They set the context and then moved on to the amendment. There is an element of them having invited a much broader discussion by their opening remarks.

1378. **Mr McCartney**: Fair enough; that has been teased out, and that is acceptable. However, to say that people are being evasive when they say that they will come back with an answer is a bit unfair, to be quite fair.

1379. **Dr Russell**: All I wanted to say was that you are raising an issue, and you are using the language of rights. Where the state may choose to provide a service and where a mother may choose to avail herself of a service, the state provides an entitlement to make an intervention to save the life of the unborn child, which is a perfectly legitimate service to provide and action for the state to take. You are talking, in this instance, about a case in America. Whether that is a human rights matter, as opposed to a protection by the state of the rights of the mother and the unborn child, the two things are not necessarily coterminous. That is not to say that the entitlement would not exist.

1380. **Mr Poots**: Perhaps it is something that you would reflect on if unborn children have a right to health care.

1381. **Dr Russell**: The position is quite clear. We can only keep referring back to the European Court's jurisprudence, which we cannot step outside, as it would be outside our statutory remit. The rights of an unborn child are coterminous and inextricably linked to the rights of the mother. Service provision by the state in protecting an unborn child in what services may or may not be provided fall within the margin of appreciation of the state and its health service.

1382. **Mr Poots**: Do the mother's reproductive rights always trump the rights of the unborn child?

1383. **Dr Russell**: Clearly not, because the European Court recognises that it is within the margin of appreciation to regulate access to termination of pregnancy.

1384. **Mr Poots**: You raised the issue of the morning-after pill. When do you first know that a child has been conceived?

1385. **Mr Allamby**: Different states have set out in statute what they consider on a statutory basis. As I understand the jurisprudence of the European Court, in the absence of a statutory basis, I do not think that there is anything that establishes that. The courts have said that there is neither a legal nor a legislative consensus on that, and the court is not prepared to enter into giving a definitive version. That is the legal position.

1386. **Mr Poots**: If I was to take a challenge and walked into court three, four days or five days after someone had taken the morning-after pill and three, four or five days after engaging in sexual intercourse, what standing would that have? How could I prove that that person was pregnant in the first instance?

1387. **Ms Hild**: In Northern Ireland?

1388. **Mr Poots**: Yes.

1389. **Ms Hild**: The Smeaton case in England would be informative because, under the current legislation, the morning-after pill is not prohibited. That is why I was pointing out the difference between the language of the proposed amendment and the language of the current

legislation, which there is some clarity on because [Inaudible.]

1390. **Mr Poots**: How do I prove that the individual was pregnant? If I decided to take a case, how would I prove that the individual was ever pregnant?

1391. **Ms Hild**: Under the current legislation those involved in the Smeaton case, which I referred to, went to great lengths to look at the scientific and legal issues on that. The reason why there is a significance in the difference of the language is because one of the points that they talked about was the miscarriage, which is in the 1861 Act but not in the existing legislation. That is why it is a distinction.

1392. **Mr Poots**: The morning-after pill is a contraceptive method. It is not a means of termination. It is fundamental. You raised the issue that someone could end up in court over this. I asked you a very simple question. If I am standing in a court of law, how do I prove that someone who took the morning-after pill three, four or five days after they engaged in sexual intercourse was pregnant in the first place? How could I bring any challenge in any court of law in that instance? This is a straw man.

1393. **Mr Allamby**: With respect, the Smeaton case was taken on behalf of an organisation, if I recall correctly. That organisation took the case on the basis that the administration of the morning-after pill is unlawful. If I remember rightly, it was taken by an individual on behalf of the Society for the Protection of Unborn Children. The person who took the case did not take it on the basis of what had happened to that person as an individual; they took it on behalf of an organisation. The point that we are back to is that the amendment is not clear. If an organisation, as opposed to an individual, wished to take a case on the basis of this amendment, in our view, they could do that. They would have to prove that they had standing and sufficient interest etc, but they could do that. They would not necessarily need to produce an individual to do that.

1394. **Mr Poots**: They would have to prove pregnancy.

1395. **Mr Allamby**: No. They could —

1396. **Mr Poots**: You could not go to court on the basis that a pregnancy was terminated wrongfully if you could not prove that there was a pregnancy in the first instance, in which case that would be a misuse of the morning-after pill.

1397. **Mr Allamby**: That is not the purpose of this amendment or what it is seeking to do. All that —

1398. **Mr Poots**: I know that it is not. You raised this.

1399. **Mr Allamby**: Yes, but all that we are saying is that this amendment does not provide clarity on what it is and does and that it can be interpreted in a way that goes beyond what it its intent appears to be.

1400. **Mr Poots**: When it links to other law and good practice, I think that there is sufficient clarity.

1401. **Mr Allamby**: I beg to differ. That is fine. I understand the point that you are making. I understand —

1402. **Mr Poots**: You beg to differ, but you have not demonstrated how it could be done.

1403. **Ms Hild**: Mr Poots, the language that you are using is the phrase "termination of pregnancy". The language of the amendment specifically is:

"ends the life of an unborn child at any stage of that child's development".

1404. That is a different set of language. The language that you are saying needs to be proven in court is actually not what the amendment is requiring and is not the offence that the amendment is seeking to establish. This is why we say that that is not clear.

1405. **Mr Poots**: Either you are not getting what I am saying or you do not wish to get what I am saying. What I am saying very clearly is that, for any individual to take this matter to court, they would have to demonstrate in an unequivocal way that conception had taken place in the first

instance. How does the individual do it? This is purely a scare tactic on the part of the Human Rights Commission, as opposed to a real threat.

1406. **Mr Allamby**: I am really sorry, but, no, it is not. I will go back to the A, B and C v Ireland case, which dealt with the 1861 Act. One of the points that it made in its judgement was that, even if prosecutions were not happening in reality, the lack of clarity in the regulatory framework and how things applied was still sufficient to be contrary to the convention. So, in this case, whether somebody decides to prosecute or to take a case or otherwise, the lack of clarity is relevant. As Kyra pointed out, the amendment is so broadly framed that, in our view, it would be contrary to the convention.

1407. I accept that people around this table may have a very different legal view. This is the commission's view, which is based on stepping back and looking at the jurisprudence. I understand that others may take a different view. That is fine. That is perfectly normal and understandable. Ultimately, if it came to a challenge, the courts would have to decide. However, it is a view that is based on international human rights law. It is not based on some kind of, if you like, commission crusade or anything else; it is based on our understanding of the jurisprudence.

1408. **Mr Poots**: I will be generous and say that your arguments are tenuous at best. The only threat in regard to court is coming from nobody other than the commission itself. Not for the first time, the commission is threatening to take people to court when policy is being devised. That is inappropriate action on the part of the commission. If the Assembly makes a decision that is not compliant with human rights, you are well entitled to challenge it. However, when the Assembly is making and devising law, it is your job to lobby, not to threaten court action. That is something that the commission really needs to reflect on, because one would consider it to be bully-boy tactics.

1409. **Mr Allamby**: Chair and Edwin, with great respect, it is not our job to lobby; it is our job to advise. I do not see our role in this issue as lobbying; it is about offering advice. That advice is genuinely given and based, as I have said, on the jurisprudence. It is then up to a Department or the Committee to reject or accept that advice. I understand that, but it is not our job to lobby; it is our job to advise.

1410. **Mr Poots**: Fair enough. It is your job to advise, but it is not to advise with the threat of court action in the midst of policy in the making.

1411. **Mr Allamby**: I understand the point that you are making. Our —

1412. **Mr Poots**: It is anti-democratic, to be quite frank.

1413. **Mr Allamby**: For us, the issue is whether there is a breach of human rights law and international standards signed up to by the UK Government. I understand the point that you made. The Chair made it equally forcefully. I understand —

1414. **Mr Poots**: We cherish democracy and the right for the people's voice to be heard through elected representation.

1415. **Mr Allamby**: Part of democracy includes safeguards —

1416. **Mr Poots**: Correct.

1417. **Mr Allamby**: — and checks and balances, of which there are many, and the commission plays a small part in that. I cherish that democracy with checks and balances as strongly as you and your colleagues around the table.

1418. **The Chairperson (Mr Givan)**: Let us set aside that some of us will not accept your interpretation: what if the wording "unborn child at any stage" read "unborn child from implantation in the womb"? Would that give clarity? At that point, it will be known whether a woman is pregnant. That can be unequivocally demonstrated through tests. Would that deal with the lack of clarity?

1419. **Mr Allamby**: To be candid, I do not think that it is for me, as the chief

commissioner, to commence a negotiation here this afternoon. If other forms of wording were being put forward, I would want to go back to the commission, talk to my colleagues, reflect on the issues and then come back to you. I do not think that it is appropriate for me as an individual to negotiate. I am only one of eight commissioners. I speak on behalf of the commission, not on behalf of me as an individual. Frankly, I do not think that it would be right for me to start negotiating one way or another on the commission's position based on something that might look very different from this amendment. If another amendment is suggested, I will happily take the commission's collegiate view.

1420. **The Chairperson (Mr Givan)**: Subsection 2(b) is meant to be helpful on exceptional cases of urgency. However, if subsection 2(b) creates uncertainty and that is the area that you are not clear on, remove it and leave subsection 2(a), which is crystal clear:

"that the act or acts ending the life of an unborn child were lawfully performed at premises operated by a Health and Social Care Trust".

1421. So, for the sake of clarity, let us remove the exceptionality aspect. It is trying to be helpful, but let us remove it. At least, then, you would be absolutely clear.

1422. **Mr Allamby**: For the same reason that I outlined just now, I am not sure that it is for me, as an individual, to negotiate a solution. I speak on behalf of the commission. I do not think that it is appropriate for me, this afternoon, to try to craft something and give a view on behalf of the commission. I have seven other commissioners, and I am sure that they might want to reflect on any different proposed amendment to the Justice Bill. That is not being evasive. That is just proper corporate responsibility.

1423. **The Chairperson (Mr Givan)**: I am just trying to establish the issue. If it is not about the principle behind this, as that is a matter for the state within the margin of appreciation, and is just about the clarity, we could be very clear by stripping out subsection 2(b). In my view, that would make it worse, but it could be very clear.

1424. **Mr Allamby**: The position for the commission is this: does any amendment breach international human rights law based on the jurisprudence and the standards? We look at it on that basis. So, if there was an alternative amendment, we would reflect on that and come back to you. If our view was that it was no longer a breach of the convention, we would say that. If we felt that it still was a breach, equally, we would have to set out the reasons why.

1425. **The Chairperson (Mr Givan)**: We know what the answer would be because, in your view, existing law is in breach of international law. There is really not much point talking about the amendment, because existing law does not meet the standard. What the amendment does is regulate within the existing law. Your problem is that you are not happy with existing law.

1426. **Dr Russell**: The amendment deals with the provision of a service, where it may be performed and where it may not be performed. That is entirely different from the issue that you raise with regard to the criminal law and whether it is compliant with human rights law. An amendment could be drafted in such a way that it, in and of itself, regardless of the wider issue, is compliant with convention law and international standards. The commission would look at that independently, as we always do with anything that comes before us, and give our considered advice.

1427. **The Chairperson (Mr Givan)**: Do you think that, in the interests of social cohesion, it is better that Parliaments deal with sensitive social matters, which is what this is, or should it be for the courts? Take the 1967 Act, which I disagree with, and I think that everyone in the Committee disagrees with it. However, it was brought in by politicians mandated by the people. I may not agree with that decision — in fact, I do not — but, as a democrat, I have to accept it. Take the issue of gay marriage. I

disagree with the vote in Parliament, but it was a vote by politicians mandated by the people. It was not brought in by the courts. Therefore, as a democrat, I have to accept that. However, when the courts become responsible for ultimately dealing with sensitive social issues, do you think that that is good or bad for social cohesiveness?

1428. **Mr Allamby**: I believe in parliamentary democracy and in the split between the Executive and judiciary, so I accept that Parliament and devolved Assemblies are entitled to pass laws. The question of whether those laws are lawful, whether in terms of human rights standards, administrative law or anything else, is a matter for the judiciary. That is a perfectly proper check and balance, and one that I support. In terms of social cohesion, I do not simply look in a narrow sense at parliamentary democracy; I look at the broader sense of checks and balances, and I support a broader conception of checks and balances. I am utterly respectful of the rights of parliamentarians to pass laws. The question of whether those laws stand up to judicial scrutiny then becomes a matter for the courts. That seems to me to be perfectly proper. I am not seeking in any way, shape or form to undermine that form of democratic accountability.

1429. **Mr Douglas**: Les, when someone asked you earlier about Amnesty International, you said that you cannot speak for that organisation. Its submission to us made a claim about human rights standards. What is your interpretation of that? Also, does the commission believe its comment? It stated:

"Human rights standards are clear that access to abortion should not be hindered, should be easily accessible and of good quality and that states should eliminate, not introduce, barriers which prejudice access to abortion services, such as conditioning access to hospital authorities."

1430. **Mr Allamby**: As a statement of Amnesty's view of how policy should be provided, I do not demur from its view. As to whether the law requires policy to be implemented in exactly that form, I do not recognise that as a particular quotation from a judgement. The principle that, where abortion is lawful, the regulatory framework should be clear so that everybody knows their position in law — the clinicians, the woman and the inextricable links with the unborn child — that is, I think, the position that the commission takes on the matter. Whether I would frame it as Amnesty International has is not the issue for us. That is our understanding of the core position, and that is the position that we seek to uphold here.

1431. **Mr Douglas**: I come back to clinicians. You talked about the chill factor. Is that right?

1432. **Mr Allamby**: Yes.

1433. **Mr Douglas**: You also mentioned malformation and sexual crimes, including rape and incest. I think that you went on to say that the right to an abortion in some or all of these circumstances is clear. I go back to a question Edwin raised last week with Amnesty International. He asked Amnesty to what point someone should be able to have an abortion: 15 weeks, 20 weeks or whatever. What is your view on a full-term abortion in some of these circumstances? What effect would the chill factor have on a doctor who has to perform an abortion at, say, 37 or 38 weeks?

1434. **Mr Allamby**: We are saying that termination should be available to a victim of sexual crime or where there is a serious malformation. It should be clear. I do not think that we are starting from a position of saying exactly at what point it should be clear. The state has a margin of appreciation in these circumstances. It should be a right that is real and practical, not theoretical and illusory. Where within that you draw the line is a matter for the state, but, if it is drawn in a way that is far too restrictive, there is a set of issues. It is not for the commission to say exactly what the number of weeks would be, but the right needs to be real and practical.

1435. **Mr Douglas**: Amnesty International said clearly that the rights of the mother

were paramount, no matter how late the pregnancy, but you are not saying that.

1436. **Mr Allamby**: We are saying that the right is inextricably linked.

1437. **Dr Russell**: The paramountcy test applies only under the right to life. In an instance where the life of the mother is clearly at risk, that would be a paramount concern. In all other instances, whether serious malformation of the fetus, rape, incest, or other sexual crime, it falls within the state's margin of appreciation to determine where that line should be drawn.

1438. **The Chairperson (Mr Givan)**: If all those issues are within the state's margin of appreciation, why on earth are you threatening court action? That is what I cannot understand. Dr Russell has just said that fatal fetal abnormality, rape and incest are all within the state's margin of appreciation. We are the state — we decide — so why would you go to court?

1439. **Mr Allamby**: The margin of appreciation is broad, but it is not unlimited.

1440. **The Chairperson (Mr Givan)**: So Dr Russell was wrong when he said that.

1441. **Dr Russell**: No, the margin of appreciation is about where the line in the sand is drawn —

1442. **The Chairperson (Mr Givan)**: — by the state.

1443. **Dr Russell**: Yes, by the state. It is not about access to the service.

1444. **The Chairperson (Mr Givan)**: I still do not understand why, if it is within the state's margin of appreciation, you are threatening court action. That is what you have just said. Those issues are within the state's margin of appreciation. The Assembly and the Executive are the state. Why are you threatening court action?

1445. **Dr Russell**: At what point provision in those circumstances is made unavailable is within the state's margin of appreciation; providing the service in those circumstances is not.

1446. **The Chairperson (Mr Givan)**: Expand on that point for me.

1447. **Dr Russell**: The CEDAW committee has been clear in saying to the Northern Ireland Executive and the UK Government that in circumstances of serious malformation of the fetus, rape and incest, there should be access to termination. How that is then regulated is within the margin of appreciation of the state.

1448. **The Chairperson (Mr Givan)**: I met Gary earlier this week. His mother was violently raped, and he was conceived through that rape.Gary is married and has three children, one of whom was adopted, and grandchildren. Does the Human Rights Commission believe that he has the right to life?

1449. **Mr Allamby**: Of course. The court is very clear: a woman has a right in those circumstances to give birth, and nobody is suggesting —

1450. **The Chairperson (Mr Givan)**: Gary should have a right to be protected under the law. The Human Rights Commission is clear that, as an unborn child, Gary does not have a right to be alive.

1451. **Mr Allamby**: The right of an unborn child is inextricably linked to the right of the woman. That is our understanding of the legal position, and that is the basis on which we have commented on the amendment that is before you today.

1452. **The Chairperson (Mr Givan)**: Do you find it strange that everyone who is in favour of abortion is alive?

1453. **Mr Allamby**: I am not sure what I can say in answer to that question. It is not for the commission to get into the question of a woman's right to choose other than in human rights' international law and standards. The right of the unborn child is an issue on which people have very strong views. The commission looks at international human rights standards and offers advice on them. If we feel that there has been a breach, we decide whether to take legal action. That is the basis on which we come to you today. I understand that, given the views represented around the table,

some of the things that I have said are not popular, to put it mildly, but that is the basis on which we offer advice to the Committee.

1454. **The Chairperson (Mr Givan)**: It is not just that they are not popular; it is the fact that the Human Rights Commission is even considering going to court on the issue. That should be left to parliamentarians. If the commission were to take that course of action, it would undermine the democratic legitimacy of the Assembly. This is a very serious consideration that the commission should put to the forefront of its mind before embarking on that course of action.

1455. **Mr Allamby**: I understand, and the eyes of the commission are entirely open to the issue that you have raised. Our role is to promote and protect international human rights standards. That is part of our mandate. It is to offer advice, and that is what we will do. I understand the point that you are making, but that is the mandate of the Human Rights Commission. It is a statutory mandate and one of the wider checks and balances, of which parliamentary democracy is a very important and cherished one.

1456. **The Chairperson (Mr Givan)**: OK. We move on to violent offences prevention orders (VOPOs). This should not take that long. I invite you to make your presentation.

1457. **Mr Allamby**: I will ask my colleague, Dr David Russell, to do that.

1458. **Dr Russell**: As members know, at our last appearance before the Committee, we were asked to come back on this provision, specifically on its application to children. We have gone away and considered it. Our starting position on the criminal sanction and what would flow from it is premised on international standards. We must draw the Committee's attention to the fact that the United Nations Committee on the Rights of the Child (CRC) has been clear that the age of criminal responsibility in all contracting states should be a minimum of 12 and that, ideally, the age should be raised to 14. On this basis, the serving of a VOPO on a child is problematic because of where the age of criminal responsibility sits at present in Northern Ireland.

1459. The commission advises the Committee that when considering the application of this particular provision, and in order for it potentially to operate compatibly, the first point of principle should be considering the age of criminal responsibility in Northern Ireland in the context of the Bill so that anything in the justice system thereafter is compatible with binding human rights standards. If that was not the case, it is the commission's considered view that, as it stands, if applied to a child, a violent offender prevention order would be in breach of article 43 of the UNCRC. That is our basic position.

1460. In addition, I draw your attention to qualifying offenders. Clause 53(3) enables an application to be made with regard to an offence that has taken place outside of the jurisdiction. Exactly the same principle would have to be applied to the application of the provision for it to be compatible with the convention and the rights of the child. So, if a child had been convicted in a state where the age of criminal responsibility was below the age of 12 for the base offence and, on the basis of that, an application was made for a VOPO, that, too, would engage the CRC. The fact that the initial offence was committed outside Northern Ireland does not obviate the responsibility of the Assembly in ensuring human rights compliance for the child in question.

1461. Finally, if a decision was made to continue with the provision, and assuming that these issues were addressed in order to ensure compliance with the binding treaty obligation, we remind the Committee that the CRC is clear, even with regard to juvenile justice, that the best interests of the child, in this instance a child offender, has to be a primary consideration in addition to the

consideration of the potential harm to others. I am happy to take questions.

1462. **The Chairperson (Mr Givan)**: There are concerns about compliance. The Bill has already been introduced to the Assembly. Where was the advice that the commission should have been giving to the Department? The Bill has started its journey. If the commission was there at the start of the process, surely this should have been detected and considered at that point.

1463. **Mr Allamby**: In our initial analysis, we looked at this as a provision for adults rather than for children. We did not raise any legal issues in respect of adults. I think that it is probably a reasonable criticism to ask whether we should have envisaged this being an issue for children as well. I do not think that we sat down and thought about that. Our assumption was that the VOPOs were a provision for adults rather than for children. As I understand it, it was only when the Children's Law Centre raised the issue that it came to our attention. In an ideal world, we should have looked at this earlier, and I can only apologise. Clearly, we are not suggesting that VOPOs do not apply to adults. That is the issue that we had addressed initially, and we had not thought about how it applied to children and young people.

1464. **Dr Russell**: To be clear, there are no grounds in human rights law as to why one could not apply to a child. The point is this: if it were to apply, it would have to do so in a compliant fashion.

1465. **Mr McGlone**: Your paper states that the commission recommends that the Bill be amended to ensure:

"in the event of any application for a VOPO with regard to a child, the best interest of that child would be a primary consideration in addition to the consideration of potential harm to others."

1466. Can you explain that for me? If you, potentially, have a very violent person, how would the primary consideration be the child?

1467. **Dr Russell**: It is "a primary consideration", not "the primary consideration".

1468. **Mr McGlone**: Can you explain that to me? It states:

"in addition to the consideration of potential harm to others."

1469. If I was the person potentially at risk, I would hope that, instead of being an add-on, I would be a primary concern, too.

1470. **Dr Russell**: That is the language of the treaty. The nature of children means that the rights and provisions afforded to them are very different from those afforded to adults, and they are particularly different with regard to how children should be treated when they engage the criminal justice system. As I said, it says "a primary consideration"; it does not say that it is the only consideration. There is a balance at play here. You have suggested a scenario. If you can think of a violent offence that could be committed by a child, a primary consideration might, depending on the circumstances, be to apply a VOPO. That would be in the child's best interests, as it would prevent them committing a criminal offence. The fact that it is a primary concern does not mean that the outcome is necessarily set in stone.

1471. **Mr McGlone**: This would be applicable to 12- to 18-year-olds. That is the age range.

1472. **Dr Russell**: In Northern Ireland, it would be applicable from the age of 10.

1473. **Mr McGlone**: I understand that, so it would be applicable from the age of 10 to 18.

1474. **Dr Russell**: Yes, and beyond for adults.

1475. **Mr McGlone**: I have seen some 16-, 17- and 18-year-olds who could do a fair bit of damage.

1476. **Dr Russell**: That is why I said that the international standard is that the age of criminal responsibility should be set at a minimum of 12 and in ideal circumstances 14. So, there is no concern about 16-year-olds, other than with regard to the fact that he

or she would still be a child and their engagement in the criminal justice system should be different.

1477. **Mr McGlone**: I appreciate that this would be in rare and exceptional circumstances. Do you reckon that the Bill should be amended to incorporate that?

1478. **Dr Russell**: I raised the issue of the first point of principle, which is that the introduction of a VOPO, because it is part of the criminal justice system, raises an initial concern: anything in the criminal justice system in Northern Ireland at present that would apply to a child above the age of criminal responsibility is in violation of the UNCRC. If the age of criminal responsibility were raised to 12, we would be having a different discussion.

1479. **Mr McGlone**: Thank you very much for clarifying that.

1480. **The Chairperson (Mr Givan)**: There are no more questions. Thank you very much. I appreciate that this was a lengthy and lively session. I certainly appreciate your taking the time to indulge us.

1481. **Mr Allamby**: Thank you, Chair. I have probably had more enjoyable afternoons, but it is important that all of this is aired.

3 December 2014

Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Paul Frew
Mr Seán Lynch
Mr Patsy McGlone
Mr Edwin Poots

Witnesses:

Ms Bernadette Smyth	*Precious Life*
Mr Liam Gibson	*Society for the Protection of Unborn Children*
Ms Caitriona Forde	*Women's Network*

1482. **The Chairperson (Mr Givan)**: I welcome Liam Gibson, the Northern Ireland development officer for the Society for the Protection of Unborn Children; Bernadette Smyth, Precious Life; and Caitriona Forde, Women's Network. As with previous evidence sessions, this session will be recorded by Hansard and published in due course. I am not sure who is making the opening remarks. Please take us through your submissions briefly, and members will ask questions after that.

1483. **Ms Caitriona Forde (Women's Network)**: I speak on behalf of Women's Network, which is a pregnancy counselling service that fully informs women of the procedures and risks of abortion and provides them with compassionate alternatives to it.Whatever a woman needs to overcome her fear and panic when faced with an unplanned pregnancy, Women's Network is always there to provide loving care and support during pregnancy and after birth.

1484. Soon to come in the new year will be a new pregnancy care facility in Northern Ireland called Stanton Healthcare. That will take over and expand the services of Women's Network. Such services will include pregnancy tests, ultrasound scans, pregnancy, childbirth and parenting education, maternity and baby supplies, and counselling on abortion, adoption and post-abortion stress. Stanton will work alongside local GPs to provide referrals for medical attention and treatment as required and will also work alongside other supportive organisations to provide referrals for adoption, housing and social services.

1485. If a woman enters the Marie Stopes centre or any private abortion centre for help, it will cost her money and her baby. The doors of Stanton Healthcare will always be open, and anything a woman needs to help her through her pregnancy will always be free. Women and their babies deserve better than abortion, and Stanton Healthcare seeks to protect them from the exploitation of Marie Stopes and other profit-driven abortion providers. That is why Women's Network supports Mr Jim Wells's proposed amendment to the Justice Bill, which proposes that no defence to the criminal charge of abortion would be available to anyone who performed an abortion for a fee at a private medical centre.

1486. Three months ago, Women's Network was contacted by a young pregnant woman who was very distraught after being told that her baby appeared to have a disability. When 20 weeks pregnant, her consultant suggested that her baby was incompatible with life, and it was recommended that she go to Marie Stopes to have an abortion. Women's Network contacted Mr Edwin Poots for assistance in this distressing case, and, thanks to their involvement, the young woman and her newborn baby, Poppy-Grace, were provided with perinatal care and comfort care in the Northern Ireland Children's Hospice.

1487. Poppy-Grace was diagnosed with a very rare condition called Neu-Laxova syndrome and lived for eight precious days. Surrounded by the loving

warmth and care of her mother and family, she sadly passed away in the Northern Ireland Children's Hospice on Wednesday 1 October. Parents, when faced with a devastating diagnosis, deserve better than cold and callous dismissal and abandonment.

1488. Marie Stopes proudly professes to be the UK's leading provider of sexual and reproductive health-care services. In an editorial published in the 'British Medical Journal' in May 2014, Ann Furedi, the chief executive officer of the British Pregnancy Advisory Service (BPAS), declared that women in Northern Ireland need access to abortion for the same reasons as women in the rest of the UK. In her book, 'Unplanned Pregnancy: Your Choices', Ms Furedi writes that unplanned pregnancy is one of the most common medical problems faced by sexually active women and that many tens of thousands of unplanned pregnancies end in abortion, making it the most common operation among women. However, abortion should not be understood as a health service for treating a physical or mental health condition. It is no more than the intentional killing of the most defenceless and vulnerable human being: the unborn child.

1489. Abortion also harms the woman. For instance, despite Marie Stopes stating that there is no proven link between abortion and breast cancer, researchers in 2013, after examining 36 studies that investigated the association between abortion and breast cancer, concluded that the risk of developing breast cancer among women who had had one abortion increases by 44% and that the risk of breast cancer increased as the number of abortions increased.

1490. Research was conducted over a 30-year period, examining the extent to which induced abortion, live birth and pregnancy loss were associated with increased or decreased risks of mental health problems, including depression, anxiety, suicidal ideation and alcohol and drug dependence. In 2009, it revealed that exposure to induced abortion was consistently associated with increased rates of mental disorders. That study shows that, although abortion was associated with increased mental health problems, no increase was evident for those having unplanned pregnancies that came to term. That evidence clearly poses a challenge to the use of psychiatric reasons to justify abortion for women who have unplanned pregnancies. According to a 2013 research paper by Byron Calhoun, John Thorp and Patrick Carroll, Northern Ireland and the Republic of Ireland continue to be the safest places for pregnant women and their babies. Over the 40 years of legalised abortion in Britain, there has been a consistent pattern whereby higher abortion rates have run parallel to a higher incidence of stillbirths, premature births, low birthweight neonates, cerebral palsy and maternal deaths as consequences of abortion. In contrast, both Irish jurisdictions consistently display lower rates of all morbidities and mortality associated with legalised abortion.

1491. However, if unplanned pregnancy is one of the most common medical problems, and abortion is the most common operation, supposedly providing the cure, why does Britain continue to lag behind the standards of maternal health in Northern Ireland and the Republic of Ireland? Perhaps Ms Furedi and her fellow profit-driven abortion providers should reconsider hiding behind the rhetoric of a woman's right to choose. It does not serve women's needs or best interests; it only fools them into believing that they need the likes of BPAS or Marie Stopes to kill their unborn children.

1492. To conclude, on behalf of Women's Network, I reiterate that, rather than erasing the problem of an unplanned pregnancy with the immediate solution offered by a morning's visit to an abortion centre, every pregnant woman deserves to be comforted and assured that she is not alone in coping with her pregnancy and the birth of her child. Abortion is never the solution to an unplanned pregnancy, and Marie Stopes

or any private abortion centre will never be wanted or needed in Northern Ireland.

1493. **The Chairperson (Mr Givan)**: Thank you very much, Caitriona. Are there any other opening comments?

1494. **Ms Bernadette Smyth (Precious Life)**: I was just going to present the submission.

1495. **The Chairperson (Mr Givan)**: Feel free.

1496. **Ms Smyth**: I am here on behalf of Precious Life, the leading pro-life group in Northern Ireland, in response to the Justice Committee's invitation to give evidence on the Justice Bill and the proposed amendment to it.

1497. Since 1997, Precious Life has worked tirelessly to protect Northern Ireland's unborn. Through activism throughout Northern Ireland, lobby campaigns, through the courts and our information drives on the street, we have helped to save many babies and mothers from the horror of abortion.

1498. In regard to Mr Jim Wells MLA's proposed amendment to the Justice Bill, Precious Life and the vast majority of people in Northern Ireland support it. In fact, nearly 35,000 submissions were made through Project Justice during the consultation period. Abortion in Northern Ireland is a criminal offence, and it is governed by sections 58 and 59 of the Offences Against the Persons Act 1861 and section 25 of the Criminal Justice Act (Northern Ireland) 1945. There is a defence that may be raised: namely that the abortion was performed to save the life of the pregnant mother or to prevent a real and serious adverse effect on her physical or mental health. That defence is not automatic and depends on the circumstances of the act carried out.

1499. The sole purpose of the legislative provisions is to protect the unborn child. Mr Wells's proposed amendment makes it clear that a defence to the criminal charge of abortion would not be available to anyone who performed an abortion for a fee at a private medical centre. The purpose of the amendment is to ensure that private medical centres, such as the Marie Stopes centre, which opened its doors in Belfast in October 2012, cannot legally carry out abortions in Northern Ireland. The sole purpose of private facilities is to destroy unborn children, and their sole interest is profit.

1500. I refer to the case of a whistle-blower who drew attention to what was happening in Marie Stopes. She said:

"Everything is geared to getting as many people in for terminations as possible."

1501. She alleged:

"When I started in July 2004, the branch was performing between 20 and 30 surgical abortions a day. But we were told Essex was doing 50 a day and that we were under-performing. So they called a meeting last November at which we were told our bonuses were being withheld until we caught up. We had two wards upstairs and it was like a car production plant. When I started, people would be given a few hours to recover, but by the end they were waking them up within half an hour and getting them out."

1502. Ms Georgiou also claimed that the bonuses act as a sales incentive, in the way that they might if you worked on a perfume counter in a department store: the more people you got booked in for terminations, the better bonuses you would get. Marie Stopes's professed mission is "children by choice, not chance". However, the law in Northern Ireland ensures that every unborn child — every human being, born and unborn — has the right to life, the right not to be intentionally killed. Precious Life wants unborn children and their mothers protected from abortion and is therefore totally opposed to the Marie Stopes centre or any private abortion facility in Northern Ireland. Precious Life wholeheartedly supports Mr Wells's proposed amendment to the Justice Bill and its prohibition of the commercial provision of abortion services in Northern Ireland.

1503. Marie Stopes, or any other private abortion facility, is not needed in Northern Ireland. It has been widely reported that both Northern Ireland and the Republic of Ireland are among the safest places for women to give birth. Over the 40 years

of legalised abortion in Britain, there has been a consistent pattern whereby higher abortion rates have run parallel to higher incidence of stillbirths, premature births, low birthweight neonates, cerebral palsy and maternal deaths. Those are the consequences of abortion. In contrast, Caitriona referred to a paper by Dr Byron Calhoun, in which we can see that Northern Ireland and the Republic of Ireland:

"display lower rates of ... morbidities and mortality associated with legalized abortion."

1504. The law in Northern Ireland ensures that pregnant women receive world-class medical care because both mother and child are treated as patients. In difficult cases in which the mother's life is in danger, she and her unborn child receive the best obstetric care, as has always been the case.

1505. Marie Stopes proudly professes to be the UK's leading provider of sexual and reproductive health-care services. However, abortion should not be understood as a health service — a treatment for a physical or mental condition — as it is, in fact, the deliberate killing of an unborn child. It must be understood that there is no medical condition whereby the life of a pregnant woman can be saved only by abortion. Operations, treatments and medications whose direct purpose is the cure of a proportionately serious pathological condition of a pregnant woman are legally permissible when they cannot be safely postponed until the unborn child is viable, even if they will result in the death of the unborn child. If, through careful treatment of the pregnant woman's pathological condition, the unborn child inadvertently dies or is injured, that is tragic, but it is, if unintentional, not unethical and not a criminal offence. For example, if a pregnant woman develops cancer in her uterus, and the doctor recommends surgery to remove the cancerous uterus as the only way to prevent death through the spread of the cancer, removing the uterus will always lead to the death of the unborn child, who cannot survive at this point outside the uterus. In that scenario, the surgery directly addresses the health problem of the woman. The organ that is malfunctioning is the cancerous uterus, and the woman's health benefits directly from the surgery because of its removal. It has been clear, time and again, that there is evidence that shows that there is no medical necessity. In fact, Professor Eamon O'Dwyer of University College Galway said:

"there are no circumstances where the life of the mother may only be saved through the deliberate, intentional destruction of her unborn child".

1506. To determine the appropriate treatment of suicidality in pregnant women, one must turn to the evidence that is already available from consultant psychiatrists who have had extensive experience in the care of patients who are suicidal and pregnant women with mental health problems. When suicidal intent arises in pregnancy, it is in the context of mental illness. A suicide risk assessment must be carried out when a pregnant woman threatens suicide, which will determine the appropriate care plan, treatment involved, psychological intervention, nursing, social support and, perhaps, medication as indicated by the needs outlined in the case history and examination of the patient.

1507. Patricia Casey, a professor of psychiatry in University College Dublin, in her submission to the Oireachtas Committee on Health and Children in May 2013, said that there is no evidence that abortion is a treatment for suicidal intent. In fact, to offer an abortion to a distressed woman who is psychologically ill is seriously ill advised, since the woman's capacity to make such a life-changing decision is frequently impaired. Moreover, there is an increased risk of relapse, both immediately and in the long term, post abortion. It is important to stress that preserving the pregnant woman's safety is done through care, support and psychological help, not by the killing of her unborn child.

1508. As I stated, in difficult cases in which the mother's life is in danger, she

and her unborn child receive the best obstetric care, as has always been the case in Northern Ireland. Marie Stopes, or any other private abortion facility, is not offering or providing any treatment that cannot be ethically and legally provided on the NHS free of charge. Pregnant women in Northern Ireland do not need Marie Stopes or any other private abortion facility to receive the necessary treatment and care, and, as former Health Minister Mr Edwin Poots stated, there are no cases of such women dying in Northern Ireland.

1509. At a meeting of the Justice Committee on 10 January 2013, representatives of the Marie Stopes centre in Belfast failed to provide a detailed explanation of how pregnant women are medically assessed in order to determine whether an abortion can be performed to save the life of a pregnant woman or prevent a real or serious adverse effect on her physical or mental health. The representatives failed to defend how Marie Stopes health-care professionals could hold an honest belief, or have reasonable grounds to believe, that abortion was necessary to save a pregnant woman's life or to prevent injury to her physical or mental health. Alarmingly, Dawn Purvis, the programme director of the Marie Stopes centre in Belfast, when questioned by the Chairperson of the Justice Committee, admitted that there is nothing to stop the Marie Stopes centre in Belfast from carrying out abortions right up to birth. So there appears to be no accountability for services provided by the Marie Stopes centre.

1510. I add that Marie Stopes is a member of Voice for Choice, a UK coalition of pro-abortion organisations that works to change the law on abortion in the UK, pressurise doctors who are pro-life by forcing them to refer them to other doctors, and they want to extend this amended Act to Northern Ireland.

1511. I also draw attention to the fact that there appears to be no accountability for services provided. Although it has been registered with the Regulation and Quality Improvement Authority (RQIA), it has been very clearly outlined in evidence that the RQIA would have no role in ensuring that abortions are carried out within the legal framework. Precious Life's concern that Marie Stopes will not be providing pregnant women with the medical treatment and care that they need is amplified by Marie Stopes's association with the reported deaths of numerous women. We could go on and on. I think that Liam will probably be covering some of the effects of the recent deaths. In 2007, for example, a 15-year-old girl died after an abortion at a Marie Stopes clinic. A woman from the Republic of Ireland also died in a taxi after an abortion. She suffered a heart attack, which was caused by extensive blood loss.

1512. We could go on and on, but I also want to refer to the fact that it has always been reported that Marie Stopes has performed illegal abortions all over the world, and I think that that evidence was debated here in 2013 as well. We have evidence that Marie Stopes has been involved in illegal abortions in Sudan, Zambia and Kenya. In 2007, a video was exposed wherein Marie Stopes International's programme director admitted, at an abortion conference in London, that Marie Stopes does illegal abortions all over the world. In a nutshell, Marie Stopes breaks the law in order to change it. There must be accountability, transparency and an open working relationship between health-care providers and the Department of Health, Social Services and Public Safety (DHSSPS). So, clearly, that has not been the case, to judge from the history of Marie Stopes.

1513. Without the safeguards, pregnant women in Northern Ireland are vulnerable, open to exploitation and exposed to physical, emotional and psychological harm. Precious Life urges the Justice Committee to adopt Mr Wells's proposed amendment to the Justice Bill and ensure that the Marie Stopes centre in Belfast, or any other private abortion facility, does not perform abortions in Northern Ireland.

1514. Pregnant women in Northern Ireland do not need Marie Stopes or any private abortion facility to receive necessary treatment and care. Given that abortion is the deliberate killing of an unborn child — a cold and costly, direct and wrong social solution to the troubles faced by a vulnerable pregnant woman — one can appreciate why Britain falls below Northern Ireland's and the Republic of Ireland's standards of maternal health. Marie Stopes's rhetoric — children by choice, not chance — does not serve women's needs or best interests but only dupes them into believing that the choice to pay for higher-skilled hands to eradicate the existence of their unborn child is what they deserve. We say that women deserve better. With loving care and support, and appropriate medical treatment, every pregnant woman should be comforted and assured that she is not alone in coping with pregnancy and the birth of her child. Abortion is never the solution to an unplanned pregnancy.

1515. Marie Stopes or any private abortion facility will never be wanted in Northern Ireland. I am sorry that I am going on a bit. There is one last point that I want to make.

1516. I received an email from a worker for Marie Stopes in Kenya:

"I worked in Marie Stopes in Kenya for two years as a clinician and service provider. Marie Stopes has 24 branches currently in Kenya, which I now call 'killing centres'. Abortions have been done there daily for the past 20 years, even though this is unlawful. There is no law in Kenya that allows them to do that, but they are still being protected by corrupt pro-abortion politicians in government. There have been many deaths of women procuring abortions at these centres, while the majority of women have had countless perforations and other complications that arise from the procedures.

On 21 January, I joined Marie Stopes. I reported for work on 23 January and, after 14 days of induction, I was posted at a centre. While there, I witnessed a lot of horrors and was doing abortions as big as 20 weeks and fully-formed babies. It was so difficult to watch and comprehend. Since that time I have never recovered. The most shocking was a 27-year-old pregnant woman, 28 weeks pregnant. The baby died after crying for six hours. There was nothing I could do to help. In three months, I hit 100 abortions. At no time did the police ever come for us, approach us or any anti-abortion crusaders. This was a worrying trend but I continued. I moved on to a different clinic, and by the time I started working in this new clinic, I was already badly affected. I was having bad dreams about babies crying all around me, and I believe, as a result of aborting the 20-week pregnancy, even during the day I sometimes heard babies crying. It was so worrying. This became difficult and psychologically it affected my work. Even performing my duties was becoming an issue.

I stopped doing abortions of over 16 weeks' gestation. That reflected negatively on our clinic's income. I wanted to save myself from this mess, and I succeeded in saving a few lives, but then the numbers dropped and the income dropped. The bosses came to the clinic one day and asked me why the clinic was not performing well. I said that I could not continue doing such late-term abortions. The best way for them to get rid of me was to label me with stealing money, blah, blah, blah. They have done this to a number of other Marie Stopes employees, and they are also afraid of coming out because of threats. I am writing this in fear. Because they did this, I decided I could not continue with the killings any more."

1517. That is the clear message from someone who works in Marie Stopes:

"They are there to kill your next generation. Killing is not a solution for women to live a comfortable life. In Kenya, Marie Stopes is breaking the law. The law in Kenya says that abortion is illegal in Kenya unless it is the only way to save the life of the mother when it is absolutely impossible, and the only way to save the life of the mother is terminating the pregnancy. I have never, in my time working with Marie Stopes, ever come across a case like that. They are there to make money because they charge a lot; they charge a massive amount for abortions to be done. For psychological disturbance, as for my case, it is difficult for me to live peacefully. This has affected my social and psychological well-being. There is need for more efforts for sexual behaviour."

1518. I received that email yesterday, and this guy asked me to read it out today to highlight the fact that Marie Stopes is not needed in Northern Ireland. He has

been following the case, and he asked me to refer to his email.

1519. Thank you for listening.

1520. **Mr Liam Gibson (Society for the Protection of Unborn Children)**: Thank you very much for the invitation. I want to say a little about the Society for the Protection of Unborn Children. We were founded in 1967 in order to oppose the passage of the Medical Termination of Pregnancy Bill, which later became the Abortion Act 1967. One of our founder members was Dr Aleck Bourne, who was an abortionist and an activist striving to bring about the reform of abortion laws in the United Kingdom. In 1939, he was prosecuted but acquitted, after having performed an abortion on a 14-year-old girl who had become pregnant as a result of having been raped by a group of soldiers. By 1967, he had had a change of heart and realised that this had, in fact, opened the floodgates. He did everything within his power to prevent the passage of the 1967 Act. Unfortunately, he was unsuccessful.

1521. Since then, the Society for the Protection of Unborn Children has been very active in research, education and lobbying, and in the courts. We have had a number of cases, both domestically in England, Scotland and Wales, and in Northern Ireland. In 2009 and 2010, we launched two successful applications for a judicial review of the medical guidance from the DHSSPS, which resulted in its being withdrawn. At present, we are supporting two Glasgow midwives who are before the Supreme Court in London. Their case was heard just last month, and we expect the judgement to be handed down in the near future. It will be a very important case for medical professionals who want to protect their right of conscientious objection and non-involvement in abortion. We have accreditation at the UN and lobby in Geneva and New York.

1522. One of the principal messages that I want to get across this afternoon is to refute some of the criticisms of the present law in Northern Ireland, which I think have already come up in previous evidence sessions, in particular, the criticism that the Offences Against the Person Act 1861 is simply outdated Victorian legislation. It is true that it was passed in 1861. That said, the principles that are embodied in that law are much older than the Victorian era and date back, in fact, to the 5th century BC, the foundation of Western medical ethics and the Hippocratic oath. Our law is principally the same as that espoused by the Hippocratic oath in the 5th century BC. Those principles, which argue against medical personnel ever taking a human life, even in the womb, were re-espoused in 1948 by the World Medical Association and the Declaration of Geneva. This arose, of course, after the medical case at Nuremberg, when Nazi medicine had gone into the fields of euthanasia and abortion. The euthanasia programme in Germany was very well known. It is less well known that one of the first acts that the German occupation put forward in Poland was a law to decriminalise abortion. The doctor's oath bound doctors to maintain the utmost respect for human life from the time of conception, even under threat. It asked doctors never to use their medical knowledge:

"contrary to the laws of humanity".

1523. That is a direct reference to the Universal Declaration of Human Rights. That declaration was made within three months of the adoption of the oath. I hope that you are aware that the Universal Declaration of Human Rights provides human rights for all members of the human family, regardless of any distinction whatsoever, whether that be race, colour, political opinion, birth or any other status. Whatever way you want to cut it, human rights apply to all members of the human family, regardless of their stage of development or the circumstances of their conception.

1524. At Nuremberg, two of the people who stood trial because of their involvement in the decriminalisation of abortion in Poland were Richard Hildebrandt and Otto Hofmann. They were not abortionists

but were just party functionaries who implemented law. It is ironic that people stood trial in Nuremberg for the decriminalisation of abortion in Poland and for doing what Amnesty International now argues that the Northern Ireland Assembly ought to do.Contrary to what has been stated here previously, there are international human rights treaties and legislation that recognise the unconditional right to life; not one international instrument of human rights recognises the right to abortion. Not one. The American Convention on Human Rights explicitly states that the right to life applies from conception. The European Convention on Human Rights does not see it that explicitly, but, that having said that, it refers to the Universal Declaration of Human Rights, which, as I have already outlined, excludes any section of humanity from having its rights abrogated.

1525. The European Court of Human Rights has shown a great deal of latitude in its interpretation of the right to life in abortion cases. For a court that covers 50 member states, where there is no consensus on abortion, it is not surprising that it gives a wide margin of appreciation to member states to decide what their own abortion laws will be. There is no question that the law in Northern Ireland would be in breach of the European Convention on Human Rights. When the United Kingdom of Great Britain and Northern Ireland helped to draft the European Convention on Human Rights, the whole of the UK had the same law as we have now. The idea that, somehow, it was in breach all those years and that we are in breach now of the convention that the UK helped to draft is simply preposterous.

1526. In 2005, in the case of Vo v France, the court said:

"the embryo/foetus belonged to the human race."

1527. The court did not go any further for the reasons that I mentioned; it does give a broad margin of appreciation. However, I think that anybody interested in human rights would recognise that if you are a member of and belong to the human race, you are automatically granted all the human rights that we share equally.

1528. So, there is absolutely no obstacle in international law, either the law that is applicable to the courts in the UK — the European Convention — or the wider international instruments that do not actually have any legal standing in our courts, such as the International Covenant on Civil and Political Rights. None of those things prevents the law in Northern Ireland from staying the same or adopting the proposed amendment.

1529. The case of Tysi c v Poland of 2007 is somehow being presented as recognising a right to abortion. That did not happen. The court was very specific that, where abortion is already lawful, there cannot be obstacles outside that law preventing people from exercising their legal right. Since this amendment would not prevent the application of a right that already exists, which would be the right to access health care that would prevent death or long-term permanent damage, there should not be an issue with it at all.

1530. Furthermore, any case that went from Northern Ireland would have to exhaust all domestic remedies first. Interestingly, the Society for the Protection of Unborn Children had an amicus brief in 2005 with the D v Ireland case and in 2010 with the A, B and C v Ireland case. While the court rejected the application from D in 2005 because it failed to exhaust all domestic remedies, somehow that standard was not applied in the more recent case. Arguably, the case of A, B and C v Ireland should not even have been heard. This has set a precedent of the court going against the terms of the convention itself.Furthermore, article 53 of the convention actually allows countries to have a higher standard of human rights than apply in the convention. That was to prevent the convention's being used to lower human-rights standards. Clearly, we have a higher standard of recognition of the right to life of the child in the womb than many countries across Europe. The convention cannot be used to lower our standards. We certainly do have recognition of the rights of the child in the womb. Even the recent case of Siobhan

Desmond versus the senior coroner in 2013 recognised that a child from the point of viability can be recognised as a person under the law and can therefore be entitled to an inquest.

1531. In winding up, I just want to say that, in the talk on this issue, the words "human rights standards" are very well chosen. These are basically the recommendations of the Committee on the Elimination of Discrimination Against Women (CEDAW). CEDAW has no judicial standing whatsoever. Abortion is not even mentioned in the convention itself. The committee was set up a while after the convention was ratified. Its opinion is simply that of an NGO; it has no legal standing and cannot dictate to countries what their criminal law ought to be.

1532. The Convention on the Rights of the Child, to which both the UK and Ireland are signatories, recognises the right to life before birth. In its preamble, it says that:

"Bearing in mind that, as indicated in the Declaration of the Rights of the Child, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth'".

1533. Article 1 acknowledges that a child is anyone under the age of 18. It does not give a starting date; it does not say "from birth". It says that:

"a child means every human being below the age of 18 years".

1534. Article 2 specifies the right to life regardless of origin, property, disability, birth or any other status. Article 6 recognises the right to life. Article 24 recognises the duty on states to ensure the highest level of maternal health care during pregnancy. That is a right of the child: the mother is not the rights holder in this document; it is the child. That recognises the need for appropriate prenatal and postnatal care for the child.

1535. Finally, the idea that restrictive abortion regimes drive people to illegal abortions is simply unfounded. Within the first 20 years of the implementation of the Abortion Act 1967, the police in England and Wales recorded 986 offences of procuring illegal abortions and brought 293 prosecutions. I have further material dealing with deaths due to legal and illegal abortions in Britain, and I can make it available to anybody who wants it. Thank you.

1536. **The Chairperson (Mr Givan)**: Thank you very much. Members will have some questions.

1537. **Mr McGlone**: Thanks very much for your submission. Obviously, I come at this from a pro-life perspective. Liam, in support of your case, you said that there was no question that the law in Northern Ireland would be in breach of the European convention and that there was no obstacle to this in international law. You quoted various articles about the rights of the child. There are two things. Have you as an organisation taken legal advice on those? Secondly, have those rights been asserted or interpreted as standards in either regional or international law? We have been hit over the last while that it is compliant with this international standard and that international standard as the case for the liberalisation of abortion laws in the North. Can you provide us with the counter legal interpretations of the law or the standards that are being upheld? I do not expect you to have them with you today, unless you are very well renowned — as you are — as a legal expert in international law, but it would be very helpful to us if those could be provided.

1538. **Mr Gibson**: I will do what I can to make sure that I get those to you. I can give you a briefing on EU law, which is binding, unlike general international law on human rights. We took advice specifically on the amendment and the possibility that it would fall foul of the transportation of services. Our advice came from a lawyer who does work for the British Government, and it was verified by an Austrian colleague. I can make that available to you.

1539. **Mr McGlone**: If you can share that with us, it would be very helpful.

1540. **Mr Gibson**: The EU has absolutely no interest in controlling criminal law in

member states, and that is what we are talking about. It is an amendment to the Justice Bill, and it just does not come under the remit of the EU. The more general standards that you are talking about are fraught with controversy. The Universal Declaration of Human Rights is quite clear, however. Many of the treaty bodies that are supposed to oversee compliance, even though they do not have any legal standing, are very influential in the United Nations. That is why we find that, in order to keep delegates informed of the language that arises in various conventions, there is a trend towards, basically, saying that black is white and turning the original purposes of the UN and the Universal Declaration on their head. there is a need to go back to the starting point. Like all human institutions, the UN and the European Court are subject to natural decay, and, unfortunately, we find that they are not prepared to stand over it. They prefer to reflect human rights standards rather than uphold the original standards that were agreed.

1541. **The Chairperson (Mr Givan)**: One of the comments that we heard earlier from the Human Rights Commission was that there are no separate recognised human rights for the unborn child in any international human rights laws — that there are rights, but that they are interlinked with the rights of the mother; they are not a stand-alone, separate, recognised form of rights for the unborn child. There are rights, but they are inextricably linked to the rights of the mother. What do you say about that?

1542. **Mr Gibson**: The European Court has always taken the view that it is a balancing exercise of weighing the rights of the child against the rights of the mother. That is understandable if you want to maintain a status quo with no consensus. The Tysi c case, which I mentioned earlier, involved a mother who had a threat to her eyesight.

1543. It was possible that, during the process of giving birth, her eyesight might have been damaged by the strain. She had an application under Polish law, which allows abortions in cases of serious threat to the health of the mother. She was denied an abortion simply because she could have had a caesarean section and because a specialist disagreed that the level of threat was really as grave as that. When the court heard that case, it decided that her way was obstructed because there was no procedure for an appeal beyond the ordinary medical opinion and second opinion. One of the dissenting judges in that case, Spanish judge, Javier Borrego Borrego, said that he found what the court had done frightening because, basically, it had said that there was a six-year-old boy alive in Poland whose birth was a violation of the European Convention on Human Rights.

1544. As for a specific and separate article that recognises the right of unborn children to be born, that is not separate; it is encompassed because the Universal Declaration of Human Rights was drafted to encompass everyone. It does not separate out any particular class or person due to the stage of their development, their age or any other status. The term “any other status” covers everything that is left unsaid in the Universal Declaration of Human Rights.

1545. I agree that there is no separate instrument that recognises the right to life of the unborn child in exclusion to the human right to life. I have to agree that that is the case. The drafters of the Universal Declaration of Human Rights specifically did not want to separate out particular groups; they wanted something all-encompassing. The Convention on the Rights of the Child is very clear on what I have pointed out to you. Again, the American Convention on Human Rights specifically recognises the right to life from the moment of conception. Without knowing precisely what was said, I agree; yet I say that it is not a problem. The right to life is recognised in all the major international conventions.

1546. **The Chairperson (Mr Givan)**: CEDAW, which you touched on briefly was cited as well. You are saying quite clearly that CEDAW has no jurisdiction.

1547. **Mr Gibson**: Yes. It is not incorporated into UK law; it can serve as an aspiration, but no one could seek redress of their grievance under CEDAW. Abortion is not mentioned at any point in the text of the convention. Most of the articles covered by the CEDAW convention will be covered in a country like the UK anyway. Discriminating against women is already unlawful, so it is not really a problem. A number of cases have tried to say that the fact that abortion is unlawful is discrimination against women and to get the European Court to back them up on that, but it has never worked.

1548. **Mr McCartney**: Thank you for your presentation. I have a couple of brief points. I realise that you are separate, but, obviously, the presentation is very much the same. Your document, Liam, is very explicit where it says:

"We are opposed to abortion whether performed within the health service or the private sector."

1549. Is that shared by all three of you?

1550. **Ms Smyth**: Yes, because the evidence shows clearly that there is no medical necessity. We are not opposed to medical treatment. I outlined clearly in my presentation that, sometimes, life-threatening conditions can present in pregnancy: for example, a mother may have a cancerous uterus or be diagnosed with breast cancer or pre-eclampsia. There are conditions, but, in 2014, it is very rare. As was presented in the evidence during the debate in the Irish Republic, there is no medical necessity. No woman will be denied medical treatment to save her life, but, at the same time, treating her unborn child as a second patient. In some very rare cases, for example the cancerous uterus, where, in the removal of that uterus, the child may die as a secondary effect, the intention was not to take the life of the unborn child.

1551. I am sure that I speak for the three of us when I say that we want to make sure that all women are given the medical treatment, and that is the case in Northern Ireland. I have worked with women for 17 years through crisis pregnancy support, dealing with cases where I have had to refer them for second opinions. In all those cases, there has always been life-affirming medical care for the woman. For example, every mother who presents with pre-eclampsia will always be given the appropriate drugs, bed rest and whatever may be needed to protect her health. The majority of doctors who are treating two patients will take a pregnancy as far beyond viability as possible to safeguard the life of the mother and the child. Sometimes, the baby may have to be born prematurely, and that was the case recently in Dublin where a woman presented. It was the suicide case. The doctors made a decision to take her beyond viability to safeguard the life of the unborn child but also to help to treat her psychological condition. Looking at the psychological well-being of women, Patricia Casey clearly outlined that those women must be cared for in the same way as we would care for another person who is not pregnant and may be suicidal.

1552. **Mr Gibson**: Abortion is abortion, no matter whether it happens in the private sector or the public sector. One of the main dangers that we see and one of the principal reasons why we support the amendment is the possibility of something developing along the same lines as the experience in Canada. Until 1969, Canada's law was very similar to ours; it was then replaced by a more liberal law, supposedly on health grounds. It quickly ran into the courts and arguments over what exactly "health" means. At what stage of health is an abortion lawful? Within 10 years, the new law was totally undermined by the actions of an abortionist, Henry Morgentaler, who opened up clinics and presented himself for prosecution. We are worried that the very same situation could happen here, where the best way to change the law would be to break the law. The amendment would reinforce the current situation and put things back to how they were before Marie Stopes arrived. Hopefully, it will prevent an escalation. If they are left to sit there,

they will keep moving gradually with incremental steps towards their ultimate aim: full-blown abortion along the same lines as the rest of the United Kingdom.

1553. **The Chairperson (Mr Givan)**: They say that that is not the case, to be fair.

1554. **Mr Gibson**: They would say that, wouldn't they?

1555. **The Chairperson (Mr Givan)**: Why not just accept that they will act within the law and take their word for it? What is wrong with that approach?

1556. **Mr Gibson**: If they were the Boy Scouts of America, you might believe them. However, they have a terrible record of breaking and transgressing the law, not only in Kenya, Zambia and South Sudan but even in the United Kingdom, where they have performed sex-selective abortions.It just undermines the credibility of an organisation. If their conscience is clear about performing an abortion then telling an expedient lie is not beyond them.

1557. **Ms Smyth**: Can I just refer to that? In 2012 there was an international symposium on maternal health in Dublin. I attended, as did Liam, and there was a very clear agreement from doctors throughout the world — international doctors who had been involved in maternal care. Some of those doctors were cancer specialists; all were involved in the care of women. They all came together, and the statement was very clear:

"there are no circumstances where the life of the mother may only be saved through the deliberate, intentional destruction of her unborn child in the womb."

1558. That evidence continues to be presented throughout the world. The American obstetricians and gynaecologists have also made a similar statement to say that there is no medical necessity to destroy the life of a child in order to save the mother's life.

1559. **Mr McCartney**: The amendment that we are considering states that:

"It shall be a defence … that the act or acts ending the life of an unborn child were lawfully performed at premises operated by a Health and Social Care Trust".

1560. You would be opposed to that as a defence as well.

1561. **Mr Gibson**: No —

1562. **Ms Smyth**: It may be.

1563. **Mr Gibson**: That is just basically saying what the law is now.

1564. **Mr McCartney**: That is what I am asking. Are you opposed to that? Do you think that is a good law or a bad law?

1565. **Mr Gibson**: Are you asking whether I approve of the existing defences in Northern Ireland law?

1566. **Mr McCartney**: Yes.

1567. **Mr Gibson**: No. Aleck Bourne, who is basically the founder of the case law that we have now — it was his action — regretted it, and I regret it. It is a tragedy that the law in Northern Ireland does not protect all children. Having said that, the mechanism there is based on actual threat. There was no threat, really, to mental health. It is well established now that abortion does not save a woman's mental health. It does not save her from becoming a mental or physical wreck. It is actually more likely to drive a woman to suicide.

1568. I have statistics here, if you want to have a look at them, from recent studies on the mental damage that abortion does to women. Considering the time, I think I will just give you the paper rather than start listing them. There are 18 different studies. We think that the law should be applied and, if it is applied, there are going to be practically no real grounds, because of the advances in medicine since 1967. There was an excuse for the House of Commons in 1967, because they did not know what the effects of abortion were on women. They did not know half of what we know about embryology and fetology. They did not have any 2D scans, let alone 3D scans. We are in a much better position,

and we should learn from the mistakes that have been made.

1569. The clause does not actually specify any particular defence. That clause could allow abortion in a much more liberal regime than there is at present if the law changed, or it could be more restrictive if the law changed in that way. It is a very neutral clause. It is not going to change very much on its own. If you are asking me if I approve of abortion in some circumstances, I do not.

1570. **Mr McCartney**: In general terms, what I am trying to say is that, whereas the clause deals with whether or not they should be carried out in a public facility versus a private facility, I just want to be clear. Your position is clear, but I just want it for the record, that it would not matter whether it was private or public: you would still be opposed.

1571. **Mr Gibson**: The private/public distinction is not part of our objection.

1572. **Ms Smyth**: It is clear that the sole purpose of the law is to protect the unborn child and the mother. A woman is safer in the NHS if her life is in danger. I know that this is a different issue from abortion, but, for example, if a woman had an ectopic pregnancy and went to a private facility like Marie Stopes, her life would be endangered through Marie Stopes. They would not have the facilities or the emergency back-up that we have in NHS hospitals. The law says that a doctor may have a defence, but that the doctor must exhaust every available avenue under the existing law to protect the mother and the child. Marie Stopes' sole purpose is not to protect an unborn child. It is to provide an abortion — to take the life of an unborn child for a fee. As Liam has said, we are a pro-life organisation, and we want to protect both mother and child. We are presenting evidence here today because Marie Stopes has never got the intention. Their sole purpose is to abort unborn children, whereas the NHS in Northern Ireland will work within the law that clearly protects mother and child. We present the evidence that the NHS is the best place to protect mothers and their unborn children.

1573. **Mr Poots**: Mr Gibson, you made a claim that in some instances Marie Stopes were carrying out abortions on the basis of sex.

1574. **Mr Gibson**: Yes. Let me see if I can find the name of the woman. Tragically, this came to light because the woman died. It was Sarbjit Lall, age 29, from Bradford. She died after an abortion was arranged by Marie Stopes in Leeds in 1993. Mrs Lall wanted an abortion when she found out that she was expecting a baby girl. Strangely enough, the coroner blamed the poor woman, calling her deceptive and manipulative and saying nothing about the abortionists. That seems to be very unjust. Obviously, there are moves afoot to try and curtail abortions on the ground of sex in Britain. We will have to wait and see what happens. At the moment, it is unlawful, but that is not being respected.

1575. **Ms Smyth**: It was debated recently at Westminster, and evidence was given. I think there was a Bill making an amendment to the Abortion Act 1967 calling for clarification on sex selection, as BPAS and Marie Stopes were providing abortion for baby girls. That was exposed by the media.

1576. **Mr Poots**: It clearly fits with what Amnesty International told us last week. They said that the reproductive rights of the woman always trumped the child's right to life. The length of time was not an issue for them when terminating a pregnancy. There was no reason that was strong enough to count against termination, where that was the desire of the woman. I suppose that that is what some people believe.

1577. I have had debates, Chairman, with people who described the unborn child as just a cluster of cells. Last week, Mr Dickson posed a question on the rights of the woman and referred to the right of the woman to have cancer removed from her body. I thought that was an absolutely appalling comparison to make with the removing of an unborn child. It

is shocking if Marie Stopes is engaging in that type of activity.

1578. **Mr Dickson**: I am not pleased, but I am content that Mr Poots has raised the issue of my comment last week. I need to nail the lie of the permutation that has been put on that comment. The comment was made in the context of a comparison of paid-for medical services and NHS services. I set out the circumstances where someone has been given a diagnosis of cancer and is told that they can have their operation perfectly safely in a number of weeks in the NHS, or they can opt to have that operation instantly, or in a short period of time. Likewise, and let me be quite clear about this, when women exercise their very restricted legal right to have an abortion in Northern Ireland, the question is whether they should be in a position to make exactly the same decision. For many people, there will be very strong emotional requirements to deal with the situation as soon as possible. That was the context in which the comment was made, and I bitterly resent it being twisted in the way it has been.

1579. Chair, can I ask the witnesses one question? I welcome the comments that they have made. Maybe you have a collective view, but, as organisations, do you have a view on the morning-after pill?

1580. **Mr Gibson**: Certainly, the Society for the Protection of Unborn Children is opposed to it. As I said in my submission:

"We are opposed to the intentional killing of unborn children through abortion, whether by chemical or surgical means (including the use of drugs and devices to cause abortion of the early embryo)".

1581. **Mr Dickson**: I just want to be absolutely clear about this: you are opposed to the use of the morning-after pill.

1582. **Mr Gibson**: It is an abortifacient. That said, it has several effects. It can actually prevent ovulation. We are opposed to its use as an abortifacient.

1583. **Mr Dickson**: That was the view of the Evangelical Alliance. They were not necessarily promoting the view, but they were questioning that last week. Do all of you share the same view?

1584. **Ms Smyth**: We are pro-life representatives. If a chemical or a surgical method — whatever it may be — is used to destroy the life of an unborn child, we are opposed to that. We recognise that, as Liam said, it has a number of mechanisms, but the main intention is to stop the implantation of the already conceived embryo. We are here to speak about the wellbeing of mothers and unborn children — that is what I think is very important — and whether Marie Stopes should offer care to women in a crisis pregnancy or can meet their medical needs. We believe that the NHS is the best place.

1585. **Mr Dickson**: Just for confirmation?

1586. **Ms C Forde**: Yes.

1587. **Mr Dickson**: Regardless of whether the provider is Marie Stopes or Boots the chemist or a GP, you are opposed to the morning-after pill.

1588. **Ms Smyth**: Marie Stopes' sole purpose is to wreck the law, or change the law here. The majority of people — indeed, every woman who uses Marie Stopes — is not using it for the morning-after pill, but in a crisis pregnancy. We would not need Marie Stopes to provide just the morning-after pill, because we have Boots, Brook Advisory and others.

1589. **Mr Dickson**: My question was not about Marie Stopes. It was aimed at getting a very clear answer from you that it does not matter who the supplier is.

1590. **Ms Smyth**: Life begins at conception. We want to protect it from conception.

1591. **Mr Dickson**: In those circumstances, as three organisations you do not believe that the morning-after pill should be prescribed.

1592. **Ms Smyth**: We believe that life should be protected from conception.

1593. **Mr Gibson**: We make no apology for that. We are not trying to —

1594. **Mr Dickson**: I just want to be absolutely clear.

1595. **Mr Gibson**: If you are going to say that life begins at conception, then you have to defend it from conception. That is only consistent.

1596. **Mr Dickson**: I want to be absolutely clear about that, because concerns have been raised that the amendment could lead to a legal challenge to the morning-after pill. The Human Rights Commission, for example, raised that issue with us today.

1597. **Mr Gibson**: I do not think that will happen. The Society for the Protection of Unborn Children brought a case some years ago, and the courts rejected it. It is unlikely that —

1598. **Mr Poots**: [Inaudible.]

1599. **Mr Dickson**: I hear what Mr Poots says, and, indeed, I think the Human Rights Commission made reference to the same case, although they were not quite sure of the exact citation. I am not taking sides: I am simply putting the point to you. I think the argument that they were making was that the law in England has been determined in that regard. They suggested that the widely drawn context of this amendment could include the morning-after pill.

1600. **Mr Gibson**: They are looking for some argument against it.

1601. **Mr Dickson**: OK, that is helpful.

1602. **Mr Gibson**: Legal advice would probably tell people not to take a case if it had already been taken and lost.

1603. **Mr Dickson**: All that I have been trying to do is test that theory and see whether there is a genuine view that it is a fear for some people who support the morning-after pill that this would have that effect or whether you are genuinely satisfied that that is not really a runner.

1604. **Mr Gibson**: Certainly, it is not on our cards, because it has been tried. It is too late now to go back and look for an appeal.

1605. **Mr Dickson**: I understand.

1606. **The Chairperson (Mr Givan)**: Thank you very much for coming this afternoon — this evening as it is now. It is much appreciated.

14 January 2015

Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Mr Stewart Dickson
Mr Sammy Douglas
Mr Tom Elliott
Mr Paul Frew
Mr Chris Hazzard
Mr Seán Lynch
Mr Alban Maginness
Mr Patsy McGlone
Mr Edwin Poots

Witnesses:

Mrs Kathy Fodey	*Regulation and Quality*
Mr Glenn Houston	*Improvement Authority*

1607. **The Chairperson (Mr Ross)**: From the Regulation and Quality Improvement Authority (RQIA), I welcome Glenn Houston, the chief executive, and Kathy Fodey, the director of regulation and nursing. The session is being reported by Hansard, and the transcript will be published on the Committee website in due course. When you are ready, do you want to brief us on your thoughts? We will then open the meeting up to questions from members.

1608. **Mr Glenn Houston (Regulation and Quality Improvement Authority)**: Thank you very much, Mr Chairman. I have prepared an opening statement, which I am happy to share with you.

1609. Thank you for the opportunity to attend the Committee for Justice this afternoon. On 15 September 2014, the Regulation and Quality Improvement Authority made a written submission in response to the consultation on the Justice Bill. The RQIA wishes to acknowledge that this is a complex and highly sensitive issue on which members of the public and elected representatives hold strong views. The RQIA's area of expertise is health and social care, so we are not here to make alternative proposals in respect of amendments to the criminal law that is currently under consideration. While we acknowledge the complexities of the ethics of termination of pregnancy and abortion, we are here to identify and consider the potential impact of the legislation on our specific area of work. We believe that the proposed new clause 11A raises issues for regulation, which we have identified and highlighted in our response to the consultation. These issues centre on the potential impact of clause 11A for the interpretation and application of the Independent Health Care Regulations (Northern Ireland) 2005 as they currently stand.

1610. The RQIA's written submission to the Committee was informed by legal opinion, as we considered it necessary to obtain legal advice on the potential implications of the proposed amendment for the RQIA's role and responsibilities under our principal Order, which is the Health and Personal Social Services (Quality, Improvement and Regulation) Order 2003 and, of course, the Independent Health Care Regulations (Northern Ireland) 2005. We intend, Chairman, to confine our remarks to the impact of the proposed amendment and the implications that it may have for our role as a regulator.

1611. The RQIA was established under the provisions of the Health and Personal Social Services (Quality, Improvement and Regulation) Order 2003. Article 35 of that Order states that the RQIA has:

"the function of carrying out inspections of statutory bodies and service providers, and persons who provide or are to provide services for which such bodies or providers have responsibility, and making reports on the inspections".

1612. Currently, almost 1,500 independent care services are registered with the RQIA. The largest categories are private dental care, nursing homes and residential care homes. Since the establishment of the

RQIA in 2005, there has been a steady increase in the number of registered agencies and establishments every year. Each registered service is subject to annual inspection by the RQIA, and the frequency of those inspections is determined by another regulation, the Regulation and Improvement Authority (Fees and Frequency of Inspections) Regulations (Northern Ireland) 2005. So services are regulated in accordance with the relevant specific regulations and the associated minimum standards developed by the Department of Health, Social Services and Public Safety (DHSSPS).

1613. The Independent Health Care Regulations (Northern Ireland) 2005 place a statutory duty on the RQIA to register and inspect independent hospitals and clinics that meet the stated requirement for registration. Currently, there are two conditions that would require an independent clinic to be registered with the RQIA. These conditions are identified at regulations 4 and 5. To summarise, these conditions for registration are, first, that an independent clinic must register if it intends to carry out a prescribed technique or make use of prescribed technology and, secondly, that a medical practitioner working in the clinic is not otherwise engaged in providing services to Health and Social Care (HSC) in Northern Ireland. In this context, the key reference in the regulations is:

"a medical practitioner who provides no services in pursuance of the 1972 Order".

1614. Therefore, if a medical practitioner does not provide services under the Health and Personal Social Services (Northern Ireland) Order 1972, any surgery or consulting room where that medical practitioner is working must be registered with the RQIA as it meets the definition of an independent clinic that is specified in the regulations.

1615. When a medical practitioner does provide services under the 1972 Order, the surgery or consulting room is not required to be registered as it does not meet the legal definition of an independent clinic. This gives rise to a legal paradox. Two clinics in the same town may provide the same range of services. One will require to be registered due to the fact that a doctor working in that clinic does so on a wholly private basis. The neighbouring clinic does not fall to be registered if the doctor is also employed on either a full-time or part-time basis providing services in the NHS in Northern Ireland. The RQIA has raised this matter with the Department, along with a request that it be considered as part of any planned review of the Independent Health Care Regulations (Northern Ireland) 2005.

1616. It is also important to consider the range of prescribed techniques and technologies as referenced in the Independent Health Care Regulations (Northern Ireland) 2005, which are listed under regulation 4. They include, for example, use of lasers, endoscopy and in vitro fertilisation. Termination of pregnancy is not listed as a prescribed technique. Under the current legislation, therefore, there is not a requirement for an independent clinic providing such a service to register with the RQIA on that basis alone. That is an important point, Chairman. This means that an independent clinic that provides termination of pregnancy within the law as it currently stands does not need to be registered with the RQIA, provided the doctors working there are also contracted to work in the NHS in Northern Ireland.

1617. The legislation does not provide for the RQIA to offer voluntary registration. The RQIA will register only services that are required by law to be registered. When an independent clinic falls to be registered under the regulatory framework, we are required to inspect that clinic annually. That is a minimum of one inspection per annum.

1618. The requirements for registration with health and social care regulators differ across the United Kingdom. In Wales, for example, a clinic would be excluded from the requirement to register only if doctors were providing NHS services in that clinic. Therefore, any clinic employing doctors who provide services

on a wholly private capacity would be required to register with its regulator, the Healthcare Inspectorate Wales.

1619. In England, there are specific and detailed statutory provisions and regulatory standards against which the quality and legality of the services of the termination of pregnancy in an independent clinic can be measured and assessed by the Care Quality Commission (CQC). This provides a specific regulatory framework against which the CQC may inspect those services. To summarise that point: under the current legislation in Northern Ireland, an independent clinic will fall to be registered and inspected by the RQIA only on the basis of the type of services provided and whether it employs a doctor on a wholly private basis. Currently, there is one independent clinic in Northern Ireland, which, under its statement of purpose, provides a range of family planning and sexual health services, and termination of pregnancy up to nine weeks' gestation. Its statement of purpose includes reference to medical abortion within the limited and strict legal criteria of Northern Ireland for clients aged 16 and above up to nine weeks' gestation. Marie Stopes International's Belfast clinic is registered with the RQIA under the provisions of the Independent Health Care Regulations (Northern Ireland) 2005. It falls to be registered solely as it employs a doctor on a wholly private basis.

1620. In the event that the criminal law is amended to include new clause 11A, an independent clinic, such as Marie Stopes, would be prohibited from providing terminations in Northern Ireland under any circumstances. In that regard, Marie Stopes would be required to amend its statement of purpose specifically to exclude medical abortion being undertaken on the premises. The clinic, however, would still fall to be registered with the RQIA if it continued to provide other medical services and employed a doctor on a wholly private basis. Should Marie Stopes cease to employ a doctor on a wholly private basis, the service would no longer need to be registered with the RQIA. In that scenario, the RQIA would have no mandate to enter and inspect the clinic.

1621. It is unlikely that clause 11A, of itself, would prohibit the clinic from providing information to patients about termination of pregnancy or in signposting patients to registered clinics outside Northern Ireland.

1622. If enacted, clause 11A would make it illegal for any independent health-care provider to carry out an abortion, as that procedure could be performed only on premises operated by an HSC trust, with the notable exception of the circumstances outlined in proposed clause 11A(2)(b).

1623. The RQIA has received legal advice that has confirmed that, under the current legislation, the RQIA has no authority to question or challenge the decisions of a medical practitioner in respect of his or her treatment of an individual patient in any setting. Therefore, the RQIA cannot question a medical practitioner's assessment of the basis on which a decision to offer a termination of pregnancy is made. In the event that the RQIA became aware of circumstances that suggested that a medical practitioner had acted other than in accordance with his or her professional code of practice, the RQIA would be obliged to refer that matter to the General Medical Council (GMC) for further investigation. Should the RQIA become aware of information that suggested that any employee of a registered service had engaged in a criminal act, the RQIA would immediately refer that matter to the relevant authority — the PSNI. The RQIA is not empowered to carry out criminal investigations. However, we would, and we do, liaise closely with the PSNI in circumstances where we believe that it is necessary and appropriate to do so.

1624. Our engagement with regulated services is based solely on providing fair and unbiased regulation to drive improvement in the quality of services for those who rely on them. The RQIA would caution against any proposal that

would fundamentally alter the nature and purpose of that responsibility.

1625. To conclude: any changes to the criminal law that would have implications for the existing legislation that governs the regulation of independent providers and Health and Social Care trusts must be given due consideration. Any resultant amendments required to the regulations and minimum standards for health and social care would require to be taken forward either in tandem or shortly after in sequence. Chairman and members, thank you very much for the opportunity to present this information.

1626. **The Chairperson (Mr Ross)**: Thank you very much. From your written submission and your opening statement, you seem to be particularly concerned about two areas. First is the change in the RQIA's role, in that you would move from assessing quality to enforcement. If the amendment were made, are you suggesting that you would need to work with the police on all those issues and on any role that you would have in that area?

1627. **Mr Houston**: Chairman, as I said, we currently register approximately 1,500 services. There are times when we are obliged to work collaboratively with the PSNI — for example, on investigations into allegations of the abuse of vulnerable adults, which we do routinely. In any circumstance in which any of our officers are privy to information that ought to be shared with the PSNI, we share that information. As you rightly said, our organisation is neither mandated nor has the capacity or resource to conduct criminal investigations. Our written submission indicates that, if that were to change, we would want to employ people with particular skills and possibly work in tandem with the PSNI when it was necessary to do so. We view that as fundamentally not within the current ethos of the regulation of health and social care services in Northern Ireland.

1628. **Mr A Maginness**: Thank you very much for your very helpful submission. I will start by asking about your role. Is it correct that you do not have a clinical capacity?

1629. **Mr Houston**: I will hand over to my colleague Kathy Fodey, who is our director of regulation. She will explain what we do.

1630. **Mrs Kathy Fodey (Regulation and Quality Improvement Authority)**: If you mean clinical capacity in the assessment of clinical decision-making, the short answer is no. It is the same as if we were inspecting an independent hospital that undertook a hip surgery. We would not question the clinical decision-making that led to that surgical procedure being undertaken. We do not second-guess the actions of medical practitioners.

1631. **Mr A Maginness**: You referred to the Marie Stopes clinic. My understanding is that the clinic is registered with you. Is that correct?

1632. **Mrs Fodey**: It is, yes.

1633. **Mr A Maginness**: Will you describe your role in relation to Marie Stopes? I am not quite sure what impact that would have on the clinic and your inspection role.

1634. **Mr Houston**: I will make a couple of points in response to your question and will ask Mrs Fodey to elaborate. The 2005 regulations currently govern the activities of independent health-care providers. As I said, when a clinic falls to be registered, our requirement under the Regulation and Improvement Authority (Fees and Frequency of Inspections) Regulations (Northern Ireland) 2005 is to undertake an inspection of that service once a year as a minimum. If the service falls to be registered on the basis that it employs a doctor on a wholly private basis, the focus of our inspection will be on the activities of the individual clinician. I will ask Mrs Fodey to say a little more about that.

1635. **Mrs Fodey**: The Independent Health Care Regulations (Northern Ireland) 2005 dictate that the Marie Stopes clinic falls to be registered by the fact that it employs a doctor on a wholly private basis. That doctor does not

work in the NHS or Health and Social Care in Northern Ireland in any other capacity. Therefore, that doctor falls to be regulated by us as a private doctor, in the capacity of an independent clinic private doctor.

1636. The independent health-care standards were finalised and launched by the DHSSPS in 2014, and we specifically register and inspect against a number of standards. Those include informed decision-making and what information is available to patients who come to be seen by a private doctor. They also include patient-client partnerships: how they are managed; how complaints against a private doctor are dealt with; how records are maintained and whether they are stored appropriately in accordance with data protection and confidentiality; and whether they are protected. There are clinical governance issues about the operation of a private doctor's practice, the staff indemnity insurance and the practising privileges of that doctor. Is there a policy, a protocol and a contract for that private doctor to operate on those premises?

1637. Management control of operations covers a range of things, like the operating hours of a clinic, governance and management. If a doctor administers medications, for example, it might cover the safe disposal of sharps. Those are the type of governance and management operation issues. It also deals with medical emergencies. If a medical emergency were to occur, are there sufficient facilities and the wherewithal in that clinic to deal with it?

1638. **Mr A Maginness**: I will be more specific: you do not inspect any clinical decisions that are made by a doctor.

1639. **Mrs Fodey**: No, we do not.

1640. **Mr A Maginness**: If a doctor, for example, were to carry out a procedure in relation to abortion, would you be aware of that?

1641. **Mrs Fodey**: Our focus is to ensure that a doctor is qualified and trained to undertake the procedure that he has been employed to do. If that doctor is employed in that capacity to provide abortion, the expectation is that he or she is trained to administer medications to a woman, in the same way, with a doctor who is employed to provide hip surgery, we expect him or her to be registered with the relevant royal college and to have the appropriate qualifications. I am not sure whether that answers your question.

1642. **Mr A Maginness**: It does and it doesn't. What I am trying to get at is this. Let us leave Marie Stopes aside. Can you go into a clinic that, from time to time, carries out abortion procedures and invite it to detail those procedures? Can you inspect the records for that sort of activity?

1643. **Mrs Fodey**: Are you talking specifically about Marie Stopes as it operates in Northern Ireland?

1644. **Mr A Maginness**: I wanted to make it a general point, so clinics that are similar to Marie Stopes. You may not want to comment directly on Marie Stopes, so I want to see whether you can advise the Committee as to what might happen in your inspection of abortion procedures.

1645. **Mr Houston**: There are probably three broad areas, Mr Maginness. First, when a clinic is registered, it must abide by its statement of purpose. If a clinic strayed beyond its statement of purpose, we would be concerned with that and would endeavour to address it. Secondly, a clinic must abide by the regulations, and, as I explained in my opening statement, the regulations in Northern Ireland are different from regulations in other countries, including England and Wales. One of our current challenges in Northern Ireland with those regulations is that they do not specifically address or prescribe the techniques by which a termination of pregnancy may take place. Thirdly, in working within the regulatory framework, we must look at what that framework requires of a clinic, which is specified in the regulations. You mentioned one area: record-keeping. A clinic must keep good records. Our ability to access records is governed by the 2003 Order. There are certain circumstances, which are clearly laid

out in the Order, whereby we can access records without consent. Generally, if we access records, we must do so with the consent of the patient. The exception in the 2003 Order is when a concern is identified to us that the life of a patient may be immediately at risk. That provides an exception, but, even in those exceptional circumstances, we must justify the basis on which we take that decision. That would inevitably require us to seek legal opinion and be sure of our grounds.

1646. **Mr A Maginness**: From what you say, it seems to me that your powers to inspect any clinic that may be involved in abortion outside the National Health Service are limited.

1647. **Mr Houston**: They are.

1648. **Mr A Maginness**: Whereas, in England and Wales, there are different powers, so the situation is different.

1649. **Mr Houston**: The regulations are different, and they are more extensive in relation to the procedure for the termination of pregnancy or abortion.

1650. **Mr A Maginness**: Your written submission states that you had some problems with proposed clause 11A — I do not know whether you still have them — and treatments carried out beyond NHS facilities — for example, treatments that are borderline abortion or something of that nature carried out by a private clinician. You felt that, in such circumstances, what is legitimate within the present law may not be lawful. I think that that is the gist of what you were saying.

1651. **Mr Houston**: I preface my answer by saying that neither of us is a trained barrister or solicitor and neither of us is an expert in the law. However, what we were attempting to do in our written submission was to identify areas that might arise as unintended consequences of clause 11A. One of the questions we posed in our submission was: how might an ectopic pregnancy be treated under clause 11A if it were identified outside an NHS service?

1652. It is worth making the general point that many clinicians are in private practice. Those clinicians, if they also work in the NHS, do not fall to be registered as an independent clinic under the regulations. The issue is how clause 11A might extend to circumstances of that kind. Obviously, clinicians have a choice to refer people on and to refer them into the NHS, which many do, including general practitioners.

1653. The second question we raised was: if an individual sought medical advice and, on the basis of that consultation, opted to have a medical abortion within the law as it stands, and clinicians in private practice were administering that medication outside NHS premises, how would clause 11A cover that circumstance? We do not have an answer to that; we raise it as a question.

1654. **Mr A Maginness**: You raise that question quite rightly, and you have come here independently to speak to the Committee.

1655. Have you looked at section 1(3) of the Abortion Act 1967? I will give you a copy, because it may be helpful to have a wee look at it. It reads:

"Except as provided by subsection (4) of this section, any treatment for the termination of pregnancy must be carried out in a hospital vested in the Secretary of State for the purposes of his functions under the National Health Service Act 2006 or the National Health Service (Scotland) Act 1978".

It continues:

"or in a place approved for the purposes of this section by the Secretary of State."

1656. Section 1(4) states:

"Subsection (3) of this section, and so much of subsection (1) as relates to the opinion of two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of the opinion, formed in good faith, that the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman."

1657. The point I make to you is this: Mr Wells's amendment, in my opinion, reflects this subsection. I cannot see much difference between that and Mr Wells's amendment. This is the substantive law under which — I believe, anyway — British abortion law is carried out. If Mr Wells's amendment is reflective of that, and it does not cause legal problems in England and Wales of the type to which you have quite properly adverted — I am not in any way critical of that — why would it cause a problem here?

1658. You may not have an answer to that question, and I respect that, but I raise the issue because I think there is very little difference between Mr Wells's amendment and the substance of subsection (3).

1659. **Mr Houston**: I bow to your knowledge on that, Mr Maginness. I do not wish to challenge that in any stated shape or form, but —

1660. **Mr A Maginness**: I am not expressing a legal opinion here.

1661. **Mr Houston**: Whether it is a legal opinion or a personal opinion, I still would not wish to challenge it.

1662. **Mr A Maginness**: It is a personal opinion.

1663. **Mr Houston**: You asked, quite rightly, whether we had looked at the Abortion Act 1967. Having referred to the situation in England in my oral statement, I can share with the Committee two things: the Care Quality Commission (Registration) Regulations 2009 and the Department of Health's 'Procedures for the Approval of Independent Sector Places for the Termination of Pregnancy (Abortion)', which are described as interim procedures. The opening statement in that document says that the Secretary of State for Health has a responsibility under section 1(3) of the 1967 Act, as amended by section 37 of the Human Fertilisation and Embryology Act 1990, to approve places other than places exempted by this section for the purpose of treatment for termination of pregnancy (abortion) and that all places operated by non-NHS bodies must be approved.

1664. **Mr A Maginness**: Yes.

1665. **Mr Houston**: Those documents may be useful to the Committee.

1666. **Mr A Maginness**: My final point is that, in present circumstances, outside the NHS, is there an approved place here where an abortion procedure could take place lawfully?

1667. **Mr Houston**: The only place outside the NHS that offers that service is Marie Stopes International. It is currently registered under the independent health care regulations.

1668. **Mrs Fodey**: We would point out, however, that England has actually written the requirements into its regulations and standards for termination of pregnancy and abortion. There is no equivalent in Northern Ireland, so there is no requirement to register a place to undertake the termination of a pregnancy. The place is registered by virtue of employing a doctor on a wholly private basis.

1669. **Mr A Maginness**: Thank you very much; that is very helpful.

1670. **Mr Elliott**: I apologise for missing the start of your presentation. I have a query about a point on page 4 of your written submission, which begins:

"If it is the intention of the promoters of this Clause to impose a blanket ban on private healthcare entities providing pharmaceutical early pregnancy termination services".

1671. Do you know that paragraph?

1672. **Mr Houston**: Yes, I have it here.

1673. **Mr Elliott**: Can you expand on that slightly more? You have given an example in the preceding paragraph. Are there any wider difficulties around that, or is it limited to what you have put in the preceding paragraph?

1674. **Mr Houston**: The reference we made, Mr Elliott, in the preceding paragraph was to the example of a situation arising inadvertently as the result of a road traffic accident. How does the law apply in that circumstance? That is an extension of the purpose

and nature of the law as opposed to the literal interpretation of the law. For us, the most significant issue is what becomes of an individual who is acting under medical supervision and guidance, but perhaps is administering an abortifacient at home as opposed to on NHS premises or in a clinic. Would clause 11A as it currently stands criminalise that activity, and is that an intended or an unintended consequence? I deliberately pose it as a question, because I am not clear what the intention was.

1675. **Mr Elliott**: If it was not intended as part of the proposal, I assume there is a mechanism for — I will not say "getting round it" — dealing with that situation.

1676. **Mr Houston**: There may well be appropriate means of setting out exemptions. In every piece of legislation, exemptions are normally prescribed. The independent health care regulations prescribe certain exemptions; for example, an occupational health service offered by an employer does not need to register as an independent clinic. It may employ a doctor who is working on a wholly private basis for that company providing occupational health advice, but that is a prescribed exemption.

1677. **Mr Elliott**: Maybe this is an unfair question, but do you see it as a practice that could increase the numbers administering such medication at home?

1678. **Mr Houston**: I look to my colleague, Kathy, to add to my answer. When the Abortion Act 1967 came onto the statute book, we did not have the Internet. The Internet opens up opportunities to individuals that were not around maybe even five years ago. A concern that any health care provider would have would be that, as an unintended consequence, women will be driven underground and put themselves at greater risk out of fear of seeking service, help, and support through a registered clinic or the NHS.

1679. **Mrs Fodey**: The only thing I would add is, following Glenn's point on access through the Internet, we have a difficulty with some web-based doctor services. They do not know where you live, so the doctor at the other end may not know that he is supplying drugs to someone who is resident in Northern Ireland against the law. Does that in itself make it against the law? I cannot answer those questions, but these are the types of scenarios that may be subject to this.

1680. **Mr Elliott**: I assume that could be happening at present, as well.

1681. **Mr Houston**: It could be. We do not know.

1682. **Mrs Fodey**: Individuals could be sourcing medication on the Internet for such purposes without it being known to any of us.

1683. **Mr Elliott**: Thank you very much.

1684. **Mr Poots**: How many abortions have been carried out in the Marie Stopes clinic?

1685. **Mr Houston**: We do not know the answer to that question, Mr Poots.

1686. **Mr Poots**: And therefore you do not know if any have been carried out outside the law.

1687. **Mr Houston**: One follows from the other. We do not know the number that have taken place.

1688. **Mr Poots**: Who does know? Does the PSNI know?

1689. **Mr Houston**: I doubt that the PSNI knows, but I cannot answer for them. Marie Stopes should know. They should be keeping a record.

1690. **Mr Poots**: Do you accept that it is an unacceptable position that people could be operating outside the law?

1691. **Mr Houston**: It raises an important question about the kind of information that an independent health clinic should be recording, what it should be doing with that information and what permissions there ought to be around the sharing of that information with the consent of patients. This is certainly a matter that has been of concern to this Committee previously.

1692. **Mr Poots**: Euthanasia is illegal in Northern Ireland and, indeed, across the UK. If someone was offering that facility, that would also be against the law.

1693. **Mr Houston**: I am sure you are correct in that.

1694. **Mr Poots**: It would therefore be unacceptable for an organisation to do so and hold those records without sharing them. Do you accept that it is inappropriate that any organisation could be acting outside the law? You are suggesting that records should be shared with the patient's permission. I am sorry, but when it comes to the law, that overcomes that particular issue. If someone is engaging in an act which is breaking the law, then you do not have the right to hold on to that information.

1695. **Mr Houston**: Again, this is perhaps something that is a very important interplay between the criminal justice legislation and health and social care regulations in terms of how information should be held and captured and under what circumstances, and with whom that information should be shared. For example, should it be shared with the Department of Health, Social Services, and Public Safety? Should it be shared with the Health and Social Care Board or the Public Health Agency? Should it be shared with the Regulation and Quality Improvement Authority? Those are all, I think, very valid questions and should be part of a debate.

1696. **Mr Poots**: Fair enough.

1697. **Mrs Fodey**: The only thing I would add to that is that our expectation is that any medical practitioner registered with the General Medical Council would not only adhere to their code of conduct but fulfil their responsibilities under the law.

1698. **Mr Poots**: Everybody, including the PSNI for that matter, is subject to scrutiny. Everybody has the ability to break the law. That is why we have scrutiny mechanisms in place. We have a Police Ombudsman, for example. As an organisation, you carry out many different inspections of people working in the health and social care sector. This group, however, perhaps because of weaknesses in the law or things which have not previously been thought about, have found a gap in the law allowing them to carry out work that does not come under scrutiny. That is basically what the issue is. I am not suggesting that they are breaking the law, but there is no mechanism for scrutinising that. That is, therefore, a deficiency that we need to address. I think this is what Mr Wells was trying to address. You raised quite a few issues about the legal context to clause 11A. Did that come from you or did you get legal advice?

1699. **Mr Houston**: As I said in my oral statement, we felt it was appropriate to seek a legal view because we are not ourselves experts in the law. We sought and received opinion about proposed amendments, and our written submission reflects that opinion.

1700. **Mr Poots**: Thank you.

1701. **Mr Lynch**: You state that the draft clause is ill thought out. On what key grounds do you take this view?

1702. **Mr Houston**: There were two reasons for our queries. One was whether there are unintended consequences. The second issue — it is more a criminal justice than a health and social care issue — is how we make good law that can be policed and against which individuals can properly be held to account. We wanted to point out that, whereas we as a regulator have a very specific and well-defined regulatory role within the health and social care order and its associated standards, we are not a criminal justice agency and are not, therefore, well placed to police the law.

1703. **Mr Lynch**: Thank you.

1704. **Mr McGlone**: We are coming to the nub of the issue. Can you talk me through what you check in a facility that you regulate?

1705. **Mrs Fodey**: It very much depends on the premise under which the facility is registered with us. If it is a nursing home, we inspect against the nursing home regulations and DHSSPS

minimum standards for nursing homes. By the same token, if it is an independent clinic, we inspect against the independent health care standards. Because they are silent on the issue of termination of pregnancy, if we are there to inspect a private doctor service, we focus our inspection on the private doctor service, including how that private doctor came to be registered in that clinic, what services are provided, how records are maintained and what qualifications they have.

1706. **Mr McGlone**: So the question is whether a person is qualified to administer or serve within that practice or building or facility. Let me take you to a hypothetical — or probably non-hypothetical situation, as I would be surprised if you have not been there as an organisation. What if you find something untoward in terms of the level of professionalism or practice of a suitably qualified individual or individuals? What is the trigger mechanism then?

1707. **Mrs Fodey**: That does happen; it is not a hypothetical situation. It happens across a range of services, and there are a number of mechanisms that we use. The very first thing is to assess the impact on patients and relatives — people who are in receipt of services. If for example, it immediately triggered safeguarding vulnerable adults or child protection issues, we would refer those on to the relevant authorities immediately. If we felt that there was an issue — whether we felt that the law was being breached and a crime was being committed — we would refer that on to the PSNI, and we have protocols for joint working with the PSNI that provide us with an easy mechanism to do that.

1708. **Mr Houston**: I would add another dimension, Mr McGlone. The registered provider — the registered person, as it is known in the regulations — has a duty and a responsibility, if they have a concern about the practice of anyone employed in that clinic, to address that. That might involve also making a referral to the professional regulator: if it is a doctor, that is to the General Medical Council and, if it is a nurse, that is to the Nursing and Midwifery Council. We have had conversations in the past with registered persons about that very issue.

1709. **Mr McGlone**: We will presume that that is the public sector. Can we move over into, say, an independent or private sector? You alluded to that earlier. Is it the independent health care regulations?

1710. **Mrs Fodey**: Yes.

1711. **Mr McGlone**: If you are in a premises, what does your remit cover there? Is it different to the public sector, or is it the exact same remit? What is the trigger mechanism or the process to be followed if you find something untoward, improper or illegal regarding a professionally qualified individual? What happens in the independent or private sector?

1712. **Mrs Fodey**: There would be no difference whatsoever. We still protect the people in the first instance. We make referrals to the PSNI, if that is appropriate; we refer it to the professional regulator; and we, as the regulator, would take enforcement action if we felt that it was a breach in regulations.

1713. **Mr McGlone**: I will tease that out a wee bit further for you. Say, for example, an illegal abortion was taking place — you would certainly hope not in the public sector — in the private sector or in an independent clinic, as we will call them, what level of evidence or information are you privy to, to make the call that that was illegally taking place? In other words, unless somebody discovers it and passes it on to you, the police or whatever, what are your powers of investigation to establish whether that may or may not be happening? It could be that or it could be something else — for example, the illegal prescription of drugs.

1714. **Mr Houston**: In any circumstance where a concern is brought to our attention, regardless of where it came from, the first thing that we have to consider is the appropriate authority to investigate that concern. If the appropriate authority is, for example, the PSNI, then we could actually be compromising a police investigation if we stepped into that space and,

somehow or other, prevented a robust investigation being led by the PSNI.

1715. **Mr McGlone**: I think that you are maybe picking me up slightly wrong. I am not talking about where someone has reported it to you; I am talking about your level or your capacity to discover whether something untoward or illegal is happening.

1716. **Mrs Fodey**: During our inspection, we may discover something, but that would be coming across something. If you are asking whether we go in deliberately and search to see whether there has been a breach in the criminal law, the answer is no.

1717. **Mr McGlone**: Right. Say that people's medical files are kept in there: do you have access to those medical files?

1718. **Mr Houston**: First, we need to make sure that proper records are kept, and that is referenced in the independent health care regulations. The regulations are quite specific about the records that an independent clinic should keep. They are also very specific about the range of events that an independent clinic should report to the regulator. For example, the death of a patient is the very first thing that would be reported. Also prescribed is:

"any serious injury to a patient … any infectious disease … any event in the establishment or agency which adversely affects the well-being or safety of any patient … any allegation of misconduct resulting in actual or potential harm .. any theft, burglary or accident in the establishment or agency."

1719. Those are the kind of things that the responsible individual is required to report to the Regulation and Quality Improvement Authority. Those would be triggers to the RQIA to ask a number of questions and, depending on how those are dealt with, they might also be triggers to refer the matter on to the GMC or the police.

1720. **Mr McGlone**: That is the guidance. Finally, then, have there been occasions where, whether public or private, abortions have been listed among those?

1721. **Mr Houston**: No. Abortion is not specifically listed, Mr McGlone.

1722. **Mr McGlone**: I know it is not listed; I heard your list there. Has the actual act of an abortion been listed under any of those headings?

1723. **Mr Houston**: I am not aware of that at any stage since my time in RQIA, which goes back to 2009.

1724. **Mr McGlone**: That has been very helpful. Thank you.

1725. **Mr Dickson**: I appreciate the presentation that you made. Have you actually received any complaints about the Marie Stopes clinic and the services that it provides?

1726. **Mrs Fodey**: No.

1727. **Mr Dickson**: You have conducted an inspection there, is that correct?

1728. **Mrs Fodey**: We have, yes.

1729. **Mr Dickson**: Were any adverse comments made in the inspection that you conducted about any of the services that it provides?

1730. **Mrs Fodey**: By staff?

1731. **Mr Dickson**: No, in your report.

1732. **Mrs Fodey**: Adverse comments about —

1733. **Mr Dickson**: About the quality of record-keeping or whatever.

1734. **Mrs Fodey**: No. We assessed the clinic, and it was fully compliant with the standards that we went out to inspect against.

1735. **Mr Houston**: In the last inspection, if I am not mistaken, there were no requirements or recommendations made.

1736. **Mr Dickson**: That is very helpful, thank you.

1737. **The Chairperson (Mr Ross)**: Thank you very much. We appreciate your time.

21 January 2015

Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sammy Douglas
Mr Tom Elliott
Mr Paul Frew
Mr Seán Lynch
Mr Alban Maginness
Mr Patsy McGlone

Witnesses:

Ms Anne Kane	*Health and Social*
Mr Alphy Maginness	*Care Board*
Mrs Fionnuala McAndrew	

1738. **The Chairperson (Mr Ross)**: I welcome Fionnuala McAndrew, director of social care and children, Alphy Maginness, director of legal services, and Anne Kane, governance manager of the Health and Social Care Board (HSCB). You will be aware that the meeting is being reported by Hansard and will be on the Committee website in due course. When you are ready, if you would like to brief us on your views, we will then open it up to members for questioning.

1739. **Mrs Fionnuala McAndrew (Health and Social Care Board)**: Thank you, Chair. I will make a short presentation to draw the Committee's attention to some of the issues that we have raised in our response. The Health and Social Care Board welcomes the opportunity to speak to the Committee on this important matter.

1740. At the outset, I would like to commend the Committee for Justice and the Department of Justice for taking forward a number of initiatives that have directly benefited vulnerable children and adults in contact with the criminal justice system, many of whom are known to health and social services. The board has worked closely with the Department of Justice to deliver those and other improvements, which illustrates the value of collaborative working between criminal justice and health and social care systems, from the highest level to front-line services.

1741. I would like to make the following points about the proposals being considered by the Committee today. We support some of the proposals unanimously. Many of them have the potential to be of significant benefit to vulnerable witnesses and victims of crime. I make specific reference to the proposals for sharing victim and witness information under Part 4 to provide a more effective mechanism through which victims can automatically be provided with timely information about the services available to them. The proposal contained in Part 5 in relation to the exchange of information is a small but important additional safeguard for vulnerable groups — children and adults — and should assist in ensuring that appropriate persons are unable to get work with such groups of individuals.

1742. However, as you know from our submission, there is a proposal that the Health and Social Care Board has expressed some concerns about. I think that we set that out well in our response, but I would like to draw the Committee's attention to a couple of issues that we have articulated in that response.

1743. First, there is a robust argument that the current legislation provides a wide degree of discretion and a low threshold for action by the Attorney General where a decision by the coroner has been made not to hold an inquest, an inquest has been held but was deficient, or fresh evidence has become available. In our view, the Attorney General is already able to request all relevant documentation obtained by the coroner during his or her investigations into the deaths, and could review that documentation. In summary, we contend that the present system is sufficiently robust to ensure that the interests of

justice are properly served and there is therefore no need for the proposed amendment.

1744. The Attorney General's correspondence to the Committee dated 5 March makes specific reference to securing access to documents such as serious adverse incident (SAI) reports. That amendment would allow the Attorney General to require any person who has provided health or social care to a deceased person to produce any document or give any other information that, in the opinion of the Attorney General, may be relevant to the question of whether a direction to hold an inquest should be given by the Attorney General. It is our contention that the relevant documentation will already have been provided to the coroner and will have been used by him or her to inform the decision to hold or not hold an inquest. Again, we respectfully suggest that that amendment is unnecessary.

1745. As I mentioned, the correspondence refers to some difficulty in accessing serious adverse incident reports in the past that he considered would assist him in determining whether a direction to hold an inquest should be made. That appears to us to reflect a common misunderstanding of the purpose of serious adverse incident analysis and reporting. The serious adverse incident process is primarily a service improvement process that seeks to identify and learn lessons for practice and organisations. It should not be seen as a vehicle for apportioning blame or determining culpability. That is a matter for other processes to determine as appropriate. The success of serious adverse incident reporting and investigation depends on the preparedness of staff to engage in the process in an open and transparent manner. This openness in reporting is positively encouraged in return for an assurance about the nature of any such report and how it will be used.

1746. I have already referred to the fact that this information is already made available to the coroner, if necessary, through the High Court. The proposal from the Attorney General seems, to us, to seek that a system established to promote reflection, service evaluation and learning be used for a different purpose. In our view, it is likely, therefore, that the amendment will result in the unintended consequence of increasing staff reluctance to engage in this process. In addition, it is our experience that families who are already distressed about the loss of a loved one need a lot of support at that time, in both coming to terms with their loss and understanding the SAI process, why it is being initiated and their involvement. It is our concern that additional advice to them of the Attorney General's intervention is likely to compound that distress. Finally, I draw the Committee's attention to the fact that both the Department of Health, Social Services and Public Safety and the board have issued correspondence to trusts in relation to the legal requirement to report deaths to the coroner under section 7 of the Coroners Act. There is explicit reference to this requirement in our documentation.

1747. I ask the Committee to understand that the HSCB welcomes the majority of the amendments proposed, but asks the Committee to give further consideration to the proposals suggested by the Attorney General.

1748. **The Chairperson (Mr Ross)**: Thank you very much. I have a couple of questions before I open it up to other members. The South Eastern Health and Social Care Trust has said that it does not have an objection to the proposed amendment and that it would provide a clear statutory basis for the disclosure of papers and assist the trust to be clear about what documentation could be released to the Attorney General. We have a letter from Mr Alphy Maginness in which you were asking on what authority the Attorney General was requesting certain papers. Would the amendment not be helpful in clarifying that, given that that is exactly what you are asking for in that letter of 23 December?

1749. **Mrs McAndrew**: I will make an initial response and then ask Mr Maginness

to come in. I have had access to the trusts' responses and the Department of Health's response. The South Eastern Trust response comes from a position of it having been asked for papers in the past and there being a lack of clarity about what exactly is being requested and how that might be used. When we reflect on the whole health and social care system's response, we are concerned about duplication and the impact on clinicians and families. If the amendment were to proceed, there would be an absolute need for more clarity about what its implications might be. I will ask Alphy to make a response.

1750. **Mr Alphy Maginness (Health and Social Care Board)**: Chairman, my letter posed this question: what is the legal authority for access? That is a perfectly legitimate question to ask in the circumstances. The law is quite clear. In fact, a response to that letter, which I do not think that you have, confirmed the Attorney General's Office's view that it did not have legal authority to access the documents. Nevertheless, the safeguards are already in place, as Fionnuala has pointed out.

1751. In that circumstance, the request was in relation to an issue that had been brought to the Attorney General's attention by a third party. I do not know the circumstances of how it was brought to it, but I do know that, in that particular case, the trust had made a determination that there was nothing untoward in respect of the death of the individual. The death had, in fact, been reported to the coroner. The coroner concurred with that view and, as recently as today — I saw correspondence literally just before I came in the door — one of the more senior medical officers of the trust met the coroner's medical adviser, and she agreed completely with the trust's view that there was nothing untoward in respect of that death and that the coroner would not be changing his original decision; namely, not to hold an inquest. That case actually is a very good example of where this could go. There would be these nugatory exercises to determine whether there was anything untoward. An original decision has already been made by senior trust staff on the one hand, and then a third party interferes and says to the Attorney General, "You should question this further."

1752. The role of the coroner is very expressly set out in the Coroners Act. If the coroner makes the decision, quite rightly that decision is subject to review by the Attorney General; no one is suggesting otherwise. Those are proper circumstances for the Attorney General to intervene. However, if it is without justification, that leaves it open to — abuse is too strong a term perhaps, but unnecessary duplication of effort and unnecessary waste of resources in the already difficult financial circumstance that we have. It will increase unnecessarily the administrative burden on trusts and medical staff.

1753. **The Chairperson (Mr Ross)**: I understand that you believe that it is unnecessary and would have unintended consequences. We need to be mindful of that in any legislation that we pass. If the power were to be given to the Attorney General, as is proposed, in your view, would it be helpful if an application to the High Court had to be made to exercise such discretion and call for evidence? A number of stakeholders have suggested that. Have you any view on that?

1754. **Mr Alphy Maginness**: It is an option, of course, that is readily available. My understanding from looking at other jurisdictions, such as England and Wales in Great Britain and the South of Ireland, is that the situation there is very much as it pertains today in Northern Ireland. The Attorney General there does not have additional powers to access records, reports and information of any description. However, in those jurisdictions, the Attorney General does retain the power to effectively review a coroner's decision. We respectfully suggest that there is no reason to change a system that is apparently working extremely well and does have the safeguard, not just for those individuals directly affected by the events but for the public generally, that

the Attorney General can come in if he believes that it is necessary to intervene in a coroner's decision. In our view, the coroner being the first port of call is entirely proper, and it is unnecessary to have another party effectively carrying out the same role.

1755. **Mr Lynch**: Fionnuala, you spoke about the unintended consequences for staff involved in the process. Could you elaborate on that? Secondly, when the Attorney General was here, he said that there was no harm in having a second pair of eyes. Do you see him intervening where he should not?

1756. **Mrs McAndrew**: I referred to the unintended consequences for clinical staff and families. I will start with clinical staff. The people who deal with these situations are front-line nurses and doctors. They are the people who break the bad news to families in the first place. Where we feel that the matter needs to be looked at, they are then required to explain our SAI process. Our experience is that that, in itself, can lead to all kinds of emotional responses from families. Clearly, it is already a very distressing time. They are concerned that something may have gone wrong, and we are looking to see if there are any lessons that can be learned from that case. That whole process needs to be managed. Front-line nurses and doctors carry out that function in the knowledge that it is a learning exercise. We are not looking for blame. We are not looking to see who is at fault. We are encouraging an open debate about how we can provide better quality services. Our concern is that the more legal powers you introduce around this whole process, the more professional clinicians get concerned about the consequences for them and their colleagues.

1757. Our experience of family involvement is that it is very distressing at times. We have to remember that we are talking about the loss of loved ones; sometimes it is a baby who has died. It is very challenging for families to understand why we would be looking to see if there was anything that could be improved upon. More than two pairs of eyes look at this whole process. I will explain. In the first instance, the procedure requires the trust to look back on the case, in order to understand what interventions happened, who was involved and what measures were taken. That is when they would look for any potential learning. After that, the information is scrutinised by the Health and Social Care Board in what is quite an intensive process that often involves an iteration of looking at reports and asking for more detail until we are satisfied that everything has been looked at appropriately. As Alphy said, an unexpected death, under section 7 of the Coroners Act, is referred to the coroner, who will look at it in his own right, as well. I am not sure at this stage of the benefit in introducing yet another person into this process, because the process is robust as it stands. I hope that answers your question.

1758. **Mr Frew**: Will the coroner always be assured that he or she has all the information at hand? What safeguards are in the system to ensure that happens?

1759. **Mr Alphy Maginness**: There is a legal obligation to provide the coroner with all relevant information pertaining to the death, including reports and records, in keeping with the serious adverse incident procedures introduced in recent years, and which have been added to. I personally was involved in an inquest last week, and in the pre-hearing consultation with the trust, I was assured, and I know, that the coroner had been given a copy of the serious adverse incident report, as had the family. The solicitor on the other side confirmed to me that he had also received the report.

1760. The other safeguards include section 10 of the Coroners Act, which makes it an offence not to report a death within the terms of section 7. In other words, if a death ought to be reported, it is an offence not to report. Criminal action could be taken against an individual who fails to submit a report. Furthermore, under section 17C, which deals with

offences relating to evidence — I will not read the whole lot — it is an offence:

"... for a person to do anything that is intended to have the effect of—

(a)distorting or otherwise altering any evidence, document or other thing that is given or produced for the purposes of any investigation or inquest under this Act, or

(b)preventing any evidence, document or other thing from being given or produced for the purposes of such an investigation or inquest,

or to do anything that the person knows or believes is likely to have that effect.

(2)It is an offence for a person—

(a)intentionally to suppress or conceal a document that is, and that the person knows or believes to be, a relevant document, or

(b)intentionally to alter or destroy such a document.

(3)For the purposes of subsection (2) a document is a "relevant document" if it is likely that a coroner making any investigation or holding an inquest would (if aware of its existence) wish to be provided with it."

1761. The penalty is not just a fine but potentially up to six months in prison. So, it is imperative, and not just for medical staff in trusts, to ensure that, firstly, the death, if it falls within the confines of section 7, is reported, and that, secondly, all relevant documentation is made available to the coroner.

1762. **Mrs McAndrew**: May I add to that, Chair? All the documentation that we have within the health and social care family relating to the serious adverse incident report, such as reporting formats and checklists, make reference to reporting to the coroner. The designated officer at the board level will make sure that that is complied with. There are checks and balances within the process, as well, to make sure that it happens.

1763. **Mr Frew**: Who categorises an incident as a serious adverse incident?

1764. **Ms Anne Kane (Health and Social Care Board)**: In the health and social care trusts and all arm's-length bodies in the Department, we have adverse incidents and then there is a set of criteria in the SAI procedure that determines whether something is a serious adverse incident.

1765. **Mr Frew**: I take it that, by the nature of the incident, such categorisations could be contested.

1766. **Ms Kane**: The board encourages our health and social care trusts to report something that might look like a serious adverse incident and that may then not meet the criteria when investigated by the trust. They will then come back to the board and liaise with the designated review officer, when a decision will be made on whether to de-escalate.

1767. **Mrs McAndrew**: The statistical information that we provide to our board shows an increase in SAI reporting over the years in which the process has been under way.

1768. **Ms Kane**: Absolutely.

1769. **Mrs McAndrew**: That is because we are encouraging reporting, transparency and openness. It is my understanding that our procedure was submitted alongside our response to the consultation, but, certainly, if that is not available to the Committee, we would be happy to share it.

1770. **Mr Alphy Maginness**: May I make one further point? A recent case was alluded to earlier about which the Attorney General had written to the Committee. The trust had deemed that case at a senior level not to be a serious adverse incident. That remains the trust's position, despite further investigation and the coroner's own independent investigation. It was not a serious adverse incident. The demarcation between what is and what is not a serious adverse incident is very clear, and the criteria are well set out in the document.

1771. **Mr Frew**: In your opinion, when it is right and proper for the Attorney General to get involved?

1772. **Mr Alphy Maginness**: As the law currently states, where he has reason to believe that an inquest should be held following the decision of the coroner.

The exact terms are set out in section 14 — it has previously been referred to — which provides that:

"Where the Attorney General has reason to believe that a deceased person has died in circumstances which in his opinion make the holding of an inquest advisable he may direct any coroner".

1773. He could direct a coroner after the coroner has made a decision that there should not be an inquest, or he could intervene if the coroner has held an inquest, but he finds the inquest unsatisfactory.

1774. **Mr Frew**: Excuse me for my ignorance, but how would the Attorney General know what incidents he should get involved in? Is there a form of reporting, or is it just a case of a member of the public writing in? How would the Attorney General ever get involved in the first instance?

1775. **Mr Alphy Maginness**: When the coroner makes a decision and he is unhappy with it. I am not sure of the interface between the coroner and the Attorney General. I do not know whether the coroner reports to the Attorney General on every decision.

1776. **Mrs McAndrew**: I do not know either.

1777. **Mr Alphy Maginness**: I do not know the circumstances. The present position is that the Attorney General may intervene where the coroner has decided not to hold an inquest. I am aware of recent situations where the Attorney General has intervened and directed that an inquest should be held.

1778. **Mr Frew**: Would serious public concern be a trigger for the Attorney General?

1779. **Mr Alphy Maginness**: After the coroner has made a decision, it could be; or it might be that the family were unhappy with the coroner's decision or their solicitor wanted to take it further. Presumably there is no impediment to the solicitor making a referral to the Attorney General's office.

1780. **Mr Frew**: As the law stands, the Attorney General would then have to go to the High Court?

1781. **Mr Alphy Maginness**: No. The Attorney General can make the decision, as provided for in section 14, "Inquest on order of Attorney General". The key point is, though, that it has been through the coroner's books, if you like.

1782. **Mr Frew**: Then when the Attorney General asks for information, you are duty-bound to give it to him or her.

1783. **Mr Alphy Maginness**: The Attorney General will get the information that has been provided to the coroner, and there is a duty to provide the raft of information I referred to to the coroner in the first place.Unless someone has intentionally withheld documentation — if they have, that is a criminal offence — the coroner should have all the relevant material. I fully accept that there could be additional material after the inquest, which might force the hand of the Attorney General.

1784. **Mr Frew**: If the coroner gets his lot, how does he know whether there is any more? If the Attorney General gets only the coroner's lot, how can he assure himself that there is nothing more?

1785. **Mr Alphy Maginness**: Both can request any additional information. If it is a medical issue, coroners routinely request statements from the relevant medical and nursing staff and from management. They get statements from the family and the police, and they also have access to patient records. If it is a complex medical issue, a coroner can also institute an independent report from that specialty. It is all within the remit of the coroner.

1786. **Mr McCartney**: May I take up that point? The Attorney General is entitled to all reports, subject to the coroner, and also reports that you retain and do not send to the coroner.

1787. **Mr Alphy Maginness**: Documents are not withheld from the coroner. That is the point.

1788. **Mr McCartney**: I ask that question because, in the John O'Hara inquiry, was a report not withheld — not illegally — but it is now accepted that perhaps it would have been enlightening to the coroner if it had been passed on? That is the Warde report.

1789. **Mr Alphy Maginness**: In the suggested wording of the Attorney General's proposed amendment, it states that no parties should be asked to provide documentation that they would not be asked to provide in a High Court hearing and:

"A person may not be required to produce any document or give any other information under this section if that person could not be compelled to produce that document or give that information in civil proceedings in the High Court."

1790. I think that you are referring to the hyponatraemia inquiry. If an independent report is obtained by any party to the inquest, they are not required to disclose that report unless they intend to rely on it in High Court proceedings.

1791. **Mr McCartney**: In this instance, if this amendment had been in place, and there was the scenario of a second pair of eyes, would the Attorney General have seen the Warde report?

1792. **Mr Alphy Maginness**: I do not think that that would have made any difference, because —

1793. **Mr McCartney**: I am not saying that it would make a difference; I am just asking whether he would have seen it?

1794. **Mr Alphy Maginness**: No. In my view, he would not have seen it, because of that —

1795. **Mr McCartney**: So the Health Department is in possession of some documents, which may inform the coroner. From my reading of this — I was not at the inquiry so I do not want to pretend that I know all of it — it seems to be accepted that, if the Warde report had been at the Coroners' Court, he may have come to a different decision. It also states that the Department subsequently accepted liability in that case.

1796. **Mr Alphy Maginness**: The Warde report was not provided in the inquest in that case. It was not provided in a medical negligence action in that case, because, under current law, there was no requirement to provide the report, but, even under the law in the Attorney General's proposed amendment, there is no requirement or legal obligation to furnish that report. The proposed amendment states:

"A person may not be required to produce any document or give any other information … if that person could not be compelled to produce that document … in civil proceedings in the High Court."

1797. We are going slightly off tangent, but, very briefly, if there is a medical negligence action before the High Court, you are not necessarily required to produce any expert report — that is, a report to determine your liability or otherwise — unless you intend to rely on it.

1798. **Mr McCartney**: I understand the technicalities, and you maybe need a lawyer to go through them, but Fionnuala, in her opening remarks, talked about staff reluctance and not compounding the distress of the family of the deceased. As a layperson, I ask myself a question about a second pair of eyes: if the Attorney General had seen the Warde report in these circumstances, would he have had the power to ask that that be shown to the coroner?

1799. **Mr Alphy Maginness**: I do not believe so.

1800. **Mr McCartney**: So a report somewhere in the system, which would assist a family to find out how their loved one died, can be held back.

1801. **Mr Alphy Maginness**: It is to do with the nature of the report. I think that we are confusing two issues. A report such as that considers a variety of factors, one of which, for example, is whether or not there was negligence. In that case, the Warde report was not critical. That is my view, but everyone is entitled to a different view. The point is that, if you

intend to rely on it, you have to disclose it. That is the legal nicety around it in the High Court, but that is not a relevant factor in the proposed amendment, because the law will be unchanged in respect of that. It would not make any difference whether it is the Warde report or a report on an obstetric or orthopaedic case that was obtained for a different purpose.

1802. **Mrs McAndrew**: The reassurance that we can give the Committee is, as I said, that documentation about a patient's care is submitted to the coroner.

1803. **Mr McCartney**: I will read this out, because I think that it is important for us for clarity. Michael Stitt QC for the directorate of legal services (DLS) said:

"The point has been made that this would have been of benefit to the coroner. This may be the case but it does not mean that the Trust acted either illegally or in any way improperly".

1804. Nobody is doubting that, but it may have been good practice in this instance to provide the coroner with it, because you can say that something is not illegal or improper, but it still allows you room to say, "Let's do it". Michael Stitt continues:

"The Trust notes the evidence from the coroner that he would have expected to have had sight of the Warde Report".

1805. So the coroner himself said that he should have had sight of it. I accept that the trust says that, with respect, it disagrees with the interpretation of the practice and prevailing legal principles. That is when the second pair of eyes comes in. I will not make a judgement on who is right or wrong because it is the law, but, when a second pair of eyes talks about safety, good practice and not compounding the distress of the family of the deceased, I believe that the Warde report should have been submitted. That reassures us that, when people may not have acted illegally or improperly, you could go the extra mile and put all the documents on the table, so that there is no distress for families in the aftermath.

1806. **Mr Alphy Maginness**: The proposed amendment will not achieve that. That is all that I am saying to you.

1807. **Mr McCartney**: However, if he has access to all documents —

1808. **Mr Alphy Maginness**: He will not have access to that if it is not required to be produced in the High Court.

1809. **Mr McCartney**: Perhaps we need to look at that. It surprises me that a Department can be in possession of a document that, when it is subsequently brought to court, people felt would have been of benefit, particularly when the coroner said that it would have been of benefit. Even under this legislation, that could happen tomorrow. It is in your gift. If you do not feel that it is illegal or improper to withhold a document that may be of benefit to someone trying to establish the cause of death, I think that we should look at that in the form of an amendment to the Justice Bill.

1810. **Mr Alban Maginness**: I just want to tease out, Mr Maginness, in section 14 —

1811. **Mr Alphy Maginness**: This will be good.

1812. **Mr Frew**: We are all thinking the same. [Laughter.]

1813. **Mr Alban Maginness**: I read a Hansard report from 1959 in relation to this debate. Mr Topping — I think that he was the Minister of Home Affairs at the time — said that it was a power that would obviously be used most sparingly and only in the most exceptional cases. Has there been any change in that? Is that fixed in law? Is it a residual power used by the Attorney General sparingly and in the most exceptional cases?

1814. **Mr Alphy Maginness**: I am aware of it being used on two occasions in recent years. It is some 55 or 56 years since that was stated. The fact is, whether it is exceptional or not, the power remains open to the Attorney General, and it is a matter for him when he wishes to exercise it.

1815. I would not have thought that it would be used frequently, but it will be used

when the Attorney General believes that it is appropriate to intervene and has a reason to believe that an inquest ought to be held. I think that the coroner is best placed to answer when he would wish to use it. Whilst that is a debate within the Senate, that in itself is insufficient to say that you could not use it more frequently. It is when he has "reason to believe": that is the key phrase.

1816. **Mr Alban Maginness**: I will take that phrase that you have just used: it is his belief that there ought to be an inquest. That threshold is quite low in comparison with other thresholds that the Attorney General might have to meet.

1817. **Mr Alphy Maginness**: It is. That is all the more reason why we believe that the amendment is unnecessary. He can still intervene. The key point is that the coroner makes the first call, and, if the Attorney General is unhappy with that call, he can intervene.

1818. **Mr Alban Maginness**: In a sense, the Attorney General's role is to supervise the coroner's system, and, if he suspects or believes that there is some sort of deficiency in what the coroner is dong, he can intervene.

1819. **Mr Alphy Maginness**: I think that that was the intention of the legislation. That is still available to him.

1820. **Mr Alban Maginness**: I have one further point that relates to the serious adverse incident reports. How do you characterise those reports? Are they documents that are intended to improve performance, or are they intended to be part of an investigation into a death?

1821. **Mrs McAndrew**: I will bring Anne in a moment, but our procedures are based on international best practice. The purpose of the serious adverse incident system in any jurisdiction or in any business — even in the aviation industry — is to look at whether things could have been done differently, to take that learning and to change the way you do things to avoid another incident of that nature happening again. Our whole process is based on those principles. It is important to understand that, because it is about the learning that clinical staff — nurses and doctors — want to take from the process to make sure that they learn from a situation and amend their practice. It has led to policy changes, practice guidance changes as well as individual practice changes. It is not just clinicians, although it is important that they feel confident that they can go into the process without fearing that it is about blame. It is not a disciplinary process, which is a separate process. The process, among the many that we have, is about learning.

1822. When that learning comes forward from within the health and social and care system across Northern Ireland, we have looked at whether the policy, the guidance on practice needs and our serious adverse incident procedure need to change. We have built that in. Anne, if I am not reflecting that —

1823. **Mr Alban Maginness**: Are you suggesting that there might be a detrimental impact if those are disclosable in the context of the amendment?

1824. **Mrs McAndrew**: I am reflecting to the Committee that it is a difficult process for everybody concerned. Doctors, nurses and other clinicians come to care for people and to save life. It is difficult for them. It is equally difficult for the families. We do our best to encourage clinicians to get involved in the process. There is fear and some reluctance if they feel that the report will be used for a different purpose. There is concern that the report will suddenly be used for blame and to look at who is at fault. Clearly, the report is used for a number of purposes at the minute, but the actual investigation is predicated on the basis of looking at learning, not at blame and guilt. It is an important distinction. It is what separates it out from disciplinary and criminal procedures. Those procedures can run alongside, but it is not what this process is about.

1825. **Mr Elliott**: What is the process that the Attorney General has proposed about

then? It is really difficult. If you are saying that all the required information can be made available under current regulations in law, in your opinion, what is the Attorney General looking for in addition?

1826. **Mrs McAndrew**: I am not sure that we fully appreciate the need for it. That is the point that we are making.

1827. **Mr Elliott**: That is what I am trying to establish.

1828. **Mrs McAndrew**: We feel that there are processes and systems whereby that information is available and can be made available to the Attorney General under certain circumstances. That is already in existence. So, if I am being honest with the Committee, we are not quite sure what the intention behind the amendment is.

1829. **Mr Elliott**: The case that you are making is that there is no need for it and that everything is in place to make the required information available. Is that right?

1830. **Mrs McAndrew**: That is what we believe.

1831. **Mr Elliott**: From my perspective, let us turn that the other way round. What would be the difficulty or problem in introducing the proposed amendment? If everything is already there, would this make any difference or inhibit you and the trusts any further?

1832. **Mr Alphy Maginness**: It is not just asking for information relating to a death. The coroner is the first port of call. You have to inform the coroner of a death within the terms of section 7. The proposed amendment opens that up significantly. It could be any document in relation to any death. Lots of people die in hospital. That is a natural phenomenon. The proposed amendment suggests that the Attorney General will have access to any document relating to any death at any time. I also note that it is not even time-limited. May I read the amendment? It states:

"The Attorney General may, by notice in writing to any person who has provided health care or social care to a deceased person, require that person to produce any document or give any other information which in the opinion of the Attorney General may be relevant to the question of whether a direction should be given by the Attorney General under section 14."

1833. Section 14 deals with inquests on an order of the Attorney General. Where are the limits? There are no limitations in that. There are no boundaries or time limits. There are no limits to documents. Does it include the medical officer's personnel records, for example? Does it include any other records that may have a peripheral relationship to a death but are not strictly relevant?

1834. **Mr Elliott**: So what you are saying is that the current —

1835. **Mr Alphy Maginness**: It opens it up to what might be termed a fishing expedition, effectively to undermine the views of senior medical staff, who are already in a position and have a very serious obligation to make a decision on whether a matter should be referred to the coroner. As the law exists, if they fail to refer a death to the coroner when it ought to have been referred, that is a criminal offence.

1836. **Mr Elliott**: I want to be clear about that explanation. The Attorney General's amendment would open it up to more information. While you are making the case that it is not necessary because all the information is available, it is opening up the opportunity for the provision of more information.

1837. **Mr Alphy Maginness**: It is not, however, relevant information.

1838. **Mrs McAndrew**: I think that the dispute or discussion needs to be about the relevancy of the information. Alphy is making the point that the amendment is open to absolutely anything. In responses from the trusts, they are also asking for that point of clarification. What does this mean for the breadth of information that would be required? There is the potential for additional costs and additional work for the trusts. As we said, given that we think that the relevant information is available, by and large, there is the potential for duplication.

1839. **Mr Elliott**: In your opinion, is there anything else that could be made available that is not covered under current statute or regulations and could be somewhere between what the Attorney General is looking for — basically, that everything should be available — and what is in the current regulations?

1840. **Mr Alphy Maginness**: Under the Coroners Act 1959, the coroner is entitled to access any information that is relevant to a person's death, so that is fairly extensive. The key point is that, when a situation enters the arena of an inquest — sorry, not an inquest, because the coroner makes that decision — but when the coroner must intervene, the Act sets out very clearly the circumstances of unexplained deaths, whereby there is a statutory obligation to report a death to the coroner and allow the coroner to then undertake investigations. Here, the PSNI is available to the coroner to assist with investigations. As I understand it, in England and Wales, they have their own investigators, which is slightly different. The issue is the point at which the coroner's role kicks in. We are saying that the coroner is the statutory authority to properly investigate unexplained deaths. The duty is on trust staff to report those deaths. We are saying that there are sufficient safeguards in the current process and that the Attorney General does have a role — we are not denying that the Attorney General should have a role — if he is unhappy with the way in which the coroner has proceeded.

1841. **Mr McCartney**: For clarification: when you read out the amendment and described it as a fishing expedition, which I can understand —

1842. **Mr Alphy Maginness**: Sorry, I said that it has the potential to be.

1843. **Mr McCartney**: It has the potential — sorry. You can understand why a doctor does not want somebody to come to his house and say, "I want to read your personal diary". I can understand that part of it. I will go back to my original question about the second pair of eyes, as envisaged by this amendment. The Warde report was commissioned by the trust. It suggested heavily that the hospital was at fault, yet that report was not given to the coroner. Under the scenario of a second pair of eyes, it could be.

1844. **Mr Alphy Maginness**: I do not think that it would make any difference. I honestly do not.

1845. **Mr McCartney**: I am not saying that it makes a difference. It strikes me and my opinion is that the Warde report, commissioned by the trust, should have been given to the coroner, because it would have assisted in some way to find out the cause of death. It states very clearly that the hospital was at fault. At that stage, the hospital had not admitted that it was at fault. If I were the second pair of eyes reading that document, I would have asked why it was not with the coroner.

1846. **Mr Alphy Maginness**: I have explained what —

1847. **Mr McCartney**: I understand that, but the legislation would allow that to happen. At present, it does not have to happen. In the future, there is nothing to prevent a trust having a similar report in its possession and not giving it to the coroner. A second pair of eyes gives us the potential. The Attorney General might say no, but the potential is there that that document would have been with the coroner at the appropriate time.

1848. **Mr Alphy Maginness**: There is a slight difference: the Attorney General is talking about documents that relate to the care and treatment of a patient.

1849. **Mr McCartney**: It is all relevant documents. A good lawyer would make the case that it is a relevant document.

1850. **Mr Alphy Maginness**: I know, but I will go back to the point:

"The Attorney General may, by notice in writing to any person who has provided health care or social care to a deceased person, require that person to produce any document or give

any other information which in the opinion of the Attorney General may be relevant".

1851. It is the person who has provided the health care, so it is up to the individuals and, indeed, the trusts to provide the information in relation to the health care. The distinction that I am making is that the Warde report was a commentary on the care that had been provided. Commentaries and expert reports will often comment on the nature of the treatment that was given, such as whether it was of a high standard and good practice and will look at the context in which the records were kept and decide whether there was good record-keeping. A commentary could focus on a variety of issues, but it is not necessarily about the actual care and treatment. It is a commentary on the care and treatment.

1852. **Mr McCartney**: It asks, however, for the people who provided the care. If it had been in support of someone, you can make the case that it is relevant to the case because the person who provided the care asked that the report be commissioned.

1853. **Mr Alphy Maginness**: The trust asked for it.

1854. **Mr McCartney**: Those are the people who provided the care. Individual employees can become —

1855. **Mr Alphy Maginness**: It is perfectly reasonable for a trust to do that. I explained earlier that the coroner can say to an expert, "I want a report from you, expert, on the orthopaedic treatment, the obstetrics unit or whatever". A trust will do the same thing. Any attorney can do that, or the family can do that. Any party to the inquest is perfectly entitled to obtain an expert report.

1856. **Mr McCartney**: I am sorry for taking so much time, but, in conclusion, are you saying that, if there were a report like the Warde report tomorrow and the legislation were in place, the trust would have the power not to show that to the Attorney General?

1857. **Mr Alphy Maginness**: Yes, even with the Attorney General's amendment, because he is talking about a person who could not be compelled to produce that document or give that information in civil proceedings in the High Court. If it is a medical negligence action, the plaintiff's side and the defence are both perfectly entitled to obtain medical expert reports on the treatment and the nature of that treatment. If they are going to use that report, they are under an obligation to disclose it. If they are not going to use that report, they are not under an obligation to disclose it.

1858. **Mrs McAndrew**: The amendment does not change that. That is the point that we are making. It does not alter the extant provisions.

1859. **The Chairperson (Mr Ross)**: Thank you very much. I appreciate your time.

28 January 2015

Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Sammy Douglas
Mr Tom Elliott
Mr Paul Frew
Mr Alban Maginness
Mr Patsy McGlone
Mr Edwin Poots

Witnesses:

Mr David Best	*Department of Health,*
Mr Fergal Bradley	*Social Services and*
Dr Paddy Woods	*Public Safety*

1860. **The Chairperson (Mr Ross)**: I welcome Dr Paddy Woods, Deputy Chief Medical Officer; Fergal Bradley, director of the safety, quality and standards directorate; and David Best, head of the learning, litigation and service framework development branch in the Department. The session is being reported by Hansard and will be on the website in due course. In your own time, please brief us, and then I will open up the meeting to questions.

1861. **Dr Paddy Woods (Department of Health, Social Services and Public Safety)**: Thank you, Chair and members, for the opportunity to give evidence in relation to the Attorney General's proposed amendment to the 1959 Coroners Act. This evidence session is very timely, given that it comes on the back of the publication of the report by Sir Liam Donaldson on openness and transparency in the reporting of deaths and other matters. His report highlights the complexities surrounding the appropriate involvement of the coroner in investigating deaths. Sir Liam's report concludes that Northern Ireland is in line with international practice. It also concludes:

"There is substantial room for improvement, so that the coroner can more optimally contribute to the system's learning."

1862. We in the Department have been working on a number of developments that we can discuss with the Committee, if you wish, and which we believe will contribute to such improvements. We do not, however, believe that the proposals put forward by the Attorney General will deliver any element of that improvement. We have concerns that, in practice, they would have the opposite effect.

1863. I will give members a bit of context for health and social care in Northern Ireland, with which some will be more familiar than others. Over 78,000 people are employed in commissioning and delivering health and social care in Northern Ireland. Each year, there are over 1·5 million hospital attendances, more than 7,000 treatments at accident and emergency departments and about 500,000 in-patient or day-case admissions. In addition, over 100,000 patients and clients receive a range of health and social care provision daily. There are approximately 15,000 deaths in Northern Ireland each year, of which almost 7,000 occur in hospital.

1864. The Department expects all health and social care organisations to provide information and documentation to any reasonable and adequately specified request that might help an individual or family to understand the facts and circumstances of any death, but we feel that this must be done in a manner that avoids unnecessary bureaucratic burden.

1865. I will highlight how we believe the system, as proposed by the Attorney General, would operate in practice. Our analysis reflects what happens, at present, in response to requests from the Attorney General for information on individual cases. Although no single request will bring an organisation to a standstill, the impact is felt throughout the trust. The specific clinical aspects are usually concentrated on a small number of individual specialities

and clinicians, but there are wider ramifications for and additional workload experienced by other executive, managerial and administrative staff.

1866. First, of necessity, practice front-line clinicians and other staff are required to review documentation and records in order to identify the material relevant to each request and, as a consequence, are diverted from providing services to patients and clients.I am aware of the Attorney General's evidence to the Committee that the requests will not place a burden on the health service. In our view, and on the basis of what has happened to date, that is open to question. His evidence to the Committee suggests that the powers to obtain information will not be used sparingly and, as a result, will significantly increase that burden.

1867. Secondly, the open-ended nature of the proposed amendment will leave those receiving the requests unclear about which records are relevant and which are not. That, coupled with the knowledge that, being liable to a legal sanction, they may be subsequently judged to have withheld material considered relevant, places them in an invidious position. We are aware that trusts already struggle to understand what information they are supposed to provide in response to existing requests.

1868. Thirdly, the trusts, to ensure that they comply lawfully with requests, are likely to take legal advice. Apart from the direct cost of that advice, trusts will incur costs in staff time, including that of clinical staff, through spending a proportion of their time consulting legal advisers.

1869. Fourthly, issues will arise with regard to the impact that such requests will have on family members of the deceased. Who will have the responsibility of engaging with families? Will it be left to the Attorney General or will it fall to service personnel?

1870. Finally, as happens at present, trusts will end up duplicating effort, providing information on the same cases separately and, sometimes, at the same time, to the both the coroner and Attorney General, as well as the other organisations that may have legitimate interests in deaths that occur in hospital. It is worth pointing out that a range of bodies has interests in deaths that occur in hospital settings. In addition to the coroner and the police, we at the Department may have legitimate interest. So, too, might the ombudsman; the Regulation and Quality Improvement Authority (RQIA); individual patients and families, of course; in certain instances, the Health and Safety Executive; legal representatives acting on the part of various judicial processes, including negligence cases and statutory inquiries; numerous professional regulatory bodies, such as the General Medical Council and the Nursing and Midwifery Council; and auditors of various complexions, both internal to the organisation and the likes of the Northern Ireland Audit Office. So there are significant demands within the health and social care system to provide information, quite legitimately and duly authorised, in connection with the deaths of patients and service users. That is in addition to any action that a trust itself might instigate in investigating a death.

1871. The Attorney General, in evidence to the Committee as part of the consideration of these proposals, stated:

"there is concern about deaths occurring in a hospital context in particular that have not been referred to the coroner."

1872. The evidence that we have at our disposal is that, overwhelmingly, deaths are reported appropriately in accordance with statutory requirements. We hope to be able to provide the Committee with more data on that in the coming weeks. We will also be happy to discuss, in general terms, the position of those cases in the Northern Trust that have been referred to in media coverage and in the Attorney General's evidence. As members will be aware, under section 7 of the Coroner's Act 1959, it is a statutory requirement for doctors and others to report a death to the coroner, together with the facts and

circumstances relating to it, if it resulted directly or indirectly from any cause other than natural illness or disease for which the deceased had been treated within 28 days of death or in such circumstances as may require investigation. Not to do so is a criminal offence.

1873. The coroner can already ask for all the information about a case, and the Attorney General can both direct the coroner to conduct an inquest and ask for sight of whatever material the coroner has considered in deciding whether to conduct an inquest. We are aware that the Attorney General has used those powers to that end. We are also aware that, in some cases, the Attorney General has directed the coroner to hold an inquest without seeking any further information, and, in others, he has directed an inquest before the coroner has concluded his investigations.

1874. The proposed amendment enables the Attorney General to engage in those requests without having to demonstrate any rationale; without anyone having oversight of his actions; and without being required to provide any clarity on what information he is seeking. The onus and burden are, instead, placed on the providers of the information.

1875. It would be useful at this juncture to clarify the background and purpose of the serious adverse incident (SAI) process. In order to be reported as a serious adverse incident, an incident must fall into one of a number of categories, one of which is the unexpected or unexplained death of a service user. Most serious adverse incidents do not involve death, but, when they do, there is not always a direct relationship between the incident and the event. An example of that, which currently stands, is that child death due to terminal illness is automatically reported as a serious adverse incident, even though there is no concern about the care and treatment provided. Whilst, unfortunately, deaths occur in hospital, it is worth stressing that a hospital death does not automatically result in a serious adverse incident investigation. The process is not part of the coronial system or service and does not exist for that purpose. It is unfortunate that, in many people's understanding, it is confused with the death certification and coronial system. They and their purposes are separate.

1876. This has the potential to undermine the operation of the serious adverse incident process as a learning system, which is its principal purpose: for the system to learn from the investigation into such incidents. It operates to identify and promote learning. It is not a system based solely on records; it is heavily reliant on engagement with staff, and others involved in providing care, to determine their observations, evidence, viewpoints and insights into potential improvements. The scope and operation of the SAI system has changed several times over the years, and Sir Liam Donaldson's report recommends further change. If it ceases to be an effective means of identifying learning, or better alternatives emerge in the future for identifying learning, there is every possibility that the process will be stood down.

1877. Lastly, we have concerns about the practicality of the proposed clause that makes it an offence not to comply with the Attorney General's requirement. Many people provide health and social care during someone's life. There is a lack of clarity on to whom the Attorney General would give notice and, indeed, how he would know who had provided care in the first place. To whom would he write if someone died in hospital, for example?

1878. In summary and in conclusion, we have concerns about the policy rationale behind the proposed legislative change. The Attorney General already has the power to direct an inquest when he considers it to be advisable, and it has not been established that there is a problem that the legislation will solve. The scope of the proposals lack clarity and would have serious implications, resulting in more front-line staff being directed away from providing essential care.

1879. Thank you for giving us the opportunity to provide this evidence. My colleagues

and I are happy to take questions from members.

1880. **The Chairperson (Mr Ross)**: It boils down to the fact that, in your view, the power is unnecessary: in directing an inquest, under the current legislation, the Attorney General can carry out the functions that he needs and does not need anything additional; and, according to you, there is not really a problem to be solved. Is that a fair summation?

1881. **Dr Woods**: Yes. That is it in a nutshell, Chair The powers currently possessed by the Attorney General allow him to access the information because, essentially, the coroner would access the information in any case and duplicate the investigation. The concern is the potential bureaucratic burden on the health and social care system.

1882. **The Chairperson (Mr Ross)**: You said that, in the vast majority of cases, deaths are reported appropriately. Then you talked about the issues that were in the media. Are you saying that those were anomalous, or that there were particular reasons why the issue arose? Is it the case that, for example, they were not recorded correctly?

1883. **Dr Woods**: The broad statistic is that, currently, almost a quarter of deaths in Northern Ireland are reported to the coroner. I will turn to Fergal to give you the detail on the case in point in the Northern Trust.

1884. **Mr Fergal Bradley (Department of Health, Social Services and Public Safety)**: May I correct something for the record? At the start, Paddy said that there were 7,000 attendances at A&E, but there were 700,000.

1885. The Attorney General's evidence referred to some of the incidents in the Northern Trust. Those date back to events in 2013, when the trust itself reviewed a number of SAIs that it had looked at over the previous five years. I assume that the Attorney General was referring to those cases. There were 20 cases in total, of which about11 involved death.

1886. We are trying to avoid going into too much detail in specific cases. However, in looking at those cases, I would say that a number of them were reported to the coroner at the time. There were several cases involving, for example, stillbirth, which, at the time of death, under the legislation and in line with the rest of the UK, would never have been reported to the coroner.In a couple of cases that came to light only a number of years after the event, nothing untoward was known that would have caused them to be referred to the coroner. As a consequence of a look-back exercise a number of years later, when X-rays or tests were looked at, they became aware that something had been missed, and there was, therefore, an issue with regard to the death. We are looking at those cases. There is also at least one case that you would logically have expected to be reported to the coroner at the time. So it is not true to say that there are never any concerns. However, overwhelmingly, we have cases that were reported at the time and cases that would not have required to be reported or came to light only as a consequence of something else that happened a number of years after the deaths. That is important, because, for the purposes of this, the coroner was contacted on the basis of the information that is before you. Therefore, if the information comes to your attention only some time later, which can happen, that is the point at which you contact the coroner. Even with that proviso, overwhelmingly, most cases are reported to the coroner within a day, a day and a half or two days — that sort of period.

1887. **Dr Woods**: The key point is that the source of making the coroner aware of those cases emanated from the health and social care system.

1888. **Mr F Bradley**: The trusts identified that they had an issue. They brought it to the Department, and that is how it came to light. That is not to say that we do not think that there are problems about the way in which the system works. We think that there are improvements to be made, which is what we have been

looking at outside of the amendment. However, we are saying that this proposal does not address the problems where they lie.

1889. I will refer to one issue that we have, which was highlighted in Sir Liam Donaldson's report yesterday. There will be some deaths whereby it is blatantly obvious that the case should be referred to the coroner, and there will be some whereby it is equally clear that there is no reason to refer. In between those, a huge number of cases come down to a matter of judgement as to whether they should be referred to the coroner. Part of our focus is on how to try to improve the consistency of the way in which those judgements are made. We have no underlying concern, however, that there is any cover-up or systematic avoidance of referring cases to the coroner. That is not to say that, occasionally, cases that should have been referred were not. We are saying that this sort of approach will not pick that up.

1890. **Mr A Maginness**: Chair, you summed it up succinctly, and the witnesses have confirmed that that is, essentially, their view. Under section 14 of the Coroners Act (Northern Ireland) 1959, the Attorney General can look at all the papers that the coroner has and could, in such circumstances, ask for other documentation. Is that right?

1891. **Dr Woods**: Yes.

1892. **Mr A Maginness**: He has an overriding power to look at any single case and say, "By the way, having looked at all these papers, I think that there should be an inquest". That is his residual power in any death that occurs, whether in hospital or elsewhere.

1893. **Dr Woods**: Yes.

1894. **Mr A Maginness**: I just wanted to confirm that.

1895. **Mr McCartney**: You read out those statistics, Dr Woods, and we all appreciate the work done by the health service. I took my father to an appointment at Altnagelvin Hospital this morning, and the professionalism in health care is exemplary, so whatever we are talking about here is in that context.

1896. The amendment has been described loosely as a "second pair of eyes". Fergal mentioned improvements in the system. The Health and Social Care Board were here last week, and we discussed the Warde report, which was not submitted to the coroner but would have benefited a family at a particular time. Even with the framing of the amendment, there does not seem to be any compulsion to bring forward information such as that. Is that the type of improvement that you are looking towards for the future? That type of document should be submitted whether you are legally covered or not.

1897. **Mr F Bradley**: To be clear: with regard to particular issues on that, you would need to have people with relevant legal expertise to explain the basis. I understand that there are a number of different types of judicial processes and interactions between different parties whereby parties are not under any legal obligation. I could not explain to you the rationale for that. The amendment does not touch on that.

1898. In a wide range of cases, it is a matter of judgement. It is down to the individual person who is dealing with the case to say, "In my judgement, this needs to go to the coroner". They can act only on the basis of the information that is before them. We have been looking at systems like, for example, peer review. We have been piloting morbidity and mortality review systems. Davy will be able to talk about that. Basically, the idea is that, rather than a lot of these cases being left to individual judgement, within a matter of a number of weeks after the initial death being reported or not, as part of the normal process in a hospital, the teams involved on a multidisciplinary basis review a case. They reconsider and check that they are satisfied that it does not need to be reported as an SAI or should have been reported as an SAI and was. They also look at the death certification to ensure that they are satisfied with what has

been recorded on the death certificate — that is very important because we need clear evidence of what people are dying from — and the completion of the death certificate and that, with regard to things like the coroner, the individual judgement is subject to testing out against the views of others.

1899. We believe that, by moving towards that sort of a process — it is only one of the things that we have been looking at — we will get more consistency about what is being referred, and it will act as a check against individuals' judgements, because we do not believe that this is down to where these things arrive or to people deliberately trying to conceal information. It is down to people exercising different judgements based on their interpretation of the evidence. What you will find — it has come up in the look-back exercise — is that maybe tens of thousands of X-rays going back a number of years have been looked at, and another health-care professional, in reviewing what was previously looked at by someone else, identifies something that they were not aware of or missed. That can happen. We are saying that the approach that is outlined in the amendment will not pick up on that. We need a more systematic approach to improve the quality of what we are doing and to use the expertise of the people at the front line to try to ensure that the right decisions are made.

1900. **Mr McCartney**: Should there be full disclosure if a case is referred to the Coroners' Court?

1901. **Mr F Bradley**: As far as we are concerned, the coroner should have access to all the information that he needs. What I am saying is that, with regard to that legal issue, we do not possess that level of expertise. I am not completely clear on the nuances of why that happens.

1902. **Mr McCartney**: No, I accept that, and neither am I clear. I do not want to say that I am across every detail, but there seems to be an acceptance. The coroner said that he felt that he should have had the document.

1903. **Mr F Bradley**: We have tried to refer to this. When you put something on a statutory basis — say, an amendment that would put people in peril of a sanction for not complying with it — people will take legal advice. With respect, what will happen is that, when you take legal advice, your legal advisers will tell you what you should do and what you do not need to do to comply with the request. I do not believe that you will find that, in dealing with those sorts of things, it will necessarily have been health-care professionals who said, "Let us not share that information". They will have acted on the basis of legal advice. We are increasingly moving towards putting them in a position in which they need someone with a law degree to tell them how to interpret the information that they should provide, not by virtue of saying, "Let us hold something back".

1904. The sheer volume of information that can be held about any individual patient across multiple locations can be quite significant. Unlike the SAI process — bear in mind that SAI reports are now pretty routinely shared with families, those involved or the patient if that person is not deceased — for an awful lot of these cases, what you are talking about is reviewing the files of hospital records. There is no "x marks the spot" when someone has done a nice little report that summarises the whole of the evidence and has gone through and analysed it in the way in which an SAI report would. We are looking at around 1,000 SAIs a year. Around one third of those involve deaths, quite a few of which will involve mandatory reporting for child deaths and suicides. In only a very small number of cases will someone have gone in and done work focusing on the evidence and summarising it for you.

1905. **Mr David Best (Department of Health, Social Services and Public Safety)**: It is also important to remember that the SAI report is also sent to the coroner, who will have disclosure of that. You mentioned full disclosure, but it depends what you mean by that. The relevance of the requested information is vital.

1906. **Mr McCartney**: It is perhaps an impossible question to answer, but would that type of situation now not happen? A report that was obviously material was not sent.

1907. **Mr F Bradley**: I could not absolutely guarantee that. I would need to have an understanding that I do not have about the legal process. The amendment will not address that. It is a nuance.

1908. **Mr McCartney**: I accept that, but we would have an opportunity to make a further amendment to the Bill on that. As a layperson, when it comes out the other end, someone related what happened in a hospital, the hospital commissioned a report that supported the view of the family, yet it did not seem to go to the coroner. Something seems to be missing. Legally, nobody has said anything improper, but that could be done to assist the family. If that subsequently came out in an inquiry, it would look as if it had been concealed.

1909. **Mr F Bradley**: There are limited circumstances in which an SAI report is not shared. That includes when the harm has been caused or is suspected to have been caused by a family member, or when there might be health concerns about a family member's or individual's well-being and the implications of sharing that information with them. However, it is very narrow, and trusts are required to record why they do not share them. Paddy will be able to talk about the specific responsibilities with regard to candour, and it was announced yesterday that we are also moving toward the introduction of a statutory duty of candour for organisations.

1910. I cannot say that that would never happen, but it is extremely unlikely in the context of the way in which people would have treated that sort of information for many years. Unless the Attorney General will have significant resources and the insistence to trawl through information and records across quite a few cases, it will not be picked up. That is why we have done work on the morbidity and mortality review

1911. I will ask Davy to outline some of the work that is being done on the independent review of deaths. He will be able to take you through that. Would you mind saying something on that, Davy?

1912. **Mr Best**: We are considering bringing proposals before the Assembly to introduce legislation that would create a new medical examiner or medical reviewer system. That would be based somewhat on the Scottish model that will come into effect on 13 May, whereby a percentage of deaths will be randomly selected for scrutiny by the new Scottish medical examiner. There will also be an opportunity to look at another percentage of deaths in more detail.

1913. I suppose that, with the prospect of what the Attorney General would like to introduce here, what are known as "authorised persons" could request a further level of scrutiny by the medical examiner. We are considering the possibility of bringing that into Northern Ireland.

1914. **Mr F Bradley**: In addition to being able to select cases randomly, in Scotland there is a provision so that is someone is — I cannot remember the term; Davy will tell me — a legitimate person in the case, they can ask the independent medical examiner to review the case if they have a particular concern.

1915. **Mr Best**: "Interested party" is the term.

1916. **Mr McCartney**: Have you met the Attorney General to discuss it, or is just being done through this process?

1917. **Mr F Bradley**: A certain amount of correspondence has gone backwards and forwards. I would hope that the Attorney General is aware of a lot of that work. He is certainly aware of the morbidity and mortality review system.

1918. **Mr McGlone**: I want to gain a wee bit more understanding. Your submission states:

"It is not entirely clear whether the rationale behind these proposals is due to a lack of information [and] it will be important to have more policy clarity before legislation of this nature is introduced."

1919. What specifically do you require to be clarified? Can you give us a synopsis?

1920. **Mr F Bradley**: I will turn it on its head. We are civil servants; we work on policy and bring forward policy proposals for legislation. Were I to bring forward a proposal, on the normal basis, to give anyone powers to access information or records about ordinary members of the public, in any circumstance, I would expect to be asked to articulate why that power was necessary and proportionate, why that person was the right one to have the power and what the outcome would be. We have not seen anything systematically that states, first, that there is an issue of non-reporting; secondly, that this response is proportionate; and, thirdly, that this will have the impact or the outcome that you would desire, which we would share. We want to be sure that the quality of information and decision-making in referring issues to the coroner is as sound and consistent as possible.

1921. **Mr McGlone**: Yes. That is about the scope, insofar as the perception is that it may be broadened a bit. The last sentence states that, were his amendment accepted, the Attorney General may require:

"any person who has provided health care or social care to a deceased person … to produce any document or give any other information".

1922. Why should he not? Say, for example, something happened externally to a hospital that required that person to be in hospital but that it did not become apparent until later — say, in a post-mortem — that perhaps he or she took the wrong medication or something like that, which affected that person adversely. In such circumstances, why should the coroner not have access to that information?

1923. **Mr F Bradley**: If you are going to give someone the power, it is important to specify whom they can ask the information for. Does that definition include, for example, a family member who is a carer? Does it include the personnel records of all the staff involved in providing care to the individual? If the person has sought alternative therapy or medical treatment, does it involve going to the chiropodist? There is a significant burden here. From whom do you ask for information that may be relevant to the case? That is what we are trying to get to. We are not clear where this ends and its full extent, and we feel that there should be some clarity on that.

1924. **Mr McGlone**: Should that be tightly specified?

1925. **Mr F Bradley**: We are saying that we are not clear how you would specify it to achieve the purpose that the Attorney General might want.

1926. **Mr Elliott**: Thanks for the presentation. From what you have said and from reading your presentation, is it fair to suggest that a lot of it is down to clarification? Quite a bit of it is because you do not know exactly what the Attorney General may be looking for that is not currently provided for.

1927. **Mr F Bradley**: No, it is more than that. We are not clear on what basis we are doing this, but we are also not clear whether it is a proportionate response or what its desired effect is. The objective, which we share, is to ensure that deaths are appropriately reported to the coroner, that it is consistent, timely and so on. We do not see that the amendment would have that sort of impact. We are talking about 7,000 deaths a year. How many cases would the Attorney General look at randomly, or through any other process, to hit on something?

1928. I apologise for the use of language, but the point is that it would be like buying a lottery ticket. We are trying to look at having systematic approaches that make sure that professional judgements are exercised appropriately and that the process works systematically and has checks and balances, which means that an elderly person who dies on his or her own at home, with no family members, has as equal a chance as anyone else of having the circumstances of his or her death investigated. It is reasonable that

the odds of that driving up quality are better, because, ultimately, if you want to introduce a system in which all 7,000 deaths in hospital a year are scrutinised, the resource implications are such that the whole system could not bear it. It is about trying to ensure that the checks and balances are sufficient and proportionate to ensure that the quality of what is being done is right, and the decision-making is sound.

1929. **Mr Elliott**: You said that it is about a lot more than the examples that I gave. However, surely the key issue is clarification. You said that, in principle, the Department has no objection to the Attorney General having the power to access the information, but you then put in your caveats. You are saying that you have no difficulty with the Attorney General getting more information, but you are not sure what all that information is, why it is required and why it is not being provided at the moment. Have you talked to the Attorney General about those issues? You say that, in principle, you have no objection but that you do not support the current proposals.

1930. **Mr F Bradley**: Obviously, the Attorney General's approach has been to bring forward this amendment. Let me explain what our position is. We have said that we have no objection in principle — nor do we — and I have been asked, "Why not give the Attorney General the power?" My response and my answer to your question is this: why not give someone else the power to do something? The basis on which we bring forward legislation is that there is a reason to give someone a power. We would not apply the threshold if there is no particular reason not to give someone the power, particularly when it is a fairly wide-ranging power to access the records of patients and clients. We do not object in principle; we are just waiting for someone to articulate to us why he should have the power, why it is proportionate, and how and why they believe —

1931. **Mr Elliott**: That is what I am trying to say. You do not support the current proposals because you are not clear.

1932. **Dr Woods**: I think that it is fair to say that we are struggling to see the value this approach would add —

1933. **Mr Elliott**: I accept that.

1934. **Dr Woods**: — to what is already in place and, indeed, other areas of work that we are progressing.

1935. **Mr McCartney**: You do not accept the theory of a second pair of eyes.

1936. **Mr F Bradley**: There are multiple pairs of eyes. If you have a second pair of eyes, you are going to have systems in place to check. It has to be something that can deliver the outcome that you want. Davy, what percentage of cases will be randomly selected in Scotland?

1937. **Mr Best**: It will be 10% of cases that would not be referred to the procurator fiscal, who is the equivalent of our coroner. Last year, we had about 15,000 deaths, and 21% or 22% went to our coroner, so there would be a 10% difference. Are there any mathematicians here to work that out?

1938. **Mr F Bradley**: Twelve hundred.

1939. **Mr Best**: About 1,200. Thank you, Fergal. Under the regional mortality and morbidity review system, which we are hoping to roll out across all the trusts, all deaths would be considered by multidisciplinary teams in the hospital. So a number of additional sets of eyes will look at the cause of death and the care that has been provided. That will provide greater assurance than is currently available. If we then went one step further and introduced independent scrutiny, that would be additional independence to that provided through peer scrutiny.

1940. **Mr Elliott**: Chair, I think that I am there. I am just trying to get a handle on it because it is quite difficult to draw out. In principle, the Department does not seem to have a difficulty, but it needs a lot of clarification.

1941. **The Chairperson (Mr Ross)**: They do not feel it is necessary.

1942. **Mr Elliott**: They are not sure. It might be helpful if they and the Attorney General

discussed it. It may clarify it, or it may make it even more confusing. I do not know, but I take your points.

1943. **Mr McGlone**: You are the experts, and I just want to gain a wee bit of understanding. At what stage could those powers interfere with police powers?

1944. **Mr F Bradley**: The legislation would deal with that.

1945. **Mr Best**: Which powers are you talking about, Patsy? Is it these powers?

1946. **Mr McGlone**: Yes. If there is a perception, for example, that you are moving into a criminal investigation — say, someone wound up dead as a result of negligence — so that a criminal investigation could be going on at the same time, is there any potential for muddying the waters with too many people being involved, whereas the perception of the Attorney General is that he is normally at arm's length from it. I am thinking of the outworkings.

1947. **Dr Woods**: As I said, multiple authorities may have an interest in a death, of which you have mentioned a few. We already have in place a memorandum of understanding between our Department, the Health and Safety Executive, the PSNI and the Coroners Service to address that very issue. Without knowing the details, I dare say that there is a potential, and it would be necessary to look at the memorandum of understanding more extensively to ensure that the risk is minimised and that all parties are clear about their obligations and role in these scenarios.

1948. **Mr Best**: At the outset, the memorandum of understanding establishes primacy in, or who takes charge of, that investigation. I am not sure that the practicalities of the Attorney General knowing all the details at that stage would override anything that is already in place. I do not think that that would be the case.

1949. **The Chairperson (Mr Ross)**: Thank you very much for your comprehensive answers. It was very valuable.

4 February 2015

Members present for all or part of the proceedings:

Mr Raymond McCartney (Deputy Chairperson)
Mr Sammy Douglas
Mr Tom Elliott
Mr Paul Frew
Mr Chris Hazzard
Mr Seán Lynch
Mr Alban Maginness
Mr Patsy McGlone
Mr Edwin Poots

Witnesses:

Mr John Larkin — *Attorney General for Northern Ireland*

1950. **The Deputy Chairperson (Mr McCartney)**: I welcome you once again to the Committee, Attorney General. As I have said, the session will be recorded by Hansard. You will speak in the first instance, and then I will invite members' questions on each item. We will just take them as they are listed. Do you want to make any opening remarks on the amendments tabled by Mr Jim Wells and the Department of Justice to the Bill? Members, the relevant papers are in our meeting folder.

1951. **Mr John Larkin (Attorney General for Northern Ireland)**: Once again, it is a pleasure to be here giving evidence to the Committee. The particular pleasure on this occasion, Deputy Chair, is that it is the first time that I have attended a meeting of the Committee that is being chaired by you. That is an interesting and, from our mutual perspective, welcome first.

1952. If it is not inconvenient to the Committee, I propose to deal first with the two issues that come from me: the amendment to the Coroners Act (Northern Ireland) 1959, as you said, and the proposed amendment in relation to rights of audience of lawyers working in my office. I suggest that course simply because the others are very much demand-led, and I will respond to the issues in relation to the Justice Bill, including any amendments to that which are of concern to the Committee. Does that course commend itself to you, Deputy Chair?

1953. **The Deputy Chairperson (Mr McCartney)**: Yes. Members are prepared for you to cover what is called here the Jim Wells amendment and then your amendment to the Coroners Act.

1954. **Mr Larkin**: I can certainly do that. I do not propose to say very much about Mr Wells's amendment. This, I take it, is the amendment that textually reproduces the amendment that was moved by Mr Paul Givan on the occasion of the last Justice Bill. I have expressed the view that it is within competence. I have read transcripts of evidence from the Human Rights Commission, and I disagree with that. Obviously, we may be all more enlightened in view of what the High Court might say down the line, but it is absolutely clear that, as a matter of convention law — indeed, this is such an obvious point of convention law that it scarcely needs re-emphasis — that there is no convention right to an abortion, so there is no way in which it could be plausibly said that the amendment would be outside competence on a convention ground.

1955. I have to say that I was somewhat amused when I saw the reference to two interpretations being offered in relation to the emergency provision; I think that, if I have not done the chief commissioner of the Human Rights Commission an injustice, he said that the law therefore lacked clarity. As I am sure my learned colleague Mr Maginness will agree, lawyers would be out of business if there were not the possibility for debate on statutory provisions. The mere fact that there may be two statable positions — indeed, more than two statable positions — on any given statutory provision is in no way

suggestive that the provision in question lacks the requisite clarity, particularly from a convention perspective. There will, of course, be important policy considerations, and those are obviously a matter for deep reflection by the Committee, but in terms of competence the Committee should not consider itself troubled in any way by this provision.

1956. **The Deputy Chairperson (Mr McCartney)**: It is the precise amendment that was tabled to the last Bill.

1957. **Mr Larkin**: Yes.

1958. **The Deputy Chairperson (Mr McCartney)**: Do members have any questions about what we are calling the Jim Wells amendment?

1959. Nobody has any questions on that, so we will move on to your proposed amendment to the Coroners Act.

1960. **Mr Larkin**: I am grateful, Chairman, and I repeat with particular emphasis my gratitude for the depth of consideration that both members who are recent additions to the Committee and members who have been on the Committee for a longer period have given to this suggestion from me. There has been a measure of correspondence, and the Committee does have a certain amount of material on that. I hope that the Committee has conveniently to hand the letter that should have arrived with the Committee at the start of this week.

1961. To adopt a phrase that I have used before and which you have used, Deputy Chair, during consideration of this issue, this is really about a second set of eyes. Obviously, with the best will in the world and with healthcare systems working as best as they possibly can, errors are made and cases, including significant cases, slip between cracks. This is a provision that is designed to ensure, as far as possible, that there is a protection against that. You have seen the correspondence between me and Mr Maginness's brother, which made for some entertaining exchanges on the last occasion of the Committee. There is no power that I have to require any person to give me any single piece of information to enable me to consider a matter properly. It is absolutely true to say, as Mr Alphy Maginness does, that the threshold for directing an inquest is low: it is whether I consider it "advisable". However, every member of this Committee is fully aware of how heavily loaded and very much under pressure the coronial system is, both in terms of its general workload and its legacy workload. It would be quite wrong, in my view, for inquests to be directed on the basis of material which was not sufficient to take a fully informed view when, if there had been material on which a fuller, more complete view could have been taken, perhaps inquests would have been considered unnecessary.

1962. I agree that the threshold is low. This is designed also to ensure that there is protection for the coronial system in ensuring that only cases which I consider should be properly considered by the coroner actually do end up on his desk. This amendment will be a powerful tool to ensure that that will happen. The arguments have been put before you. I do not see it as anything which is going to cause an excessive burden. True it is that almost any statutory entitlement can be abused, but there is no indication that it will be, and I can assure the Committee that there is no way in which a provision of this nature would be abused by me. I am quite sure that I would not be advised to abuse it by any of my colleagues. And yet, it would provide that reassurance that the public can properly expect itself to be entitled to.

1963. Again, I referred to Northern Trust cases in previous correspondence with the Committee. The Committee will be aware that these are cases that were not referred to the coroner until, all of a sudden, I wrote seeking information about them. So we are in a situation where, naturally, one does not know what is out there, and I am not in a position to require anyone to tell me what is out there. However, given the valuable work that is going on within the health care system itself to improve systems, there is no reason to think rationally

that any effective operation would be endangered by this provision, and those who are concerned with the very highest standards of quality, in the interest of all of our citizens, should welcome it as providing that additional set of eyes and that additional safeguard.

1964. I am happy to deal with any particular points that members may have.

1965. **The Deputy Chairperson (Mr McCartney)**: In relation to the evidence that we have heard over the previous two meetings, you still believe that the second pair of eyes is the best way forward?

1966. **Mr Larkin**: Very much so. I should correct a misapprehension on the law by Mr Alphy Maginness, who says that I can only look at a potential directed inquest when the coroner has made a decision. That is simply not true. If anyone looks at the text of section 14(1), they will see that it is quite clear that my jurisdiction to direct an inquest exists whether or not the coroner has been seized of the matter, has made a decision or has made a decision not to hold an inquest. That is simply unfounded and finds no support whatsoever in the text of section 14. I can say that I have directed cases in advance of a coronial decision.

1967. **The Deputy Chairperson (Mr McCartney)**: I raised this at both sessions. You state very clearly, in relation to the report of Dr Warde on the death of Raychel Ferguson that, if you were the second pair of eyes, you would have access to that document. I know that this is all now in hindsight, but you felt that this was a document which should have been released.

1968. **Mr Larkin**: Yes. Obviously one has to be careful, because there is a degree of detail about the circumstances in which that report was commissioned, but, as you know, Deputy Chair, the senior coroner considers that he should have seen it. A distinction appears to be made in the evidence of the board between a medical report that is prepared for internal board purposes to increase the learning of the board and something that is prepared for the purposes of legal proceedings. Obviously, if a doctor writes to his solicitor and says, "I fear I may have incurred criminal liability by doing x", such a letter is not discoverable and could not be obtained by me, because it is covered by legal professional privilege. But where a board seeks expert medical evidence to assist it in determining what went wrong internally, that is not, it seems to me, covered by legal professional privilege. Therefore it would be available to me under the amendment to section 14(1). I should be able to obtain it under that amendment.

1969. **The Deputy Chairperson (Mr McCartney)**: The position regarding the access of doctors or medical staff to private papers and diaries was outlined. Would the amendment give you access to people's private papers and diaries?

1970. **Mr Larkin**: Strictly on the canon of relevance, I cannot conceive how that could conceivably fall within the amendment if someone keeps a private diary, for example. However, if there is an issue about an appointment book or about a doctor, for example, preparing notes for an article on a medical theme during which she or he refers to the particular case at issue, I would get that. I cannot see how the private diary would fall within that. Indeed, if a doctor simply said, "This is my private diary", there would be no way in which I would be seeking material of that nature, unless I had reason to suppose that what he said was incorrect.

1971. **Mr Lynch**: John, the people from the Health and Social Care Board who were here on 21 January talked about the unintended consequences for clinical staff and families. How do you answer that?

1972. **Mr Larkin**: I do not think there is an unintended consequence because, as I have said, any provision in any statute can potentially be abused instead of used, but this is a provision that is designed to be used. If it is used, it will not give rise to those effects. Indeed, as the Information Commissioner

points out, it will provide an additional safeguard because it will provide a sure legal route and a safeguard for those persons who hand the material to me.

1973. **Mr Lynch**: They intimated that if people thought that your eyes were going to be on it, they would be very careful about whether they would draw up documents and reports, knowing that this may land on your desk.

1974. **Mr Larkin**: Of course, it already ought to end up with the coroner, in one sense, so one would think that people would be careful in any event. It is one of the issues on which clinicians and lawyers sometimes disagree. They point out, rightly, that they are concerned with the delivery of care, but part of the delivery of care, as has been made absolutely clear by all of the relevant professional bodies, to the best of my understanding, is that good note-taking and note-keeping is a vital part of good clinical care.

1975. **Mr A Maginness**: Thank you very much, Attorney General, for coming. It is very useful to hear in person your views on this. I think the Committee has been struggling with this issue for some time. I am not certain whether colleagues have their minds made up. I know my mind is still undetermined in relation to this issue. The points that were made, particularly last week by the officials from the Health Department, indicated that they felt that there was no need for this additional power to be given to your office. They felt that there was sufficiency in what was available at this time, as the coroner can ask for whatever papers he requires in pursuit of his duties. The question really is this: what added value is there in you or your office having this particular power?

1976. **Mr Larkin**: I suppose that the first thing one asks rhetorically is, "What of the cases that are never reported to the coroner?" The ability of the coroner to ask — and one emphasises "ask" — for more material can be usefully exercised only if he is informed of the matter in the first place. That argument cannot apply at all to those cases which are not drawn to the coroner's attention.

1977. Secondly, the fact that a provision may not, in the event, be used is no consideration at all as to its potential usefulness. We have, happily, a range of criminal law provisions and, in any given year, happily, no breaches of those are detected, for example, in any given case by the police, but obviously, if we did not have those provisions, the position could well be different.

1978. The striking instance here is of the Northern Trust cases: a substantial batch of cases which were simply not drawn to the coroner's attention until I got involved. In a case where perhaps the coroner had been informed, but imperfectly informed — and the difficulty is of course that the coroner is typically informed by the doctors involved — there is structurally, with the best will in the world, a potential conflict of interest in a doctor or team of doctors who have been involved and who have perhaps themselves made mistakes. Self-criticism and self-judgement is a difficult exercise. This enables that potential conflict to be overcome.

1979. **Mr A Maginness**: Arising out of that, you have said that the Northern Trust cases would not have been raised by the coroner because he was not in a position to —

1980. **Mr Larkin**: He was not initially informed of them.

1981. **Mr A Maginness**: He was not initially informed of them. Your office became involved and was able to raise these issues and ask for an inquest in some or all of the cases — I am not certain. Does that not, in a sense, go against your own argument? If you were able to do that without this particular power being given to you, the power is therefore unnecessary.

1982. **Mr Larkin**: No, because obviously it shows that, unless one takes the Northern Trust as an area quite apart, there is a phenomenon of cases which should go to the coroner that are not going. One cannot extrapolate in any uniform way from that, but nonetheless it does seem reasonable to make

appropriate inferences in that regard. That is the first point. The second point is that where something is drawn to the coroner's attention, but in a way which does not flag up issues to him, he is looking at a very large workload indeed. Our focus will be narrower. And I suppose that the final point, really, is the point that was made in the letter to my office from your brother, which said, "What is your power to do this?" I will not go into the circumstances of that particular case, but it is an interesting and important case with potentially very significant ramifications. We would have no power nonetheless to take the view that we should have that material. The understanding seems to be that there is a conversation between doctors and there the matter rests. Now, I suggest that that cannot be right. The power may be a residual power and, as I have emphasised, where systems are working perfectly, this power will never be invoked, but we know that we do not live in a perfect world. We know that we live in an era of straitened circumstances, particularly on the health care front, where demand is infinite, but resources, sadly, are not. There will be cases that will, to use the prosaic expression, fall between the cracks. This amendment is designed for them.

1983. **Mr A Maginness**: My final point is that, in the Northern Trust case, the document that the Chair has referred to was not disclosed. In that case, the position seemed to be that the document was, in any event, a privileged document — "privileged" in the sense that it was prepared in anticipation of or for legal proceedings.

1984. **Mr Larkin**: I am not sure. There are two issues that one must keep separate. The first is the notification to the coroner. No notification took place. Whether or not one seeks legal advice, there is still the obligation to inform the coroner.

1985. **Mr A Maginness**: But assuming that the document was a privileged document, the trust could not have been compelled to disclose that.

1986. **Mr Larkin**: Absolutely not, no.

1987. **Mr A Maginness**: The trust could have disclosed it, but it could not have been compelled to disclose it.

1988. **Mr Larkin**: That is exactly right.

1989. **Mr A Maginness**: I think that the coroner was saying that, in such circumstances, it was desirable that the document be disclosed.

1990. **Mr Larkin**: We are referring to "the document" here. Can I ask which document it is?

1991. **Mr A Maginness**: I am not sure. It is the document that the Chair —

1992. **The Deputy Chairperson (Mr McCartney)**: The Warde report.

1993. **Mr Larkin**: I do not want to pronounce upon the precise nature of a document that I have not seen, but my understanding is — and this seems tolerably clear from the way in which the board's submission was drafted — that the board made the point about legal professional privilege, but separately referred to the Warde report. For example, the coroner has an expert, as one would expect him to in a case of that nature. If the board says, "What do we say about that? Let us get some expertise about that", and gets a report, that would not necessarily be legal professional privilege. I rather think that it is not.

1994. **Mr A Maginness**: But assuming that the document is privileged, it would not be disclosable. It could not currently be disclosed and indeed, if your amendment were to be accepted by the Committee and passed by the Assembly, it would maintain that privilege.

1995. **Mr Larkin**: Absolutely right. That is why I made the distinction in response to the Deputy Chair. For example, if a doctor is seeking advice about his or her legal position, there is no question about a document such as that being disclosed. No one would rightly seek disclosure of a document of that nature. Where you have the trust learning about a position, finding out what went wrong and getting medical expertise, perhaps from outside, to enable it to find out

what went wrong, my view is that the public should have the benefit of that learning and we would be able to get that through this amendment.

1996. **Mr A Maginness**: Yes, of course. Thank you.

1997. **The Deputy Chairperson (Mr McCartney)**: Would there be a distinction between an individual doctor asking for that document and the trust as an entity?

1998. **Mr Larkin**: No. The trust itself can of course seek legal advice. While it is in a position to waive its privilege, the legal professional privilege would also apply to documents that are obtained, for example, for the purpose of advising about legal proceedings or the particular legal position that the trust then stood in.

1999. **The Deputy Chairperson (Mr McCartney)**: Would it declare, prior to asking for the report, that it is asking for it because it feels that there may be litigation?

2000. **Mr Larkin**: Typically, one of the ways in which legal professional privilege is attracted is where the report is commissioned through solicitors. So, if, for example, the solicitors commissioned that, they would say, "We have been instructed by such and such a trust to obtain your expert opinion on such and such for the purpose of preparing a defence to a possible claim from x." Typically, that will be the way in which legal professional privilege comes into being in that kind of setting, but where a trust decided to simply learn more about what had gone wrong, that would not be an occasion of legal professional privilege.

2001. **The Deputy Chairperson (Mr McCartney)**: Maybe it is not related to this, but, if you receive a report that is favourable, then you waive the privilege, but, if you receive a report that is not favourable, you can use privilege. It does not seem to have the word "fairness" in the middle of it.

2002. **Mr Larkin**: Deputy Chair, may I say — we are moving off track a bit — that I take that point in relation to publicly funded bodies whose function it is to act in the public interest. It seems to me that they have an overriding duty of candour and transparency. Of course, they can defend their legal position, but, if they obtain at public expense advice or opinions that show that they have not operated well in the public interest, that ought to be placed before the appropriate board.

2003. **Mr Douglas**: I think that this in is a letter that you sent to us. It states:

"Under section 14(1) of the 1959 Act I can direct a coroner to hold an inquest where I consider it is 'advisable' to do so. I do not possess a statutory power to obtain papers or information that may be relevant to the exercise of this power."

2004. Have there been occasions when you have asked for information and it has been refused? Is it a big problem? Does it happen on a regular basis?

2005. **Mr Larkin**: Happily, it has not happened on a regular basis. In the last exchange, Mr Alphy Maginness said, "What power are you acting under?", and, "You've no right to this stuff". I am not sure how that is going to pan out, but it does not necessarily augur very well for getting those papers.

2006. I return to the point that was made by the Information Commissioner: this is a reassurance for the holders of the information and the documents, because they then know, "Ah, well, if we hand over this material, we're doing so pursuant to this statutory obligation". It is not merely, "We're enabling him, the attorney, to do his statutory duty"; it is, "We're actually handing it over pursuant to a discrete statutory obligation". That is a very powerful safeguard on both sides.

2007. **Mr Douglas**: I am a layman in this situation. Will you give us an example of the sort of information that you would be requiring or requesting?

2008. **Mr Larkin**: There is a classic example. One of the great learning tools in the health-care system is the serious adverse incident report, which pulls things together. The reading of that

document might, in itself, suggest that there are other documents that one should see. It would be a classic example of something in this regard.

2009. **Mr McGlone**: Chair, my apologies to you and to Mr Larkin for being a bit late. I was held up with some constituency work, not that that is any less —

2010. **Mr Larkin**: No apology necessary —

2011. **Mr McGlone**: — or any more important than what yours is.

2012. **Mr Larkin**: No, they elect you, Mr McGlone. They are much more important than I am. [Laughter.]

2013. **Mr McGlone**: That is true; you are not a constituent.

2014. Mr Douglas referred to your letter about the 1959 Act. We received a submission from DHSSPS. I will just read these out to you, if it is OK, Mr Larkin.

2015. **Mr Larkin**: Of course.

2016. **Mr McGlone**: Paragraph 8 — this is the bit that puzzles me — states:

"Under section 14 of the Coroners Act, the AG can currently direct the coroner to conduct an inquest into the death of a person if he has reason to believe that the deceased person died in circumstances which in his opinion make holding an inquest advisable."

2017. Paragraph 9 states:

"In order to exercise his power all that is required is for the AG to have a reason to believe that the circumstances of the death make the holding of an inquest advisable. The use of these words and phrases seem to import a wide degree of discretion and a low threshold for taking action and the wording does not envisage the AG having to carry out an investigative role to determine whether to direct the conducting of an inquest."

2018. In other words, it is saying to me, as a layperson, that you already have powers to direct the coroner to conduct an inquest. It is saying that you do not need to conduct an investigation to direct that an investigation take place. How do you respond to those words from the Department?

2019. **Mr Larkin**: If I may say so, that is an excellent question. It enables me to bring the matter out quite starkly. It is absolutely true to say that the threshold is quite low, but, as I said earlier, the coronial system is quite burdened — one might even say that it is overburdened. Therefore, it is important that there be an investigation to determine that there really are issues that merit consideration at an inquest. Me looking at that material enables that to occur. Individuals who know that I am looking at a particular case in which they are involved — perhaps their relative has died in circumstances that give rise to concern — will know that I am statutorily independent of the Department and of the relevant trust and board, and that a second set of eyes has looked at it.

2020. It cuts two ways. If I simply think that there is a suspicion that something does not look quite right, I may end up directing a case — in one sense, quite properly — to be investigated by the coroner, but for which, if I had seen some additional materials, they would have reassured me entirely that there was no need for coronial investigation. So, there is an important aspect of saving the coroner from potentially unnecessary work.

2021. The second point that your question enables me to highlight is that I can certainly direct an inquest. As we have discussed, the threshold is quite low, but what about the cases that I have no means of knowing anything about? I have no power to ask a relevant board, "Have you had deaths that have arisen in the last month where people have been waiting on a trolley for more than four, six or eight hours?" Right now, the cases that typically come to me are those where there are people who have very involved and engaged family and friends. What of those who live alone and die alone; those who are friendless and without blood relatives?

2022. **Mr McGlone**: That brings me on to the next bit in paragraph 11; you neatly moved me onto it. It states:

"Section 7 of the Coroners Act, states that a death should be reported to the coroner, if it resulted, directly or indirectly, from any cause other than natural illness or disease for which the deceased had been seen and treated within 28 days. The duty to report arises if that death falls within a set of clearly defined criteria which includes as a result of violence or misadventure or by unfair means, or as a result of negligence or misconduct or malpractice on the part of others, or in such circumstances as may require investigation (including death as a result of the administration of an anaesthetic)."

2023. I am really putting it back to you. If people were doing their job in accordance with what the Department has laid out to us, it says that you do not need the additional power to conduct an investigation because provision is made in there for those instances.

2024. **Mr Larkin**: There are two points. First, it may be the person responsible, in a large sense and in a legal sense, for the death who has to make the decision about whether to refer under section 7. That is the first problem.

2025. Secondly, even if the person refers, the amount of information given is a matter for them. Someone acting in whatever level of high good faith might be tempted to put the best foot forward on that. That will mean either that some cases do not go at all or cases go in a way which do not shine a light on the darker parts of the treatment, which might be the matters of real interest to the coroner. Interestingly, the provisions to which Mr Alphy Maginness alluded the last time, such as the duty about holding things back and the penalisation of that, have not been commenced.

2026. **Mr McGlone**: Finally — this brings me sequentially onto the next bit — it may well include the circumstances that you just outlined, where the person responsible for reporting is, in fact, the person who was involved in the administration or treatment or whatever. Paragraph 13 states:

"If a death occurs in a hospital and meets the criteria outlined in The Coroners Act, it will be reported to the Coroner for consideration. However, there will be occasions when a death may be reported to the Coroner sometime after the date of death. This can happen when information comes to light that may not have been apparent at the time of death."

2027. I would interpret from that, possibly or potentially, the situation that you have outlined, where the person should have been responsible for reporting it to the coroner.

2028. The paragraph also states:

"There is a perception that these are 'late reports', however, this is not the case as the Coroner will be informed once such information becomes apparent."

2029. Again —

2030. **Mr Larkin**: Let me give you an example of a problematic case. This is a case about which the coroner has written. The aspect that interests me in that context is that a particular device that governed the administration of medication vanished after the death. There could be a concern about material and documents — that is the primary focus, of course — going missing at that early stage. As you have said rightly, if the system is working well, we are largely happy. It is for the residual cases, the cracks and the gaps that we are potentially aware of now and those that we can contemplate but do not quite see at present.

2031. **Mr McGlone**: If somebody comes to you — it could be a relative — and says, "Mr Larkin, I think there is material missing here; there is paperwork missing", or to tell you that their GP or someone has discovered that paperwork around the treatment of mum, dad or whoever, is missing, would that not take us back to the paragraph that I mentioned earlier? If the Attorney General were to have sufficient reason to believe that the circumstances of the death make holding an inquest advisable — given that wide degree of discretion that the Department refers to — would that not be adequate for you to say that, based on what you have been told and on what a GP has submitted, you must direct a coroner to investigate?

2032. **Mr Larkin**: No, and that is a good example of exactly the opposite. That may be the kind of territory where a document turning up, following a direction from me, could reassure everyone that there is no problem. In the absence of that, I might be, as you suggested, disposed to direct an inquest simply because one might conjecture that something, from appearances, may look a bit off. However, if one is able to get the material, one is reassured, and, because it is an independent person who is reassured, that goes a very long distance towards reassuring the family that there is nothing untoward.

2033. **Mr McGlone**: You could put yourself through a lot of bother investigating a case that could best be placed at the coroners office. Surely, they would be in the same position to request discovery of that —

2034. **Mr Larkin**: Yes, but they may have looked at it and made a particular decision, or it might not have been referred to them. There is a variety of —

2035. **Mr McGlone**: I am talking about that particular permutation of relatives contacting you. The coroners office has not been involved, but there is sufficient merit or something is absent — based on the paperwork in front of you, on the dates and on reports back and forward — that enables you to say that there are grounds to direct the coroner to become involved. I am trying to understand the sequence. The Department stated that you have the powers to do that, based on the circumstances of the death, and have, in its words:

" a wide degree of discretion and a low threshold for action".

2036. If you have the ability to direct those empowered to conduct an investigation, the coroners, then, if you like —

2037. **Mr Larkin**: I would not be directing the coroner or his medical adviser to investigate the matter in some informal way; I would be directing that a formal inquest be carried out.

2038. **Mr McGlone**: Yes.

2039. **Mr Larkin**: That is exactly the point that I am making. In the event, that might be quite unnecessary. If I write to the relevant clinician within the trust and say, "Can you show me document X?", he is legally entitled, at present, to say, "Get lost", subject to some overarching obligation under the European Convention on Human Rights. However, if I am able to require him to give that information to me, I may look at it and say that it is quite clear that nothing untoward happened. I can then discuss with the surviving relatives the position and, in such a case, I hope reassure them of the absence of any need for an inquest.

2040. **Mr McGlone**: OK.

2041. **Mr Frew**: Thank you for your answers so far. My question is along the same lines as Patsy's. You stated, Mr Larkin, that you could, in some way, relieve the work burden on coroners. Surely, you would be placing that workload within your office.

2042. **Mr Larkin**: No, because, in this context, the workload that belongs to the coroner is that of conducting inquests. I would not ever be conducting an inquest. However, if an inquest has not taken place, family members may come to me and say that perhaps one should be held, because, to use Mr McGlone's example, some documents are missing or they have not got those documents. If I am able to get those documents and reassure myself that there is nothing untoward, I can attempt to reassure the family that there is no need for an inquest or, to use the language of section 14(1) of the 1959 Act, that an inquest in that context, is not advisable.

2043. **Mr Frew**: How do you answer the points made by the health bodies that there could be a move towards not recording and not taking notes, as is the practice now, because of this amendment?

2044. **Mr Larkin**: On analysis, I think that the officials who wrote that may want to reflect further on that because a clinician who deliberately did not write notes might find himself or herself coming close to, if not actually crossing, the threshold of committing the offence

of misfeasance in public office. It is a clinical duty to keep and maintain good clinical records. That obviously means notes. There is at present an obligation to inform the coroner in, as has been referred to, section 7 of the 1959 Act. That is underpinned by criminal penalties, so the idea that one is introducing a criminal underpinning, for example, for the first time, is simply nonsense, frankly.

2045. **Mr Frew**: You talk about using this to get into the small cracks in the system and the cases that fall between the cracks. Excuse me for my ignorance, but I am struggling to find where and how you would be alerted to those cases that fall between the cracks. There is a system in play at present — the adverse system. That automatically and mechanically goes to the coroner.

2046. **Mr Larkin**: Let me stop you there. It does not. Merely because something has led to a serious adverse incident does not necessarily result in it being referred to the coroner. That has been, one might think, part of the problem.

2047. **Mr Frew**: OK. Let us take the example that you gave of someone who has no friends, no blood relatives and who lives alone and dies alone. How would you ever know that that person existed and died?

2048. **Mr Larkin**: That is an excellent question. Part of the answer is that I might not, and, under the present arrangements, where I have no power to require production of information, I certainly would not, unless some stranger or benefactor were to draw the circumstances of such a person to my attention. However, I could potentially be alerted to the existence of such a person's death if the amendment is made. That is because I could ask on a sample basis, for example, have there been any deaths — I gave the example of people who waited on trolleys for more than six hours and where their deaths occurred within 12 hours of that. Or, I could ask for a list of the SAIs for the last month, and a case might present itself within that batch of SAIs, for example, that fell within the very category that you are describing.

2049. The point is that, right now, the person who lives alone and dies alone would, in circumstances where they were known, objectively attract our concern. There is no safeguard with respect to such a person now. At least the amendment would provide some measure of additional protection over and above what exists at present.

2050. **Mr Frew**: Health professionals will also say that the burden of work that could well be placed on them by your requests could be detrimental to the health service.

2051. **Mr Larkin**: I see that point made, but I do not think that it is accurate. The Department is itself talking about appointing an additional person, albeit within the health universe, and doing things such as 10% sampling. So, there will be a burden that way. In many ways, this is a much less intrusive and a much more tailored and targeted response. Let me be absolutely clear: although I am statutorily independent and am very glad that I am, that does not mean that I am isolated. I am very keen to work with the boards and the trusts to ensure that we, essentially, work collaboratively to deliver what I think we both have very much at heart, which is the very highest standards of public safety in this particular area.

2052. **Mr Frew**: This may be a crystal-ball question, but if this was to be passed, how often would you see yourself using the power? If you look back over the past number of years and implant that law then, how often would you have used it? Can you tell?

2053. **Mr Larkin**: It is a very good question. How often would I have used it in the past? It is almost impossible to answer that. How often do I anticipate using it in future? I think that there is a distinction between two types of cases. There are cases where trusts, boards and clinicians would welcome its use and say, "Would you give us a direction, because that gives us safety and the

reassurance of knowing that anything that we give you is done in a legally protected way?" That will probably happen quite a bit. In the tinier category of contentious ones where there is resistance, I would anticipate that happening scarcely.

2054. **Mr Frew**: How often do members of the public, family members or professionals come to you about those situations?

2055. **Mr Larkin**: Quite often. If it would be of assistance to the Committee, I can give you some detailed figures, but, in many ways, those are not the cases that you worry about so much because they have engaged, motivated people speaking up for them. It is the ones that one does not know about where there is perhaps no response at all.

2056. **Mr Frew**: I might be far out here, but I want to make sure that I close the door. What happens if someone has had a torrid time in hospital, their care has not been up to a good standard and they die but for some other reason or naturally and it was not necessarily to do with their care, yet their care was horrendous? Where does this law fit in there?

2057. **Mr Larkin**: Again, it is an excellent question. The short answer is that it does not. For example, to take, one hopes, a fanciful instance, if a member of the nursing staff racially abuses a patient on a regular basis but that is utterly clinically unconnected with the person's subsequent death, it is nothing to do with me at present and will not be anything to do with me even if that amendment is made. Let me give you an example —

2058. **Mr Frew**: You can understand why someone would be motivated to approach you or contact you about that.

2059. **Mr Larkin**: Not really, because they will at present. For example, I was approached in relation to an instance where the cause of death was tolerably clear but the remains of the deceased were not well treated after death and there was evidence of post-mortem injuries. That is hugely upsetting and hugely distressing for family members, but that would not be a basis on which I would direct an inquest, and I did not direct an inquest in those circumstances. So, by analogy, with the pre-death, unconnected-with-death and post-mortem events, the amendment would not change any of that.

2060. **Mr Poots**: Mr Larkin, it is good to see you. Historically, openness and transparency has not really been the forte of the health service, and that has, thankfully, been changing in more recent years. Will what you are doing improve that openness and transparency or will it tend to drive people back into the trenches once again?

2061. **Mr Larkin**: The affirmative answer is inescapable. There are already regulatory measures in place. I have referred to the penalising of failure to perform the duty under section 7 of the 1959 Act. If the material is asked for, it should be given. If there is a good reason to refuse, it will be refused. If there is a bad reason to refuse and it is refused, it is underpinned with a summary offence. That is a standard model in this kind of arrangement, and I do not think that there is anything in this that, properly understood, will do anything other than increase transparency and, more importantly, because it goes vitally with transparency, reassure the public.

2062. **Mr Poots**: Serious adverse incident reporting is largely a learning exercise. It is reporting that is there to avoid the same circumstance happening again. Some elements of it are less enforceable than others. Consequently, if we were to see the tailing off of serious adverse incidents, that would not necessarily mean that the health service is performing better; it may be the case that people are not being as transparent as they were previously. How do we avoid the circumstance in which people are not as open and as up for using the serious adverse incident reporting means to ensure that others learn from some failings?

2063. **Mr Larkin**: This is an instance of where good health service management comes

into play. As we know, the demands on the health service are far from diminishing. I have described them as being almost infinitely elastic, and they are going up. If one were to observe against that background a diminution in SAIs being explored, one would realise, presumptively, that something was not quite right. That is a matter for internal health service management.

2064. **Mr Poots**: You, more than most, will recognise that we live in a very litigious society. The health service is paying out tens of millions of pounds each year on the basis of people taking them to court for treatment that did not meet the standards they expected. Again, much of that care has been provided historically. I suspect that, in a number of years' time, we will be dealing with cases where the care has been provided now. We have people in extremely difficult circumstances who have very difficult decisions to make. How do we get to a situation where doctors and hospital staff are prepared to take decisions that may involve an element of risk but will get a better outcome, as opposed to making them afraid to take such a decision and where, consequently, there is less risk but a worse outcome?

2065. **Mr Larkin**: This picks up the theme of Sir Liam Donaldson. If I may say so, I absolutely agree with that. It takes us a bit outside the scope of today's discussion.

2066. In my experience, good clinicians dealing with risk are up front and transparent about the risk, and they share the risk with the person or persons affected. I think that there are very few people, such as those who are gravely ill for example, who realise that there are a number of options. If they are made fully aware of those options and how each carries risk, some more than others, and what the range of potential outcomes is, then in those circumstances, where there is communication, people will accept that those with grave illnesses die and that outcomes often do not work out as one might wish.

2067. It is where there is no upfront communication and where there is concealment, typically, that problems arise. One of the themes, and I suspect it is something that Sir Liam would probably agree with, is that, where there is early acceptance that we took that risk but it did not work out, people are disposed often to accept that.

2068. **Mr Poots**: I will create an instance. If someone has cancer quite close to their spinal cord and, during surgery, some damage is done to that spinal cord, and the individual ends up in a wheelchair, it may be a young individual, and, consequently, the level of claim would potentially run into millions of pounds. The alternative may have been to allow the cancer to continue to develop and the person dies. Those are the sorts of decisions that our front-line staff are having to make on a daily basis. There is a fear that they may end up feeling constrained and take what they consider to be the right decision as a consequence of the litigation that may go on.

2069. **Mr Larkin**: One hears that, and, to an extent, one understands it. But, I revert back to the emphasis that I think ought to be placed on effective and clear communication of risk. To take your example: if the nature of the options is communicated — bearing in mind, of course, that there has to be informed consent to treatment — then physician A cannot do anything to patient B in ordinary circumstances unless patient B consents. As we know, there is now increasing jurisprudence about what is meant by informed consent. So, I am really not talking about anything new. There has to be a proper process of putting the patient in the picture. When the patient, and the patient's relatives where appropriate, are placed in the picture, there is often a huge acceptance of what has happened, even though the outcome may be very far from what was desired.

2070. **Mr Poots**: Again, in the imperfect world in which we live, and in spite of having some of the best imaging services in the world, when you open up a person's body, the circumstances you often find

are not what you predicted. Therein lies the difficulty that physicians often find themselves in. They have to make an on-the-spot decision, and the decision they make may well be the wrong one, but it may have been one that was made with the right intent. Therein lies a difficulty.

2071. **Mr Larkin**: I agree.

2072. **Mr Poots**: There is a lot of fear out there that people will end up being constrained in the work they are doing.

2073. **Mr Larkin**: I agree, but, of course, in many ways the fear comes from clinical negligence litigation, and an inquest should not be conflated with that. It is quite separate. In one sense, an SAI is about clinicians learning. An inquest, in my view, in a medical context, should be about learning what the clinicians have learned and reassuring the public about that.

2074. In the scenario you sketch, Mr Poots, what happens in an ideal world is that, where the decisions are made, for example during the course of an operation, the relatives — providing appropriate consent exists — are informed of what has happened right away. Usually, in those emotionally charged moments — and I suspect we have all experienced those, either directly or indirectly — there is a huge, proper, and open emotional response to the candour of a clinician who often visibly bears, on his or her face, the marks of having to make a difficult decision in difficult circumstances. I think we all rightly appreciate that.

2075. **Mr Poots**: I suppose that, for your case, it would be more like an instance where a surgeon is operating close to an artery and someone bleeds to death. Those would be the circumstances that are to be feared in that instance.

2076. **Mr Larkin**: In many ways, if it is clear that that is what happened — it may be an inquest that, if referred to the coroner, he will deal with — and it is simply something that is happenstance rather than negligence, I think the wider public will understand that.

2077. **Mr Poots**: You do acknowledge that, for health care workers, the safety of the patient should always be paramount, and that that is almost exclusively the case. Consequently, people involved in health care will want to provide health care. They will not want to be involved in court cases of any kind, whether with coroners or otherwise.

2078. **Mr Larkin**: Yes, but I think there is a distinction. It used to be that lawyers liked to wrap themselves up in a god-like aura and see themselves as aloof, apart and quite immune from external scrutiny —

2079. **The Deputy Chairperson (Mr McCartney)**: Do not get him going. [Laughter.]

2080. **Mr Larkin**: I am not talking about judges. [Laughter.] Quite rightly, that is no longer the case. Similarly — I make no bones about saying it — I do not think that clinicians can pretend to be minor deities. They have to be properly accountable. Actually, the inquest is a forum in which there can be learning without direct fear of civil or criminal liability. In the very old days, it would be possible to be returned for trial by a coroner's inquest. Those days have long gone.

2081. **Mr Poots**: I think that the more openness and transparency that can be developed, the better it will be. The best example of not doing it right is the reporting that John O'Hara is looking into. Four deaths were involved there. It has turned out to be a hugely traumatic inquiry, particularly for the families and for everyone involved. Had there been more openness and transparency at the outset, it would have avoided a lot of pain for everyone.

2082. **Mr Larkin**: I agree entirely with what Mr Poots said. It is worth bearing in mind that, had there been properly informed inquests, we would not have had the inquiry that then became necessary.

2083. **Mr Elliott**: I apologise, Attorney General, for missing the earlier part of the presentation. There was a query from the Department last week. I will read Fergal Bradley's position. Maybe you

have covered it. If you have, I apologise. He said:

"We are not clear on what basis we are doing this, but we are also not clear whether it is a proportionate response or what its desired effect is. The objective, which we share, is to ensure that deaths are appropriately reported to the coroner, that it is consistent, timely and so on. We do not see that the amendment would have that sort of impact."

2084. They were saying that, in principle, they broadly support it but did not see the rationale for it and that there was maybe not enough clarity and explanation.

2085. **Mr Larkin**: That is obviously my fault. Let me try to explain very briefly. Where cases are not reported, the amendment will come into its own. Where cases are reported to the coroner but with insufficient information and therefore the coroner makes a negative decision on an inquest, the amendment will potentially come into its own. Where the coroner makes a decision, even on an informed basis, but information subsequently comes to light, the amendment will come into its own. It is textually proportionate, and, as I said earlier, any provision can potentially be abused, and that is where the Committee comes in. If the Committee thinks that, for example, a particular Attorney General in 10 years' time is doing that too often or improperly, I am quite sure the Committee or its successors will look hard at that matter. So, I see it as proportionate and necessary, and I very much welcome the view of the Department that it has no objection in principle and that we are both looking to deliver the same thing.

2086. **Mr Elliott**: I assume that you do not look at them randomly, but one of the questions was:

"How many cases would the Attorney General look at randomly"?

2087. How do you pick them?

2088. **Mr Larkin**: Right now, I do not do so, because I have no power to do so; but it is interesting that the Department is talking about introducing, perhaps, a 10% sampling scheme through the institution of a new post. The first thing is that it might be useful to use that position, which the public are already paying for. I could engage with the clinicians as to what an appropriate sampling exercise to engage in would be. For my purposes, and simply because of my resource limitations, if I were ever to engage in a sampling exercise, I can assure you, Mr Elliott, that it would be much, much smaller than 10%.

2089. **Mr McGlone**: I have one final question. I did not really close off the line of questioning earlier. There may be a query around a death and you pass it to the coroner's office. You said earlier that you can then investigate whether the coroner's office should go ahead —

2090. **Mr Larkin**: No. Once I have directed, that is the end of my role under section 14(1). It is then very fairly and squarely in the hands of the coroner.

2091. **Mr McGlone**: Yes, but you said earlier that you do have the investigative powers to look over a case and decide that there may or may not be merit in it being passed to the coroner. At the moment, someone, be it a doctor, a funeral director, the police or whatever, may become involved and pass it to the coroner to look at. Before deciding to go to a full-blown inquest, the coroner will look at all the information that he or she might have, including, presumably, asking the police to ascertain whether anything further is required. What bit of that do you need to be involved in to make sure that the process is properly gone through?

2092. **Mr Larkin**: If the process is properly gone through, then I would not be exercising my jurisdiction under section 14 at all.

2093. **Mr McGlone**: That is my point. If a family, a funeral director or someone is concerned about the death, why would they approach you when they can equally approach the coroner's office?

2094. **Mr Larkin**: Quite, and, in many ways, the coroner's office will be their first port of call. However, the coroner's office

may have looked at it on a particular set of information and made a decision that was deemed, subsequently, to be unsatisfactory, at least in the eyes of the surviving relatives.

2095. There was an example of a case, which I think falls into the second or third category that I identified with Mr Elliott, where something is reported to the coroner but the coroner is not given the information. There is an issue — and you may be familiar with it from the legacy inquests — about the coroner's source of information, and there are obligations on the police to gather information for the coroner. We know that that has been the subject of much commentary in other contexts. However, the coroner does not have a free-standing investigative power outwith pre-inquest. Obviously, he can issue a summons in the context of an inquest, but he is not a police officer with a panoply of investigative powers.

2096. **Mr McGlone**: I appreciate that. I am trying to work out who requires more powers. Is it you or the coroner?

2097. **Mr Larkin**: One of the issues often kicked around in the context of this debate is this; "Oh well, let us look at the whole coronial system down the line, and let us have a larger look at it". My view is that the best is — as it is so often, and this case is an example of that — the enemy of the good. Here is a measurable, deliverable reform that we can do now.

2098. **Mr McGlone**: In conclusion, you are saying that the coroner's office does not have sufficient power to ensure that all the necessary information or evidence required in regard to some of these cases is gathered, but that you, with your proposals, will have sufficient power and, on that basis, this is the way forward.

2099. **Mr Larkin**: Indeed, and that is the impression one gets from reading some of the legacy judicial reviews in a different context. In summary, in relation to what this will do, I very much agree with that.

2100. **The Deputy Chairperson (Mr McCartney)**: Thank you very much. We have now concluded that session.

2101. I invite you to talk about the legislative provision in relation to the rights of audience for lawyers in your office.

2102. **Mr Larkin**: Yes. If the first occasion was a sort of begging bowl on behalf of the wider public, this is a begging bowl with two parts: one is a selfish part, and the other is a public interest part.

2103. The selfish part is in relation to cost. Obviously, there will be a saving if I can use the very talented and skilled lawyers in my office in a junior counsel role in the higher courts. The public interest aspect is that it struck me forcibly on a number of occasions that I have hugely skilled staff who have been working on files — particularly in the context of litigation involving charities in the Charity Tribunal. The matter goes on appeal to the High Court, and the person who is absolutely up to date with the information on files and who has the file at her or his fingertips has to step out and let the junior counsel in private practice get to a position where she or he is able to present the case adequately. This strikes me as a significant loss to the public, in the learning occasioned by participation in litigation and, prosaically, in money that the public spend when they do not have to.

2104. Interestingly, the panoply of responses to what I have suggested range between the Bar saying, "Oh no, never" and the DPP saying, "Well, yes, but me too", and something a little vaguer, as one might have expected, from the Departmental Solicitor's Office (DSO) and, to a lesser extent, from the Crown Solicitor's Office (CSO).

2105. It is understandable and perfectly proper that the Bar makes the points that it has made. It is important for me to emphasise that, as Attorney General, I am the titular head of the Bar and would not do anything that I thought would damage the independent Bar. I do not say this because I have some selfish interest in the independent Bar,

from which I came and to which I hope to return one day, but because I think that the independent Bar is a hugely important aspect of ensuring access to justice for our citizens, and a hugely important aspect of protecting the rule of law in a free society. However, should the Committee decide to go forward with this proposal, a very small number of cases will use the facility.

2106. That leads me to the second point, which is that the PPS doing it would have a potentially very large impact in relation to that of the independent Bar. Obviously, the director is independent in the discharge of his functions, as am I. That distinction is important, because this is not the case for the Departmental Solicitor, who is not independent in the direction of his functions. The "D" in DSO is, of course, DFP. The CSO deals with non-devolved issues, and therefore may be thought of as not being of huge concern to the Committee, at least at this stage, one way or the other.

2107. As the senior law officer, I have a huge reputational stake in ensuring that the people I bring into cases do not let me and my office down. So, one can rest assured that I am not going to bring in someone, even to save money, if I think they will damage my office and the wider public interest it represents. I assure the Committee that that will not happen. This provision is very much a balance between the absolute negation that the Bar proffers and the "yes-but-me-too" approach of the other bodies. It plots a safe, median course between those two extremes.

2108. **The Deputy Chairperson (Mr McCartney)**: The Minister's view, in the consultation response, is that a mechanism is in place for all this.

2109. **Mr Larkin**: There is not at present, but there will be. As you know, in Mr Ford's first Justice Bill, there is provision for rights of audience for a certain category of solicitor. He is right in stating that regulations to confer rights of audience would, invisibly, do so on all employing barristers. I am sure that the Committee will consider that matter down the line, when it comes, if it ever comes, to look at those regulations if they are ever made. The problem, and the reason why those regulations have not come forward yet, was identified recently in a Scottish case and was touched on in a judicial review challenge to the Bar rules just last month — on 19 January, if memory serves me right — about the deployment of senior counsel in criminal cases.

2110. In the course of that interesting litigation, the Divisional Court touched on the issues of a conflict of interest. So, for example, if a citizen walks into a solicitor's office and is advised by that solicitor that they can have a solicitor advocate from within that firm, how can one avoid the rather striking potential for a conflict of interest in that setting? That problem has still not been got over. Indeed, the experience of the Scottish case, which is discussed briefly by our Divisional Court, is that that will be a real problem.That means that the route that the Minister proffers is not really going to happen, not least because I am very concerned that there should not be a conflict of interests. So, I will be contributing to drawing attention to a problem that the divisional court has itself drawn attention to. It will not happen unless the Committee makes this kind of provision.

2111. **Mr A Maginness**: Attorney, thank you for that. I think that that is very helpful. You emphasised the point, and, as a non-practising member of the Bar, I agree with you that the independent Bar is a very important element in our democracy. I think that people are inclined to forget that, but it is important. I will take an ordinary case by way of illustration. There may be a negligence case where a firm of solicitors believes that the client has a very good case and instructs a barrister to represent that client. The barrister sees the case and says, "By the way, this is not a good case. I have to inform you that your case is weak etc. You should really settle this case for x amount or whatever". I think that that independence makes a very important contribution to the citizen. I use that to illustrate the point about independence.

I think that the same goes for other bodies such as the Public Prosecution Service, where the prosecution may be convinced that this is the right way to go and brings various charges and so forth and then goes to the independent Bar. The independent counsel, acting on behalf of the PPS, says, "By the way, I don't think this is a very good case. The charges are inappropriate etc. You should look at this afresh". I think that that is a valuable thing.

2112. I am sympathetic to what you are saying about your own staff. I take it that the staff is made up of a fairly limited number of people.

2113. **Mr Larkin**: You are talking about eight lawyers.

2114. **Mr A Maginness**: Eight lawyers. Would that apply to solicitors or just to barristers?

2115. **Mr Larkin**: Both.

2116. **Mr A Maginness**: It is both. I know that you cannot give a precise figure of the number of cases that you bring per year, but —

2117. **Mr Larkin**: It is modest. One could extrapolate from the potential that eight lawyers could conceivably be engaged in. Let me correct that. One could extrapolate from the potential that one lawyer — me — could conceivably be engaged in, because they will not be involved in cases on their own. It will be only when I am engaged in the case, so one can readily see that there is a —

2118. **Mr A Maginness**: Mind you, this Committee is not too fond of two counsel in cases. I say that in jest.

2119. **Mr Larkin**: Of course, the answer is that the cases that —

2120. **Mr A Maginness**: I do not want to offend Mr Poots.

2121. **Mr Frew**: We are just glad that it is getting through. [Laughter.]

2122. **Mr Poots**: The public prosecutor and I are on the same page.

2123. **Mr Larkin**: Steering a way through the general hilarity, may I say that the cases in which I am involved are obviously very important? They are the cases that even the more austere-minded Committee members would agree would properly, in any context, attract two counsel.

2124. **Mr A Maginness**: The point of distinction that I want to make is about your office, which is an independent office, representing what I would call the public good. Therefore, per se, you are bringing that independence on behalf of the Executive here, so the whole notion of independence is not the issue.

2125. **Mr Larkin**: That is right.

2126. **Mr Poots**: I think that one thing that Mr Larkin could not be accused of is not being independent.

2127. **Mr Larkin**: I am grateful for that compliment, Mr Poots.

2128. **Mr Poots**: I thought that you might take it as a compliment. Nonetheless, I did not quite pick up whether you were supportive of the notion of the PPS having the same rights as you.

2129. **Mr Larkin**: No. If that were to happen, I think there is at least a risk of damaging the legal ecology. I think that the safe course, if the Committee is persuaded of this, is that this extension should be accorded to my staff. If I may say, we should go with that and see how it works. I am, of course, confident that it will work very well. If it does, it would seem to me that the next obvious step would be the PPS. However, that should not happen right away, because, in fairness to the Bar and the Law Society, it is being consulted only on the change that is happening in this office. It has not been consulted on a much wider change, which would certainly be a change with very significant ramifications.

2130. **Mr Poots**: Yes, although Mr Hunter, representing the Law Society, was opposed to you receiving this as well.

2131. **Mr Larkin**: Yes.

2132. **Mr Poots**: I think that he referred to it as "piecemeal".

2133. **Mr Larkin**: Some of the best reforms are piecemeal. I think that the people who have a totalitarian view of the world and want to change everything all at once often stand in the way of the more modest, measurable and deliverable reforms.

2134. **Mr Poots**: What is the downside of this to the public?

2135. **Mr Larkin**: None. There is no conceivable downside. There is a public saving, a preservation of quality and, in some cases, a quality that could bring enhancement, because you have someone who has worked with the file for longer. Take a private practice barrister, for example. Depending on the level of seniority, that barrister will, I hope, contribute to the case, but it contributes to the barrister. I do not mean that merely in a financial sense; the barrister learns from the case. That goes to service that barrister's personal career, whereas the learning that occurs for the lawyer in my office, who is working as junior counsel with me in the High Court, Court of Appeal or UK Supreme Court litigation, accrues to the public's benefit. So, there is a tripartite benefit. There is a cost saving, a preservation of quality, which in some cases brings an enhancement of quality, and a learning opportunity accrues to the benefit of the wider public. I think that it is a triple win in the public interest.

2136. **Mr Poots**: Of course, none of that precludes your office from requiring particular expertise on a subject.

2137. **Mr Larkin**: No, absolutely not; that is right. I give that reassurance to the Bar. In any case, that is precisely what I do when I think it appropriate and necessary, for the reasons that Mr Poots touched on.

2138. **Mr Poots**: You have eight lawyers, and the PPS has around 160 lawyers. Clearly, it could take on a much greater volume of work than you, which would probably have a more disproportionate impact on the independent legal profession. Our responsibility, first and foremost, is to the public, not to any particular profession. Where is the downside for the public in that?

2139. **Mr Larkin**: I can give you a personal assurance of the quality of the lawyers in my office. As one goes more widely in larger organisations, that becomes more difficult to personally assure, even from a conscientious head of a particular organisation. The director and the chief inspector of Criminal Justice Inspection have been working to improve advocacy standards, but I know that the chief inspector of Criminal Justice Inspection has historically identified issues with the advocacy in the PPS from time to time. I am very far from saying that this is not a step the Committee might one day choose to very actively look at; I am simply saying that now is maybe not the time for that.

2140. **Mr Poots**: So, if we give the go-ahead for this, your office will put in a smaller application to the Department of Justice for funding for the following year.

2141. **Mr Larkin**: One of Mr Poots's great gifts is that he can say humorous things with an entirely straight face. [Laughter.] Even he yields sometimes. We will be able to deal with increasing demands on our work in an era of increased financial stringency for everyone. Of course, it is OFMDFM that bears that particular responsibility.

2142. **The Deputy Chairperson (Mr McCartney)**: From my recollection, the director said that he was talking about a small number of his lawyers, not, I do not think, the whole team. I say that for the record.

2143. Members, before we move on to the last item for the Attorney General, which is the charge of police corruption, there are a number of questions on the Justice Bill that we will write to him about. If members have questions for the Attorney General, I invite them to supply them to the Clerk. Once we get a reply, we might invite you back to reflect on those issues.

2144. **Mr Larkin**: With pleasure, Chair.

11 February 2015

Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sammy Douglas
Mr Tom Elliott
Mr Paul Frew
Mr Seán Lynch
Mr Alban Maginness
Mr Patsy McGlone
Mr Edwin Poots

Witnesses:

Mr Paul Black	*Department of Justice*
Ms Maura Campbell	
Mr Graham Walker	

2145. **The Chairperson (Mr Ross)**: I welcome Maura Campbell, deputy director of criminal justice development division; Graham Walker, acting head of the speeding up justice and equality branch; and Paul Black from the speeding up justice branch. They are all from the Department. You can briefly outline the purposes of clauses 17 to 27, and, if members have any questions, we will take them.

2146. **Ms Maura Campbell (Department of Justice)**: Thank you very much, Chairman. This is the first of three sessions this afternoon that look at aspects of the Justice Bill, starting with Part 3, which is on prosecutorial fines. In this Part, we propose to introduce a further alternative to prosecution through the courts as part of our wider agenda on speeding up justice. That would be for minor offences by non-habitual offenders over the age of 18. We have not sought to designate a list of offences in the legislation since we believe that it should be for trained prosecutors to consider whether a prosecutorial fine is appropriate in individual cases, in much the same way as they already do for other types of diversionary disposals. The Director of Public Prosecutions (DPP) will issue guidelines for prosecutors, which will be the subject of public consultation. Fines will be set at a maximum of £200, and the prosecutor can order reparation up to a maximum of £5,000 to the victim in cases of criminal damage. That would be for actual losses as a consequence of the offence. The offender levy would still be applied, as would be the case if the person were fined by the court, with the proceeds going to the victim of crime fund. The alleged offender would have 21 days to consider the offer of a prosecutorial fine and 28 days to pay it. They would always have the option of declining the offer and having their case heard in court instead. Our hope is that, by dealing with a number of low-level offences outside the courtroom in that way, we should be able to free up police and prosecution resources, as well as court time, that could be better directed towards more serious offending.

2147. During your Committee consultation on the Bill, a number of consultees asked questions about how prosecutorial fines would operate in practice. For instance, Women's Aid highlighted concerns about them being used for domestically motivated offences. While, as I mentioned, it will be for the Public Prosecution Service (PPS) to decide how the disposal is used, we would not expect prosecutorial fines to be used in those types of cases. The Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) asked about the criminal records implications of accepting a prosecutorial fine, and the Department's response confirmed that an individual would not receive a formal criminal record, though it would be recorded on their criminal history so that the justice agencies would be aware of it in the event that the person went on to commit further offences. The only circumstances in which receipt of those fines might be disclosed would be through an enhanced check, if that were relevant to the

position for which the person applied. Of course, Access NI is dealing with posts where there is a potential safeguarding issue. Consultees also made a number of general points about the wider fine collection and enforcement regime, and we noted in our response that we are aiming to address those issues through a further Bill that the Department hopes to introduce before the summer.

2148. The Public Prosecution Service welcomed the introduction of prosecutorial fines in principle but suggested that we expand the provisions to include all low-level road traffic cases for which mandatory penalty points would be imposed in court. We have had some discussion about that proposal with the PPS and DOE colleagues, since DOE has policy responsibility for road safety, including road traffic penalties. DOE has agreed to consider the PPS proposal but would like to do so as part of a planned review of road safety. It was also of the view that further public consultation may be necessary. While we have no real objection in principle to what the PPS is proposing, the reality is that it would not, in our view, be possible to accommodate the change that it has asked for during the passage of the Bill.

2149. We are happy to take questions on those points or any others that members may have on this Part of the Bill.

2150. **The Chairperson (Mr Ross)**: You mentioned the concern about the areas in which fines could be used. Will there be a consultation on the guidance that will be given to the PPS? Will the Committee have an opportunity to feed in to that process?

2151. **Ms M Campbell**: We confirmed with the PPS that the director intends the guidance to go out for full public consultation. I imagine that it will be open to anyone with an interest to respond to that.

2152. **Mr Poots**: Who can impose the fines?

2153. **Ms M Campbell**: The intention is that the Public Prosecution Service will impose the fines. At the moment, they would be for the sorts of offences where a fine is ordered in court. The idea is for the prosecutor to be able to make that decision, as opposed to the case having to proceed to court.

2154. **Mr Poots**: Can a police officer make it?

2155. **Ms M Campbell**: Not for this type of disposal, no. At the moment, the police can issue fixed penalties, but they are of a lower order and are restricted to penalties, of, I think, £40 or £80, for a fairly tightly prescribed range of offences.

2156. **Mr Poots**: Essentially, I am thinking of offences against medical staff. There is a massive problem out there with ambulance personnel, nurses, security staff and other front-line staff in hospitals. It affects a plethora of individuals. It is generally caused by people who have either taken too much drink, taken drugs or a combination. Their behaviour is totally unacceptable, but the hassle of taking them to court is too much for the individuals to be involved in. As things stand, it does not work. You cannot introduce zero tolerance, because it does not work. Is there a mechanism whereby we could introduce something supportive for those workers? I previously raised that with Minister Ford.

2157. **Ms M Campbell**: I suppose that, in those circumstances, the prosecutor would look at what threat that individual poses to public safety more widely. If someone, maybe because they were under the influence of alcohol, was behaving out of character, I expect that that sort of fine could be applied.

2158. **Mr Paul Black (Department of Justice)**: Yes, technically, a prosecutorial fine could be levied for an offence of assault in those situations. It would be a matter for the Public Prosecution Service to decide whether the severity, or lack of it, of the incident warrants a prosecutorial fine. It will also provide the provision for making restitution for criminal damage, if that was also an issue.

2159. **Mr Poots**: As it stands, does the Bill permit that to happen?

2160. **Ms M Campbell**: The Bill does not prescribe which offences will or will not be within scope, because we felt that it was better to put that in the hands of the Director of Public Prosecutions.

2161. **Mr Black**: As the Bill stands, yes, a prosecutorial fine could be issued for the kind of situation that you are describing.

2162. **Mr Poots**: That is fine. I will get a closer look at it.

2163. **Mr McCartney**: I note that the Public Prosecution Service says that these should be treated the same as a caution. You are saying that they will not be treated the same way.

2164. **Ms M Campbell**: I suppose the main difference is that a caution attracts a criminal record.

2165. **Mr McCartney**: But you are saying that it is not attracting a criminal record.

2166. **Ms M Campbell**: It is not attracting a criminal record on the basis that a prosecutorial fine would not require an admission of guilt. Sunita Mason undertook a review of the criminal records regime, and she recommended that a criminal record should be defined as anything for which there has been a conviction or an admission of guilt. This sort of disposal is probably more comparable to a police-issued fixed penalty, which does not attract a criminal record, so we felt that this probably should not either.

2167. **Mr McCartney**: If someone is asked when trying to get employment, "Have you been convicted of a crime?", can they say no in this instance?

2168. **Ms M Campbell**: That is correct.

2169. **Mr McCartney**: What about if they wanted to get a travel visa?

2170. **Ms M Campbell**: It should not have any implications.

2171. **Mr McCartney**: Does that mean that it will not be recorded? I can understand that the enhanced search might be necessary in some instances, but, if somebody is travelling to the United States, the form asks, "Have you ever been convicted of a criminal offence?".

2172. **Ms M Campbell**: An individual will not be required to disclose that. We differentiate between a person's criminal record, which is the information that could be disclosed in various circumstances, and the criminal history, which is basically information that the justice agencies are required to hold in the public interest in case there is further offending by the individual and the agencies need to be aware of what else that person may have done in the past.

2173. **Mr McCartney**: Will these be offered in all circumstances?

2174. **Mr Black**: No, they will not be offered in all circumstances; it will be for the prosecutor to decide whether the case warrants it. If they consider the case to be too severe, it may not be eligible. They will decide on a case-by-case basis.

2175. **Mr McCartney**: I maybe worded that wrongly. Say two people did the same thing on the same day: will both of them be offered this? Is there any room for a part of the jurisdiction to do it differently from how the prosecutor's office does it?

2176. **Mr Black**: There should not be a distinction on the basis of the jurisdiction; there could be a distinction on the basis of the individual's criminal history. Although the offences might be identical on the face of it, if one of the individuals had a criminal history, they may well not be considered a suitable candidate. As Maura said, we see this somewhat as an extension of the police-issued fixed penalty. These are geared towards low-level, non-habitual offenders. We want to give individuals who have made a mistake early in life the opportunity not to carry the consequences of a criminal record. It does not result in a criminal record, and it is not considered a conviction.

2177. **Mr McCartney**: There is a reason for my asking that. It is like adult cautions or fixed penalties. A local community police officer might have more sense of who the person is and what the

circumstances are. Is some sort of trawl going to be done on how these are imposed and questions asked about why it was given here and not there?

2178. **Mr Black**: Certainly. As Maura said, the director will consult publicly on the guidance, which will include the sorts of cases that they anticipate this will be used for. The guidance will also include the sorts of cases that it should not be used for, such as domestic violence. It would not be considered appropriate in those circumstances.

2179. **Mr McCartney**: I notice that it says somewhere that the guidance is for internal use. Does that mean that the final guidance will not be published?

2180. **Mr Black**: That will be a matter for the Public Prosecution Service. I am not sure what its policy is on disclosure. There is, obviously, some internal guidance that it would not want to disclose, but I am not sure whether that applies to prosecutorial fines.

2181. **Mr McCartney**: Can people apply for it, or is it just at the discretion of the PPS?

2182. **Mr Black**: It is at the discretion of the PPS.

2183. **Mr McCartney**: Does that mean that your lawyer cannot make a case, saying, "Here is someone who has committed a very minor offence. Would you consider in this instance?"?

2184. **Mr Black**: No. They cannot be demanded, and they cannot they be imposed. It is a voluntary disposal.

2185. **Mr McCartney**: Will there be different levels of fines?

2186. **Mr Black**: There is potential to offer a fine of up to £200. That is the maximum. We expect that the PPS will probably introduce a system of banding, perhaps starting at £25. It is not, however, compelled to do so by the legislation. The maximum is pegged to the maximum level 1 fine, which is currently £200. If that shifts, the prosecutorial fine will shift to reflect that.

2187. **Mr McCartney**: I know that legislation will be coming before us, but the payment of fines has been a big issue in the past.

2188. **Mr Black**: Certainly.

2189. **Mr McCartney**: Someone could say that £400 will do the two days, but there are also people who genuinely cannot afford it. How do we get the balance there?

2190. **Mr Black**: It certainly is an issue, and it was raised during the consultation. In the light of that, we considered developing some kind of system and legislation along with the prosecutorial fine to deal with those situations. However, as the Fines and Enforcement Bill was coming up, it would have felt like duplication to develop that sort of system solely for the prosecutorial fine. Hopefully, when the Fines and Enforcement Bill passes into law, people will have plenty of opportunity to negotiate staged payments and so on with the Court Service. Those problems are associated with fines generally and not just with the prosecutorial fine, which is why we decided not to legislate for a specific payment process.

2191. **Mr McCartney**: NIACRO suggests, and the Department seems to rule out, a specific design for the payment of this type of fine. You are saying that the normal procedure should not —

2192. **Ms M Campbell**: Given that this will apply to an estimated 3,000 cases per annum, it would probably be disproportionate to design a separate system. Legislation is coming down the track that will hopefully reform the entire fine collection and enforcement regime, so it seems more sensible to wait for that.

2193. **The Chairperson (Mr Ross)**: I want to ask you about the discretion of the PPS. Is there a limit on how many times a single individual could be dealt with in this way?

2194. **Mr Black**: There is not a limit in the legislation, but it is very much intended for first-time, non-habitual offenders. We anticipate that the guidance would provide that a prosecutorial

fine may be given only once in certain circumstances. We would certainly not expect this disposal to be used repeatedly. Clearly, if someone is initially offered and accepts a prosecutorial fine, they have been given the opportunity to avoid a criminal record. If they then offend subsequently, the PPS would, I think, take the view that they have already been given that opportunity.

2195. There are no hard-and-fast rules on that. It is like the police-issued fixed penalty, which we generally anticipate will be used only once or twice, although that can vary depending on the situation and on whether the police officer or prosecutor thinks that the circumstances of the case warrant it. We did not want to be too restrictive, but we certainly do not anticipate that they would be used repeatedly.

2196. **Ms M Campbell**: It may depend on whether further offences are of a similar nature to the original offence or completely different. They should be at quite a low level. If you got a prosecutorial fine next week for not having a fishing licence, and in a couple of months' time you were in front of a prosecutor because of defective windshield wipers, with the two things being completely unrelated, it might be possible to get a further prosecutorial fine.

2197. **Mr Black**: It might be helpful to say that the guidance for the police-issued fixed penalty, which is what we see the prosecutorial fine reflecting, provides that an individual should not be given a police-issued fixed penalty more than once in a two-year period. The guidance also provides that it can be given only once for shoplifting; no one can ever get a second fixed penalty for shoplifting. As Maura says, where it is a different type of offending and a significant period has elapsed, the police have that option. We expect prosecutors to exercise that kind of judgement, which will be confined by the guidance that the director provides.

2198. **Mr McGlone**: This is an operational matter. You mentioned Access NI and enhanced checks. Are any of these proposals going to add to the workload there?

2199. **Ms M Campbell**: I would not have thought so. If anything, fewer individuals should be getting a criminal record, because, in the absence of this disposal, these cases would be going to court and people would get a criminal record as a result of their fine. This should actually reduce the number of individuals who get something on their record. I do not see it adding to Access NI's workload.

2200. **Mr McGlone**: There is an obvious reason for me asking that. It is very, very slow at the moment — it is slow almost to the point of grinding to a halt — particularly for an enhanced check. A person who has a job cannot walk into that job because of that process. Clearly, the more that can be done to facilitate it and make it more efficient, the better.

2201. Are you dealing with the update service now?

2202. **Ms M Campbell**: We will deal with that when we have other colleagues at the table.

2203. **Mr McGlone**: That is grand. It is obviously linked.

2204. **Mr Frew**: I understand the logic of a discretion and everything else. I will explore the line of communication between the Director of Public Prosecutions and the local bobby or police officer, who maybe knows the person or their family. Will the DPP ask for a reference? Would that make the system too bogged down? How will that work? Will it just be a case of running down a list and saying, "Is it a first-time offender? Is it a minor offence? Let us get them sorted with a fine and push it out." Or will there be a logic or thought process behind it, so that there is an injection of common sense and local knowledge?

2205. **Ms M Campbell**: As is already the case, when the police give a file over to the PPS they include any information that they think is relevant. In the circumstances

you are talking about, where they have some knowledge of the individual and whether the act was in character or a one-off, I expect that they would pass that information on to the PPS.

2206. **Mr Black**: That may form part of the case file. There is no provision for some kind of referral process whereby a prosecutor would go back and seek the police officer's opinion. There may be a difficulty with that as well, in that, if the officer does not have that local knowledge, the individual is at a slight disadvantage, because they are not going to get a positive character reference. So, no, there is no formal process for that.

2207. **Mr Frew**: Is there a danger that a repeat offender of the same type of crime could end up getting a second and third fine that is larger? To me, that would not be appropriate or serve the purpose of the scheme, because, obviously, financial penalties have not deterred them or made a difference.Scaling it up would not prevent further crimes.

2208. **Mr Black**: If a prosecutor were to consider giving a second or certainly subsequent prosecutorial fine to an individual, they would be constrained by the director's guidance. Technically, the legislation would not prevent that, but these will be subject to public consultation and will be closely monitored in the PPS. The guidance will provide that a prosecutorial fine is not a suitable disposal for repeat offenders.

2209. **Mr Frew**: Let us flip the logic over. A shoplifter may get caught stealing lipstick, a carton of milk, a garment or whatever and gets fined £25 or £30. They may then go out and steal something else to sell to pay the fine. Where would we go from there? You can see a vicious circle.

2210. **Mr Black**: If it were the sort of shoplifting situation that you describe, such as the theft of a lipstick, I would almost certainly expect that it would be dealt with by a police-issued fixed penalty. Shoplifting is one of the offences that that covers. The guidance was very clear in those circumstances. A police-issued fixed penalty can never be given twice for shoplifting. Once someone has received a penalty for shoplifting, they cannot be given a second penalty. The guidance for the prosecutors will provide the same sort of thing. We focus on the fact that these are for non-habitual, low-level first-time offenders. A habitual offender certainly would not be considered a candidate for repeat prosecutorial fines.

2211. **Mr Frew**: Whilst I certainly agree and see the logic in this, how can you assure me that that will not become the case for habitual offenders? Is there no safeguard in the Bill that would prevent that happening? It becomes an easy process for the DPP.

2212. **Mr Black**: We did not provide for it in the legislation in the way that we did for the police-issued fixed penalty, because, clearly, a prosecutor has the discretion. They would be looking at each case on an individual basis, and a similar offence can have very different circumstances, so we did not want it to constrain that. However, I come back to the fact that the guidance, which will be publicly consulted on, will form part of the code for prosecutors. That also requires consultation with the Attorney General. This is not a casual document that people can disregard. It will lay out quite clearly the circumstances in which it is suitable and the circumstances in which it is not. We would expect prosecutors to comply with that.

2213. **Mr Frew**: How will it be recorded? I realise that you will not have a criminal record. You will receive a fine, which is fair enough. How is it recorded and notified? When Women's Aid gave evidence, it was concerned about the domestic crime side of things and wanted to make sure that the police and the authorities were fully aware of who was living where and what they had been responsible for in the past. Whilst they are not crimes as such, because there will be no criminal record, how will they be recorded and safely used by the police and other authorities?

2214. **Mr Black**: First of all, we would not expect that the crime of domestic violence would be a suitable candidate for a prosecutorial fine in the first place. However, if that happened, it would be recorded on our Causeway system. It is not recorded as a conviction and does not form part of the formal criminal record, but the system retains a record of it having been issued. If it were the circumstances of domestic violence in the case of an enhanced check, I think that that would be disclosable, because it might be relevant to the asserted position that someone is applying for.

2215. **Ms M Campbell**: The police and the Public Prosecution Service have access to the information that is held on Causeway.

2216. **Mr Frew**: Will social services also have access to that information? How will it tap into that information?

2217. **Ms M Campbell**: Social services would not have direct access to that information, but if it had a concern about an individual, I expect that it would go to the police for any relevant information.

2218. **Mr A Maginness**: I do not think that you should call it a fine. That is my point to you. I think that it is very confusing. It is not really a fine. I think that a fine is something that a court imposes. I think that this is akin to, as you talked about, a fixed penalty. Why can you not use a term like that? I really do think that it is a confusing concept for the public and for us as legislators to come to terms with. It is for me, anyway. It does not strike me as a fine in the conventional sense.

2219. **Ms M Campbell**: Paul can correct me if I am wrong on this, but the terminology has been used probably because it essentially achieves the same outcome that you would have had if the fine had been awarded by the court. It is just that it has been done through a different process. The decision has been made by a prosecutor without the case having to go before a judge.

2220. **Mr A Maginness**: If you go to court, you are fined and you have something on your record. This is not on your criminal record as such.

2221. **Ms M Campbell**: It is not, and I suppose that that is to reflect the fact that the circumstances in which this would be used would be for the lower-level offences.

2222. **Mr A Maginness**: With respect, that it is why I find it confusing. It is not really a fine in the criminal justice sense. My advice is this: ditch it.

2223. **Mr Black**: Historically, it had always been called a fine. This goes right back to the criminal justice review of 2000, where it was referred to as a prosecutorial fine, and, again, the access to justice review of 2011 referred to it as a prosecutorial fine. Scotland operates a very similar system, which it refers to as a fiscal fine. Yes, I take your point about it being distinct from a court's disposal.

2224. **Mr A Maginness**: I think that it is a confusing term to use, and I think that you should review the use of that term. I do not know whether you can use the term "fixed penalty" or "penalty". Obviously, it is not a fixed penalty, in the sense that it would be variable, but you could call it a prosecutorial penalty or a monetary penalty instead of a fine.

2225. The other thing is that, in answer to Mr McCartney's question, you said that a person cannot demand that this be imposed. Can they request it?

2226. **Mr Black**: They will not know that they will be offered a prosecutorial fine until the offer is made. As far as the individual is concerned, they are going through the normal process, and the police will deal with them and will forward the case for a prosecutorial fine. So, I am not sure that there is necessarily an opportunity for someone to request one.

2227. **Mr Graham Walker (Department of Justice)**: I would have thought not, Mr Maginness, in that it would be at the prosecutor's discretion that that is the most appropriate disposal in that case. I

think that it would be with the prosecutor solely. That is my reading of it.

2228. **Mr A Maginness**: That makes sense. Effectively, you would be, I suppose, constraining the discretion that a prosecutor could use.

2229. **Mr Walker**: Particularly, as the guidance will form part of the code for prosecutors, I do not think that it would mandate the PPS to issue a prosecutorial fine. I think that it would be in the exercise of individual discretion in an individual case that would decide that that was the most appropriate disposal.

2230. **Mr McCartney**: Would that not assist the process? If a prosecutor is sitting down to assess a case and the person, in effect, requests that, it is like an early guilty plea. In Paul's scenario where a person is caught with lipstick, they might say, "I have done wrong. What is the best way for me to deal with this speedily?". It could assist the process. We have often been told that people who stay a long time in the system have a higher chance of staying in the system and reoffending, whereas if this was done not on the same basis as a fixed penalty but by allowing an 18-year-old, a 19-year-old or a person of whatever age who was arrested to say, "I did this", that would be in the report going to the prosecutor. In the Bill, there is no provision where someone can admit the offence. That is worth considering.

2231. **Mr Black**: Even if that were the case, the prosecutor would still have to consider the case in detail.

2232. **Mr McCartney**: Absolutely.

2233. **Mr Black**: I am not sure that there would necessarily be any time saving for the prosecutor on that front.

2234. **Mr Lynch**: I have a quick question. If the person does not pay the fine, will it be placed on their criminal record?

2235. **Mr Black**: Yes, because it will become a court-ordered fine and would be uplifted by 50%. With the upcoming Fines and Enforcement Bill, I am not sure whether that will still be the case.

2236. **Ms M Campbell**: I think that it will be. If someone is awarded a prosecutorial fine and defaults on that for whatever reason, it would go through the same process as a court-ordered fine. It would be brought back for a default hearing.

2237. **Mr Lynch**: Would there be a time frame on that like 30 days or —

2238. **Mr Black**: Yes. They have 21 days to consider the offer of a fine and 28 days to make payment. Our view is that we are giving the individual the opportunity to avoid a criminal record. If they default, they would be choosing not to take that offer.

2239. **Mr Lynch**: Will that be clearly demonstrated to the person?

2240. **Mr Black**: Yes. The prosecutorial fine form will contain all the information that we have legislated for, but it is not prescriptive. It will contain as much information as needed and will be displayed as clearly as we can so that the person knows how to deal with it.

2241. **Mr Lynch**: That will make a big difference to the person's future.

2242. **Mr Black**: Yes. Absolutely.

2243. **The Chairperson (Mr Ross)**: Thank you.

11 February 2015

Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sammy Douglas
Mr Tom Elliott
Mr Paul Frew
Mr Seán Lynch
Mr Alban Maginness
Mr Patsy McGlone
Mr Edwin Poots

Witnesses:

Mr Tom Clarke	*Access NI*
Ms Maura Campbell Ms Mary Lemon Mr Simon Rogers	*Department of Justice*

2244. **The Chairperson (Mr Ross)**: Joining us at the table are Simon Rogers, Tom Clarke and Mary Lemon. When you are ready, will you briefly outline the purposes of clause 36 to 43 and schedule 4 to the Bill that cover criminal records? Will you cover some of the main issues that have been raised in your written and oral evidence and the five amendments that the Department intend to table at Consideration Stage? We will open it up to members after that.

2245. **Mr Simon Rogers (Department of Justice)**: OK, Chair. Thank you again. We are grateful for the opportunity to outline the provisions set out in Part 5 of the Bill and the proposed amendments being brought forward to reflect developments since the Bill was first drafted. They impact on the Police Act 1997 and are designed to modernise and improve the arrangements for the disclosure of the criminal records checks that are carried out by Northern Ireland's disclosure service Access NI.

2246. The genesis of the proposals is the work and the report by Sunita Mason, who examined our approach in detail. She also reviewed the arrangements in England and Wales. The measures that are outlined in this Part of the Bill reflect many of the recommendations that she made. They also take account of a number of court decisions that have highlighted human rights issues that we considered when developing the system of disclosure.

2247. The overriding purpose of our disclosure system is to provide an appropriate and efficient scheme that safeguards the public from harm. That is particularly so when children and vulnerable groups are involved. There is a careful balance to be struck so that the disclosure of criminal records is relevant to the purpose for which they are sought and respect the rights of the applicant.

2248. There has been much recent debate about how we should approach the disclosure in relation to offences that have been committed by children, and the responses to the Committee's consultation on the Bill reflect that. The Minister has stated that he recognises that young people who have been involved in minor offending should, where possible, be given the opportunity to move on with their lives and make a positive contribution to society. While the provisions in the Bill focus on disclosure by Access NI, they also take into account those concerns and will ensure that Access NI only discloses information on youth offending when relevant and appropriate.

2249. In bringing forward the proposals in the Bill, we have, of course, engaged with stakeholders. We will continue to do that as, for example, we develop the guidance that is provided for.

2250. I will now turn briefly to the provisions. Clause 36 provides for the introduction of measures to end the current system of issuing two certificates for standard and enhanced checks. Instead, it allows for a single certificate to be sent to the applicant only. That will give individuals the opportunity to see the information

on their certificates before they provide it to an employer. That is in case they wish to challenge something in it.

2251. Clause 37 provides that children under 16 years of age will not be subject to criminal records checks except in certain prescribed circumstances; for example, those who are work in home-based occupations, such as childminding or fostering.

2252. Clause 39 contains a number of changes that relate to the disclosure of relevant information by the police. Those include a provision to enable a person to dispute information via an independent monitor. The clause also establishes the requirement for a statutory code of practice to assist the police in deciding what information should be released. We have tabled a minor amendment to clause 39 to make it clear that that code must be published.

2253. Clause 40 allows for the introduction of portable disclosures, which were mentioned earlier. On 29 January, we were informed that, due to delays in the England and Wales Disclosure and Barring Service's (DBS's) modernisation programme, we would not be able to introduce that initiative in the timescale that we had planned. That has been delayed, and I am sure that you will want to come back to that.

2254. Clause 41 establishes arrangements to allow self-employed people to obtain enhanced criminal record certificates. That is a change to cover a gap in the current safeguarding arrangements.

2255. The other amendments include the provision for the introduction of a review mechanism for the filtering scheme. That would enable a person to seek, in certain circumstances, a review of their case, where a conviction or other disposal has not been filtered for their standard or enhanced criminal record certificate. Having given careful consideration to the views of stakeholders, the draft amendment includes an automatic referral for cases that involve offences that were committed under age of 18, when that was the only offending.

2256. The other proposed amendments include a new clause to facilitate the exchange of information between Access NI and the DBS for barring and an enhancement to clause 40 in light of experience in England and Wales that will allow us to exclude a small number of applicants for enhanced checks relating to home-based positions from the update service so that we avoid the potential for unintentional disclosure of third-party information. A further amendment provides statutory cover for the storage of cautions and other diversionary disposals.

2257. In responding to the Committee's consultation on the Bill, stakeholders were broadly supportive of the measures that have been set out. Concerns related mainly to the disclosure of information in relation to children and young people, particularly its impact on education and employment opportunities. The Minister recognises that the Bill will not address all the issues that have been raised, but he believes that the provisions, including, in particular, the filtering review mechanism, represent an appropriate regime. Stakeholders sought a commitment from us that we would consult fully on the detail of the review. We have given that commitment and are happy to repeat it.

2258. In summary, the measures in this Part of the Bill have been brought forward to achieve an appropriate balance between the need to support the rehabilitation of adults and young people who have offended while protecting those in society who are vulnerable.

2259. **The Chairperson (Mr Ross)**: OK. Thank you. You mentioned the portable checks and said that there will be a delay with those. That was meant to go live in August. When do we anticipate that that issue will be resolved?

2260. **Mr Simon Rogers**: We have been in contact with DBS, as I mentioned, and it has told us a date of 2016, and that is

obviously not satisfactory. In fairness to it, it does not want to give us another date that it will fail on, nor do we want another date that we do not achieve. It is doing due diligence to give us a date by which we be can be clear that this will go live. That is obviously a setback for us because we had been making those plans.

2261. We are introducing a new IT system in Access NI that is designed to enable this. That is being done in a way that will enable us to plug it in at a later stage, so there will not be harm to the work that we have done. The reason that I mention that is that we will not have to redo the IT system to plug it in at a later stage and will be ready. However, we are reliant on DBS's modernisation programme. I cannot give you a date today, but we will notify the Committee when we know.

2262. **Mr McGlone**: Thanks very much indeed. I picked up on prescribed circumstances in clause 37. What did you say that those were?

2263. **Mr Simon Rogers**: Home-based occupations are one example.

2264. **Mr McGlone**: Obviously, if they are going to be prescribed, you have to have an idea of what the prescriptions will be.

2265. **Mr Simon Rogers**: They will be brought in through secondary legislation, so they will come before the Committee and the Assembly.

2266. **Mr McGlone**: I presume that you are picking up on my point about Access NI, the practical operational aspects of Access NI and the enhanced checks. I do not know whether you were in the room.

2267. **Mr Simon Rogers**: I was indeed, yes. The position with Access NI checks at the minute is that 72% of checks are done within five days and will leave the building at that point. The other proportion — Tom can come in here — is sent to the police for checks because of potential issues. At present, our average turnaround in respect of those cases is 16 days, but that is an average. We are conscious that, at present, partly because of Christmas being a number of days out, which does not come out of our target, we are now not meeting our published targets through December and into January. That is a matter of concern to us, because we take pride in trying to achieve the targets. Certainly, the basic and standard checks are all issued 100% within the target. We have acknowledged that there are some delays with the enhanced checks, and we have regular meetings with the police to try to resolve those. They have identified a programme to try to bring us back within target. One aspect of it is that we had more applications than we anticipated, and that obviously puts pressure on the system. We are turning round something like 72% in about five days. The other proportion goes to the police, and we acknowledge that there is an issue around the timescale on those.

2268. **Mr McGlone**: Of course, people come to me when there is a problem. One lady has been waiting for two months and cannot get into her work. I have no doubt that the clearance will come. It really is unsatisfactory at a time when some of us are preaching about the economy and trying to get people into work, and they physically cannot get in, not because work is not available but because of a block in the system. I would appreciate it if you would raise that matter. I have asked my colleague on the Policing Board to raise it with the police, and that has gone to senior level. You have those coordinating meetings. We can talk about all the theory that we like here, but the practice is different. It is still unsatisfactory for the remainder of that 28% if it is causing problems and difficulties in the community.

2269. **Mr Simon Rogers**: I completely accept the point that you make. A small proportion of them are quite complex cases. With regard to a number of the others, neither the police nor Access NI would say that it is a satisfactory situation, but we are trying to resolve it. It is helpful to raise the matter with the Policing Board. This is partly about putting the resources in place, and we are trying to get on top of it as quickly as we can.

2270. **Mr McGlone**: I have one further point, which I raised earlier with Ms Campbell. First, what is the delay with the update service? Consequentially, will it ease the delays that we have just talked about?

2271. **Mr Tom Clarke (Access NI)**: The delay is purely a technical delay. The Disclosure and Barring Service has a tried and tested method in its update service, and we want to join into that. It is modernising that service and making it better. The agreement always was that we would come in when it delivered the modernised service, which we believed would be in August this year, but the Disclosure and Barring Service has now put that back to 2016. Once it does its modernisation and update service — for want of a better way of saying it — then we in Northern Ireland will join in, and that will be a product that we can offer to citizens here.

2272. **Mr McGlone**: Do you hope that it will speed up things?

2273. **Mr Tom Clarke**: It will depend on the uptake of the update service. If people decide to subscribe to the update service —

2274. **Mr McGlone**: By subscribe, you mean pay.

2275. **Mr Tom Clarke**: Yes, for certain people. Volunteers will not have to pay to join the update service, but people who pay for their disclosure check will have to pay to join the update service.

2276. **Mr McGlone**: Can you determine the distinction between the volunteer and the person who has to pay?

2277. **Mr Tom Clarke**: At the minute, if you are a volunteer — someone who works for a not-for-profit organisation — then, as such, you get a free disclosure check from Access NI.

2278. You only have to pay if it is a non-volunteer check. If you are a teacher or a nurse or someone who is in paid employment, that check has to be paid for. If you are working for a church or one of our voluntary organisations in a voluntary capacity, the check would not have to be paid for in those circumstances.

2279. **Mr McGlone**: I presume that you do not anticipate any rise in the amounts for this new service.

2280. **Mr Tom Clarke**: At present, the annual subscription, which is paid in England and Wales, is £13, and we imagine that there will be the same subscription of an additional £13 per annum for anyone who wants to join the update service.

2281. **Mr Simon Rogers**: We are not anticipating any change to the Access NI fees as a result of the update service, just to be clear.

2282. **Mr Elliott**: Thanks for the presentation. A few of my questions have just been asked by Patsy. Can I explore a wee bit about what your targets are? You said that you were not meeting them at present. What are they for Access NI?

2283. **Mr Tom Clarke**: The targets are to issue 95% of our basic and standard checks within 14 days, and we meet that target all the time. With the enhanced checks, it is to get 70% out in 14 days and to get 90% out in 28 days. We are meeting the target of 70% in 14 days, but we cannot meet the 90% in 28 days at present because of the delays that we have with the PSNI.

2284. **Mr Elliott**: Because of the PSNI.

2285. **Mr Tom Clarke**: To put it another way, every application that comes in to Access NI is processed within six days, so every application is dealt with and processed. However, a proportion of those applications must be referred to the PSNI.

2286. **Mr Elliott**: Is that a standard proportion or is it specific cases?

2287. **Mr Tom Clarke**: It is specific cases that are set out in legislation, and a specific reason is, for example, if someone is in a home-based occupation — if they were fostering, adopting or childminding — that must go the PSNI. If an individual has a criminal record, that must also go to the PSNI. If an individual is flagged up on the intelligence database that we can

use, it must also go to the PSNI. There are criteria in legislation for when a case must be passed to the PSNI, and that is what we do.

2288. **Mr Elliott**: Do you have some of those checks in process for over two months?

2289. **Mr Tom Clarke**: The PSNI has some our checks for over two months, yes.

2290. **Mr Elliott**: If you are doing voluntary work for an organisation and you have a role, sometimes you are getting Access NI checks every couple of months. Will this legislation assist with that in any way?

2291. **Mr Tom Clarke**: That is a reference to the update service. The update service will allow people to subscribe to a service whereby the information on their check is monitored and updated regularly. The idea is that they could take the current certificate that they have to a new voluntary organisation. That voluntary organisation can do a free online check to see whether the information on that certificate has changed or remains the same. If it remains the same, the organisation can go ahead and employ that individual or allow them to volunteer for it without having to get a new check.

2292. **Mr Elliott**: Does it cost it money to do that?

2293. **Mr Tom Clarke**: No, it does not cost it any money to do that. It is a free online check by the employer.

2294. **The Chairperson (Mr Ross)**: Thanks, Tom. We have a live update. I understand that the Minister is on his feet. I say that just in case Division Bells go off shortly. If members are succinct with their questions, we might get through this session. No pressure, Raymond. [Laughter.]

2295. **Mr McCartney**: I have a number of points. The Children's Law Centre was very clear that diversionary disposals should not be disclosed in criminal records. Why do you think that it is necessary? It said that international standards were clear, so I wonder what the response of the Department is to that.

2296. **Mr Simon Rogers**: Sunita Mason, in her review, looked at that issue, and her conclusion was that there are certain things in these disposals that ought to be disclosed and that Access NI, therefore, ought to disclose them. There are arrangements in place, however, through the filtering, and, indeed, this legislation will bring in a review mechanism to enable an individual to look at the circumstances of that disclosure and, if it is disproportionate, to challenge it.In addition, the filtering arrangements that we will now apply — these are the statutory arrangements that we have brought in — will remove automatically a number of offences, depending on their severity as long as there is no repetition, etc, either quickly or over a period of time. It just depends on the nature of the offence. Our view is that we have to balance the rights of an individual who is applying for the certificate against the risks to the vulnerable adults or children who the person would be working with.

2297. **Mr Tom Clarke**: The genesis of it is in Sunita Mason's recommendations. She recommended that we should disclose that information, but, as Simon said, it is subject to filtering arrangements.

2298. **Mr McCartney**: How will the automatic referral to the independent reviewer work?

2299. **Mr Simon Rogers**: That is part of the filtering part of the review process. Having had various discussions, we have concluded that a young person, whose only offending was as a young person, does not have to make a case for their offence to be reviewed. It will go automatically to an independent person, who will take a look and decide whether or not it is proportionate for that to remain on the record. That is how it will work in practice.

2300. **Mr McCartney**: Once that review is done, if it is removed, is that it removed for ever?

2301. **Mr Simon Rogers**: Do you mean for the purposes of the Access NI certificate?

2302. **Mr McCartney**: If you go into the review process, and it recommends that the offence is removed, is it removed in its entirety or is it retained somewhere for the future?

2303. **Mr Simon Rogers**: It will be retained on your criminal record because, if that person is back in court, that may be relevant to the offending.

2304. **Mr McCartney**: If it disappeared under the rehabilitation of offenders legislation, would it then be removed for ever?

2305. **Mr Simon Rogers**: No.

2306. **Mr Tom Clarke**: A diversionary disposal, such as a caution or an informed warning, is automatically spent under the rehabilitation of offenders legislation. Simon is talking about where we issue an Access NI check and there is information about someone who was, for example, 17 when they offended. We are saying that we will automatically refer that to that independent person to decide whether or not we should disclose that. There will be an independent review before that information is disclosed, and we will take the advice of the independent reviewer on that point.

2307. **Mr McCartney**: I think that the Children's Law Centre made a criticism that it seems to be rowing in the wrong direction in terms of disclosure. Is there any provision for the Department to review the Rehabilitation of Offenders Act in light of the changes made in England recently?

2308. **Ms Maura Campbell (Department of Justice)**: There are no plans at present for a review of the Rehabilitation of Offenders (Northern Ireland) Order 1978, which is the comparable Northern Ireland legislation.

2309. **Mr McCartney**: I say that in light of our previous subject of prosecutorial fines. People were perhaps convicted of something 20 or 30 years ago when they were under the age of 18. If they were now in front of the courts, they would have this. I notice that it mentions offences. It says:

"the offences have to be committed out of the same circumstance".

2310. Under the rehabilitation of offenders legislation, if you have two convictions, even they are from the same event, it is on your record for ever. That was part of the discussion with Bob Ashford.

2311. **Mr Tom Clarke**: That is a slightly different thing. It could be spent under the rehabilitation of offenders legislation. Bob Ashford was referring to the filtering mechanism that Access NI applies if you have more than one conviction. At present, that will always be disclosed. You are right on the point, but it is not about the Rehabilitation of Offenders Act but the Access NI legislation.

2312. **Mr McCartney**: In terms of that wider discussion, Simon Weston and Bob Ashford made the point that they committed offences when they were teenagers, yet they are now in their 50s and that offence can still be pulled out somewhere along the line. Circumstances and everything have changed in their life, and you can look at their contributions to life in general, but when they were going to make another contribution, they were denied the chance because of offences from when they were 14 and 16 respectively.

2313. **Mr Simon Rogers**: The Minister met them and was very sympathetic to their point. The regime that we are putting place would enable their circumstances to be looked at, whether through the filtering, which does not apply at present if there are two offences, and through the review, because an adult — we talked about automatic referral for a youth — can seek a review and say, "This is disproportionate. I was 15 when I broke the greenhouse window. This should be removed from my record. It is not relevant". This reviewer could then say, "You are quite right: it is coming off".

2314. **Mr McCartney**: Do you imagine that the mechanism will lead to that type of conviction being pushed aside?

2315. **Mr Simon Rogers**: Yes.

2316. **The Chairperson (Mr Ross)**: Thank you, Maura, Simon, Tom and Mary.

11 February 2015

Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sammy Douglas
Mr Tom Elliott
Mr Paul Frew
Mr Seán Lynch
Mr Alban Maginness
Mr Patsy McGlone
Mr Edwin Poots

Witnesses:

Ms Kiera Lloyd	*Department of Justice*
Mr Graham Walker	
Mr Declan McGeown	*Youth Justice Agency*

2317. **The Chairperson (Mr Ross)**: We welcome back Graham Walker. We also welcome Declan McGeown, chief executive of the Youth Justice Agency, and Kiera Lloyd, from the reducing offending policy unit in the Department of Justice. I ask you to brief us on the purpose of clauses 84 and 85 of the Bill. We will then move on to questions.

2318. **Mr Declan McGeown (Youth Justice Agency)**: Thank you, Chair, for the opportunity to comment on the youth justice provisions in the Bill. There are two provisions in the Bill that relate to youth justice. The first, clause 84, is a substantive clause, which amends the existing aims of the youth justice system as set out in section 53 of the Justice (Northern Ireland) Act 2002 to include the best interests' principle as espoused by article 3 of the United Nations Convention on the Rights of the Child. This amendment gives effect to one of the key recommendations of the youth justice review team, namely, that the aims be changed to reflect the principle that all those involved in the youth justice system should have the best interests of the child as a primary consideration. How the criminal justice system deals with children who offend often determines the extent to which they desist from or carry on offending. While the harm caused by their behaviour needs to be confronted, having regard to what is in their best interests is more likely to ensure that the wider issues associated with their offending are successfully identified and addressed. What is in the child's best interests and what is in society's best interests are not mutually exclusive. It is important to highlight that during your call for evidence on this Bill, the small number of respondents who commented on this clause welcomed its inclusion.

2319. The second provision, clause 85, is a technical adjustment to remove a specific legislative transitional arrangement, which is no longer applicable. The legislative change provided for in the Criminal Justice Act (Northern Ireland) 2013 was necessary following a legal challenge to the release and recall arrangements associated with child detention orders. One of the new subsections contained transition arrangements applicable to any child detained under such an order at the time of commencement of the Act. In the event, these transitional arrangements were not required, as no child fell into this category. A commitment was therefore given to the Justice Committee and the Assembly to delete the subsection at the earliest opportunity. This clause fulfils that commitment. It is a purely technical adjustment and has no legislative policy, or practical, implications. I should add that no comments were received on this provision during the call for evidence.

2320. I hope that this has given members sufficient detail on the clauses involved. We are happy to take questions.

2321. **The Chairperson (Mr Ross)**: There were no real issues raised.

2322. **Mr McCartney**: The intention is defined as the "best interests" principle. How do you make sure that intention is fulfilled?

2323. **Mr McGeown**: As we get closer to recognising that this will be adopted as the way forward, we will work closely with the criminal justice family — probably through the Criminal Justice Board — to outline what is required. We will look at what they are already doing, see what else is needed and work closely to ensure that we are ready in time.

2324. **Mr McCartney**: Who do you imagine will observe implementation on your behalf? Will it be done internally or by the Criminal Justice Inspection?

2325. **Mr McGeown**: I suspect by both. We will certainly monitor it, but I suspect Criminal Justice Inspection will have a look too.

2326. **Mr McGlone**: I will be very brief indeed. I raised this issue when it came up previously in the Committee. The Children's Law Centre raised concerns that the ducks were not properly in a row. Have you liaised with them since then to ensure an element of compatibility? I presume that is naturally how things would have gone.

2327. **Ms Kiera Lloyd (Department of Justice)**: The Bill manager at the time had a conversation with someone in the Children's Law Centre. One of the concerns they had was where the reference to best interests was put in the clause. The conversation was about whether that would make a practical difference or cause any issues. We reached the conclusion that it was a decision by the drafter as to where it fitted best in the clause as currently drafted.

2328. **Mr McGlone**: This was a mutual conclusion.

2329. **Ms Lloyd**: The conversation was between the Bill manager and the Children's Law Centre, and, as I understand it, they reached the conclusion. The Children's Law Centre did not really raise the issue in its formal response.

2330. **Mr McGlone**: That's grand. Thanks very much.

2331. **Mr Douglas**: Declan, I will ask you a question by way of a quote from C S Lewis:

"Isn't it funny how day by day nothing changes, but when you look back, everything is different".

2332. I am thinking of Raymond's point earlier about children who end up with a record for breaking windows or whatever. People look back fifty years later and all they see on the record is what the child did. Do you have a view on that?

2333. **Mr McGeown**: I do. Since taking up the job of chief executive in October, I have been looking at the child and the child's experience in the system. Certainly, it would be better for the child and society as a whole if the child does not come into the system at all. There has to be a lot of work done upstream with that child to make sure that where he or she is displaying behaviours or signs, we work as early as possible to try and keep them out of the justice system. Obviously, we will do our bit as part of the wider justice family, but there is also a call for others to be involved, because the social aspects go beyond the justice system. Certainly, since I have taken up the post, my role has involved working closely with a lot of the key players in various Departments to see how we can do that.

2334. **Mr Douglas**: You mentioned others. Who are you talking about in particular?

2335. **Mr McGeown**: We have already started having conversations. I also chair the Children and Young People's Strategic Partnership to reduce offending. Around the table we have people from health, education and voluntary and community groups. It is about talking to them and trying to get a sense of why that child comes into the system in the first place and what needs to be done to prevent that.

2336. **Mr Douglas**: Thank you, Declan.

2337. **The Chairperson (Mr Ross)**: Thanks, folks. We managed to get through that without Division Bells.

18 February 2015

Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Sammy Douglas
Mr Tom Elliott
Mr Paul Frew
Mr Seán Lynch
Mr Alban Maginness
Mr Edwin Poots

Witnesses:

Mr Gary Dodds	*Department of*
Mr Ian Kerr	*Justice*
Mr Graham Walker	

2338. **The Chairperson (Mr Ross)**: With us today to outline the new policy amendments to the Police and Criminal Evidence (Northern Ireland) Order 1989 are Maura Campbell, criminal justice development division; Graham Walker, speeding up justice and equality branch; Ian Kerr, policing policy and strategy division; and Gary Dodds, police powers and HR policy branch.

2339. You are all very welcome. When you are ready, please brief us on the proposed amendments. We will then open up to questions.

2340. **Mr Ian Kerr (Department of Justice)**: Thank you, Chairman. Clauses 76A to 76D are proposed amendments to the biometric provisions in the Police and Criminal Evidence (Northern Ireland) Order 1989, or PACE.

2341. There are five amendments, four of which have been drafted and shared with the Committee. The remaining amendment is being drafted, but we will outline the policy intent behind it as well. In four of the five cases, the amendments are to address shortcomings identified through early experience of operating the corresponding provisions in England and Wales. The fifth is to bring within the retention framework a new discretionary disposal being introduced to Northern Ireland elsewhere in the Bill.

2342. At present, PACE allows DNA sampling and fingerprinting of an arrested or charged person once only in an investigation. Provisions still to be commenced in the Crime and Security Act 2010 will confer power on the police to require a person to attend a police station for the purposes of having their fingerprints and a DNA sample taken, if those were not taken on arrest.

2343. Clause 76A will amend PACE to allow police to retake fingerprints and a DNA sample in cases where an investigation has been discontinued and where the material originally taken has been destroyed in accordance with the new retention framework but the same investigation later recommences, perhaps because new evidence has emerged. The amendment will also extend to these arrangements the Crime and Security Act (CSA) power to require attendance at a police station. This power must be exercised within six months of the date of the investigation being resumed. It is subject to the same constraints as currently drafted.

2344. Clause 76B adds a new article 63KA to PACE to reflect the introduction in Northern Ireland of prosecutorial fines by Part 3 of this Bill. We flagged this with the Committee during oral evidence at Committee Stage of what is now the Criminal Justice Act 2013. Where an individual is arrested in connection with a recordable offence and accepts a prosecutorial fine for committing the offence, we intend that his or her material may be retained for a period of two years, consistent with provisions already in the framework relating to penalty notices.

2345. Clause 76C is to replace existing article 63N of PACE, which has been found not to achieve the intended policy outcome.

As currently drafted, article 63N requires there to be a causal link between the taking of DNA fingerprints on first arrest and a conviction obtained following a later arrest for a different offence. At present, if, for example, an individual is arrested in connection with a burglary and their prints and sample were taken and, separately, they were arrested in connection with, say, domestic violence and convicted of that but not of the burglary, the legislation prevents the retention of the fingerprints and sample in connection with the conviction for the second, unrelated offence because the investigation of the first offence did not lead to the second arrest. Therefore, the material would have to be taken again on the second arrest, with the associated processing costs, in order to be retained. The substituted article 63N will make it clear that DNA and fingerprints taken from an individual may be retained on the basis of a conviction, irrespective of whether that conviction is linked to the offence for which the material was first obtained.

2346. Article 63R of PACE disapplies the general destruction requirements from material to which other statutory regimes apply. One such regime is that in the Criminal Procedure and Investigations Act 1996, which sets out the disclosure duties of the prosecution and the defence in relation to criminal proceedings: for example, the prosecution must disclose to the defence any material that could undermine the prosecution case or be otherwise helpful to the defence. As currently drafted, article 63R applies to fingerprints and DNA profiles but not to DNA samples, which must be destroyed no later than six months from the date on which they were taken. This has been creating operational difficulties in cases where the sample becomes relevant as evidence in court proceedings, particularly samples used for purposes such as drug and alcohol use and violent sexual contact between suspects and victims. The amendment made by clause 76D disapplies the normal destruction rules for samples in cases where the sample is or may become disclosable under the 1996 Act but makes clear that the material cannot be used for any purpose other than in proceedings for the offence for which the sample was taken and must be destroyed once the Act no longer applies.

2347. Finally, we intend to put forward an amendment to correct a gap identified in new article 63G of PACE, which makes provision for the retention of DNA and fingerprints taken from persons convicted of an offence outside Northern Ireland. As currently drafted, article 63G would not permit the retention of the DNA profile and fingerprints taken from a person in Northern Ireland on the basis of a conviction recorded against the person for a recordable, non-qualifying offence in England, Scotland or Wales.

2348. At this point, Chair, I should maybe explain some of the terminology. We speak of a recordable offence, which, as members who have been through this with us before will know, is any offence for which an individual could conceivably receive a custodial sentence. A qualifying offence, on the other hand, is a serious sexual or violent offence, and the two definitions are used as thresholds for the application of different aspects of the framework. Anyone convicted of a recordable offence may have the material retained indefinitely.In the absence of a conviction, if the offence for which they have been arrested and charged is a qualifying offence, the material may be retained for a limited period of three years with a possible further extension. That distinction in definitions is pertinent to the difficulty that we have here.

2349. The difficulty in the provision has its origin in the treatment of convictions in overseas courts. We understand that when the provisions were being drafted, there was agreement that foreign convictions should be reckonable for retention purposes. However, there were concerns that persons might be convicted of a recordable offence in some countries on the strength of a lower standard of proof than would be required in domestic courts. A conscious decision was, therefore, taken to err on the liberal side and provide that, in

respect of overseas conviction, indefinite retention would be permitted only in connection with a qualifying offence rather than a recordable offence. Inadvertently, when the legislation was being drafted, that higher threshold was applied to convictions in Great Britain, so the amendment will provide that a conviction in Great Britain for a recordable offence will be reckonable for the purposes of determining the period of retention of material taken in Northern Ireland.

2350. That is as much as I have by way of introduction. We will now take any questions.

2351. **The Chairperson (Mr Ross)**: It all seems very complicated and not at all easy to decipher. I will start with a very basic question, in the hope that you have the information or can give some guidance. How many people living in Northern Ireland have their DNA on a database?

2352. **Mr Gary Dodds (Department of Justice)**: The figures from March 2014 are 123,000 profiles on the local DNA database and about 700,000 sets of fingerprints.

2353. **The Chairperson (Mr Ross)**: In both cases, how many of those individuals were not found guilty of an offence?

2354. **Mr Dodds**: That is a good question. Under the new regime that we are planning to introduce in October, around 33,000 DNA profiles will be destroyed or deleted from the DNA database. Those are mainly profiles from people who have no previous convictions. The new rules require their destruction. Around 91,000 sets of fingerprints would also be destroyed when the new system is introduced.

2355. **The Chairperson (Mr Ross)**: Who is responsible for destroying those and under what supervision?

2356. **Mr Dodds**: It is police material, so it will be the responsibility of the police and Forensic Science to ensure that whatever needs to be destroyed under the law will be destroyed.

2357. **The Chairperson (Mr Ross)**: I can understand why that would be a very useful tool to get future convictions for those who have carried out very serious crimes, such as sexual crimes, and crimes like burglaries. However, you said that it will also be used for those who have accepted prosecutorial fines. When we heard evidence on prosecutorial fines only a matter of weeks ago, it was emphasised to us that they would be for minor, lower-level offences, yet you are saying that such individuals would still have their DNA retained.

2358. **Mr Dodds**: The police have a power to take DNA and fingerprints from anyone who has been arrested for a recordable offence. Some recordable offences will be subject to a prosecutorial fine once the Bill becomes law. In instances in which the police have taken DNA and fingerprints from someone who is arrested but subsequently accepts a prosecutorial fine, we have suggested that the DNA and fingerprints be held for a limited period of two years, which is consistent with the penalty notice provision already in statute.

2359. **Mr Kerr**: It may be worth mentioning that, whilst they do not have prosecutorial fines in England and Wales, they do have them in Scotland, where the retention regime is five years for a situation in which the fine is awarded in connection with a qualifying offence and two years when it is awarded in connection with a recordable non-qualifying offence.

2360. As you said, when we looked at it with the policy leads who were considering it at the time, we went through the 2013 Act, and they were clear that there would be no circumstances in Northern Ireland in which this disposal would ever be used in connection with a qualifying offence. Therefore, we have mirrored the Scottish retention period of two years.

2361. **Mr McCartney**: I have a similar question: is this in addition to the prosecutorial fine?

2362. **Mr Kerr**: Yes.

2363. **Mr McCartney**: I remember the debate on the penalty notice. Would DNA

retention form part of a person's records that could be accessed through an Access NI search?

2364. **Mr Kerr**: No.

2365. **Mr McCartney**: That would not be disclosed.

2366. **Mr Kerr**: No, it is not remotely like a criminal record; it is anonymous.

2367. **Mr McCartney**: Is that the case even in a wider search? I know, from the Association of Chief Police Officers, that it would not be disclosed as part of a straightforward search, but would the retention of DNA show up in any other search?

2368. **Mr Kerr**: No.

2369. **Mr Douglas**: Thank you for your presentation. Gary, you gave us the number of DNA and fingerprint records. How does Northern Ireland compare with the likes of England, Scotland, Wales or, indeed, the Republic of Ireland in percentage terms?

2370. **Mr Dodds**: It is much smaller, of course. The national DNA database in England and Wales has close to five million DNA profiles. Some will be from Northern Ireland as it shares profiles with the national DNA database. That number has significantly reduced because the English have introduced their new rules, meaning that over a million profiles had to be deleted from the national database. In percentage terms, I think that the Northern Ireland profiles are for about 5% of the population.

2371. **Mr Kerr**: When we were taking the Bill through, England and Wales were holding DNA profiles for about 10% of the population. Following the implementation of the new framework, they expect to lose about a fifth of those, which would bring that figure down to about 8%. In Scotland, it was about 6%. As Gary said, it is 5% in Northern Ireland, and we expect to lose about a fifth of those on implementation, so we should come down to 4% overall.

2372. **Mr Poots**: I think that many people will be disappointed that there will be a reduction in DNA retention. The bottom line is that, if the legitimate authorities had my DNA or fingerprints, it would not concern me, because I do not intend to do anything wrong. The only people with something to fear from the civil authorities having their fingerprints and DNA are those committing crime.

2373. I would want to ensure that the legislation is robust and strong and can maximise the level of DNA and fingerprint retention that we can achieve while remaining human rights compliant. I recognise that there were rulings from Europe, which is probably why you are losing quite a lot of that material.

2374. **Mr Kerr**: The Marper judgement. Yes indeed.

2375. **Mr Poots**: In what you propose, will we maximise the ability of the police to retain as many DNA profiles as possible?

2376. **Mr Kerr**: DNA will be retained for anyone who is convicted. That is the bottom line, and that position will not change. In fact, the only change that is being made by the introduction of the new framework is that indefinite retention in the absence of a conviction will no longer be permitted.

2377. **Mr Poots**: I think that you indicated that you will hold DNA for one particular crime but that it will not be applicable to another crime. Is that right?

2378. **Mr Kerr**: Yes, in the way that the legislation is drafted at the moment, there is some mischief around the use of the words "leads to". This means that, if DNA is taken in respect of one offence but the individual is not convicted, unless the investigation of that offence led to the same individual being arrested for a subsequent offence — hence "leads to" — the DNA cannot be used in respect of the second offence. That was never the policy intention, and we are moving to remedy that in the amendments that we propose.

2379. **Mr Frew**: Explain to me how you are remedying that. You have a DNA sample,

a person goes through court and is found not guilty of a primary offence. That person is then investigated for a secondary offence and goes to trial.Are you telling me that you cannot use that DNA sample for the second offence?

2380. **Mr Kerr**: We can do that only if the second offence arose from the investigation into the first. If that is the case, that is possible at present, but that leaves us with the gap that we are seeking to address. I do not want to complicate the issue.

2381. **Mr Dodds**: The problem that arose is that the draftsmen wanted to cover a situation where someone was arrested and their DNA and fingerprints taken and were matched in the database against a subsequent crime that the person had committed. The legislation allows for the material from the first offence to be used on an evidential basis to prosecute the person for the secondary offence — hence the causal link. If someone has been arrested for an offence that is not related to the first offence, we want the material for the first offence to be retained on the basis of the conviction for a secondary, unrelated offence. It is very complex.

2382. **Mr Frew**: If someone is convicted, that sample is there forever and a day. Is that right?

2383. **Mr Kerr**: The profile generated from it is, yes. The sample will be destroyed.

2384. **Mr Frew**: That will be identifiable.

2385. **Mr Kerr**: Yes.

2386. **Mr Frew**: For instance, if you walk into a building that has been burgled or where someone has been assaulted or attacked, you can get DNA samples that connect to that primary source. Surely all that has done is identify a suspect.

2387. **Mr Dodds**: That is correct, yes.

2388. **Mr Frew**: Surely you would then take another sample from that suspect.

2389. **Mr Dodds**: Not DNA. If DNA is taken in connection with one offence and there are pending arrests for the same individual for other offences, the DNA would not ordinarily be taken on each arrest event. Fingerprints are taken on each arrest event, but not DNA. We want the DNA for the first offence to be retained until an outcome is generated from any subsequent arrests that are unrelated to the first offence. If, for example, he has had four pending —

2390. **Mr Frew**: There is a domino effect.

2391. **Mr Dodds**: Yes, that is correct. If he is convicted after arrest number four, the police can retain the material from the DNA taken for the first arrest on the basis of a conviction for arrest number four. That is totally unrelated to the first offence, and that is where the legislation is incorrect.

2392. **Mr Frew**: There is a blind spot.

2393. **Mr Dodds**: There is, yes.

2394. **Mr Frew**: Why can you not simply take a further sample?

2395. **Mr Kerr**: You can, but there are processing costs associated with that. We are trying to keep the costs to a minimum and avoid the police having to take new samples and process them at additional cost.

2396. **Mr Frew**: There are bound to be fundamentals here; excuse my ignorance. Why can we not retain DNA even if someone has been proven innocent?

2397. **Mr Dodds**: That is the whole basis of why we have changed the law. The current law allows indefinite retention when someone's material is taken, irrespective of the outcome of that arrest event.

2398. **Mr Kerr**: Essentially, it is in order to be compliant with the judgement of the European Court of Human Rights. That has been the driver.

2399. **The Chairperson (Mr Ross)**: Strasbourg has taken on civil liberty protection. There is also legislation in Westminster.

2400. **Mr Frew**: I know that this is an argument or debate for another arena or forum,

but dental records are available, are they not?

2401. **Mr Dodds**: This legislation relates to DNA and fingerprints. I do not know about dental records

2402. **Mr Frew**: I ask because, surely, in essence, what everyone wants is for criminals or people who commit an offence to be detected, detained and punished, and for justice to be served. I would be for giving any establishment that investigates law and serves justice all the tools and power to do that, within, of course, regulations and with the exercise of restraint. Surely, dental records, fingerprints and anything that can help detection are good. How big an impact will the destroying of samples have on crime detection?

2403. **Mr Dodds**: The obvious impact of deleting quite a significant volume of profiles from the database is that there are fewer profiles on the database to create or generate subsequent matches from crime scenes in the future. It remains to be seen what impact that will have.

2404. **Mr Kerr**: There is no doubt that there will be a loss of investigative capability as a result of this.

2405. **Mr Dodds**: I think that we have to accept that, yes.

2406. **Mr Kerr**: We have always known that.

2407. **Mr Elliott**: Have we no choice?

2408. **Mr Dodds**: None. We have to comply with the judgement and move away from what we have at the moment, which is a blanket and indefinite retention, to something that is much more structured and related to conviction and non-conviction.

2409. **Mr Frew**: This is a broad, sweeping question: are you satisfied that everything within the amendments pushes that legal requirement to destroy to its limits —

2410. **Mr Kerr**: Everything that we are doing within the amending provisions that we are introducing, with the possible exception of the new material moving to prosecutorial fines, is aimed at improving the existing provisions in the Bill, and improving them in the sense of plugging gaps in them so that material that would otherwise be lost, or thresholds that would not be met, will, in future, be met and recovered. It is refinement, but it is refinement in that direction. That is how I would characterise it.

2411. **Mr Douglas**: I will ask two quick questions. I am not sure whether you will be able to answer the second. The first is on the National Crime Agency (NCA). You say that there will be a reduction of about one fifth in the figures. I assume that, with the operation of the National Crime Agency, there will be an increase in the number of people whose fingerprints and DNA are taken. Obviously, there will be more activity leading to the arrest of criminals and gangsters.

2412. **Mr Kerr**: The NCA is another agency that will bring more resources to bear on criminal elements, and you would imagine that, as a result, there will be an increase in activity and in product for the biometric system.

2413. **Mr Douglas**: Can the National Crime Agency introduce the taking of DNA and fingerprinting of, say, criminals originally from Russia or other international communities?

2414. **Mr Kerr**: Where recordable offences have been committed in the UK, any of the law enforcement agencies operating in the UK that have powers of arrest will add such material to the database. We have provisions elsewhere in the legislation for the entry on to the database of material from persons convicted of offences overseas. We should be able to do that wherever they come from.

2415. **The Chairperson (Mr Ross)**: That is great. Thank you very much. We appreciate that.

18 February 2015

Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Tom Elliott
Mr Paul Frew
Mr Seán Lynch
Mr Alban Maginness
Mr Patsy McGlone
Mr Edwin Poots

Witnesses:

Ms Angela Bell	*Department of Justice*
Ms Amanda Patterson	
Ms Karen Pearson	
Mr Graham Walker	

2416. **The Chairperson (Mr Ross)**: I welcome Karen Pearson, deputy director of criminal justice policy and legislation division; Angela Bell, jurisdictional redesign branch; Amanda Patterson, head of criminal justice policy branch, and Graham Walker, the Justice Bill manager. You are aware that the meeting is being reported by Hansard and that the report will appear on the Committee website in due course. When you are ready, briefly outline the purpose of clauses 1 to 6 and schedule 1 of the Bill, which cover single jurisdiction for County Courts and Magistrates' Courts. Then we will open up the meeting to questions before moving on to the next part, if that is agreeable.

2417. **Ms Karen Pearson (Department of Justice)**: Angela Bell and I will deal with single jurisdiction; let us take that first. Part 1 of the Bill creates a single territorial jurisdiction in Northern Ireland for the County Courts and Magistrates' Courts.

2418. At present, Northern Ireland is divided into seven County Court divisions and 21 petty session districts by departmental orders. County Court and Magistrates' Court business is required to be dealt with in a particular division or district, depending, for example, on where the incident occurred or where a party to the proceedings lives. The Bill removes these statutory divisions and allows the County Courts and Magistrates' Courts to exercise their jurisdiction throughout the whole of Northern Ireland, bringing them into line with the High Court, Crown Court and Coroners' Courts.

2419. The Bill also provides for the single jurisdiction to be supported by an administrative framework, the purpose of which is to provide a reasonable degree of certainty to court users about where their cases will be heard. Under the framework, the Department will determine the administrative court divisions, after appropriate consultation, in place of the current statutory ones, and the Lord Chief Justice will issue directions detailing the arrangements for the distribution and transfer of court business.

2420. It is intended that current listing arrangements will be largely unchanged so, for example, an offence which would currently be dealt with in the County Court division where the offence occurred, or where the defendant resides, will instead be dealt with in the administrative court division where the offence occurred or the defendant resides.

2421. A key benefit of the new system will be the ability to transfer cases between administrative divisions. That flexibility does not exist at present, and it will allow cases to be moved where a good reason exists. Details of what "a good reason" is will be set out in the Lord Chief Justice's directions and will include, for example, where a transfer will better suit the needs of victims and witnesses, perhaps to allow them to avail of particular facilities that may not exist in all courthouses.

2422. Maintaining court users' access to local justice has been a key consideration in the development of these proposals.

It is considered that the Lord Chief Justice's ownership of the listing directions, as well as a requirement for judicial approval, and the opportunity for parties to make representations in relation to the transfer of a case, ought to provide appropriate safeguards for these proposals.

2423. I will finish there, Chair; I am happy to take any questions.

2424. **Mr McCartney**: I have just a couple of questions. In relation to the observation made by the Public Prosecution Service (PPS) that there will be a considerable impact on its organisation and resources if we move to a single jurisdiction, what work has been done to alleviate that for the future? If the PPS thinks that it may have difficulties around that, that might undermine the rationale in terms of access.

2425. **Ms Pearson**: There have been some discussions with PPS. I will ask Angela to deal with that.

2426. **Ms Angela Bell (Department of Justice)**: After the oral evidence session, we had the opportunity to speak with the PPS. We discussed the whole system with it, and we highlighted that the single jurisdiction proposals have come about as a result of the review of public administration (RPA) and the changes to the administrative boundaries and local government districts. It has accepted that those RPA changes will impact on it and all the criminal justice agencies. Everybody will have to consider their position in light of RPA, which will come into force before the single jurisdiction provision. The single jurisdiction provisions will overlay on top of the RPA, and the RPA is the catalyst for any changes. Our view is that the single jurisdiction is not going to cause particular problems once RPA is established.

2427. **Mr McCartney**: But the PPS is saying that the single jurisdiction is posing the problem rather than RPA.

2428. **Ms A Bell**: I think that, following discussions with it, it has come to understand that the sequencing is the other way round.

2429. **Mr McCartney**: The Children's Law Centre made an observation around travel. Have travel costs been built into the reorganisation?

2430. **Ms A Bell**: Not at this stage. It is considered that any applications to transfer a case will be the exception rather than the norm. There may well be benefit to people making applications, so it might be that a child will have to travel a shorter distance to get to court. On that basis, we felt that it was not really appropriate to start building in extra provisions specifically for travel for children.

2431. **Mr McCartney**: Are there any provisions built in for travel in any circumstances?

2432. **Ms A Bell**: Not really. Obviously, legal aid will be available for the cases. Any expenses that would normally be recovered under legal aid will still be recoverable. If extra travel costs are incurred in that scenario, they will be covered.

2433. **Mr McCartney**: If you are not anticipating too much movement, why would you not build in travel costs for exceptional circumstances where there will be added journeys?

2434. **Ms A Bell**: We did not want to set a precedent so that other groups would start to seek similar —

2435. **Mr McCartney**: When you say other groups —

2436. **Ms A Bell**: Any other groups. The Children's Law Centre was particularly concerned about children. If older people started to present difficulties —

2437. **Mr McCartney**: The Attorney General made an observation about the Lord Chief Justice giving consideration to a lay magistrate being as close to his or her home patch as possible. He said that that should be a principle written in for all transfers.

2438. **Ms A Bell**: That was specifically included for lay magistrates because of their make-up. Under the review or

courthouses back in 2000 they were set up to be local to their area when they were dealing with court matters. We really wanted to maintain that specific aspect of their make-up. As far as the Lord Chief Justice's directions are concerned, the fact that he will be issuing those directions gives sufficient cover. The draft directions suggest that there will not be very much change from the current statutory provisions; it will be an administrative version of what we have at the moment.

2439. **Mr McCartney**: I have a general question: will the idea of the single jurisdiction lead people to believe that it may be part of a process that will eventually reduce the number of sites in which there are courthouses?

2440. **Ms A Bell**: That was not the original intention of the policy. It is fair to say that, potentially, there will be a knock-on effect, but it certainly was not the original intention.

2441. **Mr McCartney**: But it could be a consequence of it.

2442. **Ms A Bell**: The number of courthouses could be reduced under the existing statutory provision. It will not be predicated on the single jurisdiction coming about. Those changes could be made under current arrangements.

2443. **Mr McCartney**: The reason I ask this is because, if the case for a single jurisdiction were approved, it could be thrown back at you in the future. Someone could say, "Well, sure, you agreed to a single jurisdiction, so why do we need multiple places to administer justice in a single jurisdiction?".

2444. **Ms A Bell**: I think that the Department would still be very conscious of its statutory duty to provide sufficient access to justice.

2445. **Mr Dickson**: Thank you for presenting the outline of this issue to us. Can I ask you one question that seemed to come through in some of the consultation? Is there a danger that the single jurisdiction places too much emphasis on your administrative benefits rather than on the needs of court users?

2446. **Ms A Bell**: That will become more apparent once the Lord Chief Justice issues his directions, which will set out the reasons for departing from the standard arrangements. I am hopeful that those will be fairly balanced and that there will not be an emphasis on court administration being the reason for any moves to take place.

2447. **Mr Dickson**: So, you can see benefit to end users?

2448. **Ms A Bell**: Absolutely.

2449. **Mr A Maginness**: Thank you very much for your presentation and for your previous submission in relation to this issue. I have asked before whether the judiciary is happy with this, and I have been told that the answer is yes, but are the magistrates happy? Do you know that the County Court judges are happy, as discrete groups within the judiciary? It is not going to affect the High Court or senior judges; it is going to affect County Court judges, Crown Court judges, magistrates, or district judges as they now are. Are you content that the discrete elements have been consulted and are happy?

2450. **Ms A Bell**: Yes, we are.

2451. **Mr A Maginness**: In answer to the question that the vice-chair put in relation to courthouses and the single jurisdiction, it seems to me that, in the circumstances where the Department is closing courthouses with great enthusiasm, this would fit into that particular strategy for closing courthouses. It may not have been intended that way, but it will help because you can say that there is a single jurisdiction so we do not need a courthouse in Ballymena. People can go elsewhere, and it is all a single jurisdiction now. That could be the outworking of this particular change, and I do not think that is particularly helpful to the community at large. I am making that point to you.

2452. **Ms Pearson**: The closure of courthouses is subject to consultation. That is the process.

2453. **Mr A Maginness**: It did not seem that way in the Assembly yesterday when the Justice Minister was replying to questions. He seemed to be very adamant. He actually talked about it as being a reform. I cannot understand how that term is used. It is certainly a cut, but it cannot be seen as reform because it was not signalled in the process of reforming the system that courthouses would close to the extent that they are being closed.

2454. **Ms Pearson**: There is a consultation at the moment, and our understanding is that the Committee is seeing colleagues about that very issue in the middle of March.

2455. **Mr A Maginness**: You are not the person to answer that particular question.

2456. **Ms Pearson**: On your point, Angela said earlier that if we were not bringing the proposals forward, courthouse closures would still be possible. We understand that people may make the link, but, for us, they are two separate exercises.

2457. **Mr A Maginness**: It is fortuitous that the two things coincide.

2458. **Ms Pearson**: We have a difference of views on the proposals.

2459. **Mr A Maginness**: The main point that is being made not just by the Law Society but by others is that there needs to be a robust set of guidelines to ensure that the assignment of business takes into account the needs of witnesses, victims of crime and defendants. To ensure a fair process and that flexibility is welcomed, it is important that access to justice is promoted through avoiding unnecessarily long journeys for participants in the court process where possible. It seems that, from what is being proposed here, there is not really that much by way of protection for people who could be, at the very least, inconvenienced by the single jurisdiction.

2460. **Ms A Bell**: The Lord Chief Justice's directions will include a requirement that the parties are consulted or are given an opportunity to make representations when an application is made to move a case to a different division. We felt that that, together with judicial approval, would be required to provide a safeguard.

2461. **Mr A Maginness**: If there is only one jurisdiction, as it were, how can you really argue in court to say, "My case should stay in Enniskillen"? The argument will be that Omagh is not that far away.

2462. **Ms A Bell**: That is the purpose of the administrative directions. The listing arrangements will remain largely as they are currently.

2463. **Mr A Maginness**: Really, at the end of the day, there is no protection for people in this new system. You are at the whim of the administration and those who are running the system, including the judges, of course.

2464. **Ms Bell**: Really, the purpose of this was to benefit court users, and, while I appreciate that there will be scope for what you are suggesting, that is certainly not the intention.

2465. **Mr A Maginness**: The other point is that, under this system, county court judges will not have a jurisdiction. They will not have a division.

2466. **Ms Bell**: That is right. They will work throughout Northern Ireland.

2467. **Mr A Maginness**: So, they can be pushed around the whole of Northern Ireland willy-nilly. They will have no bailiwick at all.

2468. **Ms A Bell**: The Lord Chief Justice will continue to issue his directions so that he will decide where they sit. The expectation is that there will not be a great deal of change.

2469. **Mr A Maginness**: It gives the Lord Chief Justice a lot of additional clout, does it not?

2470. **Ms A Bell**: He already issues the directions.

2471. **Mr A Maginness**: Yes, but if you are appointed to a certain division, then you can exercise your judicial power, as it were, in that division. Under this system, you do not really have any division. You do not have any seat as such as a judge. Therefore, you can just be directed here, there and everywhere.

2472. **Ms A Bell**: That is true, but I am sure that arrangements will be put in place between the chief and his staff to ease that as much as possible.

2473. **Mr A Maginness**: I just wonder about judicial independence in all of this.

2474. **Ms Pearson**: There is nothing that we will be doing in the proposals that will impact on the ability of the Lord Chief Justice to run the listing arrangements. That would remain absolutely his.

2475. **Mr Elliott**: Thanks for the presentation. I have a couple of quick points. The Bill states that the Lord Chief Justice may give directions in a number of areas like the distribution of the business etc. How is it normally operated? I am assuming that it is just a court administration team directing the business.

2476. **Ms A Bell**: It is the Lord Chief Justice who issues directions about the distribution of court business.

2477. **Mr Elliott**: So, it will be the Lord Chief Justice as opposed to "may" be.

2478. **Ms A Bell**: It will be. It is worded as "may", but, in effect, it will be the Lord Chief Justice.

2479. **Mr Elliott**: I assume that this is the broad principles of the distribution as opposed to individual cases.

2480. **Ms A Bell**: Individual cases will then be subject to any request to depart from the normal arrangements.

2481. **Mr Elliott**: OK. Will this proposal give precedence or priority to any type of cases, for example, family courts?

2482. **Ms A Bell**: The directions have not yet been finalised. The Lord Chief Justice will be considering whether any particular group would require a priority, but, at this stage, it is not anticipated that that would happen unless there were a particularly good reason.

2483. **Mr Elliott**: They will not even be contained in regulations. It will be at the discretion of the Lord Chief Justice? Is that right?

2484. **Ms Bell**: That is right.

2485. **The Chairperson (Mr Ross)**: Are those directions subject to public consultation?

2486. **Ms Bell**: They may not be. The Lord Chief Justice would not be required to consult publicly, but my understanding is that he will certainly consult interested parties on a targeted basis.

2487. **Mr Elliott**: Chair, just on that point. It might be worth exploring further with the Lord Chief Justice how he intends to do that and how he will take opinions. It is important to find out what might shape his thinking on that, because we are basically in the dark. I am not saying I do not trust the Lord Chief Justice to do it properly —

2488. **The Chairperson (Mr Ross)**: It would be useful to write to him.

2489. **Mr Elliott**: It would be useful to get a view on how he plans to take opinions.

2490. **The Chairperson (Mr Ross)**: We will move on to part 7 of the Bill, which covers VOPOs. Members, please signal if you have any questions. When you are ready, please outline the purpose of clauses 50 to 71 of the Bill, and then we will take questions.

2491. **Ms Pearson**: We have Amanda Patterson with us today. Part 7 of the Bill will introduce provisions for a violent offences prevention order (VOPO). This is a new civil order similar to the existing sexual offences prevention order, and the Minister believes it will increase the ability of our criminal justice agencies to protect the public from the risk of serious violent harm from those who have already been convicted of violent offences.

2492. Having extended the scope of the public protection arrangements to encompass violent offences and sexual offences, our aim is to equip those tasked with protecting the public with a similar range of appropriate risk management measures across both categories of offending behaviour. The amendments to the provisions that the Minister intends to table at Consideration Stage will address a number of concerns raised by the Attorney General about European Convention on Human Rights (ECHR) compliance.

2493. First, we are putting a framework in place that will require any fingerprint, photographic or verification material collected under the VOPO notification provisions to be destroyed when the order expires, unless, in the case of fingerprints, they are being used to replace or update data sets already held under normal police and criminal evidence (PACE) provisions, or, in the case of photographic or other information obtained by Departments, the police have applied to the courts and been granted permission to retain such material in the interests of continued public protection.

2494. Also included is an amendment subjecting the power of the police to enter and search an offender's address to a proportionality test where it is somebody else's place of residence. We are also aware of concerns expressed to the Committee during the evidence sessions about the availability of the orders to manage risks from young people under 18. We are very happy to take views and answer questions on that point.

2495. **The Chairperson (Mr Ross)**: Women's Aid was concerned that the threshold for a VOPO would be too high to catch domestic violence cases. Do you have you a response to that?

2496. **Ms Amanda Patterson (Department of Justice)**: Yes, the advice from the agencies was that, if we set the threshold any lower, thereby bringing in common assault, it would become unmanageable to a large extent.

2497. The VOPO as it stands now excludes the lowest offences, such as assault occasioning actual bodily harm in domestic, family and various other circumstances. That was considered by the agencies to be where you wanted to set the level. This order is not geared totally for domestic violence cases. It is to deal with people who are presenting a risk of serious violent harm to the community; although it will include those convicted of serious domestic violence, it is not simply to deal with domestic violence.

2498. **The Chairperson (Mr Ross)**: Is there an argument for a different category — a domestic violence protection order — as is the case in other jurisdictions?

2499. **Ms Patterson**: I do not have policy responsibility for that area, but I understand that the Department is looking to consult on domestic violence protection orders. The other reason for that being slightly different is that they would offer immediate protection to an individual. Police could do something when they arrive at an incident by serving notice. A violent offences prevention order would not offer that service, because it has to be considered by a court on the basis of a conviction.

2500. **Mr McGlone**: My question relates to the synopsis of responses. Could you please clarify the following:

"The VOPO will be a preventative, rather than a punitive measure, aimed at preventing children from further offending — the reoffending rate for young people (48%) is higher than that for adult offenders (42%). It also has the potential to prevent young people becoming victims of crime".

2501. What does that mean? Can you elaborate on that?

2502. **Ms Patterson**: It is probably an additional benefit of the VOPO. The majority of victims of violent crime are young males. We hope that the imposition of a VOPO will help to prevent a crime being committed.

2503. **Mr McGlone**: OK, I have got it now. In the next paragraph, you refer to the data and say that you:

"expect that those eligible for a VOPO may be in the region of 7 per year. This figure is supported by the reoffending pattern of the number of young offenders committed to custody for a violent offence (which would in itself indicate a level of seriousness) and who went on to reoffend".

2504. What is that pattern that is referred to? What is the supporting reoffending pattern?

2505. **Ms Patterson**: That figure was the number in one year who were convicted of a violent offence — 21, if I remember rightly. They had reoffended over a period of 18 months, and it is therefore suggested that they are the sort of individuals who would be covered if the VOPO applied to young people. It would likely be used for someone who had had an immediate custodial offence for a violent crime and had then reoffended within a short period. That is where the figure came from. It was designed to illustrate the fact that it would be a very, very small percentage of under-18s.

2506. **Mr McGlone**: Is that seven out of 21?

2507. **Mr McCartney**: The Children's Law Centre and Include Youth have raised concerns about under-18s. What is your view? Have you met?

2508. **Ms Patterson**: Yes, we have indeed, and we understand their position and where they are coming from. The Department would say that concerns that the order will be used indiscriminately for young violent offenders are much misplaced, given the sort of numbers we had thought about. The barrier, if you want to call it that, that the court would have to apply to a violent offences prevention order is quite high. It can be used only if there is a risk of serious harm from the individual concerned.

2509. The other concerns were in relation to the fact that there would be other licence conditions and other sentencing disposals used for young people. Our answer to that would be this: if the VOPO is not needed, it will not be used. Just because it is available does not mean that it is going to be used. Bear in mind that the statutory agencies that we consulted were able to say that they were aware of cases, albeit a very small number, where a VOPO would have been extremely useful in managing a risk from someone under the age of 18. That is really where this is coming from. If a VOPO is not needed, it will not be used. The court would not be able to use it, and we would not expect it to be used if there were other licence conditions and other sentencing disposals to manage the risk. The VOPO is not a sentencing or punitive disposal in any event. It is purely a risk management tool or a means of protecting the public.

2510. Both organisations were talking about reintegration and rehabilitation of young people.We absolutely accept that that is extremely important. That is what the sentencing disposals and the systems would aim for, whereas the VOPO, which would more or less run in parallel, would ensure that the public protection agenda was being followed. It may also have a positive effect on parole commissioners' ability to allow for release, in that, if they can see that there is any risk in the community, they can also see that proper management tools are in place for the agencies to manage that. It may enhance the ability to allow for a young person's release.

2511. **Mr McCartney**: In other aspects of law, the distinction is always made between being over and under 18. There is no room here to make this bespoke for under-18s.

2512. **Ms Patterson**: I am not sure what it would look like. That has not been put forward by either of the two organisations that do not agree with the proposal for under-18s. If there was something else that we could look at, that might be possible, but it has not been put to us. In the two target consultations on the violent offender order that the Department undertook following the original consultation, which included all the children's organisations and other targeted organisations, no response was received, other than from Include Youth and the Children's Law Centre (CLC).

2513. **Mr McCartney**: In the context of the use of the words "preventative" and "punitive", if a trawl or vetting process was done for Access NI, would a VOPO show up?

2514. **Ms Patterson**: Sorry, I do not know the answer to that. I do not think so.

2515. **Mr McCartney**: I am not making a difference between preventative and punitive.

2516. **Ms Pearson**: I think that it would depend on whether it was the normal Access NI check or the enhanced one that we could write.

2517. **Mr McCartney**: Where the term "punitive" is concerned, someone looking on might say that it would be a very rare for you to get a VOPO. If the punitive aspect is against your name and on your record, it stays on your record.

2518. **Ms Patterson**: The conviction would be the thing that would be on the record.

2519. **Mr McCartney**: As you said, it is used only in certain circumstances, so anybody looking at it may say that it might be a conviction, but it is a severe —

2520. **Ms Patterson**: I am more than happy to find that out for you and to let you know.

2521. **The Chairperson (Mr Ross)**: Nobody else has indicated that they want to speak on this Part. If everyone is happy, we will move on to Part 8, which includes clauses 72 to 76, covering jury service, and clause 82, which covers defence access to premises. Whenever you are ready, will you brief us on that Part? We will then open up the meeting for questions.

2522. **Ms Pearson**: Yes. I will start with juries. The Bill makes adjustments to current arrangements for jury service. It abolishes the upper age limit, which is currently 70; it increases the current age for automatic excusal from jury service from 65 to 70; and it makes miscellaneous amendments to the Juries (Northern Ireland) Order to bring it up to date. It is our view that removing age as a barrier to participation in this aspect of civil society is a good step. We are aware that the Commissioner for Older People suggested that a full equality impact assessment (EQIA) should be undertaken to ensure that people aged between 65 and 70 were not disproportionately affected by the amendment. We were not planning to take that step, Chair. An EQIA on the Bill has already concluded that there is a disproportionate impact on those aged over 70 who would be entitled to serve as a juror, whereas currently they are not. That is not a negative impact. It means that a person aged 71 now has a choice that was previously denied to them and that that choice is theirs to exercise. For those aged 65 to 70, while automatic excusal will no longer be available, there will be a general discretion to excuse them from service should they so request.

2523. **The Chairperson (Mr Ross)**: Are there any questions, members? There are no real issues.

2524. I thank Karen, Angela and Amanda. Graham, you are staying with us for the next session.

2525. **Ms Pearson**: I think, Chair, that we have defence access to cover for you as well.

2526. **The Chairperson (Mr Ross)**: Sorry; go ahead.

2527. **Ms Pearson**: The Bill also makes provision for a defendant to be able to apply to a court for access to premises for the purpose of preparing his defence. That provision was requested to plug a technical gap. It would allow recourse to the courts should agreement not be given. The Attorney General (AG) recommended an amendment to the clause to strengthen the threshold for application. It is the AG's view that a higher test is needed to balance the rights of the occupier of the premises.

2528. Instead of requiring access in connection with the preparation of its defence, the Attorney's view is that an application should be granted only to ensure compliance with the defendant's fair trial rights. We accept the Attorney's view and are content to bring forward

the amendment that we shared with the Committee today.

2529. **Mr Poots**: How would that pan out in reality? Can you give us an example?

2530. **Ms A Bell**: At the moment, the defendant would normally reach agreement with the prosecution that they could inspect the crime scene. That is very rarely an issue. This ability to apply to the court for a court order would be used only on those very rare occasions when that is not agreed. It could happen at any point during the proceedings, meaning that it could happen whenever the defendant decides that he needs to inspect the premises. That would be done by way of an application to the court.

2531. **Mr Poots**: In thinking about human rights, if you had a dwelling, for example, where the defendant lived with a family, would the defendant have access to the entirety of the dwelling or just the part of it that they used? For example, would there be access to an individual's bedroom? Say he had a 13- or 14-year-old sister, would you be able to access the entirety of the dwelling? Obviously, people could be storing drugs in other parts of the home.

2532. **Ms Bell**: It would be a matter for the court to direct the conditions it wanted to apply with the order. So, the order could allow access to the whole or a particular part of the premises, and it could require the defendant to be accompanied at all times by a police officer. There are certain safeguards built in for the occupier. They would also be entitled to make representations to the courts before the order is made.

2533. **Mr Poots**: Would it have the capacity to search the entirety of an individual dwelling?

2534. **Ms A Bell**: It is not so much a search as a visit to view the premises.

2535. **The Chairperson (Mr Ross)**: OK. Thank you.

18 February 2015

Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Tom Elliott
Mr Seán Lynch
Mr Alban Maginness
Mr Patsy McGlone
Mr Edwin Poots

Witnesses:

Ms Maura Campbell	*Department of Justice*
Mr Graham Walker	

2536. **The Chairperson (Mr Ross)**: I will move on to Part 2 of the Bill, which covers committal for trial. I welcome Maura Campbell, deputy director of the criminal justice development division in the Department. When you are ready, will you outline the purpose of clauses 7 to 16 and schedules 2 and 3 to the Bill, which cover committal for trial? We will then open up the Floor for questions.

2537. **Ms Maura Campbell (Department of Justice)**: Thank you very much, Chairman. There have been decisions covering a number of measures designed to speed up the justice system. Part 2 provides for the reform of the committal process — I think I am safe in using the word "reform" in this context — and five clauses in Part 8 cover early guilty pleas, a statutory framework for the management of criminal cases, which is also referred to as statutory case management, and the public prosecutor's summons.

2538. Those clauses in Part 2 aim to streamline the procedure for moving business from the Magistrate's Court to the Crown Court. Under the current arrangements, the committal stage is used to determine whether there is sufficient evidence to justify putting a person on trial in the Crown Court. That can be done in a couple of ways, such as through a preliminary investigation (PI), where witnesses are required to give oral evidence and to be cross-examined, or through a preliminary enquiry (PE), which is essentially a paper exercise. We also have what are known as mixed committals, which are effectively a combination of the two. In practice, most cases proceed by PE.

2539. Clauses 7 and 8 would abolish preliminary investigations and mixed committals. That is in direct response to feedback from victims' organisations about the impact on victims of having to give their oral evidence in court twice. That can be traumatic, especially for victims of sexual crime or other vulnerable witnesses, and it can feel like a trial within a trial for them.

2540. Clause 11 would allow cases to be directly transferred to the Crown Court, where the defendant has indicated that he or she intends to plead guilty at arraignment.Clause 12 provides for the direct transfer of a specified offence. At this stage, we propose that that should apply only to murder and manslaughter cases. The intention is to add to the list of specified offences over time.

2541. As you might expect, a range of views was expressed during consultation. For example, while the Law Society acknowledged the concerns about vulnerable witnesses, it suggested that it would be preferable to build on existing court rules that allow for certain exceptions and to give more discretion to district judges to allow oral evidence to be given at committal if the interests of justice required it. On the other hand, the Public Prosecution Service (PPS) commented that the proposals in the Bill were more limited than it would have liked, and it called for committal to be abolished altogether. Victim Support NI also said that it favoured outright abolition, but it had no fundamental objection to a staged and gradual

transition along the lines that we are proposing.

2542. We noted in our response that outright abolition is the Minister's ultimate aim, once it is clear that the system has the ability to cope. In the interim, we feel that our proposals are striking the right balance. The PPS also suggested that clause 12 could usefully be amended to enable the direct transfer of a co-defendant who has been charged with a non-specified offence. We are happy to explore that today with the Committee. If you were minded to accept the need for an amendment, we could look to bring that forward at Consideration Stage.

2543. I will pause now to take questions on Part 2 before we move on to the other provisions.

2544. **The Chairperson (Mr Ross)**: You mentioned clause 12(4), which enables the Department to amend the list of specified offences by way of an order. Are there any limitations on that, or is there a role for the Assembly in the Department's power on that?

2545. **Mr Graham Walker (Department of Justice)**: The Assembly procedure that that would attract is the affirmative resolution procedure, so there would be an opportunity for the Assembly to debate that in full.

2546. **The Chairperson (Mr Ross)**: Maura, you mentioned that the Minister's aim is to remove the committal proceedings entirely. When do you anticipate that the criminal justice system will have the capacity to do that?

2547. **Ms M Campbell**: We do not have an agreed time frame for that yet. I think that we would need to see how well we manage with the direct transfer of murder/manslaughter cases in the first instance, and I think that it would probably depend on what progress we might make with some of the other reforms. For instance, if we had a large proportion of defendants entering an earlier guilty plea, which would take a lot of clutter out of the system, it might free up resources to start transferring more cases into the Crown Court that do need to go for contest.

2548. I think that a combination of factors will determine that. I think that the advice from the office of the Lord Chief Justice was that we should start with a smaller volume of those higher-end cases and see how that progresses before we make any decisions about how quickly we move to add other offences. At least we have the headroom to do that through this provision. As Graham said, that will be managed through coming back to you with proposals for what else might be added to that.

2549. **Mr McCartney**: In an overall sense, how does the long-term goal of abolishing committal proceedings improve the justice system? Does it make it more streamlined? Does it speed up the process?

2550. **Ms M Campbell**: Our main driver was the impact on the victim, because this originally came out of a focus group that we had with a range of victims' organisations. Victim Support and Nexus in particular were very keen for us to address this. We do feel that it has potential, particularly in the circumstances that I talked about where we are able to differentiate at an earlier stage between early pleas and contests. It could remove something that it is a bit of a speed bump at the moment in cases that could be got to Crown Court more readily.

2551. We have been seeing that in a pilot exercise that we are doing on indictable cases in Ards Crown Court division. That commenced on 2 January, so it is still very early days, but already we are getting cases into court quite quickly. However, even where a person has indicated very early on that they wish to plead guilty, we still have the requirement to go through the committal process. If we did not have to do that, we could directly transfer them. Potentially, there are a lot of benefits, not just for court time but for the police and prosecution in proceeding by way of a streamlined file, as opposed to having to produce a full file, which can take a considerable amount of time. It

also reduces the need to commission forensic exhibits, medical reports and all that, which are part of the reason for delays at the moment.

2552. **Mr McCartney**: I ask that because defining a vulnerable witness would be relatively easy. I can understand that, in a situation where someone was giving evidence in a rape trial, it is like a trial within a trial, as a witness would have to be put through it twice or whatever. In other cases, where, say, a police officer or a forensic officer is the main basis of it, you can see the value of a committal trial to prevent you going to the Crown Court.

2553. **Ms M Campbell**: That could be the case in theory, at least, but in practice, we have found that very few cases end up being weeded out as a result of the committal process.

2554. **Mr Walker**: If we looked at 2013 as an example, we see that of a total of 1,743 cases that went through the committal process, only 51 were not returned for trial. In other words, they were not sent to the Crown Court. That is something like 2·9%, so it does not weed out a huge number of cases. It is not a terribly effective filter.

2555. **Ms M Campbell**: Bear in mind that there are other ways in which cases could be taken out. That could be either through the defendant being discharged in a Magistrates' Court or the no bill procedure. We feel that there are other mechanisms for safeguarding the defendant's rights in those cases.

2556. **Mr McCartney**: I understand that, but 51 is still a high number of cases where someone is not kept in the system for whatever number of weeks. I agree in principle, in that if there are vulnerable witnesses, there should not be a committal, because you are nearly putting off a potential witness because of the experience the first time. It might even reduce their ability to do it the second time, or they might not want to do it the second time. It is also about making sure that the system does not see it as a run-through. There must be something somewhere along the line to measure whether the case is sufficient enough to go to the Crown Court. We will then not end up with a high number of cases, especially when you are putting in a system with early guilty pleas, which might weed out some. It is about trying to come up with that sort of idea [Inaudible.] committal.

2557. **Mr Walker**: There are a couple of issues there. Once the defendant is sent to the Crown Court for trial, they can make an application for what is referred to as a no bill. Essentially, that is an application to the Crown Court judge before trial that the evidence that was disclosed at committal does not constitute a prima facie case. It is not the case that the reforms would mean that there would be a great number of cases going to a nugatory trial. Once they are sent to the Crown Court, if the defence feels that the defendant really should not be there, it can make the application for a no bill. Essentially, it is the same test at no bill as it would have been at committal; it is simply that the papers do not disclose the case.

2558. Where the direct transfer provisions that we are proposing for murder and manslaughter are concerned, the clauses provide for an application to dismiss. Essentially, it is the same principle. Once the papers are served on the defendant, the defence can make an application to the Crown Court judge to say that the case against the defendant should be dismissed. Even through that process, it should not entail nugatory trials, because if there clearly is not a case to be answered, those applications will be made to the Crown Court judge.

2559. **Mr McCartney**: When the Committee did the inquiry in and around the experience of witnesses and victims, one of the consistent observations/criticisms was the length of time it took from a person being charged to being put on trial. Whatever views or reservations you have on this particular thing, can we safely say that this will ensure that trials happen quicker?

2560. **Ms M Campbell**: It should help with speeding cases up. We are also mindful that other jurisdictions in these islands

do not have a committal process. It has been removed in the Republic, England and Wales.

2561. **Mr Walker**: Scotland had a very different process to begin with.

2562. **Ms M Campbell**: They had something different, but they do not have something that is comparable. We feel that it is proportionate in getting the balance right between the rights of the defendant versus the impact on victims and witnesses. It should also address the principal concern of victims, which is the sheer length of time that it takes to get cases through.

2563. **Mr Walker**: Although a great deal of cases do not proceed by way of mixed committal or PI, the difficulty is that, once the defence says that it wants it to go by way of PI or that it objects to all or some of the witnesses, the case is set up for a PI or mixed committal. Quite often, that necessitates a couple of days in the court diary, and because the court diary may already be full, it could be maybe six or eight weeks before a date is set for the PI or the mixed committal. What invariably happens is that, on the day, the defence will quite often let it go through on the papers. The fact that we would be moving in the interim to a situation where all cases, bar murder and manslaughter, would be simply moved through on the papers would remove that potential blockage.

2564. **Mr McCartney**: I assume that, presently, the number of applications for a no bill would be low.

2565. **Mr Walker**: Yes.

2566. **Mr McCartney**: If the new system comes in, do you expect that to increase?

2567. **Mr Walker**: I would not necessarily expect it to increase. I have figures that show the number of no bill applications in a particular year, and I have tried to drill into them to find out whether someone is more likely to get a no bill if their case went through a PE or a PI.

2568. In 2014, out of just over 1,500 cases, there were 27 PIs. Nine of those went to a no bill, which is 33%. Some 21 cases originated by way of mixed committal, and five of those went to no bill, which is almost 24%. Out of just over 1,400 cases — 1,453 cases — that originated by way of PE, 154 went by way of a no bill, which is just over 10%. I suppose the point is that it does not really matter how a case originates; there is still the opportunity for a no bill.

2569. **Mr McCartney**: What do you want to see coming out of this in the future?

2570. **Ms M Campbell**: It is difficult to put any hard figures on an amount of time or costs saved. Obviously, we will want to monitor that along with the other reforms that we are making, and it is very difficult to isolate one particular factor that helped a case to go through quicker. We will seek to have the capacity, which we have, to measure the impact that it looks like having.

2571. The work that we are doing on a pilot basis might help us to look in more depth at particular cases to see what has helped to get them through quicker. Initially, that will be with a committal procedure in place, but we will maybe be able to set up a similar process when we start to take this out. Given that a relatively small number of cases will initially directly transfer, we should be able to look at those in some depth to see what impact they have had in comparison with what would typically happen with cases of that nature.

2572. **Mr A Maginness**: The whole purpose of committal proceedings is that they act as a filtering system so that weak or questionable cases can be examined at an early stage so that a court can decide whether a person should go to trial. What is wrong with that?

2573. **Ms M Campbell**: I suppose the real purpose is to see whether there is a prima facie case. It is not so much to test the reliability of the witness or the strength of the evidence, because that is properly the role of the trial.It is about looking at the prima facie case, but we

think that there are other safeguards in place that can be used to weed out those cases without interrupting the rights of the defendant.

2574. **Mr A Maginness**: Yes, but you want to abolish any process of filtering.

2575. **Ms M Campbell**: It is not so much that we are taking out any opportunity for filtering, because there are those other processes that effectively allow you to filter.

2576. **Mr A Maginness**: Not until you get to the Crown Court.

2577. **Mr Walker**: We will retain PE for all cases.

2578. **Mr A Maginness**: Yes. PE is simply on the papers, right? Are you saying that you can make the application at PE for a dismissal of the case?

2579. **Mr Walker**: Absolutely —

2580. **Mr A Maginness**: You are retaining that.

2581. **Mr Walker**: The district judge will retain their power to discharge the defendant —

2582. **Mr A Maginness**: Let us say that the district judge says that witness A said such and such, that he has not had the opportunity to hear him or her, that, if he did hear him or her, he might have a different opinion, but, as he has not, the case will just go to trial. What purpose is served there?

2583. **Mr Walker**: Essentially, that is what happens in the vast majority of cases at the moment. Whether it is a PE, a PI or a mixed committal, in practice, the district judge, either having heard the prosecution evidence in a mixed committal or a PI or having simply read the prosecution evidence in a PE, decides whether a prima facie case exists and does so before hearing any evidence on behalf of the defendant. Essentially, they are deciding whether there is or is not a prima facie case before they take it any further, therefore the defence —

2584. **Mr A Maginness**: If there is a preliminary investigation, the magistrate is hearing evidence.

2585. **Mr Walker**: Yes, but in practice, because of the way that the legislation is construed, only after the district judge has heard the evidence on behalf of the prosecution and has decided whether there is a prima facie case will he or she invite evidence from the defence. So, they will have already decided —

2586. **Mr A Maginness**: I am not talking about evidence from the defence; I am talking about the examination of prosecution witnesses. It seems to me that, fundamentally, if you have a filtering system that separates good cases from bad cases in establishing a prima facie case that should properly be prosecuted, that is a very sensible system.

2587. You are talking about 1,743 cases. Were they all PEs, or were they a mixture of PEs and PIs?

2588. **Mr Walker**: I think that you are referring to the 2013 figures.

2589. **Mr A Maginness**: Yes.

2590. **Mr Walker**: Of those, 42 were PIs and 31 were mixed committals.

2591. **Mr A Maginness**: Right, so 70 out of that lot were proceeded with by hearing some evidence.

2592. **Mr Walker**: I cannot say that with any degree of certainty. What I can say is that they were listed as a PI or —

2593. **Mr A Maginness**: I accept your point that sometimes you get to a stage where it is just decided on the papers. Out of 1,740 cases, you have 70 cases that went through an actual committal of some sort. That is a very small percentage. It is not as if there are hundreds of cases clogging up the system. It is a very small percentage, and I wonder why you want to eliminate that when it serves a good purpose. In other words, that process gets rid of bad cases that should not be prosecuted.

2594. **Ms M Campbell**: I suppose that another way of coming at it —

2595. **Mr A Maginness**: Sorry, Ms Campbell, I want to ask one further question, and I will then come back to you. Out of the 70 cases that were heard, how many ended up with the charges being dismissed or the trial not being proceeded with?

2596. **Mr Walker**: I do not have those figures.

2597. **Mr A Maginness**: It would be interesting to find that out. That would be useful.

2598. **Mr Walker**: In 2013, only 2·9% of cases were not returned for trial.

2599. **Mr A Maginness**: Yes, that was 51. That might be 51 people out of that 70; it might be 51 people out of the cases from that 70 that were not proceeded with.

2600. **Ms M Campbell**: It would be 51 out of a larger number of cases.

2601. **Mr A Maginness**: Perhaps, you could come back on that; I do not want to get bogged down with it. Sorry, I interrupted, Ms Campbell.

2602. **Ms M Campbell**: You made the point that, if you do not hear the oral evidence, you are missing an opportunity to weed out cases. I suppose it comes back to whether the opportunity to weed out a relatively small number of cases through that process is proportionate when you look at it against the impact on the victims. That is where we are coming from. Bearing in mind Mr McCartney's point about attrition, there is evidence from the victims' organisations that having to go through the committal process can lead to attrition in a number of cases, particularly in serious sexual assault cases. We have looked at this in the round — looking at both the victims' perspective and the efficient administration of justice — and we have come down in favour of taking out the oral evidence section, because we think that it is proportionate to do so.

2603. **Mr A Maginness**: In dealing with sexual cases, are there not provisions to prevent a cross-examination taking place?

2604. **Ms M Campbell**: There are certain protections in place for vulnerable witnesses, but the feedback we are getting from the victims' organisations is that having to go through that process is —

2605. **Mr A Maginness**: But if no cross-examination takes place, surely that meets the need of a vulnerable witness. I am in favour of protecting vulnerable witnesses and think that the court should have the authority and discretion to prevent a vulnerable witness being cross-examined, particularly in sexual cases.

2606. **Mr Walker**: Though, those rules only relate to witnesses up to the age of 17.

2607. **Ms M Campbell**: So, adult witnesses can be called to give evidence —

2608. **Mr A Maginness**: I am not sure about that, but I defer to your greater knowledge on the matter. In any event, this is a process that can be helpful for the administration of justice, and it does not unduly hamper the expeditious processing of court cases. I am not sure that you are going to save much anyway, which I suppose is contrary to my own argument, but nonetheless this could be helpful for weeding out bad cases. At the very least, a mixed committal should remain. In other words, there should be an opportunity to examine, not all witnesses, but some specified witnesses who are central or core to the prosecution case.

2609. **Mr Walker**: I certainly take that point. The only thing I would say is that, obviously, the defendant will still be entitled to make an application for a no bill once the case is transferred to the Crown Court.

2610. **Mr A Maginness**: That is the other point that I am going to make. You may see an increase in people applying for no bills in the Crown Court, and at that point you may have further delays in the Crown Court in relation to cases that have not been properly filtered through a committal process.

2611. **Ms M Campbell**: That is unlikely, hopefully, in the case of an early guilty

plea. Obviously, when we introduce this for murder and manslaughter cases, we will need to monitor that to see what happens in practice.

2612. **Mr A Maginness**: Of course. At a no bills stage — I am not sure about this — is there an opportunity to call witnesses?

2613. **Mr Walker**: No, there is not. The Crown Court judge simply considers the papers that were tendered at committal.

2614. **Mr A Maginness**: That is a weakness, certainly from a defence point of view. If you are on trial and say that witness X is a bad witness, and he or she is central to the prosecution case, you can apply to the judge who might say, "We'll hear this case, and you'll have an opportunity to cross-examine this person in the course of the trial." Surely, that is not satisfactory.

2615. **Mr Walker**: Arguably, the correct forum for testing the credibility of witnesses is at the trial itself as opposed to in the preliminary proceedings.

2616. **Mr A Maginness**: Arguably, arguably.

2617. **Ms M Campbell**: Also arguably, it is the role of the PPS to ensure that, in bringing forward a case, it meets the public interest test, including the evidential test, and that witnesses are going to be capable of giving oral evidence.

2618. **Mr A Maginness**: The PPS, in its submissions and comments on all of this, is gung-ho in favour of getting rid of committal proceedings. That surprises me, because I would have thought that the PPS would view it as a public duty to examine cases at an earlier stage to ensure that proper prosecutions are brought.

2619. **Ms M Campbell**: I think the PPS is very mindful of the resource requirement of preparing for a committal, which in certain circumstances can be almost as great as preparing for the trial itself. I think its hope is that the abolition of committal would greatly reduce that overhead for it.

2620. **Mr A Maginness**: Can I ask about a very minor and probably silly point? Why do you spell "inquiry" with an "i" and not an "e"?

2621. **Ms M Campbell**: That is not a silly question. [Laughter.]

2622. **Mr Walker**: That is a question to which I once may have known the answer.

2623. **Mr A Maginness**: If you look at what the various legal bodies say, you see that they all talk about PEs. Indeed, during your submissions, you were talking about PEs, but, in the Bill, it is PI. It is "inquiry" beginning with an "i".

2624. **Mr Walker**: The Magistrates' Courts (Northern Ireland) Order 1981 has "inquiry" with an "i" as well. I think that it has just grown up that it is being called a PE to differentiate it from the other PI.

2625. **Mr McGlone**: Maybe they have been privatised. [Laughter.]

2626. **Mr Walker**: Possibly.

2627. **Mr Elliott**: It is very technical.

2628. **Mr A Maginness**: Well, there you are.

2629. **The Chairperson (Mr Ross)**: We will move on before we get into a debate about apostrophes and things like that. Do no other members wish to speak on this section? Are we happy enough to move on?

2630. OK, we move on to Part 8 and clauses 77 and 78, which cover early guilty pleas. Again, whenever you are ready, if you want to brief us on this, we will then put the questions.

2631. **Ms M Campbell**: Yes, certainly. These are two statutory provisions intended to encourage the use of earlier guilty pleas. They are intended to complement the approaches we have been developing in parallel on a non-statutory basis.

2632. The provisions will require a sentencing court to state the sentence that would have been imposed if a guilty plea had been entered at the earliest reasonable opportunity. They also place a duty on a

defence solicitor to advise a client about the benefits of an early guilty plea.

2633. We have made you aware of our intention to make a small adjustment to clause 78. That is to remove a regulation-making power that the Attorney General advised was not required.

2634. A number of issues were raised during your consultation. Those included how much impact the provisions would have in practice, whether the duty on solicitors should also apply to advocates, and when the earliest reasonable opportunity to enter a guilty plea might be.

2635. That is just a brief overview of the provisions, and I am happy to take questions.

2636. **Mr Dickson**: While I appreciate the value of early guilty pleas, where are the protections for children and vulnerable adults? All the evidence would indicate that those are the two types of people most likely to admit to something when there is no requirement to do that.

2637. **Ms M Campbell**: I absolutely agree with that. What we do not want is people to feel that they are somehow being coerced into entering an early guilty plea. It is about speeding up justice but not expedient justice. The police and PPS would be encouraging people to take advice from the legal representative before they would decide how to enter a plea.

2638. We have been piloting a sentencing statement that outlines in detail for an accused, after a police caution but before the start of a police interview, what the implications might be of entering an early plea but also reminding them that, if they are not guilty of the offence, they should not plead guilty to it. That seems like a fairly obvious statement, but someone who is vulnerable may need that spelled out for them. If someone is particularly suggestible or might want to give the answer that they think is expected, you have to make that absolutely clear. The statement reinforces that point a couple of times.

2639. If the police felt that someone was not able to make an informed decision, they would certainly try to ensure that they had proper legal representation or the support of an appropriate adult at that stage to make sure that their rights were safeguarded. You are absolutely right: it is an important point that we do not want those who are more vulnerable to just go with the flow and maybe confess to something that they did not do or to confess to the wrong charge.Maybe they did something, but it was not quite what they are being charged with, which can happen on occasions as well. That point is very well made.

2640. I do not think that there is anything in our provisions that should create additional risks for a vulnerable person making that plea, because we are putting the onus on the defence solicitor to advise their client, to give them the proper advice and to get to the heart of what has happened in the case, in the way that many defence solicitors say that they already do and they should be doing.

2641. **Mr Dickson**: It is just the need for that assurance to be there, so that, in particular, children and vulnerable adults do not think that this is a way of getting out of the situation — out of the police station where they are sitting or whatever — and so that they can have adequate representation and that the police officer asking the questions not only has the right of the law to process the matter but the ability to use their common sense and judgement of the situation so that they can advise the individual that it would be appropriate to take legal advice before saying something.

2642. **Ms M Campbell**: For people with significant communication difficulties, registered intermediaries can be brought in at a police investigation stage to assist the police in ensuring that they are interviewing the person in the correct way and that the person understands what is being asked of them.

2643. **Mr Dickson**: Does that also apply to somebody for whom English is not their first language or for somebody who is deaf and uses sign language?

2644. **Ms M Campbell**: In those cases, a registered intermediary may not be required. It may be an interpreter who can ensure that there is proper comprehension and understanding. The registered intermediary role is more for someone who, maybe because of a learning disability or some such disability, is having difficulty in expressing their views or understanding what is being said to them; their expressive or receptive language is impaired in some way. We are still at pilot stage with that, and it is still for the Crown Court. Certainly, it is for the most serious cases and, in some cases, exceptions are being made, in particularly meritorious cases outside those tiers where that provision is there. We want people to think about this at an early stage, and, at that stage, we will try to ensure that the right safeguards and protections are available to make sure that the vulnerable have their rights upheld.

2645. **Mr Dickson**: The other side of the coin is obviously the fact that it is a welcome move to expedite a case.

2646. **Ms M Campbell**: We see benefits to the defendant. We have had helpful discussions with defence practitioners, and we found that, in a number of cases, their view was that it might make it easier for them to properly advise their clients if all of this is done very transparently.

2647. **Mr Dickson**: I accept that. Thank you very much.

2648. **Mr A Maginness**: I do not understand why the court needs to say what sentence it would have imposed if a guilty plea were entered at the earliest reasonable opportunity. Why is that necessary?

2649. **Ms M Campbell**: The intention there is that, if someone decides to enter a plea at a very late stage in proceedings, the court can make it clear to them that they are not getting the maximum discount that may have been available to them had they pleaded guilty at an earlier opportunity. It reinforces the fact that a late plea will not, in most cases, get you as much discount as an earlier plea might.

2650. **Mr A Maginness**: The damage is done, as it were. What is the point of the court doing that at that stage? How does that assist anybody?

2651. **Ms M Campbell**: It probably does not make much of a difference in that particular case, but it would make offenders and their legal representatives more generally aware. It goes back to the point that I made to Mr Dickson about more transparency in the system about how the system of early guilty pleas operates.

2652. **Mr A Maginness**: Yes, but it is a self-evident proposition that if you plead guilty late on in the day, you are going to get a heavier sentence than you would have got. That stands to reason, does it not?

2653. **Mr Walker**: During the consultation, the point was made that there was a degree of knowledge out there about credit and a reduction for an early guilty plea, but that it would be helpful if there was greater transparency and a way, almost, of advertising that. I take your point that it is sort of closing the door after the horse has bolted. However, the intention behind the clause is, essentially, to build up, over time, an enhancement of knowledge of the sentencing guidelines that the Lord Chief Justice has promulgated. The intention is to increase awareness and build up a greater knowledge that credit is available in certain circumstances.

2654. **Mr A Maginness**: The next provision concerns the duty of the solicitor to advise a client about an early guilty plea. If a solicitor does not do that, he or she will be in breach of the regulations that will be devised. Is that right?

2655. **Mr Walker**: As drafted, the clause provides that the Law Society would make regulations in respect to the giving of advice. It was drafted in that way because, as the duty to advise touched on the professional obligations of a solicitor, we felt that it was probably more appropriate to leave that to the Law Society to regulate.

2656. **Mr A Maginness**: So, it will devise those rules and regulations, and then —

2657. **Mr Walker**: Sorry, what I was going to say was that one of the amendments before you would remove that subsection, on the advice of the Attorney General. The Attorney General commented that, as the clause already sets out the nature of the duty and the penalty for failing to comply with the duty, clause 78(3) simply placed a regulatory burden on the Law Society that could be dispensed with. So, that regulation-making power would —

2658. **Mr A Maginness**: What is the penalty if a solicitor contravened that section?

2659. **Mr Walker**: That is set out in clause 78(5).

2660. **Mr A Maginness**: Yes, which states:

"any person may make a complaint in respect of the contravention to the Solicitors Disciplinary Tribunal."

2661. **Ms M Campbell**: Yes.

2662. **Mr A Maginness**: You then get into all sorts of problems about who is telling the truth in that matter: is it the client or the solicitor? There are also all sorts of issues about client-solicitor confidentiality. Have those been addressed?

2663. **Mr Walker**: The drafting of the clause closely follows the provisions in the Justice Act 2011 on the giving of advice by a solicitor advocate. It is constructed in a broadly similar way.

2664. We have had some engagement with the Law Society on the clause. We have not specifically discussed that issue nor, to my knowledge, has it necessarily been raised with us by the Law Society.

2665. **Mr A Maginness**: It seems to me that any solicitor worth his or her salt will advise their client to plead guilty if there are grounds to do so, and to do so expeditiously.

2666. **Ms M Campbell**: It is the Law Society's belief that, in practice, most solicitors would routinely do that, and that that would not be a significant departure from what is regarded as current best practice.

2667. **Mr A Maginness**: My point is this: why are you putting it into legislation, if it is being done?

2668. **Ms M Campbell**: It arose from a discussion with the Committee when we briefed you on the outcome of our consultation on early guilty pleas. Mr Weir made that suggestion, and following our appearance —

2669. **Mr Walker**: And Mr Wells.

2670. **Ms M Campbell**: Mr Wells as well. Following that, the Committee Chair wrote to us to ask whether we had considered the suggestion and whether we were willing to accept it. We said that we would, on foot of the briefing that we had provided on the outcome of the consultation.

2671. **Mr A Maginness**: Sometimes I disagree with Mr Wells. [Laughter.] And, indeed, Mr Weir.

2672. **Ms M Campbell**: We wrote to the Committee on that occasion, so all members would have had sight of the correspondence at the time.

2673. **Mr A Maginness**: I understand the history, but it just seems to me to be unnecessary in all the circumstances. It will create a lot of problems. Well, not a lot of problems, but it could create conflict between a solicitor and a client. A client could perhaps even use an alleged breach of the duty to his or her advantage in the justice system. It is unnecessary and could give rise to some problems, even though its inclusion is well intentioned, and I am sure that Mr Wells intended for it to be used properly.

2674. **Mr Elliott**: Sorry, Chair, is Alban saying that he does not think that the clause is necessary?

2675. **Mr A Maginness**: I do not think that it is necessary.

2676. **Mr Elliott**: I just wanted to clarify that.

2677. **Mr A Maginness**: It is my political view.

2678. **Mr McGlone**: I want to go back to Alban's point about people admitting that they are guilty halfway through a trial. In the case of a brutal crime, around which there is probably a lot of media attention, the judge could say that the defendant would have got 20 years but is instead being given 14 years. You will forgive my degree of cynicism, but people usually admit their guilt because the writing is on the wall and their solicitor has told them, "Hi, boy, you are going to get the hammer here anyway, so you are better admitting your guilt". There may be victims of brutal crimes, and families of those victims, who will feel that that boy should have got 20 years and that the judge pulled out of applying that sentence because, in a cynical exercise, the defendant admitted that he was guilty.

2679. From a presentational point of view, that could create more problems than it would solve in the area of transparency and all those things. I therefore remain to be convinced.

2680. **Ms M Campbell**: The circumstances that the clause is intended to address are those in which defendants could have pleaded guilty earlier but did not. They had perhaps made the victim go through the trauma of giving evidence and then entered their guilty plea, whereas they could have reasonably entered their plea before that happened. It is to allow the judge to say that, as a result of having put the victim through that ordeal, defendants will get less of a credit or discount than they would otherwise have done. The scenario that you are talking about relates to the giving of extra credit because a plea was entered early.

2681. **Mr McGlone**: I remain to be convinced, but thanks for shedding some light on the thinking around it.

2682. **Mr McCartney**: I want to make a couple of points. My understanding is that the Law Society is not happy about being put in the position of the early guilty plea almost becoming part of its responsibilities. Alban is right. The Law Society may say that all good solicitors will advise their client of all the options but that making it a statutory responsibility for them to do so may pose them some problems. We may have to return to the matter in the future. On the —

2683. **Mr Walker**: Sorry, Mr McCartney, but we absolutely accept that solicitors who are acting in the best interests of their client would properly advise that client at the appropriate juncture.

2684. **Mr McCartney**: The other aspect concerns the process. If a charge is laid against someone, will part of the process deal with whether that person pleads guilty to a lesser charge? We see that often at the door of the court. A person may be charged with grievous bodily harm, and the prosecution may say to the defence that it might look favourably on a plea of actual bodily harm, after which the plea is changed.

2685. **Ms M Campbell**: We are not trying to go down the road of plea bargaining, which I think is your underlying concern. I am sure that there are circumstances in which at an early stage in considering a case, depending on what the accused discloses, the PPS may review the appropriate charge. A typical example might be one of someone admitting to possessing marijuana but saying that it was for personal use and that there was no intent to supply. In that situation, the PPS might look at what it would charge the individual with. However, we are not talking about brinkmanship at the door of the court in an effort to get a reduction in the charge. That would be getting into plea bargaining, which is a different thing. That is not the policy intent behind the clauses.

2686. **Mr McCartney**: In your scenario, people might have made no admission on arrest, but, when presented with the charges, they might say to their brief that the marijuana was for personal use. However, because the police are charging them with intent to sell, they will fight that charge. If they were given the opportunity to go for the lesser

charge, they might plead guilty, so how do we fix that scenario?

2687. **Ms M Campbell**: I will again refer to the pilot that we have under way in the Crown Court. One thing that we would like to see happening in the future in cases is earlier disclosure to the defence from the prosecution and earlier discussion between police and prosecution about what the appropriate charges in the case should be. At the moment, both sides seem to like to play their hand very carefully and not disclose more than they are required to, but we think that there should be scope for an earlier resolution of cases, or a narrowing of the issues if you had that greater transparency in the process, so that better-informed decisions could be made at an earlier stage on how the case should proceed.

2688. I think that that goes a bit beyond what we are talking about here on earlier guilty pleas, but I think that all the things connect. A point that the Law Society has made in the past is that, very often, the reason that there is a reluctance to enter an early guilty plea is that the defence is not aware of the full strength of the case or the evidence against the person. In fairness, the defence, to create a level playing field, should be getting more information earlier from the prosecution.

2689. **Mr McCartney**: At what stage is a plea considered not to be an early guilty plea?

2690. **Ms M Campbell**: We have avoided trying to define what "earliest reasonable opportunity" is. Indeed, the question of what it means came up quite a lot in the consultation responses. It will be so case-specific. I think that it is something that has to be left to the discretion of the judge to determine in the particular circumstances of a case.

2691. **Mr McCartney**: I want to be satisfied on a point, in the interests of justice. The temptation for people might be to plead guilty early because they are told that, if they do not plead guilty, they will get a heavier sentence. Something may then come to light that necessitates the plea being changed. Is there a process to fix that?

2692. **Ms M Campbell**: There is a difference between indicating an intention to enter a guilty plea and the actual admissibility of a formal plea. In those circumstances, I would have thought that, if people have merely indicated, they can still change their plea if something comes to light. Even that indication could help to speed up the case, because, for instance, in Ards, we are finding that the police are having to request fewer forensic exhibits because they are fairly confident that a case will go a particular way. If something were to come to light, and defendants were to say that, having indicated an early guilty plea, they had now reconsidered, they could pursue those other lines of evidence. In a lot of cases, provided that they are aware of the case against them and of what the consequences might be of pleading later, people are able to make a properly informed decision at that early stage.

2693. **Mr McCartney**: If defendants were to go for an early guilty plea and then change their mind, that information could not form part of the trial. The prosecution could not ask them when in the box whether they had originally said that they had intended to plead guilty and what had made them change their mind.

2694. **Ms M Campbell**: I think that it would depend on the reason that they were giving for changing their mind. It might be the case that, having discussed it further with their solicitor, they decided that it was not what they had intended to do. I suppose that it is to meet the sorts of circumstances that Mr Dickson was talking about. If people were vulnerable, and it came to light that there was a vulnerability, the solicitor might go back to them and say that they need to look at it again as they were a bit too quick to admit to the charge and perhaps did not understand the full consequences of what they were doing. In that case, I would think that the judge would take that into account.

2695. **Mr McCartney**: Therefore, it is disclosable. If people indicate that they are going to plead guilty, it can be brought out at trial that they did so.

2696. **Mr Walker**: I think so. I could withdraw at any time an indication that I am going to plead guilty, up to the point at which I formally enter my plea.

2697. **Mr McCartney**: I am thinking about the line between somebody being charged with grievous bodily harm or actual bodily harm. You see that in particular in cases of domestic violence, where the leniency of a sentence for grievous bodily harm can be appealed but not the leniency of a sentence for actual bodily harm. We should try to avoid such grey areas: where there is a loophole or where defendants may be advised of the difference between the two charges but, when confronted with that in the witness box, are told: "You pleaded guilty earlier to grievous bodily harm, so why should we believe you that you are not guilty?" I am talking about that sort of grey area.

2698. **Ms M Campbell**: If defendants had not had the benefit of legal advice at the point at which they made that admission, I think that it would be reasonable to say that they needed to take that advice into account.

2699. **Mr Elliott**: Thank you for the presentation. I have always had concern about this clause. As has been highlighted already, it has the potential to be exploited to some degree. Those who are charged may feel under some pressure to take a more lenient sentence by pleading guilty, even though they may not be guilty. No matter how you dress it up, that will be an issue, I have no doubt. I do see the reasoning behind it, however, which is to try to stop victims being put through the torment of a case.

2700. I am sure that other parties are aware of this particular case, as the family had lobbied individuals and MLAs. A deal was done between the prosecution and a person who was guilty of an incident in which a person had died. The family of the person who had died felt that they had not got their day in court, because the case did not get to court. I know that that case may be one of the few exceptions, but they felt that they had a lot to offer and that the individual had been dealt with too leniently because they had not been able to tell of the torment and the difficulty that the actions of the accused had caused them. That is the other side of the coin. In that instance, the victims had wanted to go to court.

2701. **Ms M Campbell**: We asked victims' organisations at an earlier stage whether, if there were more early guilty pleas, victims would feel that way. They felt that you would probably get a different answer from people who had never before given evidence in court than you would from those who had. It is only when you get into the court setting that you realise what a traumatic experience, and how daunting, it can be. What might help to mitigate that is the fact that, in the case of an early guilty plea, a victim should still be able to put forward a written statement, which is provided for elsewhere in the Bill. That is done at the moment on a non-statutory basis, but we are putting it on to a statutory footing —

2702. **Mr Elliott**: I am sorry for cutting across you, Maura, but are statements always accepted at present?

2703. **Ms M Campbell**: Yes, as far as I am aware.

2704. **Mr Elliott**: Always?

2705. **Ms M Campbell**: I am not aware of any instance in which the judge has refused to accept such a statement.

2706. **Mr Elliott**: Is the victim always informed of that?

2707. **Ms M Campbell**: Yes, at the moment, at the decision-to-prosecute stage, victims are informed by the PPS that they have the facility to make a victim statement, so they should be aware of that, and we will certainly be trying to promote the use of victim personal statements on foot of the legislation as well.

2708. **Mr A Maginness**: I have just one point to make. The duty is on the solicitor, not on counsel.

2709. **Ms M Campbell**: That is so, and a couple of people raised that point during the consultation.

2710. **Mr A Maginness**: Say that counsel advises you, you should not be pleading guilty. If the solicitor has already advised you, you should plead guilty.

2711. **Ms M Campbell**: I suppose that —

2712. **Mr A Maginness**: I think that it could become problematic in those circumstances. Of course, solicitors cannot say that counsel told them to do this or do that", nor can barristers say that they told the solicitor to do this or do that.

2713. **Ms M Campbell**: We want to differentiate between making people aware of the fact that there may be credit for an early guilty plea, as distinct from telling them what their plea should be. Those are two different propositions.

2714. **Mr A Maginness**: Yes.

2715. **Ms M Campbell**: We would be concerned if counsel, as well as the solicitor, were reminding the client of the credit available. Then, you could be starting to get into the territory that we talked about, where people might start to feel pressurised. If two legal representatives are raising that point with defendants, they may start to feel as though there is more pressure on them to admit their guilt. This is really about making sure that the information is provided to defendants at an early enough stage in the proceedings so that they are aware that there are implications for them as a result of when they enter their plea.

2716. **Mr A Maginness**: If you are reminding a client, the client could then say to you, "Well, should I plead guilty or not?" It seems that you raise a lot of —

2717. **Mr Walker**: There are a couple of rationales for the duty not being on counsel. First, we may not have counsel in every case, particularly in a Magistrates' Court. Secondly, we expect that the duty on the solicitor will, in practice, be an enduring duty, by which I mean at different points throughout the preparation for the case: perhaps once in the police station; once when the PPS has disclosed a certain amount of the case; and perhaps again when counsel comes on board. It will be an enduring duty, so, in the situation that you raised, where counsel and the solicitor had a fundamentally different view, one would expect advice to be given again to the client. Essentially, that is why the duty is on the solicitor as a sole point of contact as opposed to it being on counsel as well.

2718. **Mr A Maginness**: Of course, a barrister could change. A solicitor normally would not change.

2719. **Mr Walker**: Absolutely. In any event, there will always be a solicitor instructing counsel. That is the point of continuity.

2720. **The Chairperson (Mr Ross)**: We move on to clauses 79 and 80 in Part 8, which cover avoiding delay in criminal proceedings; clause 81, which covers a public prosecutor's summons; clause 83, which covers powers of court security officers; and Part 9, which covers supplementary provisions. Brief us when you are ready, and we will then take questions.

2721. **Ms M Campbell**: Clauses 79 and 80 create a statutory framework for the management of criminal cases. The provisions are the Department's response to the Committee's recommendation in the report of your inquiry on services for victims and witnesses that case management should be placed on a statutory footing. They are also a response to a similar recommendation that was made by Criminal Justice Inspection. The clauses will create a general duty on everyone working in the criminal justice system to reach a just outcome as speedily as possible and enable the Department to bring forward regulations to set out the duties of the court, the prosecution

and the defence in the management of criminal cases.

2722. We have specified that the regulations must take particular account of the needs of victims, witnesses and children. The regulations would aim to make clear what is expected of the defence and the prosecution by the time that a case reaches court. They would empower judges to ensure that the regulations are applied. We hope that they will lead to a reduction in the number of adjournments prior to the start of trial, fewer witnesses being called to court unnecessarily and the speedier progress of cases more generally. We have shared with you proposed amendments to the clauses that were recommended by the Examiner of Statutory Rules following his scrutiny of the Bill's delegated powers memorandum. In essence, the amendments address the Examiner's comments that the two separate regulation-making powers currently in clauses 79 and 80 could be combined into one and that the regulations should be subject to statutory consultation with the Lord Chief Justice, the DPP, the Law Society and the Bar.

2723. In the consultation responses, there was strong support in principle for the provisions. Issues raised included what we mean by "just outcome" and whether it is the right terminology to use, whether the regulations should apply to the Public Prosecution Service and what sanctions could be applied.

2724. Clause 81 will allow public prosecutors to issue a summons to a defendant without first having to get a lay magistrate to sign it. We hope that that will help to reduce the time taken between a decision to prosecute and the first appearance in court. Again, there was a mix of views on that provision during consultation. The Law Society took the view that it is a judicial function and more properly the role of a lay magistrate. The PPS welcomed the new measure, which, they say, will allow it to submit complaints electronically to a court office, as opposed to the current manual system.

2725. We are happy to take questions on the remainder of the Part 8 provisions.

2726. **The Chairperson (Mr Ross)**: Have you any comments specifically on Part 9?

2727. **Mr Walker**: No, other than to say that Part 9 is fairly technical in nature and contains supplementary provisions pertaining to the Bill as a whole.

2728. **The Chairperson (Mr Ross)**: When we are told that things are technical in nature, it always makes things a little bit more interesting. You always want to delve a little bit more into it.

2729. Clause 86 is one of those clauses that we are seeing increasingly in all Bills that go through the Assembly. Departments like to stick that clause in at the end of a Bill. It is not just in the Northern Ireland Assembly; I think that it happens across the United Kingdom as well.

2730. The title of clause 86 is:

"Supplementary, incidental, consequential and transitional provision, etc."

2731. What does that mean?

2732. **Mr Walker**: That is an excellent question. I will begin by saying that it is a general construction that is used, as you pointed out, in lots of legislation. Legislative counsel will draft something like that to cover various eventualities.

2733. **Ms M Campbell**: Particularly for a Bill of this size, where there is the potential for an issue to arise in a number of areas that might need some rectification. It is intended to address any minor points that might arise, rather than substantive policy.

2734. **The Chairperson (Mr Ross)**: I would suggest that it is a bad habit that Departments have got into. Are there any limitations on what that might mean? I know that you are saying that it is for minor things, and we often hear that, not just from the Department of Justice. Are there any limitations on it?

2735. **Mr Walker**: I would need to look at the clause in more detail, to be honest. I am happy to come back to you on that.

However, I am sure that the Committee will have had the benefit of the Examiner of Statutory Rules' consideration of delegated powers and the various housekeeping clauses in the Bill. I assume that nothing untoward has been raised by that consideration, and certainly nothing has been raised with the Bill team.

2736. **The Chairperson (Mr Ross)**: I understand that it is legitimate to have it in there. It is just a case of whether it is right for Departments to put it in. The Committee might want to look at that again.

2737. **Ms M Campbell**: I just want to clarify that that was not something that we specifically asked for in instructions. It was something that the draftsman decided to include, as Graham said, because it is a fairly standard provision.

2738. **The Chairperson (Mr Ross)**: We might want to break that bad habit.

2739. **Mr Douglas**: Thank you for your presentation. Apologies, Chair, for being late. I could not get out of the other Committee meeting.

2740. Maura, you mentioned clause 79 and talked about a "just outcome". Can you give us some examples of an unjust outcome and what that would mean for young people?

2741. **Ms M Campbell**: An unjust outcome would be if decisions were taken without all the relevant evidence having been considered. I would like to think that that would not be the case. The formulation "just outcome" was something that we thought best encapsulated what we are trying to achieve here, which is that, in trying to ensure that things progress speedily, we do not do anything that impedes the necessity of a just outcome. The just outcome would always have primacy here, but, within that, we would be ensuring that we are doing all that we can to move cases on as quickly as we can.

2742. **Mr McCartney**: I go back to the point that the Chair made. Clause 86(2) states:

"An order under subsection (1) may amend, repeal, revoke or otherwise modify any statutory provision (including this Act)."

2743. Does that give the Department the power, if the legislation is passed in the Assembly, to say that it is not taking it forward and just bin it?

2744. **Ms M Campbell**: If we were not going to take something forward, we would just not commence the provisions.

2745. **Mr McCartney**: I understand that: I am asking whether the subsection gives you the power to do that. I am not asking you whether you would do it. Does it give the Department the power not to enact this if it did not suit?

2746. **Ms M Campbell**: The point that I am making is that we could do that even if we did not have that provision by simply not commencing the provisions.

2747. **Mr McCartney**: I understand that. I do not doubt that the Department wants to do this, but it also states "any ... provision". Say we tabled an amendment that stated that we wanted the preliminary enquiries to go ahead, would the Department have the power to say, "You have already signed up to clause 86, which allows us to repeal or revoke any part, so we are going to repeal or revoke that"?

2748. **Mr Walker**: In practice, I do not think that that is the intention behind the provision.

2749. **Mr McCartney**: I am not trying to second-guess anything. I am just asking whether you are giving people the power to do that.

2750. **Mr Walker**: I cannot say for certain. I will be absolutely honest with you: I am approaching that part from a position of pure ignorance at the moment.I am happy to take advice on that and come back to you, if that would help.

2751. **Mr McCartney**: The Bill allows for any part to be taken out, if the Department wants, and nobody could say anything because, by voting for it, we would have given you that power.

2752. **Mr Walker**: In my limited legislative knowledge, it seems to be a standard provision. Legislative counsel came up with that construction. As I say, I am perfectly happy to take advice and come back to you on that. I might regret saying this, but if —

2753. **Mr Douglas**: Do not say it, then.

2754. **The Chairperson (Mr Ross)**: This is being recorded by Hansard.

2755. **Mr Walker**: I am happy to come along during your formal clause-by-clause scrutiny and speak to some of those issues after I have had an opportunity to take advice on them.

2756. **Ms M Campbell**: We would be happier to respond substantively after discussing it with the legal advisers so that we can be absolutely clear what the effect of this may or may not be.

2757. **Mr Walker**: They will tell us what its scope is.

2758. **Mr McCartney**: It reads very simply:

"amend, repeal, revoke or otherwise modify any statutory provision (including this Act)."

2759. This is the point that the Chair made. Nobody is saying that it has been done in the past, but perhaps you are all persuaded.

2760. **Ms M Campbell**: I would be keen to clarify with our lawyers what "by order" means and what role the Committee would have in scrutinising anything that we did under the terms of that provision "by order", so we will take that away and get further advice.

2761. **The Chairperson (Mr Ross)**: Members have no further questions.

25 February 2015

Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Mr Stewart Dickson
Mr Tom Elliott
Mr Chris Hazzard
Mr Seán Lynch
Mr Patsy McGlone
Mr Edwin Poots

2762. **The Chairperson (Mr Ross)**: The oral evidence sessions on the Bill and proposed amendments have been completed, and the Committee will now begin its informal consideration of the clauses, schedules and proposed amendments. Today, we will discuss Parts 3, 4 and 5 of the Bill and the proposed amendments by the Attorney General in relation to the Coroners Act (Northern Ireland) 1959 and to provide rights of audience for lawyers working in his office. I am sure that many of you have been through the process before, but I just remind you that the informal consideration provides an opportunity for members to indicate whether they are content with the clauses and amendments, whether they require any further information or clarification, whether they are minded to reject clauses or whether they wish to amend clauses.

2763. I presume that you all have a hard copy of your pack; I refer you to tabs 1 to 3. Part 3 is on prosecutorial fines. Do members have any views on clauses 17 to 27 of the Justice Bill? Are you content with the clauses, do you wish to reject any of the clauses or amend anything? I will open it up to members. I think it is something, Alban, that you had raised concerns about before.

2764. **Mr A Maginness**: Sorry, what was —

2765. **The Chairperson (Mr Ross)**: We are looking at prosecutorial fines.

2766. **Mr A Maginness**: Oh, yes.

2767. **The Chairperson (Mr Ross)**: We are at Part 3 of the Bill, tabs 1 to 3 of your hard copy, clauses 17 to 27. Are there any views, members? Nobody wants to commit to going first. There were a few issues that we raised during the oral session. I raised the matter of how often an individual could be offered the prosecutorial fine. I was a little bit concerned about whether it could be seen as something that was an easier option for the Public Prosecution Service (PPS). We could ask whether there is anything that could be put in the Bill to tighten that up. Maybe that is about the directions that come from the PPS, but it is an area that I thought we would look at. Their purpose is for non-habitual offences, so I am not sure that it would be the appropriate mechanism for repeat offences, but, for minor offences, it is certainly valuable in that it does not take up court time. I would be concerned if individuals were continually offered that.

2768. **Mr A Maginness**: I agree with you, Chair. It is not designed for repeat offences. I suppose once or twice would be the limit — probably only once — because it serves as a warning. It is not, in effect, a criminal conviction, so it is a serious attempt to divert that person from any future offending. It should therefore have very limited usage. I am not sure whether that is implicit in the provision. I suppose that you could argue that it is.

2769. **Mr Poots**: In its representations to the Committee, NIACRO said that the easy way out is not to pay the fine; it is to do a very short jail sentence. How will the Bill allow for the collection of fines? The biggest problem is that there does not appear to be the means of enforcing —

2770. **Mr A Maginness**: Of course, if you do not pay the fine, you commit a criminal offence.

2771. **The Chairperson (Mr Ross)**: We are expecting the fines and enforcement Bill,

but there is slippage. It keeps pushing that issue back, but it is a hugely important issue.

2772. **Mr Poots**: Can they take it at the point of source?

2773. **Mr A Maginness**: They should be able to.

2774. **Mr Poots**: If someone is getting £100 a week, for example, can they take £5 a week off them at source?

2775. **Mr Lynch**: The advantage was that you did not have it as a criminal record but that, if you did not pay the fine, it became a criminal record. That is a major change.

2776. **Mr Elliott**: I support what Edwin said. They need a mechanism for trying to collect the money. We have heard of so many people going to jail for unpaid fines. I do not know whether we need that in primary legislation, but it needs to be dealt with at some stage.

2777. **Mr Poots**: We do not want people running about the country after £100; you could be spending £500 while trying to gather up a £100 fine. It needs to be a very clear that, if you get hit with a fine and agree to take it, you have to demonstrate how it is going to be achieved. If you are on benefits, for example, it could come directly from the benefits. If you are in employment, it should come directly from your employer. If you are not prepared to pay it up front, you should never see it.

2778. **The Chairperson (Mr Ross)**: My understanding is that the powers to do that will be in the fines and enforcement Bill. It is important that we get progress with that Bill to allow those powers to be used.

2779. **Mr A Maginness**: I made this point the last time: calling it a "fine" is inappropriate. It really should be a "penalty". Obviously, it is not a fixed penalty; it is variable. It should be "prosecutorial penalty" rather than "fine". A fine connotes something that has gone through a court and is a criminal sanction. It is a matter of style more than anything else, but the language should convey something less than a fine that someone would get in a criminal court.

2780. **Mr Poots**: The other one was I posed the question, but I still do not have the answer about who can impose the fines. Can the Bill empower health trusts or the Ambulance Trust to impose fines? If an individual is being verbally abusive, constantly effing and blinding, and threatening staff, can someone at that stage say to them, "Right, any more of that there and I will issue a prosecutorial fine, and that'll be £150"? It will alert people, and there needs to be a further step to make it easier for people to get some form of mandatory sentencing for abuse of staff beyond that. It is not tolerable in today's society that front-line people who are providing a service can be abused like that. Front-line police officers have the ability to deal with that, but an awful lot of this is happening, and we need to give more support to our staff in those instances.

2781. **Mr A Maginness**: I agree in principle with what Edwin said, but I do not think that a health trust or an authority of that type could be the body that imposes a penalty or a fine. I think that it has to be the PPS. It could be referred to the PPS and done that way.

2782. The point is a good one. Verbal abuse and the obstructive behaviour of customers or clients is a mischief that needs to be addressed. This might be a good way of addressing that mischief.

2783. **Mr Poots**: I do not mind how it is done, but I want empower those front-line staff to defend themselves.

2784. **The Chairperson (Mr Ross)**: We could seek information from the Department about whether the health trusts could refer directly to the PPS as opposed to having any police involvement.

2785. **Mr Poots**: It needs to be smooth and easy, because staff have too much to do to pursue those things. If we ever want to institute zero tolerance of bad behaviour, and we should be looking to do that, we need the ability for that to happen. That will also lead to more prosecutions of people who go further.

Staff do not want to spend time in courts. It needs to be made easy to punish people for bad behaviour. I would invite anybody to go to an emergency department (ED) on any night of the week — not just at the weekends — and they will see people being abusive.

2786. **Mr Dickson**: To carry that conversation forward a little: we empower traffic wardens to deal with traffic offences. Why should we not be in a position to empower designated staff within a range of public bodies, in this case, health, with the same power as traffic wardens to issue fixed penalty notices, and people pay a fine or whatever?

2787. **Mr Poots**: The 85-year-old grandmother who parks three inches over a white line is subject to such enforcement —

2788. **Mr Dickson**: Exactly, so why not —

2789. **Mr Poots**: — yet some foul-mouthed being is able to get away with it.

2790. **The Chairperson (Mr Ross)**: I suppose the issue would be whether health-care workers would want to take on a quasi-judicial role.

2791. **Mr Dickson**: Maybe not. The point is that, in the same way that the duty can be given to a traffic warden, it should be able to be given to someone with a not dissimilar status within a public body, whether in the Ambulance Service or in health care.

2792. **The Chairperson (Mr Ross)**: I think that there is general support for the principle behind it, although there are certainly areas that we will want to seek more information on. Let us see who will be able to deliver them and whether it is a matter that could be referred directly to the PPS or to some other designated individual. We also need more clarity on whether it will be in the Bill that individuals will not be able to avail themselves of it on more than one occasion. We also need to get more information on the fines and enforcement Bill. We clearly want it to be linked together and want those two things to be done in parallel to ensure that, if there are fines, there are the appropriate powers to take money from individuals.

2793. **Mr Hazzard**: Does anyone know whether there is precedence for this anywhere else?

2794. **The Chairperson (Mr Ross)**: Scotland has a fiscal —

2795. **Mr A Maginness**: Procurator Fiscal —

2796. **The Chairperson (Mr Ross)**: Are they penalties or fiscal fines?

2797. **Mr Hazzard**: I would be keen to explore what happens when a perpetrator denies being offensive. If someone parks a car for too long, there is evidence. Would it be a camera that picks up sound?

2798. **Mr Poots**: There will be cameras in a lot of facilities. There would not be a camera in a situation in which, for example, a community nurse is in a house and gets assaulted verbally or physically. That would be more challenging in terms of the evidence base. However, there will be cameras in a lot of areas.

2799. **The Chairperson (Mr Ross)**: The individual will be offered the fine. They do not have to accept it and can go to court or whatever else. It is more a way of trying to deal with lower-level offences so that they do not go to court and can speed up justice.

2800. I think that we are generally content with that, but we will follow up on some of the other issues and try to get more information before we move on to the formal clause-by-clause consideration. Are members content with that approach?

Members indicated assent.

2801. **The Chairperson (Mr Ross)**: We now move to Part 4, which deals with victims and witnesses. The clauses deal with the victim and witness charters and bring into effect one of the key recommendations of the Committee's inquiry into the criminal justice services available to victims and witnesses of crime.I invite you to comment on clauses 28 to 35, which cover victims and witnesses, and to say whether you are content with the clauses or wish to

amend or reject any of them. I will open the floor up for comment.

2802. There was general support for this before. An issue was raised about the difference between victim statements and victim personal statements, and I am not sure that that was made particularly clear. It might be something that we want to double-check with the Department.

2803. **Mr Lynch**: Are you talking about victim impact statements and personal statements?

2804. **The Committee Clerk**: The issue was that, in all the guidance and everything that this is referred to outside the Bill, the phrase "victim personal statements" is used, but the Bill uses the phrase "victim statement". The question was asked why there could not be consistency, because if somebody looked at the legislation two or three years down the line and saw the phrase "victim statement", they may not be clear whether it refers to the same thing that is being used or to something different. I think the explanation was that it was the draftsperson's view that it should be called a victim statement in the Bill. The explanatory and financial memorandum explained it. The issue is that, further down the line when the Bill becomes an Act, most people will not go back to the explanatory memorandum to look at it. It is about whether there is potential for confusion later when this becomes an Act. The issue is whether there is any particularly strong reason for not using the same terminology.

2805. **Mr Elliott**: Was a reason given for not using it?

2806. **The Committee Clerk**: As was recorded in Hansard last week, the reason was that they had spoken to the draftsperson, who felt that, because victim statements can be given by the family of a deceased person as well as an actual victim, the phrase "victim personal statements" was not the right terminology. However, it was pointed out that a victim statement can refer to the impact on other people as well. I am not sure about this. If the Committee wants, we can go back and clarify whether there is any specific reason why the same terminology cannot be used.

2807. **The Chairperson (Mr Ross)**: Are members happy enough to do that?

Members indicated assent.

2808. **The Chairperson (Mr Ross)**: Are members generally content with the clauses?

Members indicated assent.

2809. **The Chairperson (Mr Ross)**: We will move on to Part 5, which deals with criminal records. I invite members to comment on clauses 36 to 43 and schedule 4, which cover criminal records, and to say whether you are content with the clauses or wish to amend or reject any or whether you require any further information.

2810. **Mr Poots**: I want to ask about record-keeping. It is strongly indicated that criminal record checks would not be carried out on under-16s. What is the situation for people who are 18 and over but who committed an offence when they were under 16? I am thinking in particular of someone who applies for enhanced disclosure certificates and so forth to work in certain places if, for example, a sexual offence had been committed by a 15-year-old who would be working with vulnerable young people. I assume that that is available and is not restricted.

2811. **The Chairperson (Mr Ross)**: From recollection, I think that it would still be available in the deeper check of the two. We can double-check that, but from recollection, I think that it is still available for certain types of jobs.

2812. **Mr Lynch**: I think it was a definition of a minor offence and, in effect, that was outside —

2813. **Mr Poots**: I think so, yes.

2814. **The Committee Clerk**: We can get more information on the retention framework. My understanding is that particular offences, such as sexual offences, murder and manslaughter

and those sorts of offences, even if committed when a person is under 18, are on the record regardless of age. It is more the minor disposals and cautions that, depending on when the offence took place and how often, either remain on the record or are removed. My understanding is that they will show up for certain checks, but we can get some more information on the actual framework that is used, if that would help the Committee.

2815. **The Chairperson (Mr Ross)**: There are no other comments. The Committee is generally supportive, albeit that there should be checking for more serious offences and whether they still turn up in a deeper check. Is that correct?

Members indicated assent.

25 February 2015

Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Mr Stewart Dickson
Mr Tom Elliott
Mr Chris Hazzard
Mr Seán Lynch
Mr Alban Maginness
Mr Edwin Poots

2816. **The Chairperson (Mr Ross)**: I ask members for their views on the Attorney General's proposed amendment to the Coroners Act 1959 to confer on him power to obtain papers to provide a clear statutory basis for the disclosure in the context of his power to direct an inquest where he considers it advisable to do so and whether they wish to support the amendment or require any further information.

2817. **Mr A Maginness**: I am not sure that my party has a fixed view on this at this time. Clearly, there are issues here that need to be resolved. It seems to me that, from the evidence that the Department of Health and the health trusts put forward, they had a problem with this. It further seems to me that the Attorney General can currently apply to the health trusts for all papers and documentation that the coroner can get. Given that, at the time that that was put, I wondered whether the Attorney required an additional power to have access to documentation. Of course, the Attorney has argued that it will be "an extra pair of eyes" — I think that that was the term that he used. He put forward a good argument as well. I am not sure whether the balance is properly struck by his proposed amendment. So, for this moment in time, I think that we will reserve that position and come back to it. There is a degree of qualification in endorsing the Attorney General's position at this moment in time.

2818. **The Chairperson (Mr Ross)**: I think that that is fair enough. My understanding is that the Health Minister is sending us more information on the serious adverse incidents, and I also understand that it will possibly be with us for next week's meeting so that we can discuss it then. I am happy enough to defer it to a better time.

2819. **Mr Lynch**: That is fine, Chair. We can come back to it with the extra information. Do we then vote on it in the Committee?

2820. **The Chairperson (Mr Ross)**: Not until the formal stage. Obviously, with these, the situation is slightly different in the sense that the Attorney cannot table them himself. If the Committee were in agreement, the Committee would, effectively, take it on. It is a slightly different issue in that sense. Perhaps the best way to deal with this would be for members to have discussions about the two issues in their own parties. Are members happy enough?

Members indicated assent.

2821. **The Chairperson (Mr Ross)**: The second issue is on the Attorney's proposal for providing right of audience for lawyers in his office. You have correspondence on this from the Attorney. It is about having legislative provision to provide rights of audience for lawyers in his office and whether we wish to support that provision. Again, will members indicate whether they have a view on this?

2822. **Mr A Maginness**: I am sympathetic to what the Attorney is asking for for his own office, because it has a discrete number of lawyers. However, on foot of his suggestions to the Committee and his discussion about this, there was further correspondence from the Departmental Solicitor's Office (DSO) and also, I think from the PPS, in which they said, "If the Attorney General is going to get this, we want it as well". The reason why I would be sympathetic to the Attorney General is because a small, discrete number of individuals

work in a fairly restrictive area of law, primarily judicial review, and, in the circumstances, I would have thought that that would not be unreasonable. However, if it creates a precedent and you have to expand it to include a raft of others, it diminishes the rights of counsel to act independently within our courts. That would become a serious issue. I understand that they have serious objections to that. It is a difficult one to resolve, but again, as far as my party is concerned, there is no definitive position at this moment. We would have to consider it further.

2823. **Mr Lynch**: The Attorney General acknowledged that others would have an equally good argument — they would have the right to the same — but he had the best right and he would do that. However, it could widen out.

2824. **Mr Elliott**: What negatives are there if others got the same rights?

2825. **The Chairperson (Mr Ross)**: I suppose the argument — Alban could articulate this much better than I — is about the independent Bar and the role that it plays in our democracy and our justice system. I presume that that is the argument.

2826. **Mr Elliott**: Does that mean that it is giving privilege to someone?

2827. **The Chairperson (Mr Ross)**: As I said, Alban will be able to articulate this much better than I, but it is the principle of having an independent Bar. If you allow rights of audience for the PPS, the Departmental Solicitor's Office and whoever else, you are moving away from that principle that we have established within our democracy.

2828. **Mr Elliott**: I take Seán's point that the Attorney General has a higher or better right than others, but I do not necessarily hold that view. I am not that convinced about it anyway, but I am wondering whether, if it is for the Attorney General, why is it not for the Director of Public Prosecutions (DPP) and the Departmental Solicitor's Office?

2829. **Mr Poots**: Alban articulated why, in that it is small and discrete and that it deals with a relatively confined area, which is on judicial reviews. I would not be desperately unsympathetic to others having the right at some point, but I would like to make a judgement on it. Allowing this very modest change would do no violence to where the independent Bar is as things stand. It may lead to a more cost-effective system in years to come. I would be inclined to give the AG's office the right of audience but not to extend it beyond the AG's office at this point to allow us to calculate and make an assessment on whether it has been a success or not.

2830. **The Chairperson (Mr Ross)**: We are not going to make any decision today, and I respect that your party has not come to a definitive position on this. We could seek guidance from the Department on whether, as Edwin suggests, there could be a trial for this to see how well it would work and whether, if we were minded to support the Attorney General's amendment, a review mechanism could be built into it to see whether it has worked. It is something that we could explore. If members wish to go back to their parties and get definitive positions on this, I am happy enough to do that when we come back to it. However, if anybody has any further comments to make —

2831. **Mr Elliott**: It might be useful for those drafting the Bill to look at that, because if you built a review in, you would need something additional in the regulations because they are easier to change. That is only a thought.

2832. **The Chairperson (Mr Ross)**: That is useful. Thank you.

4 March 2015

Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Sammy Douglas
Mr Paul Frew
Mr Seán Lynch
Mr Alban Maginness
Mr Patsy McGlone
Mr Edwin Poots

2833. **The Chairperson (Mr Ross)**: We will move to the informal consideration of the Justice Bill. Many of you were here last week and know the process that we will go through. We will go through different elements of the Bill, and if people could indicate whether they are generally content or whether they want any further information from the Department, we can do that. We will have a mop-up session next week before we go through the formal clause-by-clause scrutiny.

2834. We will move to Part 1 and schedule 1, which deal with the single jurisdiction for County Courts and Magistrates' Courts. I remind members that, following the oral evidence session with departmental officials, the Committee agreed to write to the office of the Lord Chief Justice to request further information on the nature of the consultation that will be carried out on the directions and who will be consulted. The response will be circulated as soon as it is received. At the meeting of 10 December, the Committee also agreed to write to the president of the association of county court judges to requests its views and comments on the provisions. A response on that is still awaited as well.

2835. I will open the session up to members. Could members indicate whether they are content with clauses 1 to 6 and schedule 1 to the Justice Bill or whether they wish to obtain any further information?

2836. **Mr McCartney**: We do not require any information, but there may be some issues that will require some explaining. We do not need any more information. We certainly know the issues.

2837. **The Chairperson (Mr Ross)**: OK. There are no other comments, so we will move on.

2838. Part 2 and schedules 2 and 3 deal with the committal to trial. The relevant papers include further information, which was requested during the oral evidence sessions with officials, that the Department provided on the number of cases that have not proceeded to trial.

2839. I will again open it up to comments on whether members are content with clause 7 to 16 and schedules 2 and 3 to the Justice Bill or whether any additional information or clarification is required.

2840. **Mr A Maginness**: When you say "content", do you mean whether we are in full agreement with a clause?

2841. **The Chairperson (Mr Ross)**: It is informal. It is about whether we are generally content or whether the Committee wants to —

2842. **Mr A Maginness**: OK. You are just testing the waters.

2843. **The Chairperson (Mr Ross)**: Yes. If the Committee felt very strongly opposed to something or wished to amend something, we would perhaps want to indicate that. Parties will take their own view when it goes to the Floor, but, as a Committee, if there are issues, we can flag them up. That will give us a chance to get those addressed before we go to the formal clause-by-clause consideration. Are there any comments, or are we generally content?

2844. The Department has also highlighted the fact that the Public Prosecution Service (PPS) has suggested that clause 12 could usefully be amended to enable

the direct transfer of a co-defendant who has been charged with a non-specified offence. If the Committee is minded to accept the need for the amendment, it will be put forward at Consideration Stage. That is just for information. Are we content to support the proposed amendment?

2845. **Mr A Maginness**: I am not saying that we are opposing the intent of the clauses, but we have concerns about them. I just want to make that clear.

2846. **The Chairperson (Mr Ross)**: That is fine. Is any additional information required?

2847. **Mr A Maginness**: No, it is just a matter of consideration and argument.

2848. **The Chairperson (Mr Ross)**: That is fine. OK, members?

Members indicated assent.

2849. **The Chairperson (Mr Ross)**: Are we happy enough to give consideration to the PPS amendment if it comes forward?

Members indicated assent.

2850. **The Chairperson (Mr Ross)**: OK. Part 6 is on live links in criminal proceedings. I refer members to the relevant papers, including further information that the Department provided following the oral evidence session.

2851. The Committee sought clarification from the Department following its oral evidence session. A copy of the Department's response is in the packs. I will open up the discussion, if members can indicate their views on clauses 44 to 49. Does anybody require further information? Are members generally content?

Members indicated assent.

2852. **The Chairperson (Mr Ross)**: OK, if everyone is happy enough, we will move on to Part 7, which is on violent offences prevention orders (VOPOs). I refer members to the relevant papers in their information packs, including further information provided by the Department relating to VOPOs and information disclosed as part of the Access NI check, which was requested during the oral evidence session.

2853. Are members content with clauses 50 to 71, or do they require any other information? Are you happy enough to move on?

Members indicated assent.

2854. **The Chairperson (Mr Ross)**: I suggest that, over the next few days, parties maybe look at some of these issues for a mop-up session so that we can address any concerns.

2855. We will move on to Part 8 and miscellaneous provisions. I refer members to the papers in their information packs relating to clauses 72 to 76, which cover jury service. Do members require any information or clarification, or are they content with clauses 72 to 76?

Members indicated assent.

2856. **The Chairperson (Mr Ross)**: I refer members to the papers in their information packs relating to clauses 77 and 78, which cover early guilty pleas. Can members indicate whether they are generally content with clauses 77 and 78 or whether any additional information is required?

2857. **Mr A Maginness**: Those clauses include the duty on the solicitor, do they not?

2858. **Mr McCartney**: Yes.

2859. **Mr A Maginness**: We would have concerns about that.

2860. **The Chairperson (Mr Ross)**: Are there any other comments?

2861. I refer members to the papers in their information packs relating to clauses 79 and 80, which cover avoiding delay and criminal proceedings. Again, do members have any comments on clauses 79 and 80, or do they need further clarification or information?

2862. **Mr McCartney**: No.

2863. **The Chairperson (Mr Ross)**: Are members generally content?

Members indicated assent.

2864. **The Chairperson (Mr Ross)**: I refer members to the papers in their information packs relating to clauses 81 to 85, which cover the public prosecutor's summons, defence access to premises, powers of court security officers and youth justice.

2865. Again, I open it up to members to comment on clauses 81 to 85.

2866. **Mr Douglas**: Can I just check this, Chair? Some of these clauses are just technical, is that right?

2867. **The Chairperson (Mr Ross)**: No real issues were raised during the oral evidence sessions. Happy enough?

Members indicated assent.

2868. **The Chairperson (Mr Ross)**: Part 9 is on supplementary provisions. I refer members to the papers in their information packs, including further information from the Department on the purpose and effect of clause 86. I will open it up to members.

2869. Clause 86 is that amendment that Departments stick in at the end of Bills that seems to give them huge scope for doing stuff that we have not gone through. If members are generally content, I would be minded to oppose that. I do not see the necessity for it. Perhaps we can have a discussion on the mop-up day. It is a bad habit that I think Departments — all Departments, not just this one — are getting into.

2870. **Mr Frew**: If nothing else, asking them for a justification for having it in will keep them on their toes. They do not seem to be able to give us any justification.

2871. **The Chairperson (Mr Ross)**: We will move on to the formal consideration of amendments that the Attorney General proposed. We had a brief discussion on this last week. I refer members to their papers on the Attorney General's proposed amendment to the Coroners Act 1959. Further correspondence has been received from the Minister of Health, Social Services and Public Safety dated 25 February providing information on the look-back exercise on serious adverse incidents (SAIs). That indicated that, of the 1,417 serious adverse incidents reported from 1 January 2009 to 31 November 2013, a death resulted in 777 cases, and of those, 18, or 2·3%, were reported to the coroner more than three days after the date. The letter sets out further details on the 18 cases and on a number of initiatives that the Department of Health is taking forward to strengthen and enhance public assurance and the process on the scrutiny of the death certification. The initiatives include the roll-out of a regional mortality and morbidity review system and the introduction of an independent medical reviewer, similar to that being introduced in Scotland from May 2015 and that will provide additional safeguards and assurances. Members indicated last week that they wished to take some time to consider this. Do members have a view of whether they are inclined to support it?

2872. **Mr McCartney**: We are inclined to support it.

2873. **Mr McGlone**: To support the Attorney General's amendment? Yes. I know, Alban, that you are the spokesperson.

2874. **Mr A Maginness**: We still have some concerns about it. There are good points in what the Attorney is saying, but we have to weigh that against what the Health people are saying. Anyway, we will have to —

2875. **The Chairperson (Mr Ross)**: Return to this? Is that what you are suggesting?

2876. **Mr A Maginness**: Yes.

2877. **The Chairperson (Mr Ross)**: I think that the additional information is useful.

2878. **Mr Poots**: I would be somewhat reluctant. I think that traditionally the health service has sought to cover up where it has fallen down. It has been in the process of change, but it still has not got there. We have tried to encourage it down the route of more openness and transparency, because with the likes of the O'Hara review,

which has just been completed, one can see the failings of not being open, honest and frank at the outset.

2879. The SAIs were set up as a learning, not a punishment, process. It may be that something fairly minor has gone wrong or something very significant. It is there to say that, "Because you did not do the following, that led to a worse outcome for this individual than would otherwise have been the case". They should not be negatively perceived. We want as much openness, honesty and frankness from our staff as possible. I am somewhat reluctant to support this if it were to lead to people not being as upfront as they might otherwise be. Otherwise, we would not have that learning. I want as much openness as possible, but at the same time, I am not convinced that this will extract further openness. I am not saying that the Attorney General is wrong on this, but I am not convinced that he is right either. I am not in a position where I can —

2880. **Mr A Maginness**: Can I just say that there is a difference between SAIs and an accident report? An accident report is a piece of evidence that you can scrutinise. The SAI is a learning experience for the professionals involved. That was its original purpose; it was not intended to create an evidential basis. That is the difference between the two. I have an open mind on this, and I think that others —

2881. **Mr Poots**: The Attorney General's concern came on the back of the fact that there had been around 20 deaths in Coleraine. There is absolutely no doubt that some of those should have been reported.

2882. **Mr McGlone**: Whatever about the learning curve in hospitals, my one concern in all this is that, clearly, information that should have been provided to families or to the next of kin has so far been withheld or set to the one side. What the Attorney General is doing may clarify that situation to give people what they require, which is openness on how their loved one passed away, be it a child through to a mum or dad or whoever. The question that we have to ask ourselves is this: if the situation at the moment is that that has not been 100% delivered, why not? What is before us today is whether what the Attorney General is proposing can help to deliver that. While I have an open mind, I am veering at this stage more towards the latter, which is that the Attorney General's proposal could help people who are in difficult circumstances already to establish the truth about the death of their loved one.

2883. **Mr Frew**: To be clear, my understanding of it is that the Attorney General could call on anything that he suspects he wants to look at. It is not just adverse incidents; it could be any death. Whilst I can see the rationale for that, there is the aspect to it that means that, if he can call anything in, there could be a grip of fear going across the health service about what we should make people aware of that they should write down and record. I worry that that practice would ultimately diminish the transparency. Whilst I think that we all want to get to a position where there is more transparency, it is about how we get there.

2884. **The Chairperson (Mr Ross)**: The best vehicle to do it.

2885. **Mr Frew**: Yes, and that is what I am still querying.

2886. **The Chairperson (Mr Ross)**: We will take the decision that the Committee is still open-minded on this, and we will return to it. If members can concentrate their minds, maybe in the next number of days, the Committee will try to come to some sort of view. Because this is slightly different, in the sense that the Committee would have to take it forward because the Attorney General is asking us to, I think that some sort of decision needs to be taken.

2887. **Mr McCartney**: On a technical matter, is there a possibility of a sunset clause on this amendment? Can a sunset clause be written into this? In other words, you could review it every 12 months. If it is overdone, or if the Health Department puts itself in that advanced position —

2888. **The Chairperson (Mr Ross)**: We will get advice on that.

2889. Members, we will move on to Mr Wells's proposed amendment. The Committee initially took evidence on that amendment. Are members of the view that we should include views on it in our Committee report? That could be useful, given that the criticism the last time was that there was not any consultation on it. Now that there has been consultation on it, I am presuming that another Member will bring it forward.

2890. **Mr Lynch**: I was just going to have Jim continue this.

2891. **The Chairperson (Mr Ross)**: Mr Wells could not bring it forward, but I imagine that somebody else will. It might be useful to include in the report the comments that were made in the evidence session, if members are happy enough to do that.

2892. **Mr Poots**: We could make it a Committee amendment if we so desired.

2893. **Mr McCartney**: [Inaudible.] The Committee could vote on it, and [Inaudible.]

2894. **Mr Poots**: It depends on whether there is a majority on the Committee.

2895. **Mr McCartney**: Of course, absolutely.

2896. **Mr Poots**: I understand that. It could be a Committee amendment.

2897. **Mr Frew**: Whether people support it, I think that the Committee should comment, because we have certainly looked at it and have consulted on it. It is not as though we are blind to it.

2898. **The Chairperson (Mr Ross)**: We will discuss that again in our mop-up session about the options that there are for it. As long as members are satisfied —

2899. **Mr A Maginness**: At the moment, we are sympathetic to the amendment. We have not made a formal decision yet.

2900. **The Chairperson (Mr Ross)**: Members, we will arrange a short meeting for lunchtime on Tuesday 10 March to complete the informal consideration and proposed amendments. Formal consideration will take place on 11 March. If members make an effort to be at the meeting on 10 March and to have a think about some of the issues that we have not yet resolved, that would be very useful.

2901. **Mr McCartney**: Will you be looking to propose amendments on 11 March?

2902. **The Chairperson (Mr Ross)**: Hopefully, yes.

10 March 2015

Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sammy Douglas
Mr Tom Elliott
Mr Paul Frew
Mr Seán Lynch
Mr Alban Maginness
Mr Edwin Poots

2903. **The Chairperson (Mr Ross)**: The Committee agreed to hold a meeting today to complete the informal consideration of the Justice Bill and proposed amendments, including the consideration of additional information that was requested from the Department in relation to Parts 3, 4 and 5, the Attorney General's proposal for legislative provision to provide for rights of audience for lawyers in his office, and a final opportunity for members to raise any issues or outline their views on the Bill and proposed amendments prior to the formal clause-by-clause consideration, which we will do during tomorrow's Committee meeting. I refer you to the further information from the Department that was circulated electronically to members yesterday, and to the letter received today from the Attorney General regarding his proposed amendment to the Coroners Act (Northern Ireland) 1959.

2904. Part 1 and schedule 1 deal with the single jurisdiction for county courts and magistrates' courts. I remind the Committee that we considered Part 1 and schedule 1, which provide for a single jurisdiction of county courts and magistrates' courts, and the related proposed departmental amendments during our meeting of 4 March. No further information was requested, but some members indicated that they have some issues with this Part of the Bill. Responses from the office of the Lord Chief Justice on the nature of the consultation that will be carried out on the directions and who will be consulted, and from the association of county court judges on its views or comments on the provisions, have not yet arrived in the Committee office.

2905. I ask members for their views on clauses 1 to 6 and schedule 1. Are we generally content, or does anyone wish to propose a Committee amendment or suggest that the Committee should oppose it? If I do not hear anything, I will take it that the Committee is generally content.

Members indicated assent.

2906. **The Chairperson (Mr Ross)**: We move on to Part 2 and schedules 2 and 3, which deal with committal for trial. The Committee considered Part 2 and schedules 2 and 3, which cover committal for trial, at the meeting of 4 March. No further information was requested, and Mr Maginness indicated that he had concerns regarding these clauses. The Committee noted the Public Prosecution Service's (PPS) suggestion that clause 12 could usefully be amended to enable the direct transfer of a co-defendant who has been charged with a non-specified offence, and agreed that it was content for the Department to table such an amendment at Consideration Stage. In its letter of 6 March, the Department provided the text of the proposed amendment and indicated that it will allow for the direct committal of any co-defendants who are charged with an offence that is not a specified offence so that all defendants can be tried at the same time, in the interests of justice.

2907. I ask members for their views on clauses 7 to 16 and schedules 2 and 3 and the proposed amendment by the Department. If nobody says anything, I will take it we are generally content unless anybody has any specific amendments or proposals to make.

Members indicated assent.

2908. **The Chairperson (Mr Ross)**: Part 3 deals with prosecutorial fines. I remind the Committee that we considered Part 3, which provides for prosecutorial fines, at the meeting of 25 February. A number of issues were raised. The Committee agreed to request further information from the Department on the benefit of including a safeguard in the Bill to limit the number of prosecutorial fines that can be issued by the PPS, rather than leaving it to be covered in PPS guidance; on the use of prosecutorial fines for low-level offences, such as the verbal abuse of health-care staff; on whether there could be a fast-track system whereby such incidents could be referred to the PPS directly by health trusts; on the timescale for the Fines and Enforcement Bill and how that will assist in addressing the current difficulties affecting fines; and on whether the term "prosecutorial fine" is appropriate and accurate, or whether a different name should be used.

2909. A response was received from the Department on 9 March. In relation to including a safeguard in the Bill to limit the number of prosecutorial fines that can be issued by the PPS, the Department has confirmed that it will be dealt with in the PPS guidance. While the Department anticipates that the guidance will not fetter a prosecutor's discretion in how the power is exercised in an individual case, it expects that repeat fines should not be offered, except in the most exceptional and meritorious circumstances. The Department considers that dealing with repeat use of prosecutorial fines by way of PPS guidance rather than in the Bill offers a more flexible approach and is consistent with the principle of prosecutorial independence. Regarding the use of prosecutorial fines for low-level offences, such as verbal abuse to health-care staff and whether there could be a fast-track system whereby such incidents could be referred to PPS directly by health trusts, the Department has indicated that it is concerned that circumventing the role of the police in a criminal investigation by fast-tracking referrals to the PPS directly by health trusts may make it more difficult to ensure that evidential matters are properly dealt with. There could also be significant issues in asking a health professional to make a judgement in relation to an incident and to liaise with the PPS during the progress of an individual case.

2910. The Department also indicated that, in relation to the term "prosecutorial fine", although the disposal is not court-imposed, the underpinning arrangements on default mirror those of a court-imposed fine, and it considers that the alternative use of the word "penalty" could lead to confusion with fixed penalties, which do not involve a legal assessment of the evidence. The Department has also confirmed that the Fines and Enforcement Bill will contain provisions to allow unpaid financial penalties to be deducted directly from income — whether that be benefits or wages — and, in certain circumstances, from bank accounts. The intention is to seek Executive approval to introduce the Bill in June.

2911. I ask members to note the additional information that has been provided by the Department and ask whether anyone has any views on clauses 17 to 27 of the Bill. If no one has anything to say, I will take it that we are generally supportive.

Members indicated assent.

2912. **The Chairperson (Mr Ross)**: I move on to Part 4, which deals with victims and witnesses. I remind the Committee that we considered Part 4, which covers victims and witnesses, and two proposed amendments by the Department relating to victim statements and the creation of new information-sharing powers at the meeting on 25 February. The Committee discussed the need for consistency in the terminology used when referring to victim personal statements in the legislation and the guidance documents, and whether there is any specific reason not to use the term "victim personal statement" in the legislation instead of "victim statement". It also agreed to request further clarification from the Department on that issue.

2913. The Department has repeated that legislative counsel is of the view that the term "victim personal statement", as used in all the guidance etc, is not an appropriate term for use in the Bill, as a statement may be made by someone other than the direct victim. The response does not, therefore, propose to address the need for consistency and clarity in the terminology that is used.

2914. The Department has also provided the revised wording of the amendment that it intends to table in relation to information-sharing powers for victims and witness information schemes, which can be found in the letter dated 6 March. The minor changes relate to paragraphs 3(1) and 3(2) of the new schedule 3A and designate the PPS, rather than the PSNI, as data controllers.

2915. I ask Members to note the additional information and the revised text provided by the Department. Again, I ask for any views on clauses 28 to 35 and the two amendments proposed by the Department. If no one has any comments to make, I will take it that we are generally content.

Members indicated assent.

2916. **The Chairperson (Mr Ross)**: The Committee considered Part 5 and schedule 4, which cover criminal records, and five amendments proposed by the Department, at the meeting on 25 February. The issue of what types of offences remain on a criminal record and for how long was raised, and the Committee agreed to request further information from the Department on the retention schedule and arrangements. In its response, dated 9 March, the Department provided information on the types of offences retained on criminal records and the filtering arrangements that will apply.

2917. I ask members to note the additional information and indicate their views on clauses 36 to 43 and the five amendments proposed by the Department. If no one has any comments to make, I will take it that we are generally content with the proposals.

Members indicated assent.

2918. **The Chairperson (Mr Ross)**: The Committee considered Part 6 of the Bill, which covers live links in criminal proceedings, at the meeting on 4 March, and noted the Department's intention to table an amendment to clause 46 so that the same safeguard applies as is provided for in clauses 44 and 45, which places a responsibility on the court to adjourn proceedings where it appears that the accused is not able to see and hear the court and be seen and heard by it, and where that cannot be immediately corrected. No further information was requested, and members raised no issues on this Part of the Bill.

2919. In its letter dated 6 March, the Department provided the text of the proposed amendment to clause 46 to ensure a consistency of approach with respect to the safeguarding arrangements that are provided for in the other live link provisions in the Bill. I ask the Committee to note the text of the amendment proposed by the Department and ask for any views on clauses 44 to 49. If there are no specific comments, I will take it that we are generally content.

Members indicated assent.

2920. **The Chairperson (Mr Ross)**: I remind the Committee that we considered Part 7 of the Bill, which provides for violent offences prevention orders, and related proposed amendments by the Department of Justice at the meeting on 4 March. No further information was requested, and members had no issues to raise in relation to this Part of the Bill. Again, I ask the Committee for its views on clauses 50 to 71 of the Justice Bill and the amendments proposed by the Department. If no one has any specific comments, I will take it that members are generally content.

Members indicated assent.

2921. **The Chairperson (Mr Ross)**: I move on, then, to Part 8, which covers

miscellaneous provisions. The Committee considered clauses 72 to 76, which relate to jury service, at its meeting on 4 March. No further information was requested, and members had no issues to raise in relation to these clauses. I therefore ask the Committee for its views on clauses 72 to 76. If no one has any specific points to make, I will take it that the Committee is generally content.

2922. **Mr Elliott**: Chair, I am not objecting to it, but it might be useful to find out who is exempt from jury service at present, just as a matter of interest.

2923. **The Chairperson (Mr Ross)**: We will try to get that for you before tomorrow's formal stuff.

2924. **Mr Douglas**: That is a good point. A young fellow contacted me, or rather his parents did, a couple of weeks ago. He was asked to go on jury service when he was doing exams, and they just refused to let him off. I contacted them, and they got it sorted out. It would be good to find out who is eligible.

2925. **The Chairperson (Mr Ross)**: Sure. We will try to do that for tomorrow.

2926. We move on, then, to clauses 77 and 78. The Committee considered Part 8, clauses 77 and 78, which cover early guilty pleas, and a related amendment proposed by the Department, at its meeting on 4 March. No further information was requested, and one member expressed concerns regarding clause 78 and the duty it places on solicitors.

2927. I open up and ask Committee members for their views on clauses 77 and 78 of the Justice Bill.

2928. **Mr A Maginness**: I have a concern about clause 78.

2929. **The Chairperson (Mr Ross)**: Ok.

2930. **Mr Lynch**: I have the same concern.

2931. **The Chairperson (Mr Ross)**: On the same issue? Because of the duty it places on solicitors?

2932. **Mr A Maginness**: I think that it is unnecessary, Chair.

2933. **Mr Elliott**: I know that I have not raised too many issues on this. I have been following the comments. From Alban's point of view, what would be a better idea, or should nothing go in there at all?

2934. **Mr A Maginness**: Just nothing. It is unnecessary, because any solicitor worth his salt is going to advise his client in any event. Placing the duty on the solicitor could create problems and conflicts between solicitor and client further down the line. A client might say: "I was not properly advised", make a point of law and go to the courts on the basis that they were misled. It is problematic and unnecessary.

2935. **Mr Elliott**: I am trying to think of a better way of doing it, as opposed to putting nothing in. Surely there has to be a responsibility somewhere to inform clients of the issue. You cannot leave it so that there is no duty to inform them

2936. **Mr A Maginness**: In practice they are informed, and I would have thought that, although there is not a statutory duty, there would be a duty on a defence solicitor to inform the client. Anyway, we can come back to it.

2937. **Mr Elliott**: I am just interested.

2938. **Mr A Maginness**: It is an interesting situation, but it is something that we can debate further.

2939. **The Chairperson (Mr Ross)**: That is fine. We have noted that down, and we will come back to that tomorrow.

2940. The Committee considered Part 8, clauses 79 and 80, which cover avoiding delay in criminal proceedings, and related amendments proposed by the Department, at the meeting on 4 March. No further information was requested, and members had no issues to raise in relation to these clauses. I open it up to members to express their views on clauses 79 and 80. If there are no specific comments, I will take that as general agreement.

Members indicated assent.

2941. **The Chairperson (Mr Ross)**: I remind the Committee that we considered Part 8, clauses 81 to 85, which cover public prosecutor's summons, defence access to premises, court security officers and youth justice, as well as a proposed amendment to clause 82 by the Department, at the meeting on 4 March. No further information was requested, and members had no issues to raise in relation to these clauses. I ask for views on clauses 81 to 85. If there are no specific comments, I will take it that the Committee is generally content.

Members indicated assent.

2942. **The Chairperson (Mr Ross)**: Part 9 deals with supplementary provisions. The Committee considered Part 9 at its meeting on 4 March. Additional information was provided by the Department regarding the purpose of clause 86 and the power provided to the Department. The wide-ranging scope of clause 86 and the power it provides to the Department to change the Bill and, indeed, any piece of legislation was discussed, and the necessity to provide such wide-ranging powers to the Department was questioned. The Committee agreed to discuss whether clause 86 should be opposed or, at the least, amended to limit the powers being provided to the Department.

2943. The Bill Clerk, Aoibhinn Treanor, will be here to provide advice if necessary. This will be provided in closed session, so we will return to it at the end, rather than go in and out of closed session. We will decide whether that is necessary, if members are content with that approach.

Members indicated assent.

2944. **The Chairperson (Mr Ross)**: OK. I move on, then, to the new policy amendments relating to the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) and fingerprint and DNA retention. The Department wrote to the Committee on 11 February advising that it intends to bring forward a number of new policy amendments at Consideration Stage to the biometric provisions in PACE. At that stage, the Department provided the text of four amendments, and it subsequently provided the text of another amendment in its letter dated 6 March.

2945. Departmental officials attended the meeting on 18 February to outline the purpose of the proposed amendments and answer members' questions. The officials indicated that four of the five amendments are to address shortcomings identified through early experience of operating the corresponding provisions in England and Wales. The other amendment will add a new article to PACE to reflect the introduction in Northern Ireland of prosecutorial fines by Part 3 of the Bill. The Hansard report of the evidence session is in your folders.

2946. Are members generally content to support the amendments that the Department intends to bring forward at Consideration Stage? Do you have any views?

Members indicated assent.

2947. **The Chairperson (Mr Ross)**: I will take it that you are generally content, and we move on to the Attorney General's proposals for legislative provision for rights of audience for lawyers in his office.

2948. The Committee discussed the Attorney General's proposal for legislative provision for rights of audience, and similar requests by the PPS and the Departmental Solicitor's Office (DSO) at its meeting on 25 February. Some members indicated that they had sympathy with the request of the Attorney General on the grounds that it was a modest change that would provide rights of audience for a small, discrete number of lawyers in his office working in a fairly restricted area of law, primarily judicial review, and would lead to a more cost-effective system. There were concerns, however, that it might create a precedent or be widened to include rights of audience for lawyers in other offices, which could diminish the rights of counsel to act independently in the courts, which the Bar Council would have serious objections to.

2949. The Committee agreed to request further information from the Department regarding whether, if the proposal is taken forward, it could be adapted to provide for a review mechanism after a period to assess the impact and whether other organisations such as the PPS and/or DSO should be provided with similar rights and a mechanism to exercise those rights, if considered appropriate.

2950. The Department, in its response dated 9 March, indicated that it is still of the view that the best way to progress this issue is through the Law Society regulations provided for in the Justice (Northern Ireland) Act 2011; it understands that the Law Society expects to issue an impact assessment of the regulations for consultation in the next few weeks. The Department believes that, if the Attorney General's amendment is made, the operation of those arrangements will be best monitored on an administrative basis, with further legislative provision made as necessary. In its view, legislating on a prospective and contingent basis would be an unusual and unnecessarily complicated approach.

2951. I ask members whether they wish to support the proposal by the Attorney General for rights of audience for lawyers in his office. From my point of view, I have some concerns about this. I think that the best way of dealing with it would be to allow the Law Society to come forward with its regulations, although I note that there has been considerable delay, given that it had the power to do so in 2011. I do think, however, that it would be preferable. Again, I will open it up to members. Seán?

2952. **Mr Lynch**: [Inaudible.]

2953. **The Chairperson (Mr Ross)**: OK. Any other views at this stage?

2954. **Mr Douglas**: Chair, just to check, does this create a precedent? That is one of my concerns.

2955. **The Chairperson (Mr Ross)**: We know that the PPS has said that — Christine will keep me right — if this power is granted to the Attorney General's office, it will look for a similar power. Is that right?

2956. **The Committee Clerk**: Yes. The PPS and the Departmental Solicitor's Office indicated that they would wish some of their staff to be accorded rights of audience as well.

2957. **The Chairperson (Mr Ross)**: Any other views?

2958. **Mr A Maginness**: I share your concern, Chair. If it was simply the Attorney General's office, it would probably be acceptable, but once you create this exception, it is very hard not to allow others. I do not know how to regulate this.

2959. **Mr Elliott**: Chair, is there a built-in mechanism to regulate it for certain lawyers? How is that worded? I cannot remember.

2960. **The Chairperson (Mr Ross)**: The piece of work that the Law Society is doing will bring in regulations around who has rights of audience in court, and things like that. As I said, my only concern is that it has taken so long to get this, although the indication seems to be that it will bring forward the proposals in the next few weeks, which would allow this to be brought through together, rather than a piecemeal approach, which I know there have been concerns about before. Again, I have noted that Sinn Féin members are generally supportive; other members are perhaps less favourable. We will return to it tomorrow, and, if necessary, we can take a vote on it. If anyone wants any further information, we will see whether we can get it by tomorrow for you. I think we have aired it quite a bit.

2961. **Mr A Maginness**: You have.

2962. **The Chairperson (Mr Ross)**: I move on to the Attorney General's proposed amendment to the Coroners Act (Northern Ireland) 1959. The Committee initially discussed the Attorney General's proposed amendment to the Act at its meeting on 28 February. I advised members that the Minister of Health would provide further information on the handling of serious adverse incident

reports, and the Committee agreed to give further consideration to the proposed amendment on 4 March.

2963. The Health Minister subsequently wrote on 25 February providing information regarding the look-back exercise on serious adverse incidents and a number of initiatives that the Department of Health is taking forward to strengthen and enhance public assurance and scrutiny of the death certification process. The Committee noted the additional information and discussed the proposed amendment at its meeting on 4 March. Some members indicated that they were inclined to support the proposed amendment, while others indicated that they still had some concerns. The Committee agreed to request advice on building a review mechanism or sunset clause into the amendment and to discuss the issue further at the meeting today.

2964. A further letter has been received today from the Attorney General setting out further information in support of his proposed amendment. The Bill Clerk is here to provide advice and, if members are content, we will move into closed session to receive that advice.

The Committee went into closed session from 1.04 pm until 1.23 pm.

2965. **The Chairperson (Mr Ross)**: We will look, then, as a Committee, at Part 9, which covers supplementary provisions. We will deal with Part 9, including clause 86, first. I ask members for their views. Are we still minded to oppose clause 86 or do we want to bring forward an amendment to tighten its use? I am still of the view that this is a bad habit and that, if we want better legislation from the Department, we should not give them the opportunity to mop up afterwards. It might keep them on their toes; I think that was the phrase you used, Paul.

2966. **Mr Frew**: Absolutely. This is fundamental. You sort of think to yourself: "What has been passed without being scrutinised?" There is no time like the present, so let us put the marker down and see where it takes us. I do not think there will be any negative repercussions. I do not think that is a risk in that regard.

2967. **The Chairperson (Mr Ross)**: OK. I ask for views on clauses 87 to 92. Are members generally content with those? I will take it that no comment means generally content.

Members indicated assent.

2968. **The Chairperson (Mr Ross)**: We now deal with the Attorney General's proposed amendment to the Coroners Act (Northern Ireland) 1959. We are returning to this now that we are in public session. Again, I ask for comments on whether we are minded to support the Attorney General's proposed amendment or whether we wish to amend or oppose it. Paul and Tom made some comments earlier.

2969. **Mr Frew**: Whilst I understand the logic of the Attorney General's proposal, there is fear about a change to the practices in any service, in this case the health service. This is about serious adverse incidents and the usefulness of that, investigating and looking back on issues that do not always result in death. There are certain issues where people's lives and health can be affected without leading to death. This may well hamper things or have an indirect bearing in that it could change practices. At the very least, it could scare practitioners into not reporting or noting down information that could be vital to an inquiry or investigation. If that mindset was to be instilled in the Health Department, there could be serious problems down the line for loved ones and people who have cause to seek investigation and redress. Therefore, while I understand the rationale of this amendment, I am worried about the indirect consequences for the health service.

2970. **The Chairperson (Mr Ross)**: I take comfort from the fact that the Department of Health has indicated that it is looking to improve the accountability mechanism and things like that. There is some comfort there. Are there any other views?

2971. **Mr McCartney**: We are generally supportive but we certainly want to protect people's personal and private materials.

2972. **The Chairperson (Mr Ross)**: We will take a note of the views and we will return to this tomorrow during the formal scrutiny.

2973. We move on then to the amendment proposed by Mr Wells. The Committee discussed the proposed amendment at its meeting on 4 March, and the Committee agreed to include the written and oral evidence received on the amendment proposed by Mr Wells in the Committee Bill report. Some members indicated that they were sympathetic to the proposed amendment, but had not reached a final decision; others expressed their support; and others indicated that they would not support it. Again, we had agreed to return to this issue today. I will open up to members. Do you want to include the evidence that we took in our Bill report, or does the Committee want to take a formal position on it?

2974. **Mr Poots**: A fair bit of work has been done on this to establish a lot of the facts around it. I think it would be useful to take it forward as a Committee Bill, since it is not associated with an individual person or party. That would be to the benefit of the debate, whether it is accepted or not by the House.

2975. **The Chairperson (Mr Ross)**: Are there any other views?

2976. **Mr McCartney**: We will not be lending our names to that. It can be a formal proposal; we have no issue with that.

2977. **The Chairperson (Mr Ross)**: OK. I noted that, and we will return to that tomorrow.

2978. **Mr A Maginness**: Will there be a formal decision on this tomorrow?

2979. **The Chairperson (Mr Ross)**: Yes.

2980. **Mr A Maginness**: We are supportive of the amendment but we will wait until tomorrow.

2981. **The Chairperson (Mr Ross)**: We have division on a few issues, so we can decide all of those tomorrow during the formal clause by clause, and maybe get a bit more time to clarify.

2982. **Mr Frew**: I want to ask about the procedural point that Alban made. We will go through the clause-by-clause scrutiny, proposing and supporting clauses and amendments, but Jim Wells, now that he is a Minister, will not be able to pursue this proposed amendment, so there will have to be a secondary mechanism to decide whether the Committee takes it on. The first logical question is whether members support or oppose the amendment, and the second is whether the Committee proposes to take it forward. The fact that Jim Wells will not be able to take this forward presents the Committee with the opportunity to consider adopting the amendment.

2983. **The Chairperson (Mr Ross)**: There are a few of these, and the Committee will have to take a view on whether to bring them forward. Obviously, Mr Wells is not able to, and the Attorney General is not either. We can discuss that tomorrow and take a formal view on it. Some of these things can be taken forward by individual members if necessary, but we will discuss that in the formal clause by clause tomorrow, if members are happy with that approach.

2984. I move on, then, to new policy amendments relating to sexual offences against children. I remind members that, at its meeting on 14 January, the Committee considered proposals from the Department to bring forward two amendments at Consideration Stage to provide for a new offence of communicating with a child for sexual purposes and an amendment to make an adjustment to the existing offence of meeting a child following sexual grooming. The amendments aim to close what is seen as a gap in the law relating to sexting and to reduce the evidence threshold for the existing offence of meeting a child following sexual grooming. The Committee agreed that it was content with both proposals and subsequently noted the text of the proposed amendments at its meeting on

18 February 2015. The Department has now provided a revised wording of the amendment relating to the enhancement of the existing offence of meeting a child following sexual grooming to correct a typographical error in the original draft amendment. I ask members first to note the revised text of the proposed amendment, and, secondly, to note that the formal Questions will be put on the clauses and schedules of the Bill and proposed amendments that relate to the Bill at the meeting tomorrow.

Members indicated assent.

2985. **The Chairperson (Mr Ross)**: If everyone is happy enough with that, the meeting tomorrow will take place in this room at 2:00 pm, and we will go through the Bill, clause by clause.

11 March 2015

Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Sammy Douglas
Mr Tom Elliott
Mr Paul Frew
Mr Seán Lynch
Mr Alban Maginness
Mr Patsy McGlone
Mr Edwin Poots

2986. **The Chairperson (Mr Ross)**: We will now undertake the formal clause-by-clause consideration of the Justice Bill and the proposed amendments. For ease of reference, the text of the proposed amendments that have been considered by the Committee are included in Committee members' tabled pack. A further letter has been received from the Director of Public Prosecutions on Part 2 of the Bill, which covers committal for trial, and on the Attorney General's proposed legislative provision for rights of audience for staff in his office, as well as further information supporting the inclusion of Public Prosecution Service (PPS) staff in the amendment. The letter was circulated electronically to members yesterday and is included in the tabled pack. The Department has also provided additional information on exemptions to jury service, as was requested at yesterday's meeting. It is also in the tabled pack.

2987. We will proceed through the clauses in and schedules to the Bill in order and put the Questions formally. Where there are amendments proposed, I will put the Question on the amendment first. Where no amendments have been proposed and no issues highlighted, we will seek the agreement of the Committee to group clauses when putting the Question.

2988. We begin with Part 1, which deals with single jurisdiction for County Courts and Magistrates' Courts and covers clauses 1 to 6. At yesterday's meeting, no issues were raised, and the Committee indicated that it was generally content with the clauses and the proposed amendments by the Department to schedules 1 and 6.

2989. Do I have the agreement of the Committee to group clauses 1 to 6 for the purpose of putting the Question?

Members indicated assent.

Question, That the Committee is content with clauses 1 to 6, put and agreed to.

2990. **The Chairperson (Mr Ross)**: Part 2 deals with committal for trial and covers clauses 7 to 16. At yesterday's meeting, no issues were raised, and the Committee indicated that it was generally content with clauses 7 to 16, schedules 2 and 3, and the proposed amendments by the Department to enable the direct transfer of a co-defendant who has been charged with a non-specified offence.

2991. Do I have the agreement of the Committee to group clauses 7 to 12 and clauses 15 and 16 for the purpose of putting the Questions?

Members indicated assent.

Question, That the Committee is content with clauses 7 to 12, put and agreed to.

New Clause

Question proposed:

That the Committee is content with the proposed departmental amendment to introduce a new clause 12A to allow for the direct committal of any co-defendants who are charged with an offence that is not a specified offence so that all defendants can be tried at the same time.

Question put and agreed to.

2992. **The Chairperson (Mr Ross)**: I know that there is great enthusiasm, but can we speak a little bit louder, in aid of clarity?

Question, That the Committee is content with clause 13, put and agreed to.

Clause 14 (Specified offences: application to dismiss)

Question proposed:

That the Committee is content with the proposed departmental amendments to clause 14, which are a consequence of the introduction of new clause 12A.

Question put and agreed to.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Question, That the Committee is content with clauses 15 and 16, put and agreed to.

2993. **The Chairperson (Mr Ross)**: We move on to Part 3, which deals with prosecutorial fines. I remind members that, at the meeting yesterday, the Committee noted additional information provided by the Department of Justice. No issues were raised, and the Committee indicated that it was generally content with clauses 17 to 27.

2994. Do I have the agreement of the Committee to group clauses 17 to 27 for the purpose of putting the Question?

Members indicated assent.

Question, That the Committee is content with clauses 17 to 27, put and agreed to.

2995. **The Chairperson (Mr Ross)**: Keep your voices up, folks.

2996. Part 4 deals with victims and witnesses. At the meeting yesterday, the Committee noted additional information provided by the Department and the revised text of one of the two amendments that it intends to bring forward. No issues were raised, and the Committee indicated that it was generally content with clauses 28 to 35 and the two proposed departmental amendments to enhance victim statements and create information-sharing powers.

2997. Do I have the agreement of the Committee to group clauses 28 to 32 and clauses 34 and 35 for the purpose of putting the Questions?

Members indicated assent.

Question, That the Committee is content with clauses 28 to 32, put and agreed to.

Clause 33 (Persons to be afforded opportunity to make victim statement)

Question proposed:

That the Committee is content with the proposed departmental amendments to clause 33 to allow a victim or a bereaved family member to include, in a victim statement, the impact that a crime has had on other family members.

Question put and agreed to.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Question, That the Committee is content with clauses 34 and 35, put and agreed to.

New Clause

Question proposed:

That the Committee is content with the proposed departmental amendment to introduce a new clause 35A and a new schedule 3A to create information-sharing powers to provide a more effective mechanism through which victims can automatically be provided with timely information about the services available to them in the form of victim support services, witness services at court and access to post-conviction information release schemes.

Question put and agreed to.

2998. **The Chairperson (Mr Ross)**: We move on to Part 5, which deals with criminal records. At yesterday's meeting, the Committee noted additional information provided by the Department of Justice. No issues were raised, and the Committee indicated that it was generally content with clauses 36 to 43, schedule 4 and the five proposed departmental amendments.

2999. Do I have the agreement of the Committee to group clauses 36 to 38 and clauses 41 and 42 for the purpose of putting the Questions?

Members indicated assent.

Question, That the Committee is content with clauses 36 to 38, put and agreed to.

Clause 39 (Enhanced criminal record certificates: additional safeguards)

Question proposed:

That the Committee is content with the proposed departmental amendment to clause 39, which is being made at the suggestion of the Attorney General, to make it clear that the code of practice provided for in the clause must be published.

Question put and agreed to.

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

3000. **The Chairperson (Mr Ross)**: Can we get our voices back again, folks?

New Clause

Question proposed:

That the Committee is content with the proposed departmental amendments to introduce a new clause 39A and a new schedule 3B, at the suggestion of the Attorney General, to create a review mechanism for the scheme to filter certain old and minor convictions and other disposals, such as cautions, from standard and enhanced criminal record certificates, which came into operation in Northern Ireland in April 2014.

Question put and agreed to.

Clause 40 (Up-dating certificates)

Question proposed:

That the Committee is content with the proposed departmental amendment to clause 40 to prevent to prevent potential Data Protection Act breaches by excluding a small number of applicants for enhanced checks for home-based positions from the Update Service, where third-party personal information could be disclosed unintentionally.

Question put and agreed to.

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clauses 41 and 42, put and agreed to.

New Clause

Question proposed:

That the Committee is content with the proposed departmental amendment to introduce a new clause 42A to facilitate the exchange of information between Access NI and the Disclosure and Barring Service for barring purposes.

Question put and agreed to.

New Clause

Question proposed:

That the Committee is content with the proposed departmental amendment to introduce a new clause 42B to give statutory cover for the storage of cautions and other diversionary disposals on the criminal history database.

Question put and agreed to.

Question, That the Committee is content with clause 43, put and agreed to.

3001. **The Chairperson (Mr Ross)**: We move on to Part 6, which deals with live links in criminal proceedings. No issues were raised at yesterday's meeting, and the Committee indicated that it was generally content with clauses 44 to 46 and the text of a proposed amendment by the Department of Justice that the same safeguard should apply as is provided for in clauses 44 and 45, which places a responsibility on the court to adjourn proceedings where it appears to it that the accused is not able to see and hear the court and to be seen and heard by it, and where that cannot be immediately corrected.

3002. Do I have the agreement of the Committee to group clauses 44 and 45 and clauses 47 to 49 for the purpose of putting the Questions?

Members indicated assent.

Question, That the Committee is content with clauses 44 and 45, put and agreed to.

Clause 46 (Live links: proceedings for failure to comply with certain orders or licence conditions)

Question proposed:

That the Committee is content with the proposed departmental amendment to clause 46 to ensure a consistency of approach with respect to safeguarding arrangements provided for in other live-link provisions in the Bill.

Question put and agreed to.

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clauses 47 to 49, put and agreed to.

3003. **The Chairperson (Mr Ross)**: We move on to Part 7, and I remind members to speak up when we are taking decisions. No issues were raised with Part 7 at the meeting yesterday, and the Committee indicated that it was generally content with clauses 50 to 71 and the proposed amendments by the Department to reflect comments and improvements suggested by the Attorney General.

3004. Do I have the agreement of the Committee to group clauses 50 to 64 and clauses 66 and 67 for the purpose of putting the Questions?

Members indicated assent.

Question, That the Committee is content with clauses 50 to 64, put and agreed to.

3005. **The Chairperson (Mr Ross)**: Stick with it, folks. We are nearly there.

Clause 65 (Method of notification and related matters)

Question proposed:

That the Committee is content with the proposed departmental amendments to clause 65 relating to verification of identity and the retention of fingerprints and photographs.

Question put and agreed to.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Question, That the Committee is content with clauses 66 and 67, put and agreed to.

Clause 68 (Supply of information by relevant Northern Ireland departments or Secretary of State)

Question proposed:

That the Committee is content with the proposed departmental amendments to clause 68, which provide a framework restricting the retention of information of information to the duration of the violent offences prevention order.

Question put and agreed to.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

3006. **The Chairperson (Mr Ross)**: Please speak up, folks.

Question, That the Committee is content with clause 69, put and agreed to.

Clause 70 (Power of entry and search of offender's home address)

Question proposed:

That the Committee is content with the proposed departmental amendment to clause 70 in relation to power of search of third-party premises.

Question put and agreed to.

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clause 71, put and agreed to.

3007. **The Chairperson (Mr Ross)**: We move on to Part 8, which deals with miscellaneous provisions. Clauses 72 to 76 deal with jury service. At yesterday's meeting, no particular issues were raised. The Committee indicated that it was generally content with clauses 72 to 76 but further information was requested on who is currently exempt from jury service. Further information on exemptions from jury service, as provided by the Department, is in the tabled pack.

3008. Do I have the agreement of the Committee to group clauses 72 to 76 for the purpose of putting the Question?

Members indicated assent.

Question, That the Committee is content with clauses 72 to 76, put and agreed to.

3009. **The Chairperson (Mr Ross)**: We move on to clause 77 and 78, which deal with early guilty pleas. At yesterday's meeting, a number of members indicated that they had concerns over clause 78 and the duty that it places on solicitors. I presume that members still have those concerns.

3010. The Department has previously provided the text of an amendment to clause 78, following advice from the Attorney General. Therefore, the Question on the amendment will be put before the Question on clause 78.

Question, That the Committee is content with clause 77, put and agreed to.

Clause 78 (Duty of solicitor to advise client about early guilty plea)

Question proposed:

That the Committee is content with the proposed departmental amendment to clause 78 to remove a regulation-making power in subsection (3), which the Attorney General has identified as being of no practical benefit.

Question put and agreed to.

3011. **The Chairperson (Mr Ross)**: Is the Committee content with clause 78, subject to the proposed departmental amendment?

3012. **Mr A Maginness**: No.

3013. **The Chairperson (Mr Ross)**: Would you like us to take a vote, or shall I just note that you are not content?

3014. **Mr A Maginness**: I just wish to express our reservations; it is not an absolute position.

3015. **The Chairperson (Mr Ross)**: We will reflect that in the Committee report.

3016. **The Chairperson (Mr Ross)**: Clauses 79 and 80 deal with avoiding delay in criminal proceedings. I remind members that, at yesterday's meeting, no particular issues were raised. The Committee indicated that it was generally content with clauses 79 and 80 and the proposed amendments by the Department to reflect comments and advice from the Assembly Examiner of Statutory Rules.

Clause 79 (General duty to progress criminal proceedings)

Question proposed:

That the Committee is content with the proposed departmental amendments to clause 79.

Question put and agreed to.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 80 (Case management regulations)

Question proposed:

That the Committee is content with the proposed departmental amendments to clause 80.

Question put and agreed to.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

3017. **The Chairperson (Mr Ross)**: At yesterday's meeting, no particular issues were raised, and the Committee

was generally content with clause 81, which deals with a public prosecutor's summons.

Question, That the Committee is content with clause 81, put and agreed to.

Clause 82 (Defence access to premises)

3018. **The Chairperson (Mr Ross)**: Clause 82 deals with defence access to premises. At yesterday's meeting, no particular issues were raised, and the Committee was generally content with clause 82 and the proposed amendment by the Department, at the suggestion of the Attorney General, to adjust the threshold for an order.

Question proposed:

That the Committee is content with the proposed departmental amendment to clause 82 to adjust the threshold for an order allowing access to property to ensure proportionality and greater clarity in the use of the power.

Question put and agreed to.

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

3019. **The Chairperson (Mr Ross)**: At yesterday's meeting, no particular issues were raised, and the Committee was generally content with clause 83, which deals with powers of court security officers.

Question, That the Committee is content with clause 83, put and agreed to.

3020. **The Chairperson (Mr Ross)**: At yesterday's meeting, no particular issues were raised, and the Committee was generally content with clauses 84 and 85, which deal with youth justice.

Question, That the Committee is content with clause 84, put and agreed to.

Question, That the Committee is content with clause 85, put and agreed to.

3021. **The Chairperson (Mr Ross)**: We move on to new provisions and issues that are not currently included in the Bill. I will put the Question on a range of new provisions from the Department that the Committee has considered that cover issues that are not currently in the Bill before putting the Questions on the schedules and Part 9, as there are some consequential amendments to the schedules and Part 9.

3022. First, on sexual offences against children, I remind members that, at the meeting on 14 January 2015, the Committee considered proposals by the Department to bring forward two amendments at Consideration Stage to provide for a new offence of communicating with a child for sexual purposes and an amendment to make an adjustment to the existing offence of meeting a child following sexual grooming. The proposed amendments aim to close what is seen as a gap in the law relating to sexting and to reduce the evidence threshold for the existing offence of meeting a child following sexual grooming.

3023. The Committee agreed that it was content with both proposals and subsequently noted the text of the proposed amendments at the meeting on 18 February and the revised wording, to correct a typographical error at the meeting yesterday, of the amendment relating to the enhancement of the existing offence of meeting a child following sexual grooming.

Question proposed:

That the Committee is content with the proposed departmental amendment to introduce a new clause 78A to reduce the evidence threshold for the existing offence of meeting a child following sexual grooming.

Question put and agreed to.

Question proposed:

That the Committee is content with the proposed departmental amendment to introduce a new clause 78B to provide for a new offence of communicating with a child for sexual purposes.

Question put and agreed to.

3024. **The Chairperson (Mr Ross)**: I move on to the offence of causing or allowing serious physical harm to a child or vulnerable adult. At the meeting on 21 January 2015, the Committee considered a proposal by the Department to create a new offence of causing or allowing serious physical harm to a child or vulnerable adult. The new offence will close a loophole that prevents the PPS from being able to prosecute in circumstances in which injuries must have been sustained at the hands of a limited number of members of a household but there is insufficient evidence to point to the particular person responsible.

3025. The Committee agreed that it was content with the proposal and subsequently noted the text of a proposed amendment at the meeting on 18 February.

Question proposed:

That the Committee is content with the proposed departmental amendment to introduce a new clause 83A and a new schedule 4A to create a new offence of causing or allowing serious physical harm to a child or vulnerable adult.

Question put and agreed to.

3026. **The Chairperson (Mr Ross)**: I move on to Lands Tribunal salaries. At the meeting on 18 February, the Committee considered information and the text of a new provision developed by the Department, at the request of the Committee, to change the affirmative resolution procedure for the annual determination of Lands Tribunal salaries. No particular issues were raised, and the Committee was content with the proposed amendment.

Question proposed:

That the Committee is content with the proposed departmental amendment to introduce a new clause 85A to change the affirmative resolution procedure for the annual determination of Lands Tribunal salaries.

Question put and agreed to.

3027. **The Chairperson (Mr Ross)**: I move on to new policy amendments relating to the Police and Criminal Evidence (Northern Ireland) Order 1989 — PACE — on fingerprint and DNA retention. I remind members that the Department wrote to the Committee on 11 February 2015 advising that it intended to bring forward a number of amendments at Consideration Stage to the biometric provisions in the 1989 order. Departmental officials subsequently attended the meeting on 18 February to outline the purpose of the amendments and to answer members' questions.

3028. Four of the five amendments are to address shortcomings identified through early experience of operating the corresponding provisions in England and Wales, while the other amendment will add a new article to PACE to reflect the introduction in Northern Ireland of prosecutorial fines by Part 3 of the Justice Bill. At yesterday's meeting, the Committee noted the text of the proposed amendments. No particular issues were raised, and the Committee indicated that it was generally content to support the amendments.

Question proposed:

That the Committee is content with the proposed departmental amendment to introduce a new clause 76A to allow police to retake fingerprints and a DNA sample in particular circumstances.

Question put and agreed to.

Question proposed:

That the Committee is content with the proposed departmental amendment to introduce a new clause 76B to correct a gap identified in new article 63G of PACE to provide that a conviction in Great Britain for a recordable offence will be reckonable for the purposes of determining the period of retention of material taken in Northern Ireland.

Question put and agreed to.

Question proposed:

That the Committee is content with the proposed departmental amendment to

introduce a new clause 76C to provide for the retention of fingerprints or DNA profiles relating to persons given a prosecutorial fine, as introduced in the Bill.

Question put and agreed to.

Question proposed:

That the Committee is content with the proposed departmental amendment to introduce a new clause 76D to provide for the retention of DNA profiles or fingerprints on the basis of a conviction, irrespective of whether that conviction is linked to the offence for which the material was first obtained.

Question put and agreed to.

Question proposed:

That the Committee is content with the proposed departmental amendment to introduce a new clause 76E to disapply the normal destruction rules for samples in cases in which the sample is becoming, or may become, disclosable under the Criminal Procedure and Investigations Act 1996.

Question put and agreed to.

3029. **The Chairperson (Mr Ross)**: We now move on to the schedules to the Bill. I will put the Questions on the schedules before Part 9, as Part 9 contains the commencement provision that relates to the schedules.

Schedule 1 (Amendments: single jurisdiction)

3030. **The Chairperson (Mr Ross)**: I remind members that the Committee indicated that it was generally content with the consequential amendments proposed by the Department of Justice for inclusion in schedule 1, which are primarily to remove references to "petty sessions district" and "county court division" in existing legislation.

Question proposed:

That the Committee is content with the proposed departmental amendments to schedule 1.

Question put and agreed to.

Question, That the Committee is content with the schedule, subject to the proposed amendments, put and agreed to.

3031. **The Chairperson (Mr Ross)**: We move on to schedule 2, which is titled "Amendments: abolition of preliminary investigations and mixed committals". No issues were raised, and the Committee indicated that it was generally content with schedule 2.

Question, That the Committee is content with schedule 2, put and agreed to.

Schedule 3 (Amendments: direct committal for trial)

3032. **The Chairperson (Mr Ross)**: The Committee indicated that it was generally content with the consequential amendments proposed by the Department of Justice for inclusion in schedule 3 as a result of proposed new clause 12A.

Question proposed:

That the Committee is content with the proposed departmental amendments to schedule 3.

Question put and agreed to.

Question, That the Committee is content with the schedule, subject to the proposed amendments, put and agreed to.

3033. **The Chairperson (Mr Ross)**: We move on to schedule 4, which is titled "Amendments: criminal records". No issues were raised.

Question, That the Committee is content with schedule 4, put and agreed to.

Schedule 5 (Transitional provisions and savings)

3034. **The Chairperson (Mr Ross)**: No issues were raised, and the Committee indicated that it was generally content with the consequential amendments proposed by the Department as a result of proposed new clauses 76D, 78A and 83A, and new schedule 4A.

Question proposed:

That the Committee is content with the proposed departmental amendments to schedule 5.

Question put and agreed to.

Question, That the Committee is content with the schedule, subject to the proposed amendments, put and agreed to.

Schedule 6 (Repeals)

3035. **The Chairperson (Mr Ross)**: I remind members that the Committee indicated that it was generally content with the amendments proposed by the Department, which are consequential to the proposed amendments to schedule 1.

Question proposed:

That the Committee is content with the proposed departmental amendments to schedule 6.

Question put and agreed to.

Question, That the Committee is content with the schedule, subject to the proposed amendments, put and agreed to.

3036. **The Chairperson (Mr Ross)**: We move to Part 9, which deals with supplementary provisions. At yesterday's meeting, advice was provided on clause 86 — members will remember the discussion on that — its purpose and whether it was necessary or could be amended to restrict the power provided to the Department. A number of members indicated that they were of the view that the power provided by clause 86 was unnecessary and should therefore be opposed. No issues were raised with clauses 87 to 92 and the consequential amendments proposed by the Department to clause 91.

3037. Are members still of the view that we should oppose clause 86?

3038. **Mr McGlone**: I am sorry that I was not here yesterday, but maybe we can get some sort of indication as to the rationale for opposing it, please?

3039. **The Chairperson (Mr Ross)**: Do you mean the rationale for clause 86?

3040. **Mr McGlone**: Did I not say for opposing it?

3041. **The Chairperson (Mr Ross)**: Are you asking what the rationale is for opposing it?

3042. **Mr McGlone**: Yes.

3043. **The Chairperson (Mr Ross)**: Clause 86 is that sort of very broad clause stuck in at the end of Bills that pretty much allows the Department to do whatever it likes. We have discussed it for a few weeks. I do not know whether you were present.

3044. **Mr McGlone**: I was, yes. OK, Chair, thank you.

3045. **The Chairperson (Mr Ross)**: I seek the agreement of the Committee to group clauses 87 to 90 for the purposes of putting the Question.

Members indicated assent.

3046. **The Chairperson (Mr Ross)**: The first Question that I will put is on clause 86. Is the Committee content with clause 86?

3047. **Mr Frew**: Sorry, is clause 86 the Henry VIII clause?

3048. **The Chairperson (Mr Ross)**: Yes, when I put the Question, members who want to remove it should say that they are not content.

3049. Is the Committee content with clause 86?

3050. **Some Members**: Not content.

3051. **The Chairperson (Mr Ross)**: Is the general view that members are not content?

3052. **Some Members**: Not content.

3053. **The Chairperson (Mr Ross)**: Would you like a vote?

3054. **Mr Dickson**: No doubt the Assembly will vote on the matter — if it is still in existence. [Laughter.]

3055. **The Chairperson (Mr Ross)**: I noted Patsy's earlier optimism about welfare reform.

3056. **Mr Elliott**: It is up to the Minister to make the point in the House if he wants to include the clause.

3057. **The Chairperson (Mr Ross)**: It is a useful debate to have.

Question, That the Committee is content with clauses 87 to 90, put and agreed to.

Clause 91 (Commencement)

Question proposed:

That the Committee is content with the proposed departmental consequential amendments to clause 91 as a result of the introduction of proposed new clauses 35A, 78A and 78B, and new schedule 3A.

Question put and agreed to.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Question, That the Committee is content with clause 92, put and agreed to.

3058. **The Chairperson (Mr Ross)**: We come to the long title of the Bill, which is fairly straightforward.

Question, That the Committee is content with the long title, put and agreed to.

3059. **The Chairperson (Mr Ross)**: There will now be an opportunity to discuss the proposed amendment by the Attorney General and the amendment that we are referring to as the "Jim Wells amendment".

3060. First, we will discuss the Attorney General's proposal for rights of audience for lawyers working in his office. The Committee discussed the Attorney General's proposal for legislative provision for rights of audience for the lawyers working in his office and similar requests by the PPS and the Departmental Solicitor's Office (DSO) at the meeting on 25 February 2015. Those were discussed again at yesterday's meeting, when Members noted further information provided by the Department on the provision of a review mechanism, if the proposal was to be adopted, to enable the impact to be assessed and provision to be enacted for other organisations, such as the PPS or the DSO, if considered appropriate at that time.

3061. The Director of Public Prosecutions has written again asking that, in the event of the Attorney General's request for rights of audience for lawyers in his office being accepted, the PPS also be included in the limited way asked for: three lawyers holding the position of higher court advocate. The Director of Public Prosecutions is of the view that it would be odd for the only public legal office where court advocacy is a core function to be excluded from any statutory change to the normal regulations on rights of audience.

3062. At yesterday's meeting, some members indicated that they supported the request by the Attorney General on the grounds that it was a modest change and would provide rights of audience for a small, discrete number of lawyers in his office working in a fairly restrictive area of law, primarily judicial review, which would lead to a more cost-effective system. Other members had some concerns regarding whether it would create a precedent or a situation where it would be difficult to refuse requests from other organisations, as has been the case. They felt that the best way forward was through the mechanism provided in the Justice Act (Northern Ireland) 2011, although the considerable delay in the production of the Law Society regulations was noted.

3063. The Committee agreed to return to the issue today. Do members wish to support the proposal by the Attorney General for legislative provision to be made to provide rights of audience for lawyers in his office? Do members wish to highlight any comments for inclusion in the Committee report? Any views?

3064. **Mr A Maginness**: Could we say, "Maybe"? [Laughter.]

3065. **The Chairperson (Mr Ross)**: To many of the questions we can answer "Maybe": this is not one of them.

3066. **Mr Dickson**: There is a fence about somewhere.

3067. **The Chairperson (Mr Ross)**: Do members have views?

3068. **Mr A Maginness**: I reiterate what I said yesterday: if the provision was simply confined to the Attorney General's office, it would be different. However, there are implications for other organisations in government and the public service that would want to avail of a similar proposition. Therefore, the amendment has a wider effect. That is the problem. If it was confined to the Attorney General's office, the answer would be yes. That is why I said, "Maybe".

3069. **Mr Dickson**: On the basis of the representations that we have received, this is potentially a barn door to be opened, which is why I suggest that the answer be no.

3070. **The Chairperson (Mr Ross)**: We need a decision. I propose a show of hands. We have discussed it on a number of occasions.

3071. **Mr McCartney**: Is there a way of tabling two proposals? There may be people who are against the proposal in total, but there may be some who are in favour of the power going to the Attorney General's office and others who are in favour of the power for the PPS. Going back to the last clause on which we were having a debate on the Floor for, it might be hard for the Committee to come up with an agreed amendment.

3072. **The Chairperson (Mr Ross)**: The Committee will have to make a decision on whether that is what we want to do. If the Committee decides that that is what we want to do —

3073. **Mr A Maginness**: If the Committee agrees, the clause goes forward. You can still revisit it on the Floor.

3074. **The Committee Clerk**: If there are a number of options, the Committee has to decide the option it wants to go with, because that is what the Committee would table as its amendment. There is nothing to prevent any other Member from amending that amendment once it was tabled in the Bill Office or tabling a new amendment that could encompass more than the Attorney General's office. If the Committee was to go with the option of supporting the Attorney General's proposal only, the amendment would simply provide for that. However, there would be nothing to prevent another Member from submitting a different amendment to widen things or amend the Committee's amendment.

3075. The Committee would not be able to put in options. The Committee needs to reach one position, and it is then open for other people to either amend that position or propose an alternative position by way of other amendments.

3076. **Mr Elliott**: I have a question that is relevant to the other amendment from the Attorney General. If this amendment is not accepted today, I assume that a member can bring forward whatever amendment they so wish to either add or take away from it. Is that correct?

3077. **The Committee Clerk**: Yes. This amendment is not in the Bill; there is no amendment in this one. There is a draft amendment to the Coroner's Act from the Attorney General, but there is no amendment provided on this provision. We would draft one if that is what the Committee wanted.

3078. The Committee report will reflect your discussion on the issue and any views submitted to the Committee on it. That will be available to all Members prior to the debate at Consideration Stage. Therefore if the Committee decides today that it does not wish to support the proposal from the Attorney General, the report will simply reflect the evidence that we have received, the discussions that have taken place, and the conclusion that the Committee has reached. However, that does not prevent any other Member from tabling such an amendment if they so wish, having read the information.

3079. **Mr Frew**: I reiterate that we can only assess what is in front of us, which is the right of audience for the Attorney

General's staff. As that looks favourable, we see others coming in, which has a bearing on our thinking. I am not content to agree to this amendment because of the potential for all and sundry to come in. My issue is as much a principle as anything: if you allow one, what reason have you deny to others? That is where I am coming from.

3080. **Mr A Maginness**: Maybe the best way is to reject the amendment at this stage and allow any party that wants to table an amendment on the Floor of the Assembly to do so. That might be the best way.

3081. **The Chairperson (Mr Ross)**: Are members content with that approach?

3082. **Mr McCartney**: We are in favour of it going forward, but you do not want to create a vote. It could be recorded that we did not reach consensus and that is why there is no Committee amendment. There might be reluctance on the part of the Attorney General, the PPS or the DSO to ask an individual party to table an amendment. They might come to a couple of parties and come to an agreement, which is fine, but you can understand the reluctance of one party to support an amendment in case it looked political.

3083. **The Chairperson (Mr Ross)**: That is a fair point. So, the Committee notes that we have no agreement and therefore are not going to support the amendment.

Members indicated assent.

3084. **The Chairperson (Mr Ross)**: Moving on to the Attorney General's proposed amendment to the Coroners Act. The Committee discussed the Attorney General's proposed amendment to the Coroners Act at the meeting on 4 March and considered further information provided by the Health Minister regarding the look-back exercise on serious adverse incidents and a number of initiatives the Department of Health, Social Services and Public Safety is taking forward to strengthen and enhance public assurance and scrutiny of the death certification process. Some members indicated that they were inclined to support the proposed amendment, while others indicated they still had concerns. The Committee agreed to request advice on building a review mechanism or sunset clause into the amendment. The Bill Clerk attended yesterday's meeting to discuss the matter and agreed to consider several issues and to provide further advice today. If members are in agreement, we will move into closed session to receive that advice. We will then go back into public session to make our decision.

Committee suspended.

On resuming —

3085. **The Chairperson (Mr Ross)**: OK, members. I will seek views from members on whether they wish to support the proposed amendment by the Attorney General to the Coroners Act either as drafted or with amendments. The view previously was that some were inclined to support it and some were not. That is still the view.

3086. **Mr McCartney**: Can we table a proposal to support it?

3087. **Mr Elliott**: I want to put on record that I am probably inclined to support it to let it go, but it is subject to us as a party making more amendments to it. I would like it to go forward, subject to the amendment that has come forward today if that is reasonable.

3088. **The Chairperson (Mr Ross)**: Do members support the proposal as amended?

Question put.

The Committee divided: Ayes 5; Noes 5.

AYES

Mr Elliott, Mr Lynch, Mr McCartney, Mr McGlone, Mr A Maginness.

NOES

Mr Dickson, Mr Douglas, Mr Frew, Mr Poots, Mr Ross.

Question accordingly negatived.

3089. **The Chairperson (Mr Ross)**: We will put it into the report that there was a difference

of view on it, and it is open to other parties if they wish to bring it forward.

3090. We move on to the proposed amendment by Mr Jim Wells. I remind members that the Committee discussed the proposed amendment by Mr Wells at the meeting on 4 March and agreed to include the written and oral evidence received on it in the Committee Bill report. Some members indicated that they viewed the proposed amendment sympathetically but had not reached a final decision on it; others expressed support for the proposed amendment, whilst others indicated that they would not support it. Can I get members' views? Do we want to note in the report that there were different views?

3091. **Mr Poots**: We are in an awkward situation, in that Mr Wells is no longer on the Committee. However, the Committee took the amendment on and had a consultation on it, to which some 20,000 people responded, in one way or another. A very similar amendment came before the House previously at, I think, Further Consideration Stage. At that time, a petition of concern was lodged against it by Sinn Féin and some others. As I recall, the argument at that stage was that there had been no public consultation and, therefore, it was not appropriate to bring it forward in that way. I think that that argument has now pretty much been dealt with, in that you have had a consultation and people will find another reason to object at this point.

3092. It does not make any significant difference to abortion laws, other than that it reduces the sentence from life imprisonment to a period of not more than 10 years, so it is softer than what currently exists in law. The only aspect that makes a significant change is that it would be carried out exclusively in public health services as opposed to private clinics. I think that members across the way would be supportive of maintaining public services in a public place as opposed to having a private company carrying out services. I hope that the Committee can move forward in its entirety and support the amendment. Given the Committee's role, it is probably the best channel to deal with it.

3093. **The Chairperson (Mr Ross)**: I was not on the Committee at the time, so I want to clarify the point and make sure of it. I do not think that the Committee brought it forward with a mind to it being Committee amendment but because of the criticism that there had been no consultation. Is that correct?

3094. **Mr Poots**: Jim has moved on and is not there to take it forward, so it will be left to another member.

3095. **The Chairperson (Mr Ross)**: I appreciate the point.

3096. **Mr McCartney**: For the record, when Jim tabled it he used the same argument and one of the points that we made was about the lack of consultation. However, other points were made in the debate; it was not just a single-plank argument. When Jim tabled it recently, we laid out why we would be opposed to it, so that is why I would prefer a vote. I have no issue with people voting and it being carried by whatever the vote is; however, we would certainly oppose it going forward in our name as a Committee amendment.

3097. **The Chairperson (Mr Ross)**: There is a difference of views. If Mr Poots wants to put it to the —

3098. **Mr Douglas**: I want to ask about the procedure. Edwin mentioned that Jim Wells put it forward, but he is not here any more. Is that a problem for us?

3099. **The Chairperson (Mr Ross)**: The Committee could adopt it as a Committee amendment or individual members from any party could table it as an individual amendment.

3100. **Mr Lynch**: If the Committee takes it on, will there be a simple vote on it?

3101. **The Chairperson (Mr Ross)**: The Committee will decide whether they want to take it on as a Committee. If there is a vote on it and it is tabled as a Committee amendment, it will be reflected that there was not agreement. If I am speaking in my capacity as

Chairperson, I will reflect the fact that there was no agreement on it, and it will be up to individual members to vote on it in the Assembly.

3102. **Mr Frew**: Chair, if I could come in on the procedure. It is very similar to the amendments from the Attorney General that we have just debated. If that vote had been 4-5 in favour of the amendment, it would still be a Committee agreement, albeit not unanimous. I would prefer the Committee to take it forward, but I am also relaxed that everybody will not agree with that. That can be relayed and reflected in the Chamber. I am happy enough with that.

3103. **Mr Elliott**: In fairness, it is slightly different from the amendments from the Attorney General. If Mr Wells cannot take it forward, I am sure that one of his colleagues will. I would personally be supportive of the amendment. I do not want to reflect the party view, because we have a free vote on the issue.

3104. I would prefer if it was taken forward by an individual member, but I am quite happy if the Committee feels that it wants to vote on it and take it forward as a Committee amendment. I am easy either way. My preference would have been for the Committee to air its views — we have had our say on it throughout the process — but that a member would introduce it on the Floor. That person can relay the representation that was made in the consultation responses.

3105. **The Chairperson (Mr Ross)**: I am in the hands of the Committee. Edwin, do you want to see whether the Committee will take it on, or are you happy —

3106. **Mr Poots**: Test it. If the Committee does not want it, that is fine. A vote will also reflect the fact that some members were unhappy.

3107. **The Chairperson (Mr Ross)**: Do you want to make a proposal?

3108. **Mr Poots**: Yes, to that effect.

3109. **The Chairperson (Mr Ross)**: The proposal is that we take the amendment on as a Committee.

Question put.

The Committee divided: Ayes 7; Noes 3.

AYES

Mr Douglas, Mr Elliott, Mr Frew, Mr McGlone, Mr A Maginness, Mr Poots, Mr Ross.

NOES

Mr Dickson, Mr Lynch, Mr McCartney.

Question accordingly agreed to.

3110. **The Chairperson (Mr Ross)**: OK. Thank you very much for your cooperation. That ends the Committee's consideration of the Justice Bill and the proposed amendments. Thank you for getting through it relatively quickly.

TSO
information & publishing solutions

Published by Authority of the Northern Ireland Assembly,
Belfast: The Stationery Office

and available from:

Online
www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail
TSO
PO Box 29, Norwich, NR3 1GN
Telephone orders/General enquiries: 0870 600 5522
Fax orders: 0870 600 5533
E-mail: customer.services@tso.co.uk
Textphone 0870 240 3701

TSO@Blackwell and other Accredited Agents

Printed in Northern Ireland by The Stationery Office Limited