

**Assembly and Executive Review Committee**

# **Second Report on the Arrangements for the Devolution of Policing and Justice Matters Volume Two**

**Together with the Minutes of Proceedings of the Committee Relating  
to the Report, the Minutes of Evidence and Other Relevant Documents**

**Ordered by the Assembly and Executive Review Committee to be printed 25 February 2010  
Report: NIA 42/09/10R (Assembly and Executive Review Committee)**

**UNDER EMBARGO  
UNTIL 9 MARCH 2010**



# Powers and Membership

## Powers

The Assembly and Executive Review Committee is a Standing Committee established in accordance with section 29A and 29B of the Northern Ireland Act 1998 and Standing Order 59 which provide for the Committee to:

- Consider the operation of Sections 16A to 16C of the Northern Ireland Act 1998 and, in particular, whether to recommend that the Secretary of State should make an order amending that Act and any other enactment so far as may be necessary to ensure that they have effect, as from the date of the election of the 2011 Assembly, as if the executive selection amendments had not been made;
- Make a report to the Secretary of State, the Assembly, and the Executive Committee, no later than 1 May 2015, on the operation of parts III and IV of the Northern Ireland Act 1998; and
- Consider such other matters relating to the functioning of the Assembly or the Executive as may be referred to it by the Assembly.

## Membership

The Committee has eleven members including a Chairperson and Deputy Chairperson with a quorum of five. The membership of the Committee is as follows:

Mr Jimmy Spratt (Chairperson) \*  
Mr Raymond McCartney (Deputy Chairperson)

Mr Alex Attwood	Mr Nigel Dodds *****
Mr Simon Hamilton ***	Mr Danny Kennedy
Mr Alex Maskey **	Mr Alan McFarland
Mr John O'Dowd	Mr Declan O'Loan *****
Mr Ian Paisley Jnr ***	

\* Mr Jeffrey Donaldson resigned from the Committee with effect from Tuesday, 26 February 2008 and was replaced by Mr Jimmy Spratt on 4 March 2008.

\*\* With effect from 20 May 2008, Mr Alex Maskey replaced Ms Caral Ni Chuilin.

\*\*\* With effect from 15 September 2008, Mr Simon Hamilton replaced Mr Ian McCrea and Mr Ian Paisley Jnr replaced Mr George Robinson.

\*\*\*\* With effect from 15 September 2009, Mr Nigel Dodds replaced Mr Nelson McCausland.

\*\*\*\*\* With effect from 26 January 2010, Mr Declan O'Loan replaced Mrs Carmel Hanna.

### Declaration of Interests

In any proceedings of the Committee when devolution of policing and justice matters were being discussed, Members declared the following interests:

- Mr Jimmy Spratt, Member of the Policing Board for Northern Ireland
- Mr Alex Attwood, Member of the Policing Board for Northern Ireland
- Mr Alex Maskey, Member of the Policing Board for Northern Ireland
- Mr Nelson McCausland, Belfast District Policing Partnership
- Mr Ian McCrea, Cookstown District Policing Partnership

- Mr Declan O’Loan, Ballymena District Policing Partnership
- Mr Ian Paisley Junior, Member of the Policing Board for Northern Ireland

**Observer Status**

On 27 January 2009, the Committee agreed to re-extend observer status to those political parties represented in the Assembly, but not represented on the Committee, when the devolution of policing and justice matters were being discussed.

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## List of Abbreviations

AG	Attorney General
AME	Annually Managed Expenditure
CICAPNI	Criminal Injuries Compensation Appeals Panel Northern Ireland
CJINI	Criminal Justice Inspection Northern Ireland
CSR	Comprehensive Spending Review
DEL	Departmental Expenditure Limits
DFP	Department for Finance and Personnel
DPP	District Policing Partnership
ERINI	Economic Research Institute for Northern Ireland
FMDFM	First Minister and deputy First Minister
FSNI	Forensic Science Northern Ireland
HMT	Her Majesty's Treasury
NICtS	Northern Ireland Court Service
NIJAC	Northern Ireland Judicial Appointments Commission
NIJAO	Northern Ireland Judicial Appointments Ombudsman
NILSC	Northern Ireland Legal Services Commission
NIO	Northern Ireland Office
NIPB	Northern Ireland Policing Board
NIPF	Northern Ireland Police Fund
NIPS	Northern Ireland Prison Service
OFMDFM	Office of the First Minister and deputy First Minister
PBNI	Probation Board Northern Ireland
PPS	Public Prosecution Service
PRRT	Police Rehabilitation and Retraining Trust
PSNI	Police Service Northern Ireland
RUCGC	Royal Ulster Constabulary George Cross Foundation
SoS	Secretary of State
SOCA	Serious Organised Crime Agency
YJA	Youth Justice Agency







Northern Ireland  
Assembly

Appendix 10

# Minutes of Evidence



## 27 January 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mrs Carmel Hanna  
 Mr Alex Maskey  
 Mr Nelson McCausland  
 Mr Alan McFarland  
 Mr John O'Dowd  
 Mr Ian Paisley Jnr

### Witnesses

Mr Victor Hewitt *Economic Research  
 Institute of Northern Ireland*

1. **The Chairperson (Mr Spratt):** As is customary, I invite members to declare any interests. I declare that I am a member of the Northern Ireland Policing Board.
2. **Mr McCausland:** I am a member of the Belfast District Policing Partnership.
3. **Mr Paisley Jnr:** I am a member of the Policing Board.
4. **Mr A Maskey:** I am a member of the Policing Board.
5. **The Chairperson:** There are no members from any other parties present. I invite Victor Hewitt to join us. You are very welcome, and we are very glad to have you on board.
6. There is no doubt that a lot of people on the Committee are worried about various budgetary shortfalls. Some of that has been in the public domain. The Committee has agreed that it will visit some of those areas, because we have to be satisfied that we have the full picture before us. We have also indicated that we will continue with the complementary process, despite what the Northern Ireland Office (NIO) has said. As we get information back, we intend to pursue that path as a

Committee. We also intend to call some of the organisations at various points as we get that information.

7. I know that Mr Hewitt has already been briefed and will bring the Committee up to speed on where we are, and take some questions after that.
8. **Mr Victor Hewitt (Economic Research Institute of Northern Ireland):** Thank you, Chairman. My task is to assist the Committee as much as possible, in order to help you to understand what financial position you are liable to inherit when these matters are brought into the Northern Ireland public expenditure block. In the past, some elements of the policing and justice system have been within that block, but the proposals at the moment are to include further elements, such as the Court Service, which was never part of it before. In some respects, you are entering unchartered territory in doing that.
9. My experience of this, going back to the 1990s, is that matters such as security and law and order have a way of working themselves up the priority list once they are in place. Since the block is fixed overall, you will find that those matters tend to squeeze out other things.
10. I have been looking at the overall figure work for the NIO. Typically, the overall budget had been rising until the last spending review. The future projections from that are on a downward track. At the time of the negotiations a year or so ago, I mentioned to the parties that they must not forget about the comprehensive spending review out-turn for the NIO, because that was something that would be coming down the track. The temptation in the Treasury is always to put pressure on.
11. A range of issues has been identified. For example, the NIO faces a 5% efficiency cut, as opposed to the 3% efficiency cut in the Northern Ireland

- Civil Service. That will impact on us in two ways. First, it will mean a general reduction in the baseline of the block as a whole. Secondly, you will find that there will be less money in the organisations when they are taken over than there appears to be at the moment. Land sales have more or less dried up, so the financing of the capital programmes is under some pressure. If these bodies are brought in, they will be made part of the overall civil service reform programme. I can see no provision within any of the NIO bodies for incorporation into the reform programme. There are issues such as Account NI and so on.
12. There is a growing bill for legal claims on the police side. We have seen some quantification of that in the last few days. It may have been somewhat exaggerated, but it is a very substantial amount of money. The legal-aid budget itself is under considerable pressure. There is no provision for additional payouts for victims at the moment. Prison costs here are running well ahead of the equivalent in GB. Those are just some of the issues which will bring their own pressures with them.
13. Our task at the moment is to go through such figure work as we have available. The various bodies have been written to requesting further information. When we get that, we will trawl through it to see how it stacks up. I have had some difficulty in reconciling the figures that we already have. There seem to be some substantial changes between the figures that we were given by the Secretary of State some months ago and the updated figures. There are quite large changes in the underlying budgets. None of them seem to fit against the departmental reports either. That may be simply the result of internal monitoring exercises, moving money around, but we need to get to the bottom of that.
14. The other point that you will need to bear in mind is how you are going to fund policing and justice in the future. The Northern Ireland block is effectively tied to expenditure in England through the Barnett formula. Therefore, when a spending review takes place, the standard formula is that we get a share of comparable spending in the rest of the UK. If, for example, health spending rises, we get a share of that extra spending.
15. Comparability is usually around 100% — most of the things done in the UK are also done here. The proportion, based on population share, is about 3%. Law and order expenditure will be no different. There will be law and order elements in the spend in England, of which Northern Ireland will get a share. However, any extraordinary elements in our block that do not have counterparts in the rest of the UK will create a pressure on the block as a whole. A classic example of that is the water service; there is no comparable spend in England.
16. Those are some of the preliminary issues that the institute has identified. We are going through the figures and have, on occasion, been less than happy with the arithmetic that has emerged. I saw a freedom of information request submitted to the PSNI about overtime. The cost was broken down into civilian and police overtime as percentages of the total bill, and the total had been calculated by adding the two percentages together. That is only correct if the same overall total is being used. Therefore, an answer of 16% was given, when the true answer was 10%. Little things like that worry me.
17. **Mr Paisley Jnr:** Is that called cooking the books?
18. **Mr Hewitt:** In fact, that is shooting oneself in the foot, by stating that more than the actual amount of overtime is being worked.
19. **The Chairperson:** Thank you. I know that it is early days and that there is a lot of work ahead of the Committee. Members have already identified many of the issues that you have raised.
20. **Mr Paisley Jnr:** You posed the question of future funding, which is a matter that will exercise the Committee. Have you

- identified any models or frameworks for funding, or is it simply a Barnett exercise?
21. **Mr Hewitt:** It is very much the latter. The Treasury is very much wedded to the Barnett formula — although it may become unwedded, given the present financial crisis. The standard procedure is that once a baseline is established, it is adjusted through the various components of the Barnett formula. There are actually a large number of subprogrammes that aggregate up into the overall departmental allocation. If that is to be the case, it is important that the baseline starts from the right position. If you start with a deficit you will continue to have a deficit.
22. **Mr Paisley Jnr:** You have obviously started work on identifying that baseline, but, if the figures that you have at the moment do not add up, is it possible to get even a ballpark figure of where the baseline is?
23. **Mr Hewitt:** The figures add up in that they provide totals, but reconciling those totals to other published information is not particularly easy at present. As I said, we are at only the beginning of a process that will be studied in considerably greater detail. I have not found much information about some of the gaps that have been mentioned, and the computation of that is quite important.
24. **Mr Paisley Jnr:** I imagine that finding projections for expenditure by the Police Service is slightly easier because of the voluminous publications on policing compared with other Departments. Have you delved into that yet?
25. **Mr Hewitt:** Yes, we have been collecting the annual reports of the relevant bodies in order to get a handle on their spending. However, the general principle that applies in these matters is that about 80% of the actual spend is generated by around 20% of the bodies. In other words, there are large spending bodies that must be looked at, and smaller ones that, given the time and resources, can be looked at. As far as
- the finances are concerned, the budget is driven by the really big bodies such as the PSNI and the Prison Service.
26. **Mr Paisley Jnr:** Have you started to consider legal aid? I think that that is where the big black hole will be.
27. **Mr Hewitt:** I have seen some very large figures that I have been unable to verify. It is well known that the UK system of legal aid is generous, and Northern Ireland tends to be top of that list. At the moment, I feel that the legal aid budget is in substantial deficit.
28. **Mr A Maskey:** I want to caution myself — and, at some point, the Committee — as we progress through this exercise. I am conscious that we do not want to end up with a series of reports and figures and budget projections from various agencies that are trying to put themselves in a negotiation position. We must determine the real need. If the Committee is to play a significant role in the process during the time ahead, we need to know what is really needed rather than what might be worthwhile or a good idea [*Inaudible due to technical difficulties.*]. How can we ensure that we do not end up as someone else's advocate by default?
29. **Mr Hewitt:** You are really talking about what are technically called needs assessment exercises, which are difficult to do. The basic idea is to take some benchmark — usually expenditure in England — and look at the objective factors that drive that expenditure, such as population figures, the distribution of the population among various age groups, and other factors that are not easily changed by human intervention. Then you look at Northern Ireland's objective factors relative to those in England to determine how far away from that benchmark we are. That will take you a certain distance, but there will always be special factors. Given Northern Ireland's historical background, the special law-and-order factors will be substantial. It is doable, but it is not an exact science — I wish it was.

30. **Mr McFarland:** Along with others here, I was a member of the Policing Board for its first five years, and I sat on the finance committee. It is clear to everyone that there are a lot of legal bills, claims bills and legal aid. An enormous chunk of money goes towards various legal expenses, on which it is sometimes difficult to get a handle. I suspect that, although we can address broad-brush issues, we need to go into the figures to work out whether we can remove any of the impediments to good use of finance.
31. Some impediments may not be moveable. For example, during my time on the Policing Board, a constable took the police to court about overtime allowances. The judge ruled that, because the constable had received £9,000 a year in overtime in previous years, he was entitled to expect £9,000 a year as part of the settlement. These weird, esoteric things happen, and, therefore, we need to mine into that area in due course.
32. **The Chairperson:** That was a comment rather than a question.
33. Mr Hewitt, you will, undoubtedly, examine the papers. We have a letter from David Lavery of the Court Service, in which he indicates that he is happy to reply on behalf of four other agencies: the Criminal Injuries Compensation Appeal Panel for Northern Ireland; the Northern Ireland Legal Services Commission; the Northern Ireland Judicial Appointments Commission; and the Northern Ireland Judicial Appointments Ombudsman. We have already indicated that we are happy enough that he replies, but we made it very clear that we may also seek information from the other individual organisations.
34. **Mr Paisley Jnr:** Does he bid for those organisations in the comprehensive spending review?
35. **The Chairperson:** I assume that he does.
36. **The Committee Clerk:** I do not honestly know. The letter only arrived yesterday. I tried to reach him to have a discussion, but was unable to. If it will be helpful, I can take that issue up and establish what the arrangements are.
37. **The Chairperson:** We want to be clear that we are running a complementary process. The letters that come in should be copied to Mr Hewitt. Do members agree?
- Members indicated assent.**
38. **The Chairperson:** Does the Committee note the letter from the Court Service?
- Members indicated assent.**
39. **The Chairperson:** The Clerk will speak to Mr Lavery about the issues that were raised. Thank you very much, Mr Hewitt. It has been short today. I think that we will be seeing each other on a fairly regular basis. You are very welcome to stay on or to escape.
40. We now move to the category-two list of issues.
41. **Mrs Hanna:** I apologise for being late. I presume that you received Mr Attwood's apologies. I think that he is in the Chamber, which is where I am also supposed to be.
42. **The Chairperson:** I think that Simon Hamilton has probably escaped as well. I understand that today is particularly busy. I will note the apology from Mr Attwood.
43. I remind members that these proceedings are being recorded by Hansard. I intend to go through the category-two list of issues in the same way that we did previously — by going round the different parties. Obviously, we are not going to hear from the SDLP. We will deal with the issues in the order that they appear; I will read them and then ask the parties to make their initial comments. Issue A is whether there is a need to endorse recommendation 22 of the Committee's original report — that the post of Attorney General should be a full-time role, at least initially.
44. **Mr Paisley Jnr:** I am content with that proposal. I think that the role of the Attorney General should be full time

- for the initial period and the set-up arrangements.
45. **Mr A Maskey:** I endorse that position.
46. **Mr McFarland:** I am also happy with that proposal.
47. **The Chairperson:** I think that there is consensus on that proposal. The Committee is content that the post of Attorney General be a full-time role, at least in the initial period. We move to issue B, which concerns who will be responsible for appointments to the judiciary.
48. **Mr Paisley Jnr:** Edward Gorrige — I think that he is the chief executive of the Judicial Appointments Commission (NIJAC). I think that NIJAC should be responsible, and I also think that some of the appointments are the responsibility of the Prime Minister. I cannot envisage when those arrangements would change.
49. **Mr A Maskey:** The matter was addressed in the letter from the Office of the First Minister and deputy First Minister (OFMDFM) on 18 November 2008. I am happy with the way that the matter was addressed.
50. **The Chairperson:** We will refresh our memories on that.
51. **Mr Paisley Jnr:** I am not proposing anything different. There is no political role as such, so NIJAC is the obvious body to undertake the role.
52. **Mr McFarland:** I would like clarification. I understand the letter dated 18 November to say that, although the proposal was that OFMDFM would appoint the judges, it was always going to be NIJAC that selected them; OFMDFM would merely make the official appointment. OFMDFM then said that it would take no further role and allow NIJAC to appoint the judges. What is the legal position on that?
53. Traditionally, NIJAC has done all the sifting, assessing whether people are adequately qualified and so on. It was then the Prime Minister, the Secretary of State or whoever who made the official appointment. Presumably, that is why the role of making the official appointment was to be transferred to OFMDFM. What are the legal implications of a sudden change being made to the effect that the body that undertakes the selection procedure also makes the appointment? That would be a different system from elsewhere in the UK. Also, who appoints members of NIJAC?
54. **Mr Paisley Jnr:** NIJAC is already appointed.
55. **Mr McFarland:** There is concern about judges being appointed by OFMDFM, but my understanding is that the people who sit on NIJAC are appointed by OFMDFM.
56. **Mr McCartney:** Only five of its members are political appointments.
57. **Mr Paisley Jnr:** I think that there are 12 altogether.
58. **Mr McCartney:** Yes; but only five are political appointments.
59. **Mr McFarland:** I would like that to be examined further.
60. **The Chairperson:** A briefing paper will be drawn up to deal with the points that you have raised. I think that it is around five.
61. **Mr Paisley Jnr:** NIJAC is a balanced commission; it has five political appointments in addition to professional commissioners. The commission could be in place for a considerable period of time, with people needing to be replaced as they die or retire. It is not a case of block appointments being made every so often.
62. **Mr McFarland:** I would still appreciate clarification on the matter.
63. **The Chairperson:** In relation to the point that Mr Maskey raised, the letter states:  
*“In order to ensure the independence of the Judiciary responsibilities ... the appointment and removal of judicial office holders would rest with the Judicial Appointments Commission.”*
64. Does that provide clarification?



65. **Mr A Maskey:** Yes.
66. **The Chairperson:** Do members agree that we should park that subject until we have a look at the research paper?
- Members indicated assent.**
67. **The Chairperson:** The next item is the relationship between the Serious Organised Crime Agency (SOCA) and the security services, the Minister, the Department and the Assembly.
68. **Mr Paisley Jnr:** The security services should be available to give regular briefings to the future Minister and Committee, if necessary. The Policing Board receives regular briefings from SOCA and the security services. That should be the be-all and end-all of the relationship; as a devolved administration, we should have only a briefing relationship. National security is national security, and the administration and direction of national security starts and stops with the Prime Minister.
69. **Mr A Maskey:** We do not currently have any control or authority over the relationship. Therefore, it will probably rest, as Ian Jnr said, with a briefing role, and we will probably have to develop that. Is this really a category-three issue? In a sense, our party is easy, because I suspect that there is not going to be a change in the relationship between now and the transfer of power. Rather than return to this question next week or the week after, I suggest that it might really be a category-three issue, although I am not moving that formally this morning.
70. **The Chairperson:** Are you putting that formally?
71. **Mr A Maskey:** I am trying to look at the realpolitik of it. We will not change the current relationships as they are set out, and Ian Jnr is also making that point. Therefore, at least at this point, we would probably defer it because we are not going to change it. However, it will be on the basis that there will need to be some understanding.
72. **Mr McFarland:** It is most unfortunate that Alex is not here as this is his favourite topic above all else.
73. **Mr Paisley Jnr:** I am delighted that he is not here. Let us get it sorted.
74. **Mr McFarland:** As Ian said, these are national security issues. However, I believe that there is an issue – and it is the same issue that we had on the Policing Board when it was transferring this stuff from Special Branch to the security service, which is that there needed to be in place protocols and memoranda of understanding on people’s rights with regard to the access of information. One could argue that although national security is a case of just national security, other issues will arise through SOCA, whereby organised crime issues that are quite within the remit of our Police Service and Courts Service here — although handled by SOCA — are not national security issues per se. It would probably be quite useful if we had a clear idea of what those issues were before they were transferred here, and how information will be handled by our Minister and our Department and, therefore, our Police Service.
75. I understand that some of the issues regarding the Police Service are already in place — they were put in place at the time of the transfer. However, it would be useful for us to satisfy ourselves that we are not missing a trick as regards having the matter tied up before it comes across, because it may not be possible to tie it up afterwards. Therefore, it would be useful to get some idea, perhaps from the Policing Board or the Chief Constable, and perhaps even the Courts Service, as to what sort of things might need to be tied up before we transfer. Issues are involved that are outside national security, but which are handled by those organisations and will impinge on our system here after devolution.
76. **The Chairperson:** With regard to the memoranda, perhaps that is a point that the Committee might also like to take up with the NIO when it appears before



- the Committee, which we want to do reasonably quickly.
77. **Mr McFarland:** We have asked for those already.
78. **Mr A Maskey:** That is obviously the way to go in the short to medium term. However, our view in the longer term would be that some of the data-related matters perhaps need to be dealt with by being transferred into the Police Service. That is another discussion for another time. Sinn Féin's view on that will not change tomorrow, or this side of the transfer of powers. We may never change it. Therefore, further consideration will be given to those matters. That is why I am suggesting that memoranda may be the best that we will get in the short term, and we have already started that in train with the NIO. Given that we are taking the matter forward on that basis so far at least, I am not so sure that we will get much more out of having more discussions on that every week. Therefore, I am suggesting that it might be a category three matter.
79. **Mr Paisley Jnr:** I take the point, and we should caution against constantly going to an issue that has already been at an operational level. I will not use the word "satisfaction", but there has been satisfactory progress and there is now a settled relationship between the Policing Board and how it interacts with SOCA and the security services. Some of us are satisfied with that and others might want to change it. However, the fact is that there is a settled relationship, and that is an operational issue. Why would we want to bring those operational matters, over which we would have no jurisdiction anyway, into week in, week out discussions in this forum? I do not think that that is necessary.
80. That is why I believe that if we can we settle on the view that if a regular briefing is established between the Minister and the Department and the security services and SOCA, that regular briefing satisfies on a knowledge basis. However, as regards a policy and operational basis, operations would rest with the police, and policy and operational direction of the security service would rest with the Prime Minister. That is the way that it should be.
81. **Mr McFarland:** I agree with that, but that is not what I am talking about. I understand that the NIO has agreed memorandum protocols as to how those organisations will link in with any new Department, and that has been part of the ongoing discussion. For some time, the Committee has asked for sight of those in order to understand how that relationship is to work. I am not proposing that we discuss this every week, and certainly not the operational side of things. However, I am keen to see that for which Alex keeps agitating: for the NIO to come to the Committee and update us on the position and explain how that relationship will work after devolution. It would be useful to get that issue clear in our minds before policing and justice matters are devolved. Clearly, there will be further discussion afterwards.
82. **The Chairperson:** In that case, the Committee agrees that it will take that issue up with the NIO, and defer it in the meantime. It is not for discussion on a weekly basis, but we will raise some of those points with the NIO.
83. **Mr McFarland:** Excellent.
84. **The Chairperson:** We now move to issue D:  
*"What needs to be done to ensure the maintenance of existing North/South policing and justice agreements?"*
85. **Mr Paisley Jnr:** My party is very supportive of appropriate co-operation between this jurisdiction and any other jurisdiction with which we have to have a good security relationship with regard to sharing of information about, for example, sex offenders, drug dealing, serious crime and people trafficking. There needs to be good, genuine co-operation in place.
86. Further to the previous question, protocols are established. Let us see what they are. If we are satisfied with them, so be it. If we think that more

- work needs to be done, then let us develop that debate after we have explored the protocols. However, we do not think that simply establishing another formal tier in the North/South Ministerial Council will address that; it will merely amount to creating another tier. It should be dealt with appropriately by examining the protocols that exist and see whether there is work to be done. If there is work to be done, we are prepared to do it. If there is no work to be done, which I doubt, then so be it.
87. **The Chairperson:** We have joined together issues D and E, because they are related. What do members think?
88. **Mr Hamilton:** That would be sensible.
89. **The Chairperson:** Do members agree that issues D and E fall into each other? Issue E asks:
- “Is there a requirement for a Justice Sector of the North/South Ministerial Council?”*
90. That has been addressed by Ian. Are members happy to join those two issues? It seems to me to make sense.
91. **Mr Hamilton:** We could say that we cut down on our issues by one.
92. **Mr A Maskey:** From Sinn Féin’s point of view, we would certainly want to maintain and continue with the agreements that already exist. We believe that it is necessary to have a justice sector in the North/South Ministerial Council. *[Inaudible due to technical difficulties.]*
93. **The Chairperson:** I do not think that any of us are 100% clear on what the agreements are in relation to some of the issues.
94. **Mr Paisley Jnr:** We know that they do not cover parking fines.
95. **The Chairperson:** We will not go into that.
96. **Mr Hamilton:** Ian is an expert on them.
97. **The Chairperson:** That will obviously come up in the protocols about which we will be talking to the NIO. Members may want to ask the Chief Constable when he next appears before the Committee what arrangements exist. Some members know some of the arrangements and co-operation that exist. I believe that those are matters that the Committee needs to tease out.
98. **Mr McFarland:** I agree with you. The operation of it is fairly good, but, as I recall from previous discussions on these issues, a number of legal systems will collapse on the devolution of policing and justice matters. I believe that the Committee already decided that we should replicate those systems, because they were important. Perhaps we can refresh ourselves, today or in due course, on what those systems are and what the Assembly needs to do in order to re-establish them. It would be useful, too, to get another briefing on the North/South justice sector with regard to what exists and what we need to do in order to maintain that.
99. I believe that the Committee also talked about what other developments had occurred. As you will recall, the two Governments set up a group, which was made up of civil servants, to take forward discussion on areas of mutual interest. The last time that we met with NIO officials, I think that they ducked the issue, or their answer was not quite clear. Therefore, the next time that NIO officials appear before the Committee, perhaps we could re-examine whether there are any other areas that are at present unseen — that were, so to speak, cleared away before devolution, but that may, in fact, impact on us afterwards.
100. **The Committee Clerk:** The issue was raised during deliberations on the category one list of issues, and it was suggested that, when the Committee became involved in category two list of issues, it would be useful to have an early session with the NIO on the whole range of memoranda of understanding protocols.
101. It is also worth pointing out that, in reflecting that issue in correspondence with the Secretary of State, he suggested that such information could be shared only after it had been

- provided to the two Administrations. That assertion by the Secretary of State was challenged in the most recent letter from the Chairperson of the Committee, and we have not received a reply to that. That is the up-to-date position.
102. **The Chairperson:** Given that the Committee is calling in the NIO, and given the wider context surrounding the financial issues, I presume that we would want to keep them two separate issues, as opposed to everything being combined into one briefing.
103. **Mr McFarland:** For the record, the Ulster Unionist Party does not see any need for a North/South Ministerial Council meeting on policing.
104. **Mr Attwood:** I apologise for arriving late, but I had to speak in the Chamber.
105. The arrangement in respect of North/South policing is between the PSNI and the gardaí. Therefore, that does not fall, in part or in full, with the devolution of justice and policing. We can certainly have a meeting with the police to discuss what that means and what more could be done, but it will fall outwith the responsibility of the Assembly.
106. The second issue is that there are elements of the justice agreement between the British Government and the Irish Government that will fall at the point of devolution, and there are elements that will continue, because they fall within the responsibility of the British and Irish Governments. However, the area that is not within their sovereign responsibility, and which is a North/South element, will fall. That is the end of it, unless some arrangement is put in place for it to continue. Given that most of this is important but politically neutral, if I may put it that way, it seems to me that the Committee should, at least, be saying that those are the elements that will fall, and will it cause us any difficulty to renew them in order that there is not a gap in, for example, protections on a North/South basis, which might otherwise happen. If that part of the justice agreement falls, the Committee should, as a minimum,
- be trying to get to the point whereby we can sign off on an arrangement entered into at the point of devolution between the Dublin Administration and the North Administration.
107. It would be worthwhile asking not just what the agreement says, but what is the programme of work that is being taken forward at an official level between the respective justice Ministers, so that we can get a sense of all the work that they do, and a sense that it is not a threatening mandate, but rather it is commonsense work that is necessary for the welfare of the citizens North and South.
108. There are proposals to extend that justice agreement and to have a justice sector of the North/South Ministerial Council. All of that can be outlined during the course of our conversations. For now, however, we must get our heads around whether we can agree to continue those elements that will fall on the day of devolution, and then take forward from that the other elements on which we might potentially agree.
109. **Mr A Maskey:** To return to Alan's point: relevant, ongoing structures already exist, and I suppose that it would be possible to work around them. With regard to issue E, we believe that a justice sector of the North/South Ministerial Council is needed. It would probably be helpful to identify what currently exists within those structures. I suppose, therefore, that the specific question is what needs to be done. Do we need legislation? Do we need to ask for legislation? We need to work out exactly what currently exists. Let us answer that question, because it may well be answered very simply. *[Inaudible due to technical difficulties.]*
110. **The Chairperson:** I sense that the Committee needs to have further discussion on that matter. We are pretty much agreed that we want to speak to the NIO about protocols, and so forth. I ask you formally whether we agree that D and E are joined as one issue.
111. **Mr Hamilton:** Agreed.

112. **The Chairperson:** Perhaps around the middle of February, given our work programme, we can schedule an early meeting with the NIO on the specific issue that we just discussed, and take it from there. Therefore, we will park the issue in the meantime until those arrangements are made. The Committee Clerk's office will go ahead and make those arrangements for a convenient time in the not-too-distant future.
113. **Mr Attwood:** I propose that if this is a North/South justice arrangement, it seems to me that we should invite officials from the Department of Justice, Equality and Law Reform, because it is not a one-sided issue. They might have a view about what should or should not happen on the far side of devolution. It seems to me that in order to complete the circle, we should invite the other partners in the current arrangements without prejudice to whatever future arrangement we might propose.
114. **Mr Paisley Jnr:** I have no objection to that in principle, as long as it carried out separately. I hope that they do come. They did not come the last time the Policing Board invited them. It would be interesting to see if they could come.
115. **The Chairperson:** But that would be separately?
116. **Mr Paisley Jnr:** Absolutely.
117. **Mr Attwood:** Separately on the same day, or around the same time anyway?
118. **The Chairperson:** We will see what arrangements can be made. I am not going to be tied down. I want to give the Committee staff some flexibility to arrange an appointment, and I will not tie them down to dates.
119. **Mr A Maskey:** Can we ask the NIO to provide us with some of that information in writing before its officials appear before the Committee? I believe that the Committee would find that useful.
120. **Mr Hamilton:** It would be useful in every case for witnesses to provide a written briefing.
121. **The Chairperson:** OK. We will arrange for the Committee office to start to deal with that matter.
122. We shall now proceed to issue F:  
*“What is the extent of the financial provisions for a department which would exercise the range of policing and justice functions?”*
123. **Mr Hamilton:** Think of a number and multiply it by 100.
124. **Mr McFarland:** That is Victor Hewitt's area, is it not? We discussed that already.
125. **The Chairperson:** Yes, the Committee discussed that at an earlier stage and decided that we would deal with it as a separate issue. Letters were sent out after the briefing that we received from our specialist adviser. I do not see any real value in a round-table discussion on the matter now. We are waiting on advice and on letters to come back.
126. **Mr Paisley Jnr:** Issue I in the category one list, to which a reference is appended to issue F, asks:  
*“How, and when, should the financial negotiations with the NIO be conducted, and by whom?”*
127. I think that members need to cast their minds with regard to how that would function. Would that involve, for example, the justice Minister working up his bid, taking it to the Minister of Finance and Personnel, and the Minister of Finance and Personnel then making a proposal? That is how other Departments operate. Is it the same sort of arrangement that we envisage, because we may have a different arrangement for justice money? It might be funny money. How do we conduct those negotiations — *[Inaudible due to technical difficulties.]*
128. **The Chairperson:** That might be an issue that the Committee might want to take up with the First Minister and deputy First Minister, too.
129. **Mr McFarland:** OFMDFM told us in its letter that it and the Finance Minister will be negotiating with the NIO and the

- Treasury for that first tranche. Thereafter, presumably it becomes a normal function of government. Money will come in accordance with the Barnett formula and, presumably, the Finance Minister, in discussion with the Minister for justice, will then talk to OFMDFM and, once it is in place, it will become a part of the normal budgetary process. I understood, however, that OFMDFM and the Finance Minister will negotiate for the initial tranche.
130. **The Chairperson:** Can we then defer issue F and come back to it?
131. **Mr Attwood:** I would like to comment on the point that Ian made — which, if I understand him correctly, is a valid point. Whatever negotiations are going on between OFMDFM and the NIO, there may be some point in the Committee thinking through some of the overarching issues. Therefore, the question posed, for example, by issue J in the category one list of issues — “Should any budget be ‘ring-fenced’?” — is something that the Committee might want to consider in its deliberations. I suspect that the London Exchequer will try to bend OFMDFM to accept that, in order to get some financial guarantees up front, OFMDFM might begin to send out signals as to, for example, what the total size of the Police Service might be in due course. I can envisage the Committee — not, perhaps, now but in four or five weeks’ time — wanting to converse generally about overarching issues such as that and ring-fencing budgets, along the lines that Ian outlined.
132. **The Chairperson:** Can we park that in the meantime? The finance issue is, obviously a big one and one to which the Committee will return, and I imagine that we will return to issue F frequently.
133. Let us now turn to issue G:
- “What, if any, consideration should there be of the Ashdown Report on Parading?”*
134. **Mr A Maskey:** On a minor procedural matter: could issue G not just as easily be included in issue L?
135. **The Chairperson:** Does the Committee agree to reallocate issue L to issue G? Issue L now reads:
- “Is there a need for further clarity of the powers to be devolved, and, if so, should they include matters relating to the Public Processions (Northern Ireland) Act 1989, flags and symbols and recruitment to the PSNI?”*
136. **Mr Paisley Jnr:** I believe that we are slightly ahead of ourselves on issue G and that we really need to await the publication of the Ashdown report and see if there are any significant changes to what we assumed would be in it. Therefore, I think it may be premature to discuss that item.
137. **Mr McFarland:** Have we a timescale for the publication date?
138. **Mr Paisley Jnr:** I have no idea. It might be worthwhile the Committee Clerk trying to find out how long is a piece of string.
139. **The Chairperson:** We can do that.
140. **Mr Paisley Jnr:** Simon Hamilton is interested in issue L.
141. **Mr Hamilton:** I know that there has been controversy about some aspects of issue L, and we have discussed whether we should be even delving in to them. As with some of the Committee’s other discussions, it will, perhaps, take time to reach a definitive position on that. The point was made previously that the subject of flags, for example, is difficult enough without lumbering it with additional problems. Having received a hospital pass to talk about issue L, I would like more time to reflect on that.
142. **Mr A Maskey:** The point has already been made that we cannot deal with the Ashdown report on parading until it is published. The other two things that Sinn Féin is content to include are — *[inaudible due to technical difficulties.]*
143. **The Chairperson:** I am not sure that Simon did not indicate that he had a query on the category three list of issues. He said that we needed to see the Ashdown report first in order to see what emerges from that.



144. **Mr McFarland:** The parading issue needs to be sorted before devolution. Uncertainty cannot remain around the issue of parades because, if disagreements were to take place on it every year, it is the one issue that would put the policing and justice budget into orbit. The issue needs to be sorted for good. Given that, among other considerations, it is not clear whether Ashdown will recommend that the remit of the Parades Commission be extended, we should park the issue.
145. The matter of flags and symbols, which is set out in issue L, was dealt with some time ago. It is covered by legislation, and it was part of the original agreement; and system of recruitment to the PSNI is sorted out in 2010 when the current system will return to normal. Therefore, those are, in a way, non-issues, and I am not sure who raised them in the first place because that are not directly related to our considerations.
146. **The Chairperson:** I believe that they came out of one of the party leader's letters and party submissions. Most of the issues that were raised came out of party submissions.
147. **Mr Attwood:** Given that the Committee has reached this stage of its discussions, the NIO and the Ashdown report team owe it to us to provide some certainty about their progress on the issue of parading, which, to some degree, is hanging over the debate. Ian — cryptically — talked about where the Ashdown team might be in respect of its proposals, and I suspect that it will dilute its proposals as time goes on.
148. In the run-up to devolution, one of the first questions that people will be asked, after questions on finance, is how parades will be managed if there is a bad season. That is part and parcel of the financial discussions that might take place, so the Committee should ask the NIO when it expects that Lord Ashdown will publish his report. As I understand it, the membership of the Parades Commission is due to be advertised this year as its term has concluded.
149. **Mr McCausland:** It has been extended for a year.
150. **Mr Attwood:** When was that announced?
151. **Mr McCausland:** It was announced very quietly. Towards the end of 2008, the current term was extended for a year.
152. **Mr Attwood:** Has it been extended until May 2010?
153. **Mr McCausland:** I think that it was due to run out in December 2008, and it has now been extended until December 2009.
154. **Mr Attwood:** Even at that, if new legislation were to result from Ashdown's report — and I hope that there is not much — December 2009 might yet be the time at which justice is devolved or not. There needs to be some certainty about where they are, when they will be published and what the Government might do. I suspect that those questions will be met with a very loud silence; however, I think that we must find out where things are.
155. **The Chairperson:** Would it be more appropriate for me to write to Lord Ashdown and ask him exactly what the position is at the moment? Is the Committee in favour of that?
- Members indicated assent.**
156. **Mr McCausland:** We talked earlier about finance, and now we are talking about parades. Every year, the cost of policing protests is astronomical. It would be helpful if the PSNI could give us a sense of the cost of its policing operations. There is clearly a connection between the financial issue — which is considerable — and reaching a proper resolution on parades and protests.
157. **The Chairperson:** The police have a breakdown of costs.
158. **Mr McCausland:** It would be useful to have that.
159. **The Chairperson:** Those questions can be asked; the figures can be made available.

160. **Mr McCausland:** It is worth getting a global figure.
161. **The Chairperson:** We move to issue H:  
*“In the context of Recommendation 26 of the Committee’s original report, to which Department should the Public Prosecution Service be attached?”*
162. **Mr Paisley Jnr:** In order to keep the strapline of the Public Prosecution Service — to provide an effective prosecution service — it should be attached to the Department of Finance and Personnel (DFP). Essentially, the relationship will be about ensuring that the Public Prosecution Service (PPS) is properly financed and resourced, but ultimately independent of the Government.
163. **The Chairperson:** This came from category one.
164. **Mr Paisley Jnr:** The rationale is that there is a financial relationship with that agency. *[Inaudible due to technical difficulties.]* There is no ministerial role.
165. **Mr A Maskey:** We think that it should be linked to OFMDFM. *[Inaudible due to technical difficulties.]*
166. **Mr McFarland:** I am curious as to how this is handled in Scotland, which is the closest mirror of our system. At a previous meeting, the Republic of Ireland’s Court Service and the Scottish Court Service briefed us; however, I cannot quite remember how they handled this matter. They had changed their systems to try to protect the agency and to ensure that there was no question of any perception of political interference or budgetary constraints on the PPS. Can we park this until we find out how it is handled in Scotland?
167. **The Chairperson:** We can return to it next week.
168. **The Committee Clerk:** Would it help if — *[Inaudible due to technical difficulties.]*
169. **Mr McFarland:** Yes; it is worth reminding ourselves what they said. The head of the Public Prosecution Service has a view on this; perhaps the Attorney General-designate has a view. This issue has been neuralgic for some time now, and it is worth getting more advice from those involved in order to get it right.
170. **Mr Attwood:** Ian’s comments confirm one of the issues around that, namely that the height of accountability for the PPS will be around administration and finance. Although that is significant in itself, I do not think that it is the range of accountability that it should. That is why one of the post-devolution issues will be how we can get a better accountability culture around the PPS without interfering with its independence. I think that that can be done, and I think it essential that it is done.
171. I may have misunderstood Ian, but the Minister and the Committee will have a very particular role around the administration and budget of the PPS. It is not that that independence will mean that you cannot touch the agency; it is that the agency will have to account for how it spends and administers the money. I do not think that DFP is the right place for that; the justice Department would be a much more appropriate home. The nature of the business that that Department will be carrying out will mean that it will have a much better knowledge of how the justice pound is being spent. If it has responsibility for all of the justice agencies, then it will bring to the accountability function an insight borne of the fact that it lives in that world. In my view, it would be very useful to ensure that one of the biggest budgets in the justice system — that of the PPS — is spent and administered appropriately. I do not think that it would compromise its independence by being placed there.
172. The Probation Board is an independent body, as is the justice agency; a whole range of organisations are independent bodies, but will be part of the justice family and the justice Ministry. The PSNI will be so more than any other body. Whatever its level of accountability to the Assembly, subject to the role of the Policing Board and the district

- policing partnerships, it will be in the justice family. No one is saying that, because it will be in the justice family and there will be a justice Minister and a justice Committee, it will be any less independent. In parallel, I think it is self-evident that the PPS should go into the justice Ministry arrangements.
173. I do not understand why, given all of the evidence, the PPS should be any different. Why should the PPS be taken out of all of that and given to DFP? It is the first time that I have heard that suggestion, but I understood that there was to be a conversation between Sinn Féin and the DUP around the function staying with OFMDFM. It is the first time that I have heard that DFP is going to be the preferred home, as the DUP sees it, for the future of the PPS.
174. **The Chairperson:** I think that that issue has been looked at a previous meeting on the category-one list. That is my recollection.
175. **Mr McFarland:** Was the original NIO recommendation that it went to OFMDFM?
176. **The Chairperson:** Maybe we can come back to that in the additional information. We are not going to resolve this today because there are three different views on where it should be, and at least one party has asked for more information. There is more information coming back. Is the Committee agreed that we park this issue for the moment?
- Members indicated assent.**
177. **The Chairperson:** We move then to issue I:
- “In the context of recommendation 27 of the Committee’s original report, about examining the independence and of accountability of the Public Prosecution Service, before, and following devolution, what consideration should be given to this matter, pre-devolution?”*
178. **Mr I Paisley Jnr:** Can you read recommendation 27 to the Committee?
179. **The Chairperson:** Recommendation 27 states that:
- “The Committee recommends that the independence of the PPS and its accountability to the Assembly should be examined before, and following, the devolution of policing and justice matters to produce recommendations which would, in turn, be considered by the Assembly.”*
180. **Mr Paisley Jnr:** What do you think that means?
181. **The Chairperson:** I thought that you were going to tell us.
182. **Mr Paisley Jnr:** It is a recommendation of our Committee, but it is open to interpretation. It is a reporting function, but it not as though it is just an annual report. It is more than that. I would like to park the issue.
183. **Mr A Maskey:** We are happy enough to come back to this. However, we think that it sits more readily with OFMDFM.
184. **Mr McFarland:** This is the issue that Alex has just raised, as to how these organisations should be accountable to us. There are two aspects. One is the provision of administration and finance for these organisations; we are paying their bills. The Assembly should be interested in how they spend their money and should have the ability to question whether they are doing it wisely. There is the administration side — are they working well? We look at everything else through the Departments.
185. That is one aspect; the other is more difficult. As you know, we were warned off this issue by a number of senior legal figures — I leave it at that — who did not want politicians anywhere near any of this. However, if the public is paying the bills, and our constituents complain about how badly things are working, the Assembly will want to have the ability, not to question the judgement of judges, or the PPS on its decisions as to whether to prosecute, to hear the evidence. There is an issue of broad policy which will interest the Assembly and its Committees.



186. The question is how we do that. The original proposal was that the Attorney General would turn up every so often in the middle of the Assembly, sitting on a little dais, and be open to questions. The issue is whether the Committee can speak to the Lord Chief Justice or the chief executive of the Court Service, and how all that is to work. This question is related to that. One can argue that that will go live on devolution. Post-devolution, we may want to have these people talking to the Committee and Assembly and so on. These issues have to be discussed. They are extensive and, politically, potentially fraught. Perhaps we should park them and refresh our memories as to what the various organisations said to us, using our original report, which contains a lot of evidence from senior legal figures about this. We can discuss it in due course, but not today.
187. **Mr Attwood:** When the original recommendation was proposed, the word “before” was not included. I proposed that that should be incorporated, and I had reasons for doing so.
188. I will characterise what I have been looking at. Over and above the fact that there is going to be some relationship to a Northern Ireland Department, there remain issues about how the PPS conducts its own internal affairs. A management board should be created to manage the internal affairs of the PPS because of the extent of Assembly and ministerial responsibility for its finance and administration. However, that is different from hands-on management responsibility. A management board should be created, and it should be structured out of the current management of PPS. I do not say that I recommend that model but, one way or another, we have got to a point where responsibility for managing the police without compromising its operational independence comes through a Policing Board made up of politicians and community representatives. There is a need for a management board, composed of appropriate people — I do not prejudge who they should be — to be responsible for managing the Public Prosecution Service. I anticipate that such a management board would reflect a range of interests and inputs on how the PPS can best be managed.
189. We should begin to probe into some policy areas at this stage, because they are very important. For example, during discussion on either the Preparation for Government Committee or the Programme for Government Committee — I cannot remember which one — there was a unanimous agreement that we were unhappy with the current PPS policy in relation to giving reasons for cases collapsing or prosecutions not being pursued. That arose from a particular, prominent case in which prosecutions were withdrawn that were very relevant to this Building and to neighbouring buildings. At that stage, the Committee unanimously agreed that we should look at the policy for instances when cases collapse or are not pursued and that, within reason, more should be done by the PPS in respect of that. That is a critical policy issue.
190. In our negotiations with the British Government at Hillsborough, when the British Prime Minister agreed to a range of SDLP proposals, the one that he, Jonathan Powell and the then Lord Chancellor resisted was to do with the giving of reasons. That was the one issue that provoked most resistance and opposition from the British systems, both legal and political. There is a reason for that. We agreed unanimously, and we should look at the issue of giving reasons in order to determine whether we can develop that policy further, because it is very restrictive at the moment. It would be useful to look at that as a representative issue.
191. I am looking at the structural matters to do with the PPS and relevant policy areas around the PPS. Given that we have a number of months before policing and justice powers are devolved, we should probe into those areas now. It might be useful if parties were to prepare very short papers on the matter. The SDLP is certainly prepared to produce a paper, in indicative terms, on what some of the issues might be in relation to that.
192. **Mr Paisley Jnr:** Alex has opened up a real can of worms. Creating a board or

- quango to look at the Public Prosecution Service, which is a non-departmental organisation would be, to put it in the kindest terms, overkill. It is fraught with so many dangers. The strapline for the Public Prosecution Service must be that it is independent; it is very difficult to understand how a board could be created that would not, in some way, upset that independence. That is especially true if that board were to examine issues, as the Policing Board does.
193. If there was a disagreement at a board meeting about what cases are and are not pursued, it is easy to imagine the disarray that would result within the Public Prosecution Service. How about a discussion about sentencing arrangements for some particular person? Take any recent case that has not been prosecuted — for example, the case against Nuala O’Loan for breaching section 63(3) of the Police (Northern Ireland) Act 1998. The Public Prosecution Service said that the evidential test for prosecution had been met but that it was not in the public interest to prosecute her. Imagine what a political football that would be at a meeting of the PPS board.
194. The issues that that proposal would open up are incredible. Alex has put some ideas on the table, and we all need to go away and reflect on the implications of those but, for the record, I believe that a board such as that proposed by Alex would be fraught with real danger.
195. I am not opposed to getting explanations as to why a prosecution is, or is not, being pursued. Indeed, that happens with victim conferencing. When the victims are brought in, they usually meet the senior prosecutor. They can see, and have read to them, the senior counsel’s decision as to why a case has not gone to prosecution. I have seen that happen. There is an explanation role, and it does tend to work. However, there is the odd case where it does not work, and those cases usually become problematic. By and large, however, it does work. We must be very careful about entering into a situation where we start — *[Inaudible due to technical difficulties.]*
196. **The Chairperson:** My sense is that parties may be given more time to discuss the issue, and we will come back to it. Parties need to go off and reflect on what has been said this morning and come back on this very serious issue. Are members agreed?
- Members indicated assent.**
197. **Mr Attwood:** I will prepare a paper anyway.
198. **The Chairperson:** A thesis?
199. **Mr Attwood:** Just a paper.
200. **The Chairperson:** I thought that someone referred to a thesis.
201. Lunch is available outside the door. We still have two or three issues to deal with.
202. **Mr Paisley Jnr:** I propose that we come back to those issues next week. There is a debate in the Chamber, which is due to last for three hours, and I am going to be called into the Chamber.
203. **Mr A Maskey:** *[Inaudible due to technical difficulties.]*
204. **The Chairperson:** Are members happy to adjourn the meeting and call it quits? Lunch is available to members outside the door. I hope that it has not got a parking ticket.
205. We are stopping at item I. That leaves items J, K and M to deal with. I suggest that when we start with those issues next time. Are Members agreed?
- Members indicated assent.**

## 3 February 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Simon Hamilton  
 Mr Alex Maskey  
 Mr Nelson McCausland  
 Mr Alan McFarland  
 Mr John O'Dowd  
 Mr Ian Paisley Jnr

206. **The Chairperson (Mr Spratt):** I remind members that this part of the meeting, which is on policing and justice issues, is being recorded by Hansard. I intend to proceed in the usual manner. Last week, the Committee agreed to resume at issue J, which has now become new issue I on the category two list of issues. I sometimes think that we should have started by discussing the last issue before moving to discuss issue I, but we will take them in the order in which they are laid out. New issue I states:

*"In relation to Recommendation 30 of the Committee's original report, who should undertake the advisory role in relation to the appointment of the Police Ombudsman?"*

207. **Mr Paisley Jnr:** As I believe I said last week, I am happy to consider and hear suggestions on how that should be taken forward. My gut instinct is that, because the role of the Police Ombudsman is supervisory and over-arching, the Secretary of State should make that appointment. My reason for suggesting that is so that the Police Ombudsman has a level of independence from the institutions here. However, neither I nor my party is hard and fixed in that view, and we will consider any other suggestions that are made and come to an arrangement of the matter. We think that there is merit in ensuring that that appointment is seen to be transparent and outside of the influence of parties here that may

have to question or be questioned by the ombudsman.

208. **Mr A Maskey:** Sinn Féin's preference is for the matter to reside with the Office of the First Minister and deputy First Minister (OFMDFM). I take Ian's point, and, at the centre of the issue, we must consider the independence of the system. However, that is built in, and is being built in, by the provisions and the recommendations that we are making. Therefore, given the cross-community nature of OFMDFM and the importance of that function, our preference is for that matter to reside with OFMDFM.

209. **Mr McFarland:** Where did this issue lie in the expectations of the NIO on its famous chart? I understood that, under the current legal remit, the ombudsman answers to Parliament and that that was not due to transfer across when policing and devolution is devolved.

210. **The Committee Clerk:** Perhaps there is some confusion. The specific question is about who should give the advice on who should be appointed as the Police Ombudsman. The Committee has already agreed on the financial allocation of the Police Ombudsman, so you are now considering only the issue of the appointment of the ombudsman.

211. **Mr McFarland:** Where is the ombudsman to go? In the past, that issue has been kept well away. We discussed the matter with the Policing Board last year, and the view was that, as Ian said, the Police Ombudsman was to be so independent that it had nothing to do with us here. It would, so to speak, be on a link into Westminster rather than into us.

212. **The Committee Clerk:** The proposal which, I believe, the Committee endorsed was that the Office of the Police Ombudsman would be an executive non-departmental public body that would be answerable to

- the Department of justice. However, that is not the issue that we are now considering.
213. **The Chairperson:** We should be considering the appointment of the Police Ombudsman.
214. **Mr McFarland:** I presume that the appointment of the Police Ombudsman will be similar to that of judges and the Judicial Appointments Commission (JAC).
215. **The Chairperson:** It has been suggested that OFMDFM undertakes the advisory role in relation to the appointment of the Police Ombudsman, and Ian Paisley Jnr has suggested that the Secretary of State deal with it. Ultimately, we are considering who should play an advisory role on the appointment. It will fall within the remit of the Department of justice, and the role will, therefore, be scrutinised by the associated Committee.
216. **Mr McFarland:** The selection procedure will be sensitive, as is the case in the appointment of judges. The judges were put out to the JAC so that it would not be possible to prevent or allow favoured candidates to be successful. That is less of an issue now, because the rushing round that was part of the ombudsman's remit previously will transfer elsewhere, so he or she will be dealing with police officers only — as we thought would be the case originally. It is, therefore, likely to be less of a neuralgic issue.
217. **The Chairperson:** The position of Police Ombudsman will be advertised publicly, I believe. The Committee is trying to establish from where the advisory role will come.
218. **Mr McFarland:** I thought that the appointment lies with the Secretary of State.
219. **The Chairperson:** The Secretary of State does make the appointment at present.
220. **Mr McFarland:** I understood that his Department makes the selection as well; there was no advertisement previously.
221. **The Chairperson:** I think that there was, Alan.
222. **Mr McCartney:** It was advertised.
223. **The Chairperson:** It was a public advertisement; but we will check that, because I suspect that there are different opinions on the matter. We need to do more research and find out the criteria when Al Hutchinson was appointed, and how that was done. That should provide us with some assistance in making our decision. Are members content?
- Members indicated assent.**
224. **The Chairperson:** We proceed to new issue J:  
*“What procedures and protocols will there need to be between the Minister, an Assembly Committee and any newly established department and its associated agencies?”*
225. Some of that was relocated from issue O in the category one list of issues on 25 November. It is, probably, bound in with issue K. That is where I felt that issue K should be discussed before issue J. However, we agreed on the order, and it must be followed — unless I am directed to deal with issue K first. Are members happy to proceed with the issues as they appear?
226. **Mr Hamilton:** We could deal with them simultaneously, but discuss issue K first.
227. **The Chairperson:** I will have to read issue K. Will we discuss issue K first, or will that be confusing the issue again, because we did separate them?
228. **Mr Hamilton:** In that case, keep them separate.
229. I will address issue J. There is a relationship between the resolution of issue K and issue J. As discussed previously, we should see how day-to-day relationships between the Committee, Minister and the Department work in other jurisdictions.

230. Scotland, for example, had to increase the number of its justice Committees from one to two so that different aspects of the work could be carried out. I am not by any means proposing that we have two Committees, but it would be interesting to see why Scotland had to do that and how it operates on a day-to-day basis. We should also examine how the system operates in the Irish Republic and other places with similar systems. We can learn lessons from other jurisdictions. That is why there is a benefit in going to the jurisdictions to see how their systems work.
231. **Mr A Maskey:** The same procedures that apply to Ministers, their Departments and agencies will, by and large, apply to the new Department of justice.
232. **Mr McFarland:** If there is to be a normal Department, it should be treated as a normal Department. The only slightly confusing issue is the business of the Policing Board.
233. **The Chairperson:** That has been dealt with already.
234. **Mr McFarland:** It is the same issue: how the Committee links in with the agencies. The Policing Board is an agency and part of the Department. Part of the overall picture is how the different organisations will operate. Logically, they would operate on the same basis as a Committee — if it has an interest in an issue, it calls forward interested parties, such as the chairman of the Policing Board or the Chief Constable, and is able to have a relationship with them and have a chat with them to find out what is going on.
235. **Mr Hamilton:** I failed to make that point earlier, and other members have. I cannot see any radical difference in the structure or operation of a Committee scrutinising the Department of justice than any other Department in the Executive. However, Alan has made a reasonable point. There is a difference with the Policing Board, which is unique, and we will have to construct our own lines of demarcation between ourselves and the Policing Board. There are also issues of sensitivity, and that creates a different perspective. By and large, I think that it would operate in exactly the same way as any other scrutiny Committee.
236. **Mr McFarland:** The Committee has, I believe, built a fairly good working relationship with the Policing Board and the Chief Constable. When we first approached the matter, it could well have been an issue, but it has ended up not being an issue. From our previous experience on the Preparation for Government Committee, there was an issue with the judiciary and the level to which politicians should be involved. It was made clear to us that politicians should not go anywhere near Court Service matters. Some exploration must be done in linking in with that part of the Court Service, because, clearly, there are sensitivities – perhaps for very good reason – and the worry is that politicians will start interfering with judicial decisions.
237. The Court Service itself is fairly easy. When David Lavery appeared before the Preparation for Government Committee, he was quite open to the idea of coming to talk to a Committee. Therefore, we have some exploration to do with the more formal structures of the criminal justice system.
238. **The Chairperson:** For the purpose of the Hansard report, I state that the SDLP is not present. Alex Attwood has left the Committee to go to the Chamber.
239. There is a fair degree of consensus on how we will deal with this issue. The only provision is that we will probably want to look at what is happening in other places. We are agreed that it will work on the same basis as any other Committee. Are members agreed?
- Members indicated assent.**
240. **The Chairperson:** We will do some more work on that issue when we have looked at Scotland, the South, and whatever other places we hope to examine, and add a few more bits and pieces to it. That will also include a paper on the



PPS, on which the Committee Clerk is working and which should be ready in a couple of weeks' time.

241. **The Committee Clerk:** If that is not ready for next week, it will certainly be ready for the following week.
242. **The Chairperson:** We now move on to the final issue – new issue K in the category two list of issues:
- “What would be the status of the Minister’s position in, and relationship with, the Executive Committee; and would the Minister be required to bring significant, or controversial, matters to the Executive Committee?”*
243. **Mr Hamilton:** This matter is extremely important, and the Committee is committed to resolving it. However, the issue will require further discussion, and my party would like some time to do that.
244. **Mr A Maskey:** We are still considering the matter. It is an important issue, and we have not finalised our view on it.
245. **Mr McFarland:** Our view, as you well know now, is that it should be a normal relationship, a normal Minister, identified in the normal way, and who has a normal ministerial relationship with the Executive.
246. **The Chairperson:** Although the SDLP are not present, I assume that they would echo what you have said.
247. **Mr A Maskey:** Just as a matter of interest, what is a “normal” Minister?
248. **Mr Paisley Jnr:** If you find one, point him out. – *[Laughter.]*
249. **The Chairperson:** More work, therefore, needs to be done, and there needs to be more discussion. So, we are parking that issue in the meantime. That brings us to the end of policing and justice matters for today.

## 17 February 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mr Alex Maskey  
 Mr Nelson McCausland  
 Mr Alan McFarland  
 Mr John O'Dowd  
 Mr Ian Paisley Jnr

### Witnesses:

Mr Victor Hewitt	<i>Specialist adviser</i>
Mr Stephen Pearson	<i>Economic Research Institute of Northern Ireland</i>

250. **The Chairperson (Mr Spratt):** I welcome Mr Victor Hewitt and Mr Stephen Pearson. Victor has been before the Committee before, and both he and Stephen will be speaking to us over the next number of weeks as we delve into the task that we have been given. I remind you that the evidence session is being recorded by Hansard, although the record of the proceedings will not appear in the public domain for the time being.
251. I ask Committee members to declare any interests. I declare an interest as a member of the Northern Ireland Policing Board.
252. **Mr Paisley Jnr:** I am a member of the Northern Ireland Policing Board.
253. **Mr McCausland:** I am a member of the Belfast District Policing Partnership.
254. **Mr A Maskey:** I am a member of the Policing Board.
255. **The Chairperson:** If you are leading the discussion, Victor, we will go over the information that you have given us and ask questions afterwards.

256. **Mr Victor Hewitt (Specialist adviser):** Thank you, Chairperson. We have received most of the returns from the various agencies to the letter that was sent to them. However, we are pursuing a couple of stragglers. We had only a few days to have a preliminary look at the responses. We have tried to put the information that they provided on to a common format, and we have translated some of it into a graph index, on which it is easier to see the trends in expenditure.
257. We have been sifting through the papers and making other enquiries. We detect that the various bodies are keen to have the opportunity to put their case to the Committee, but, indirectly, they also want to lodge bids for resources. We are not just receiving information; they are making a plea to their sponsor body, which is the Northern Ireland Office (NIO).
258. We have attempted to sort out those bids, and we have still to complete that work, but we are trying to put the bids into three categories. The first category is “major pressures”, which are clearly not covered at present and are inescapable. Money that has yet to be identified will have to be found to address those pressures. The second category is “other pressures”, which may become inescapable and appear to be difficult to cover. The third category might be best described as “aspirational issues”, and that category covers bodies that are bidding for resources that, in the normal course of events, they may be expected to absorb using their own funds, such as pay and prices pressures, to which all bodies are expected to make a contribution.
259. At present, we have identified four areas of concern under “major pressures”. The numbers in those areas keep moving around, but the first issue is legal aid, which is experiencing a substantial

- shortfall in its budget — I will return to the numbers in a moment. The second issue is the cost of inquiries. The third issue is hearing-loss claims against the Police Service of Northern Ireland (PSNI). The fourth issue is the knock-on effect of the equal-pay claim, and the Northern Ireland Civil Service is dealing with that issue. I will explain how that interconnects with the NIO element — it comes in through the PSNI.
260. We asked for information across the entire comprehensive spending review (CSR) period; that is, starting from 2008-09 and going through to 2010-2011. We asked for information from all three years because, in a sense, we wanted to see how the bodies coped with any pressures that they identified in the first year — 2008-09. With only one month of 2008-09 to run, 2008-09 is almost completed. Any pressures that were identified in 2008-09 have been dealt with in some way or other. Therefore, it is only 2009-2010 and 2010-11 that are now particularly relevant. When looking at the figures, one should focus on the final two years of the CSR period rather than the entire CSR period. Somehow or other, the first year of that will have been covered, and the Committee may wish to raise with any witnesses that are called how they dealt with the pressures that were identified in the first year of the CSR period.
261. The main driver of legal-aid costs has variously been described as expensive cases or complex cases, and legal-aid provision has consistently fallen short. During the current year, a Legal Services Commission bid to the NIO for approximately £20 million was successful. To that, another £4 million was added from the Legal Services Commission's own reserves and various other pots of money. Therefore, £24 million was made available on top of its provision for this financial year, more or less ensuring that this year's bill was met.
262. The future years are always speculative. It is a bit of a moving feast, and I hope to have an opportunity to speak to the Court Service — the Legal Services Commission's sponsor department — to try to establish a clearer view on that. Certainly, over the next year, and possibly over the next two years, one is looking at a shortfall of somewhere in the region of £36 million, although an upper limit might be almost £60 million. Obviously, clarification is needed.
263. **Mr Paisley Jnr:** You say that you are looking at a figure of £36 million, but that figure could be as much as £60 million?
264. **Mr Hewitt:** If one looks at its returns, the Legal Services Commission starts off with a very large amount of money, but that covered everything in year one. The figure remains at £60 million for the next two years. Figures that I obtained from other sources suggested that that might be a slightly large figure, so I need to sort out with the Court Service exactly what its overall —
265. **Mr Paisley Jnr:** That would be the original £24 million on the £200 million to which your paper refers?
266. **Mr Hewitt:** Yes.
267. The cost of inquiries is an interesting vehicle. Essentially, the NIO has been meeting the cost of inquiries on an ongoing basis but meeting it from the shortfall in its expenditure each year. That carry-forward is more or less exhausted, so the NIO faces a pressure of around £46 million for the remainder of the CSR period. Again, that figure is an estimate, because the cost of inquiries tends to grow, and the NIO would not expect to have available end-year flexibility to cover that pressure, so it is a genuine one.
268. **Mr Paisley Jnr:** Is that for the five specific inquiries, which are Wright, Finucane, Hamill, Bloody Sunday and Rosemary Nelson?
269. **Mr Hewitt:** Those are the ongoing inquiries, as far as I understand.
270. The next two major pressures are pressures on the PSNI. One is an inherited claim on hearing loss that goes back quite a number of years.



- I understand that ear protection for training on firearms ranges was not available in the 1970s or the 1980s, and, when it did become available, it was not mandatory. By the time it became mandatory, it was nearing the end of the relevant period. A substantial number of individuals have potential claims. The estimate that I have for claims is somewhere in the region of £98 million, but, again, that figure is a moving feast.
271. **The Chairperson:** There is only a 50% uptake at present, so that figure has the potential to increase dramatically. We must be careful about that and ensure that we quantify accordingly.
272. **Mr Paisley Jnr:** I assume that you received that figure from the police.
273. **Mr Hewitt:** We received it from the NIO.
274. **Mr Paisley Jnr:** Did the NIO mention any other pending inquiries or claims? Were flak-jacket claims mentioned?
275. **Mr Hewitt:** The NIO mentioned equipment claims for injuries to backs, for instance.
276. **Mr Paisley Jnr:** I hear that the total could be twice the amount that you mentioned.
277. **Mr Hewitt:** It is difficult to say, because few of those affected have come forward. There will be some environmental claims as well.
278. **Mr Paisley Jnr:** Are those claims anything to do with Sammy Wilson?
279. **Mr Hewitt:** They are not related to your colleague.
280. None of the environmental claims has crystallised to the point where it is possible to put a figure on their value. However, you should be aware that other claims are in the pipeline.
281. The equal-pay claim for low-paid civil servants is another interesting issue. You will have heard Department of Finance and Personnel (DFP) announcements on the ongoing negotiations between itself and the unions about the size of that claim for the entire Civil Service.
282. The PSNI is caught up in the situation because a number of the civilian personnel of the PSNI was recruited through the same Civil Service mechanisms. There is a feeling, therefore, that if the Civil Service is liable for its low-paid personnel, the PSNI should be liable for its low-paid personnel. That bill is a moving feast, potentially, although not to the same extent as that for inquiries. It would be prudent to imagine something in the order of £20 million in back pay. To that, one must make provision for an ongoing cost, because salaries that had not been expected to increase, will increase.
283. Taken together, those pressures will amount to around £200 million. We regard those as inescapable pressures that will have to be met, one way or another, and for which there is not adequate provision at this time.
284. One can identify at least as much again in other claims, but we are still in the process of sorting the wheat from the chaff over what claims are inescapable and what claims will be absorbed normally by the body.
285. I want to take the Committee's mind on how one might proceed with the financial inquiry. The Committee will have a range of options. First, it could act merely as the recipient of information provided by the bodies and collate it into an overall picture, or, secondly, it might wish to take a more active and probing approach to the information that it has been given, in order to challenge, to some degree, the validity of some of the claims that are made.
286. I am not sure as to how the Committee will wish to proceed on that, because it creates two different costing situations for us. There is a difference in the Committee's having a role in an inquiry and in its merely collating information.
287. It is up to the Committee to decide whom to call, but I suggest that the groups associated with the inescapable pressures are candidates to be

- interviewed. Beyond that, groups with a substantial budget should be given some priority by the Committee — even if they are not identified as being a major pressure. Therefore, that is where we are at. I am now happy to take questions.
288. **The Chairperson:** Thank you for that, Victor. You mentioned the policing budget, which the Committee has discussed to some degree. However, those of us who sit on the Policing Board will be aware that some of the pressures are being pushed. That budget must be signed off by the end of March, and it is now being frantically worked on. It is already in the public domain that some of the pressures are being pushed into next year's budget, which leaves the PSNI in an even worse position as it moves into the next budgetary period. The budget will be more than £30 million, and we will have to tease that out. Therefore, we need to bring organisations along, and we need to put on record some of the substantial pressures that are being placed on the Budget.
289. Issues concerning the Court Service and the Prison Service also need to be considered. A document on newbuilds for courts is out for consultation, and I am not sure whether the NIO has costed that, but we need to get some idea about it. There are also pressures on the prison establishment for new prisons. The Criminal Justice Inspection Northern Ireland has made recommendations on Hydebank Wood young offenders' centre. There could be substantial spends in some of those areas, and we need to get an idea of those spends.
290. I will open up the floor to questions on the various papers, but, first, we need to decide on the order in which we can begin to contact people, because, when today's meeting has finished, we will have to notify potential witnesses for our evidence sessions. I am not sure whether we can get any witnesses in time to attend next week's meeting, but we need to start planning for the meeting on 3 March. We need to schedule the people whom we are going to see
- and decide how we will do that over the next few weeks.
291. **Mr McFarland:** If representatives from the Court Service are appearing to talk about financial issues, presumably we can also discuss their thoughts on the structures in the Court Service, because, when its director, David Lavery, appeared before the Committee, he had some interesting thoughts on the way forward. We could therefore take the opportunity to discuss structures with witnesses from the Court Service rather than call them back to appear before the Committee a second time.
292. **The Committee Clerk:** I do not see any reason why we cannot do that. I can inform the Court Service of our intentions.
293. **Mr McFarland:** We will get only one go at negotiations with the Treasury and the NIO between now and the end of March. If we do not get those negotiations right, we will suffer further down the line. Equal-pay claims, for example, should be left to the NIO to sort out before the matter transfers across to us. Their messing-around led to the inequality in the first place, so it seems silly to expect us to resolve the issue.
294. Elements of the proposals from the Eames/Bradley Consultative Group on the Past might be adopted. The whole business of the inquiries and the work of the Historical Enquiries Team (HET) should remain within the NIO's budget. Presumably, costs will not come out of our policing budget. I will leave that matter to be dealt with.
295. On the subject of hearing-loss claims, Committee members who are on the Policing Board will know better than I do, but I sat on the Policing Board's finance and general purposes committee for several years, and there was a great tendency to simply agree on issues without challenging them.
296. I spoke to the chairman of the Policing Board the other day. I wonder whether we are being robust enough about hearing-loss claims, but colleagues on the Policing Board will know whether

- we are. For a long time, the board automatically paid out on claims on the grounds that it was cheaper to pay out than to fight them.
297. **Mr Paisley Jnr:** The board does not do that any more.
298. **Mr McFarland:** I know that. When the Policing Board began to fight claims, the number of claims made decreased. I understand that the situation started with firearms instructors, who, given their job, are more likely to submit hearing-loss claims. Age affects people's standard of hearing, and, in fact, my hearing is deteriorating. Therefore, if everybody jumps on the bandwagon, anyone who was ever a police officer will receive compensation. Is the board likely to fight that type of situation or will it simply put its hands up and accept that, at the moment —
299. **The Chairperson:** At the minute, the board is putting up a fight. It is examining cases, and it intends to continue to do so.
300. **Mr McFarland:** Therefore, the board is looking at claims case by case?
301. **The Chairperson:** Some work is currently in the judicial system, and the Committee cannot get involved or ask questions about that, because the board will not discuss the matter with us, the police or anybody else. When representatives from the board appear before the Committee, they will not discuss details of specific cases. Some cases are driven by the legal profession, which is, in effect, advertising and telling people who served as police officers within a certain period that they are likely to have suffered hearing loss. Everybody trundles along and submits a claim, and it creates, as Alan said, a snowball effect. I mentioned the 50% uptake, because the figure of £98 million could turn out to be much more.
302. **Mr McFarland:** May I ask a question about legal aid? Legal aid is, technically, unending. Is the budget for legal aid limited, or does it continue limitlessly each year? The only way in which to estimate budget requirements for legal aid is to analyse the previous year's costs. Is it possible to cap legal aid? There was an argument in England recently because the legal-aid budget was capped as a result of its getting out of hand. Is that the case here?
303. **Mr Hewitt:** I am not entirely familiar with the process, but legal aid is clearly a rising cost. I understand that solicitors consider people's circumstances and what resources are available to them when deciding whether to grant legal aid. However, once legal aid has been granted, it appears to be difficult to control. However, as I said, I am not entirely familiar with the procedures, so I will look into that matter.
304. **Mr McFarland:** In a busy year, if the legal-aid budget is used, is it impossible to grant legal aid thereafter? Or do we identify that the budget will run out and cap the level of legal aid to ensure that everybody receives some aid but not as much as is required? It is useful for the Committee to understand that black hole in the system.
305. **Mr Hewitt:** I will enquire about that matter.
306. **Mr Paisley Jnr:** The Committee must be careful about how it approaches the matter. I understand Alan's view that some people in various organisations are over-egging the pudding and inflating their bid, and so on. It is not the Committee's job to analyse how much money each body receives. We should deal with facts, and consider how much money bodies receive and for how much they bid. Moreover, as is outlined in Victor's paper, we must determine what we believe they need for the remainder of the current CSR period. We proceed on the basis of expected costs and whether we can achieve sufficient supply in order to meet that cost. That is one level that we should take it at, but it is a very short-term level.
307. The paper provided does not address the longer view, and it is essential that the Committee get to grips with long-term issues. What will the policing and justice budget be after summer 2012?

- Assuming that the devolution of policing and justice powers continues, that there are no hiccups and that it rolls on with political support, how will we make a reasonable and fair calculation when submitting a bid to the Northern Ireland Office? Should we consider the current budget and estimate £200 million, plus 2% for inflation?
308. How do we make a longer-term guess? When the NIO transfers powers, we should inform it that not only should the moneys come across, but that it should use a formula for transferring money to supply the very needy, and very greedy, bodies in the longer term. We need to take that approach.
309. We should not analyse how much money each body receives, but not because we do not have the appetite for doing so. We would all be very old men by the time that we assessed all the bodies to ascertain whether they were wiping our eye or were bidding for too much. That is not our role; that is the role of a scrutiny Committee. Let us get to grips with the ballpark figure of what the process will cost. We could then identify where the gap is, plug that gap and then take a longer-term view of how we receive moneys from the NIO to meet bodies' needs. We should take that approach.
310. **Mr A Maskey:** That is fair enough, but the difficulty is that, in order for us to understand what needs to be sorted out, we must perform some robust scrutiny. I do not want to spend the next year going through each body's budget either, because that will take considerable time. From my experience of the Policing Board, it is like smoke and mirrors. It is a most unsatisfactory process.
311. We could not hope to conduct that level of scrutiny. However, Victor spoke about aspirational issues, of which that is one. We must be mindful that we are not a sounding board, or somebody else's negotiator. The figures that have been presented may not be realistic. They may be, but when the police presented figures in different papers to the Policing Board, those figures were vastly different over a period of a couple of weeks, simply because there was a row at the Policing Board. I was very angry about that process.
312. I do not simply want to pass on somebody else's wish list. Alternatively, I do not want to pass on very deserving bids.
313. **Mr Paisley Jnr:** We will have a tab on that over the next 10 years.
314. **Mr A Maskey:** In order for us to put a tab on what we think is realistic, we will have to conduct a certain amount of robust scrutiny. It is about achieving a balance, because I do not want to give somebody the opportunity to tell the Committee how much they want and need. What that person says may be 100% legitimate, but it may not be. Some of that may be a good idea, but we could do it next year, or in a different way.
315. **Mr Hewitt:** Both points are well made. I am particularly concerned about the longer term. We envisage that a position will be reached at which those functions will be transferred along with a budget. Thereafter, they will fall within the purview of the Northern Ireland block — into the assigned budget, as it is called. That assigned budget is driven by the Barnett formula. For policing and justice in future years, Northern Ireland will receive a share of what is being spent additionally on the policing budget in Great Britain.
316. If the baseline at which the powers are transferred is not right, there will be very substantial deficits and very little additional moneys coming across. It is a very rough rule of thumb, but considering the numbers in this area in Northern Ireland, a 2:1 ratio would not be far off the mark. In other words, we tend to spend twice as much, on average, as is spent in Great Britain on many policing and justice issues.
317. This is an expensive area. I suggest that the Committee may want to work towards a statement of principle with the Treasury. At the time of the 1998 comprehensive spending review, it

- was envisaged that the Prison Service would be downsized and that certain arrangements would be made. The documentation for that comprehensive spending review included an expression about making provision for all known pressures. It is very important to know the pressures for which one should make provision before moving to a different financing regime in future. As I said at our first meeting, those issues tend to push their way up the priority list. They are very difficult to avoid, yet the resources would have to be found from elsewhere in the block.
318. I remember when the policing of parades drove up overtime hours to astronomic levels, and in those days, provision for that had to be found by removing money from capital projects, because that was the easiest way to make that provision. Given the nature of the public-expenditure regime that we have now, money cannot be moved from capital into current. Money can be moved from current into capital, but not from capital into current, so that route is closed off. Other areas of current expenditure would have to be raided in order to meet those pressures. Those are some of the longer-term options that could, perhaps, be thought about.
319. In relation to the other point made by Mr Maskey, I believe that — for the credibility of the Committee, if nothing else — it would be wrong for the Committee to be a sounding board for organisations. The Committee should ask some questions of those people and require them to justify their budget claims. That is my personal view, of course.
320. **Mr Attwood:** Thank you for the presentation. If nothing else, the evidence that we have heard this morning and all the documents that we have seen have given us a snapshot of the budgetary position for all these organisations, or at least the significant ones. That allows us to look at the issue with our eyes wide open.
321. My own view is that when all the figures are extracted, the situation that has been presented is benign. The situation is going to deteriorate generally, not least because, I presume, there is going to be a further demand for efficiency measures by the London Exchequer, which will work its way across the Irish Sea to here.
322. I was attracted to the idea of a statement of principle that Victor outlined. The Committee might be overreaching itself if it were to try to create that, but I hope that some statement of principle will be agreed elsewhere between the NIO and other people who are negotiating these matters. The NIO and London have to acknowledge, in order to help the North to become even more stable, that policing and justice arrangements must be kept stable for a significant period of time. Previously, those arrangements were such a point of friction in our community that it is important now to ensure that, one way or another, that is not the case in the future. Therefore, when it comes to these matters, a political statement of principle must be accepted by London.
323. Having said all that, I believe that the people whom you suggest that the Committee should speak to are the right ones. If speaking to those people will help us to identify where the hard issues are and where the real bottom line is, that is as good a place as any to start. Therefore, I agree that the Committee should speak to the organisations that you recommend.
324. This may be beyond the scope of your involvement to date, but in your contact with the relevant groups, are you getting any sense that the budgetary issues are getting resolved? The First Minister and deputy First Minister have said that they hope — that is the word that they used — that by the end of the financial year, which is now six or seven weeks away, the budgetary issues between the devolved Administration and London will be resolved.
325. Given that you have identified a £200 million budgetary pressure, are you picking up from those organisations



- that those issues are part of the discussions? If those matters are part of the discussions, are you getting any sense that they are getting resolved? In particular, are you picking up anywhere along the line an indication that a conversation is occurring between the NIO, the devolved Administration and the police about reducing the police numbers, as has been proposed by HMSC and the NIO?
326. **The Chairperson:** I do not think that the issue of police numbers is relevant; we are dealing with financial issues.
327. **Mr Attwood:** It is relevant because 80% of the police budget is spent on staff costs and thus relates to police numbers. Therefore, it is relevant to ask whether, in respect of the police budget, you are picking up on a side discussion going on about a reduction in police numbers.
328. **Mr McCartney:** I do not think that that is an appropriate question to ask Victor.
329. **Mr Attwood:** Of course it is.
330. **The Chairperson:** No; I do not think that it is. Those are points that we can raise legitimately with the police.
331. **Mr Attwood:** People are looking at the financial figures and are having conversations at some level, and it is fair to ask whether they are picking up on what those conversations are about.
332. **The Chairperson:** There is no suggestion from the submission by the Police Service that any such discussions are going on. It is unfair to draw the advisers into that.
333. **Mr Attwood:** There are other questions that they can answer.
334. **Mr Hewitt:** I will give a partial answer. Clearly, the major axis will be between DFP and the NIO when settling the overall Budget Estimates for the NIO responsibilities that might be transferred. The Treasury will be the other major party in that. Those engagements are actively proceeding; it is no secret that the Minister of Finance and Personnel is determined that the financial aspects be resolved satisfactorily before those matters are taken forward. In that sense, a parallel operation is taking place to the Committee's inquiry.
335. I am not aware about the issue of personnel other than the issue of the full-time reserve being phased out. That is now the subject of a security review. According to the Patten Report, the budget is predicated on the full-time reserve being phased out, but if the security review came to a different conclusion, that would bring an additional pressure. That is the only personnel issue with the police of which I am aware.
336. **The Chairperson:** Efficiency measures and the fall in receipts of the sale of land and properties because of the fall in prices must have an impact on the some the budgets.
337. **Mr Hewitt:** That has had an impact, but I am not sure that that is an enormously large problem in the NIO area. The fall in property prices is clearly a large problem in areas such as social housing. I do not have the exact numbers, but I can find out the amount of capital receipts that was budgeted for. Such matters are considered over the course of a single year.
338. To take an example from outside the NIO, the collapse of the Workplace 2010 scheme meant that a receipt of £175 million did not come in this year. That is an in-year pressure. It is not that £175 million does come in every year; that needs to be dealt with for one year, and once that year is past, one is in clear blue waters. There is a similar situation with the police estate. One can see that the police are under pressure to dispose of property and that this is not a particularly good time to do that.
339. The efficiency savings are not only a matter for the police. The Chancellor has indicated that he wants to raise the target for efficiency savings from 3% to 5% for UK Departments, including the NIO. Those efficiency savings are effectively cuts, because they are

- cash-releasing savings from Whitehall Departments. The consequence for Northern Ireland is that they will be translated through the Barnett formula, which works both ways, up and down. That will result in a “down” to the Northern Ireland Budget and to the Scottish Budget. I understand that that is being resisted, and the Minister of Finance and Personnel said that in the Chamber. That would be a further pressure on the overall Budget for Northern Ireland.
340. **Mr McFarland:** Given that the Policing Board is responsible for people and buildings and that the budget is devolved from the NIO to the Policing Board, is there an issue of propriety or potential for a row with the Policing Board over why the Committee is talking to directly to the police, and not to the Policing Board, in the first instance? It is a question of how the issue should be handled.
341. **The Chairperson:** We will be talking to the Policing Board.
342. **Mr McFarland:** So, we do not see the Policing Board getting in the way of the list of three?
343. **The Chairperson:** There will be another list, and I anticipate that we will call the Policing Board fairly early.
344. **Mr McFarland:** So, the Policing Board will not get upset about not getting called before the police?
345. **The Chairperson:** We will work that out in a minute or two. Once we get the list, we will work out the order in which we should call witnesses. Perhaps we should group witnesses, so that they are called on an ordered basis.
346. **Mr Paisley Jnr:** I wish to return to the issue of disposal of the police estate. The police may take an operational decision to close a building, but the building would remain the property of the Policing Board. The Policing Board can decide when to dispose of it. To whom do the receipts go, and to whom would they go in the future? Would they go to the Policing Board, would they go to the justice Department or would they go to the Treasury?
347. **Mr Hewitt:** That depends partly upon what has been negotiated between the bodies, and partly on the size of the receipt. If it is a very large receipt — probably over £10 million — the Treasury would take a particular interest in it. However, in the first instance, the receipt would go back to the body that owns the property and, normally, be used within its budget. We must distinguish between planned receipts and unplanned receipts. Usually, planned receipts are built into a budget; for example, a body is given a certain amount of money, and it is assumed that it will generate a certain amount of additional money from the sale of the property. Combined, those two things will fund that body’s operations. If, during the course of a year, something is identified as being surplus to requirements, but was not built into the budget, that is an additional receipt, and, quite often, it comes down to negotiation between the two bodies.
348. **Mr Paisley Jnr:** Can we get absolute clarity on that point? It will probably take some good work from Victor, but as I understand it, the PSNI is planning to close around 50 or 51 stations. Even if it decides to do that, the decision of when to dispose of those stations, if ever, remains entirely with the Policing Board. One assumes that they would want to dispose of those stations; however, the timing of the disposal — involving as it does market place offers, and so on — would be crucial. If the Policing Board decides to dispose of those stations, up to, or after, 2012, who gets the benefit of that money? It might help us with our calculations if we factor in that a number of the receipts from closed and sold stations could come back to the Department or go directly to policing.
349. **Mr Hewitt:** I will look into that for you. Most of the information about receipt lines should be within the Policing Board budget; however, I will make the necessary enquiries.

350. **The Chairperson:** The forensic science laboratory feeds off the policing budget. It is something of a moveable feast from year to year, depending on the cases, and so on; however, it needs a set budget, too. As an agency, it charges the PSNI for its services; therefore, in order to make a projection, we need to tease out with the PSNI what the spend has been in that area over the past number of years.
351. Are there any other questions? We will try to put our questions into some sort of order, and work out a table as a result of that. Two issues are, I assume, the PSNI and the Policing Board. There is a table of spend for each Department, which might be helpful.
352. **Mr McFarland:** The Ad Hoc Committee on Criminal Justice looked at the changing role of the Probation Board, which was mightily expanding its role to look after prisoners from the moment that they appeared in the dock until the moment that they left prison. One of the points made by that Ad Hoc Committee was that there had to be a proper budget allocated to that. Given that that is in the process of happening, it is worth keeping an eye on whether that is factored in somewhere. If it is not factored in until after the devolution of policing, suddenly, an extra budget will have to be found.
353. **The Chairperson:** This is a bit of a lottery now. We will try to group them after that.
354. **Mr McCartney:** Many of those groups feel that their budget is satisfactory. I assume that we can rule them out immediately.
355. **The Chairperson:** I imagine that there is no point in calling a group that says its budget is satisfactory. I am looking for recommendations as to whom we should call.
356. **Mr Paisley Jnr:** I will start the bidding then. On this list, you have already proposed 1, 2, 3 and 4. I propose: 5, 6, 7, 8, 9, 10 and 13.
357. **Mr McFarland:** Not the Policing Board?
358. **Mr Paisley Jnr:** I want you to propose something, Alan.
359. **Mr McFarland:** The bill for the Legal Services Commission is not due to its functioning. Have we a bill for the administration of that body? It is difficult to estimate: we have talked about it already, and it could be up, down or all over the place. The £65 million is made up mainly of legal aid costs.
360. **Mr Hewitt:** Yes. Legal aid accounts for the bulk of that figure. The administration costs are a fraction of it.
361. **The Chairperson:** We need clarity as to that figure. I heard it mentioned this morning that it may be as high as £80 million. You have a figure of £38 million and other figures have been talked about: we need to tease out of them exactly what the sum is. In other parts of the United Kingdom, budgets have had to be capped as a result of spiralling costs.
362. **Mr Hewitt:** I have given some additional figures, but the sum varies a great deal. We covered those costs in 2008-09 by bidding for £22 million from the Department. They brought a £2 million transfer from Court Service funds and they used a £2 million cash balance. That made £24 million, which covered that pressure. However, the pressures built up again in the final two years, and according to the table, they amount to £60 million in the final two years. Later this week, I will meet with the Court Service and go through these figures with the officials in some detail, if the Committee agrees.
363. **The Chairperson:** We will call them, anyway. Alan, do you wish to call any others?
364. **Mr McFarland:** I would like the Committee to call the Ombudsman's office, if the Eames/Bradley report is accepted. The bulk of the Police Ombudsman's office now deals with historic matters, and it has taken on many extra staff and detectives from all over to deal with them. However, they will be hived off into the Historical Enquiries Team area, so that the



- Ombudsman will be left dealing with current policing matters. Presumably, an enormous swathe of his budget and personnel will go off with them. If that happens, and the historic stuff is left with the NIO, these budgets could change quite a bit.
365. **The Chairperson:** Should we call any other organisations?
366. **Mr Attwood:** OFMDFM and the NIO want to have this matter concluded. We have five or six weeks before the end of the financial year and we need to move quickly. Therefore, we should consult with a very short list of organisations. I agree with Victor's recommendations. We should call the Legal Services Commission, the Court Service, the Northern Ireland Office and the PSNI. That is where the budgetary pressures lie, and given the time frame in which we have to work, that is the way that we can best direct our energies.
367. **Mr McCausland:** The organisation that was left out earlier was the Policing Board.
368. **Mr Hewitt:** Will the Committee ask the Policing Board about its own costs or about its responsibilities for the wider budget?
369. **The Chairperson:** We will research the possibilities for the wider budget.
370. **Mr McFarland:** The Prison Service is an enormous expense, and the cost per prisoner here is completely out of kilter with that in the rest of the UK and elsewhere. Why it costs something like £58,000 to keep a prisoner for a year here is going to become a major issue.
371. **Mr Hewitt:** The figure is closer to £84,000.
372. **Mr McFarland:** Either way, the figure is enormous compared with that in GB. The Prison Service is a big spender, and we may need to have a chat with some of its representatives.
373. **The Chairperson:** Did you also mention the Police Ombudsman, Alan?
374. **Mr McFarland:** If the Eames/Bradley report is implemented — and I do not know whether it will be — an entire chunk of the Police Ombudsman's office will go to the Legacy Commission and the Historical Enquiries Team. Presumably, that will mean that the Police Ombudsman's office will come to us with a much leaner cost base of about £9 million.
375. **The Chairperson:** That is one of the issues that we will raise with the NIO. There is also an issue with the RUC GC Foundation. It was promised a museum many years ago, and the NIO was supposed to be involved in negotiations concerning a sum of between £4 million and £5 million. We need to tease out exactly what is happening between the NIO and the RUC GC Foundation, because that may be a pressure that emerges. I will not die in a ditch over whether the RUC GC Foundation is called before the Committee, but the issue needs to be raised with both the foundation and the NIO.
376. **Mr McCartney:** The RUC GC Foundation has raised the issue.
377. **The Chairperson:** My understanding is that a promise was made to the RUC GC Foundation. When policing and justice is devolved, I do not want us to suddenly find a £5 million promise that we did not know about beforehand.
378. **Mr McFarland:** In the Ad Hoc Committee, an issue was raised about the rapid expansion of the Life Sentence Review Commissioners. Do you remember that that system was changing? Does the budget figure for the Life Sentence Review Commissioners relate to the new organisation or the old one?
379. **Mr McCartney:** It relates to the old organisation.
380. **Mr McFarland:** Do you remember that there was discussion about those commissioners increasing in number?
381. **Mr McCartney:** They were to become sentence review commissioners

- rather than Life Sentence Review Commissioners.
382. **Mr McFarland:** That is right. The commissioners were to dramatically increase in number and have more staff, premises, and so on. I wonder about the figure listed there, because I am not sure whether all that has happened yet.
383. **Mr Attwood:** That has happened, and the paper states that the figure listed relates to the new organisation.
384. **Mr McFarland:** Is that the new figure? I have not read the paper in detail.
385. **The Chairperson:** We will clarify that.
386. **Mr Attwood:** Alan's wider point questions whether the Prison Service has enough money to do all that it is meant to do in respect of prisoners who may come before the parole commissioners. Big money is needed for that, and it is unclear whether the Prison Service has that money.
387. **The Chairperson:** We can ask that question to representatives of the Prison Service when they are here.
388. **Mr McFarland:** The Probation Board is also tied in with that issue. It is supposed to be delivering a lot of those things, but it is unclear how much of that is in its budget.
389. **The Chairperson:** Meetings with those organisations need to be worked into a schedule, and the Committee office will do that. If an issue that is raised requires people to be brought before the Committee towards the end of the process, we will do that. We have still not been given any information on the state pathologist.
390. **The Committee Clerk:** We have not received a reply; therefore, I have no idea on that one.
391. **The Chairperson:** We will keep the pressure on, and we will pass that information on to you as soon as we receive it. The figure involved is almost £2.2 million, but we can make a decision once we receive the relevant information.
392. We will need a week in which to notify these people; we have to give them the opportunity to appear before the Committee. That will be at the meeting on 3 March.
393. **The Committee Clerk:** It will be on 4 March.
394. **The Chairperson:** Yes, 4 March. Those sessions will take place in the Senate and will be public.
395. **Mr A Maskey:** Is there a way of asking some of them to be here next week, because people such as David Lavery —
396. **Mr McFarland:** The witnesses will be expecting to come, because we have already told them that we are likely to call them. Some of them may well be able to come earlier, and if they can do so without inconveniencing —
397. **The Chairperson:** If any of the witnesses is available to appear before the Committee — if we can get a couple of them to attend next week — the Committee office will notify members by email about who will appear. We have a short meeting planned, but if we can get some of the witnesses to come along, that will be some of the work done. I imagine that getting some of the bigger players might be difficult without giving them some notice; we will have to give a reasonable period of notice to people such as the Chief Constable.
398. **The Committee Clerk:** I gathered from the discussion earlier that it would be better to have witnesses appear before the Committee on a single subject. If representatives from the Court Service and the Legal Services Commission were invited to appear on the same day, that would allow the structure of the questioning to run with a theme. If the Chief Constable and the Policing Board were to be invited to appear together, I may then have some scope to slot in the other witnesses around those arrangements.
399. The specialist adviser has said that he plans to have discussions with the Court Service later in the week. There may be a question over how soon the Court

- Service would be in a position to come along. If we could manage it that way, I would have some flexibility to organise a programme, which would then be issued to members as soon as possible.
400. **The Chairperson:** Are members satisfied with that approach? That is a reasonable approach.
401. Mr Hewitt, are there any other issues that you want to cover? You will be with us at the sessions —
402. **Mr Hewitt:** Yes, we had planned to provide the Committee with briefings for those sessions, provided that we can get some advance notice of whom the Committee is going to see. I take it that the Committee has no objection to our speaking to the organisations to clarify detail beforehand?
403. **The Chairperson:** I do not think so. You will be available if there are questions on the day; the Committee Clerk tells me that the system can allow for that.
404. **Mr Hewitt:** Yes.
405. **The Chairperson:** You will be with the Committee anyway, and you will be able to feed questions through to members. Although you will not be able to ask a question directly, you can feed questions through to anyone through the Committee Clerk if there are issues.
406. **Mr McFarland:** Do we all get earpieces?
407. **The Chairperson:** We can talk into our sleeves.
408. I ask members to bear in mind that the Committee felt it important to have this discussion in closed session today. We are not hiding anything; everything will be revealed as witnesses are brought along to the various sessions. I ask members to bear in mind the confidentiality of the discussions this morning, and I ask that there is no speculating in the press. I do not think that that would be helpful to this process. We are trying to get the best deal possible for the eventual devolution of policing and justice issues. It is a big area on which there could very easily be speculation. There is a whole range of areas to cover. The other meetings will be in public session, so issues will be coming into the public domain as we question people. Are there any other issues?
409. **Mr McCartney:** Can we have the completed list of whom we are calling?
410. **The Committee Clerk:** One through to 12 are: the Legal Services Commission; the Northern Ireland Court Service; the Northern Ireland Office; the Police Service of Northern Ireland; the Northern Ireland Prison Service; the Public Prosecution Service; the Youth Justice Agency; the Probation Board for Northern Ireland; the Forensic Science Agency of Northern Ireland; the Compensation Agency; the Northern Ireland Policing Board; and the Policing Rehabilitation and Retraining Trust. There may be more clarification from the RUC GC Foundation by correspondence or through our specialist adviser.
411. **The Chairperson:** Clarification on the museum issue.
412. **Mr McFarland:** Why is the Police Rehabilitation and Retraining Trust on the list?
413. **The Chairperson:** The Police Rehabilitation and Retraining Trust is based at the Maryfield complex in Holywood. There is an issue around the Forensic Science Agency's laboratory, and a section of the NIO is in some sort of discussion, but we do not know —
414. **Mr McFarland:** If there is a reason for that, that is fine.
415. **The Chairperson:** The reason is that there would have been a £5 million pressure on the NIO had the Police Rehabilitation and Retraining Trust been moved from Maryfield to re-accommodate the Forensic Science Agency, which is currently located at Seapark, Carrickfergus. The Seapark site would have required an entire rebuild had the Police Rehabilitation and Training and Trust been relocated to there, which, obviously, is an issue.

416. Earlier, we mentioned other issues around the Court Service, such as the consultation document on the IT equipment that has to be installed into various courts around the Province. The document mentions six, seven or eight courts. Obviously, there is spend there, and we must get to the bottom of that.
417. **The Committee Clerk:** As regards Mr McCartney's question, I wish to clarify that, at present, the Office of the Police Ombudsman is not included on the list. The Committee will want to pursue, with the Secretary of State, the question about the Historical Enquiries Team and whether that budget will transfer across to result in a leaner Office of the Police Ombudsman, and whether, at this stage, the Committee wishes still to call it the Office of the Police Ombudsman.
418. **The Chairperson:** On the financial issue, the Committee must talk to some of the players — from the Police Service of Northern Ireland and some other bodies that members mentioned already — before we bring in the NIO. Once we have clarity on some of those points, we will raise them with the NIO.
419. **Mr Paisley Jnr:** I thought that we were leaving the NIO until near the end.
420. **The Chairperson:** I know that the Committee wants to speak to the NIO about other issues, but I am merely talking about the financial issues. It may well be that some of those other issues will arise when the NIO officials are before the Committee.
421. We agreed that the Committee is open to suggestions as to who should be called to give evidence. We can do that once we have held a meeting to clarify certain points on some issues. Are there any other issues?
422. I thank Victor Hewitt and Stephen Pearson for attending this evidence session. I hope that from your point of view, this has been a helpful exercise. I know that your work is ongoing, and I understand that the Committee Clerk will review the list as soon as he makes arrangements with the various bodies. We will keep you up to speed with who is attending the Committee and when. That will also help you to sort your diary. The Committee appreciates your help and assistance with the matter, but much work remains to be done.
423. **Mr Hewitt:** Thank you, Chairman.

## 24 February 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mrs Carmel Hanna  
 Mr Danny Kennedy  
 Mr Alex Maskey  
 Mr Nelson McCausland  
 Mr Alan McFarland  
 Mr John O'Dowd  
 Mr Ian Paisley Jnr

### Witnesses:

Ms Anne McCleary	<i>Northern Ireland</i>
Mr Mark McGuckin	<i>Prison Service</i>
Mr Robin Masefield	
Mr Max Murray	

### Also in Attendance:

Mr Victor Hewitt	<i>Specialist adviser</i>
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424. **The Chairperson (Mr Spratt):** I welcome representatives of the Northern Ireland Prison Service. I welcome Robin Masefield, the director general, Mark McGuckin, the director of finance and personnel, Max Murray, the director of operations, and Anne McCleary, the director of services. We anticipate having up to an hour for the meeting, during which time the witnesses will give a brief opening statement, leaving time for Committee members to ask questions.
425. First, I invite Committee members to declare any interests. I declare an interest as a member of the Northern Ireland Policing Board.
426. **Mr Paisley Jnr:** I am also a member of the Northern Ireland Policing Board.
427. **Mr McCausland:** I am a member of Belfast District Policing Partnership.
428. **The Chairperson:** Alex Maskey, who is absent, is also a member of the Northern Ireland Policing Board.
429. You are very welcome. This is a crucial issue for us at the moment. We are dealing particularly with the financial aspects of the devolution of policing and justice, and I am sure that members will have quite a few questions.
430. **Mr Robin Masefield (Northern Ireland Prison Service):** Thank you. We very much appreciate being given the opportunity to appear before the Committee, and we thank you for allowing us the time to do so. I will keep my remarks very brief. I am grateful to my colleagues, who have been introduced already.
431. Mr Gary Boyd, who is our chief accountant and head of financial services, is here along with my head of press office. However, the four of us at this table will aim to deal with all your questions.
432. On 6 February 2009, I responded in writing to the Committee Clerk's questions. I am conscious that that was a slightly shorter and crisper response than some other organisations might have provided, but I do not wish to eat into the Committee's time for questioning.
433. Four key issues face the Northern Ireland Prison Service. I am also conscious of yesterday's debate in the Assembly. The first issue to face the Prison Service is the Criminal Justice Order (Northern Ireland) 2008. The previous time that some of my colleagues and I appeared in the Senate Chamber, we were questioned on our views on and preparedness for implementing the draft Order.
434. Secondly, the Northern Ireland Prison Service estate has had a fair amount of investment over the years, but it is



- still deficient in a number of key areas. I imagine that you may wish to pose questions on that. That has implications for capital expenditure and for resource-revenue costs thereafter.
435. Thirdly, the service devotes a lot of attention to organisational development issues such as staff development and human resources.
436. Finally, we are conscious of the pressures that the wider economic and financial climate in which we operate place on the Prison Service, the wider Northern Ireland Office and Government more generally.
437. **The Chairperson:** I know that several projects are ongoing at present, particularly where modernisation is concerned. What is the current expenditure position with those projects, and, as a result, what might be the possible pressures on funding in the years that lie ahead?
438. **Mr Masefield:** There are perhaps three areas that I could discuss on that point. I shall talk about the Order, and my colleague will speak about the human resource dimension, about which we have particularly impressive stories to tell about the changes that we are introducing with staffing. Thirdly, we will talk about the development of the estate, which covers capital, as well as revenue, issues.
439. A range of pressures was identified across the Northern Ireland Office family, as I might call it, in the preparation of the draft Order a year ago. I remember being asked whether the Prison Service could afford to implement the Order. I answered then that we could, and I believe that that remains the position. A total of £4.7 million is set aside for the Prison Service to implement its share of the Order.
440. We are on target with the progress that is being made this year, and, in the final year of the comprehensive spending review (CSR) period, we will have £2.6 million in additional moneys. Many demands are being placed on us, including the recruitment of additional staff such as psychologists and the gearing up of the offender-management model, which we think is the right way forward. In the light of those demands, we believe that those additional moneys will provide us with the funding that we, along with the Probation Board and the Northern Ireland Office, require to play our part in implementing the draft Order. That is one strand of modernisation against which we can put a tick.
441. My colleague, as head of personnel and finance, will address the staffing issue.
442. **Mr Mark McGuckin (Northern Ireland Prison Service):** The Prison Service is a staffing-led organisation, and it delivers its function working with and through people. There is a significant resource requirement for staff. A couple of years ago, we looked at the overall staffing position and the reliance that is placed on highly paid and highly skilled prison officers to carry out a whole range of functions across the system.
443. We identified a range of opportunities for efficiencies. We put together and agreed a package with the staff associations that addressed the overall staffing complement — the overall numbers that are involved — and the type of staff. As a consequence, we had a 10% pure efficiency reduction in the overall number of staff that were required, and we brought in support grades to carry out functions that are not directly related to engagement with prisoners. For example, the contact that some staff had with prisoners was as court escorts. However, maintaining the security of the environment is the key consideration.
444. In addition, and with the agreement of the Prison Officers' Association (POA), we introduced a support grade. Staff in that grade carry out peripheral functions in secured areas around the establishments in question, such as maintaining the fabric of the building and so forth. There is a range of posts in that grade and over the next two or three years, we will gradually bring more support grades on stream, thereby replacing prison officers that



- have left through natural wastage. Pure efficiencies and the use of different types of staff have created total efficiency savings of approximately £25 million or £26 million over the period. That helps us to address some of the other pressures that we face.
445. **Mr Paisley Jnr:** Thank you for coming today, ladies and gentlemen.
446. To cut to the chase, we are trying to secure the devolution of policing and justice powers to Northern Ireland. To do that, we need to know how much the Prison Service costs now and how much it is likely to cost us until 2012 and beyond. We need that information in order to inform our negotiations with the Northern Ireland Office, which normally likes to negotiate with people who are in the dark about such matters. By having that information, we can agree a figure with the Northern Ireland Office through which the Prison Service can be sustained, not only at its current level, but efficiently and effectively in the future. Thus, the Prison Service will be able to grow and develop and do what is expected of it. It will be able to look after people properly and meet the expectations of the twenty-first century public in Northern Ireland.
447. Robin, I am asking you for a ballpark figure: in order to sustain the Prison Service and to develop it in the way that I suggested, how much money should we request from the Northern Ireland Office?
448. **Mr Masefield:** I could give you a number of answers to that.
449. **Mr Paisley Jnr:** I just want the truthful and the real answer.
450. **Mr Masefield:** You will always get from me, sir, a truthful answer, and indeed a real answer, in the context of the role of the agency as a member of the Northern Ireland Office family. Very broadly, the result of the comprehensive spending review settlement was that we were provided with a flat real settlement of a 2.7% increase across the board for year-on-year inflation costs, and that has, undoubtedly, created some pressures for us.
451. The truth is that in the last year of the SR04 period, as our accounts show, our out-turn was several million pounds below the initial opening budget. We were able to return money to the central fund, which was excellent, because it contributed to the end-year flexibility.
452. **Mr Paisley Jnr:** Was that capital money that was returned?
453. **Mr Masefield:** No, it was revenue. We brought forward a small amount of capital because of our successful spending against it on new accommodation. This year, as the end of the financial year approaches, we will break even or perhaps, we hope, come in slightly under budget. We do not deny that we will struggle to continue to take the service forward in the next two years.
454. On 1 April 2009, we will enter the third year of the pay-and-efficiency agreement to which my colleague referred. Therefore, we can anticipate the budget levels and the salary costs in that agreement. We can also get a good handle on the staff who will replace those who left through the natural wastage — Mark referred to them already.
455. I single out the implications for the development of the estate as presenting perhaps the biggest single challenge to the service; you may wish to question us further about that. I am conscious that I did not come back to you on that, Chair; it was the third element of your opening question. The estate, undoubtedly, requires development in two strands. In addition to the capital cost, to which you referred, revenue costs will tail thereafter. Those comprise the capital charge, which is currently 3.5%, and depreciation.
456. For example, if, as we hope, Magilligan Prison were to be replaced with a new redeveloped facility, that new facility would cost more, because, over the 50-year period, we would be paying a capital charge and a higher level of

- depreciation for a new asset than for the current facility. Therefore, within our budget for the coming year, we will seek to contain the increasing costs incurred as a result of our progress in developing accommodation to meet the increasing prisoner population. We hope to offset those costs against any savings that we may be able to make.
457. **Mr Paisley Jnr:** That is very interesting. However, can you answer my question: how much money do you actually need? How much should we be asking the Northern Ireland Office for, for a sustainable period, up to 2012 and beyond, to allow the Prison Service, not to struggle through — as you put it — but to sustain itself and grow?
458. **Mr Masefield:** The specific figure is £13 million, which is the cost that is associated with the estate development. That is the combined revenue cost for the year in which we are starting, 2009-2010, and then for 2010-11.
459. **Mr Paisley Jnr:** Is that £13 million on top of the £134.9 million that you will bid for under the resource budget?
460. **Mr Masefield:** With respect, clearly an element of those capital costs, and the associated revenue costs, is included in our budget. The centre — the Northern Ireland Office — will look to us to manage and produce a balanced budget, notwithstanding those pressures, which are largely, but not exclusively, the result of modernising the estate, trying to produce a prison service that is fit for the twenty-first century, and some inescapable consequences from the continually rising prisoner population.
461. **Mr Paisley Jnr:** I will ask that again, because I need to get this in plain English — I am a wee bit stupid when it comes to these things: is that £13 million on top of the £134.9 million that you are budgeting for in the years 2008-09 and 2009-2010?
462. **Mr Masefield:** As you will appreciate, I am not going to give you a direct answer saying yes —
463. **Mr Paisley Jnr:** Why not?
464. **Mr Masefield:** That is an additional cost in the budget that we have — it is an additional pressure that we will need to meet within our budget.
465. **Mr Paisley Jnr:** I understand the word “pressure”; however, in a year to 18 months, at the very outset, you guys will be totally answerable to the Assembly. Do you want to be here, in a year to 18 months, explaining that you should have told us how much was really needed? Now is the time to put that on the table, tell us what you need, and perhaps we can get a sustainable budget for the future. We are trying to help. At the minute, your political master is the Northern Ireland Office, but that will not be the case for very much longer. You have to make a judgement call today: will you give us the full picture or only part of the picture? I hope that your call is that you will give us the full picture.
466. **Mr Masefield:** My clear response is that to an extent, we are flagging up that £13 million pressure, and we flagged up earlier that we were struggling to contain that with the resources that we have. That is the business that the four of us appearing today seek to do, and there are a number of offsetting means by which to do that — it can be done while living within the pressures.
467. **Mr Paisley Jnr:** In January 2001, the prison population was 800; in 10 years, it has practically doubled, which as an unfortunate reflection of today’s society. Nonetheless, you have to manage that population, and you do so under very difficult circumstances. We commend the very capable people who are working on the front line. From what you know, and indeed, from the changes in Government policy that are being announced and that seek to keep people in jail for longer, without releasing them — because that is what the public demands — do you envisage that population growing by another 100% over the next 10 years?
468. **Mr Masefield:** We do, frankly, yes. Two years or three years ago, as part of our strategic development programme, a lot of work was done on population

- projections, and those figures were independently quality assured by Queen's University law department. The projection is for roughly a 5% growth in the initial years and a 4% growth thereafter. That did not take into account the changes in the Criminal Justice (Northern Ireland) Order 2008, which had not come through at that time. As you are aware, the hope is that the Order will provide properly for diversions from custody those who do not need to go to prison, but who may now be sent there as a result of a lack of an available alternative.
469. Just yesterday, there was a very welcome development with the announcement of the women offenders' strategy, which is putting in place, for example, a probation facility that did not exist previously. Good progress is being made in providing an alternative. This morning, Max Murray was present when the Minister announced the introduction of electronic monitoring — or tagging — which is another alternative. Until now, the courts would have been obliged to send people to custody, so that step is welcome. It is our hope that the prison population will roughly balance out over time.
470. My personal belief is that probably in the longer term, as you said, we will end up with more of those individuals — people serving long-term, indeterminate and extended custodial sentences — who will find it very difficult to satisfy the parole commissioners that they have reduced the risk of serious harm that they pose to the community.
471. **Mr Paisley Jnr:** Does that mean that by 2018 we could have a prison population in excess of 3,000 people?
472. **Mr Masefield:** We would not go that far; our calculations are that in 15 years, the adult male prison population will have risen to 2,200.
473. **Mr Paisley Jnr:** What about the female population?
474. **Mr Masefield:** We have not completed the work that would take those calculations to the same level. In the next few weeks we hope to publish a strategic outline case for projections the female prisoner population, which has increased significantly. For example, when we transferred from Mourne House at Maghaberry in June 2004, there were just 17 female offenders in custody; there are now 55.
475. **Mr Paisley Jnr:** Therefore, that figure has more than doubled.
476. **Mr McCausland:** Thank you. Can you clarify some of the points that Ian made earlier? You said that there have been costs of £134.9 million and an additional £13 million associated with the estate. You talked about pressures and how you cope with and contain them. I like to approach these things very simply — you either add £13 million on to the £134.9 million, or you make savings within that £134.9 million for some or part of what you need. Which is it, and how would you do it?
477. **Mr Masefield:** I will give you as simple a response as I can as head of the organisation, bearing in mind my fellow directors. It is our job to manage the budget within the resources that we are given. We strive to do that, and we are about facing the period in the annual cycle where we are producing the business plan for the next year — 2009-2010 — when we will be working with our governors and colleagues on the basis of our improved financial strategy to address that very question and to begin to make some of the hard choices.
478. It may interest the Committee to know that in England and Wales, what they call a core day was introduced. That has made a fundamental change to the working week. That is because the English prison service did not have sufficient resources. It means that the regime now closes down on Friday lunchtime and prisoners no longer go to workshops or receive education classes on Friday afternoons, and evening association is also curtailed. That is the hard choice that was made in order that they could live within their budget. I am not suggesting anything as radical

- for the Northern Ireland Prison Service, but we will be taking a hard look at all aspects of cost.
479. If you were to ask me whether we could make more efficiencies, I would say that undoubtedly we could. Some of those are within our gift, and some are not necessarily so. Mark McGuckin described some of the detail of the longer-term process that we are engaged in, and we are making further progress in capping the ceiling for the pay progression of staff that are now joining as main-grade officers. There is a wide strategy in place to progress that and to reduce costs over time.
480. We have made real progress. A comparatively short number of years ago — five or eight years ago — we were three times as expensive as the English prison service on the costs for each prisoner in place. We believe that we are now less than twice as expensive. The English prison service no longer publishes its figures precisely, and the costs are not exactly comparable, but we are on a reducing glide-path on the annual costs for each prisoner in place.
481. **The Chairperson:** Regarding the £13 million of additional costs for the prison estate, can you clarify that those are non-cash costs representing additional capital charges and depreciation? What is the value of the estate that the charges apply to?
482. **Mr Masefield:** I can confirm the former. On the latter point, the current value of the estate is around £200 million —
483. **Mr McGuckin:** It is around that, but the additional charges are based on the accommodation that we have been building in recent times, such as the new house block that opened at Magilligan recently, and the new house block that we are building at Maghaberry. It also includes additional accommodation at Magilligan. For clarification, the sum is a total of £13 million across the next two years, as opposed to £13 million in each of the next two years.
484. **Mr McCausland:** In the figures that are included in the members' papers, you referred to administration and programme costs. I assume that administration relates entirely to the salaries — is that what that means?
485. **Mr Masefield:** It is principally a distinction, though it is a bit over-simplistic. "Administration" is largely the headquarters staff, whereas the "programme" is about front-line delivery, and it also covers services to the prisoners, such as food, utilities or running costs.
486. **Mr McFarland:** Thank you. I am keen to explore some of the challenges that you face. Your critics would say that the Prison Service has not made the same journey that the PSNI has made, in that the experience of most of its officers lies in the dark days of the Troubles. The prison officers were outstanding in the way that they dealt with the Troubles. As you know, when we discussed the draft Order, there was a suggestion that there are new prison techniques and new methods. The Prison Service's critics say that its officers are fairly elderly — by and large, they are at the top end of the age scale — and that they are not necessarily at an age when they can be retrained for all those modern techniques. Presumably, you will be faced with that issue.
487. The service is attached to a powerful union, which is famed for its strength. Indeed, it is very protective of its members. From the point of view of unions, that is as it should be; however, it is expensive for the service.
488. Under the draft Criminal Justice Order (Northern Ireland) 2008, the Probation Board was to take over much of the training period when prisoners are in jail. That service takes an interest from their first appearance in court, and it monitors them until they are released from prison. Those duties were carried out formerly by prison officers, but they are to be transferred to the probation service, as I understand it. That is another issue.

489. At our previous meeting, you talked about the fact that a substantial percentage of those who are in prison should not be there, because they are fine defaulters who ended up in prison when they should have been dealt with in the community.
490. How will all that work out? We are trying to think not just about the budget for this year and next, but to make sure that we have an accurate picture of what will happen in five years when the prison population has risen. Ian Paisley mentioned this, and my sense is that when we get control, politicians will be less tolerant of the current bail system. The Chief Constable appears repeatedly before various Committees saying that he is fed up with encountering prisoners who are due for their ninth appearance in court but who, each time they arrive in court, are given bail yet again instead of being locked up. That is yet another issue.
491. **The Chairperson:** Please ask your question.
492. **Mr McFarland:** It is important that we get this right first time, because we will not get another go at it. It is important that the Prison Service has a projection of what it will cost in five years, or else we in the Assembly will be left looking silly because we did not ask the questions when we had the chance.
493. Can you tell us what the situation with all this will be? How large will the increase in the prisoner population be? Some will be released because they are fine defaulters. Technically, the service should change the style of its officers, and I presume that that will reduce the cost, making it more comparable with the service England. Will you give us a picture of where you see all that going?
494. **Mr Masefield:** I will respond first, and my director of operations will answer on changes affecting staff training.
495. Referring to your point about the draft Order, I want to give you an idea of the future scale of the service. By year 3 — 2010-11 — we will have about £2 6 million. We will have roughly 200 staff, many of whom are already in the system, meaning that they will not all be new staff. They will operate what we call the offender-management model. There are two key elements to that: a case manager and a sentence manager. The case manager will be a probation officer and will have responsibility for the individual prisoner, from the pre-sentence report that goes to the court, through to discharge, making the process seamless — much as we discussed at our previous meeting. We see that as a positive improvement.
496. There will also be a sentence manager, who will be a prison officer — one of our own staff — whose job will be to ensure that the individual in question is working to his sentence plan for the time that he is with us. He will ensure that the prisoner's needs are addressed, his offending behaviour corrected and that he is getting on the relevant programmes, such as enhanced thinking skills, cognitive self-change, or sex offender treatment programmes. That officer will ensure that progress is made and that the individual is prepared for potential release and for the judgement as to whether they can go back safely into the community. We have recruited 20 additional psychological assistants already to help us with that element of the programme.
497. Therefore, the picture has changed slightly since we spoke previously. The probation service is playing a slightly bigger role, but we will probably do more of the programme work ourselves, partly as a result of our subsequent decision to bring in psychological assistants. The probation service is providing some additional support, but our staff will largely be responsible for such matters. That will place additional requirements on the staff on the landings, who will liaise with the sentence managers about the progress of individual prisoners.
498. **Mr Max Murray (Northern Ireland Prison Service):** The big emphasis, particularly as regards public-protection sentences, is on satisfying parole commissioners as to somebody's suitability for release. The only way to do



- that is to ensure that significant risk-assessment procedures are in place and that what will be called sentence planning is in place, whereby a sentence plan is drawn up. Interventions must be in place, and subsequent and further risk assessments must be completed by psychologists after a dossier, as we call it, is prepared. That dossier is then passed to the parole commissioners, after which an oral hearing is held at which the parole commissioners, in the presence of legal representatives, will explore suitability for release and then *[inaudible]* make an evaluation. That is a challenge for the service, and we will have to step up to the mark to meet it.
499. Inherent within that process is the need to ensure that our prison officers similarly understand the environment in which they operate today. You are right in what you say about our prison officers; the previous recruitment campaign for prison officers was held in the early 1990s. Many of our prison officers had worked in the Maze Prison or Belfast, and their experiences were largely of working with paramilitary prisoners where the emphasis was mainly on disengagement rather than engagement.
500. The expression “culture change” is not one that we use lightly; in fact, it is an expression that we do not particularly like, but it encapsulates everything that we are about at the moment. A major culture change programme is under way in the service. For example, we sent all our principal officers, senior officers, first-line managers and second-line managers for a full week’s training at the Prison Service College. Last year, we ran a two-day training programme for all prison officers, which 70% to 80% of prison officers attended.
501. The programme’s emphasis was largely on learning from the previous programme that we delivered to principal and senior officers, in which victims talked on DVD about their experience of crime and what they expect of the Prison Service when an offender goes into custody. It is not about locking up a prisoner; it is about working with the prisoner to avoid any instances of re-offending in future.
502. As I said, the programme was delivered over two days. It had a significant impact to the extent that, last year, when prison officers were being interviewed by line managers for their personal development plans, 600 of them identified the need for further interpersonal training skills and de-escalation skills. For the first time in many years, we noticed a move away from the old traditional requirement for control and restraint (C&R) skills, which are the basic use-of-force skills. Thus, the service is moving forward and changing, albeit gradually. Certainly, the demand is there, and there is a need to implement the new arrangements under the Criminal Justice Order (Northern Ireland) 2008.
503. **The Chairperson:** I remind members that we must try to stick to financial matters — that is really our task today.
504. **Mr Attwood:** Robin, I thank you and your team for coming along today.
505. In one sense, the policing and justice budget is very vulnerable. My view is that the Exchequer in London will try to claw back money from the North, given that, for all the obvious reasons, there has been such an extravagant policing and justice budget over the years of conflict. I do not think that London will appreciate the need to maintain policing and justice budget lines in order to help maintain stability in the North.
506. In the event of the devolution of policing and justice, the budget for it will be part of the devolved pot. In those circumstances, and given the higher cost base here — for example, the higher cost for each prisoner place — we can see the politics of this place beginning to probe how every pound is spent in the Prison Service and elsewhere in the criminal justice family, as you put it. Therefore, I believe that there is a little, for want of a better word, vulnerability around the budget lines for the Prison Service. That will not go away;



- it will be a political theme for the next five, six or seven years.
507. Given that the Prison Service is still part of the NIO, and in the light of what back-room people in London have been saying about achieving more efficiency savings, have you, or has the NIO, been given a heads-up to produce additional efficiency savings when powers are devolved? Even the Minister of Finance and Personnel accepts that such savings would, in fact, be straightforward top-line budget cuts. Have you had any indication that you are about to be hit in such a way?
508. **Mr Masefield:** To answer your question slightly differently, I can truthfully say that we have had no indication of how big our slice of that potential efficiency cake might be. Nevertheless, in the light of the overall economic climate, central Government is flagging up the need to make further savings. However, the Prison Service has yet to be informed of its allocation.
509. **Mr Attwood:** As you know, they are coming. Indeed, they may come tomorrow, when the various Finance Ministers and others will meet the Prime Minister in London.
510. I am impressed by the fact that you have put a budget line in place to deal with the consequences of the Criminal Justice Order (Northern Ireland) 2008. Your office will be responsible for ensuring that much of the resultant work in prisons is carried out, but I am concerned about whether the culture in the Prison Service will allow for, or whether enough of your officers have the necessary experience to do, that sort of work.
511. When Peter Smith, the head of the Parole Commissioners, gave evidence to the Committee, he took great pains to talk about the enormous financial consequences of the 2008 Order, and Robin Masefield appears to acknowledge that. Given what you said about the increasing number of prisoners, and so forth, are you satisfied that even the budget lines that you have been able to put in place, which look impressive on paper, will be adequate? Given what Peter Smith and the Probation Board told us about those matters, I am concerned that even those impressive figures may underestimate what will be required.
512. **Mr Masefield:** I shall be broadly reassuring, in line with the response that I gave the last time. The financial provision that we have made should pretty well cover what will be required. Nevertheless, it is difficult to anticipate the future, and the measures introduced by Paul Goggins — whereby prisoners who need not be in custody can be diverted elsewhere, whereas others may be staying longer with us in future — have created tensions in rebalancing the criminal-justice system.
513. As I said on the previous occasion that I appeared before the Committee, there are two types of resources. One can have all the money in the world, but, in order to do the business, one must have the right people with the right skills in the right place at the right time, and that is hugely difficult for the Prison Service, and, to a lesser extent, the Probation Board and others.
514. Obtaining a report from an accredited psychologist is a particular bottleneck through which every prisoner must pass. However, those professionals are in short supply, and, to some extent, the prison services in Northern Ireland, Scotland, England, Wales and the South are all competing with one other for their services. In order to bring people on, there has been ongoing engagement with the universities. For example, the University of Ulster has been working with Skills for Justice, and Queen's University Belfast has been considering opportunities for postgraduate courses. We have taken short-term remedial action by bringing in psychological assistants, but we are still finding it difficult to attract individuals with a full master's degree in forensic psychology, which, perfectly understandably, is the level of accreditation and experience that is required to satisfy the Parole Commissioners.

515. **Mr Attwood:** First, are you saying that the criminal-justice regime is not in a position to provide the range of information and reports that is necessary in order to put people forward for parole hearings?
516. Secondly, can you confirm whether the unit cost for prisoners is £87,000 per annum per prisoner? Over and above what you said about changing your officers' profile, how do you intend to reduce that figure to make it more consistent with prisoner costs in Britain?
517. **Mr Masefield:** I shall deal with your second question first. The current target is a spot over £80,000, and next year it is projected to be approximately £78,000.
518. Therefore, we are seeking to reduce that figure. More significantly, over a year ago, the Select Committee on Northern Ireland Affairs produced a report, which said that cost per prisoner-place comparison was outdated and should be moved away from, because England no longer calculates on the same basis.
519. The unit cost per member of staff is, in some ways, a more accurate measure of efficiencies. It is decreasing much more significantly, and Mark referred to the £25 million reduction for the three-year period, and that is as a result of the efficiency savings.
520. **Mr Attwood:** What are your target costs?
521. **Mr McGuckin:** At this point, we do not have a target cost as such, because there are so many variables, not least the number of cell spaces and the number of prisoners therein. The steps that we have taken over the past couple of years through the efficiency package will continue to deliver further cost reductions in the unit costs of staff. Staff profiles change over time, and some more highly paid prisoner officers will leave the system and will be replaced by people who are on a new capped salary from 2002. It will take time to feel the effects of that replacement, but it will reduce overall costs.
522. **Mr Attwood:** Is there not a target of, for example, £70,000, £65,000 or £55,000?
523. **Mr McGuckin:** It would take a considerable amount of time to reach such targets, and, in the meantime, there are so many variables that would interfere that it is unrealistic to set targets now. The idea is to keep the downward pressure on the overall costs in line with the other factors that intervene at any particular time.
524. Much of our existing accommodation is inefficient. Although the houses in Maghaberry are of reasonably good quality, they are, in staff terms, inefficient. It will take time to replace those houses with more cost-effective and staff-efficient accommodation, and the associated costs — capital costs, depreciation in the value of the premises, and so on — will also increase. Therefore, we can reduce the unit cost of staff by improving the accommodation, but we also face other challenges.
525. **Mr Masefield:** It is a challenge that we must address. However, HM Prison Service and the Scottish Prison Service face similar challenges.
526. **Mr A Maskey:** I want to approach the matter from another angle. I am slightly alarmed that you have no early projections on numbers of female prisoners, given the backdrop of some serious indictments, which I do not need to explain now, of female-prisoner management systems in the Prison Service. Those reports and the rectification of the problems must have capital-arm-revenue cost implications. Therefore, without projections of the numbers, how will we project figures and search for a proper budget? We are here to try to establish a necessary and appropriate budget.
527. If I were a Minister or a representative from the Treasury, I would be interested in your opening remarks to the effect that you were able to return revenue money — you did not give a figure, and I would be interested to hear it — in

- the first year of the comprehensive spending review. In the second year, you might break even and, in the third year, you might struggle. As a Minister or representative of the Treasury, I would say that, in the third year, I will squeeze you, and you will struggle, but you will come in on budget.
528. I want to get a handle on the level of revenue that was returned, because I can understand capital's being returned if, for a variety of reasons, it was not utilised. However, revenue is entirely different, and, therefore, I am interested in the revenue figure that was returned, and in how was that figure calculated, because it is obviously erroneous. We try to base our calculations on realistic figures, should we decide to lobby later, and what I have heard so far does not encourage me much.
529. **Mr Masefield:** I will deal with your question about finance first. To the best of my recollection, the figure is somewhere between £3 million and £4 million. That is partly because the centre in the Northern Ireland Office has the level of allocation that it gets from the Treasury through the CSR. However, it is also in the business of trying to build backup, or contingency, capacity and subsequently fund developments such as the powers legislated for in the Criminal Justice Order (Northern Ireland) 2008.
530. It is in all our interests to find out where we did not need to spend that money. Perhaps the prisoner population did not rise, for example, or we had been funded for things that we did not need. The money could have been put back into the centre and funding issued collectively, and the Probation Board may have benefited from that to an extent.
531. I will return to the second point about women prisoners. I am conscious that I did not quite give a full answer, and I want to give full and honest answers to all the Committee's questions. I have a meeting with Minister Goggins at lunchtime today to discuss the issue of prison numbers. We anticipate that the number of women prisoners will increase, but there is a slight debate about the extent of that increase and the impact of some of the diversionary measures, such as the women's strategy that was published just yesterday and the tagging system that was introduced today.
532. I am conscious that the female-prisoner population is significantly skewed, in that 20% of women in prison are there as the result of one arrest operation. In principle, we remain absolutely committed to providing a better long-term facility for women than Ash House at Hydebank Wood, which has serious limitations. In recent months, numbers in Ash House have been between 55 and 60, which is nearing even the increased capacity.
533. We are looking at developing a business case to progress the matter in both the short and longer term. I anticipate that a strategic outline case for the women's facility will be produced within a month. That will be the same as what we did for Magilligan Prison a year ago and will provide clearer answers to your question.
534. **Mr Murray:** I was involved in the decision to move women prisoners from Mourne House at Maghaberry Prison to Ash House after there were a couple of tragic deaths in custody at the former. At that time, I received projections, which I still have on file, that numbers were likely to increase from 17 to approximately 34, but to no more than 40, by 2009. That shows the reliability of projections — we need to be careful not to rely on them.
535. Many of the women in custody should not be there and should instead be dealt with through support systems, such as mental-health treatment on the Health Service. Indeed, much work is being done with the Health Service to look at personality disorder, for example. Many females have personality disorders, and we must manage those women correctly. The intention is to have dispersals and diversions rather than to rely on their being taken into custody all the time.
536. The female prison population is particularly difficult, because it contains

- some seriously damaged and abused prisoners. However, when the original decisions were made in 2004, no statistician in the world could have foreseen that there would have been an increase to 61 last year. That was simply not on the cards.
537. **Mr A Maskey:** Can you give an indication of the degree to which you will struggle with shortfall in the third year of the CSR?
538. **Mr Masefield:** I would hate to leave you, Mr Paisley or anyone else with the impression that the shortfall is £13 million year on year. That figure is a composite of a little more than £5 million in the year that we about to go into and around £7.5 million the following year. Therefore, the shortfall in year three of the CSR will be in the region of £7 million or £8 million. That is predominantly, but not exclusively, as a result of the required estate development and the associated resource tail.
539. It is possible that there will be a change. This is speculative, but my finance colleagues think that the Treasury may revisit the capital charge that it levies, which used to be 6% and which was reduced to 3.5% a couple of years ago. It is sometimes difficult to project how UK-wide changes will affect us.
540. **Mr Murray:** The devolution of policing and justice powers will bring a major benefit in that we will not have to pay VAT on the new facilities.
541. **Mr Paisley Jnr:** Pay VAT?
542. **Mr Masefield:** Yes, we pay VAT at present.
543. **The Chairperson:** I will be leaving the Chair shortly, because I have to speak in a debate in the Assembly Chamber. The Deputy Chairperson, Raymond McCartney, will take over in the Chair.
544. **Mr Hamilton:** We are almost encouraging you to come up with negatives, and I envisage that will be a characteristic of these evidence sessions. We are almost like Bruce Forsyth, in that we are encouraging you to go higher and higher. Thus far, you have given us a figure of £13 million.
545. **Mr Masefield:** With respect, the annual figure is £7.5 million — it is £13 million over the two years.
546. **Mr Hamilton:** OK, so it is lower. *[Laughter.]*
547. **Mr Masefield:** I would be in even more trouble if the figure of £13 million were allowed to gain currency.
548. **Mr Paisley Jnr:** It is now out there — this meeting is being broadcast live.
549. **Mr Hamilton:** To be fair, Robin made it clear that the figure of £13 million is over two years. We are almost transfixed with the comprehensive spending review period, as is evidenced by many of our questions. To make predictions about 10 years into the future is almost like asking how long is a piece of string. If you are saying that the potential exists for the prison population to grow at a rapid rate — almost doubling over a 10-year period, which is not a long time — have you any projection of the possible cost of that worst-case growth?
550. I also wish to ask about the capital budget. I am aware that you spoke about the resource pressure on capital, because there is a tendency for people to say that capital is the cost of the bricks and mortar, while forgetting about the resource costs. The capital budget has increased impressively since 2005, and it will reach £26 million by the end of the CSR period. Is that sufficient to cover the cost of the planned capital expenditure, and does it take into account the need to cover the potential growth of the prison population over the next 10 years? Are those projects sufficient?
551. **Mr Masefield:** It is always nice when one can answer a question fairly simply. The answer is yes, it should be sufficient for the capital, partly because there is a limit to the rate at which one can spend it. There is an estate-development strategy that has been well worked out. Anne and her team in estate

- management are excellent in that area, and I want to pay tribute to them.
552. There are plans for some additional accommodation, to which Mark referred. There will be another 120 places opening in Mourne House at Maghaberry Prison later this year, and there are plans for further development on a similar scale elsewhere at Maghaberry in order to meet the needs of the prison population. What is important is that there will be an opportunity to decant to make much-needed, sequential improvements to the square houses at Maghaberry, which also need to be brought up to date, as the inspectorate regularly tells us. A range of other, slightly smaller-scale projects will also be advanced.
553. Specifically, the big two projects are Magilligan Prison and, as is briefly referred to in the draft strategy for the management of women offenders that was published yesterday, the plans for a female facility. There is scope in that figure of slightly over £70 million capital over the three years of the CSR to do the preparatory work, including its exemplar design and business case, and the programme management thereafter. Of course, the Treasury does not get into discussions about what the position will be at the end of the CSR period.
554. **Mr Hamilton:** You are content that the capital budget is sufficient?
555. **Mr Masefield:** Until March 2011, yes.
556. **Mr Hamilton:** Have any projections been carried on the cost associated with the rising prison population, and how far that is beyond any extrapolation of current budgets?
557. **Mr Masefield:** Yes and no. I briefly referred to taking on business-case advisers, for example. The project at Magilligan Prison will go out to tender shortly, and at that stage the detail can be considered. As my colleagues have already said, it is crucial to ensure that the future generation of establishments and replacement accommodation is designed efficiently and effectively, as we are doing already, so that it encourages interaction between staff and prisoners.
558. If, for example, any of you were to visit Magilligan Prison, Halward House will be formally opened in a couple of weeks' time. That is a state-of-the-art facility. Representatives from the English Prison Service have visited and peer-reviewed the programme for opening that unit. Halward House is extremely effective. Prisoners are eating on the landings outside their cells and interacting with staff, which is exactly the model for developing the service at Magilligan and Maghaberry prisons as we want to.
559. **Mr Hamilton:** Do you feel that any elements of your expenditure duplicates work that other agencies in the justice family carry out, or could be better carried out by other agencies?
560. Will the implementation of the 2008 Order have the potential to remove some of that duplication and, therefore, ease some of the pressures on your budget, or will it have the contrary effect?
561. **Mr Masefield:** At a legislative level, we hope that there will be some advantages coming from the 2008 Order; for example, the introduction of electronic tagging, which was announced today. It is a slightly longer piece of work, because it also involves the devolved side and the Court Service. Therefore, it is a three-way system.
562. Real opportunities exist for dealing with fine defaulters. A quarter of all receptions into prison are individuals who have failed to pay fines, and they are in custody for an average of four and a half days. One must query whether that is an efficient use of the taxpayer's money. It is very important that the fines get paid, but there are possible alternatives, such as the attachment of earnings and other mechanisms.
563. A real tension is evident concerning wider efficiencies and back office. The Prison Service prides itself on how many units operate extremely effectively on their own, and procurement is an area in which one particular individual has



- assisted us and undoubtedly achieved significant savings.
564. For larger procurement operations, we work across the Northern Ireland Office family and with the Central Procurement Directorate in the Department of Finance and Personnel, and to do so is right and proper. However, there is some tension as one moves towards centralising back-office functions. It can mean that one loses that flexibility and ability to meet immediate needs proactively. Especially in the Prison Service, one needs to have operational flexibility in order to move fast and to meet changes, whether they be changes in the nature of the population, or even at a more immediate level, such as issues about food and other aspects of procurement.
565. **Mr O’Dowd:** On the first point about how much money the Prison Service needs, your response was that you were looking at a 4% year-on-year increase in the prison population. I have said to you before that if we achieve those figures, politics and society have failed. For example, if the entire Health Service budget were to be invested in acute services, it would be a waste of money, because one would be investing repeatedly. Therefore, when we are looking at the policing and justice issue and at the Prison Service, we will be asking the various sectors over the coming months about their budgets, and we will have to take a collective view on where is best to invest money.
566. Although I have no difficulty in ensuring that the Prison Service is properly equipped, funded and resourced, any section of the justice system that comes through these doors may tell us that it wants, for example, another £13 million, £20 million or £50 million. However, should we then not collectively say that that £20 million or £50 million should be invested in prevention measures or in mental-health services?
567. You said that some female prisoners come from a background of abuse. If that is the case, they should not be in prison but being cared for elsewhere.
- Therefore, we must ensure that we first create a society that does not automatically have a 4% increase year-on-year in its prison population. There will always be people who have to go to prison. I have no difficulty with that, but we must invest in our society and in our justice system.
568. Simon touched on the issue of using money wisely, but the Youth Justice Agency and the Probation Board offer services to offenders, as does the Prison Service. Therefore, if there any duplication, we can fine-tune that, or we can remove one of those agencies from certain services and better use the money.
569. **Mr Masefield:** I am glad that Max referred to mental health. He is absolutely right — we are at last making progress in achieving a closer working relationship between the criminal-justice sector and the health sector. That is hugely important, and it is something that I have made a priority. We transferred lead responsibility for prisoner healthcare on 1 April 2008, which is excellent, and we have a very good, close working partnership with the South Eastern Health and Social Care Trust, and it is now bringing in additional staff.
570. The Department of Health, Social Services and Public Safety has published its personality-disorder strategy. We had a workshop with the Department and with the Probation Board last Friday on working together, and we have another session this Friday. You are right to say that real opportunities exist. One of my opposite numbers in England and Wales said a few years ago that care in the community has become care in custody, and there is a real danger of that happening here, unless one focuses on that issue very much.
571. It may not necessarily be for me to comment on the latter point. There is a certain architecture in the Northern Ireland Office. It has an unusually wide range of satellite bodies — arm’s-length bodies — and a figure of over 40 is probably identifiable, which seems to be



- quite a lot. Intuitively, there is scope for some efficiencies to be made. Whether one would specifically want to make those savings in the areas that you mentioned —the Youth Justice Agency or the Probation Board — is questionable, because I think that my colleagues would agree that those are huge strengths. The Probation Board certainly has huge strength and credibility in all the areas with which it deals, because it has been independent of the Northern Ireland Office, and has its own management board and ethos.
572. The Youth Justice Agency has also done extremely well. Its models of restorative justice are a worldwide example of good practice. We are assessing those models to determine whether we can develop more of our own restorative practice in the Prison Service. In answer to your question, there is probably some scope for financial savings to be made. However, to an extent, that would mean that those organisations would lose some of the ethos that they had built up. That may be a judgement for others to make in years to come.
573. **Mr Kennedy:** I welcome the representatives from the Prison Service. Thank you for your presentation and your answers. I have a question about the issue of what are called efficiency savings. With the potential of a rising prison population, do you have any concerns that the ratio of prisoners to prison officers will become distorted? How do we compare with other parts of the United Kingdom in that respect?
574. **Mr McGuckin:** For a variety of reasons I am not concerned that the ratio would become distorted. First, if the prison population increases, more prison buildings will be needed. We will, therefore, build accommodation that is efficient from a staffing perspective. We can make better use of the resource that is available. In recent years, the ratio of staff to prisoners has decreased. The ratio is probably slightly above one member of front-line staff to each prisoner. In England and Wales, the ratio is lower than that.
575. It is not appropriate to make clear comparisons between here and there because of the nature of the establishments that operate in England and Wales. There are approximately 140 prison establishments there. They range from the very open, which will have very low staffing ratios, to the high-security establishments, which will have very different staffing ratios. Effectively, we have three prisons, and we take all comers. Unfortunately, we are not allowed to turn anybody away at the gate.
576. We must manage a very diverse population in those establishments. Some of the differences have been discussed today. Therefore, we will always have a slightly different, and slightly higher, ratio of staff to prisoners. With modern building techniques and modern accommodation, we can make further inroads. Over time, the ratio should decrease a little bit more.
577. **The Deputy Chairperson:** I have a couple of questions before you finish. What percentage of the revenue budget is paid out in staffing costs?
578. **Mr Masefield:** In straight pay costs, it is 66%. If I understand it correctly, however, that excludes some of the staff-related costs, such as training, travel and subsistence, and other issues. If those costs were included, it would certainly be more than 70%, and perhaps nearer 80%.
579. **The Deputy Chairperson:** You said earlier that a new wage cap had been in place since 2002. What was the average pay before 2002 and post-2002?
580. **Mr McGuckin:** Before 2002, the average salary was about £35,000. The top of the scale is currently around £28,500, post-2002. Nobody is at that level yet. A few people are probably earning close to that amount, but that is the top of the scale. That demonstrates the difference, because, pre-2002, many staff were at, or near, the top of the old scale.
581. **The Deputy Chairperson:** What was the pre-2002 make-up of 66% of the budget?

582. **Mr McGuckin:** The 66% covers Prison Service grades, general service grades, administrative staff, and so on. I cannot give you a percentage breakdown. However, of the staff who are in that category pre- and post-2000, probably around 25% are on post-2002 scales. That does not include the support grades that we discussed earlier, which we are building up gradually. Currently, out of 1,800 Prison Service grades, there are around 500 support grades. That balance will continue to increase. The current projection is for the number of support grades to rise to around 700.
583. **Mr Masefield:** The average annual salary for those grades will be around £20,000, or less.
584. **The Deputy Chairperson:** The point was made that accommodation can have an impact on staffing levels. At present, what major impediments are there to reducing staffing? Are they the building's design or already-established custom and practice?
585. **Mr McGuckin:** Both. The building's design has a key impact, because of lines of sight, staff safety, and the number of staff that needs to manage small areas and landings. There is also the issue of moving away from the security culture of the past and from reliance on physical security and staff numbers. Therefore, an organisational-development issue must be addressed if we are to make more efficient use of our resources. Ratios must also be reduced in order to deal with the increasing population of the present.
586. **Mr Masefield:** If I may comment briefly, a third factor, which is not unimportant, is our relationship with the Prison Officers' Association. Traditionally, during the past 10 years or so, we have negotiated to reduce significantly staffing levels. Certainly, the number of man-hours in Magilligan Prison, for example, where you were governor some years ago, Max, has reduced. A proportion of those staff savings has gone into the annual pay round or to make efficiencies.
587. **The Deputy Chairperson:** As part of the NIO, the Prison Service currently pays VAT. What implications will there be for VAT at the point of transfer of policing and justice powers? Will the British Treasury make savings as a result?
588. **Mr Masefield:** As we understand it, on devolution, we would no longer be liable for VAT.
589. **The Deputy Chairperson:** Before we finish, you have an opportunity to raise any points that you feel that you have not covered.
590. **Mr Masefield:** Thank you, but I do not think that we have any more points to raise.
591. **Mr O'Dowd:** Has VAT been taken into account in your future budget?
592. **Mr Masefield:** No.
593. **Mr Paisley Jnr:** For completeness, you gave us a projection for the male-prisoner population. You will soon have a projection for females. Have you got a projection for young offenders?
594. **Mr Masefield:** No. Young offenders is an interesting area, because it is different. During the past four or five years, its figure has largely flatlined and remained remarkably consistent. There can be fluctuations, particularly among juvenile offenders. Their figure tends to be between 10 and 20, or even 30. I believe that there were 14 when we last counted. Interestingly, the number of young offenders, who are aged between 18 and 21 — potentially up to 23 years of age at Hydebank Wood — has stayed broadly between 180 and 200 for the past four or five years, with the majority of them on remand.
595. **The Deputy Chairperson:** Thank you, Robin, Mark, Max and Anne for your presentation. I am sure that we will see you again in future.

## 24 February 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mr Danny Kennedy  
 Mr Nelson McCausland  
 Mr Alan McFarland  
 Mr Alex Maskey  
 Mr John O'Dowd  
 Mr Ian Paisley Jnr

### Witnesses:

Mr Gareth Bell                      *Youth Justice Agency*  
 Mr Phil Tooze                      *of Northern Ireland*  
 Mr Davie Weir

### Also in Attendance:

Mr Victor Hewitt                      *Specialist adviser*

596. **The Deputy Chairperson (Mr McCartney):** I welcome Mr Davie Weir, Mr Phil Tooze and Mr Gareth Bell from the Youth Justice Agency.
597. Before the witnesses give their presentation, I ask Committee members to declare any interests.
598. **Mr McCausland:** I declare an interest as a member of Belfast District Policing Partnership.
599. **The Deputy Chairperson:** I remind Committee members and our guests to switch off their mobile phones, because they interfere with the recording equipment.
600. **Mr Davie Weir (Youth Justice Agency of Northern Ireland):** The Youth Justice Agency was created in April 2003, and it is an executive agency of the Northern Ireland Office (NIO). The agency's aim is to reduce youth crime and build confidence in the youth justice system, and it caters for the needs of young people aged 10 to 17 who are in the criminal-justice system. We are

accountable to the Minister through the NIO's departmental sponsor. We do not develop policy, as that is a role of the NIO's criminal-justice directorate.

601. We have a chief executive, Dr Bill Lockhart, who sends his apologies for not being able to appear before the Committee today. We also have four executive directors and two non-executive directors. There are four directorates in the agency. The first is the community-services directorate, which is responsible for the supervision of young people in the community and for contributing to the prevention of offending by children and young people. The community-services directorate supervises some 700 young people in the community at any one time.
602. The second directorate is the youth-conference service, which is responsible for diversionary youth conferences for young people who are referred by the Public Prosecution Service (PPS) and for court-directed youth conferences for those referred by the courts. The youth conference service processes between 1,600 and 1,800 youth conferences a year.
603. The third directorate is custodial services, which includes the Woodlands Juvenile Justice Centre in Bangor. The centre caters for children who are committed, remanded and those who are subject to the Police and Criminal Evidence Act 1984 (PACE). It is staffed to cater for 36 young people, although the numbers fluctuate widely.
604. The fourth directorate is responsible for corporate services, including human resources, finance, planning, communications, and so on.
605. The recently completed Woodlands Juvenile Justice Centre in Bangor is widely regarded as a state-of-the-art facility. It cost £16.8 million to build, which was funded entirely from the sale

- of land around the building. The centre costs £7.8 million a year to run, and it is staffed by 169 people: care staff; education staff; security staff; and support staff.
606. The community-services directorate maintains 17 centres across Northern Ireland to try to provide access for all young people in the jurisdiction. That costs £5.5 million a year to run, of which £1 million is devoted to funding external bodies that contribute to the work of the agency.
607. The current staffing level is 111. That is made up of people with a background in social work or in youth work, administrative staff and support staff.
608. The youth-conference service runs from five administrative centres across Northern Ireland, many of which are shared with community services' facilities. It costs £2.8 million a year to run and has a staff of 42 professional social workers, youth workers, educationalists and people with a background in restorative justice.
609. Corporate services is housed in the headquarters building in Waring Street in Belfast. Its costs are £4.8 million, but that includes a number of costs that are simply allocated there for central purposes. It has a staff of 30 civil servants.
610. Our resource departmental expenditure limit for 2008-09 was £21.5 million in total. We anticipate that it will be £21.7 million in 2009-2010. We have had five years of unqualified accounts, and we have survived within budget in each of those five years. Last year, a Criminal Justice Inspection of corporate governance gave us a clean bill of health. A Criminal Justice Inspection also took place at the juvenile justice centre at Woodlands in Bangor and at the youth-conference service. Independent valuations by a number of bodies of various strands of service that are being delivered have taken place.
- (The Chairperson [Mr Spratt] in the Chair)
611. Our key strategic areas in the delivery of justice are: the supervision and completion of orders; the involvement of victims, particularly in the youth-conference service; measures of satisfaction by victims and by young people; the objective of facilitating the reintegration of young people into the community; reducing offending through assessing risk, planning, intervening and reviewing; linking young people to education, training and employment opportunities; and contributing to the reduction of antisocial behaviour.
612. On safety, we implement a policy of no escapes from the juvenile-justice centre. We aim to reduce our already low level of restraint employed in the centre, and we aim to screen all young people for mental-health needs.
613. We aim to stay within budget, to publish our audited accounts, to retain our Investors in People status and to continue to monitor the development of training for staff.
614. Our key operational issues are to reduce offending and to provide models to support the introduction of the Public Protection Arrangements Northern Ireland (PPANI). We are working on the development of a priority-offending team for young people who are at highest risk, on improving our IT network, and we are working for staff health.
615. **The Chairperson:** I am sorry that I have only just been able to join you, but I was in the Assembly Chamber. I declare an interest as a member of the Northern Ireland Policing Board.
616. **Mr O'Dowd:** In your comments, you said that, as part of your service, you screen young people for mental-health illnesses. Screening is good, but what happens after that, and what budgetary commitment do you have to assisting people with mental-health illness? What resources are in place for assisting young people with an illness such as a personality disorder?
617. **Mr D Weir:** I shall answer part of your question, and Mr Tooze will answer the other part. We have a tiered assessment

- model for the young people whom we supervise in the community that presents criminogenic needs and the risks that they pose to themselves and others. Our strategy is to develop closer links with child and adolescent mental-health services in the community.
618. The principle is that, because we are responsible for supervising them, that does not reduce children's entitlement to services from other mainstream services. There is always a struggle for resources for child and adolescent mental-health services, but our link is to provide access for the children whom we are supervising where a need is indicated to the community-based mental health services. The situation is slightly different for young people who are in custody.
619. **Mr Phil Tooze (Youth Justice Agency of Northern Ireland):** Yes, it is slightly different. We screen every young person who comes into the centre on reception. We do a fairly thorough risk assessment of all the needs of the young person, because we are dealing with young people rather than adults. To meet those needs, we have four psychiatric nurses, one of whom is usually on the rota at all times in the centre.
620. We have a full-time forensic psychologist, and a consultant psychologist who comes into the centre weekly. Those staff meet our everyday needs. In conjunction with that, all our staff are trained as care workers rather than as prison staff. There is a difference between our centre and a prison-type establishment. We try to meet the needs of many young people that way.
621. Many young people who come into custody have significant mental-health needs as a result of a range of causes, such as substance abuse, self-harm or attention-deficit hyperactivity disorder (ADHD). We tend to meet that side of keeping young people in custody without too much difficulty. Young people are often with us in the centre for only a matter of days or weeks, so it is very difficult to predict what will happen to them. Some 70% of our population are remanded rather than sentenced. We must work with our community-services team in order to ensure that there is a link with those who plan services in the community.
622. **Mr Hamilton:** I want to ask about your capital budget. The Woodlands Juvenile Justice Centre is your major capital programme, and it does not appear that you envisage anything significantly beyond that in the forthcoming years. I just want to confirm that that is the case and that there is nothing else in the pipeline, even on a smaller scale.
623. **Mr Gareth Bell (Youth Justice Agency of Northern Ireland):** We will adopt a new case-management system next year, which will involve the procurement of software and some IT equipment that will enable us to transmit information across our network. That will cost £690,000, as we explained in our letter to the Committee. Our baseline capital budget is £200,000 a year, which is spent on replacement IT, vehicles, plant and equipment. The one potential problem, which we highlighted in our letter, concerns the recommendations of the recent review report on the use of constraint. We may require security equipment costing £250,000, which is obviously in excess of our baseline budget.
624. **Mr Hamilton:** While we are on that grid, there is an estimated £1 million in capital receipts for the most recent comprehensive spending review (CSR) period. Can you tell us what that amount relates to, and whether, in the current climate, it is an achievable and realistic figure? If it is neither, what pressure would that put on your budget?
625. **Mr Bell:** That figure relates to the Whitefield House site at Blacks Road in Belfast, which is an old 1970s building. It is still operational, and we still have people working there, but it has been identified for disposal along with two other NIO properties. A project team from the criminal-justice directorate will be responsible for those three sales.



626. We had originally planned to sell Whitefield House this year, but it has been subsumed into the forthcoming project. For the purposes of our finances, that sale has been re-profiled to the final year of the CSR. The latest information on the value of the property reveals that we may not realise the full £1 million, and that will have an impact on the budget of the future justice Department. We may retain Whitefield House and transfer it to the Department when we leave it, but it will still be an issue for the Department as a whole.
627. **The Chairperson:** Will you declare an interest, Mr Paisley Jnr?
628. **Mr Paisley Jnr:** I am a member of the Policing Board.
629. **Mr McCartney:** Thank you for your presentation. In your response to the first question, you said that your budget was adequate, which is sound. In your experience, is there any duplication among yourselves, the Probation Board and the Prison Service, and have you identified any areas in which any such duplication could be reduced?
630. **Mr D Weir:** There is a legislative overlap between our organisation and the Probation Board, which is responsible for the preparation of pre-sentence reports to the youth court and for the supervision of young people, as are we, in the 10- to 17-year-old age group who are subject to probation orders. We are working to address that situation by way of a pilot project in greater Belfast, in which the Probation Board team that focuses exclusively on the young people in the 10- to 17-year-old age group is working with us.
631. We often have situations in which a child is subject to both a youth-conference order and a probation order. The objective is to have greater efficiency in the supervision of that young person and to ensure that the various orders or plans that he or she is subject to are managed coherently. The pilot scheme will kick off on 6 April and run for two years. During the second year, it will be reviewed to identify whether there are increased efficiencies in the model. We are working closely with the Probation Board on that front.
632. **Mr Tooze:** The custody system in Northern Ireland is probably far more efficient than in anywhere else in the UK. We take the majority of juveniles in the system; the only juveniles who go to the youth court now, or who have to go to the youth court, are those with cases in which, statutorily, they cannot come to us. There are certain 17-year-olds who cannot come to the juvenile-justice centre because of legislation. That usually happens if they have had a juvenile-justice-centre order, are 17 and cannot come to us, or they are remanded over the age of 17 and cannot come to us.
633. We now take all young women under the age of 18, so there are no young women now placed in Hydebank Wood at all. The vast majority of 15-year-olds in England and Wales is held in Prison Service custody. Currently, no 15-year-olds are held in Prison Service custody in Northern Ireland, and very few 16-year-olds. There is not really an overlap of prisons. As regards efficiencies, our set-up is comparable to the system in England and Wales.
634. **Mr Attwood:** I have just one question. The specialist adviser to the Committee told us a week or two ago that, when one examines the range of submissions from the various policing and justice organisations, quite a number of them, understandably, are trying to make a pre-emptive bid for additional resources, given that the focus of our investigation is the financial arrangements after devolution. In your submission from Mr Lockhart, you are definitive in saying that you do not see the need to raise any specific requirements for additional funding within or beyond the current CSR period allocation. You did not have any unsuccessful bids in the spending review, and you were lucky in that regard. You convey a high level of certainty that your budget is fit for purpose over the next two years. Can you confirm that there is no issue, as you see it at present, contrary to that assessment?



635. **Mr D Weir:** We do not identify any issues concerning capital spend. The centre is very new, and that is our one large capital investment. As regards staffing and resources, we feel that we are adequately equipped to deal with the young people who are referred to us. Our premises, and so on, are leased, and we have long leases, so we know our expectations.
636. **Mr Bell:** I shall expand on that. The one issue for us at an agency level is the proposed capital expenditure — if we have to do it — which is to install security equipment and CCTV coverage at the centre. However, we have spoken with the NIO and, on the scale of things within the NIO's overall capital expenditure budget, £250,000 is not a lot. That is why that has not gone forward as a bid from us, because the NIO feels that it can meet that expenditure.
637. The other point that I will make about our current budget is that, had we been sitting here two years ago, we would have been saying that yes, we are under funded, because we were rolling out youth-conference services across the Province, but we were still getting funding as a service that was rolling out. However, we did get quite a reasonable uplift in the current CSR period, and that is why we are confident, more or less, that we have enough money.
638. **The Chairperson:** Mr Alex Maskey, will you declare any interests?
639. **Mr A Maskey:** I am a member of the Policing Board.
640. **Mr McCausland:** You said that you are adequately staffed, which is the current situation. Looking ahead to the next few years, do you anticipate any substantial rise in the number of young people whom you will be dealing with, and, as a result of that, any impact on staffing?
641. **Mr D Weir:** A significant rise in the numbers in custody would have an impact. However, we are investing time, energy and some resources in prevention. Sorry, I know that I am not quite answering your question, but part of our role is to prevent young people from entering the criminal-justice system. Demographics show that Northern Ireland's youth population is not growing. Therefore, unless there is a massive upswing in the numbers admitted into custody, we are well within capacity.
642. **Mr Tooze:** Even then, it is not significant. We are limited in our capacity. We are a 48-bed centre, and we are already staffed and resourced to look after 36. The highest level that we have reached in the two years since we opened is 42. At present, we can cope with fluctuations within that sort of range fairly comfortably. Therefore, even if the worse came to the worse, and courts changed their sentencing culture to give more custodial sentences, there would be some, but not an enormous, impact.
643. **Mr Paisley Jnr:** I am very impressed by the Youth Justice Agency and the work that it has put into reviewing services over the past couple of years.
644. I agree with some of Alex's points about the agency's living within its budget and appearing to be fit for purpose. When the draft Criminal Justice Order (Northern Ireland) 2008 takes full effect, will it have an impact on the role that your organisation plays and the pressures that it faces?
645. **Mr D Weir:** The agency is preparing for that through, for example, the way in which we respond to pressures that may come from young people who are subject to electronic monitoring. We are looking at what that may mean if there are, for example, call-out costs at weekends. We do not anticipate that that will involve enormous numbers, and staff have demonstrated that they are flexible. Therefore, we can respond to those sorts of pressures. We have also set up pilot local-risk-management panels. However, those panels involve the same staff, with the same young people. We are simply employing a slightly more sophisticated model of assessment and supervision. At present, we do not anticipate that that will have a big impact or that it cannot

- be accommodated in the existing system.
646. **Mr Paisley Jnr:** I do not want to compare chalk with cheese, but the message that the Committee has picked up in a written submission from the Probation Board is that the draft Criminal Justice Order will have quite a sapping effect on its role. Why will it be different for the Youth Justice Agency?
647. **Mr Tooze:** Part of the Probation Board’s problem is caused by changes involved in the ending of 50% remission. Therefore, the draft Criminal Justice Order, when it becomes law, will have a significant impact on adults. In the juvenile-custody population, a juvenile-justice-centre order requires six months in custody and six months’ supervision, which means that that change will not affect the majority of young people who get sent to our centre.
648. Remand accounts for 70% of our centre’s young people. The two or three who are subject to section 42 detention orders under the Criminal Justice (Children) (Northern Ireland) Order 1998 are already dealt with by lengthy sentences, which means that the Probation Board would probably become responsible for their supervision on release. That aspect does not impact on us.
649. **Mr Hamilton:** The spreadsheet of spending areas in the papers presented to the Committee refers to “agency programme expenditure external funding”. That funding has grown fairly significantly, from under £1 million to more £5 million, towards the end of period to which the spreadsheet applies. What does that relate to? How secure and fundamental is that funding to the agency’s work?
650. **Mr Bell:** For clarification, the £5 million referred to should have been bracketed, because it covers all four items and is carved up each year as part of the agency’s internal budgeting exercise, during which we decide on our priorities.
651. We will soon complete our budgeting exercise for next year, and, for instance, that £885,000 will be around £900,000. The rest of it will be in the running costs. The breakdown was not available when the spreadsheet was being prepared.
652. **Mr Hamilton:** How secure is that external funding?
653. **Mr Bell:** That external funding is funding that we provide to bodies outside our agency. It is not external funding that we receive.
654. **Mr Hamilton:** What programmes receive that funding?
655. **Mr D Weir:** There are a number of programmes. We have a contract with the Extern organisation, which provides intensive support for young people. It can take up to 10 young people, and it provides 15 hours supervision a week for each young person. There are also contracts in place with a range of voluntary youth organisations, which provide individual mentoring to young people as a component of their youth-conference order or plan. For example, we make a small contribution to the Duke of Edinburgh’s Award, because a number of our young people registers with it. We are in partnership with Barnardo’s, Action for Children, the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) and Extern in the delivery of services and in the promotion of employability of young people who are our clients. We access their services in order to secure and strengthen their position in the community, and we contribute to efforts that are made to prevent young children aged 10 to 13 from offending. We contract out those services.
656. **The Chairperson:** Does your agency, as part of the NIO, pay VAT? That question was also asked of the Prison Service.
657. **Mr Bell:** The agency pays VAT on the majority of its expenditure. There are certain contracted-out services on which it is allowed to reclaim VAT, but there will be a reduction in our overall expenditure with the move to the Northern Ireland Civil Service VAT regime.

658. **The Chairperson:** No other member has expressed a wish to ask a question. Earlier, we heard from representatives from the Prison Service, who peddled the Treasury/NIO line on budgets, and so on. If the devolution of policing and justice powers were to be happening in a short time, would you be informing us of any pressures that you are under — pressures that you have not told us about already. If you come along here in 12 or 18 months' time and tell us of another £1 million or £2 million that you have not informed us about today, you will not find the Committee well disposed to you. Can you assure us that your agency is not peddling an NIO/Treasury line? It is a serious question.
659. **Mr D Weir:** We have no skeletons in our cupboard.
660. **The Chairperson:** Are you saying that there is nothing hurtling down the track for which you will be coming looking for money in the foreseeable future?
661. **Mr D Weir:** We are equipped appropriately to deal with what is coming to us.
662. **The Chairperson:** Thank you for your evidence. We may want to correspond with you or speak to you again after the Committee has had more considerations.



## 24 February 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mr Alex Maskey  
 Mr Alan McFarland  
 Mr Ian Paisley Jnr

### Witnesses:

Ms Maura Canavan	<i>Probation Board</i>
Ms Cheryl Lamont	<i>for Northern</i>
Mr Brian McCaughey	<i>Ireland</i>
Mr David van der Merwe	

### Also in attendance:

Mr Victor Hewitt	<i>Specialist adviser</i>
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663. **The Chairperson (Mr Spratt):** I welcome representatives of the Probation Board for Northern Ireland (PBNI) to this oral evidence session of the Committee; thank you for coming along. The Committee is examining the financial issues on the eventual devolution of policing and justice issues to the Northern Ireland Assembly. I declare an interest as a member of the Northern Ireland Policing Board.
664. **Mr A Maskey:** I also declare an interest as a member of the Northern Ireland Policing Board.
665. **Mr Paisley Jnr:** I, too, declare an interest as a member of the Northern Ireland Policing Board.
666. **The Chairperson:** When the other members arrive, I will also ask them to declare whether they have any interests.
667. I welcome the director of probation, Brian McCaughey, and David van der Merwe, Cheryl Lamont and Maura Canavan. You are very welcome. I ask that you give a short opening address, after which Committee members can ask you questions.
668. Before you begin, Ronnie Spence, chairperson of the Probation Board for Northern Ireland, has tendered an apology. He is unable to attend the meeting because he has another engagement this afternoon. However, he said that he is happy to address, at a later stage, any issues that the Committee might have.
669. Once again, I ask members to switch off their mobile phones, because they interfere with the recording equipment. I also remind members that Hansard is recording this session, and therefore, everything that is said is on the record.
670. **Mr Brian McCaughey (Probation Board for Northern Ireland):** Thank you for the invitation to give oral evidence to the Committee. The Probation Board for Northern Ireland is a non-departmental public body that is answerable, at present, through an independent board on to the Northern Ireland Office. Probation has existed as a public service for more than 100 years and has been provided in Northern Ireland through a non-departmental public body since 1982. Our mission is to make communities in Northern Ireland safer by assessing and managing the risk that offenders pose.
671. We aim to reduce crime and the harm that it does by challenging and changing the attitudes and behaviours of offenders. We are one of the smallest organisations in the criminal justice family, albeit that we are centrally involved in the assessment and management of offenders.
672. We provide 9,500 reports to judges and parole commissioners annually, including 6,000 pre-sentence reports to assist judges in determining sentences. Additionally, the Probation Board supervises 4,000 offenders who are subject to court orders, 3,200 of whom are in the community and 800 of whom are serving sentences and awaiting

- release. As measured by reconviction rates, we are among the most effective probation bodies in the UK.
673. The comprehensive spending review (CSR07) provided PBNI with the additional resources to assist in the implementation of new legislation and sentencing. We very much welcome having that extra money to assist us in carrying out the additional responsibilities, and we acknowledge the effort that the NIO made to secure those resources. However, the outcome fell short of what we requested. More significant is the very large gap that has emerged over the past decade or so in spending on probation in England and Wales in comparison with Northern Ireland.
674. I refer members to a paper that was published in December 2008 by the Centre for Crime and Justice Studies at King's College, London — 'Criminal Justice Resources Staffing and Workloads: An Initial Assessment' — which reported a 160% real-terms increase in spending on probation between 1999 and 2005 in England and Wales. In Northern Ireland, the increase was 13% over the same period. It is always difficult to be sure that one is comparing like with like, and I understand that, given the differences in structures, systems and staffing grades, but I am wholly confident in concluding that probation in Northern Ireland has not enjoyed the similar increase in resourcing as experienced in England and Wales, and indeed by our colleagues in the South of Ireland.
675. Another significant area where we believe that we are underfunded is in our capacity to work in partnership with the voluntary and community sectors in preventing offending and re-offending. We work in, with and through the community, and we wish to address that area for the future. In the past, some 20% of the PBNI budget was devoted to that vital work, but other budget pressures have meant that it has been gradually squeezed throughout the decade, with the result that it is now around £1.2 million a year. That represents 7%, as opposed to 20%, of the budget.
676. In conclusion, PBNI is one of the smallest organisations in the criminal justice family; nonetheless, we are central to assessment and management, supervising most offenders within the system. Our focus is on achieving positive change in offenders, thus reducing crime and the harm that it does. We, as an organisation, balance care and control, and we always prioritise public safety. Uniquely, we deliver our services locally, in offenders' homes, in a family context, in his or her community, and along with voluntary, community and statutory partners.
677. We apply Northern Ireland standards and service requirements in an individualised case-management approach to supervision. Independent reconviction data demonstrate that that approach is highly effective, but the overall allocation of resources has historically not adequately reflected our responsibilities and is significantly out of line with spending patterns in England and Wales.
678. **Mr Paisley Jnr:** Thank you. At the outset, I will say that I admire your guts and candour in spelling out a very clear written report to us, which clearly shows where you have pressures and where you need money to be spent. It also gives us a reasonably good steer as to what we should be asking the Northern Ireland Office for. Thank you for not giving us any fancy verbiage or footwork on this. Your presentation was straight to the point, and I admire your candour.
679. If I am correct, you said in your report that the probation service's budget is £18 million a year below what you believe is required. Over the CSR period of three years, that is £52 million short of what you require. Is that correct?
680. **Mr McCaughey:** Yes.
681. **Mr Paisley Jnr:** Secondly, I want to ask about delays in the implementation of the Criminal Justice (Northern Ireland) Order 2008. As you know, the NIO has



- indicated, and many of the wise and the good have told us, that this is the twenty-first century way of doing things under the Order. You are saying that if you are not resourced properly, you will not be able to implement the Order properly or that there will be significant delays in its implementation. That would obviously create a backlog in the system, putting more pressure on the prisons and so on.
682. If you were to get that additional money, would that mean that other money would be released and given to the other parts of the justice portfolio? For example, do you think that less money would have to be given to the Prison Service, or, if we were able to feed that money into that service, would a saving made be elsewhere? Realistically, do we need that money as well as that which we are getting?
683. **Mr David van der Merwe (Probation Board for Northern Ireland):** It is anticipated that there will be savings across, as you say, the entire criminal justice system, particularly in respect of those sentenced for fine default. It is proposed that such people should be made to do supervised activity orders or community service, thus freeing up prison spaces. Electronic monitoring will enable some individuals who are currently on remand awaiting sentence to be released on bail, which would again free up prison places. There is also the conditioned early-release scheme. However, we are not in a position to make any judgement on whether the Prison Service can make any savings, given the structural nature of the facilities that it manages. Certainly, there is an intention to move people out of prison and into the community, reserving prison for the most dangerous.
684. **Mr Paisley Jnr:** Therefore, if you get money and are able to do your job in the way that you want to, could major savings potentially be made at the expensive end of the delivery of the justice system?
685. **Mr van der Merwe:** Potentially, yes.
686. **Mr Paisley Jnr:** That is very interesting.
687. I also want to ask you about one of the specific projects that you mentioned in your paper, which is the integration of the case-management system with the Causeway Programme. Potentially, that could cost just over £1.25 million. I, as a member of the Policing Board — which I have already declared as an interest — am aware that we have been following the Causeway Programme for nearly six years. What is the timescale for the Probation Board's being integrated into that programme?
688. **Mr van der Merwe:** Currently, it is estimated that the Probation Board will come online to the Causeway Programme in autumn 2011, given that the current phase that integrates the Court Service and the Prison Service into the Causeway Programme is about to go live imminently, just before the summer of this year. Planning will then begin for the next phase, which brings the Probation Board and further functionality for the Prison Service into the system.
689. **Mr Paisley Jnr:** If you spend the ballpark figure of £1.25 million, will you save money ultimately? Will that help to save money, or can you explain why that expenditure is necessary and why we should be drawing up a bid that includes that cost?
690. **Mr van der Merwe:** That expenditure will bring about savings in the paper-intensive nature of the current system. Currently, any pre-sentence reports that we prepare are printed out and hand delivered to the Court Service, which must then read those papers into its electronic system. The programme also improves security and data protection considerably, as it makes it possible to submit reports electronically via a secure network from the Probation Board to the Court Service, as well as facilitating other data exchanges between the Probation Board and the Prison Service on the management of offenders. Therefore, there are two benefits: one is on the security of data

- and data protection; and the other is on the efficiencies that it will create.
691. **Mr Hamilton:** I echo Ian's opening comments about the frankness of both your presentation and the papers that you have given to us. I am sure that the Chairperson will not be asking whether these witnesses are trotting out the orthodox line from the Treasury or NIO.
692. **The Chairperson:** I think that they have escaped from the clutches of NIO and the Treasury.
693. **Mr Paisley Jnr:** You may have lost their Christmas card, but you have ours.
694. **Mr Hamilton:** Such candour makes our job much easier — we are not having to hoke about looking for problems because you are very open and honest. In comparison with recent years, you have a fairly hefty capital budget going forward. What does that entail, and is it sufficient? Is there a belief in the service that that capital budget is sufficient to meet the capital demands that are being put on you, aside from the IT project, which has been touched on?
695. **Mr van der Merwe:** There are two main elements to that project. The first is the physical facilities from which we operate. Being a community organisation that operates in the community, we need to have facilities in most regional towns throughout Northern Ireland. Over the years, our estate has suffered as a result of a lack of investment, so the first element of the project concerns refreshing the estate. In particular, we need to provide interview facilities and group-work facilities for offenders, which, by their nature, must ensure that any conversations that take place in them are private, and there must also be a certain consciousness about the personal safety of our staff. It is not just a question of renting open-plan office space.
696. The second element concerns the ongoing investment in IT facilities, a significant chunk of which includes the refresh of our own case-management system, as well as the general upgrade of IT facilities, which continues each year. The shortfall that we highlighted concerns the capital cost of integrating our case-management system with the Causeway Programme's IT system.
697. Having said that, the announcement last week of the withdrawal from Workplace 2010, and the potential signal that that sends about a change in the Government's intention as to whether they wish to own or rent property, has implications. Our budget was drawn up on the basis that we would be selling off all our estate and renting back property, albeit not at a private finance initiative level, because the facilities are too small. A rethink is required, given that we are not sure whether we can realistically sell the properties that we currently own. There are around £1.3 million of presumed proceeds in that capital funding — effectively an element of self-funding — that we are no longer confident that we can achieve. Therefore, an additional £1.3 million may be required over and above the £1.2 million that we have already flagged for the Causeway Programme integration.
698. **Mr Hamilton:** Had the service intended to completely change its estate and move away from current accommodation to entirely new accommodation?
699. **Mr van der Merwe:** Our estate is currently around 60% owned and 40% leased, and we intended to phase out the remaining owned properties.
700. **Mr A Maskey:** Thank you for the presentation. Brian, you said that under CSR07 you got additional resources to cope with the further requirements on the service, and, obviously, you welcomed that. However, you are still £18 million a year short. The presentation listed a number of areas in which that deficit has had an effect, including the fact that:  
*“frontline service delivery will be reduced.”*
701. That sentence is repeated for two areas. Some of those pressures are self-explanatory; however, I am trying to get a handle on what the real pressures are. In other words, what needs to be done in those areas?

702. **Mr McCaughey:** For us, the pressures are in the number of offenders that we require one probation officer to supervise them. Given that the new legislation is primarily about public-protection sentences and sexual and violent offenders, as director of the board, I want to ensure that that is at a manageable and doable level. That is the reason that my ideal world was outlined in the presentation, and I understand that that has to be balanced against realism. However, I felt — and the Committee has obviously understood — that that presentation should describe my ideal world, along with the four additional areas that have been identified. In answer to your question, the major pressure concerns the number of offenders that one probation officer would be expected to supervise.
703. **Mr van der Merwe:** As the director said, probation staffing is structured around an individual case-management approach. We need to cut according to our cloth; however, in reality, a probation officer would supervise more offenders than is perhaps ideal or would be considered best practice. We cannot cut out areas of service altogether because every offender needs attention. The degree to which we can give adequate attention to each offender and challenge and change their behaviour is important — I think that that is where we may lose some of our benefit.
704. **Mr McCaughey:** I can respond to that; indeed, I touched on this point earlier. Our approach, historically, has been to work in partnership. Everything that we do is in partnership; however, our ability to support community and voluntary groups and to get them to work with us will be reduced greatly by that budget pressure.
705. **Mr A Maskey:** You gave figures for the considerable number of reports that the Probation Board provides for the Court Service, for example. Are there any examples — and these may be difficult to provide — of when work has fallen down because the appropriate level of staff was unavailable? In other words, are there any elements of the system that simply do not work because of the deficit that you described?
706. **The Chairperson:** Before you answer, Mr McCaughey, I inform the Committee that I must leave the Chair. That is no reflection on the answer that you are about to give. I am due to speak first in the Chamber when the debate resumes after lunch. The Deputy Chairperson, Raymond McCartney, will take the Chair.
- (The Deputy Chairperson  
[Mr McCartney] in the Chair)*
707. **Mr McCaughey:** I can answer that question fairly quickly. We have Northern Ireland standards and service requirements for the supervision of offenders. However, if we had insufficient staffing or resources, we would have to move away from those standards and service requirements. It is not simply by chance that the Probation Board for Northern Ireland has a high success rate; the standards and service requirements that we apply are of a high order, and we supervise offenders very thoroughly. However, if resources were insufficient, we would have to step back from those expected standards.
708. **Mr Attwood:** Thank you for the detail, as well as the tone, of your submission. I have two or three questions to ask. Some of the figures that you outlined project beyond 2010-11. It is important that we anticipate that, especially in respect of the outworking of the Criminal Justice (Northern Ireland) Order 2008.
709. As regards the current spending period up to 2011, I remember that the Probation Board was offered funding for implementing the outworking of the Order, but it indicated that it was content with the funding that it received as a result of the negotiations with the NIO and Paul Goggins on its budget lines and work on the Order. Subject to what you said, that is my recollection. What has changed in the past year to make the Probation Board realise that it needs more money to carry out its work in following through the legislation?

710. **Mr McCaughey:** I understand your question, and you are correct. However, the Probation Board and I approached this evidence session as an opportunity to update the Committee on our current and future situation and to reflect on the past.
711. We made our submission under the Criminal Justice Order (Northern Ireland) 2008; however, we did not get our full submission, yet we were content that what we got would allow the board to move forward. That has been the approach that the organisation has adopted. We have never, ever received our full requests. Our organisation has a “can-do” approach — we have cut our cloth accordingly and moved forward positively.
712. **Mr van der Merwe:** An element of that £600,000 for the sentencing framework was not delivered. The Northern Ireland Office agreed to that by delaying the implementation of certain aspects of the legislation, in particular, the roll-out of the bail-information scheme. We had proposed a certain roll-out timetable; however, the Northern Ireland Office extended that timetable, and, consequently, the Probation Board had to operate with fewer resources. Therefore, there was an agreed approach to rolling it out. We got everything that we had asked for, but the timing was sometimes delayed beyond the CSRO7 period.
713. **Ms Maura Canavan (Probation Board for Northern Ireland):** When we were carrying out the exercise on the CSRO7, we reviewed the baseline for our ongoing work, excluding all the new work under the sentencing framework, and our baseline budget was cut. Therefore, although we received the money for the sentencing framework according to the timings, the overall requirements that we submitted were reduced.
714. **Mr Attwood:** Is there an adequate budget line for the business that the Probation Board does in respect of the Order? I am concerned that, in general, the budget lines that relate to the consequences of that Order, whether for the work of the Prison Service, Probation Service, or any other service, are simply not sufficient to fulfil the expectations of the legislation. The evidence from England and from the parole commissioners supports my concern. Within two or three years, when prisoners say that they want to be released, will it be the case that the regimes to facilitate that, or even to get them a hearing of any weight before the parole commissioners, will not be in place because of a lack of funding?
715. **Mr McCaughey:** We were content that we could deliver a service based on the allocation that we received. The main difference is that the presumption of dangerousness that exists in England and Wales must be determined by the courts here. In Northern Ireland, there is no automatic presumption of dangerousness set against a schedule of offences of a violent or sexual nature. In England and Wales, an individual who was convicted of such an offence would automatically go to prison. However, as that is not the case in Northern Ireland, I do not envisage as many people going to prison here.
716. The member raised an important point, but I stress to the Committee that some individuals will still go to prison for violent and sexual offences. It is imperative that programmes in prison are available to allow those individuals to evidence the reduction in the risk that they pose. Otherwise, the parole commissioners will left be with the dilemma of how on earth to evidence a reduction in risk that would allow them to decide whether to release those prisoners.
717. **Mr Attwood:** It may interest you to know that the director of the Prison Service gave evidence that it has had to set aside parcels of money to create the new regime over the next couple of years. He also flagged up the issue that being able to recruit qualified staff to carry out the work in prisons was another matter.
718. You make a big play for extra funding in order to decrease the ratio of officer to offender and, usefully, you provided the

- figures for comparable jurisdictions. Is the ratio in Northern Ireland decreasing?
719. **Ms Cheryl Lamont (Probation Board for Northern Ireland):** That ratio has remained steady for a period. Perhaps I could take the liberty of describing briefly the work of a typical probation officer. I am a probation officer in Dungannon, and my caseload of 24 cases includes those that range through low-, medium- to high-risk offenders. I also prepare four court reports each month. As Brian McCaughey, the head of the organisation, said, probation officers operate standards of practice that provide both an effective mechanism for the supervision of offenders and public assurance.
720. I must also provide a service to the court, probably for a couple of mornings each month. In addition, I co-deliver an anger-management programme. I stress the fact that probation officers are not office based. We deliver our work in the streets and communities of Northern Ireland. To that end, we connect with local community and voluntary groups, and we represent the organisation in various fora, such as in domestic violence partnerships and child-protection panels. A probation officer does all that work and is also, quite rightly, expected to attend team meetings on the internal communication of the organisation.
721. The Probation Board employs qualified social workers as the main deliverers of the service, and they will be expected to adhere to, and to continually develop, their professional expertise. Therefore, a lot of demands are placed on them. I stress that, as we go forward with the complexity of the work, when I was a front-line worker, I took notes with a pen and paper, which David alluded to. However, we now have case-management systems in which we input our work.
722. I also stress that the tools that we — thankfully — now use in the assessment and management of offenders require time to complete. Furthermore, in comparison to the time taken, the assessment, case-management and evaluation (ACE) tool, which is what we call our validated instrument, is more user-friendly than the offender assessment system (OASys) tool that is used in England and Wales. Therefore, in my view, the caseload has remained fairly similar in some ways, but there is a complexity to the work across the range, which, hopefully, I have explained to you.
723. **Mr Attwood:** My concern is that your community budget is getting squeezed from 20% to 7.5%, and it may get squeezed further, which is not good. There is an increasing number of prisoners, so attempts must be made to reduce the ratio of offenders to probation officers. Robin Masefield said that the number will increase by up to 5% per annum over the next number of years. There is also the Order to consider, which is very expensive to implement. Therefore, for those four reasons, there will be serious budgetary pressures over and above anything that might arise either because of the general budgetary situation or because the Exchequer is going to get very mean about the budget for the devolution of justice generally.
724. Looking ahead two or three years, there will be some difficult situations, because, in the current budgetary environment, I do not know how those four objectives can be attained in the current and likely budgetary environment. I am on the same page as Brian on this issue, but, for the purposes of the report —
725. **Mr McCaughey:** I understand the member's comments, and I look forward to engaging in those challenges for the future. Those are the real challenges. I am not so sure about an increase in prisoners over the next number of years, and it will be for the Assembly and the Department of justice to promote use of our prisons for the most dangerous, violent people who will cause hurt and harm to our families. If that is the strategy, how, therefore, should we manage all the others? Surely, the numbers of people going to prison for



- non-payment of fines cannot be right; surely, in Northern Ireland, we can think of a more effective, worthwhile way to allow those offenders to make good the harm that they have done to society and to make some payback to society by way of specified activities or some sort of community service.
726. I should have mentioned earlier that perhaps we could do more about prevention and diversion to determine whether people actually enter this system of ours, because once they join the system, it is very hard to get off the rails. I wonder whether there are other ways of managing people — and female offenders in particular — before they are brought into the court system. We are developing a new strategy, which is out for consultation, on how we can engage with female offenders and deal with all the issues and reasons why they might offend and, if at all possible, prevent them from having to go to prison. We can then deal with the issues that are involved, particularly where parenting issues, children, mental health and addictions are concerned.
727. I would also look at specific sentence reports, as opposed to full reports to court, in the context of savings. I am not sure that we need 6,000 reports to court, because I believe that I could tell very quickly whether someone needed a full report or an initial assessment, which would direct the court. Savings could be made in those areas, so I do not see the world as being totally negative. In fact, we have a great opportunity.
728. **Mr Paisley Jnr:** On that issue of reporting, I am not trying to set you up against the people with whom you work. However, is there a culture in the courts system whereby people want all paperwork and reports before they will pass sentence or make a determination, or is there a willingness to take guidance and direction on an expert or a directed report?
729. **Mr McCaughey:** We are piloting a new arrangement for the provision of specific sentence reports in order to evidence the reduction, delay and increase in saved days and the effectiveness of the decisions in order to ensure that people can take up community service.
730. **Mr Paisley Jnr:** How that progressing? Is it too soon to say?
731. **Mr McCaughey:** It is improving. However, as you suggested, we are attempting to change custom, practice and culture.
732. **Mr McFarland:** Thank you for your briefing and answers. I want to examine the ratios and cost of supervision. It is clearly important that high-risk offenders are supervised properly, and the same argument could apply to medium-risk offenders. Although it is ideal by your standards, would it make an enormous difference if more low-risk offenders were allocated for each individual officer? Although reoffending rates are lower here than in England, they are still enormous. There are questions about the effectiveness of the system, because some individuals are career criminals who will continue, even under supervision, to be criminals. How effective and cost-effective is that?
733. What is the role of the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO)? Am I right in saying that it is a separate organisation? The voluntary sector, including community restorative justice, and other agencies manage offenders when they are released from prison. In the longer term, will an issue arise about how well money is being spent, either by those groups or by organisations that look after people when they leave prison? The system seems to involve an enormous number of people, and money is being drawn from different sources. Is that a good way to spend money in the longer term when budgets start to tighten?
734. **Mr McCaughey:** That is a great question. As director of probation, I believe that if we are tasked to give a lead on the assessment and management of offenders in Northern Ireland, we should at least have a say as to which groups that work with offenders receive money. That is not fully the case



- today. Our submission outlines the funding and budget that my counterpart in the South of Ireland receives. All money for engaging with offenders in the voluntary and community sector in the South is channelled through the probation service. The Committee should consider that.
735. Mr McFarland is absolutely right. Based on NISRA's independent research on the matter, Northern Ireland is more effective in this field than anywhere else. Three out of four people on our community-service scheme will not have been reconvicted within two years. Moreover, seven out of 10 people on community supervision will not have been reconvicted in two years. Those figures are unmatched elsewhere because of how we do our business in, with and through the community and because of our high standards on service requirements.
736. That leads me on to the future, when policing and justice powers will be devolved. In order for the community to understand and have confidence in criminal justice, they need to be involved in its delivery. I am seeking, through our submission and through the additional moneys that we have requested, to increase our community-development budget in order to allow us to engage further with community groups on the management of offenders, particularly lower-risk offenders. I want the Probation Board for Northern Ireland to return to the world of diversionary activities and engaging with communities. I do not want to only deal with one son in a family who has been in trouble, but deal with the second son who is at risk of becoming involved. Quite frequently, parents ask for help with him because he is going along the same lines as his brother.
737. **Mr McFarland:** Earlier, we heard from the Youth Justice Agency of Northern Ireland, which has an enormous budget and sees itself getting involved again in that sort of activity. There is an effort to find more money for youth diversion in the policing world and in youth justice. A number of different agencies see themselves as being the deliverer on those sorts of matters. Is there an issue in trying to get the police, the Probation Board and youth justice into some common agreement over who should do that work and who should be funded to do it?
738. **Mr McCaughey:** I appreciate the question. In our submission, we put a figure on where we believe that additional moneys should go to community development to work with adjudicated offenders. That is for us to engage further with the community in order to engage with adjudicated offenders. That is based on our knowledge and experience over the past 27 years and on the reduction in budget that has been mentioned.
739. However, I am a realist, and it would be a decision for the future as to whether that money would come to the Probation Board, which has responsibility for the assessment and management of risk that is posed by offenders, or whether there would be some other mechanism that a Department of justice would wish to look at to co-ordinate and better target that funding. As the body that is responsible for the supervision of 4,000 offenders, 3,200 of whom are in the community, that is the uplift that I would require to seek to enrich the community and voluntary sector to work with me.
740. **The Chairperson:** I wish to clarify a couple of points on the figures that you presented. The CSR shortfall for 2008-09 to 2010-11 is £4.1 million. There is a shortfall beyond the CSR period for the Order of £4.85 million. From 2011-12 onwards, there is a shortfall of £11.07 million from the revision of offender ratios. The shortfall from the case-management system integration with the Causeway Programme is £1.29 million, and there is a shortfall of £2.6 million from community development. That is a total shortfall of £23.91 million, minus £1.02 million from 2008-09, which has passed already. That gives a total figure of £22.89 million. How does that figure fit with the figure of £18 million that you highlighted?
741. **Mr van der Merwe:** Some figures are annual figures. The case-management

- system figure is a one-off amount of £1.2 million, as opposed to the revision ratios, which are an annual amount. There is almost an element of double counting in the way that you have analysed the figures.
742. The £4.8 million for the Order going beyond 2011 is an annual figure. We have disregarded the actual shortfall in the current CSR period in calculating the figure for the year as £18 million. We have only worked on the Order figures going forward of £4.8 million a year, the revision of supervision ratios of £11.1 million a year, and the community development figure of £2.6 million, which gives £18.2 million. The capital money for the Causeway Programme is separate from that.
743. **The Chairperson:** I have one more question about the board's agency status. Does the board pay VAT as part of the NIO arrangements?
744. **Mr van der Merwe:** The board is not registered as a VAT vendor. We have to pay VAT on all our invoices, but we cannot claim it back.
745. **The Chairperson:** Thank you for that. Do members have any further questions?
746. Thank you for coming along. Are you aware of any other issues that could have a material and inescapable consequence for your budget in future? It is refreshing to see that, as was shown in the first presentation, you are not in the clutches of the Treasury or the NIO. You have given us an honest and upfront presentation, which is a good news story. I assume that if policing and justice powers were to be devolved in the near future you will not trundle along with cap in hand, saying that you wanted a few million pounds that you did not tell us about.
747. **Mr McCaughey:** I reiterate that we have approached this event — and our submission — by outlining as best we can to the Committee exactly what the situation is for the Probation Board. We do not have a world of surprises for the future. I am telling you as I see it so that the Committee is as informed as it possibly can be.
748. I also reiterate that the Probation Board is one of the smaller organisations in the system. However, our track record provides strong evidence of our value for money and creativity. I hope that we have demonstrated our positivism and can-do approach. We have adopted a localised and individualised community response to the management of offenders, and we have a strong history of working in partnership in local communities with the voluntary and community sectors and in a North/South and European context. Above all else, our performance and results stand up against anyone else's, and I ask the Committee to look at that.
749. The Probation Board is a growing and vibrant organisation that pursues excellence in everything that it does. We look forward to working with all Departments on all the issues that have an impact on offending. We believe that in Northern Ireland we have an opportunity to set a standard for criminal justice for others. We believe that we can give a lead for the future. As director of the Probation Board, I want the Committee to know that the organisation wishes to play a full and central role in assisting the Assembly in its aspirations for the future of criminal justice.
750. **The Chairperson:** Thank you for being so frank and upfront with us. We may seek written clarification on certain points or we may ask you to speak to the Committee again directly. I wish you well.

## 3 March 2008

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mrs Carmel Hanna  
 Mr Nelson McCausland  
 Mr Alan McFarland  
 Mr John O'Dowd  
 Mr Ian Paisley Jnr

### Witnesses:

Mr Paul Andrews	<i>Northern Ireland</i>
Mrs Jacqui Durkin	<i>Court Service</i>
Mr David Lavery	
Mr David Thompson	

- 26 February, which provided an overview of the legal-aid system in Northern Ireland and the financial pressures to which that system has been subject.
754. Other aspects of the Court Service's financial position — apart from legal aid — are dealt with in the letter of 9 February, which we sent to the Committee Clerk. We shall draw particular attention to what we said in that letter about the court-building programme in Northern Ireland, inquests and, perhaps, judicial costs.
755. Apart from those brief introductory remarks, Chairperson, I do not propose to make any other formal statement. We are pleased to assist the Committee in any way.
756. **The Chairperson:** Before I begin, I declare an interest as a member of the Northern Ireland Policing Board. I invite Committee members to do the same.
757. **Mr Paisley Jnr:** I am a member of the Policing Board.
758. **The Chairperson:** There is no one else present who is required to declare an interest.
759. Can you outline some of those costs, Mr Lavery, particularly the court-building costs?
760. **Mr Lavery:** The Committee has invited us to provide an overview of the budgetary pressures to which the Court Service will be subject for the remainder of the comprehensive spending review (CSR) period and beyond. We have identified a number of such pressures, of which the most significant by size and challenge is, of course, the immediate legal-aid pressure that has preoccupied the Committee today. We estimate that it will cost £60 million over the next two years.
761. We have also brought to the Committee's attention the fact that there is a build-up of demand for
751. **The Chairperson (Mr Spratt):** I welcome the representatives from the Northern Ireland Court Service, and I thank them for coming here today to help us with our inquiry into the devolution of policing and justice powers, and, in particular, to answer questions on financial issues.
752. I welcome David Lavery, the director of the Court Service; Jacqui Durkin, its head of court operations; David Thompson, its finance director; and Paul Andrews, its head of publicly funded legal services, which deal with legal aid. I anticipate that the session will last for up to an hour and will mostly involve questions from members. I invite you to make a brief statement, and then I will ask you to leave yourselves open to questions.
753. **Mr David Lavery (Northern Ireland Court Service):** The Court Service welcomes the opportunity to assist the Committee with its deliberations. As the Committee will be aware, we wrote to the Committee Clerk on 9 February 2009, providing an overview of the Court Service's financial position. Together with colleagues in the Northern Ireland Legal Services Commission, we submitted a joint memorandum, dated

- improvements to the court estate in Northern Ireland. We have projected a total capital cost of the order of £100 million of work that lies ahead of us but for which we have not been funded in the current CSR round. We thought it appropriate to draw to the Committee's attention some other pressures that will arise over the next couple of years.
762. The only one that might be described as explicitly devolution-facing is assimilation costs for staff who will join the Northern Ireland Civil Service. The Northern Ireland Court Service is technically a separate civil service, and there are some slight differences in our terms and conditions around salary scales and grading structures. Clearly, if we become part of the Northern Ireland Civil Service on devolution of justice powers, our staff will cease to be Northern Ireland Court Service civil servants and become members of the wider Northern Ireland Civil Service instead. Should that happen, there would be a need to assimilate our grading structure and our salary structure. We have projected a cost of approximately £400,000 over the next two years in order to achieve that. There are some slight differences in some of our pay scales that would have to be addressed. We can examine that in greater detail if it would assist the Committee.
763. In my letter, I also identified a pressure of £7.5 million for judicial costs, even though those have not been created by the proposed devolution of powers. I tried to explain that there is a constitutional principle that judicial salaries should be paid out of the Consolidated Fund. In other words, it should not be in the gift of an Assembly or a Parliament to vote money to judicial salaries. For largely historical reasons, the amount of money in the Consolidated Fund for judicial salaries in Northern Ireland has been capped, or has marked time, at a particular level that is no longer sufficient to cover the totality of judicial salaries and other costs. In practice, we are making up the shortfall from our departmental budget.
- That situation must be addressed under devolution in order to place all the money for judicial salaries into the Northern Ireland Consolidated Fund. It is simply a means of underscoring the principle of judicial independence.
764. However, we have also identified some judiciary ancillary costs. For example, in the past couple of years, some concessions were made on the taxation treatment of judicial pensions, which were funded at the time but have not been funded for new judicial posts. Therefore, as new judges are appointed, the costs associated with the adjustment to the taxation of judicial pensions fall to the Court Service. That amount is building up over time, and we have identified it as part of the £7.5 million judicial costs.
765. We have also identified the need to take up some additional responsibility for judicial transport. As the Committee is aware, during the Troubles, and up until now, many judges who have dealt with criminal cases in Northern Ireland have received police protection and have been driven around in police cars. However, part of that infrastructure is likely to change this year. There will be a consequential impact on the Court Service's budget as we take up the slack and provide travel allowances. In some cases, if a judge were travelling a very long distance over many days to preside over a trial, we might have to provide a car-pool facility, in the same way as — dare one say it — Ministers and senior public officials have such a facility. Therefore, we have also factored in that cost.
766. We have also identified an estimated figure of £2 million for inquests. There are around 20 so-called “legacy inquests” going back a number of years, and those will now come before the Coroner's Court in Northern Ireland. Those cases gave rise to issues concerning the European Convention on Human Rights and were the subject of litigation that has been before the courts for many years. A backlog of cases in which the European Convention on Human Rights is relevant has built

- up. With some recent decisions made by the Appellate Committee of the House of Lords, those legacy inquests are now in a position to proceed, and they will be expensive cases to administer.
767. The complex nature of the cases is such that the coroners will almost certainly require additional legal support, by way of appointment of counsel, to assist them in the preparation of their cases, and in the presentation of the cases at the inquest. Therefore, we have included an estimate of up to £2 million, which includes a figure for the appointment of an additional coroner. We have temporarily appointed one additional coroner to build up the capacity of the coroner system to deal with cases that are, by their nature, complex, and are likely to last many weeks or months.
768. We have also declared a very small amount in our pressures for tribunal reform. As the Committee may be aware, the Northern Ireland Executive agreed in principle that the Court Service would assume responsibility for running Northern Ireland's tribunals, and one of the steps that we propose to take is to bring together administrative staff. There is a multiplicity of small tribunals in Northern Ireland, and we think that we could achieve efficiencies by bringing some of the staff together into a common back office, but accommodation and staffing costs are associated with that.
769. We have declared total resource pressures of around £70 million, and a capital pressure, primarily for building new courthouses, of £100 million.
770. To conclude, the legal-aid pressure, which has preoccupied the Committee today, is an inescapable pressure. Those liabilities exist, and they are in the system. Bills will have to be paid, but funding has not been provided in the legal-aid baseline to do that. The only other inescapable pressure is the devolution assimilation costs for staff, which amount to roughly £400,000. All the other elements are matters that the Court Service will want to do, or will be obliged to do, in the next few years. Therefore, it would be remiss of us, at least, not to declare those to the Committee so that members are aware of the level of pent-up demand for expenditure in some areas.
771. **The Chairperson:** The £100 million figure for new courts is out to consultation at present. Does that amount include expenses for high-tech IT equipment and other specifications?
772. You were present to hear the Northern Ireland Legal Services Commission's evidence to the Committee. Have you any comment to make about the fact that legal-aid costs in Northern Ireland appear to be higher than those in other parts of the United Kingdom? It appears that high costs here are down to legal costs and payments to legal professionals. It seems that our pay scales and billing scales differ from those operating in other parts of the United Kingdom. Have you considered reforming that policy, or has any work been done to bring our costs into kilter with the rest of the United Kingdom?
773. **Mr Lavery:** You said that the court-building programme was the subject of a public consultation. At present, we are consulting about a proposal to change the way in which we operate a number of the smaller courthouses. We are suggesting that five courthouses become hearing centres. Rather than open from Monday to Friday to provide office facilities but have court hearings on only one or two days a week, we are suggesting that they become limited-opening courthouses, which we call hearing centres. Therefore, the courthouse would open only on days on which a court hearing was taking place. The office would be open for normal business on court sitting days, but the office facilities would be provided from other larger courthouses in the same locality on the other days of the week.
774. Our proposal applies to the five smallest courthouses. We have published a consultation paper on that type of rearrangement at Bangor, Limavady, Larne, Strabane and Magherafelt courthouses.



775. **The Chairperson:** Would that create efficiencies?
776. **Mr Lavery:** It would, but they would be fairly modest. It would not be necessary to heat and light the building on the days on which it was closed, nor would security and the associated paraphernalia be required. The staff would continue to work, but they would be relocated on non-court sitting days to another court office, from where they would perform their duties.
777. The £100 million, about which we have notified the Committee, is to improve the court estate, which is an estate of variable quality. Recently, we opened some modern courthouses in Belfast and in Dungannon, and they are among the best in Europe. However, we have some old buildings as well, some of which date back to the nineteenth century. They are difficult to adapt to modern expectations. For instance, it is difficult to provide disability access to those buildings.
778. We also must face such issues as population and business growth in some areas, so that figure comprehends a range of expenditure, the most pressing of which is Ballymena courthouse. It will need to be closed for major refurbishment, because it needs a roof replaced and a great deal of remodelling work.
779. We have also identified the need to replace courthouses in Lisburn, Newtownards and Bangor. Lisburn has outgrown the capacity of its existing building. We hope to develop a new and better courthouse for Lisburn. The Court Service believes that Newtownards and Bangor courthouses could probably be replaced by a new and better courthouse serving north Down. There is also considerable pressure on Londonderry courthouse. Derry has a very busy court, and we have plans to redevelop the administrative block in order to provide additional court capacity there.
780. Our projection, including for courtroom technology, is a total capital spend of the order of £100 million. That simply is not in the budget. As I explained to the Committee, our budget is about £21 million in capital spend over 2008-09, 2009-2010 and 2010-11. That is something of which the Committee should be aware. It is something about which we will return to the proposed Department of justice and the Department of Finance and Personnel.
781. The Chairperson invited me to comment on the issue of legal aid, and we heard the observations of colleagues in the Legal Services Commission. The legal-aid system in Northern Ireland was established in 1965, and it provides access to justice for many people. We must not lose sight of that. More than 70,000 received support in dealing with legal problems last year; therefore, legal aid provides an opportunity for people to address legal grievances or to have representation in court proceedings that they might not otherwise be able to afford. Legal aid is an important service that provides people with a great deal of assistance.
782. However, in some areas, expenditure is unquestionably higher than it is in comparable regions of the United Kingdom or Ireland. There is a number of reasons for that. First, there is a relatively high degree of social deprivation in Northern Ireland. The Committee knows, and Mr Daniell from the Legal Services Commission explained, that entitlement to legal aid — civil or criminal — begins with an assessment of the person's ability to pay for his or her legal representation. In order to obtain legal aid, a person must satisfy the appropriate authority that he or she does not have the means to pay for the case.
783. Serious criminal-legal-aid cases that end up in Crown Court, such as those discussed earlier, begin in the Magistrate's Court, where 80% of defendants charged with indictable offences qualify for legal aid. Thus, a substantial proportion of people who appear before criminal courts, particularly on serious criminal charges rather than for minor offences, such as motoring offences, is eligible for legal aid under the current scheme.



784. The criminal-legal-aid scheme is a free scheme, not a contributory one. Once someone qualifies for criminal legal aid in Northern Ireland, legal representation is paid for by the taxpayer. Unlike civil legal aid, which may require a contribution, if a person qualifies for criminal legal aid, he or she is provided with solicitor and barristers free of charge.
785. A third factor that has a bearing on all of this is the volume of cases. Although the number of civil cases going before the Northern Ireland courts has declined, there has been a steady growth in the number of criminal cases. In the period for which we have provided statistics to the Committee, there has been a 29% increase in the number of Crown Court cases, which are the most serious and tend to require the greatest amount of work and legal representation. Hence, the volume of cases before the courts acts as a driver for legal-aid applications.
786. I must also concede that there has also been a growth in the average cost of cases. It is not just a case of more cases costing more money — the average cost of criminal cases has been growing. A particular growth area that the Committee has already discussed with our colleagues from the Legal Services Commission is that of very-high-cost criminal cases, which are the most expensive Crown Court cases. We have been surprised at the number of those qualifying as very-high-cost criminal cases. That is something at which we may need to look.
787. We thought that the threshold would be such that we would have one third of the number of cases that has been coming through the system. There is clearly something there for which we have not planned. We are getting a higher volume of very-high-cost criminal cases, and once a case is certified as being a very-high-cost criminal case, it is not subject to a system of prescribed standard fees. The remuneration for the lawyers who work on those cases is assessed by a judicial official known as a taxing master after the case is concluded.
788. No one knows how much those cases will cost, or how much the Legal Services Commission will have to pay, until the case is concluded and an assessment of costs has been made. That has been the cost driver that has confronted the legal-aid system in the past year or so.
789. The additional £24 million that had to be provided for legal aid in the financial year that is just ending, 2008-09, is almost entirely attributable to that greater incidence of very-high-cost criminal cases. We have had more of them, and they have cost us more in legal fees than we would have expected.
790. **The Chairperson:** You say that you may need to look into those cases. Should not you be looking into them?
791. **Mr Lavery:** We will certainly address your further question as to whether any planning has been done in order to address that.
792. If I can refer members briefly to the memorandum that we submitted, it states that there is a very substantial disparity between the average cost of criminal legal-aid cases in the Northern Ireland Crown Court in comparison with that in England and Wales. The Chairperson earlier drew attention to the fact that we have projected an average Crown Court case cost of more than £13,000 — almost £14,000 — compared with £6,300 in England and Wales.
793. I do not believe that the Scottish figures would enable us to compare like with like. The figures for what are known as solemn proceedings there, which are the more serious criminal cases, are much higher.
794. In sticking to the figures that we can stand over, it costs almost £14,000 for a Crown Court case in Northern Ireland and £6,300 in England and Wales. In his evidence, Mr Daniell stated that £13,887 is on the high side. He explained the way in which that figure had been calculated, which was to take the average cost of a Crown Court bill and multiply it by three. That was done on the assumption that every Crown Court case involves a solicitor, a

- barrister and a senior barrister, or QC. That average has been calculated by taking into account the fees that QCs, ordinary barristers and solicitors charge. If we could calculate more exactly the average cost of each case — rather than the average cost of each bill — it would be somewhat lower than that, but it would certainly not be £6,300.
795. **The Chairperson:** I am sorry to interrupt, but you say that the cost of the bill is multiplied by three to represent the fees of a solicitor, a junior barrister and a QC. Do court cases in other parts of the United Kingdom involve a solicitor, junior barrister and QC? Is that the norm, or does Northern Ireland have, because of the Troubles, and so on, a culture of dealing with cases differently from England and Wales or from Scotland? Is it possible that their court culture does not require a solicitor, junior barrister and QC in every case? Are we paying through the nose?
796. **Mr Lavery:** I was trying to reach that point. The level of legal representation in cases is one of the cost drivers in Northern Ireland. In criminal cases, the norm is to have both senior and junior counsel, as well as a solicitor. By comparison, in Crown Court cases in England and Wales, many more cases are dealt with adequately by a solicitor and one counsel, rather than by a solicitor and two barristers. We intend to address that, because it is clearly a cost driver. If the average bill had simply to be multiplied by two rather than by three, the result would be a lot closer to the English figure — it would be perhaps £8,000, rather than £13,800. Clearly, the level of representation is a cost driver and something to which we have regard.
797. At present in Northern Ireland, the level of representation that there will be in a Crown Court case is a judicial decision. The defendant appears for the first time before a Magistrate's Court on the preliminary charges before the case is eventually transferred to the Crown Court for trial. As I explained in my introductory remarks, 80% of defendants qualify for legal aid at that point and receive it free of charge. The magistrate decides then whether to grant a certificate for one or two counsel. Therefore, right at the very beginning of a case, when it is starting on its way along the production line as it were, a judicial figure decides to allocate a QC to a case; however, that may change later.
798. I think that you are looking for ideas or suggestions about that this morning. There may be a case for deferring the decision to bring in senior counsel to a much later stage, when the Crown Court judge who will try the case has read the papers and has had an opportunity to decide the case's level of complexity and, indeed, whether it is going to trial. Although every case starts with the intention of going to trial, many are resolved by way of a guilty plea and do not proceed to a fully contested trial. Therefore, there may be a case for deferring that decision.
799. **The Chairperson:** I have to say that I am becoming more and more worried about what you are saying.
800. **Mr Lavery:** I mean to reassure you.
801. **The Chairperson:** You tell me that a judicial figure decides the level of representation at a particular stage of the production line. To me, that smacks of jobs for the boys the girls, and it therefore needs to be examined. You said that the commission and Court Service intend to address that.
802. The situation has become very worrying. We will have to consider this matter seriously in relation to devolution. There is now a need to examine it, because spiralling costs and the growing cost of legal aid, which seems to be a year-on-year pressure, have obliged you to go to the Treasury annually. The time for addressing it has passed: to be blunt, it is now time for action.
803. Nelson McCausland has joined us. Do you have any interests to declare, Mr McCausland?
804. **Mr McCausland:** I am a member of the Belfast District Policing Partnership.
805. **The Chairperson:** Thank you, Nelson.

806. I am sorry to have interrupted you, Mr Lavery, but some of the things that you said worried me.
807. **Mr Lavery:** I am trying to reassure you somewhat. You invited us to address what can be done about this, as you did Mr Daniell. Some of the areas that we are addressing involve changing to having a more robust system of standard fees for cases, for example. Any system that leaves assessment of the cost of the case to the end of proceedings brings with it an element of unpredictability.
808. We have started a process of introducing a regime of standardised fees for criminal cases. Many Crown Court cases are subject to standard fees already, where the fee is set through legislation — by the Lord Chancellor at the moment and, in the future, by the Northern Ireland Minister for justice — so it is clear at the outset how much a case will cost, irrespective of how long it lasts. We think that that is a clear way of introducing cost control and efficiency. It seems safe to assume that if lawyers know that the case will attract a particular set fee and that that fee will not get any bigger, regardless of whether the case lasts longer, that will act as an incentive toward efficiency.
809. However, in the past year or so we have had a problem in that we have not, as yet, introduced standard fees. The very-high-cost cases are, by their nature, assessed *ex post facto* by a judicial figure, and there is no sufficient predictability in the way in which those fees will turn out. We have been in consultation with the legal profession regarding immediate reforms, and we plan to introduce a new system of fees for very-high-cost cases. That will be based on the corresponding rates of remuneration in England and Wales. That will require solicitors and barristers to account for the amount of work that they do and the time that they spend doing it, rather than the traditional way, whereby counsel marks their fees. That is based on what is called a brief fee, which is a composite fee that includes all the preparatory work done, as well as up to and perhaps including, the first day of the case.
810. Early in the new financial year, we plan to introduce a new fee regime for the very-high-cost criminal cases, and that will be based on the level and structure of remuneration for England and Wales. That will be an immediate way of introducing a greater degree of cost control and budgetary predictability.
811. However, I cannot pretend that it will have any impact on the cases that are in the system already, because I cannot change retrospectively the basis on which those cases have been taken on. Some of them have been completed already, and the bills are waiting to be paid. However, it is intended that from April onwards, cases for which criminal legal aid has been awarded, which become very-high-costs cases, will be remunerated at the same rates as in England and Wales. That seems to us to be an immediate way to address cost control.
812. More generally, I would offer standardised fees as a response. Standard, predetermined fees, where one knows in advance what one will get, and prompt payment of those fees to give people predictability and cash flow, is the right road to go down. That will gradually close off those other avenues where the assessment of the fee is at large and is an *ex post facto* assessment. The fewer of those situations that there are, the better. Our overall objective is to achieve cost control and budgetary predictability, as well as value for money.
813. I am sorry that I am monopolising the discussion, but I should say that the Committee should be encouraged not to look solely at criminal legal aid. Civil legal aid has also seen quite a lot of growth, particularly in the area of matrimonial and children's cases. Again, it seems to us that the single biggest cost driver is the level of representation; the number of lawyers that are used in each case has gone up significantly. In children's cases, it is quite common for many of the parties — not only the child, but the parents

- and, perhaps, grandparents — to have their own separate legal representation. That is one of the explanations for the significant growth in that area of civil legal aid. Again, we intend to address that.
814. I am sorry if I have monopolised the discussion on that point, but I wanted to give the Committee some sense of what we are looking at.
815. **The Chairperson:** Just before I invite members to speak, for the record, will you clarify that you said that, over the entire CSR period, you have £20 million of capital available, and that the annual amount is £4.8 million for next year, £8.8 million for the following year, and the capital spend of £100 million is completely uncovered at present? Is that correct?
816. **Mr Lavery:** Yes. Our capital allocation for 2008-09, 2009-2010 and 2010-11 was, I think, £21.8 million. That allows us to maintain our court estate and begin the repairs to the Ballymena courthouse, which was referred to earlier. However, as far as building a new courthouse anywhere is concerned, that sum would not look at it. We thought that it was appropriate to at least alert the Committee to the fact that there is a bit of a pent-up demand for that type of remedial work.
817. **Mr Paisley Jnr:** Thank you for your very helpful presentation and for the letter that you forwarded to us on 9 February. First, I would like some clarification on a figure that is listed on page 5 of that letter. A summary of the budgetary pressures is provided, and a figure of £60 million is identified for legal aid. Is that the same £60 million legal aid pressure that the Legal Services Commission talked about?
818. **Mr Lavery:** Yes.
819. **Mr Paisley Jnr:** Does that mean that it is not a separate figure?
820. **Mr Lavery:** Fortunately, yes.
821. **Mr Paisley Jnr:** You are reassuring us with that answer.
822. The second issue concerns your comments about trying to drive costs down. What will be the practical outcome of your suggestions on how to do that? Will the legal profession accept that radical change? Would there be any impact? I suggested to the previous witnesses that there may be a strike. What are the real, nitty-gritty, down-to-earth repercussions of pursuing what you suggested to us?
823. **Mr Lavery:** You are encouraging me to speculate. However, a recent example is the disruption to the work of the Crown Court towards the end of last year and at the beginning of this, when counsel refused to appear in cases. Their complaint — which was shared by solicitors — was about the length of time that it was taking to pay for very-high-cost criminal cases.
824. **Mr Paisley Jnr:** You cannot argue with money.
825. **Mr Lavery:** Part of our difficulty was that we were not funded to pay those cases; we had to secure additional funding to pay the bills that were in the system. However, the Bar Council passed a resolution stating that counsel need not accept or retain instructions on any matter about which they were not satisfied that they would be paid a reasonable amount within a reasonable period of time.
826. One might view that as a bit of a shot across our bows. However, I think that the authorities in the legal profession — the Bar and the Law Society — realise that we are moving into a different world where they are negotiating for fees, ultimately, with the Northern Ireland devolved Administration rather than with the Treasury in London. They realise that they will be just one of the many sectors of our community competing for finite resources. We have had those conversations with those organisations. In future, there will be no blank cheques, which was a term that somebody used earlier this morning. If we want an increase in the legal aid budget in Northern Ireland post-devolution, anything that is allocated will be money

- that cannot be spent on schools, healthcare, housing or social welfare.
827. **Mr Paisley Jnr:** We want to ensure that we know the consequences of seeking this money. You are telling me that what is desirable is possible, but that there may be a few bumps in the road.
828. **Mr Lavery:** I do not think that any practitioner would embrace any Government initiative that would restrict either the number of opportunities to undertake publicly funded work or the rate of remuneration that is paid for it. However, we have been very clear with both professional bodies — the Bar and the Law Society — that there will inevitably be a need to reduce the cost of publicly funded legal services in Northern Ireland.
829. The Chairperson invited me to explain what we were doing. One thing that we need to do — and that we are considering — is having what one might call smarter procurement. We are one of the bulk purchasers of legal services in Northern Ireland, as is the Public Prosecution Service and perhaps the Central Services Agency (CSA) and one or two others. It ought to be possible for the bulk purchasers to co-ordinate activities somewhat better than has been done in the past so that the cost of legal aid does not drive, say the PPS, to increase the fees that are paid to prosecutors or vice versa — that the fees paid to prosecutors do not drive the cost for defence lawyers.
830. I think that we need to work in a more joined-up way. Personally, I believe that the devolution of justice to Northern Ireland will not only provide the opportunity, but it will present the necessity to do that. As you speculated, there will be bumps along the way.
831. In case I do not get the chance to say this, I should point out that one has to acknowledge that there has been an element of historic underfunding of the legal aid budget in Northern Ireland. It is an incomplete picture to simply ask how the Court Service let the situation get out of control. At the minute, and as Mr Daniell explained, the legal aid system is designed to be demand led; it helped 70,000 people to access justice in 2008. Given how it is now structured, it probably costs about £80 million a year, rather than the £65 million that is in the system. It will ultimately be for those in the devolved Administration to decide how much they want to spend on publicly funded legal services. The system is there to help people — not to help lawyers.
832. **Mr Paisley Jnr:** Make no mistake about it — my personal objective is to achieve an outcome where devolution delivers a system that is better, not for the lawyers or the courts, but for the people. We are, ultimately, the people's servants, and we must ensure that what we get out of this process is better.
833. I want to ask about judicial salaries expenditure. You said that that amounts to £7.7 million per annum, the lion's share of which comes from the Consolidated Fund. The Court Service has to fund almost one third of that total, and by next year, the figure will be almost 40%. Is that a strike at judicial independence? It seems to me that it is a real blow to judicial independence, bearing in mind the saying "he who pays the piper".
834. **Mr Lavery:** It is wrong in principle, and the Northern Ireland Act 1998 more or less obliges us to reposition judicial salaries into the Consolidated Fund. It states that for that reason, the control of judicial salaries is reserved or excluded from the devolved Administration. It is a constitutional principle in the South of Ireland, Scotland, England and Wales that judges do not have to wait for the Parliament to vote on their salaries each year.
835. I pay a substantial sum of money annually from my departmental budget —
836. **Mr Paisley Jnr:** You should not be paying that.
837. **Mr Lavery:** I should not be paying it. However, I have to, because the Treasury froze the amount of money that is available for judicial salaries.



838. **Mr Paisley Jnr:** We need to examine that matter at the point of devolution.
839. **Mr Lavery:** The Treasury will look at the matter by moving the money from the Court Service budget into the Consolidated Fund, with the result that I will be £2 million worse off.
840. **Mr Paisley Jnr:** I understand your point. You also mentioned that the sum for transport arrangements will amount to £800,000 in 2009-2010. I understand that, historically, when a judge was under threat — which all of them were, wrongly, for a considerable period of time in our country's history — they received a threat assessment and were given a police escort. If such a threat has been removed, which I understand has happened for a considerable number of judges, that would mean that they would no longer need police protection. Therefore, that would mean that in addition to their pay, they would receive the perk of a driver and vehicle. I have no difficulty if that aspect of the job is outlined upfront. However, there appears to have been some sort of sleight of hand whereby one day the Police Service is paying for the transport because of the threat, but when that threat is removed, the Court Service pays for it because the police can no longer afford to. How did that state of affairs arise? Does every judge or magistrate in England and Wales have a driver?
841. **Mr Lavery:** No. Those costs are modelled on comparable jurisdictions. We have looked at the situation in England, Wales, Scotland and the South of Ireland, and we have developed proposals that we are discussing with judges. If judges no longer require police protection, we expect them to make their way to court under their own steam, as is the case in other jurisdictions.
842. However, as you will appreciate, a judge may have to be assigned on a peripatetic basis in some cases, which means that instead of being assigned to Laganside Courts in Belfast, for example, from Monday to Friday, some judges are a floating resource that can be deployed all over the place. Indeed, on appointment, all judges at County Court and Magistrate's Court level operate on that basis for years.
843. Just as in any other walk of life, although someone cannot claim motor mileage or travel and subsistence for journeys between their home and their base, they are entitled to claim mileage for business travel. Part of that figure is a reflection on a calculation of how much we think judges would be entitled to claim for motor mileage at Civil Service rates. If, for example, a peripatetic judge who is based in Belfast is sent to Antrim courthouse, he would be able to claim mileage for the distance between Belfast and Antrim. Otherwise, he would bear that at his own personal expense. That is considered to be business travel.
844. You referred to a "perk", although I would not describe it as such. We have also factored in that it may be reasonable, on hardship grounds, to have a car-pool arrangement; for example, when a coroner has to go to Enniskillen for three days to carry out an inquest, he could be driven there and could work on his papers in the car on the way there and on the way back.
845. **Mr Paisley Jnr:** Would access to that car-pool arrangement be standard for all judges? Would it be cheaper to have that arrangement?
846. **Mr Lavery:** It would be controlled. The proposals on which we are consulting require the Lord Chief Justice, as head of the judiciary, to effectively act as gatekeeper. Our current suggestion is that a judge who routinely travels a round trip of more than, for example, 130 miles on two or more consecutive days may be able to apply for a pool car and a driver. That is, ultimately, at the Lord Chief Justice's control. However, you can see that it is a way to address wear-and-tear issues. I am not sure that I would describe it as a perk. It is not unlike other aspects of public service where similar facilities are available.
847. **Mr McFarland:** Would a peripatetic judge who travels back and forth regularly from home in north Down to work in Belfast,



- but who is considered to be able to work anywhere, get any mileage?
848. **Mr Lavery:** No. That is a matter for Revenue and Customs. Its advice is that that travel is regarded as normal commuting, for which people are not entitled to business expenses.
849. **Mr McFarland:** Can you bring me up to date with the situation as regards the reorganisation of the Court Service? My understanding is that it is due to become an agency. The Committee discussed previously the possibility of the service becoming some form of board that is run by the Chief Constable. Can you indicate the sort of costs that are involved in that? The other area that we are curious about is the cost to the DPP and where it might fit into the system as regards how it will be looked after.
850. **Mr Lavery:** I am not an expert on the latter point. I believe that the Committee will take evidence from the Public Prosecution Service. Without wanting to dodge the question, the matter is probably best raised at that meeting.
851. When the Committee was kind enough to invite us to give evidence in September 2007, we explained that on devolution, the Northern Ireland Court Service would cease to be a separate public service in its own right and that it would initially be an agency of the new justice Department, like the Prison Service, the Probation Service and other associated parts of the justice system. However, during that session, the Committee took evidence from the Lord Chief Justice — and, I must say, I hope that it will be the Lord Chief Justice and not the Chief Constable who heads the Court Service. I believe that that was a slight slip of the tongue.
852. **Mr McFarland:** It was; I am sorry.
853. **Mr Lavery:** That is unless you have something planned for me that I have not anticipated.
854. **Mr McCartney:** Back to the old days, Alan.
855. **Mr Lavery:** When the Lord Chief Justice gave evidence to the Committee, he said that there would be merit in looking at how the courts in the South of Ireland are run, and at what is planned for Scotland, where the Scottish Court Service will be put more at arm's length from the Scottish Government's justice directorate. As is the case with the Courts Service in the South of Ireland, the Scottish Court Service will be a non-ministerial Department — a civil service Department that will be run as a board, rather than as an agency of the Scottish Justice Department. That board would be chaired by the chief justice in Scotland and would comprise public representatives and executive members.
856. It is interesting that the issue of where the courts and the judiciary fit into the justice system in Northern Ireland is being examined alongside a similar process in Scotland. The Scottish Court Service began as an agency of what became the Scottish Justice Department, but it was decided that that was not the best arrangement, and they looked consciously at the system in the Irish Republic, where the Courts Service is run by a board that is chaired by the Chief Justice of Ireland and that comprises judicial, legal and lay and business representatives. It is thought that the benefit of that arrangement is that it puts the courts and the judiciary at arm's length from the Irish Department of Justice, Equality and Law Reform and that it is more compatible with the principle of judicial independence. It is also felt that that is a better space in which to place that aspect of the delivery of a public service.
857. The Committee's reports have indicated that it intends to return to that issue at some point. On day one of devolution, however, we in the Court Service will have to be an agency, because primary legislation will be required to reposition us in the way that I am talking about.
858. **Mr McFarland:** Are there more costs attached to the Court Service becoming an agency under devolution than there would be if it were moved over in its current state?

859. **Mr Lavery:** Not that I have identified. The costs that I referred to, such as those attached to the assimilation of our staff into Civil Service grades, would be the same either way. In a previous evidence session, I suggested to the Committee that it would be of real benefit to our staff to become employees of the Northern Ireland Civil Service, because they are a small and isolated mini-service at present. Joining the wider Civil Service would have many benefits for them, such as broader career opportunities.
860. **Mr Attwood:** I apologise to the Committee and to the witnesses; I have had business to attend to on the Floor of the Assembly, and I have been in and out of the Committee meeting. As you know, Mr Lavery, the reason for these evidence sessions is to create certainty about the financial issues on the subject. Therefore, I have a couple of questions to ask in that regard, and then I will ask a broader one.
861. First, I wish to create certainty about what you consider to be the inescapable resource pressures. In the paper that you submitted to the Committee, you highlighted four or five matters, and you emphasised two as being inescapable pressures. Although you say that all the matters that you referred to were inescapable pressures, you repeated that assertion for two particular issues. Yet, in the evidence that you gave today, you said that the inescapable pressures were staff costs and legal aid. In order for us to have certainty, given that this process has a wide audience, including the representatives of at least two or three Governments, and in order to inform negotiations that are going on elsewhere and to inform our report, can you tell us what you believe will be the inescapable pressures over the next two years? Are they legal aid and staff costs only, or are there more from the other menu of issues that you identified in your submission?
862. **Mr Lavery:** I will deal with that first. To avoid any possible misunderstanding, the two inescapable devolution-specific costs are legal aid, which will cost £60 million, and staff devolution costs, which we have projected will cost £400,000. All the other matters will have to be attended to whether devolution happens or not — they are not, in that sense, devolution-dependent. For example, I identified £2 million that I project to be the cost of dealing with some of those inquests. If devolution were not to happen, I would still have to find £2 million to pay for those inquests, because they are not devolution-specific.
863. Mr Attwood is absolutely right to invite me to summarise the two inescapable financial pressures of devolution, which are legal-aid costs at £60 million and staff-assimilation costs on devolution at £400,000. The judicial costs, which is in the grey area closest to devolution, become an issue on devolution simply because, as I tried to explain, it is inappropriate for judicial salaries to be paid out of a departmental budget. Therefore, at the very least, the money that I will use from my budget to pay judicial salaries this year needs to be repositioned within the Consolidated Fund. I would much prefer it if new money were put in — a proposal that Mr Paisley encouraged me to agree with — because the payment of judicial salaries out of the Court Service budget is a disadvantage to me. The two inescapable financial pressures of devolution are legal-aid costs and staff-assimilation costs.
864. **Mr Attwood:** Can you confirm that you are not making a case to the Committee, or to others, for some flexibility around the £10 million of pressures that you identified for 2009-2011, the final two years of the current CSR period, to address those pressures?
865. **Mr Lavery:** We certainly identified those pressures, and every department in the justice system will do exactly the same. We must draw the line somewhere; it cannot turn into a Dutch auction at which everybody produces everything that they want to do.
866. I hope that I have not misled the Committee. What I have tried to do is

- to encourage you to carry out a bit of due diligence before you take this on, so that you know that there are some inescapable costs — legal-aid costs and staff costs — and, so that you aware that there is a build-up of demand in the system. Whether devolution happens or not, the courthouse in Bangor needs replacing, because it is not fit for purpose. Therefore, the process is more akin to due diligence. I have reflected those pressures in some of the pre-devolution discussions that have taken place. I draw a line under legal-aid costs and staffing costs as the points at which those pressures become inescapable.
867. However, if policing and justice powers are devolved, I will ask the justice Department for £2 million for those inquests and £100 million for court buildings, just as I would in the normal bidding environment in government.
868. **Mr Attwood:** One of the useful benefits of this evidence session and the previous one is that people will be able to move forward with their eyes wide open to what some of the cost consequences of the devolution of policing and justice powers will be, whether they be for the Court Service, the Prison Service or elsewhere in the system.
869. I have a passing familiarity with the legacy inquests, and I am a wee bit surprised at the fact that the pressure point for those may be as little as £2 million. Given the complexity of the issues raised by those inquiries, I would have thought that the sum might have been higher. You can hold that answer for a second.
870. It seems that, unless the legal profession demonstrates some flexibility with ongoing very-high-cost cases, we are where we are in respect of legal-aid costs. This Committee cannot run from the consequences of that. We might not like where we are and how we got here, and we may like the new regime that the Court Service and the Legal Services Commission will introduce from April. However, it seems that we cannot escape the consequences of the matters that have been outlined today.
871. Nonetheless, it would be helpful if you could indicate what you think the average cost of criminal legal aid in Northern Ireland will be once the new regime starts in April. Will it be somewhat higher than £6,300, which is the average cost of legal aid in England and Wales, or will be closer to £13,887, which is the average cost in Northern Ireland at present? Answer those two questions, and I will return to my final point in a minute.
872. **The Chairperson:** Do you have another question?
873. **Mr Attwood:** I will wait until I hear David's answer.
874. **Mr Lavery:** On the first point about inquests, I also acknowledge that that is a projection, which may prove to be right or wrong. Of the £2 million attributed to the inquests, I am confident about £400,000 of that, which I know to be the cost of the additional coroner and coroner's staff that I have put in place to build capacity in the Coroners Service. I know that there will be an influx of new cases, and that there are at least 20 legacy cases. I know that those will take up a great deal of the senior coroner's time, so I have backfilled the system by asking the Judicial Appointments Commission to appoint an additional coroner.
875. The balance of £1.6 million is a projection of how much I think that I will need in the remainder of the current CSR period to pay towards those cases. However, I am not overly confident, given the pace at which they are being dealt with, that those cases will not spill into the following CSR period. Those cases may have a longer tail, and, if so, further funding will be required from 2011-12 onwards.
876. I can offer a fair degree of certainty about the £2 million for 2009-2010 and 2010-11, but I am not sure whether the job will be done by then, or whether a proportion of those cases will extend into future years, for which funding will be required. I can see in front of me only the first two years of the cases.

877. On very-high-cost criminal cases, it is transparent from the figures we have provided to the Committee that the problem is not just the £60 million for 2009-2010 and 2010-11 but the £45 million to £50 million in the next three years. As Mr Daniell explained, and he used the analogy of the oil tanker, until those legacy cases are out of the system, there is an accumulated liability in the legal-aid system. Even if all the reforms that I have mentioned are introduced from this April, they will not have an impact until much later. I believe that it will be the third year of the next CSR cycle before costs come down.
878. **Mr Attwood:** Five years' time?
879. **Mr Lavery:** At the current rate of reform, and given the cumulative liabilities, it could be the fifth or sixth year.
880. You asked me how much the cost could be decreased. I do not think that it can be decreased to £65 million, which is the legal-aid system's baseline as it currently operates. There is an irreducible value or around £80 million at present.
881. To reduce that to £65 million would require some radical surgery. One would either have to stop certain types of legal aid or go much further than we suggest is currently possible, and redesign the system. It may simply have to be decided that nobody gets senior counsel in certain categories of work, or that, in children's cases, not every member of the family needs a solicitor and a barrister, and perhaps a senior barrister. The system would have to be radically redesigned.
882. That is why I also have an appetite for Mr Daniell's view, whose contribution I watched on a monitor in the Great Hall, having left the Senate Chamber. He spoke of the need for a fundamental re-examination of how legal aid should be supplied in this country. Whether almost £7 million should be spent on a non-departmental public body (NDPB) to run the legal-aid system is a legitimate question, as is whether legal aid should be delivered in the way in which it is at present. That is why, at the end of the paper that the Court Service submitted jointly with the commission, it is stated that we want to develop some strategic options for the incoming Minister to consider.
883. **Mr Attwood:** As you see it at the moment, in five or six years' time, on current costings, the budget line would be at least £80 million. Is that correct?
884. **Mr Lavery:** Yes, I believe so.
885. **Mr Attwood:** Thank you very much.
886. **The Chairperson:** It is not just the inescapable pressures resulting from devolution of policing and justice powers in which we are interested but the inescapable pressures for which we do not yet have money to meet, regardless of whether devolution happens.
887. **Mr McCartney:** Thank you for your presentation. I shall ask questions similar to those that I asked the Legal Services Commission representatives about the process of resolving budgetary pressures. What process do you currently use to deal with those pressures when they have been identified? What are the strengths and weaknesses of that process, and what do you envisage as being the ideal process for the future? Furthermore, what impact will the transfer of policing and justice powers to the Assembly have on that process?
888. **Mr Lavery:** Those are important questions. I want the future process to be somewhat different from the present one.
889. The 2009-2010 financial year begins in April, and, although I have already been allocated £65 million for legal aid for that year, I know — we all know now — that that will not be sufficient. Therefore, Mr Daniell, the chairperson of the Legal Services Commission, and I will begin the year in the knowledge that there is not enough money in the system to discharge all liabilities. We must, therefore, begin a dialogue with the Treasury in London, with which we currently deal directly for funding.
890. In conjunction with the Legal Services Commission, we will begin the financial year by telling the Treasury that there



- are insufficient funds in the legal-aid baseline to discharge the accumulated liabilities and that we will require an injection of additional funding. Unfortunately, such discussions tend to drag on throughout the year, in the course of which they are elevated to ministerial level. My Minister is the Lord Chancellor and Secretary of State for Justice, Jack Straw, who, in the past year, wrote to the Chief Secretary to the Treasury to seek additional funding for legal aid. Last year, correspondence began in the middle of the year, and the matter was only resolved in the fourth quarter.
891. I do not mind whether Hansard reports that I believe that beginning the year knowing that there is insufficient funding, and having to wait until the fourth quarter to resolve the problem, is no way in which to run a business. Furthermore, the system generated some of the problems that we encountered at the turn of the year, when the Bar, in effect, went on strike — it knew that there was not enough money in the system to pay the bills. The arrangement created a great deal of disruption for the courts as well.
892. I hope that, under devolution, we might have a much more transparent process, whereby setting the legal-aid budget would be based on more appropriate dialogue with the Department of Finance and Personnel, the Department of Justice and the Legal Services Commission. Using that process, we could agree a realistic budget for the next three years, ensuring cost-control budgetary predictability and value for money, thus allowing the Legal Services Commission to plan for the year ahead, rather than have it know that by the third of fourth quarter it will run out of cash. Consequently, all the energy that must be devoted each year to to-ing and fro-ing with the Treasury in order to get more money would not be wasted under the new arrangements. We would be better served devoting our energy to reducing costs or to redesigning the system.
893. That may be a rather anecdotal approach to answering your question. Nevertheless, as Mr Daniell and I said, the system basically involves a protracted discussion throughout the year in order to get top-up funding. The best outcome would be to have a proper, proportionate and sustainable budget at the beginning of the financial year, based on which everyone could plan their business, instead of constantly having to go back throughout the year with what Mr Hamilton called the begging bowl.
894. **Mr McCausland:** I apologise for not being here earlier, but I was attending another Committee. You said that, in many cases, people here are represented by a solicitor, a junior barrister and a senior barrister, and that that would not be the case across the water. What is the difference in the size, per head of population, of the legal profession in Northern Ireland compared with that in Great Britain? Do we have a much greater proportion of barristers?
895. **Mr Lavery:** I shall hand that hospital pass to my colleague. We have the figures, and, given that I do not wish to mislead the Committee, whoever finds them first can answer.
896. **The Chairperson:** I ask everyone to check his or her mobile phone, as I can clearly hear that one is switched on.
897. **Mr Paul Andrews (Northern Ireland Court Service):** England and Wales and Northern Ireland are two very different marketplaces. Anything that I say will already be in the public domain, because it formed part of my evidence to Sir George Bain's review. My analysis is, therefore, a matter of public record.
898. In Northern Ireland, 30% of solicitors work in firms with five or more partners. In 1986, there were 276 qualified barristers in Northern Ireland, but, by 2006, that number had risen to 560. The Law Society of Northern Ireland said that a relatively high percentage of its members were undertaking low-margin publicly funded legal services, together with a range of pro bono work. It was suggesting that there was a high level of dependence on legal aid, and that there was wide coverage of that in towns and



- villages throughout the jurisdiction where legal aid was available to individuals.
899. The preponderance of significant commercial multi-partner firms in London means that there is a significant number of solicitors there. Therefore, the same read-across to a commercial base in Northern Ireland does not exist. Although certain information is available, that is distorted by the commercial ventures of solicitors' firms in England and Wales, which perhaps do not do legal-aid work as we know it. A good majority of firms in this jurisdiction does at least some legal-aid work.
900. **Mr Lavery:** We have hesitated to introduce some of the changes that have been introduced in England, such as contracting for legal services. In England, the Legal Services Commission awards contracts to firms of solicitors to do a certain amount of legal-aid work in a particular geographical area.
901. The structure of the legal profession in Northern Ireland is that there tend to be smaller firms in country towns that are dependent on a mix of work. Those firms provide a community legal service, and even people in rural areas can access a choice of legal representatives, which we think is important. Now is not the time to do something too radical on that, because small firms depend on conveyancing, probate and a bit of legal-aid work. There is currently no conveyancing work, and some of those firms are much more dependent on the throughput of their legal-aid cheques to sustain their viability.
902. In answer to Mr McCausland's original question, I am not sure whether there are too many lawyers here, but I undertake to write to the Committee if we can extract any empirical information on that. The structure of the Bar is different; it operates not from chambers but from a library system, and it has comparatively lower overheads. I have a hunch that the growth in the Bar in Northern Ireland has been so great over the past 20 years that we are top of the league for lawyers per capita. As I said,
- if I can provide any empirical evidence to the Committee, I undertake to do so.
903. **The Chairperson:** As with the Northern Ireland Legal Services Commission, there are a number of areas on which we will want to come back to you, and we will want to raise a number of questions with you in writing in the not-too-distant future.
904. For clarification, are you currently able to reclaim VAT?
905. **Mr Lavery:** At present, the Legal Services Commission pays legal-aid bills. VAT is paid on top of the fee as a disbursement and is not reclaimed. One would want to address that, and devolution might provide the opportunity to do so. VAT is a significant additional cost. If one looks at a typical block bill for a case, it comprises the fees for a solicitor plus VAT, the fees for a barrister plus VAT, the fees for a QC plus VAT and, possibly, the fees for an expert witness or two.
906. Many people get paid in a case, and VAT is a significant additional disbursement that we cannot at present recoup.
907. **The Chairperson:** Finally, is anything hurtling down the track about which you have not told the Committee? For instance, if devolution of policing and justice powers takes place in the not-too-distant future, is there anything that might lead to your coming along, cap in hand, to the Committee, to the Department of Finance and Personnel or to the justice Minister to say that, although you appeared before the Committee, there is a requirement for £10 million or £20 million that was not mentioned but the Court Service should have foreseen?
908. **Mr Lavery:** That is a bit like encouraging the defendant to have other offences taken into consideration before sentencing.
909. In its letter of 9 February, the Court Service tried to avoid surprises emerging under devolution. That is why we had the debate about what is or is not an inescapable pressure. Certain

things are driven by devolution about which the Committee must know. There are also things that the service must do, and about which the Committee must be aware, if, as we hope, a devolved environment is achieved. That is what I call the due-diligence element of the exercise.

910. Nothing has occurred to us that has not been disclosed to the Committee. It is clearly not in anyone's interest not to disclose something.
911. **The Chairperson:** David, I thank you and your colleagues for coming along, for being frank and open with the Committee, and for your presentation and the papers that you have supplied to Committee members. The Committee appreciates that, and we will probably come back to you.
912. **Mr Lavery:** Thank you very much for your time.



## 3 March 2008

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mrs Carmel Hanna  
 Mr Alan McFarland  
 Mr John O'Dowd  
 Mr Ian Paisley Jnr

### Witnesses:

Mr Jim Daniell            *Northern Ireland Legal*  
 Mr Gerry Crossan        *Services Commission*

913. **The Chairperson (Mr Spratt):** I welcome Mr Gerry Crossan, the chief executive of the Northern Ireland Legal Services Commission, and Mr Jim Daniell, its chairman. I ask members to declare any interests that they have. I declare an interest as a member of the Northern Ireland Policing Board.
914. I invite Mr Crossan and Mr Daniell to make a short presentation based on the papers that they have submitted to the Committee, after which members will have an opportunity to ask questions.
915. **Mr Jim Daniell (Northern Ireland Legal Services Commission):** I shall keep my remarks brief so that there will be plenty of time for questions. The Northern Ireland Legal Services Commission welcomes the opportunity to discuss the issues at hand. We recognise that we are responsible for a significant amount of expenditure, which is increasing. That is an important issue in the context of devolution.
916. I wish to stress a few points from the commission's perspective. The expenditure that we have described in the papers is, to a large extent, demand-led, in the sense that we work to a legislative framework that, for civil legal aid, requires us to grant certificates for civil legal aid in circumstances that are prescribed by financial eligibility and merit. For criminal legal aid, it is the responsibility of judges to determine when someone should be in receipt of legal aid. In that sense, therefore, expenditure is very much demand-led, from the commission's perspective.
917. The quantum paid in particular cases is determined in a range of ways. For example, the very-high-cost case category on the criminal side, which accounts for a significant amount of our expenditure and is not particularly predictable, is a matter for the taxing master, who is a member of the judiciary. In other areas of criminal work, we work to scales that the Court Service sets for us. Similarly, on the civil side, although we set some fees after discussion with representatives of the legal profession, others are set on a statutory scale in the County Court by the judiciary. At High Court level, again the taxing master plays a key role. Therefore, there is a limit to the amount of direct leverage that we have on the amount of expenditure.
918. I must also mention the level of expenditure over time, which is particularly significant in this conversation. Very often, a certificate for legal aid might be granted and the bill presented for payment some years ahead. Therefore, in some cases, for certificates that we are granting now, payment will be made in three or four years' time. Obviously, that makes prediction of financial requirements quite complex. It also means that any actions that are intended to have an impact on the amount of money spent on legal aid are likely to have that impact some way ahead. I would go so far as to say that, for the current comprehensive spending review period (CSR), the figures that the Committee has been given are for expenditure that has, more or less, already been committed. Therefore, there is a limit as to what can be done in the current

- CSR period to reduce the funding, the figures for which have been presented to the Committee. Even going into the next CSR period, it is like turning a big ship around — it would take time to make changes that have an effect on expenditure.
919. I know that the Committee has been presented with a supplementary paper to provide a bit more background — it is a joint memorandum by the commission and the Northern Ireland Court Service — in addition to the letter of 9 February 2009 that we sent. However, I advise a slight note of caution about making comparisons with other jurisdictions. Obviously, in legal-aid cases, there is an issue concerning whether one is comparing like with like. Indeed, one of the reasons why we did not include figures for the Republic of Ireland is that the system there is so different. Any attempt to compare overall expenditure per capita with that jurisdiction would not work and would be fairly meaningless.
920. That is all that I want to say by way of introduction. I welcome questions, and we will deal with them if we can.
921. **The Chairperson:** Thank you for your presentation, and for the papers that you supplied.
922. I will go straight to the point that you made about cost in Northern Ireland in comparison with other jurisdictions. In paragraph 15 of the joint memorandum, there is a dramatic difference in the figures for the cost per capita of criminal legal aid. For instance, the Northern Ireland Crown Court gives a figure of £13,887, compared with £6,300 for England and Wales, and £2,824 for Scotland. The average cost of civil legal aid in England and Wales is slightly higher than that for Northern Ireland.
923. We want some explanation of the reasons why the cost of criminal legal aid in Northern Ireland is dramatically higher than it is in any other part of the kingdom.
924. **Mr Daniell:** First, we are talking about average costs. The table at paragraph 14 compares net expenditure per head of population, but I will answer the question about average costs as best I can.
925. I ask members to note that this illustrates the difficulty of comparing cases. The figure of almost £14,000 for Northern Ireland is presented as an average cost for each case, as is the figure for England and Wales. We keep records that are based on average cost, not for each case, but for each bill issued. In some of the more serious criminal cases, for example, one might find that three bills have been issued: one to a solicitor; one to a junior barrister; and one to a senior barrister. The final figure is arrived at by effectively multiplying the average cost of each bill by three. Those calculations were made rather quickly, and the figure that I quoted may have slightly overstated the situation. I do not wish to overdo that, but not every case in the Crown Court involves a solicitor, a junior barrister and a senior barrister. That figure should be slightly lower, therefore. I hope that we can find time to explore that issue in more detail.
926. There is an important point to make about the Crown Court in Northern Ireland. A different court structure operates in England and Wales to that in Northern Ireland. Full-time district judges sit in Northern Ireland's Magistrate's Court, which takes more serious cases than its equivalents in England and Wales. The result of that is that some of the less expensive cases, which would go through the Crown Court in England and Wales, do not go through the Crown Court in Northern Ireland. There is no question that the fees for criminal cases in the Crown Court in Northern Ireland are more expensive, but we must be careful not to exaggerate them. The figures that we have presented, if taken at face value, may slightly overplay the difference.
927. **The Chairperson:** When we compare England and Wales with Northern Ireland, we are not comparing like with like.
928. **Mr Daniell:** We are not comparing like with like; that is correct.



929. **The Chairperson:** In land mass and everything else, we are comparing ourselves to a much larger area. Therefore, the comparison with England and Wales is not reasonable. It begs the question: what can be done to reduce those costs? If devolution of policing and justice powers takes place, Northern Ireland plc — for want of a better expression — must pay for it.
930. The costs are higher. Has that been the tradition over the years? Has that system been allowed to creep in here, yet not in other parts of the United Kingdom? We do not know the legal-aid costs for the South, so we cannot make a comparison with that jurisdiction. We need an explanation, because the issue that costs appear to be going up and up, even against the backdrop of a more peaceful situation in Northern Ireland, is one that is raised regularly. We need serious answers. I am sorry to put you under pressure, but do you believe that a review of the cost of the legal-aid system is required? Northern Ireland seems to be totally out of kilter with the legal system in the rest of the United Kingdom.
931. **Mr Daniell:** I will make a number of comments in answer to your questions. The annual expenditure on criminal legal aid in the Republic of Ireland is approximately €50 million, which, per capita, is a very much lower level of expenditure than that in Northern Ireland.
932. I will not simply leave it at this simple answer, but, from the commission's point of view, the simple answer is that we make payments on the basis of fees on the criminal side that the Lord Chancellor and the Court Service set for us. I know that representatives from the Court Service are appearing before the Committee after us.
933. Between 18 months and two years ago, there was an inspection of the Public Prosecution Service (PPS), and reference was made to the fact that fees that the PPS paid — particularly counsel fees in certain types of serious criminal cases — are approximately twice as high here as they are in England and Wales. For obvious reasons, there is a relationship between fees paid to counsel by the PPS and those in legally aided cases.
934. I can only speculate as to why the issue has not been addressed more rigorously over the years. It is possible that, during the Troubles, it was thought prudent not to rock the boat with major reform that would affect the legal profession. There may have been some thinking along those lines.
935. Another issue, which is particular to Northern Ireland, relates to the costs associated with the nature of the legal profession. When it comes to accessing justice, there has always been a feeling in Northern Ireland that individuals should be able to choose the solicitor whom they wish to choose rather than have it determined for them by the sort of contractual arrangements that exist in England and Wales. It may be that the feeling has been that we want to sustain a legal profession throughout Northern Ireland close to where people live, for instance. That carries some inevitable costs.
936. I will talk about reforms and control mechanisms in a minute, but we must bear in mind that incidence of very-high-cost cases has mushroomed in Northern Ireland in recent years. That must be looked at carefully. Those cases are complex criminal cases in which the commission has a role. If it is expected that the trial for those cases will last more than 25 days, they are certified as being very-high-cost cases. In those circumstances, the bills are referred to the taxing master for determination.
937. It is fair to say that the present regime of very-high-cost cases that came in with the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005 was expected to produce around 20 or 30 cases a year. It has produced substantially more than that. Since 2005, there have been around 250 to 280.
938. **The Chairperson:** Why is that the case?

939. **Mr Daniell:** It is an interesting subject. There is an element of speculation in this, but Northern Ireland benefits in some ways from having a falling crime rate, and, in many areas, it has lower levels of crime than England and Wales have. I stress that I am speculating, but I do not think that that applies in cases of extremely complex fraud, money-laundering and organised crime. Those are the types of cases that tend to become the very-high-cost cases, and they are extremely expensive to run. More research in that area would probably demonstrate that that is the case.
940. The Court Service representatives will speak for themselves, because this is its area on which I am trespassing. A great deal of work is ongoing into how costs can be brought under control. The Court Service is consulting on, and we are working towards, the future introduction of a system in which contractual arrangements will be entered into with practitioners for very-high-cost cases. The commission will want to ensure that it receives case plans, that it can cost plans in advance and that payments are made on the basis of those plans. We feel that that will help bring costs under control.
941. There are also issues concerning fee levels, and the Court Service will talk about those. There may be scope for reductions in the determination of Crown Court fees. Fixed fees may be considered for non-Crown Court work.
942. Another area that may be considered in future is the requirements for qualification for legal aid in criminal cases. It is very noticeable that, in the Republic of Ireland, there is a strict requirement that legal aid will normally be granted in circumstances in which someone's liberty is an issue.
943. In Northern Ireland, the judiciary can use a number of criteria to determine whether criminal legal aid should be granted. On the merits side, it is considered whether that is in the interests of justice. Although defendants are required to present a statement of means to the judge, I understand that the way in which that is administered allows far more people through the gate to receive legal aid than is the case on the civil side. It may be a question of tightening up the financial-eligibility aspect of criminal legal aid.
944. There may be questions around representation; for example, the extent to which junior and senior counsel represent defendants in a Crown Court and whether that is always necessary. All those issues are currently being considered, and they would help to bring overall costs under control.
945. **The Chairperson:** Your comments on the costs include much speculation. Does the commission do any solid research on those matters, or is that a matter for the Court Service?
946. **Mr Daniell:** We have worked with the Court Service to do a considerable amount of research on our budgetary needs, and that is the basis on which the figures that we presented to the Committee have been worked out. For example, we have an idea of how many very-high-cost cases are in the system, and we can come to a view on when bills might be likely to be presented on those. The same goes for all categories of case.
947. By working on past patterns and by considering very-high-cost cases, we can come to an educated view. However, it is no more than an educated view. At last Tuesday's Committee meeting, the Prison Service said that expected to have x number of prison officers in post in three years' time and that it needed x amount of capital spent on prisons, but our position cannot be as definitive as that.
948. Looking ahead, we must bear in mind that the very-high-cost-case area is extremely difficult to predict, but we also must consider other factors that may affect the take-up of legal aid. For example, the recession will inevitably increase the number of people eligible to receive legal aid. The recession may cause an increase in acquisitive crime, an increase in matrimonial problems and housing difficulties, all of which

- could lead to an increased demand for legal aid. I hope that the Committee will appreciate that it is difficult to come to a clear view on what that will mean for the numbers.
949. **The Chairperson:** Ian Paisley Jnr has joined the meeting. Will you declare any interests for the purposes of the witnesses?
950. **Mr Paisley Jnr:** I am a member of the Northern Ireland Policing Board.
951. **Mr Hamilton:** The Chairperson's questions initiated a discussion on how very-high-cost cases can be resolved in the longer term. However, I want to touch on the extremely stark financial pressures that you face. You said that the commission is a demand-led organisation, but that demand seems very high. For the remaining two years of the CSR, you face an estimated shortfall of £60 million, which the Court Service, your sponsor department, described as being "inescapable". You were open in saying that funding is insufficient to address the values of bills that will be presented. Such openness is useful but paints a worrying picture. This year, you received an additional £22 million from the spring Supplementary Estimates. How regularly do you receive that kind of "dig-out" just before the financial year's end?
952. **Mr Daniell:** I refer you to paragraph 6 of the supplementary paper. The table depicts a graph with three lines. The blue line illustrates allocations in the various CSR periods since 2000-01; the yellow line shows the amounts that we needed to meet the demands on us; and the red line shows the supplementary allocations that we have had to request.
953. It is worth stressing that almost year in, year out, the commission and the Court Service expend an enormous amount of time and effort trying to find ways in which to boost our in-year funding through negotiations with the Treasury and securing funds from elsewhere. That usually happens in the autumn when it appears that we will not have sufficient funding for the remainder of the year. I have been at the commission for only just over a year, but we were in the middle of that process when I joined, and I am told that it as regular an occurrence as day following night.
954. Although it is understandable that allocations are set as stringently as possible, in order to seek value for money, the amount of time and effort that is spent by the management of both organisations in arguing for more money could be better spent on considering how to manage the budget in future. We cannot avoid spending the money — there is no question of that — yet we still spend weeks and months trying to find ways in which to secure it.
955. **Mr Hamilton:** You have only been there for a year, but you are already battle-scarred by going back and forward to address financial pressures.
956. **The table in paragraph 6 is alarming:** it shows that you required an additional 50% to meet costs in 2004-05, and even in the current year you require an additional one third. The Assembly is used to Departments requiring a small additional percentage from the in-year monitoring processes, but that is a substantial chunk in addition to your existing allocation.
957. I presume from much of what you said in response to the Chairperson's questions that you were talking about long-term changes being required, and you compared the situation to an oil tanker that takes a long time to turn around. Therefore, we could expect this scenario to continue indefinitely.
958. **Mr Daniell:** "Indefinitely" is a big word, but I agree with the Court Service's view that it is extremely unlikely that, for the remainder of the current CSR period, we will be able to make significant inroads into the projections illustrated in the table. The only point that I want to stress, and I made the same point in the letter of 9 February 2009 that I sent to the Committee, is that the costs of ordinary civil and criminal business are much more predictable and would fit within our normal allocation. However,

- it is difficult to predict what will happen with the very-high-cost criminal cases that, to a large extent, take us far above our allocation. Perhaps £60 million over the next two years will be an overestimate, but I cannot be certain. However, the taxing master could make determinations that are appealed and, for some reason, increased. If that happens, it is not inconceivable that £60 million could be an underestimate. We have been quite conservative — £60 million is a realistic figure. I would hope that that figure would not increase.
959. By implication, you may be suggesting that the measures that the commission takes will deal with the problem in the next CSR period, which will take place between 2011-12 and 2013-14. I am very cautious about that. We have estimated that, if the commission were to continue being allocated £65 million in cash per annum over the three years of the next CSR period, that would leave a shortfall of around £50 million. The commission does not consider that the changes that I have been describing, which are being examined at present — a similar exercise is also being carried out on the civil side, which I have not mentioned yet — would be sufficient to eliminate, or even to eat into, that £50 million.
960. I hate to say it, but I am in the business of speculation. I do not think that the type of changes that we have been discussing would eliminate more than £10 million to £15 million of that shortfall. However, that is to suppose that the present patterns of demand remain the same.
961. **Mr Hamilton:** It is probably even more troubling that that scenario is likely to continue at that scale into the next CSR period. You are telling us today that, other than some of the measures that you have been speaking about that will take a long time to realise any benefit, the only approach available to the commission to meet that shortfall is the begging-bowl approach — asking for additional cash to fill that gap. That is what the commission has always done, and that is what it is likely to do for the remainder of this CSR period, and probably into the next period as well.
962. **Mr Daniell:** That is a fair description; that is what the commission has done. If, looking beyond the current CSR period into the next one and beyond that, I were told now that there was only £65 million a year available, and that there was no conceivable way in which that could be increased, the commission would consider more fundamental changes. However, I am not sure that even those changes could take effect in the first year of the next CSR period.
963. **Mr Hamilton:** Thank you; that is very useful.
964. **Mrs Hanna:** You described the commission as being a big ship that would take time to turn around. With that, you implied that you expect changes — we are, after all, talking about finances. There is a public expectation that the ending of the Troubles would lead to a reduction in legal-aid costs. I am not talking about the historical cases, because I appreciate that we are speaking mostly about the criminal side: fraud; extortion; and so on.
965. I know that a fairly public discussion took place a few months ago about reducing the legal-aid bill. Were those people just talking about the civil side of the legal service? There was discussion among barristers and the public, and on the radio, and the public had an expectation that that would make sense. You said that it would take time to turn the ship around, but it is the Legal Services Commission and the Court Service that set the criteria and guidelines. However, the taxing master appears to have influence. When policing and justice powers are devolved, we will also have input. In your opening remarks, I thought that you were talking about turning the ship around, but, in response to questions, you seem to be saying that that will not happen in the near future.
966. **Mr Daniell:** Rather than turning the ship around, it will be a case of veering

- from the course, through making the sorts of changes that I have mentioned. Obviously, after devolution, the Assembly will have the opportunity to legislate, and that is entirely a matter for the Assembly. However, a great deal of the expenditure after devolution has already been committed through the granting of legal-aid certificates. The commission works within a legislative framework, which, up until now, the Lord Chancellor has set. The commission has to grant legal aid in the circumstances that are provided for by legislation. The way in which bills are paid is also provided for by legislation. There will be an opportunity for that to be examined.
967. If there were a clear desire to reduce substantially the amount of money that is spent on legal aid, legislation would be needed, as would a major change in approach to how legal aid is distributed. The only ways in which to cut expenditure are either to reduce the number of cases in which legal aid is granted or to reduce the fees that are paid to practitioners. There may be other ways of looking at the issue, such as changes to the legal system. For example, could the legal system be operated in a manner that requires less expenditure? On the civil side, the commission is keen to look at alternative means of dispute resolution and collaborative family law, and at whether there are ways to prevent cases from getting to court, and, therefore, being less costly and probably better for the people concerned. Such measures could be considered.
968. It is worth making the point is that we are engaging in a reform programme on the civil side, and that programme contains a number of components, one of which is the introduction of a funding code, which will enable us to take a much more rigorous approach to the merits test that decides when it is justified to provide legal aid. For example, is it sensible to give legal aid in a case that there is not much hope of winning? We will be able to take decisions based on the funding code.
969. The programme will introduce measures such as a simplified approach to financial eligibility and a statutory charge to enhance our ability, when people win cases and are given property or a share of property, to place a charge on that to reduce our expenditure. Therefore, things can be done now, but a sea change would require a new approach.
970. **Mrs Hanna:** That is a bit like a patient going to A&E and paying a cover charge. The issue really boils down to placing qualifications on whether a case is taken on, and we all accept that people need legal aid to get justice in cases for which they cannot afford representation. However, it is fair to say that there is a certain amount of cynicism among the public about the amount of legal aid that is granted and the level of lawyers' fees.
971. **Mr Daniell:** An example on the civil side is an undefended divorce. In such cases, I suggest that there might be limits to the amount of legal aid that it would be sensible to pay. However, in a case of a freeing order for a child, which results in a child's links with his or her parents being removed, that represents an extremely serious change to that child's status, as well as a big change for the parents and others involved. In such cases, there is a degree of vulnerability, which suggests that the case should be made a high priority for help. The funding code will enable the establishment of high-priority cases, in which the merits test will work on the presumption that legal aid should be granted, whereas it may not be in lower-priority cases. In fact, the code will enable some types of case to be taken out of the scope of legal aid altogether.
972. You mentioned the quantum of fees. On the criminal side, fees are set by others, as they are in a substantial proportion of cases on the civil side — the level of fees set is not entirely within our control. In some areas, we are in discussion with the Bar and the Law Society of Northern Ireland about fee levels, because we are very conscious of achieving value for money.



973. **The Chairperson:** How far in advance of cases are legal-aid certificates issued?
974. **Mr Daniell:** Legal-aid certificates are issued to establish that people can secure legal aid when their cases come to court, and that could mean a couple of months or, in some cases, a couple of years. The other complication is that sometimes there is good reason why the bill is not presented until long after the case has concluded.
975. That might be because in some of the very-high-cost cases, it may take some time for very complex cases to be assessed. For one or two cases, one might be talking about a year or two for that to happen. On the civil side, it might be that the solicitor wants advice on how to present the claim, and that may also take time. I have seen one case where the bill was presented six or seven years after the case.
976. **Mr McCartney:** I have three or four questions to ask, but I hope that they will run into one another and that they can be answered easily. Once you have identified a pressure on your budget, what process is involved in trying to resolve it? What has been your degree of success — in other words, what are the strengths and weaknesses of the current process? From your perspective, what do you think that the process should be in future? Finally, how do you see the transfer of justice having an impact on the Assembly, and how should it have an impact?
977. **Mr Daniell:** What seems to happen with the budget and the process of resolving it is that an allocation is determined for us during a particular CSR period, but most people will probably feel that it is not enough. Then, on an in-year basis, by about the sixth or seventh month, it is apparent that, given the rate of spend, we will not have enough to meet the bills for the remainder of the year. We then enter into negotiations with our sponsor department — which is the Court Service — about how to meet the shortfall. My experience is limited, but on the occasion in question, there were extensive negotiations between the Court Service and the Treasury about how to secure the funding through Supplementary Estimates. An element of end-year flexibility was involved, and a small amount of money was also secured from Court Service funds. From the commission's perspective, the process tends to be rather hand to mouth.
978. As for what it should be, I can present only the ideal, which is that a realistic approach should be taken to what our requirements are likely to be in advance, and a realistic sum is then allocated in the CSR period — or at least in advance of the year in question, rather than leaving it so late in the day. We have the means to say that we know that we will require more than £65 million next year and the year after; therefore, it is far better to resolve that now. It is not a question of our having the ability to reduce that amount. We know that we are going to have to spend it; therefore, it would be much better if the system enabled us to resolve such issues now. If the system then wanted to go on and say that we must ensure that, along with the department concerned — which is the Court Service and the Lord Chancellor, but in future it will be the Department of justice — we had better look for ways to make substantial savings for the next period, that would be an acceptable way forward, as long as people understood what those savings might mean. If the savings are to be substantial, it would mean making significant inroads into the system of legal aid as we know it.
979. I have a few general thoughts about the transfer of justice powers to the Assembly. I think that it will be of enormous benefit to the commission, and I will give a couple of examples of what I mean. The complexity of legislation is one reason that legal aid increases over a long period. New legislative requirements can increase the number of times that someone might have to go to court, in relation to either the Government or for another reason. One positive example of that is the children's legislation, which was

- a very good piece of legislation that was introduced in the 1990s; however, it increased substantially the amount of consequent court appearances that people made and, therefore, expenses. If we are part of a devolved Department of justice, which in turn is part of the family of Northern Ireland Departments, it will be a lot easier to conduct legal aid impact assessments in order to understand the consequences of decisions that are made about policy and about legislation for spend on legal aid.
980. I can give one specific example that might help. We are not talking about millions of pounds, but there is the potential for hundreds of thousands of pounds. The Criminal Justice (Northern Ireland) Order 2008 was agreed by the Northern Ireland Office Ministers and passed by the Westminster Parliament, and a substantial sum of money was made available for its administration. That money covered the need for additional probation officers, prison facilities and psychologists, for instance. Nothing additional was provided or — as far as I can see, even thought about — in relation to legal aid.
981. Following the passing of The Criminal Justice (Northern Ireland) Order 2008, the required number of parole commissioners was increased, because there was going to be a lot of hearings before the parole commissioners. Those hearings will require representation by a solicitor and probably a barrister. As things stand, that will cost. It will probably not impinge on the current comprehensive spending review period, but it will impinge on the next.
982. Had we had a devolved environment in which we were much closer to a Department of justice and were part of the Northern Ireland Administration, I would make certain that when changes of that sort are made, proper consideration would be given to the impact on the spend on legal aid. I think that it will help us enormously in that context.
983. There are bigger issues about such things as the number of people in the legal profession and the way in which they are regulated — both of which have an impact on the availability of services to the public, and so forth. I assume that in a devolved environment, all that will be looked at in a coherent fashion in one Department. All those issues will have the capacity to affect the quality of service that we can provide and its costs. Furthermore, it will be possible to examine them holistically, which will be an enormous benefit.
984. **Mr Paisley Jnr:** Thank you for your evidence. You understand clearly why you are here; we want to devolve policing and justice, and we have to know how much it will cost us. Today, you told us that it will cost a heck of a lot of money. From what I have heard today, I do not know whether we can afford you — you are a high cost. However, I welcome your candour.
985. **Your starter-for-10 question:** are you hiding anything else of which we should be aware? If you return to give evidence to a justice and policing Committee in a few years, will you be telling us something that you should be telling us today? Is there anything else that we should know?
986. **Mr Daniell:** Not to my knowledge. As I said earlier, this is not an exact science. We do not know what is over the horizon.
987. **Mr Paisley Jnr:** I have got that. Having read some of your material, I can understand why, come the revolution, lawyers will go to the wall first. Your evidence provides figures on very-high-cost cases. It is important that I read one sentence into the record, because it relates to a substantial payment:
- “While every effort has been made to produce a realistic forecast of the costs of VHCCs based on what we know about cases already in the system and the likely incidence of such cases in the future, the actual funding requirement could vary significantly from the figures given in the table above; this particular cost head will be monitored closely and the projected spend kept under review to ensure that the figures are as robust as possible.”*

988. You are projecting for £65 million for very-high-cost cases in the current comprehensive spending review, and the figure for the current financial year — 2009-10 — is £26 million. What percentage of that goes on lawyers' fees?
989. **Mr Daniell:** Almost all the very-high-cost-case spend will go to lawyers.
990. **Mr Paisley Jnr:** Are you saying that £26 million will go to lawyers in this financial year?
991. **Mr Daniell:** Yes, including VAT.
992. **Mr Paisley Jnr:** Does any of that money go to forensics, or is it all for lawyers' fees?
993. **Mr Gerry Crossan (Northern Ireland Legal Services Commission):** The main expenditure will be for lawyers, but some of it will be for fees for expert witness.
994. **Mr Paisley Jnr:** You used the word "mushroomed" to describe what has happened over the past number of years; you said that in the noughties, there have been 280 cases since 2005. Would it be unfair to suggest that since the end of the terrorist war here and the end of the Troubles, lawyers have been incredibly ingenious in finding new ways to make a heck of a lot of money out of this place? Would that be an unfair characterisation?
995. **Mr Daniell:** That would be a little unfair, yes, because —
996. **Mr Paisley Jnr:** How is it unfair, and when is it accurate?
997. **Mr Daniell:** It is unfair to the extent that prosecutions in very-high-cost cases in particular are brought by the Public Prosecution Service. It is obviously critical in any democracy that people have the ability to defend themselves in such cases. Lawyers have to be available to defend cases, and very-high-cost cases almost certainly involve solicitors as well as junior and senior counsel. It is reasonable that defendants should have the opportunity to defend themselves. Whether there is an issue about the amounts of fees that are paid in those circumstances is not something that I should speculate on.
998. **Mr Paisley Jnr:** Does some quantum not exist, given that this situation has mushroomed since 2005? We can look at other trends and see that cases that were typical in Northern Ireland in the 1970s and 1980s have clearly declined since 2005. It is incredible that those types of cases have mushroomed from 2005 onwards.
999. **Mr Daniell:** We do not have sufficient research capacity to go into this subject in great depth; however, that is something that we — or a new Department — may need to do. I said that certain types of cases, such as those involving money laundering, organised crime and fraud, are extremely expensive. Those cases have continued at a rate since the end of the Troubles, and they attract those sorts of fees.
1000. **Mr Paisley Jnr:** Although your submission is very nicely written, I am worried that you are basically saying that we need a blank cheque to cover those costs. I am not criticising you for that, but that is essentially what you are saying to me. To ask politicians, who are trying to cut up a budget, to leave a blank cheque for these purposes is completely unacceptable.
1001. You said that fundamental changes may need to be considered. The sort of fundamental changes that you are talking about, which would allow you to run your part of the Department for the ballpark figure of £65 million to £70 million a year, are not just fundamental changes; they are root-and-branch changes. That would have an impact on people's mentality, on their expectations of justice, on the expectations, rightly or wrongly, that lawyers have of the system, and on how justice is dispensed in this part of the United Kingdom as compared with England, Scotland and Wales. Can the root-and-branch change that you are advocating be achieved, or is it a lullaby or a siren call for such change so that when we arrive at the next CSR period, we will be shafted again with a request for £80 million? I am sorry to be so blunt.
1002. **Mr Daniell:** There is not a lot to disagree with in what you said. I will go back

- to your point about a blank cheque, because I do not agree that we are asking for that. We are making an educated assessment of what we are likely to need over the remainder of the CSR period and, indeed, beyond. However, we do not have the levers that enable us to guarantee that we can live within that amount. The amount that we need may turn out to be less, or it may be more.
1003. **Mr Paisley Jnr:** Imagine that your wife came to you at the end of the month and said, “Darling, I need slightly more money than I got last month to balance the budget”. You would ask for a ballpark figure, and she could say that the amount could vary significantly but that she would take a closer look and let you know. However, she would still be clear that she needed more money. That is a blank cheque.
1004. **Mr Daniell:** If you are describing a blank cheque in the context of demand-led expenditure, which would be the same as social security expenditure, in which, under legislation, you are required to acquire liabilities, I suppose that it is a blank cheque.
1005. **Mr Paisley Jnr:** Does this stuff not make Mr Goodwin look modest?
1006. I have one more question to ask, Chairperson; I do not know whether you have asked it already. Do you pay VAT back to the Government?
1007. **Mr Daniell:** Yes. We pay solicitors so that they can pay VAT.
1008. **Mr Paisley Jnr:** We have discussed this point generally, and that may be one area of change.
1009. **Mr Daniell:** I will answer the second part of your question, which was about the root-and-branch review. I stress that that will not help in the current CSR period. If, when we become part of a Department of justice, we were asked what we would have to do to really bring the expenditure down, on the criminal side, I would suggest looking hard at the extent to which legal aid is granted in the first place. For example, should there be a much stricter means test? One option I have wondered about for some time is whether more could be done in some of the very-high-cost cases, so that if someone is found guilty, they should pay money back into the fund for the cost of the defence. Issues such as that could be examined. There are also issues about levels of representation, which could be looked at radically, and that would have to be done in conjunction with the PPS.
1010. On the civil side, we have a reform programme already that will give us some tools that will help us in that area. However, I do not pretend to say that the reform programme as it stands will make an enormous inroad into the levels of funding that we are talking about. However, one might have to think about going down the same road as England and Wales and have a contracting arrangement whereby solicitors tender for contracts. That will mean that they will undertake to run so many cases a year on the basis of that contract. One may have to think about whether that contract would be solely with solicitors, and they would have to decide whether they wanted to employ barristers. That would come out of a standard fee that would go only to the solicitor. However, not only the legal profession, but other groups, have made strong arguments against taking that route. It would mean a major change and would probably begin to change the nature of the legal profession in Northern Ireland.
1011. **Mr Paisley Jnr:** Devolution has to be seen as something that is at least equal to, if not better than, the previous arrangements under direct rule. What you say would scare me, in that the arrangements would get worse, because the system may not function in the way that the public wanted it to. That would be an absolute kick in the teeth for those of us who wanted to devolve those powers. When one accepts the argument about who should get legal aid and one goes down the road of having a means test, etc, as Carmel Hanna quite rightly said, people who have an



- expectation that they need justice would be penalised as a result.
1012. I like what you said about making the guilty pay; I am very happy with that sort of suggestion, certainly as regards my own personal arrangements. I would also like to find out how much it would cost. How much can barristers, solicitors and the legal profession make out of the system? Would some sort of capping arrangement be a way to bring down the costs?
1013. **Mr Daniell:** The contractual arrangements that exist in England and Wales that I have described would be an effective means of capping what would be paid.
1014. **Mr Paisley Jnr:** If we started to do that, would the legal profession go on strike?
1015. **Mr Daniell:** I cannot answer for the legal profession.
1016. **Mr Paisley Jnr:** What is your gut reaction? If you were a lawyer in Northern Ireland expecting to make £26 million in the coming year, and you were then told that, as of the next CSR period, you can expect to make — as a collective group — £10 million, would you go on strike?
1017. **Mr Daniell:** The only comment that I will make is that the Bar has withheld briefs in a couple of categories of case; therefore, there is the possibility of that happening. However, we are in the realms of severe speculation. If there is a reality about what money is available, there may be a limit to the extent to which people may be prepared to go down that road.
1018. **Mr McFarland:** Thank you for your briefing. I have two questions to ask.
1019. First, following up on the issue of organised crime, the Serious Organised Crime Agency deals with areas where there can be no criminal case, and it then goes after assets. My understanding is that, under the current system in criminal cases, the judge can order the seizure of ill-gotten gains and assets. I presume that that happens already. When it does, does that money go back in to the system? If, for example, the criminal were to receive legal aid, and then £15 million, his ranch in Spain and his cars were taken from him, would that money be credited to the legal aid budget, or would it go to the Treasury?
1020. **Mr Daniell:** It goes to the Treasury; we do not benefit from that.
1021. **Mr McFarland:** Clearly, that needs to be looked at. My second question concerns the size of your administrative budget. Could others do areas of your work easily, and are there areas of duplication between your work and that of others? Could how all that is dealt with be streamlined if we had more control of it here?
1022. **Mr Daniell:** I do not think that there is a large amount of duplication. The Social Security Agency, on our behalf, determines whether people are entitled to civil legal aid, because that determination is largely connected with whether people receive benefits or not. Of course, we need to look at our administration expenditure. There may be scope for making some reductions after the reform period that we are about to enter, but that would possibly be £500,000 or £1 million, not the sorts of sums that would make the difference that is being discussed.
1023. **Mr McFarland:** What size is your current budget?
1024. **Mr Daniell:** The administrative budget is about £7·5 million. The more that the system is simplified — for example, by the use of standard fees, as opposed to fees that are based on an hourly rate — the more we can begin to think about how things can be done more efficiently and how more savings can be made. We are very conscious of that. In future, we may have to think about the possibility that certain areas will be removed completely from the scope of legal aid, and that would reduce our amount of administrative expenditure.
1025. **The Chairperson:** We wanted to cover a whole range of issues, but time is not



- sufficient to allow us to do so. We will write to you, so you can anticipate quite a few questions hurtling down the track on issues that have arisen from your paper.
1026. I have two or three questions to ask on efficiency savings. Are effort and spending being duplicated by, for example, the Legal Services Commission, the Northern Ireland Court Service and tribunals? What steps are being taken to eradicate any duplication?
1027. In the context of the Deloitte report, do you envisage efficiency savings being made as a consequence of a joined-up approach being taken between the commission and the Court Service? If so, what is the timescale for those efficiency savings, and how significant will the savings be?
1028. Your submission advises that the commission was actively seeking ways to maximise value for money. Will those examinations lead to efficiency savings and a reduction in spend, and what progress, if any, has been made on that to date?
1029. **Mr Daniell:** To be fair, I did not answer the previous question as fully as I should have done, and you have sparked a thought in my mind about duplication, the Deloitte report and our relationship with the Court Service. I do not think that there is duplication in our internal processes and in how we process payments, but I think that there is an element of duplication with the policy work that we and the Court Service carry out.
1030. That is a difficult but important area. Northern Ireland is obviously a much smaller jurisdiction than England and Wales. The commission has set up structures to handle legal aid that effectively mirror those in England and Wales. There may be questions about whether that is the right approach in the future. Indeed, the commission has pressed the Court Service and the Northern Ireland Office, which have agreed to review those issues over the next few months.
1031. I will give you some examples of the sort of thing that I have in mind. The commission is responsible for the development of policy and the setting of fees on the civil side of legal aid. A small unit that comprises only a handful of people in the Legal Services Commission is working on a major reform programme. There are also people in the Court Service with whom that unit has to relate and agree certain things. In those areas where the commission is responsible for the setting of fees, it develops a business case for a certain fee level, which the Court Service then has to agree. The commission then goes back to negotiate with the profession, and then back to the Court Service. There is a lot of toing and froing.
1032. On the criminal side, although the Court Service is responsible for fees and policy, there is an argument that it could be a lot closer to the operational side of the commission. Given the constraints, things work very well between the two organisations, but there is a case for improvement.
1033. In England and Wales, for example, the Legal Services Commission and the Ministry of Justice are co-located — they effectively work as one, which is how I think we ought to work in Northern Ireland. The chief executive of the commission in England and Wales is on the management board of the Ministry of Justice, which means that they effectively work together as one.
1034. Speaking partly personally, although I know that the commission agrees with most of what I say, I think that there is case for saying that we ought to look at the architecture of the delivery of legal aid, the relationship between the its operational delivery and the sponsor Department, and whether the current degree of separation is right or whether the two organisations should be much closer together, with less duplication in policy.
1035. There are elements of legal aid that must retain its independence; for example, in matters such as judicial

reviews against Government, or care orders in cases involving children, where private individuals might be taking a case against public authorities. On the criminal side, the essential independence of decision-making in individual cases is critical, therefore, it must be retained. However, subject to that, there is a case for reviewing structures and architecture and for saying that perhaps new systems might be developed in the future. Whether a non-departmental public body is the right model is open for discussion.

1036. **The Chairperson:** Thank you. As I said, you will probably receive some communication from the Committee in the not too distant future. I thank both of you for coming along today; you have been very frank and straight with us. There are obviously pressures, and work needs to be done to try to reduce some of those pressures.
1037. **Mr Daniell:** I would like to make one brief comment; I do not want there to be any misunderstanding of an answer I gave about people who have been found guilty in court reimbursing the commission. In short, the guilty should be made to pay. Obviously, a large number of people who are found guilty in court do not have the means to pay for their defence. However, I was referring to those cases where people who are found guilty clearly have access to resources. There may be a case for those sorts of people paying either a contribution or the full cost of their defence.
1038. **The Chairperson:** Thank you.

## 10 March 2009

### Members present for all or part of the proceedings:

Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mrs Carmel Hanna  
 Mr Nelson McCausland  
 Mr Alan McFarland

### Witnesses:

Mr Robert Crawford      *Compensation Agency  
 for Northern Ireland*  
 Mr Ray Jones  
 Mr David Whitcroft

### Also in attendance:

Mr Victor Hewitt      *Specialist adviser*

1039. **The Deputy Chairperson (Mr McCartney):** I welcome Mr Robert Crawford, Mr Ray Jones and Mr David Whitcroft from the Compensation Agency to the Committee. Thank you for coming. We are behind schedule, so I thank you for your patience.
1040. Before Mr Crawford makes his presentation and I open up the meeting for questions, I ask Committee members to declare any relevant interests.
1041. **Mr McCausland:** I am a member of the Belfast District Policing Partnership.
1042. **Mr Robert Crawford (Compensation Agency for Northern Ireland):** With me are Mr Ray Jones, who is the director of operations at the agency, and Mr David Whitcroft, who is the agency's accountant. They will assist me on any technical matters that may arise. I will say a few words about the work of the Compensation Agency for Northern Ireland to set the context for our discussion. The agency is demand-led. We receive claims from people who have suffered injury or damage as a result of violent crime. Our work, therefore, depends on the level of violent crime.
1043. We do not accept all claims. At present, we deny liability in around 60% to 65% of claims. That percentage can go up or down, and that will affect the amount of money that we pay out. It may be some time before a claim is paid. Our current average is 12 to 14 months between application and payment. However, some cases can take much longer. For example, we have cases on the books that are more than 10 years old. Again, that creates some difficulty for us in predicting when money will be spent. Either way, we need to make provision for those cases in which we accept liability and anticipate accepting liability.
1044. There are two classes of claim. We take resource cover for all the claims that we receive, and we either put a price on each of those, or estimate how many of those claims we are likely to pay, and apply an average price. Currently, we hold around £62 million for all the claims that the agency has received. We have attempted to estimate how much funding we will need in the remainder of the 2007 comprehensive spending review (CSR) period, and that figure is based on the number of claims that we anticipate receiving — not an exact science — the number that we anticipate paying, and the amount that we anticipate paying out for each claim. There is around £23 million remaining for that purpose in the two remaining years of the CSR period.
1045. I emphasise that the figures that I am giving are non-cash-resource figures — they are not cash. Essentially, the agency's work is about getting funding to cover liabilities — that is the challenge that we face. Usually, cash is much easier, in the sense that once one has resource cover, it is a matter of profiling the cash and controlling that year on year.
1046. Unlike our counterparts in England, Wales and Scotland, we are managed

- by departmental expenditure limit (DEL) rather than by annually managed expenditure (AME). That means that we operate on a three-year cycle, unlike AME, which operates on a one-year cycle. I do not know why it is the case, but AME is much more flexible and easier to manage. We have not been able to find any reason as to why we differ from our colleagues. As a result of our being so, however, we must do more forecasting and planning, and we are involved in more controls.
1047. As a final comment, I will build on that and say that it is difficult to predict the future level of payments. We have attempted to improve our predictions. In the past year to 18 months in particular, we have done a great deal of work on forecasting, and we think that we are in a much better position now. For example, since April last year, we have been able to move to a three-year business plan for the first time, and that has been a big help to our planning.
1048. The point that I want to leave the Committee with is that we have no crystal ball that will help us to determine the number of claims that will come through the door next year or the year after. With that caveat in mind, we will seek to help the Committee as much as we can with our future funding.
1049. **The Deputy Chairperson:** Thank you. On your final point, are there any developments in the criminal-justice system that might place a financial burden on, or create financial pressures for, your agency?
1050. **Mr Crawford:** Several things are happening, but I would not say that they will all necessarily create pressures. For example, with effect from this April, we are introducing a new criminal-injuries scheme, which will change a number of the headings under which compensation is paid. There are about 400 descriptors that are applied to injury types, and we have made a calculation that is based on the experience of colleagues in Great Britain and on the way in which compensation rates are changing. That will affect our payments, and we have already factored that into our current budget.
1051. The calculations that we have made may be wrong — there may be more claims, or fewer claims of a high value. We cannot predict that accurately. We used a conservative figure in making that calculation, but if that figure were to be less than we estimated, we might make savings of £1.5 million or £3 million over the next couple of years. However, I must point out that at the end of the current financial year, we have seen an increase in the number of claims that we have received for criminal damage and criminal injury — those types of claims were up by about 10% for criminal damage and 2% for criminal injury. If that trend were to continue, meaning that we receive that number of claims every year from now on, that would involve an increased cost of several million pounds.
1052. We are looking at how we can manage our money better. We have entered into one agreement so far and are looking for other agreements with health trusts on long-term residential care. We anticipate saving several million pounds over the next couple of years if we can get those agreements in place. That is related to the fact that, particularly for some of our older claims, we must pay all the money out to an applicant for, perhaps, the next 25 years of care. However, if we can get agreements with health authorities on the provision of that care, we can pay the money in instalments. That arrangement is outside the existing constraints of the scheme, so we are not yet certain whether it will be possible to get the kind of agreements that we seek. However, we have one in place already that has saved us a considerable sum of money. That is an example of the sort of things that are happening.
1053. Most fundamental to this is the fact that we have seen an upturn in the number of claims, particularly in this financial year. Claims have been falling for the past five years. Therefore, it is not clear to us whether the increase represents a change in that trend or a blip. We have

- alerted the Northern Ireland Office to the fact that we might need to consider obtaining further resources. However, if we were to do that, we would be looking at the resources for year three, because, as I said at the start, we already have £23 million provided in the current CSR period for future claims, and that will certainly cover us for next year.
1054. **The Deputy Chairperson:** If there were a drop in case numbers, would that have staffing implications?
1055. **Mr Crawford:** Our framework document already commits us to reducing staff numbers by five, so we will go from having 80 staff to 75 staff. If there were a reduction in caseload, and the number of claims that we receive decreases, we would certainly look at whether we could make further reductions.
1056. We are in the middle of a staffing review, because we need to create our business plan for next year, and we want to build our staffing requirements into that. A number of other factors needs to be taken into account; for example, the grade-C issue has not yet been resolved. We have quite a number of staff at that level, so that will have an effect on agency staff.
1057. To give the Committee some examples of figures, for approximately the past five years, we have been operating with five fewer staff than our full complement allows, meaning that we have given approximately £150,000 back to the Northern Ireland Office this year. We did so because it has been possible for us to manage with fewer staff than we have money for. The budget figures that are provided do not take account of the planned reduction in the number of staff by five. Therefore, by the end of the CSR period, we expect to be running at around £122,000 under the budget figure.
1058. I should mention the fact that we have got very good staff and many very experienced staff, as well a very low sick-leave record, which stands at about 2.9%. That means that we do not have to plan on the basis of having many staff out sick, and we do not. We have the staffing complement, and the budget to bring in staff if we need to. However, in practice, we have been able to operate well under our complement.
1059. **The Deputy Chairperson:** I will ask one final question before I invite questions from Committee members. Is there any duplication in other parts of the system that you feel you could cover, or vice versa?
1060. **Mr Crawford:** During the year, we helped out on a short-term basis with AccessNI work. We were able to accommodate that within our existing budget without seeking staff or funding for us to do so. Agency staff are excellent caseworkers, so we have the skills to do casework. I am not sure whether, in the long term, it would be sensible to mix our work with other work. However, as I said, we provided short-term assistance for AccessNI projects, so we know that we can provide it. One difficulty is that we also set targets for ourselves, and anything that we bring into the mix prejudices our staff's ability to meet those targets. The way in which the agency is driven is through managing cases. Our framework document requires us to seek to reduce the average time that it takes to process claims, and that is our fundamental objective. We make modest improvements on that year on year. That objective could be at risk if more is added to the agency's workload.
1061. **Mr McFarland:** Thank you. I have several queries, but I will give you them all together. Will you differentiate for me between the Criminal Injuries (Compensation) (Northern Ireland) Order 1988 and the Criminal Injuries Compensation (Northern Ireland) Order 2002? Each has a figure of £13 million or £14 million attached to it. Presumably, there is a difference of some sort between them. How many cases have you in total for your 75 staff? Will you take us through the amazing fluctuations in capital that are outlined in your submission, which vary from £30,000 and £830,000? I am not sure what you are at there. The table at paragraph 4 of your submission shows



- budgeted expenditure of £430,000 for 2008-09, which rises to £830,000 for 2009-2010, and then falls to £70,000 for 2010-11, yet it was at £30,000 in 2006-07.
1062. **Mr Crawford:** I will ask Ray Jones to let you know the number of cases. He will look that up while I answer your other questions.
1063. There are two different criminal-injury schemes. The 1988 scheme is court-based and is the old way of handling criminal-injuries claims. By court-based, I mean that it is adversarial. The applicant submits an application and hires a lawyer, and the agency tests his or her position. The eventual settlement is approved by the court, and, if necessary, it goes to appeal. It is all court-based, and there are many legal fees to be paid. A good publication is available on that. Sir Kenneth Bloomfield headed a review of the first criminal-injuries scheme, as set out in the 1988 Order. He reported in 1999 and made a number of recommendations.
1064. One of its recommendations was to introduce the tariff scheme, which came in under the 2002 Order. It is so called because it is based on specified amounts for each criminal injury. In other words, if an individual breaks an arm, a certain amount is paid out, or if an individual sustains hearing loss in both ears, £8,500 is paid out. That is how it works — it is not court-based. Legal fees are not paid, and, on appeal, cases are heard by an independent appeals panel.
1065. We differentiate between them because the schemes are fundamentally different. We can manage the money between them because all the money that the agency receives is programme money. It is not like votes for different types of expenditure — we can mix and match. However, we must manage them, in a management-information sense, as two separate schemes.
1066. The 1988 scheme is now closed. Some 560 cases under it remain outstanding. We receive a small number of claims under the 1988 Order each year, mainly for sex-abuse cases, for which there is a longer time limit in which to make a claim. Any minor who has been injured can claim up until the age of majority plus three years, which is essentially 21 years of age. We are managing out those cases. We have had about 12 new claims under the scheme this year, and the number of claims falls each year, as one would expect. We cleared about 275 of those cases this year, and, over the next three years, we will clear the remainder — except for possibly a rump of cases.
1067. **Mr Ray Jones (Compensation Agency for Northern Ireland):** The total number of cases that we have in hand is approximately 7,500. The average intake for tariff is about 5,000. The current intake for damage is around 700 or 750 cases. Technically, we still have the capacity to take very old cases under the Criminal Injuries (Compensation) (Northern Ireland) Order 1988. Only 12 cases were submitted under that legislation this year, on a very limited and restricted basis.
1068. **Mr Crawford:** In precise figures, the 10% increase in damages that I mentioned involves a rise from 663 to 720 cases in the current year, and we predict a future figure of about 700. In the tariff cases to which Ray referred, we predict that we will come in at a little more than 5,000 — at 5,006 — and we predict a figure of around 5,000 for the future. We also have those old cases to manage out.
1069. **Mr McFarland:** What about the capital element?
1070. **Mr Crawford:** The capital figures that we have provided do look as if they are all over the place. However, that is simply because our main capital expenditure is on computer systems, which we are refreshing. The profiled expenditure relates to when we anticipate spending that capital.
1071. In fact, the figures have changed a little since they were provided, because we have pushed some work back into next year in order to get the computer system

- for the new tariff scheme definitely up and running by the start of April. Work on our website, for example, will not be completed by then; therefore, some of that expenditure will fall into the following year.
1072. **Mr Attwood:** What is the explanation for criminal-damage compensation in 2007-08 rising to more than £25 million from £920,000 in 2006-07?
1073. **Mr Crawford:** It is helpful to have the opportunity to explain that, because it also explains some of the forecasting difficulties. Much of that rise relates to a series of criminal-damage claims for firebomb attacks in the dissident republican campaign, specifically on large commercial premises. There is a time lag with large claims before money is paid out, and the agency makes provision for those claims.
1074. First, a loss adjuster is sent out within 24 hours. An ongoing debate then takes place between the applicant and the Compensation Agency. Many professionals are involved in judging the size of the loss, including financial loss of profit, and so on, and that explains the time lag.
1075. **Mr Attwood:** I appreciate that, but there is a consistency and a pattern in all the other claim lines. If one examines them, they do not vary much year on year. However, there is a huge variation in criminal-damage compensation year on year. Is the fact that claims were in the system that took a long time to process and that converged in that year the only reason for that?
1076. **Mr Crawford:** Yes, because the incidents happened within a certain period, and the time lag to clear the claims was about the same in most of those cases.
1077. Much of that work involves related claims. In other words, one incident may generate eight or 10 claims, in which case the agency runs them together as far as possible, because the issues are the same, and because doing so cuts down on administrative and legal costs. It is quite common for a number of large claims to be paid at the same time.
1078. **Mr Attwood:** I can imagine what the answer to my second question will be, and I do not want you to cause yourself unnecessary grief. However, I get the impression that the Compensation Agency is pretty tightly run and knows what it is doing. It has said in its framework document that it can reduce staff by five. Is it not the case that you could reduce staff by another five?
1079. **Mr Crawford:** The agency has already reduced staff by five. It currently employs 69.8 full-time equivalent permanent staff. The framework document requires the staffing level to get to 75 in two years. We have one vacancy to fill, which was occupied by a supernumerary member of staff. Therefore, the agency does not have five vacancies that it is seeking to fill; it is running at five under its complement.
1080. However, we have cover if the workload pressure on staff were to increase. That is why we gave £150,000 back this year — we did not use it, and I do not anticipate our using it over the next two years.
1081. At present, we are carrying out a staffing review, and, as I mentioned earlier, there are a number of issues to be bedded into that. The next framework document review is due in 2010, and I would not be surprised if, in that, the figure goes down further. What I am saying is that we do not use all the resource unless we must. Providing that we keep reducing the time taken to process claims, which is the big driver, it is much more prudent and proper that we give the money back so that it can be used elsewhere. Certainly, we could employ the extra five staff and make a bigger dent in our budget; however, at present, we are achieving our aims with the existing structure. That is the long way of answering yes.
1082. **Mr Attwood:** Out of the four or five agencies from which we have heard evidence up until now, yours is the only organisation that has given us evidence to that effect.

1083. **Mr Crawford:** A caveat is that if there were to be a change in circumstances and a large number of claims made, we would want that cover.
1084. **Mrs Hanna:** Good afternoon; you are very welcome. Have you any ideas as to why there has been an upturn in the number of cases this year?
1085. **Mr Crawford:** We have tried very hard to figure that out. We have looked at the crime figures, and, for most classes, they are going down. There are a couple of areas, such as violent crime, in which there have been increases.
1086. **Mrs Hanna:** You do not see a common trend in the cases?
1087. **Mr Crawford:** Not really. I would like to carry out more work into that, perhaps with NIO statisticians and others who may be able to help. The 2% increase in claims for criminal injury might correlate with some areas of violent crime; however, claims for offences against the person have gone down. What we find more odd is the number of criminal damage claims, because there has not been an upsurge in damage, nor have there been big incidents during the year that resulted in damage to many properties.
1088. We do have many vehicle claims. It strikes me that people who previously would have claimed from insurance, and therefore not bothered submitting a claim to us, may now be claiming from the agency, or there may be a better information system in place. However, we have never before noticed information provision to be bad in Northern Ireland, because we get about three times per capita the number of claims as are submitted in GB — people do know about the schemes.
1089. However, that is only speculation. People may now be thinking of claiming from us, where previously they would have claimed off their insurance. The amounts for criminal damage would facilitate that, because we pay everything but the first £200. Many insurance rates are better if one has an excess that is higher than that. Therefore, it becomes sensible to claim from the agency rather than off one's insurance. We cannot, however, substantiate that with fact.
1090. What we have done is to ensure that our staff are fully aware that we do not pay claims on uninsured vehicles. There is a clause in the legislation that allows us not to pay for damage if the vehicle has been on the road unlawfully or without tax. We have tightened up to ensure that staff know that. However, we have not noticed any change in the claims that we are denying for that reason. The explanation probably is that people consider claiming from us as being a better option than going through their insurance.
1091. **Mrs Hanna:** You stated that your emphasis is on strengthening the process and in getting the claims processed within a certain time limit. Did you say that the average processing time was 12 to 14 months?
1092. **Mr Crawford:** Yes, 12 to 14 months.
1093. **Mrs Hanna:** Did you say that some cases have taken 10 years to process?
1094. **Mr Crawford:** Yes, we have such cases on our books, and perhaps I should say a little bit about that, because it does sound really rather bad. In some very serious injury claims, it can take years to establish the extent of the injury; for example, brain damage can take years to assess. Very often, the decision to let the claim continue to run is made between the applicant, or the applicant's representative, and the agency. What we can and what we do do, at the request of applicants, is to make interim payments.
1095. **Mrs Hanna:** My next question was about interim payments, particularly for such cases.
1096. **Mr Crawford:** We do that. You will probably be familiar with the Green Book method of assessing compensation. We use that largely in the old cases. Post-2002, of course, the method used is different. However, in the old cases, the Green Book is very much the starting point. There is a point at which we decide that, as we will be paying

- more than X, we make X as an interim payment so that applicants are not disadvantaged. Some applicants do not want interim payments, but, for the most part, we find that they are helpful.
1097. In other cases, such as criminal-damage cases, we have real difficulty in establishing the scale of the loss. For example, if a property were damaged and records were not kept, and an issue were to arise about the amount of profit or income that a business earned, we would have real difficulty with establishing the scale of the loss. Indeed, a few cases have lingered because of that issue.
1098. **Mrs Hanna:** Do you try to recreate that record rather than its being the applicant's responsibility to do so?
1099. **Mr Crawford:** It is the applicant's responsibility to keep that record. At some point, we seek to close a case by making an offer, on the basis of our assessment of the earnings of a particular business, and we have a forensic accountant who does that for us. However, if the applicant were to choose not to accept that offer, there would be some arguing back and forth, and, sadly, sometimes that can create an impasse.
1100. Therefore, that is how things operate. However, ultimately, there is always a point at which we will make an offer, and we will not hang on, waiting for more evidence. Therefore, to conclude, unless we are unable to trace an individual, we will make an offer. There may be 30 such cases in which we have made offers, and we are in negotiations with those people.
1101. **Mr McCausland:** I am going over ground that has already been covered, but I want to get clarity. Under the 1988 Order, your table shows that expenditure increased from around £10.3 million, to £11.4 million, to £14.2, to £17.8 million between 2005-06 and 2008-09. Considering that it is nearly the end of the financial year, is it your understanding that the figure will be £17.8 million for this financial year?
1102. **Mr Crawford:** That is the budget that we have allocated for this year. The actual expenditure will be around that figure, but we have not finalised it as yet, so we cannot give you a final total.
1103. **Mr McCausland:** What is your budgeted figure for next year?
1104. **Mr Crawford:** Again, we have not broken that down yet. We have included the "resource non-cash" totals in the table. Those are the available amounts that we have to set against the various areas. We may need to draw forward some money from year three to cover that, but we have not broken it down yet. When we draw up our business plan, which we are in the process of doing, the amount will probably look similar to that figure, because the expected number of claims on our projection will be similar to this year.
1105. **Mr McCausland:** There is a changing trend, which ranges from £10.3 million up to almost £18 million.
1106. **Mr Crawford:** I have just been reminded that there is a point that I need to make. You referred to the 1988 Order figure. However, what I have just said applies to the 2002 Order figure. We have now provided for the remaining 560 claims that apply to the 1988 Order. There are only 12 new claims, and we have not made provision for them, because we assess them individually as we receive them. Indeed, all the claims have been assessed individually. That is the amount that we expect to spend, so that is the provision that we have now taken for them.
1107. Members will notice that the "total resource non-cash" figure for 2008-09 is almost £51 million, whereas it appears that we have projected relatively small figures for the next two years. The reason for that is precisely what I have just said. In the past year, we estimated the value of all old criminal-injury claims and all existing criminal-damage claims in the system, and we made provision for those. Therefore, almost £31 million of that £50 million is essentially an adjustment, because we improved our forecasting and planning. Therefore,

- the figure is £17.8 million, and, strictly, there could be around a dozen new claims. Our expected figure for that is £100,000 for the next two years. However, the 2002 Order figure for 2008-09 will be almost £14 million for the next two years. In fact, it will be less than that, because the 2009 scheme will come in in April, so we will have to factor that into the figure.
1108. **Mr McCausland:** Between 2005-06 and 2007-08, the criminal-damage figures jumped from £15 million to £25 million because of arson attacks. Therefore, for future years, it would take only one such arson attack to add a further £10 million to that figure.
1109. **Mr Crawford:** That is a very good point, and one that I wish to clarify. We do not carry provision against one-off attacks, which would prove to be very expensive. We have an estimate based on the level of criminal-damage claims this year, and that estimate did not include that large jump. We value all criminal-damage claims as they are received. We are looking at a 12-month rolling average, and, therefore, our current prediction is based on the past 12 months.
1110. The sort of calculation to which you refer is not built into our budgeted expenditure. However, we have an agreement with the Northern Ireland Office and, indeed, through the NIO, with the Treasury that we will seek extra money in that event, because it simply cannot be predicted. That would be an advantage if we were in an AME environment rather than in one that concerns departmental expenditure limits, because, in AME-type accounting, it is expected that one may need to seek additional funds year on year.
1111. **Mr McCausland:** Currently, you can go back to the Treasury and say that you need £10 million. Would that arrangement remain if policing and justice powers were devolved?
1112. **Mr Crawford:** That would need to be negotiated between the Department of Finance and Personnel and the Treasury. However, it is explicitly annotated in the NIO's relationship with the Treasury as one of the risks in which the Treasury would allow the NIO to seek extra funding. I imagine that that should carry on, because it is already built in.
1113. **The Deputy Chairperson:** I thank Robert, Ray and David for their presentation and patience.
1114. **Mr Crawford:** Thank you.



## 10 March 2009

### Members present for all or part of the proceedings:

Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Nelson McCausland  
 Mr Alan McFarland  
 Mr John O'Dowd  
 Mr Ian Paisley Jnr

### Witnesses:

Mr David Brooks                    *Forensic Science NI*  
 Mr Stan Brown  
 Mr Peter Connon  
 Mrs Janet Kirkwood

### Also in attendance:

Mr Victor Hewitt                    *Specialist adviser*

1115. **The Deputy Chairperson (Mr McCartney):** I remind everyone to switch off their mobile phones as, even on silent, they interfere with the recording equipment.
1116. I welcome Mr Brown and his delegation. I apologise for the delay and thank you for your patience. I hope that it has not been too disruptive for you.
1117. **Mr Stan Brown (Forensic Science Northern Ireland):** We got a free lunch at your expense, so there was no problem with that.
1118. **The Deputy Chairperson:** By the end of the meeting you will know that there is no such thing as a free lunch.
1119. Will members please declare any interests?
1120. **Mr McCausland:** I declare an interest as a member of Belfast District Policing Partnership.
1121. **Mr S Brown:** Thank you for the opportunity to appear before the Committee. Forensic Science Northern Ireland's (FSNI) mission is to provide effective, impartial forensic science in the support of justice. Our staff complement for the coming year is 214; 179 of those, including 136 scientists, are directly involved in service delivery. Our main customer is the PSNI, but we also carry out work for the Police Ombudsman, the Historical Enquiries Team (HET), the state pathologist, defence representatives and other customers both here and further afield.
1122. Despite its small size, FSNI is a complex organisation that plays an important role in the criminal justice system. The complexity arises from our broad range of scientific disciplines, the legalities of expert witness in court and the detailed quality assurance throughout the end-to-end process from the crime scene to the court. We are accredited to stringent quality standards for that process.
1123. We are a net-funded agency. Our resource cost for next year will be £11.1 million, of which cash funding is £527,000. Customer revenue, at £9.5 million, will cover 86% of our total costs. Matching resources to customer demand is a complex matter in an organisation such as a forensic science laboratory. However, the biggest challenge facing the agency is the need for new accommodation, which I will return to in a moment.
1124. In the past, the agency's focus was on effectiveness and getting things right. More recently, the creation of a forensic-science market in Great Britain, the police imperative to ensure value for money and the need to reduce delays in the criminal justice system have required an increased focus on efficiency as well as on effectiveness.
1125. Therefore, we are in a period of rapid change: we are redefining our entire product range and restructuring our service level agreements to a three-year horizon. Those initiatives need a close focus on business processes and customer services. The Perseus management information and business

- change programme will be vital in driving that forward. The agency has ongoing capital requirements for equipment, and we are content that current funding is adequate for that purpose and for the initial phases of the Perseus programme.
1126. Similarly, our resource funding from the Department is generally adequate, although a number of one-off pressures may arise with regard to the recent European Court of Human Rights ruling on DNA databases, possible new regulatory requirements from the forensic regulator on DNA contamination control, and facilities projects required to maintain our current premises.
1127. We have been in a temporary, and increasingly unsuitable, facility since 1992, which inhibits our efficiency substantially. The proposed new laboratory is a specialist building, and much work has already been done on the specification. The Strategic Investment Board is closely involved, because the project will straddle two comprehensive spending review (CSR) periods and, probably, the devolution of criminal justice. The total cost for the building is in the region of £50 million; £25 million has been set aside by the Department within this CSR period. Project delays may require some rollover of that into the next CSR.
1128. The alternative to new accommodation is refurbishment of the existing premises, which would be very problematic operationally, would cost £26 million and would yield an inferior solution, both operationally and in the physical independence of FSNI from the police. Without new accommodation, the agency will gradually become technically non-viable.
1129. **The Deputy Chairperson:** Your paper states that FSNI will be self-sustaining by 2011-12. How much investment will you need to achieve that?
1130. **Mr S Brown:** Being self-sustaining depends very much on what customers are prepared to pay for our service. As most of our revenue hangs off the police budget, we very much depend on how much the police decide to put in the direction of forensics. There is some expenditure that should naturally belong to the Department, such as research and development, which, under HM Treasury rules, should be an allocation from the Department that we recoup through product sales. Therefore, sustainability is a question of what our total costs and total revenue will be. Those figures are currently somewhat unpredictable, by the nature of the beast.
1131. **The Deputy Chairperson:** What impact will the proposed increase in costs have on the budget of the PSNI?
1132. **Mr S Brown:** The major cost increase is probably due to the depreciation charges and capital charges on the new building. If we build a building for £50 million with a 25- to 30-year lifetime, there will be a depreciation charge of between £1.5 million and £2 million per annum, which will need to be folded into our total costs. Ostensibly, we should recoup that from our customers, but we are not sure how the Department intends to treat that. The programme to deliver the new accommodation is a departmental project, not a project of this agency.
1133. **Mr McCausland:** You mentioned that the income from the police was dependent on how much they requested. Does that mean that the amount of work that they give your organisation is determined by their budget, rather than by the requirements of the cases?
1134. **Mr S Brown:** There is always a finite amount of resources available to the police and therefore, ultimately, to us. There is always a greater demand for our services than we can normally fulfil, so it is a question of prioritising and trying to get ahead of the game. It takes quite some time to ramp up resources in a forensic laboratory in order to meet demand fluctuations. For example, it takes two to three years to train a new reporting officer up to the competency required to go to court. There is also investment in equipment and so on. Getting that right and strategically aligned is the complex part of it. We are

- working very closely with the PSNI on that at a number of levels.
1135. **Mr McFarland:** These charts that you have provided — do they represent outcomes, or do they represent the budgets for the three previous years?
1136. **Mr Peter Connon (Forensic Science Northern Ireland):** They represent the budgets.
1137. **Mr McFarland:** How far off are they from the outcomes?
1138. **Mr Connon:** The resource figure, at £1.9 million in 2007-08, can be compared to the final outcome of £1 million in that year. I do not have the other figures to hand, but I can provide them.
1139. **Mr McFarland:** That is almost a 50% underspend. Is that what you are saying?
1140. **Mr Connon:** In that particular year, yes.
1141. **Mr McFarland:** Is that the norm?
1142. **Mr Connon:** No, it is not necessarily normal. Look quite closely at the subsequent funding years — there were various reasons in that year for perhaps not being able to utilise the spend towards the end of the year.
1143. **Mr McFarland:** The budgets for the two previous years were £1.4 million each. What were the outturns?
1144. **Mr Connon:** I will have to come back to you with those figures.
1145. **Mr McFarland:** I am curious to see those. If one is handing back money all of the time, there is a great tendency for the Treasury to assume that it is not needed. It is useful for us to know those sorts of things.
1146. **Mr S Brown:** It is one of the complexities of lab work that it can take quite a lot of time to specify and procure an investment. Sometimes the permission arrives too late for us to do it in that financial year.
1147. **Mr McFarland:** The Eames/Bradley group has made a proposal to ring-fence the historic cases into a separate organisation, and there is some discussion about whether that would remain with the NIO. Clearly it makes some sense that it should not continue to affect the current policing budget. What sort of contracts does your organisation have at the moment, and how would those be affected if, in fact, the NIO continued to deal with those historic cases, presumably under new contracts? If your organisation were to move across with the estate, as it were, presumably you will be contracting separately.
1148. **Mr S Brown:** There would be no problem with contracting with any organisation. For example, our organisation has some contracts with laboratories and partners in England, and even with some police forces in England. We also have an agreement with the HET. It would be a standalone agreement, which we would negotiate with the NIO.
1149. **Mr McFarland:** Is there much spare capacity in your organisation? It is a bit like a research area in a university. If there are a group of extremely experienced scientists — which, by and large, one usually has to be to do your sort of work — there are tons of kit sitting around that does magical things. If the organisation is fully utilised by the police, then it does not have spare capacity. The logic is that if there is spare capacity you might look at starting some commercial venture with that capacity in order to bring more money in, and presumably help to buy new equipment, etc. Does that feature in your view?
1150. **Mr S Brown:** It does indeed. Capacity is a complex issue, in that there are around 14 different specialist teams, and each team has to be a certain minimum size in order to function. It is conceivable that that minimum size inherently has some spare capacity in some areas. We are actively looking to sell that spare capacity.
1151. **Mr McFarland:** Are you allowed to keep the money from that, or does the Treasury claw it back?

1152. **Mr S Brown:** The money is clawed back at the end of the year, but our framework agreement is currently being renegotiated with the NIO, and we are looking for some more freedom on the ability to retain receipts and roll them forward. That would be very helpful and would enable investment and development in the business.
1153. **Mr McFarland:** If you were encouraged to do that, what sort of income do you imagine achieving? For example, if the new justice Minister were very impressed with this all-singing, all-dancing service and was eager to make use of the scientists and decided to get some money in by doing a deal with the Treasury that would allow the money to be kept, what level of activity would that involve? If you were freed up to do that sort of thing, what level of financing might that raise?
1154. **Mr S Brown:** That is the \$64,000 question; perhaps even more than \$64,000. Some forensic science is easy enough to export, in the sense that exhibits can be moved from another country to here and we can work on them and get the results that we need. Other services need close scene attendance and close interaction with the police on an hourly or day-to-day basis. Some exhibits are very small and can be moved easily; some are bulky and very expensive to move. Therefore, only some aspects of what we do are exportable.
1155. We can export products and do work for other countries or customers, or we can export consultancy services. For example, there is a big potential demand for our services in many parts of the world because of our experience over the last 30 years. I do not have a figure for how much we could raise, but it could be quite sizeable — at a guess, it could be 10% or 15% of total turnover. However, our top priority must be to serve the criminal justice system in Northern Ireland. If we were to do business elsewhere, that would be done in order to bolster our capacity and maintain our home capability.
1156. **Mr Attwood:** I found your submission to the Committee somewhat neutral; it did not give me any meat. You may have heard the evidence that the Public Prosecution Service and others gave earlier — they gave a lot more insight into their financial situations. It may be that what is outlined in your submission is the height of it, but I would like to see if it is. Is it going to be the case that you are self-sustaining by 2011 and that, in the event that we have devolution of justice by that time, there will be no call on the public purse in respect of the Northern Ireland budget?
1157. **Mr S Brown:** A lot of the money that comes to us from the Northern Ireland public purse is circular money.
1158. **Mr Attwood:** Yes, I know that.
1159. **Mr S Brown:** It is our goal to achieve that by 2011-12, but there are a number of unknowns. One unknown is how the new accommodation will proceed and how the financial treatment of that occurs. Another unknown is how much research and development should be funded centrally from the Department, and another is how much we need to spend on our current accommodation before the new accommodation is ready. A further unknown is the effect of the European Court of Human Rights ruling on DNA — that could have a big impact on the work that we do. We are also investing in a major business change programme called Perseus, which is scalable. We will get benefits as we start to roll that out, but we are not yet sure how far it could actually go.
1160. **Mr Attwood:** You have named five unknowns, and there are only two years before we reach 2011. I would conclude that certainty around all those unknowns is not going to arise between now and then.
1161. **Mr S Brown:** I would not bet my house on our reaching it by 2012; it is a goal that we are trying to get towards. It focuses the mind and helps us be more businesslike.
1162. **Mr Attwood:** Whatever about how money from the public purse moves from one

- agency to another, if there is devolution of policing and justice powers by 2011, there will be a call upon public funds to directly grant-fund your organisation, but we do not know what the amount is going to be.
1163. **Mr S Brown:** Yes, but I still think that the vast majority of our moneys will be customer revenue.
1164. **Mr Attwood:** There is a budget line of £25 million in the last two years of the CSR for your new accommodation. Given that no new site has been identified yet, will that money just go back —
1165. **Mr S Brown:** We have identified a site — it is not absolutely confirmed yet, but it has been identified, and a lot of study has gone into the location of that and the various options around that.
1166. **Mr Attwood:** You may have identified a site, but there are still procedures to go through, so it is unlikely that that money is going to be spent in the next year. Do you expect that the £25 million that has been allocated for the next two years will be spent by the end of 2011?
1167. **Mr S Brown:** We have checked that with the consultant architects. They feel that the vast majority of it probably will be spent within that time, if we have the approval for the outline business case shortly. The programme has taken much longer than we anticipated. If we can get approval this summer, then there is a good chance that we will be able to spend most of that money.
1168. **Mr Attwood:** So your best guess at the moment is that that budget line will be exhausted by the end of 2011?
1169. **Mr S Brown:** Or there will be some rollover from it.
1170. **Mr Attwood:** How much is needed after 2011?
1171. **Mr S Brown:** Roughly the same again. The total cost will be about £50 million. We have been rigorous on the design of the building, with regard to size, scope, specification and so on. We have taken full cognisance of optimism bias and things like that. The final cost looks like being around £50 million.
1172. **Mr Attwood:** In view of what you said earlier about being self-sustaining by 2011, how much of that will have to come from our funds?
1173. **Mr S Brown:** I imagine £26 million or £27 million. I have not discussed it with anyone, but my guesstimate is that just over half should be coming in the next CSR.
1174. **Mr O'Dowd:** I want to ask about your current income; specifically, your current contracts with the PSNI and other bodies. What is the format of those contractual obligations? How safe are they over the next few years? Are you confident that they will be renewed? You said that you might be taking on further contracts; are you confident of your present contracts as a source of income?
1175. **Mr S Brown:** We are confident that the PSNI wants us to be its local provider of choice. It is under legal pressure to ensure value for money in its own procurement, so it will have to test us against other providers in England and Wales. We have to become businesslike. We are competitive, for many different reasons. We can compete with English providers, and we have the substantial advantage of local responsiveness. If and when we have our new laboratory, we will have the finest forensic laboratory in Europe, a very experienced team of people and a good, competitive cost base. Therefore, we should be able to retain the vast majority of the PSNI's business. Senior police officers have told me that that is what they would like to see happen. We are open to the fact that they have the right to compare our costs and service levels with what is available elsewhere.
1176. **Mr O'Dowd:** Because there is a market in England and Wales, and because PSNI is a part of the Association of Chief Police Officers, there is a market aspect to this whole provision. There is also the criminal justice system here which, I would argue, is more important than the marketisation. We are confident



- that we will do it. We have a business development directorate, whose sole responsibility is to ensure that we provide customer satisfaction and that customers want to stay with us. However, where there is a market, there will be no 100% guarantees.
1177. **Mr O’Dowd:** Is it simply based on best value for money? Does the PSNI go to the open market, and suppliers bid for their business?
1178. **Mr S Brown:** Yes and no. It is best value, but not just in terms of unit price: there is much more to it than that. It is a complex, wrapped-up service with respect to responsiveness. We are confident that we can be highly competitive in our home market because of our physical proximity to our customer and to scenes. It would be very hard for any provider based outside this country to match that. We may also be competitive in taking some business in England and Wales. We also partner with other laboratories in Europe and further afield, as well as across the UK and Ireland. There is potential for partnering with competitors and adding some of our services to theirs as they compete for business. Forensic science is a very collaborative area.
1179. **Mr O’Dowd:** You mentioned the ruling of the European Court on the preservation of DNA evidence. What are the implications of that ruling? Can we have a little background?
1180. **Mr S Brown:** This is a ruling known as S and Marper. Two people were arrested, and samples of their DNA taken. Later, they were released without charge. The European Court ruled that their DNA should not be retained on the DNA database. At that time, DNA profiles of anyone who was arrested were retained. We have to go through all our many, many thousands of DNA profiles — and physical samples, which we hold in deep freeze — isolate those belonging to people who were not subsequently charged or convicted and remove them from the system. The administration of that will be quite time-consuming. It affects the whole of the UK, except for Scotland. Scotland already conforms to the European Court’s ruling.
1181. The impact on cases is that there will be fewer hits on people who might turn out to be of interest in an investigation. In the case of sex offenders, I understand that DNA will be retained whether or not they are subsequently charged.
1182. **The Deputy Chairperson:** Are there any other developments in the criminal justice system that will have a similar impact?
1183. **Mr S Brown:** Yes. The other example that I mentioned was the Forensic Science Regulator, who controls all forensic science in the UK. Partly in response to the Omagh bomb trial, the regulator has been looking at the contamination-control measures around the end-to-end process of DNA samples. He may come out with requirements for an enhanced way of controlling DNA handling, and in order to comply with that we may need to invest in facilities and consumables, and allow more time.
1184. **The Deputy Chairperson:** Does value added tax (VAT) have any impact on you?
1185. **Mr S Brown:** We are VAT-registered in our own right, separately from the Department.
1186. **The Deputy Chairperson:** A question that the Committee has asked of all witnesses is whether there is any issue that you have not raised here that may emerge further down the line to put additional demands on your budget.
1187. **Mr S Brown:** We need to maintain our capabilities. The broad scope of capability that we have is very good indeed for the size of our lab. Maintaining those capabilities is very important, because they synergise with each other. The issue may arise about whether — in case of future need — we wish to maintain a capability that is particularly underused. There is also the fact that science changes constantly, and one is never quite sure what will come along. As recently as 12 or 15 years ago, DNA testing was not standard

- practice; that has had a huge impact on laboratories such as ours.
1188. **Mr Paisley Jnr:** For the record, I declare an interest as a member of the Policing Board.
1189. One of the pressures that you identified was that you are in temporary accommodation. Will you outline some of the problems that you face as a result?
1190. **Mr S Brown:** We are based in a converted cigarette factory; most of our staff work without seeing daylight from morning until evening. In winter, we never see it at all. The other accommodation consists of Portakabins outside. That creates a workflow problem. We have to keep our exhibits separate — for example, of a suspect and an injured party — in order to avoid creating a false connection. We must decontaminate the inspection rooms between cases. Those flows, and being stuck for space, mean that it takes us longer to do that. Processing material would be much easier and decontamination quicker in a new building, because there would be reserve capacity that would obviate those bottlenecks.
1191. **Mr Paisley Jnr:** How far down the line are you towards achieving a newbuild project?
1192. **Mr S Brown:** We have a conceptual design; we have sized out the floor spaces that we need for each of the specialist forensic areas; we have specified the high-level finish and equipment that we need; and, based on that, we have done an analysis of what the building will cost.
1193. **Mr Paisley Jnr:** Which is how much?
1194. **Mr S Brown:** Roughly £50 million. The outline business case is currently being prepared and will hopefully be submitted in the next two or three months. We will then go into full design. We will have a tendering process for architects to quote against that particular specification.
1195. **Mr Paisley Jnr:** At what point do you foresee being under real pressure over accommodation?
1196. **Mr S Brown:** It will be a gradual process. The first thing that we will have to do if the Forensic Science Regulator rules that DNA contamination-control procedures must be ratcheted up even higher will be to spend money on the existing accommodation. It might cost £500,000 to bring that lab up to a satisfactory condition. Those things are very important in validating and supporting evidence for the courts.
1197. **Mr Paisley Jnr:** That is certainly true of recent trials. If there is any question at all about the forensic evidence, it can affect the result.
1198. **Mr S Brown:** That is right. Quality is absolutely critical.
1199. **Mr Paisley Jnr:** That is one fairly significant cost for you. From what I gather — do not pull any punches, because it is better to know early on — it will be an immediate pressure.
1200. **Mr S Brown:** It becomes an immediate pressure if and when the regulator rules that those additional standards are required. For other operational reasons, we may choose to gradually move premises ahead of the regulator's decision.
1201. **Mr Paisley Jnr:** Do you have a location in mind?
1202. **Mr S Brown:** We have a putative location, which we are not 100% certain that we will get. However, we are reasonably confident that we have a site that meets our purposes.
1203. **Mr Paisley Jnr:** Will you have to spend money purchasing that site?
1204. **Mr S Brown:** No, it is a publicly owned site.
1205. **Mr Paisley Jnr:** It is a land swap. Thank you.
1206. **The Deputy Chairperson:** Thank you for your evidence and your patience. We hope that the lunch in some way compensated for your long delay. Thank you very much.



## 10 March 2009

### Members present for all or part of the proceedings:

Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mrs Carmel Hanna  
 Mr Alan McFarland

### Witnesses:

Sir Alasdair Fraser	<i>Public Prosecution</i>
Mr Ian Hearst	<i>Service for Northern</i>
Mr Jimmy Scholes	<i>Ireland</i>

### Also in attendance:

Mr Victor Hewitt	<i>Specialist adviser</i>
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1207. **The Deputy Chairperson (Mr McCartney):** Before I welcome the witnesses to today's proceedings, I apologise on behalf of the Committee for the delay. I am sure that everyone can appreciate that the events of Saturday night and last night have disrupted business. A number of members of this Committee, including the Chairperson, have had to attend an emergency meeting of the Policing Board.
1208. I welcome Sir Alasdair Fraser, Mr Ian Hearst and Mr Jimmy Scholes from the Public Prosecution Service to today's proceedings. You will be aware from previous evidence sessions that we expect you to make a short presentation, at the end of which I will invite members to ask questions.
1209. **Sir Alasdair Fraser (Public Prosecution Service for Northern Ireland):** Thank you very much, Chairperson. We fully understand the exceptional circumstances that have sadly arisen. I welcome the opportunity to speak today on the work undertaken to address the financial implications of devolving policing and justice powers. With me today are Jimmy Scholes, the acting deputy director of the Public Prosecution Service, and Ian Hearst, an assistant director, who has responsibility for finance.
1210. My service made a submission to the Committee in response to the specific issues raised about the finance that is available to the Public Prosecution Service. I hope that you will find it helpful if I explain a little of the background to the Public Prosecution Service. The service was established in June 2005 by the Justice (Northern Ireland) Act 2002, which defined the statutory duties and commitments and the legislative framework within which it must provide its services. It is the principal prosecuting authority in Northern Ireland and is responsible for all criminal cases that the Department of the Director of Public Prosecutions for Northern Ireland and the Police Service of Northern Ireland prosecuted previously. At present, our total caseload is just under 56,000 cases.
1211. Since 2005, we have been building a regional service. We have established a headquarters in Belfast and regional offices in Lisburn, Ballymena and Omagh. Yesterday, we received a new office in Londonderry, and I am very happy that, after a number of years, we are able to return to Derry. I am anxious to secure premises in Newry. Funds have already been committed to achieving that, and I contend that those funds should remain available so that, if premises become available, we can fulfill our desire to open premises in that city. Along with the development of the estate, and in line with the roll-out of the service, we have carried out a recruitment exercise, which has resulted in an increase in our staffing levels from 170 to 570 — our full complement will be in and around 610 persons.
1212. I hope that the background that I have provided goes some way to explaining the year-on-year increase in expenditure, including revenue and capital, as set

- out in the table at section (D) of our submission. Now that we have reached what might be described as an almost steady state concerning accommodation and staffing, the service can accurately predict and control 75% of its costs. The remaining 25% of costs relate to expenditure on counsel fees.
1213. I understand that, last week, the Committee heard evidence from the Court Service and from the Legal Services Commission on the pressures that they face owing to mounting legal costs and the unpredictability of those costs. My service is not immune from those pressures either. We have sought to address the issue of counsel fees in the context of a challenging 2007 comprehensive spending review (CSR). That review introduced a number of measures, including restricting the use of senior counsel to a limited number of cases; using our own staff in the Magistrate's Court and, increasingly, in the County Court; and the careful management of counsel fees paid, particularly in high-cost cases.
1214. We have had to meet a number of other pressures, and, in order to do so, we have had to freeze vacancies among administrative grades. By not recruiting 40 staff when vacancies arose, it was possible for the service to meet a pressure from counsel fees of £1.15 million. That pressure will continue during the current CSR period. In our submission, we have identified other pressures, including costs that may be awarded against the prosecution, and costs associated with preparing the service for its status as a non-ministerial department. We have included a bid of £150,000 to assist with the resource implications of the latter. That money would cover the anticipated costs arising from our having such status and would go towards, for example, establishing a private office, reinforcing our finance team and securing internal audit services to support the Public Prosecution Service as it faces the increased scrutiny that will arise on devolution.
1215. The submission also provides details of further pressures anticipated to arise in future but for which a bid at this time has not been made; namely, the service's response to the Saville Inquiry, the findings of which are now due to be published in 2009, and new work that will arise from the Serious Crime Act 2007.
1216. In conclusion, I seek to assure the Committee that, although the Public Prosecution Service is a relatively young organisation approaching a steady state, the underlying costs and pressures that contribute to its funding requirements are now better understood and quantified.
1217. In giving evidence, I am fully aware of the financial constraints that apply and that lie ahead. I have sought to identify the significant issues that we will face, and to disclose fully to the Committee any concerns that I hold. I am grateful for the opportunity to speak to the Committee.
1218. **The Deputy Chairperson:** Thank you. I note that no Committee members in attendance at present have any interests to declare.
1219. In your submission, you mention measures to limit senior counsel in certain cases. Can you give me some impression of what that will cost to achieve, and what will be the quality of justice as a result?
1220. **Sir Alasdair Fraser:** At the beginning of the financial year — looking at what I described as the challenging budget that we face — our management committee decided that it was important that the Public Prosecution Service took immediate steps to ensure that it could live within budget. One of those factors was a decision to restrict and limit the use of senior counsel. It was the experience here over many years that senior counsel was engaged, both by the prosecution and the defence, in cases in which they would not be instructed in England. I suspect that that practice grew by reason of magistrates being willing to issue a certificate for two counsels to defendants, and the prosecution's wishing to present itself



- as treating the case in an equal way in instructing senior counsel.
1221. I consider that no longer to be appropriate. I have sought to limit the instruction of senior counsel to various categories of case, which include murder, manslaughter, serious sexual offences such as rape, and serious motoring offences such as causing death by dangerous driving. I have chosen those cases because, principally, they encapsulate the more serious cases that proceed to trial, and they also, in my experience, are cases that cause considerable concern across the community.
1222. I am not in a position to give the Committee a precise figure on savings. However, I am certain, by reason of fact, that the Public Prosecution Service can live within budget, having not filled a number of vacancies, as a result of which we have made significant savings. I can provide the Committee with a figure at the end of the financial year.
1223. **The Deputy Chairperson:** You have talked about your budget's unpredictability. Do you feel that there will be an increase in the very-high-cost criminal cases, and what pressure would that put on your budget?
1224. **Sir Alasdair Fraser:** The fundamental problem is that my service is demand-driven. It does not have the facility to use the normal budgetary techniques of prioritising or cutting down work. That option is not available to us. I suspect that the Public Prosecution Service is rather like the Fire and Rescue Service — if there is a fire, we attend it. It is difficult to predict in a year's time what the number of high-cost cases will be.
1225. As matters stand, and as the sad events that have occurred in the course of the past few days demonstrate, it would be reasonable to assume that the present level of high-cost cases will continue. Our problem is in providing accurate accruals in order to provide reasonable costings to the Treasury or, on devolution, to the Department of Finance and Personnel.
1226. A number of variables may or may not arise in each case. For example, an expected plea may become a contest, and an expected contest may become a plea. There may be unanticipated difficulties in cases, or an extraordinary event may cause slippage. Recently, for example, the profession was concerned about the level of remuneration that was being paid, and a number of serious cases that perhaps should have been tried this year were moved into next year.
1227. All those factors may influence costs, and they are not included in the 75% of costs that we can master. Those other costs are much more fluid.
1228. **The Deputy Chairperson:** What impact has the Criminal Justice Order 2008 had on your workload, and how do you envisage it will affect the Public Prosecution Service?
1229. **Sir Alasdair Fraser:** If you have the Serious Crime Act 2007 in mind, two matters arise from that piece of legislation, the more serious of which for us is that Parliament has given us a statutory responsibility for civil recovery. When deciding whether to prosecute, the prosecutor may conclude that the evidence is insufficient to support a prosecution but sufficient to support a civil action against the putative defendant. In those circumstances, we must acquire the skills of a civil practitioner in order to pursue that action through the High Court.
1230. The possibility of such an arrangement is an unusual development, and only two agencies are empowered to act in such a manner: the Serious Organised Crime Agency (SOCA); and the Public Prosecution Service. At present, SOCA pursues civil recovery. However, within a limited period — we have not been informed of its duration — responsibility for what, in effect, the Assets Recovery Agency was doing will pass to the Public Prosecution Service.
1231. Serious crime prevention orders is another aspect of the 2007 Act. It is now open for the prosecution to apply for such an order in the High Court as

- a civil matter, or, on conviction, in the Crown Court. The orders, which cover a range of conduct, are a significant development. We recently applied for, and obtained, the first such order in the United Kingdom. We obtained a second order relating to persons involved in the smuggling of fuel, and the court ordered that that person, or persons, could not become involved in the purchase, sale, possession or transmission of fuel for a period of five years. That is a new area of work that will develop over two or three years.
1232. **The Deputy Chairperson:** We may return to that subject at the end.
1233. **Mrs Hanna:** Good morning and welcome. What reform is necessary to control counsel fees? For instance, is there a cap on fees? Will you explain the charging scale for counsel?
1234. **Sir Alasdair Fraser:** I have been director for 20 years, and there has never been a year in which there was not a difficulty in settling fees with the Bar. My service has acted quite properly, and it settles fees largely on a case-by-case basis. Scales of fees are applied to about 15% of cases, and there is a read-down from that scale. However, the remaining 85% of cases are examined individually by a senior member of the department, who may be in discussion with counsel.
1235. It is a distinguishing feature here that counsel negotiates directly on its fees, whereas in England the clerk to chambers carries out those negotiations. Owing to the fact that counsel negotiates directly here, I have always required those negotiations to be conducted by a senior member of staff on my behalf, in order to ensure equality of arms and that my staff are not overborne in their responsibility to protect the public purse.
1236. We consider that we pay fees that are affordable, fair and reasonable for work done, and it is on that basis that we approach the formulation of a fee in each case. Extraneous factors may influence that decision; for example, 2005 statutory rules for legal aid set out fees in the form of an order. Obviously, we are now aware what the defence pays, and I accept that that may have had an inflationary effect on prosecution fees. The Bar would contend that the position has always been that the prosecution, historically and currently, pays less than the defence is paid out of the legal-aid fund, despite the fact that public moneys are furnished through both organisations.
1237. This legislature may wish to consider whether the current arrangements are desirable or whether an opportunity exists for a more radical approach to be taken, perhaps with a central authority's taking responsibility for fees. However, in this rather lengthy answer, I am seeking to explain how we assess individual fees at senior level and take decisions, and to outline the difficulties that we face. We have in hand a working party — of which the Court Service is an observer — to prepare a graduated scale of fees, if that is the system that we wish to adopt.
1238. We are looking closely at the Crown Prosecution Service in England to ascertain whether we consider its arrangements to be effective and affordable. If we adopt its arrangements, that will bring a new transparency to the basis on which fees are calculated and paid. Of my own volition and without being asked, I have decided to publish annually the earnings of counsel whom I instruct. The public should be able to reassure itself that there is openness and accountability, and that what is being done is not being done behind closed doors.
1239. **Mrs Hanna:** Thank you very much. I was going to ask you whether you planned to take a different approach, but you have answered that question to some extent. However, I am still unsure whether you feel that adopting England's arrangements would be more financially efficient.
1240. Would you ever consider capping fees?
1241. **Sir Alasdair Fraser:** The idea of capping fees is not something that one can rule out. However, as a prosecutor, I would say to the Minister responsible that

- that action would be more appropriately taken by a Minister.
1242. The figures that the Committee received last week on the average cost of the defence that is funded by legal aid are of some interest. I understand that you have received evidence that the average cost is £13,887 per case in Northern Ireland and £6,300 per case in England and Wales. I must be cautious in what I now say, because I am not certain that the factors that I have weighed, in calculating that equation, are exactly the same as those that the Legal Services Commission used in making its calculation. Equally, I must recognise that, in a case in which I am paying counsel to prosecute, I should not pay, for example, for five separate sets of counsel and five separate sets of solicitors to defend. Therefore, it may be that I am not comparing like with like. However, the average cost that we have calculated for criminal court cases for this financial year, 2008-09, is £5,800. The financial year is not yet over, however, so that remains a provisional figure.
1243. Whether or not the calculations are comparable, there is clear blue water between what we appear to be paying and what legal aid appears to pay. There is a complicating factor, however. It is a Government precept that there should be equal or like pay for equal or like work. There may be an argument that, if the figures are comparable, too great a gap exists.
1244. **Mr Attwood:** I have two or three questions. Mr Scholes may be able to help me with the first one. From the useful paper that you gave the Committee, I am unable to work out your ideal top-line requirement in the years 2009-2010 and 2010-11. You have given us figures for the devolution-funding bid and for total anticipated pressures, but then there is a separate figure given for a shortfall in counsel fees for this year, and so on.
1245. This is an evidence session to determine the funding that is required for the devolution of justice powers. Let us assume that those powers are to be devolved on 1 April 2009 — the start of the financial year. What have you identified as your top-line pressure over the next two years, and what will your top-line pressure be if you are to fill the 40 vacancies on which there is, at present, a moratorium?
1246. **Sir Alasdair Fraser:** I understand the question. We have sought to present our response in answer to the particularity of the questions raised. However, to rise a little above that, the CSR 2007 was challenging, particularly so on counsel fees. Our bid was not accepted, and we received a reduced bid of around £6.8 million, which we knew immediately was not enough. Therefore, we initiated a moratorium on the filling of vacancies. Those vacancies arose in a rather haphazard fashion and could not be predicted, nor could the range of skills that we lost be predicted. The moratorium was a rough but necessary means of ensuring that we could pay our bills at the end of the year.
1247. Our spending in this financial year has demonstrated that, with additional funding of around £1.15 million for counsel fees, we will be able to live within budget. We have identified the resource implications of the devolution of justice powers. The financial side will have to be beefed up somewhat, and a private office will have to be provided and a more focused internal audit conducted.
1248. Taking into account the additional bids to cover counsel fees, costs awarded and the resource implications of having non-ministerial department status, the total devolution funding bid for 2009-2010 is £1.6 million. That figure rises by a small amount for the third year of the CSR period. Those figures are founded on a rigorous approach, as a result of our experience this year. If we were to be allocated funding for those additional bids over the next two years, we could end the moratorium on filling vacancies.
1249. My approach is to be as forthright as I possibly can be. I understand that if policing and justice powers are devolved,

- there is little purpose in my telling the Committee in 12 months' time that I cannot remain within budget.
1250. In our submission, I also included the civil-recovery issue, which we are not yet ready to bid for, because the specific responsibilities for that have yet to be determined. The Attorney General has not yet issued advice as to who should do what and when, and SOCA has not yet indicated its intentions. Therefore, we have not dealt with that issue yet. However, I put that down in good faith as a marker.
1251. I also put down as a marker the issue of the Bloody Sunday Inquiry report. In previous years, we have tried to work within our resources, but we are now stretched financially. In the scheme of things, the amount of money that is involved is not huge; however, it is a significant amount of the taxpayer's money. I thought it wise to inform the Committee of the actions taking place in respect of that. The Committee should also be made aware of other matters, such as the Historical Enquiries Team and incentivisation. There are streams of funding that assist that.
1252. **Mr Attwood:** Your explanation is much appreciated, because, in previous evidence sessions, some of the witnesses from other organisations were a bit polite in setting out their true budgetary position for the next couple of years. You have not been impolite, but you have been explicit. However, what is the bottom line? You spoke about a bottom line of £4.5 million, before the costs of filling the 40 vacant posts are included. Assuming that there is no further issue around counsel fees, is that figure accurate?
1253. **Sir Alasdair Fraser:** Yes. If I were to enter into a process of negotiation, I would advance what the bottom line was from the start. However, I am not in that position.
1254. **Mr Attwood:** For the purposes of the Committee's report, the bottom line for the next two years of the current CSR period, over and above your current budget and excluding staff costs for filling 40 posts, is £4.5 million. On the issue of the moratorium on filling staff vacancies, in your submission, you state that a shortfall of 40 posts represents a 10% reduction in the overall staff complement. Therefore, does that reduction not — these are my words — have a disproportionate impact on your efficiency and effectiveness? That suggests to me that you must be getting close to that stage.
1255. **Sir Alasdair Fraser:** Through hard work and good will my colleagues have carried an extra burden. It is my judgement that that is a short-term commitment, not one on which I can rely in the long term. We did it because we had to do it. I would like, at the beginning of the next financial year, to begin to fill those vacancies. The moratorium has had an adverse effect. For example, we have been the subject of criticism from Criminal Justice Inspection about the work of notifying witnesses and victims of their requirement to go to court and the assistance that we as prosecutors should give them. The cuts have exacerbated the problems in an area in which we were found to be not perfect.
1256. **Mr Attwood:** I have a lot of sympathy with your view on that. I do not think it is sustainable to continue the moratorium on the hiring of staff for, for example, the next two financial years. You and I, and your colleagues, have had enough conversations about how the Public Prosecution Service (PPS) might be. We have to face up to the issue of the 40 unfilled posts.
1257. I think that the Committee heard last week that the amounts spent on defence fees — £14,000 here and £6,000 in Britain — were for high-value cases, not for the general run of cases. Are you saying that the PPS's payments to counsel amount to less than £6,000 for high-value cases, or are you saying that the payments to counsel in the general run of cases amount to less than £6,000?



1258. **Sir Alasdair Fraser:** I am saying the latter. That underlines the caution with which I introduced the subject.
1259. **Mr Attwood:** I appreciate that. What do you think is the average payment to prosecuting counsel in high-value cases?
1260. **Sir Alasdair Fraser:** I am not certain whether an average in that sense is useful.
1261. **Mr Attwood:** Comparing the figures —
1262. **Sir Alasdair Fraser:** I would be hypothesising, which I do not wish to do.
1263. **Mr Attwood:** If you can give the figures in respect of the general run of cases, why can you not give some indicative figure in respect of high-value cases?
1264. **Sir Alasdair Fraser:** There is, on the defence side, a clear definition of what a high-cost case is. I think — and my colleagues will correct me if I am wrong — that every case that exceeds 25 days falls into that category. The PPS has a system of scale fees and special fees. Special fees make up 85% of our business and are the subject of individual negotiation. I could certainly prepare a costing that related only to special fees, taking out the 15% — that would cover all of the work of the Magistrate's Court, but as we are mainly doing it, there would not be much there. It would also include the less serious indictable cases. We can do that, and if it will be of value I will write to the Committee with that information.
1265. **Mr Attwood:** It would be interesting to compare and contrast, subject to the general warning about figures and statistics.
1266. When will the High Court advocate system be in place? The Court Service said last week that its proposals in respect of reducing costs in very-high-value cases might take a number of years to take effect. Is the advocate system a short-term proposal, or will it be three or four years before it is in place?
1267. **Sir Alasdair Fraser:** Once we have completed our costing and we know what we are biting off, as it were, I intend to move during the course of 2009-2010. I anticipate that we will start slowly in each of the four regions and that we will increasingly use the senior public prosecutors once they have completed their training. The experience in England and Wales is informative; by using in-house lawyers in the Crown Court, they have reduced their reliance on counsel by 11%.
1268. It is important that there be a strong, healthy, vigorous Bar. It is equally important that, where we have rights of audience in the Crown Court, we use them to take advantage of the experience that senior public prosecutors will achieve, create career opportunities for them and raise the significance of the job of public prosecutor in the public estimation. That is something to which I am wedded, but I want to move carefully.
1269. **Mr Attwood:** The financial impact of that in year one might be a 1% reduction in expenditure on counsel's fees.
1270. **Sir Alasdair Fraser:** I do not want to use the word seedcorn, but I will. I do not want to find that by designating a small number of experienced lawyers I am losing timeliness. In an ideal world, I would like to replace the senior public prosecutors with other lawyers to carry out their casework, train the senior public prosecutors and get them into court. When they are in court, there should be savings in counsel fees.
1271. **Mr McFarland:** The Court Service told us that the time between the end of a case and the bill filtering through the system could be up to two or three years. Does that also affect your budgeting? It makes things difficult if you have to wait two years to know what money is coming down the line.
1272. **Sir Alasdair Fraser:** It does, and that has been an issue. Counsel have differed in the speed with which they have provided my service with the necessary information for an assessment of what fees should be paid and an audit trail. My regional prosecutors, who have a



- delegated notional budget for counsel's fees, know exactly what accruals are in existence each month, and they are under pressure to take steps to ensure that the bills are paid at the earliest possible time and that the accruals do not distort our budget.
1273. You are absolutely right that there is an issue. However, as long as we are calculating fees in the manner that I described, and until we move to a more arithmetic or mechanical method, that problem will remain.
1274. **Mr McFarland:** There is a function by which you can recover 22.5% of assets in criminal cases. Is that negotiable with HM Treasury? If you were stuck, could you increase that to 40%? How will that affect things when you take on the civil cases? Presumably, a similar system will exist. Is the percentage in civil cases likely to be 22.5% as well, or are we likely to see a different system?
1275. **Sir Alasdair Fraser:** The incentivisation money has a tendency to be notionally allocated to every purpose. If we raise an issue of funding, we will likely be told to use that money. As a matter of fact, there are limitations on what we can do with the money. The immediate cut is 50% to HM Treasury. Of the remainder, 45% goes to my service — which, as you rightly said, is 22.5% of the total. Another 45% goes to the investigating body, and the other 10% to the Court Service.
1276. As you will see in our submission, we have around £1.1 million of incentivisation money in 2008-09. The Home Office has rules to guide the use of that money; it must be used at least in part to promote and secure further confiscation proceeds. Therefore, I will willingly allocate part of that money for that purpose. I will increase by one, perhaps, the numbers of staff available to do the work. However, that will not deal with everything. The money is ring-fenced for three years; I have to use it during that period.
1277. On the downside, although Treasury or other Government Departments
- might suggest that we can fund any particular problem from that money, it is an unreliable source of funding because it depends entirely on whether a confiscation order is made at the end of criminal proceedings. At present, there are not, as I understand it, arrangements in place for civil recovery. Applying the logic of the scheme, it would seem desirable that the same sort of arrangement might be made. However, there might not, perhaps, be such a significant part paid to the investigator, because with civil actions we would be taking it forward.
1278. **Mr McFarland:** The Assets Recovery Agency — now part of SOCA — deals with civil cases. If no criminal case is pending, and none is likely to be, it pursues the assets of organised crime and criminals. Presumably, its investigators produce a case, which you then prosecute.
1279. Are you saying that that entire investigation side will become more like it is in the United States, in that the PPS will have detectives with surveillance assets to find the evidence and drum up the case that you will prosecute, or will SOCA continue to do that bit, with you just conducting the prosecution? I am not sure what is going to happen in civil cases.
1280. **Sir Alasdair Fraser:** You have raised a difficult issue. There is a serious crime task force, which seeks to co-ordinate strategy in the investigation of the sort of offences that you have in mind. Nonetheless, there remains a clear distinction between the investigator and the prosecutor. We have followed the approach that was set out by the Royal Commission on Criminal Procedure, which is to maintain a difference between prosecution and investigation. Others favour what you have described; a much closer working relationship between investigator and prosecutor.
1281. Under current arrangements, we are required by the Justice (Northern Ireland) Act 2002 to give prosecutorial advice to the investigator. I am happy that investigators are increasingly taking

- advantage of that. We provide advice, perhaps, even before someone has been arrested, as long as that falls within the remit of prosecutorial advice.
1282. Perhaps it is a judgement for other people to call. My view is that, as matters stand in the society that we serve, it is better to have a clear line of distinction between the investigator and the prosecutor. There is always a risk that, if those roles are melded together, the prosecutor begins to lose objectivity in the pursuit of the chase.
1283. **Mr McFarland:** Under the current proposals, you will come across as a non-ministerial Department. Traditionally, it is vital that the Public Prosecution Service be independent and be seen to be beyond influence. Is there scope for more co-ordination between the broader Court Service and your administration, which would save money without impinging on the service's prosecutorial impartiality?
1284. Another question that we have been asking for some time is where the Public Prosecution Service should be based. Does it need a home? Logically, the service would be attached to a Department, and the Committee has discussed whether that should be the Office of the First Minister and deputy First Minister or the Department of Finance and Personnel (DFP). Have you any thoughts as to where your home might be?
1285. **The Deputy Chairperson:** That is getting away from the subject of finance.
1286. **Mr McFarland:** Yes, but when the Committee discussed the advantage of having the Public Prosecution Service in front of us, that was the only outstanding question from phase 1 of the policing and justice discussion. I thought that the Committee might take advantage of Sir Alasdair being here in order to ask it, rather than bring him back in another three or four weeks' time. Since he is here to discuss the effective and efficient co-ordination of administration, it is fitting to raise the question of where the Public Prosecution Service should be based.
1287. **The Deputy Chairperson:** If the question is one of efficiency, the Committee can proceed.
1288. **Sir Alasdair Fraser:** At an early point, and to underline the independence of the service, we considered that the best location would be in the Office of the First Minister and deputy First Minister. I recognise that this is a decision that will be taken by others — I can offer only my own views.
1289. In a financial context, it is important that the Public Prosecution Service should not depend on a sponsor Department for its finances; rather, it should be placed in the position that it negotiates a settlement with DFP, perhaps with the support of a Minister. Someone will certainly have to look after the interests of the Public Prosecution Service at meetings of the Executive which discuss finances and the like — and, perhaps, in the Assembly.
1290. There are so many issues there that are not issues for me as director of the Public Prosecution Service. They are clearly political and procedural matters that it will be for the Assembly to determine. For my part, I would be content to be in the Office of the First Minister and deputy First Minister. Without wishing to appear unduly negative, I am not particularly attracted to the justice Department, which I think will essentially be an operational Department that will not truly meet my needs in taking quasi-judicial decisions independently and dispassionately.
1291. On the matter of administrative costs, Mr McFarland's suggestion is good. If there are services that can be purchased in a common way, it makes sense to do that. To an extent, we are already in that position, because a number of Departments and agencies avail themselves of a range of services from HR Connect, for example. Therefore, that suggestion is very much in the service's mind.

1292. There is also the common pursuit of the Causeway project, which will link the various agencies in a very close and direct way in sharing information. That sort of approach is the future. Resources will not increase; we must make the most of what we have and have the confidence to work more closely and effectively while maintaining our respective independence.
1293. **Mr Hamilton:** The matter has been well aired, but I want to go back briefly to the issue of counsel's fees and the deficit of £1.1 million over the next two years, which Alex and other members were talking about. That problem is not going away any time soon. Over the CSR period, there is a gap, but that gap is likely to continue. The PPS faces a perennial problem. Is it a fair assessment to say that, without the swift and successful enacting of some of the measures that you talked about, the problem will be with us for the foreseeable future?
1294. **Sir Alasdair Fraser:** The instruction and briefing of independent counsel will always be akin to a marketplace. There will always be some debate and discussion as to what the market rate should be. For my part, the future lies in settling a scheme that is open, transparent, accountable and applicable to cases, and that brings a greater certainty to the settling of them. If we can achieve that, then the rubbing points — which do exist — will be reduced. I do not want to place the Bar in a position that it would view as wrong. It is vital for our society that there be a strong, vigorous and independent Bar, and that public funds be available for the Bar to provide services; to prosecute and defend. I do not think that any of us here would contend otherwise. However, within that context, I will be working to ensure that there is a reduction in the rubbing points.
1295. **The Deputy Chairperson:** Does your agency pay value added tax (VAT), and what will the application of that be at the point of transfer?
1296. **Sir Alasdair Fraser:** Under the Finance Act 2008 we pay VAT to counsel, but that VAT is recouped and has no effect on my budget. It is money that we pay, and it is money that is brought back. It is governed by the 2008 Act. The VAT returns are managed by the financial services division of the NIO; presumably, on devolution, that will transfer to DFP. There are arrangements in place to address that.
1297. **The Deputy Chairperson:** Do financial considerations enter into the decision on whether to proceed with a prosecution?
1298. **Sir Alasdair Fraser:** That is a very difficult question. It is not something that I have experienced, and I cannot recall a single case where that was a factor. However, if the witnesses were 10,000 miles away, and if the case was very minor and, perhaps, of a technical nature, the prosecutor would have to consider whether the public interest required that expenditure to meet that prosecution. In any event, alternatives to prosecution might be available. To answer your question, it could be a public interest factor that would be relevant, but it has not happened.
1299. **The Deputy Chairperson:** Finally, are there any issues that you have not touched on that may confront you in the future, and which might have some impact or pressure on your budget? I have asked the same question of all witnesses.
1300. **Sir Alasdair Fraser:** This is a hostage to fortune. I have sought to be as forthright as I possibly can. None of us has the ability to predict events that have not occurred.
1301. **The Deputy Chairperson:** The Committee may have some additional questions, but it will put them in writing and seek responses. Thank you.

## 24 March 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mr Alan McFarland

### Witnesses:

Mr Eddie Gaw *Police Rehabilitation  
 and Retraining Trust*  
 Mr Sheamus Hamill *Police Rehabilitation  
 and Retraining Trust*

1302. **The Chairperson (Mr Spratt):** I remind members to turn off their mobile phones because they interfere with the recording equipment. Hansard is recording today's evidence session and, therefore, everything that members say will be recorded.
1303. I welcome Eddie Gaw, chief executive of the Police Rehabilitation and Retraining Trust (PRRT), and Mr Sheamus Hamill, chairman of the board of directors. You should make a short presentation, after which members will ask questions. The Committee is running close to quorum, but I hope that other members will join soon.
1304. **Mr Sheamus Hamill (Police Rehabilitation and Retraining Trust):** The Police Rehabilitation and Retraining Trust is a company limited by guarantee that was formed on 2 March 1999. Therefore, 2009 is our tenth anniversary. The trust is funded by the Government through grant aid, which, this year, amounts to £2.2 million. We must find our revenue and capital from that sum — it is one funding package.
1305. Our sponsoring Department is the policing policy and strategy division of the Northern Ireland Office (NIO). A management statement and financial memorandum is in place between the trust and the NIO. The trust is non-profit making and is what is known as an arm's-length body. It has rigorous governance structures and follows Treasury guidance and other guidance on governance issues.
1306. The trust was established following a 1994 internal review of policing. That review identified the need for changes to the police service in subsequent years. Research was conducted among serving officers, and they identified four main areas in which they felt that they would need help and support in the event of a change in policing in Northern Ireland and a downsizing of the service. Those four main areas were: careers guidance and personal development support; training and education; psychological therapies; and physiotherapy.
1307. In essence, those areas break down into two main streams. One focuses on developing vocational and employment opportunities for officers with particular emphasis on redeployment, self-help and self-reliance and the other aims to relieve the distress and hardship of officers who have been physically injured or psychologically damaged in the course of their policing service. Until two years ago, that is what the trust had done since its establishment.
1308. Over the past two years, we have sought — with the approval of our sponsoring Department — to expand our services to other areas. We now provide psychological and physiotherapy services to former military personnel in Northern Ireland. We also offer services to serving police officers through their occupational health and welfare unit, and we provide services to the Prison Service Trust, which came on stream from Christmas 2008. We also formed a subsidiary company called Futures (NI) Ltd, which is a wholly owned company that has the potential to provide our services to other elements of the public sector. We may say more about that company during the question-and-answer session.
1309. In fulfilling its purpose, the trust aspires to be a centre of excellence

- for the provision of services in the field of rehabilitation, careers, education, training and employment, and in supporting those with psychological or physiotherapy needs. The trust's model is very successful in handling the people issues that relate to the downsizing of the Police Service, and in treating some major health issues associated with former and serving officers.
1310. As a provider of services, we see the necessity for the trust's work continues post-2011. Moreover, the model that PRRT has developed can be used across the entire public sector, either to manage sickness absence and allow people to return to work sooner, or through outplacement support during any subsequent reorganisational or structural change. Our services could also be accessed by victims' groups or similar groups.
1311. The trust has two concerns. As with many other groups, we are concerned about funding post-2011, because, at the moment, we have been notified of our funding only until 31 March 2011. Our other concern is that we may have to leave our current site at Maryfield.
1312. **The Chairperson:** The estimated costing of relocation from your present site by 2011 is £5 million. That appears to be in order to facilitate a rebuild of Northern Ireland's forensic laboratory on your current site at Maryfield. Would that allow for all of the costs that are involved in relocating? Would it be necessary to have additional staffing? Would it also allow for improved or updated IT equipment, given the facilities that you have on the site to carry out some of the functions that you mentioned during the opening presentation?
1313. I understand that you already pay rent to the Northern Ireland Office. Therefore, the Northern Ireland Office gives you a grant, but it takes money back off you for rent, and so on. Can you give us an idea of what that figure might be? Have any discussions about the relocation taken place? Have you been notified officially of that, in writing or otherwise? If so, when were you notified?
1314. Before you say anything, I declare an interest as a member of the Northern Ireland Policing Board. I do not think that there are currently any other interests in the room.
1315. **Mr Eddie Gaw (Police Rehabilitation and Retraining Trust):** At the moment, the formal position is that the Northern Ireland Office, our sponsor Department, has written to inform us that, with effect from March 2011, we should no longer be at the Maryfield site. That letter arrived late in the last calendar year. On that basis, we undertook some initial costings of alternative accommodation, which is where the figure of £5 million came from.
1316. That amount is probably a ballpark figure for replicating, at a basic level, what we have at Maryfield. We have since undertaken some further work to replicate what we are doing and expand it in relation to new IT and further staff. We came up with a figure of about £8.5 million for a new building on a greenfield site. The figure of £5 million can probably now be translated to about £8.5 million for a greenfield newbuild.
1317. **The Chairperson:** There is an indication from the Northern Ireland Office that there are buildings that might be suitable and that it would help you to relocate.
1318. **Mr Gaw:** The Northern Ireland Office is liaising with Land and Property Services to assess what buildings are available. We had a meeting with our sponsor Department as recently as last week. Despite a number of reminders from our sponsor Department, Land and Property Services has not, as yet, identified any buildings.
1319. **The Chairperson:** The figure of £8.5 million is in relation to a newbuild. However, if another building were located, the figure would be £5 million. Is it correct that what is being suggested is a relocation figure of £5 million?
1320. **Mr Gaw:** The £5 million figure was based on our initial findings. We viewed



- a couple of buildings, and it was based on what we would need to do to turn one of those into a clinical, medical and rehabilitation centre.
1321. **The Chairperson:** My understanding is that the PSNI buys in other services, so there is a possibility of picking up any slack. In relation to physiotherapy to get officers back on duty, do you pick up some of the work of the occupational health and welfare services branch?
1322. **Mr Gaw:** Very much so. We are working with the occupational health and welfare services branch on the physiotherapy side and the psychology side. We are formalising contracts with the branch in relation to those areas. The focus is about getting people back to work. As Sheamus mentioned, it has made us give some thought to working with other public-sector bodies on the absentee-management side of things.
1323. **The Chairperson:** In relation to the figures, you are basically selling your services to other people as a provider. What sort of ballpark figure, on a yearly basis, do you bring in from those other organisations, including the PSNI?
1324. **Mr Gaw:** As Sheamus said, there are different contracts. We work with the Royal Irish Aftercare Service, which is a separate contract, and we bring in a significant amount of money from that. In relation to the PSNI, we bring in only enough to cover one psychologist's costs and half of a physiotherapist's costs — perhaps between £70,000 and £100,000.
1325. **The Chairperson:** What would the other significant sum be with respect to the Royal Irish Aftercare Service?
1326. **Mr Gaw:** That contract brings in £400,000 a year.
1327. **The Chairperson:** Are there any legislative proposals or refurbishment needs that might put your budget under pressure in the foreseeable future?
1328. **Mr Gaw:** The big forthcoming pressure will be with respect to the requirements of the Disability Discrimination Act 1995 (DDA). We are not DDA compliant at the moment and, as you might guess, that has practical implications for a number of our clients. In addition, there are implications for our reputation, so I have been speaking with the Northern Ireland Office about an additional capital budget to make PRRT DDA compliant. Initial soundings from our sponsor Department have been very positive regarding additional capital availability for the DDA work.
1329. **Mr Hamill:** In addition, we are at full capacity on our present site. If we were to take on additional work, we do not have enough space within our existing building's footprint for further consultation, treatment or, indeed, training rooms. We would either have to resort to some type of temporary structures or consider building a permanent, purpose-built structure.
1330. **Mr Gaw:** We have looked at the cost of leasing spare capacity in, for example, health centres, but that would be a hugely expensive way in which to go about our business.
1331. **The Chairperson:** You said that you have identified possible opportunities to use your expertise with victims', and other, groups at other centres. I assume that that would be cross-community work with groups outside the security forces?
1332. **Mr Hamill:** Very much so. The model that we have developed and refined is applicable to any group in Northern Ireland, and we would be prepared to provide our services — either in retraining or, more particularly, with respect to psychology and physiotherapy — in any part of the Province to any group that fits the spirit and criteria under which we work.
1333. **Mr Hamilton:** I commend you for the good work that you do in difficult circumstances. The £8.5 million capital requirement that you mentioned is obviously the most significant pressure on your budget. If you were to have that facility, in order to sustain yourselves in the future, how confident are you about the contracts that you have outlined,

- such as those with the police and the Royal Irish? I understand that it makes good business sense to work with victims' groups in order to expand your pool of clients, but, in light of the level of investment required, are you confident that your existing contracts are secure enough to sustain your organisation for the lifetime of any new premises?
1334. **Mr Hamill:** In order to answer that question, I must break it into a number of parts. Our contract with the Royal Irish is to provide services for three years, with an option to renew for a further two years. Obviously, we do not know whether it will take up the option to renew — that is a matter for it.
1335. Everything that we do is based on cost recovery. For example, although the Royal Irish contract is for £400,000, the regiment gets £400,000 of services. We are a not-for-profit company. The occupational health and welfare services branch contract is a contract in the sense that it is has time-renewable points at which the PSNI can, quite rightly, review the arrangement to ensure that it is getting value for money.
1336. If we were to develop any other new business streams, it would be very much around a cost-recovery type of business arrangement. That means that if someone wanted to buy our services and we needed to buy in extra staff then that cost is charged as part of the contract. One of the advantages that we see is the non-profit-making part — we are there to provide the services and clients are buying precisely that service, with the associated expertise and support mechanisms developed by PRRT over the past 10 years.
1337. **Mr McCartney:** Thank you for your presentation. Is most of the trust's current work on the psychological and physical rather than on career and employment opportunities?
1338. **Mr Hamill:** At present, it is split fifty-fifty. There are still quite a number of officers leaving the Police Service each year, and that will continue until 2011. Even after that, the officers who leave on 31 March 2011 will be provided with up to two years' support. We regard our business as being 50% training and careers guidance and 50% psychological and physiotherapy services.
1339. **Mr McCartney:** Is the cost split fifty-fifty or does it cost more to deal with the physical and psychological side?
1340. **Mr Gaw:** The cost is probably about fifty-fifty. We have more staff on the clinical side, but we buy in training expertise and academic expertise.
1341. **Mr McCartney:** Do the psychological and physical services extend to the wider family or is it confined to former personnel?
1342. **Mr Gaw:** The services extend to the wider family.
1343. **Mr McFarland:** The original idea behind the organisation was to see police officers through the retirement process by helping with training and looking after those who had been damaged, which will go on for some time. The trust is now contracting out and becoming a private company.
1344. In GB, for example, military veterans have priority treatment on the NHS, which is illegal here. The Minister cannot offer ex-military people here similar treatment because it is against human rights and equality legislation. If the trust is moving outside its original structure and design — to see police officers through the retirement phase — how does offering UDR, Royal Irish Regiment and ex-police officers, in effect, a separate private health service fit in with equality legislation? If the Health Service here is not allowed to treat military personnel in the same way as the rest of the UK, how come ex-police and UDR can access PRRT as a special private health service?
1345. **Mr Hamill:** I do not necessarily agree that we are a health service. Elements of what we do certainly constitute healthcare in the sense of the psychology and the physiotherapy. The trust was set up by Government in order to provide those services to the police

- and, in particular, to officers who were retiring or leaving the service. There was a recognition that certain needs existed within that police community. For example, if police clients did not, or could not, access psychological services from us, they would have to access them through the National Health Service or some other route.
1346. The Royal Irish Aftercare Service procures services from us. We responded to a procurement process that it issued and were successful in securing the contract, so we provide those services.
1347. **Mr McFarland:** Again, that is part of the process of downsizing the Royal Irish Regiment — those organisations were set up to see people into civilian life. The question is one of viability: can we justify the service when 70 officers leave a year, many of whom do not have psychological problems? How do you see the service going forward and making money, unless organisations such as the RUC Benevolent Fund and the UDR Benevolent Fund buy services off you for their ex-members? However, that is no longer part of the downsizing process. I wonder about the legality of that.
1348. **Mr Gaw:** We are mandated by legislation to provide the services that you mentioned. We are in dialogue with our sponsor Department about broadening our services. Sheamus Hamill spoke about the establishment of a sister organisation called Futures (NI), which will go into the market on a non-profit-making basis. I have held meetings with the Civil Service and local councils to talk to them about any services that we can provide on the health side of absentee management. We will get the legislative side sorted out with our sponsor Department and then broaden our services — we will not be taking on any contracts beyond the vires of what we are doing at the moment.
1349. **Mr Hamill:** Taking psychological care as an example, in the trust we see somewhere in the region of 350 officers a year, most of whom are former officers. We do not see the same people each year, and, although no one knows why and when psychological trauma manifests itself, our figures support the assertion that we see 350 new people each year. We have not seen any tailing off in those numbers — if anything, the numbers have climbed, albeit slowly, each year.
1350. Our prediction for the next number of years is that there will be a cadre of former officers who end up with some type of psychological disorder that will require an intervention. We provide that intervention in what many people see as a secure environment. Many ex-officers are reluctant to discuss their condition or even their former occupation with GPs. Referrals to us are down to the individual — the individual usually self-refers, although we will see some people who have been referred to us by their GPs. Our clients know that they can come to our organisation on their own without having to tell anyone else about their condition or what they may be experiencing.
1351. With regard to the physiotherapy aspect, we obviously see people who have been involved in very traumatic incidents, such as bomb explosions. However, quite a lot of the people we see are officers who suffer from the wear and tear of the occupation that they had. For example, many officers spent long periods of time on foot patrol walking cross-country with the military, so we see people with lower-limb difficulties and hip problems. We see people with back problems, because they wore body armour or had to sit for long periods in vehicles that were not ergonomically adapted for that purpose. We do not see any diminishing of that need as the retired police population grows and gets older.
1352. **Mr McFarland:** Can the UDR people, like the Royal Irish Regiment, self-refer, or do they —
1353. **Mr Hamill:** They come through a different route.
1354. **Mr McFarland:** Are there are no regular Army personnel here at all?

1355. **Mr Hamill:** No.
1356. **Mr Attwood:** There are two points that I want to clarify. The biggest pressure after 2011 will be the new accommodation. I am not clear as to whether you expected that, through NIO processes, alternative accommodation would be identified, rather than looking for a budget line to acquire or build what you have at the moment. Is there any clarity on that?
1357. **Mr Gaw:** NIO has asked us for an indicative budget to put in its budget line. We go through NIO on this.
1358. **Mr Attwood:** I appreciate that, but the Chairperson indicated that the NIO might look internally to see whether there was alternative accommodation to relocate the service. Does that seem the more likely outcome at the moment, as opposed to looking for a newbuild budget, a new purchase budget or whatever other alternative there might be?
1359. **Mr Hamill:** Our preferred choice is to remain on the site that we currently occupy. It is obvious that, if we do remain there, some remedial work will have to be done to the building; it is getting quite old and has not had any maintenance for quite some time. If we have to leave the site, and there is another suitable publicly owned building or location for us to move to, we will require approximately £5 million to make such a move.
1360. A lot would depend on the building that we get in that instance. We might get a building that does not require an awful lot of work done to it; the two or three sites that he have looked at have all been sitting vacant for quite some time and are in a sad state. To turn them into the type of accommodation that we need would require approximately £5 million. A brand-new building on a brand-new site would cost £8.5 million or thereabouts.
1361. **Mr Attwood:** Do you anticipate being served with a notice to quit Maryfield?
1362. **Mr Gaw:** We have been served with a notice to quit with effect from March or April 2011.
1363. **Mr Attwood:** I am mindful of what you said about your workload increasing as more recently retired people cross your door with the range of problems that you identified. Is it not the case that your other core business — giving advice to officers who retire or take severance — will decline with the ending of severance in 2011, subject to any potential future scheme? That core business would decline while the other core business would clearly expand.
1364. **Mr Hamill:** You are quite right; after 2011, the numbers of officers leaving the police will not be anywhere near current numbers. When we considered the matter a few years ago, we took the view that we had a pool of expertise that could be put to use across the public sector. Whether it be the psychological or physiotherapy side of things or careers guidance, those services are already there and are already being paid for by the public purse. We feel that they have an adaptability across the public sector.
1365. I accept your point that the number of police officers needing guidance on careers and retraining will decline quite a bit. However, there is no reason why our service could not be offered to other elements of the public sector.
1366. **The Chairperson:** Given that you work with serving police officers, what impact do you feel the recent upturn in terrorist activity will have on your current and future budgets in both areas of your business?
1367. **Mr Hamill:** Some of this can be a little unpredictable. Certainly, we have received evidence in the past week that some retired officers are anxious and pessimistic about what the future might hold. However, it is difficult to know what effect that is likely to have on serving officers. To extrapolate the situation with the retired police community, it might be that serving officers might feel more under pressure than they have done in the past.
1368. It is one of those things and, as I said earlier in reply to another question, it is



- difficult to know what triggers psychological difficulties in particular. We have commissioned a piece of academic research, which is under way, that we hope will answer some of those questions in about nine months' time, when we have done our work. We are looking at whether there are certain triggers.
1369. For example, some academics believe that retirement itself acts as a trigger for psychological difficulties. When officers leave the Police Service, they leave the comfort of their colleagues and their work environment. They end up at home or doing a new occupation and new things; however, sometimes that is not enough to help them deal with problems that have been dormant for some time. Some officers have been retired for 10 years with absolutely no difficulties. One example is a former officer who drove past the scene of a road traffic collision and suddenly, for no reason whatsoever, all types of events came together and an intervention was required from us.
1370. **The Chairperson:** I will ask a couple of questions that I have asked the other organisations that have appeared before us. Does your agency, as part of the NIO, currently pay value added tax (VAT)? Are you able to reclaim that or does it go directly to the NIO?
1371. **Mr Gaw:** We pay VAT, but because we are a clinical, medical and educational establishment, a number of our purchases are VAT-exempt. We pay VAT of approximately £140,000 a year; we can claim back about £10,000 a year. Therefore, we pay approximately £130,000 net.
1372. **The Chairperson:** I am not sure whether we got a figure for rent. On the one hand, the NIO gives you money and, on the other hand, it takes money away for rent each year. What is the figure for rent?
1373. **Mr Gaw:** The rent is £110,000 a year.
1374. **The Chairperson:** Does that move up or down?
1375. **Mr Gaw:** It tends to be stable. The problem in and around the issue of rent is that it is difficult to know what the landlord's responsibilities are — the lease seems to be lost in the mists of time. In the past year, I have had to start some capital work that I would have thought should be the responsibility of the landlord. Rather than getting into an ongoing debate — there are health and safety issues — we have taken the hit and paid for that work. I do not want to dip into money for front line services to spend on capital projects.
1376. **The Chairperson:** Are you telling me that the NIO is treating you like squatters in the Maryfield complex at the moment?
1377. **Mr Gaw:** I could not possibly say that.
1378. **The Chairperson:** I will not press you on that one.
1379. **Mr Hamill:** We pay our rent, and, to be fair to everyone, a lot of work has been ongoing to try to sort the problems out. However, we pay our rent, and for that we get nothing. The trust pays for everything else, from the grass-cutting to any other work that may need done in relation to the building. As I said earlier, unfortunately the building is getting quite old and tired, so as time goes on it will soak up more money.
1380. **Mr Gaw:** We are in debate with the NIO about the responsibilities of the lease, and who does what, but, as I said, there are certain issues on which one just has to bite the bullet and pay, otherwise they will be ongoing for the next two to three years.
1381. **The Chairperson:** You say that you have to cut the grass; my recollection is that there are fairly big grounds at Maryfield. You could perhaps think about getting a few sheep in, or letting the land as conacre and making a few quid. *[Laughter.]*
1382. Thank you for those answers. Are you aware of any other issues that could have a material or inescapable consequence for your organisation's budget? Is there anything that you have not told us about that you suspect may be hurtling down the train lines at you, and which could have an impact on your budget? I suggest that if policing and



- justice is devolved, and you come back in six or nine months' time to tell us that you forgot to mention £2 million or £3 million, you might not get a good reception at this Committee. If there is anything, now is the opportunity to put that on the record.
1383. **Mr Hamill:** As a trust we have always lived within the budget that has been allocated. Until quite recently we only got the budget on a yearly basis; last financial year was the first time that our budget has been allocated for three years. We work with the allocation that is given to us. Like many others who may sit in this chair, if we had more money we could do more things.
1384. We feel that, with the £2.2 million allocated this year, for example, we can do probably about 70% of what we want to do in relation to providing services to our clients and responding to our clients' needs. If we were allocated something in the region of another £500,000, that would probably allow us to do 90%-95% of what we feel we need to do. However, it is difficult to make predictions about the needs of the retired police community and the serving police community if we continue to do some business for them. If there were capacity for something in the region of another £500,000 per year, that would give us a certain amount of flexibility. Even with our current budget we have increased the number of psychologists in the organisation from three to 11. That in itself says a lot about some of the problems and issues that there are.
1385. In addition to those 11 psychologists, we have a range of associates who are distributed throughout the Province. It is unfair to ask someone to drive from Enniskillen to Maryfield to receive a service, so there are associate psychologists who are paid to provide that service. We do the same with physiotherapy. Again, if we had a little more flexibility we might be able to provide one or two more centres across the Province. By centres I do not mean buildings; I mean people who are already in business and can provide the service that we need through our associate group. There are things like that that would help us to expand.
1386. If the public sector were to see PRRT as a model that could be put to use in helping the wider public sector to address the levels of sickness absence, or to address some of the needs of the other victims' groups throughout the Province, then we would need some flexibility in relation to our grant allocation to allow us to at least start up some of those new initiatives. I do not imagine that that would involve much more than around £500,000 on top of what we are already receiving.
1387. **The Chairperson:** I assume that you are referring to Futures (NI). Are you saying that you need an additional figure from Government for whatever work you want to do, that you are already discussing it with the NIO, and that that figure is around £500,000 in addition to your current budget?
1388. **Mr Hamill:** Yes. If we had that flexibility, it would allow us take the services for our client base from providing 70% of what we want to do to over 90%. That would enable us to cut waiting times — which are very good at the minute, although we could do more work on that. We could expand our associate practices throughout the Province, and the extra money would give us flexibility to provide new specialisms if we needed them for dealing with other aspects of business. For example, with respect to victims' groups or sickness management issues, it may well be that we need counsellors, rather than psychologists. We would have to acquire the services of people with those skills so that we would be in a position to dispense the services that a future customer might wish for or need.
1389. **The Chairperson:** At what stage are your discussions on Futures (NI) with the Northern Ireland Office?
1390. **Mr Gaw:** We have put a business case to the Northern Ireland Office. It is discussing it with its finance people. There are certain financial obligations to be met and tweaks to be made to the

business case. However, the ball is in the court of the Northern Ireland Office at the moment. Shortly, there should be a meeting with some of the senior finance people.

1391. **The Chairperson:** The figure involved is £500,000?

1392. **Mr Gaw:** Yes.

1393. **Mr Hamill:** We see that sum as covering the start-up costs. As I said, any service that we would provide from then would be self-funding. If a Department were to take up our services, the charges would pay for the services. From my point of view, there is an advantage in that there is a non-profit element in that.

1394. **The Chairperson:** Thank you both for coming along today and making your presentation to the Committee. We may want answers to some additional questions; we will write to you in due course if that is the case. We wish you well.

1395. **Mr Gaw:** Thank you very much.



## 24 March 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Simon Hamilton  
 Mr Danny Kennedy  
 Mr Alan McFarland  
 Mr John O'Dowd  
 Mr Ian Paisley Jnr

### Witnesses:

Mr Adrian Donaldson      *Policing Board*  
 Mr Barry Gilligan  
 Mr Sam Hagen  
 Sir Desmond Rea

1396. **The Chairperson (Mr Spratt):** In case there is any doubt, and in relation to certain comments that have been made elsewhere, I want to make it clear that the Committee is presently undertaking very important and absolutely necessary work around the financial implications of devolving a range of policing and justice matters. I also want to dispel any suggestion, speculation or rumour that might exist about “talking up” the figures.
1397. The fact is that the Committee has the authority of the Assembly to undertake this work, and has asked for written submissions from over 20 organisations providing a range of policing and justice services. The purpose of the oral evidence sessions with some of these organisations is to explore further and to probe the extent and reality of the pressures on the policing and justice budget.
1398. The Committee has not yet reached any conclusions about the evidence that it has heard so far. That is a matter to be considered — and which will be considered — later. I expect that it will form a significant part of the Committee's report to the Assembly in due course.
1399. **Mr Paisley Jnr:** I think that a message should go out loud and clear from the Committee in line with your comments. If the Northern Ireland Office thinks that it can facilitate the devolution of policing and justice a lot quicker than this Committee — well, we have seen the mess that it has made of that over the years.
1400. The Committee is working strenuously in a hard, robust and diligent way to examine the figures that are brought to us, not figures that we invent. If Departments that are answerable to the NIO complain properly to us, we have a duty as public representatives to take that on board.
1401. If there is to be devolution of justice and policing, we will take on the responsibilities, but only if the money is there to match those responsibilities. The NIO will not be getting off cheap on this one. The Secretary of State can answer those issues when he comes before the Committee.
1402. **The Chairperson:** Those who have been making those comments will well know who I am referring to.
1403. **Mr Paisley Jnr:** I think he is called Shaun, is he not?
1404. **Mr Kennedy:** No clues, please.
1405. **Mr Paisley Jnr:** That is your starter for 10.
1406. **The Chairperson:** I will not go any further on that matter. I will leave you to make up your own mind.
1407. We move now to the Policing Board oral evidence session. I welcome Professor Sir Desmond Rea, chairman of the Northern Ireland Policing Board; Barry Gilligan, the vice-chairperson; Adrian Donaldson, the chief executive; and Sam Hagen, director of corporate services. You are very welcome.

1408. I ask members to declare any interests. I am a member of the Northern Ireland Policing Board.
1409. **Mr Paisley Jnr:** I am a member of the Northern Ireland Policing Board.
1410. **The Chairperson:** There are no other declarations of interest; if anyone else arrives I will ensure that they declare their interests.
1411. We expect the session to last for up to one hour, and I understand that you will begin by making a short opening statement. We know that there are two sides to your evidence this morning, so perhaps you will keep the two matters separate — the budget for the Northern Ireland Policing Board, and, secondly, the policing budget and the board's relationship to that.
1412. **Sir Desmond Rea (Policing Board):** Thank you for your words of welcome. As I look around the room, I am mindful of the importance of treating people well, because there comes a day when one gets one's comeuppance.
1413. **Mr Paisley Jnr:** Why are you looking at me? *[Laughter.]*
1414. **Mr Kennedy:** He is looking directly at the Chairperson.
1415. **Sir Desmond Rea:** Yes. As you rightly said, I am joined by Barry Gilligan, the board's vice-chairman, Adrian Donaldson, who recently joined us as chief executive, and Sam Hagan, the board's director of corporate services. Lorraine Calvert, who deals with our public relations, is sitting behind us. On behalf of the board, I thank the Committee for its invitation to attend. The Committee will have received a copy of the board's submission, which was considered and agreed by the board at its meeting on 5 February.
1416. The board welcomes the opportunity to attend today. Our aims are, first, to provide the Committee with information about the board's finances, secondly, to expand on the information provided in the board's written submission, and, thirdly, to address the board's role in relation to PSNI finances. Following my opening remarks, I, along with my vice-chairman, the chief executive and the director of corporate services, will be happy to answer members' questions and to provide any information that might assist with the Committee's work. If we cannot answer any questions, we will do the necessary work to come back with an answer.
1417. The board is an executive non-departmental public body, and I note that that status is recommended to remain following the devolution of policing and justice powers to the Assembly. The role of the board is to secure the maintenance of an effective, efficient, impartial and representative policing service and to hold the Chief Constable to account for the exercise of his functions and those of the police and police staff. The board carries out its role in an open and transparent way.
1418. In addition to holding the Chief Constable to account, which we do at monthly meetings, in public session and in private session, the board has a number of statutory responsibilities which require specific resources. Those responsibilities include, as you all know, support for district policing partnerships (DPPs), community engagement — encouraging the public to co-operate with the police in order to prevent crime, including community safety partnerships (CSPs).
1419. I am mindful of the fact that a consultative document on our relationship with DPPs and CSPs has been issued to all interested parties. It has not, as yet, gone out to the public. I have read the report, and, personally, I welcome it. The board has yet to consider the report, but I believe that we will find it to be a positive document, because many of the arguments put forward by the board concerning those bodies and their functions have been incorporated into it.
1420. The board also monitors the PSNI's compliance with the Human Rights Act 1998 and assesses the level of public satisfaction with the performance of the police and DPPs. In addition, there



- are a number of areas of the board's remit which the Committee may not be aware of. For example, the whole area of selected medical practitioners accounts for approximately £315,000 of the board's budget. Members may wish to ask questions about that, and we will be delighted to answer them.
1421. Chairman, you and members of the Committee will have received the board's response to your questions about the board's finances. You will note that the total estimated budget for the year 2008-09 is approximately £8,660,000, and that the board has set its business plan in line with the funding available. Members may find it helpful if I provide a summary of some of the detail that underpins those figures.
1422. Salary costs account for approximately 30% of the board's programme budget, which covers both staff and the nine independent members of the board. The board has 10 MLAs and nine independent members. Approximately 33% of the board's non-staff budget is used to pay for typical running costs — rent, rates, postage, stationery and courier services — and, secondly, expenditure to carry out its work plan. Some of the key elements include: research and surveys; human rights advice; the selected medical practitioner side of the work, which I have already referred to; advertising; and community engagement.
1423. The board also funds 75% of the costs of the 26 DPPs, one in each district council area. The overall cost to the board this year is £3.15 million — approximately 36% of the board's total budget. The remaining 25% of the DPP funding is raised and provided by councils. Most DPPs attract funding of between £100,000 and £120,000, with Belfast attracting estimated funding of £383,000 in 2009-2010. DPPs are important because policing with the community was at the heart of the Patten recommendations. DPPs are an essential element in delivering policing with the community. They relate to the local district commander; they relate to the needs of the local area; they prioritise those needs and input them to the policing plan; they monitor the performance of the district commander against the plan; and they engage with the community in the prevention of crime. The relationship with CSPs is in that latter area.
1424. As regards the board's capital budget, the board is not a capital-intensive organisation. The majority of the fixed assets are furniture and fittings and computer equipment; accommodation is leased. As assets are depreciated on a straight-line basis over five years for IT assets and five to 12 years for furniture and fittings, there is a planned capital expenditure in 2010-11 to refresh the board's computer facilities.
1425. The board has a history of staying within its budget. In 2007-08 it delivered within 3% of its allocated budget, and we are confident that we will deliver within this year's budget. The board develops and delivers its business plans in line with its allocated budget. As the role of the board is to remain unchanged following devolution, I as chairman do not anticipate any significant additional requirements in future years. Neither do I anticipate any significant easements that could be delivered by adjustments to existing plans and priorities.
1426. This statement does not take into account the consultative document that has come out this week in respect of DPPs and CSPs, to which I have already referred. The only area outside the normal business areas that has the potential to become a significant pressure: the discussions in relation to the equal pay claim for junior civil servants could have a significant impact on the board's budget. As I said earlier, we will be happy to take questions on any aspect of the submission.
1427. I turn now to the finances of the PSNI. Chairman, you and the Committee members will be aware from our submission of the board's statutory obligation to provide the Chief Constable with funding for police purposes. The Chief Constable will provide the Committee with a detailed input later

- today. However, I wish to reinforce the board's concern about the availability of sufficient resources for front line policing. Much of the financial pressure experienced by the PSNI recently is a direct result of issues over which the Chief Constable has no control; it is not an issue of due diligence.
1428. The Chief Constable will cover the detail of the figures, but the pressures relate mainly to what can be termed legacy issues, such as the maintenance of the Historical Enquiries Team; claims for hearing loss, the estimates for which continue to rise significantly; support for public inquiries, and the associated legal fees; and pension costs. All those pressures place a significant burden on the PSNI and make it difficult for the Chief Constable to continue to deliver an effective, efficient and modern policing service.
1429. Indeed, those significant pressures have meant that the PSNI has not been able to take forward projects that are important for the delivery of policing with the community. In reaching a balanced budget for next year, the Chief Constable has had to defer and set aside plans to modernise the facilities for receiving and dealing with calls for assistance — call handling, in other words; to continue to significantly reduce overtime; to introduce police community support officers (PCSOs) — an issue which the board sees as particularly important; and to develop or modernise the police estate.
1430. I wish to draw members' attention to the relative inflexibility in the PSNI finances due to the maintenance of the establishment of 7,500 officers. The associated costs account for around 80% of the total PSNI budget, and, therefore, only the remaining 20% can be played around with. The commitment to retain 7,500 officers means that any financial pressures must be met from 20% of the budget, which is approximately £200 million. Significant pressures such as hearing-loss claims must be dealt with from within that £200 million and not the overall £1 billion budget. That puts the current difficulties in clear perspective. As
- discussions on the financial settlement in the next comprehensive spending review begin, there will be a focus on the financial sustainability of retaining an establishment of 7,500, which was the number of officers recommended by Patten.
1431. The current security threat is placing further operational and financial pressures on the PSNI. The murders of the two soldiers in Antrim and of Constable Carroll in Craigavon are stark reminders of our dark and difficult past. The Chief Constable and his officers are pursuing the investigations into those murders and have had to make a separate bid for additional money to pay for those; of course, the board fully supports that bid. On the back of the three murders, I spoke to the Northern Ireland Office and drew its attention to the pressures that the police are under. Should the current threat level remain, it will have a significant impact on the PSNI's finances and its ability to provide the style of community policing that the service and the board would wish to provide.
1432. Due to the hard work of many communities and public representatives, there has been great success in delivering more peaceful marching seasons in the last few years. The board hopes that the current security threat will not lead to increased tensions at that time of year, because such tensions all too often spill over into public disorder that requires a police response. The costs of such a response would have to be met from the Chief Constable's ever-decreasing pot and, therefore, detract from normal policing. I urge you all to use whatever influence you have to continue to deliver more peaceful summers. In the past two or three years, local representatives of the different political parties have used their best efforts, and they have secured more peaceful marching seasons. The board and I hope that that continues.
1433. **The Chairperson:** In your submission, you stated that as a result of legislative changes and staffing issues, the Northern Ireland Policing Board adjusted its current work plan to stay within its budgetary allocations. Will

- there be a knock-on effect for future budgets as a result of those actions? Can those adjustments be monitored and managed, on an ongoing basis, to relieve the pressure on budgets?
1434. What additional pressures, if any, will arise in relation to the budgeted police grant for 2009-2010? You identified some of them, but I do not think that you provided figures. It would be helpful if the Committee had some idea of the figures that you and your colleagues will be considering.
1435. I remind you that the proceedings are being reported by Hansard staff.
1436. **Mr Sam Hagen (Policing Board):** The Northern Ireland Office sets our budget, and we draw up our business plan to live within that budget. Our submission states that our business plan reflects the budget that we have been given. You asked whether that will have a knock-on effect in the future; we are given a CSR settlement over three years, and we plan our corporate plan every three years and our business plans on a yearly basis. We do not foresee significant problems living within our budget and fulfilling our business plan.
1437. **Sir Desmond Rea:** In respect of the policing budget, a funding gap was identified. First, we had pressures in the last four months of the current financial year. Considerable efforts were made by the police, and by the board working with the police, to seek to resolve those pressures. We managed to do that by pushing some of this year's obligations into next year. However, that means that there will still be problems coming down the track.
1438. A funding gap of £101 million was identified in 2009-2010, and £75 million in 2010-11. In discussions between the board, the police and the Northern Ireland Office, it was agreed that we should set aside the pressures emerging from hearing-loss claims and equal-pay claims. As a consequence, the residual funding gap identified in 2009-2010 was £43.7 million, and, in 2010-11, it was £29.4 million.
1439. In order to reach a balanced budget for 2009-2010, the PSNI proposed that internal bids for funding should be rejected; PCSOs should not be proceeded with, as I outlined to you; a 5% cut should be imposed across transport, telecoms, supplies, etc; staff overtime should be reduced by 8% — incidentally, the projected figure for the following year is 20%; and police recruitment in 2010-11 should be stopped. If those cuts are implemented, there will be a remaining pressure in 2009-2010 of £13.8 million and a surplus in 2010-11 of £13.8 million. NIO approval would have to be sought to transfer budget provision from 2010-11 back into 2009-2010.
1440. Those are the figures with which you are playing. I am sure that you will want to ask the Chief Constable further questions about those. Given our role regarding the maintenance of the Police Service of Northern Ireland, we, as a board, have been working closely with the Chief Constable and his team — particularly David Best, who is responsible for finance. When we have approached the NIO, we have done so jointly. I have no doubt that you, as a Committee, are concerned about that. The resources and improvement committee monitors expenditure against budget on a continual basis. Board members regularly meet David Best and the Chief Constable in order to question them about expenditure against budget.
1441. **Mr Barry Gilligan (Policing Board):** Overtime is an area of pressure in the budget. Members and former members will be aware that a lot of work has been done with the PSNI over the lifetime of this board to reduce the average daily overtime hours, which were certainly out of kilter when compared to other police services.
1442. Members need to be aware of the very direct correlation between overtime and the policing of the community. On a visit to Lisburn, I was informed that £5,000 had been made available to deal with the specific problems of underage drinking and youths causing annoyance. That was very effective. When I asked

- where the £5,000 went, I was informed that it went directly to pay for overtime. Our chairman mentioned the possibility of a difficult marching season. If that was to happen, or there was dissident activity, it would impact on overtime that would ordinarily have gone into the policing of the community.
1443. **The Chairperson:** Is the board aware of any figures in relation to overtime due to the pressures of the past few weeks?
1444. **Mr Gilligan:** I am not currently aware of the specific figures. However, from my conversation with the Chief Constable, there is no doubt that practically all of the overtime that is available is going towards addressing the present security threat.
1445. **The Chairperson:** Just so that it is clear for the record, Sir Desmond, in relation to what you said regarding equal pay and the hearing-loss claims, does that amount to more than £100 million over the next two years? Figures of £90-odd million have been bandied about in relation to the hearing-loss claims. Are we saying that the combined figure for equal pay and hearing loss is in the region of £100 million over a two-year period?
1446. **Sir Desmond Rea:** There has been considerable conjecture in respect of the hearing-loss claims. However, as a result of the discussions with the Northern Ireland Office, it has been agreed that given that those are legacy issues — particularly the hearing-loss claims — the only sensible way in which we could proceed was to take it out of the consideration. The NIO agreed. In other words, it said that it would discuss those two areas with the Treasury. It certainly accepted the rationale for the way in which we jointly approached that issue.
1447. **The Chairperson:** Is it fair to say that that is an increasing sum, particularly on the issue of hearing loss? Is that figure rising on a monthly basis?
1448. **Sir Desmond Rea:** That is what I understand.
1449. **Mr Hagen:** It is about provision accounting. The figures that are being used relate to providing for future bills. Cash will not actually be going out the door, but it has to be accounted for when it is known about. Our understanding is that hearing-loss claims are increasing. The money is provided for on the basis of the number of claims that are received. The number of claims being received each month is increasing.
1450. **Mr Kennedy:** Good morning, Sir Desmond. You are welcome, and so are all of your colleagues. Thank you for your presentation and for your personal commitment to policing as you prepare to step down as chairman over the coming months.
1451. The Committee has no difficulty in finding common cause with the Policing Board in ensuring that adequate resources are provided for policing in Northern Ireland. The Committee must, however, also be sure that every possible efficiency saving is made without reducing the service or impacting adversely on it. You were strong in your defence of DPPs and CSPs. There is a general view that they are sometimes seen as expensive talking shops that produce little or nothing, and their cost-effectiveness is questioned.
1452. Do you plan to streamline those partnerships as part of the review that was indicated? Will there be savings, or are you content that they will continue to operate as at present? There is also a strong suggestion that there is some duplication between DPPs and CSPs that could be addressed.
1453. **Sir Desmond Rea:** The chairman of the community engagement committee is Alex Maskey and his vice chairman is Barry Gilligan, who is also vice chairman of the Policing Board. Barry will answer those questions.
1454. **Mr Gilligan:** The board's view is that DPPs have contributed significantly to increased confidence in policing. That view is shared by many visitors

- who study the whole new policing arrangements here.
1455. I will not bore the Committee with statistics, but the board's surveys indicate a very strong level of confidence in policing. We are not complacent about it, but the Chief Constable has pointed out time and time again that Northern Ireland is one of the safest areas in these islands in which to live. The board attributes that in many instances to the very close working relationship that the local community has with the PSNI.
1456. There are undoubtedly some areas where that does not work as effectively as in others; however, the board has a mechanism that enables it to compare the efficiency of DPPs. I believe that the board's investment of £3.15 million in DPPs represents very good value for money, but we are not complacent about that.
1457. In respect of savings, I would like to see investment in DPPs going up as a result of the document that Desmond talked about at the outset — it describes the closer working relationship between DPPs and CSPs. I would see that very much as the DPPs taking on a bigger role; however, there should be a net saving to the public purse. If you add together the amount of money that we currently spend and the amount currently spent on CSPs, there should be a net saving, albeit that the board believes it should have a bigger budget to deal with that.
1458. **Sir Desmond Rea:** A further point that emerged in the consultative document issued by the Northern Ireland Office is that the reconstitution and reduction in number of local councils in 2011 affords a possible opportunity to reduce the number of DPPs. However, in reducing the number, DPPs become more distant from rather than closer to the community. Nevertheless, that is a possibility. In other words, coterminosity will become an issue. I have no doubt that the board will discuss that and make its wishes known to the Chief Constable at the appropriate time.
1459. **Mr Kennedy:** On the issues of police resources and of the police reserve, the current security climate and the situation on the ground have caused concern, particularly in light of the potential closure of quite a number of local police stations and, almost automatically, a reduction in the number of police reservists. Where is the Policing Board on that issue? Is it looking at it? What projections do you have in relation to police resources on the ground, that is, actual police officers — as opposed to members of DPPs or community activists — who can respond to criminality and all its associated problems?
1460. **Sir Desmond Rea:** I will deal with the part of the question that refers to the closure of police stations. As you are politicians and you deal with people's concerns, you will no doubt be aware that there were proposals for the closure of 16 police stations. However, the board did not feel that sufficient account had been taken of the alternatives that were being proposed for policing communities in those areas, alongside those proposals. Coincidentally, the board also felt that the documentation did not take sufficient account of the dissident threat and the policing of that threat — and that was before the recent killings. The board asked the Chief Constable, and we sent the document back and said that we would not consider it until he came forward with reasoned proposals in both those areas.
1461. We have yet to receive a reply to that, but that is not a criticism. The PSNI will come back to us at the appropriate point in time. They may well come back with proposals in respect of six or seven stations and leave a second tranche to a later date. In other words, we asked the hard questions, and we told them that we would not consider the document, and the meeting has been postponed.
1462. Bearing in mind the constituency that you represent, I think that your question about police officers relates to the full-time reserve, and you wrote to me about that issue. I have written to the



- Chief Constable about it, but I have not received a reply from him. I wanted his risk assessment to be part of that reply. However, I will take the matter to the board and reply to you on the back of that.
1463. **Mr Paisley Jnr:** I welcome the delegation from the Policing Board, as Danny has rightly done. I want to go back to the issue about there being no requirement for significant funding beyond what you are getting as a board. Let us look at board funding first of all. In the answer to Danny's question about DPP versus CSP funding, there appears to be an anomaly in respect of competition, as organisations are doing some of the same work, or some of their work is overlapping. Can I take from what you have said that there is potential for a budget pressure if that anomaly is not dealt with immediately? Has the board come to any conclusions about how that might be addressed, so that we can streamline the funding and then do, as Mr Gilligan has suggested, that is, direct more targeted resources to it?
1464. **Sir Desmond Rea:** First, I do not wish to do any injustice to the report. It will, no doubt, come to the Committee, and the Committee will make its own judgement on it. What is basically being said in the document is that the Minister believes that there is a reasoned case for bringing together DPPs as and when the review of public administration takes place. There are financial issues in there, and that is one of the things that he says need to be looked at. In the meantime, he is saying that he has been out there — and I attended a DPP meeting with him, along with the CSP, in Craigavon, where the two senior administrators share an office — and that there is evidence of good practice. In the meantime, he would like to see movement — he is correct in saying that — and he would like to see people voluntarily moving to come together, and implicit in that is that there could be savings.
1465. **Mr Paisley Jnr:** That sounds like some carrot, but there will have to be stick as well. Is there stick in the document — or baton?
1466. **Sir Desmond Rea:** I cannot remember definitively whether that is the case. Therefore, I had better not answer.
1467. **Mr Gilligan:** I will put the matter into context. I put the Policing Board and DPP costs at £3.15 million, 35% of which is spent on DPP managers and other staff. Common sense says that, at the very least, we could achieve a common secretariat, which would enable an immediate saving.
1468. **Mr Paisley Jnr:** I am trying to suggest that a budget pressure might arise if the matter is not addressed.
1469. **Mr Gilligan:** There might be.
1470. **Mr Paisley Jnr:** The other issue is that you are tasked by the Policing Board to deliver an efficient and effective Police Service by, essentially, securing a budget that is fit for purpose. In the past year, how difficult has it been to deliver a balanced budget?
1471. **Mr Gilligan:** I want to reiterate the chairman's words from the start of the meeting. Our budget is generous but not very flexible. It amounts to approximately £1 billion, 80% of which is allocated to wages and salaries and 20% to other costs. With a given of 7,500 officers, if we are told to find a 3% efficiency saving on our entire budget, we cannot touch 80% of it. Therefore, on a balance of £200 million, a 3% efficiency saving becomes a 15% saving. We have been there; we have done that through the Gershon review. We did it several years ago, but we can only go so far. At a police finance meeting, someone asked me, as a businessman, what to do during difficult times. First of all, we should turn to the reserves. The PSNI has no reserves, and it has not been allowed to carry over reserves for the past couple of years. Therefore, the well is pretty dry.
1472. **Mr Paisley Jnr:** You said that 80% of the budget cannot be touched. However, there is an indication that you, perhaps, might have to consider reducing the number of recruits or the number of officers from 7,500. Given the current climate and the current pressures

- caused by the dissident threat to police officers, what sort of message, in your view, would that send to the community?
1473. **Sir Desmond Rea:** My recollection is that there is no intention to reduce the number of recruits in 2009-2010.
1474. **Mr Paisley Jnr:** Yes; but what message would that send?
1475. **Sir Desmond Rea:** I am not sure that reducing the number of recruits sends a good message. That is my personal view, because the board has not discussed the matter. It is important to retain that number until there is significant reason for change. As Barry said, the total budget, including capital, amounts to approximately £1.2 billion.
1476. **Mr Paisley Jnr:** I agree that cutting recruitment would not be good. What do you think about reducing the total number of police officers? If the Policing Board agreed to or recommended a reduction in numbers, would that send a message to the effect that the community has been depleted of a service?
1477. **Sir Desmond Rea:** Patten asked what should be the size of a police service in Northern Ireland if the population of 1.5 million or 1.6 million was transferred to a similar geographical area in England. We must not forget that, at that stage, the RUC had a total of 13,000 officers. That figure comprised 9,000 full-time officers, and the remainder were full-time Reserve and part-time Reserve. Patten decided that 4,300 officers would be required, against the reality of 9,000. However, he acknowledged that Northern Ireland is not a normal society because of the continuing terrorist threat from both identities and the civil unrest in the summer period.
1478. If one were to take the typical norms today — in other words, for example, the number of police for every 1,000 people in the population in England and Wales — the figure of 4,300 would be more in the region of 6,100, as I understand it. In a sense it is obvious: if the dissidents went away, if the loyalists decommissioned, if civil unrest in the summer period came to an end, and assuming that criminality in both identities is contained by effective and efficient policing, there are prizes to be won. Ultimately, following the devolution of policing and justice, the Assembly will be responsible for that budget, which will be competing with education and health.
1479. **Mr Paisley Jnr:** I understand the public-relations message; it is a very powerful message and one that I do not want to diminish. However, as the longest serving chairman of any major policing authority in these islands, you have a fair grasp of what is going on, and what the political appetite is, what the political stomach is. In your view, is there the political appetite, is there the community appetite and is there the ability to deliver policing in Northern Ireland, as it currently stands, with a reduced number— I think you mentioned a figure of 6,100 — of police? Is that possible?
1480. **Sir Desmond Rea:** It is not possible as long as the threats continue.
1481. **Mr Paisley Jnr:** I stress again: we police the situation as is.
1482. **Sir Desmond Rea:** You are correct. However, I am pointing out that there are prizes to be won.
1483. **Mr Paisley Jnr:** I accept that, and I think that that is a positive point to have on the agenda.
1484. The Patten Report suggested that there should be a police academy or college. I understand that money has been set aside for the bricks and mortar to build that. Are there any medium- to long-term pressures on delivering that ideal, that goal? Can that be delivered under the present police budget?
1485. **Mr Gilligan:** I think that the capital can be delivered because the capital has been set aside for it. There is no doubt that training costs will go up when the new college opens in 2012. Those increased costs, which are probably around £5 million a year, will have to be found from the existing police budget.

1486. **Mr Paisley Jnr:** Where do you imagine that that money will be found if the budget does not increase?
1487. **Mr Gilligan:** To be fair to the PSNI, I have looked at its budget over the past few years, and I have looked at the work that has been done in securing efficiencies, and I sometimes ask myself: could the same not be done in every Government Department in Northern Ireland? Over the years, the PSNI has managed to achieve a balanced budget. I am sure that the money will be found, not least because, in my view, training is hugely important. The cost of not training could be significantly higher than the money that we are talking about. Specifically where that money will be found, Mr Paisley, I do not know. However, I am confident, given the importance of a new training facility, that it will be found.
1488. **Mr Paisley Jnr:** I set that against your earlier answer that there are 80% of costs that we cannot touch. The money has to be found from the remaining 20%. It does not readily come to mind as to where you would find the additional money, within that 20%, unless there is an increase in the budget. You are a business man. Do you not agree?
1489. **Mr Gilligan:** There will certainly be significant pressure on the budget.
1490. **The Chairperson:** Perhaps you could quickly just clarify a point that Mr Kennedy made. Is the policy of the closure and disposal of police stations driven by financial pressures as much as by operational requirements?
1491. **Mr Gilligan:** No, it is not driven by financial pressures.
1492. **Mr McCartney:** Thank you very much for your presentation. What role does the board play in scrutinising the validation process of the budget for the PSNI?
1493. **Mr Hagen:** The Policing Board has a number of committees, one of which is the resources and improvement committee. The director of finance and support services for the PSNI presents figures to the committee each month on Police Service spend. He also presents the policing budget to the committee. The budget, as prepared by the Chief Constable, is presented in draft form. After the budget has been considered and scrutinised by the committee, it is then presented to the parent Department in final form. Therefore, the Policing Board's role is between the draft form and final form of the budget. That is the process that we use.
1494. **Mr McCartney:** If any part of the budget is overstated or understated, does the Policing Board have a role in bringing that to the attention of the PSNI?
1495. **Mr Hagen:** The committee goes through the budget in detail, comparing the figures with those of previous years and examining the assumptions that have been made. Therefore, the committee goes through the budget in quite an amount of detail.
1496. **Mr McCartney:** This morning, Sir Desmond outlined the pressures that legacy issues — the Historical Enquiries Team, hearing-loss cases and public inquiries — place on the budget. If those pressures were removed and realised, or satisfied, in another way, what relief would that bring to the budget? What is your appraisal of those pressures on the budget?
1497. **Sir Desmond Rea:** That is an interesting question, because we have been arguing with the NIO that legacy issues should be removed from the current policing budget. We believe that that is an argument that, above all, should be taken up by the Assembly and by the First Minister and deputy First Minister in their negotiations with the Northern Ireland Office and the Treasury. We have argued strongly that that should be the case. What was the other part of your question?
1498. **Mr McCartney:** Would removing those legacy issues relieve overall pressures?
1499. **Sir Desmond Rea:** If those pressures were removed, there would be considerable relief. One of the most substantial sums has not been mentioned. Do not forget pension costs;

- historically, we had a complement of 9,000 police officers, which is a sizeable number.
1500. **Mr McCartney:** Do you consider the pension issue to be a legacy issue as well?
1501. **Sir Desmond Rea:** We have argued that it would be better if that issue were tidied from a particular date and time.
1502. **Mr McCartney:** The Committee heard evidence, either directly or indirectly, about an approach that was used at corporate level whereby hearing-loss claims formed class actions and were settled. Is there a new approach, or could there be a different approach, whereby such claims are contested more rigorously?
1503. **Sir Desmond Rea:** It might be better if you leave that question for the Chief Constable, as he will be able to give you a definitive answer. David Best is with him, and he will give you the authoritative answer in respect of that. I am aware of the fact that there are cons of a class action. Therefore, a different approach has been adopted. However, the Chief Constable and Mr Best are the authoritative sources on that issue.
1504. **Mr McCartney:** Do you envisage that there will be improvements in the role that the Policing Board has in the process of securing a proper budget for the PSNI, which to date has been carried out with the NIO? What would be the best scenario for the Policing Board: to continue with that scenario or to have a justice Department that would negotiate the budget? Which process would be the most advantageous for you?
1505. **Sir Desmond Rea:** All of us are realists. If the transfer of policing and justice occurred yesterday, we would operate in exactly the same way as we have operated with the NIO, and we would expect our reasoned arguments to be respected by whoever it was.
1506. **Mr Gilligan:** Another point that I should add is that, obviously, we do not look at budgets in isolation. We take account of the 43 other police services in the UK and the Garda Síochána by benchmarking how much overtime they have and what sort of office space they use. That has been one of the factors in driving down overtime hours, which were totally out of kilter.
1507. **Mr McFarland:** Thank you for your presentation. On a housekeeping point, I struggled for some time to work out how you were being given £8 billion to run the Policing Board. That figure must either be written as £8,666,000 or £8.6 million. At present, however, in your paper it appears twice as £8,666 million. I understand what is meant, but it would be difficult for an outsider coming cold to Committee records. It would, therefore, be useful to have an accurate figure in your paper.
1508. **Sir Desmond Rea:** That is a valid criticism.
1509. **Mr McFarland:** Both you and the PSNI commission consultants to carry out studies. Is there any scope to co-ordinate the studies, so that you do not each spend what is, I suspect, quite a lot of money over the years on such consultations, studies, and so forth?
1510. The devolution of policing and justice powers will involve some 21 MLAs, including those on an Assembly Committee overseeing the Minister and the Department, which has a link to you. The Policing Board already oversees the PSNI. Given that all those people will be involved and there is only a single pot of money available from the block grant, how long can the funding of £8.6 million be justified and continue?
1511. **Mr Gilligan:** In answer to your first point, the question of duplication and value for money is examined by every Policing Board committee: for example, at a recent meeting of the community engagement committee, chaired by Mr Maskey, proposals were put to us that we spend £60,000 on a survey. A particular survey was under discussion, and the committee was unanimous in its view that a number of surveys had already been carried out on a similar theme. The committee, therefore,

- decided not to proceed and tasked officials with studying the results of those other surveys. We are, therefore, constantly mindful of duplication.
1512. Was your second point about how long will we continue to receive funding of £8 million?
1513. **Mr McFarland:** Yes, and it is based on the amount of people who will be involved: a total of 21 MLAs, 11 on this Committee and 10 others, a Minister, and an entire Department. This Committee will oversee the Department and Minister and hold them to account on the Floor of the House, and so forth, and the Policing Board holds the police to account. Given the constrained financial position in the current recession — and that will become worse — how long will the luxury of £8 million for the Policing Board last?
1514. **Mr Gilligan:** I do not consider £8 million to be a luxury.
1515. **Mr McFarland:** Consider that amount in the great scheme of things.
1516. **Mr Gilligan:** During the years of its existence, the board has proven to be extremely effective. From your past experience as a member of the Policing Board, you will know that the level of accountability and the policing structures that are in place are the envy of many. I argue that £8 million is money well spent, and I suggest that there are many other areas at which you might look to make savings of £8 million, rather than at the Policing Board.
1517. **Sir Desmond Rea:** Perhaps Sam will tell the Committee what consultancy exercises have been conducted in the past five years.
1518. **Mr Hagen:** Our main consultants are advisers on human rights, and that is our main cost.
1519. **Sir Desmond Rea:** I would like to add a point on human rights advisers. At 10.00 am this morning, we launched a thematic inquiry on domestic abuse. I have read that superb piece of work. I commend it to the Committee, and I will ask for a copy to be sent to each and every member. It addresses an essential problem in society and represents money well spent.
1520. I noticed in some of the papers that there has been recent scrutiny of the PSNI's use of consultants, some of it by the Northern Ireland Audit Committee. The Policing Board is continuing that scrutiny.
1521. **Mr Hamilton:** The issue of the closure of police stations was raised. The other side of that is the sale of the property and the realisation of some receipt. What happens to receipts for the sale of police stations or other elements of the police estate? Are they retained by the police, or do they go, in all or part, back to the NIO or the Treasury?
1522. **Sir Desmond Rea:** There are issues about that in the current economic climate.
1523. **Mr Hagen:** The PSNI has a capital budget which is set for the comprehensive spending review period. It has an amount to spend and an amount that it says that it will receive, from, for example, the sale of police stations. The difference between the two is met by the grant that it receives. If it gets less for the receipts than estimated, then it has to meet the difference. If it gets more than estimated, the surplus is handed back to the Department. However, in that case, the PSNI can bid for that, along with other elements of the Department.
1524. **Mr Gilligan:** In respect of the college, the projected disposal of sites currently used for training is directly offset against the capital expenditure on the college, so the PSNI will get the benefit of that.
1525. **Mr Hamilton:** If a decision is made to close a station on purely operational grounds, and the PSNI does well out of it, that is almost a disincentive. If it sells a lot and does well, it acquires a surplus to which it does not have 100% access.
1526. **Mr Gilligan:** Those days have gone.



1527. **Mr Hamilton:** Yes. I understand that.  
*[Laughter.]*
1528. **Sir Desmond Rea:** Tears in his eyes.
1529. **Mr Paisley Jnr:** Let us give a pocketful of sympathy here.
1530. **Mr Hamilton:** Say we were back in the good times again, and the PSNI was doing well: the system does not provide much of an incentive. There may be good operational reasons to close a facility or to sell off a piece of land. The police have identified significant pressures in their submission.
1531. **Mr Gilligan:** This comes back to the answer that I gave the Chairman: financial issues do not drive the closure of stations.
1532. **Mr Hamilton:** I fully appreciate that. However, where there is a capital problem and a gap and a deficit, selling off pieces of land is one way to fund that, if the decision has already been made to get rid of the land already for operational reasons. If the PSNI does not retain all the proceeds, that does not help it to meet other deficits. A mechanism might be looked at to encourage the wise disposal of assets.
1533. **Mr Hagen:** There is an argument that, where we estimate the proceeds of the sale of a police station or piece of land correctly, and need a mobile station to fill the gap left by the closure, the cost of that mobile station should be included in the estimate. The gap, then, would not include the spending on another mobile station.
1534. **Mr Hamilton:** Certainly, retention of anything over and above the estimate would be useful for the policing budget. That goes without saying, and this might be worth looking at.
1535. **The Chairperson:** I am conscious that we are now running out of time. The Chief Constable has arrived, and he has another engagement to attend. I do not wish to detain you too much longer. However, I have a couple of final questions which we have asked everyone who has appeared in front of the Committee. Does the Policing Board currently pay value added tax (VAT) and, if so, can it be reclaimed?
1536. **Sir Desmond Rea:** The answer to that is yes and yes.
1537. **The Chairperson:** Is it a significant sum?
1538. **Mr Hagen:** It is not significant for the board.
1539. **The Chairperson:** You do pay VAT, however?
1540. **Hagen:** We pay VAT, and then we claim it back. We are allowed to keep what we reclaim.
1541. **The Chairperson:** Are you aware of any other issues that could have material or inescapable consequences for your budget in the future? Again, everybody has been asked that question. In other words, is there anything that you are not telling us about at present? It will be a sad day if, after the devolution of policing and justice, you return to us in 18 months' time and say that there is another £2 million or £3 million that you knew about, but omitted to tell us about. I suggest that should that happen, you will not get a good hearing.
1542. **Sir Desmond Rea:** In respect of the board, the answer to your question is no. However, there is major concern within the board that the window of opportunity could be missed in signing up to devolution of policing and justice without securing a settlement that, above all, takes into account legacy issues and enables the PSNI and the board to move forward on a level playing field.
1543. **The Chairperson:** OK. Thank you very much indeed for the evidence that you have given us. I know that there are a number of other issues. An hour is not really long enough to cover all of the areas that we wanted to probe into. We hope to send you a number of additional questions this evening. We would ask you to reply to most of those questions, if possible, before the Secretary of State appears in front of us next week.

1544. **Sir Desmond Rea:** If we can answer any questions that will facilitate your programme, we will be delighted to do so.

1545. **The Chairperson:** Thank you very much, gentlemen, for coming along today. We will talk to you in the not-too-distant future.

1546. **Sir Desmond Rea:** Thank you.

## 24 March 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mr Danny Kennedy  
 Mr Alan McFarland  
 Mr John O'Dowd  
 Mr Ian Paisley Jnr

### Witnesses:

Sir Hugh Orde	<i>The Chief Constable</i>
Mr David Best	<i>Police Service of</i>
Mr Mark McNaughten	<i>Northern Ireland</i>

1547. **The Chairperson (Mr Spratt):** I welcome Sir Hugh Orde, the Chief Constable, David Best, director of finance and support services, and Mark McNaughten, the strategic financial manager of the PSNI. You are all very welcome. To clear up one piece of business before we move any further, I declare that I am a member of the Northern Ireland Policing Board.
1548. **Mr Paisley Jnr:** I am a member of the Policing Board.
1549. **The Chairperson:** Thank you. There are no other declarations of interest at the moment. Chief Constable, during this session there is a possibility that we may have to leave the meeting in order to vote in the Chamber; if that happens, I apologise, but there is nothing we can do about that. I know that you have time pressures as well, and we will try to deal with that as quickly as possible if it happens.
1550. **The Chief Constable (Sir Hugh Orde):** Thank you, Chairman; I will keep my opening comments brief. It will be more useful if I answer the questions of the Committee, rather than say what I think you would like to hear.

1551. The first point I would like to make is that the PSNI has focused on efficient financial management during the six and a half years in which I have had the privilege of commanding the organisation. By way of example, in the last three years over £71 million has been saved through Gershon efficiency, the target being £62 million. We are certainly committed, and hope to make similar savings in the next three years. We are aware of the importance and the high cost of policing in Northern Ireland.

1552. The PSNI has consistently come in on budget in the last six or seven years. Its accounts have never been qualified by its oversight bodies, and, as I said, it has delivered efficiency savings. That being said, we face significant funding pressures this year and looking forward. It is right to point out to the Committee that the funding currently available in the system is not sufficient, in my judgement, to sustain the current level of police numbers — 7,500 — into the future, with the appropriate infrastructure to move towards 2011. We are looking to fully recruit 440 new officers in the next financial year. The year after that it will become difficult. That could, of course, be the first year of devolution — the Committee should be aware of that.

1553. There is no mechanism to further reduce the number of officers other than by natural wastage. There is clearly no more money, and there is clearly no “Patten II”, for want of a better description. We are limited in how quickly we can downsize our organisation, as we anticipate no more than 70-100 officers leaving the service per year.

1554. The current funding is based on all full-time reserve (FTR) officers leaving the service by March 2011. Members will be fully aware of the current threat, which I am on record as declaring to be of

- major concern over the last 16 months, and which sadly led to three murders recently. That level of threat is currently being reviewed, and we are already in discussions with Government should our assessment be that we need to retain some of those individuals. Any delay, of course, will incur additional costs.
1555. There are significant pressures from legacy issues; in particular, hearing-loss cases, and the Northern Ireland Civil Service equal pay claim. The recent policing budget could only be agreed through the agreement of the Government to set those issues aside in our current budget planning. The hearing-loss cases increase week in, week out; there seems to be a concerted advertising effort among certain firms of solicitors encouraging claims, and they are reaching in excess of 150 per month. That is a significant pressure, continuing into the future, of which the Committee needs to be aware.
1556. On the issue of pension costs, because of the way we are treated with pensions — which, in essence, are uncontrollable — in my judgement there has to be a system whereby our pension liabilities are prevented from impacting on current police expenditure. That would be in keeping with the rest of the United Kingdom, where pensions are collected and paid for centrally.
1557. In addition, the other legacy issues we continue to face in relation to funding of public inquiries and inquiries from outside sources are simply not sustainable. My current focus is on policing the present; policing the past is a significant drain on current police expenditure, which is allocated for service delivery now. In the prevailing security situation there is a direct impact from any costs that I cannot put into front line policing.
1558. As a result of the current increase in terrorist activity, I have been to speak with the Government. We are in discussion over significant additional funding over the next two years to enable us to continue to deliver an effective level of service against, commensurate with, and proportionate to that terrorist threat.
1559. **The Chairperson:** Regarding the historic hearing-loss claims that you mentioned, and the pension commutation payments, the current PSNI budget has a deficit of £24.4 million. Do you envisage further scenarios which would have an extreme impact on the budget? In relation to the dissident threat over the past weeks and the horrific murders which have taken place, can you tell us whether there is any indication in monetary terms of any pressure that that may bring?
1560. As regards future pension liability, is the PSNI treated any differently to other police services throughout the United Kingdom? It is important that we get that on record.
1561. **The Chief Constable:** As regards the terrorist threat, we have significantly and consistently reduced our overtime budget by around 50% over the past six years, from around 14,000 average daily hours to around 7,000. That is the right thing to do, because we were high on overtime, and we needed to make sure that it was being used appropriately. There is, without doubt, a direct relationship between the situation that we are currently facing, the activity that we are undertaking, and the expenditure on overtime. Overtime is far more flexible; it enables us to disrupt activity. Investigations are working flat out, 16 hours a day to solve these crimes, so there is a spike in overtime at the minute.
1562. We have spoken to the Government, and are looking at a number of areas. We have asked for additional help in relation to helicopter top cover. Of course, we have no military helicopters at all. We have a plan to purchase a new helicopter in the system, about 18 months down the line. That is simply the lead time to purchase it: we have an airframe.
1563. We are looking at additional money for armoured vehicles. We have downsized our armoured fleet quite appropriately, and are now having to review that to give our guys the confidence to go out and

- deliver community policing in vehicles that look like police vehicles and are not Land Rovers, so it is in a consistent and appropriate style.
1564. We are also looking at overtime in order to bridge the funding gap so that we can provide the right level of cover to our guys in order that they can deliver an effective service and an effective investigation in these particularly horrific and complicated crimes. You will be aware that one person was charged last night, and I am confident that we will make further progress. However, prisoners are expensive, and have to be looked after — quite properly — in accordance with relevant legislation and human rights principles, which is also hugely expensive.
1565. In dealing with the terrorist issues over the next two years, a conservative estimate of costs would be in the region of £50 million.
1566. **Mr David Best (Police Service of Northern Ireland):** If you include the FTR, that comes to around £76 million over two years.
1567. **The Chairperson:** What does the reduction of 14,000 average daily hours to 7,000 equate to in monetary terms? I know that that is a difficult question because people are on different pay scales, but can you give us a ballpark figure?
1568. **Mr Best:** One thousand average daily hours equates to over £6 million per annum.
1569. **The Chief Constable:** I think that it is absolutely right that we made those significant cuts. Overtime had almost become institutionalised to some extent. Devolving the budget — over 80% of our budgets are devolved — has allowed us far more local control and inventive and sensible use of resources.
1570. In facing this type of issue, you have to be realistic, and there may be some shift backwards. I do not see the situation going back to the way it was in 2002, with 14,000 average daily hours of overtime. Bizarrely, it was a lot quieter
- then than now. I think that we can prove that we can make savings — what we need now is the right amount to deliver against the current threat.
1571. **Mr Best:** The area of claims for hearing loss is very difficult. Last year, we were receiving between 20 and 30 a month. At the start of this financial year, the figure jumped up to 60, and during the summer and the autumn there were about 150 a month. In the last couple of months, the figure has grown further; we received 346 claims in January and 187 in February. The figure for March is likely to be in the region of 250. When we issued our budget a couple of months ago, we made an assumption that we would receive 150 claims a month and allocated £98 million for that purpose over the next two years. We will probably have to revise that figure upwards. If we made an assumption of 250 claims a month, which is possible, our provision would have to rise to about £68 million per annum. The issue is very difficult.
1572. A question about class action was asked. Our legal people have consulted on that issue and, to date, have advised us not go down that route, because it would give every police officer an entitlement; 7,000 officers could potentially claim. We have taken legal advice on the issue, and that is our current position. As claims rise, that position will be reviewed, and class action is a potential option.
1573. The main issue with regard to pensions is that we are treated differently from other police services. That has been raised with the Policing Board over the last two years. If we have an overspend on elements of our pensions, or an actuary does a valuation in response to a change in the financial markets, there could be an extra liability or a credit. If there is an extra liability, that can hit our main police grant budget, which would not happen with any police service across the water. We are in discussion with the NIO and the Policing Board and hope to reverse that situation, but there is a potential cost. The latest figure is £64 million per annum. Therefore, it is very important that that additional



- funding is secured. In other words, if the actuaries change their figures, the Government should pick up the bill as they do for the Northern Ireland Civil Service and all the police services in the United Kingdom.
1574. Last year, the Home Secretary announced a change in pension commutation, providing for an entitlement to a lump sum when an officer retires from a police service. There was an additional liability of £11 million for each of the next two years. Last week, the outcome of a judicial review led to that period being extended backwards, and we now have a potential additional liability of £20 million. Those are a couple of pressures that we need to take on board as we look over the next couple of years.
1575. **The Chairperson:** During the evidence from the Policing Board, a figure of about £100 million for hearing loss and for the Civil Service pay claim was mentioned. You are talking about a figure of about £100 million for hearing-loss claims, and my understanding of what you said was that that figure had almost doubled from your previous estimate.
1576. **Mr Best:** The Policing Board got figures from us about a month ago. We have revised those figures, and the cost of hearing-loss claims is now estimated at £98 million over the two years. The cost for Civil Service equal pay is now estimated at £50 million, which is the result of a recent valuation that included some other staff, including EO2 officers. That is new information that the Policing Board would not have had, because it is so recent. Therefore, the figure for both over the next couple of years is about £150 million and rising.
1577. **Mr McCartney:** You were in the Gallery when I asked about the hearing-loss claims. Does the projected cost of £98 million include legal fees?
1578. **Mr Best:** Yes, it does include legal fees.
1579. **Mr McCartney:** From the PSNI side or —
1580. **Mr Best:** From both sides.
1581. **Mr McCartney:** OK. Sir Desmond listed four categories of legacy issues: the Historical Enquiries Team (HET), the hearing claims, public inquiries and pensions. If those costs were removed from your projections, how would you appraise the pressure on your budget as a result?
1582. **The Chief Constable:** It would make my budget manageable, in the sense that it would be predictable. The big problem that we have with pensions is that if an actuary gets out of bed on the wrong side, we may find ourselves potentially £30 million overspent and with no way of catching up.
1583. On the legacy issues, individual judges run public inquiries as they choose, which is entirely in keeping with the legislation under which they operate. As all inquiries are different, they require a bespoke response, and finding the information that the retired judges need is hugely labour-intensive; I cannot control it, in that sense. I also have to provide legal representation to all past and serving officers at those inquiries, including for example, from the RUC or independent investigators such as the Chief Constable of the Avon and Somerset Constabulary. That runs to tens of millions of pounds, which, again, I cannot really control.
1584. The HET is slightly different. We secured a red-circled amount of money — £32 million, if I remember correctly — to run that over five years. That is a predictable spend, and we have that money. The problem with that was there was a dispute, or a discussion, with the NIO about previous years in which we came in underspent and the NIO said that we could use that money to fund the HET. It is a complicated argument akin to robbing Peter to pay Paul, but it can contribute to the unpredictability of trying to run a budget in a professional way.
1585. Pensions are the biggest problem, simply because of volume. The hearing-loss claims are out of my control, in that I cannot constrain people who have a right to take an organisation to litigation. We have a right to defend where we

- can do so, and we examine robustly every single case; that is the right approach. When we settle, we settle at a figure that is as low as it properly can be. However, some cases are hard to defend. If I could get rid of all those issues, I would have a lump of money that I knew could be used to deliver policing in Northern Ireland, and I could be held to account by the Policing Board for that expenditure.
1586. **Mr Best:** The issue of the FTR could also be brought into that debate. Given that we have not provided for any FTR expenditure beyond 2010-2011, if we were to retain half of the FTR beyond that point, we would have a liability of £10 million a year. If they all stayed, we would have a liability of £20 million a year — if the security situation required it.
1587. There were a number of questions about police stations in the discussion of legacy issues. Station closures can be expensive, because some stations were built with a great deal of infrastructure. In the current market we could lose money by closing a station, because the sale value is low. In addition, we have put a lot of costs into some of those stations, and they are sitting on our balance sheet. To write down those costs, if we sell stations, is an additional cost. It is driven by operational need, but there are financial implications that influence whether a station is closed or not.
1588. Transferring the policing budget to the Assembly does have risks. Policing has risk attached, such as the occurrence of disorder. For example, the Chairman referred to the high overtime in 2002-03. We put in a bid for approximately £30 million in overtime in that year. We have had a couple of good years recently in which we have lived within our overtime budgets. However, things can go wrong; hearing-loss claims and other legacy issues can arise. The pressures can come and go quite quickly, and that is a risk that must be managed.
1589. **Mr McCartney:** Sir Desmond and Barry Gilligan both referred to issues regarding the impact of the legacy costs, including modernising the police estate. It is not within the remit of the Committee to go into the length of detentions — and I do not want to go there this morning. However, criticism has been made about the holding centres in the police estate. What impact will that have on the future?
1590. **The Chief Constable:** In a general sense, the problem with the police estate is that we wish to invest in what we want to keep and we want to lose what we do not want to keep, and Des made that point. Toome is an example. It is costing us a substantial amount of money. If we sold it, it would have a negative impact on our balance book. Therefore, it would be crazy to sell it because we would be costing ourselves real money.
1591. I do not want to get into the detail of certain observations made by an individual on the radio this morning. As a custody suite, Antrim is not in the plan for refurbishment, because it is one of our most modern suites. I was there and spoke to all the staff the Sunday before Professor McWilliams visited it. It is one of the holding centres that would be seen as very much fit for purpose in the current sense of the word. If there were recommendations for refurbishment or something similar, it would be a very expensive operation and would increase the costs. For example, if I wanted to rebuild the custody suite at Antrim, it could cost around £10 million to £15 million, which is a substantial amount of money.
1592. **Mr McCartney:** Would that be the case even if you were only to make adjustments?
1593. **The Chief Constable:** It is hard to adjust such a building. By definition, it is there to deal with extremely serious crimes. That is why it was built. It was built in 2003 to the highest specification available at the time. If people are now saying that it needs to be refurbished, then that is a debate we would take back to the Policing Board and put into our budget projections for future years.
1594. **Mr McFarland:** I have three points. The first refers to the Eames/Bradley

Consultative Group on the Past's report and the legacy issues. The sense one got from that was that the historic cases needed to be packaged up and left with the NIO. Have you had any indication of whether that is likely to happen? Clearly, if the past were to be taken out of your budget and you could police the present, it would make quite a difference to your budget. Where are we on that issue as regards discussions with the NIO?

1595. **The Chief Constable:** I am unsighted on where the debate on the Eames/Bradley group report has gone. *[Interruption.]*

1596. **The Chairperson:** The Committee will suspend for about 10 minutes. We will resume with Mr McFarland's question.

**Committee suspended for a Division in the House.**

**On resuming —**

1597. **The Chairperson:** I reiterate to everyone to turn off their mobile phones, because they interfere with the recording equipment. That includes Ian Paisley Jnr, of course.

1598. Chief Constable, I am sorry that your evidence was interrupted. The best thing to do is to start again. Alan, will you put your question again?

1599. **Mr McFarland:** What discussions have you had around the Eames/Bradley group recommending that past issues should be bundled up and perhaps left with the NIO?

1600. **The Chief Constable:** I am unsighted with regard to any developments on the Eames/Bradley group's report, apart from the fact that the £12,000 idea is no longer in the thinking. I have said on record that I have no difficulty with the HET moving into the proposed structure under the three-commissioner system recommended by the Eames/Bradley group, provided that there is no drop in service to victims. The HET was a PSNI idea, which was supported by Government, and we are very proud of what it has achieved.

1601. The financial issue will not really affect us in the sense that it is a red-circle

budget. Having said that, even if it does move across, it will not remove the responsibility from my organisation to search for material and to do all the research work, which we sometimes still have to do, even for the Historical Enquiries Team. Therefore, in essence, there is a transfer cost.

1602. We think that we have recovered most of the material in relation to murders, but Eames/Bradley group report goes far wider than that. It is a one-stop approach; victims of the Troubles can come and see the commission to find out where the best solution lies for them. However, inevitably, there will still be a cost on my organisation to supply whatever we can to bring some form of resolution to those families, so, notwithstanding the move to implement the proposals of the Eames/Bradley group, there will still be an impact on the policing budget.

1603. **Mr McFarland:** Presumably that is unquantifiable, given that it depends on how many people come forward.

1604. **The Chief Constable:** Absolutely. It is utterly dependent on demand.

1605. **Mr McFarland:** My second question relates to the police college. As I recall, the original business case contained a clawback, in that the college was going to be used by international police services that would fly in to use our state-of-the-art college, which would pay for a chunk of it. What is the situation with the incoming money from the sale and use of the police college when it is built?

1606. **The Chief Constable:** I will ask David to deal with that question. The bigger picture is that there is still huge interest in what has been achieved in policing in Northern Ireland. Only last week, I spent a whole 36 hours in America, and some key officials are very interested in the way that this organisation has worked towards the resolution of a difficult conflict. There is still a likelihood that they will seek training and other things here — people will be looking to here as a centre of excellence. It is unquantifiable, but I think that it may be

- small money compared to the overall cost of running the college. It will be an add-on, rather than something we can predict.
1607. **Mr Best:** The business case prepared for PSNI made no assumptions about income from that source. There is an expectation, but we do not want to anticipate it. Who knows where the security situation will be? Hopefully, it improves as time passes, but no assumptions have been built in.
1608. I listened to the earlier discussion with the Policing Board. Some £90 million is set aside, £52 million of which is in the current CSR period, but £38 million falls into a future CSR period. We need to make sure that that funding is clearly identified in the future period. I wish to confirm, with respect to Barry Gilligan's comments, that there will be additional running costs for the police college. The figure of £4 million to £5 million is the best estimate that we have.
1609. **Mr McFarland:** My third question is about the part-time reserve that was to form the final 10% of the Patten issue to raise it from 30% to 40% of the current population. That was clearly diverted early on. We then had the plan to bring in the police community support officers (PCSOs). Can you update us as to where we are with that, with respect to costs, personnel, people and changes?
1610. **The Chief Constable:** The harsh reality is that we do not have the money for PCSOs. That is a shame as I think that it would have been a real step forward. We wanted only 400, and they were to be focused on the very front end of community policing, with no mission-creep, which some forces have been guilty of. They would have been working to local sergeants to deliver community policing. It is a shame because it was an opportunity that we would like to have taken up.
1611. As long as we have an establishment of 7,500, our flexibility is limited. However, I recognise that there is no more money. Part-time officers are down to about 500, which is not what Patten envisaged at all. Those 500 are absolutely embedded in neighbourhood policing. We saw the 400 PCSOs as a critical add-on to that, but it is not happening because of lack of finance. The only way to move on is to look at our overall budget and the mix of sworn officers, PCSOs and support staff. At the moment, we are committed to 7,500 for all sorts of very good reasons, but, as I said in my opening comments, after next year we will recruit to full capacity. After that, it becomes hugely difficult. To achieve that, we will have to do something else within the current structure.
1612. **Mr McFarland:** You will recall that, early in the Policing Board's life, we had a visit to Chicago. There, they use 1,000 volunteers on a voluntary basis — often retired officers. Do you see something like that being brought in to cope with rising costs?
1613. **The Chief Constable:** Sadly, I did not go to Chicago. That must have been a Policing Board trip, rather than a police trip.
1614. Lots of forces do that. In Sussex and Surrey, they open police stations on a volunteer basis. I have no issue with looking at all such ideas, but to add service, rather than to provide essential service, and although it would be nice to have, it cannot be predicted. Continuity and health and safety issues all have to be considered. However, I have no difficulty in having a serious debate about the matter. It is not something that we have dealt with, quite frankly. We get huge support from volunteers for policing generally, but not for opening stations, and so on.
1615. **Mr Paisley Jnr:** Thank you for your presentation, Chief Constable. In your letter to the Committee of 6 February 2009, you indicated that, in order to achieve the breakdown plan in the current financial year, it was necessary for the Police Service to implement budget cuts totalling £15.3 million in the last three months of the financial year. To achieve that, the NIO had to transfer £9.1 million from the budget allocation of future years. You say, quite rightly,



- that that is not a sustainable solution. You used the phrase “robbing Peter to pay Paul” in your presentation. The bottom line is that this cannot go like this for much longer, and we accept that.
1616. I have checked my hearing of what we were told earlier. Mr Best said that there are four pressures, respectively totalling £70 million, £60 million, £50 million and, potentially, £20 million. You are essentially telling us that, in order to continue to deliver policing as it is and address the relevant pressures, you need a budget comprising what you currently get plus an additional £150 million for every year of the current spending round. If the NIO granted us that sort of settlement — and that is a huge “if” — could we deliver policing?
1617. **The Chief Constable:** We will deliver policing with whatever budget we get; it is a question of how effective that policing will be. As an organisation, we must ensure that we provide value for money and drive all possible efficiencies out of the money that we are given. The chairman and the deputy chairman of the Policing Board talked about how we are held to account in that regard, and it is right and proper that that is the case. As we touched on in our opening remarks, we can deliver savings without impacting on front-line services.
1618. The NIO has been very fair in trying to resolve issues such as hearing-loss and equal-pay claims, but those pressures are not to deliver policing but to deal with legacy issues. My frustration is that the money that we are allocated, through all the bidding processes, to deliver policing now is being eroded by trying to deal with things that are outwith my control. I cannot refuse to provide information to a public inquiry; that is a civil offence followed by a criminal offence under the Inquiries Act 2005, and I would not want to commit that offence. I have to put huge effort, resource and expertise into doing work that is not built into the budgetary base. Hearing-loss claims, equal-pay claims, and so on are nothing to do with us, but they impact on our budget. We received some very helpful correspondence
- about hearing-loss and equal-pay claims from the permanent secretary, and I am hopeful that those issues will be dealt with, and likewise the pensions issue.
1619. I would like all the things that we should not be dealing with in the first place to be taken out of our budget. That would give us a sensible bidding process so that, through the Policing Board, we can come to the Assembly with our proposed budget. Then we can deliver policing. David may be able to talk about the figures in more detail.
1620. **Mr Paisley Jnr:** You have set out the numbers very clearly this morning. Your settlement has been described as a generous settlement, and, realistically, it is a generous settlement. However, the fact of the matter is that the NIO has not distinguished between legacy costs and policing costs and has lumped those costs together. You have to make calculations of service delivery on the basis of how it is handed to you, and you do not choose the cloth to be cut that way.
1621. If any of us successfully persuade the NIO to separate legacy costs from policing costs, we could consider a reduced settlement because the NIO would be responsible for settling legacy issues. However, rightly or wrongly, legacy issues are currently contained within policing costs. Would £150 million in each year of the current spending round and the succeeding spending round be sufficient to deliver policing and meet those pressures?
1622. **The Chief Constable:** Given all the pressures, including the bid that has been made for extra funding from Government to deal with the rise in terrorism, the short answer to that question is no. A settlement of £150 million each year would be at the bottom end of an estimate. Rather than £300 million over two years, the amount of money required is probably more likely to be somewhere between £300 million and £400 million.
1623. The other option is for us to be treated like other forces and for pressures



- such as pensions to be taken out of my budget. We have far more pensioners than serving officers, and a police force that did have 13,500 officers is now being funded by the pension contributions of 7,500 serving officers who only pay either 8% or 11%. More police officers are retiring early, so pensions are an ever-increasing pressure on our budget. Pension payments take up about 36% of my budget, and another 45% of my budget goes towards paying serving officers. There is pressure on me to save money, but that is only relevant to a very small amount of money; the rest of my budget is predetermined expenditure that pays current and retired police officers.
1624. I would be much happier to have a smaller budget that recognised that pensions and legacy issues are not our responsibility. That would mean that we could be held to account for the money that we are given to deliver policing. There would then be interesting debates about how many police officers, PCSOs, part-time officers and police stations we want to have. It would mean that we could control the business; I cannot control a business in which so many things are simply outside my influence.
1625. **Mr Paisley Jnr:** Do you agree, however, that it is not realistic to talk about reducing police numbers in the current policing climate? Do you accept that?
1626. **The Chief Constable:** One can certainly have a conversation about the policing mix. If you want to build community confidence through community policing, there is a serious debate to be had on the value for money of, say, a community officer versus 1.6 PCSOs who are utterly focused on delivering community policing with the local sergeant. Frankly, that debate must be had.
1627. **Mr Paisley Jnr:** That is at the micro level. At the highest level, there are 7,500 officers. Let us be honest; it is not realistic for politician in this room to go out and advocate that 1,000 fewer police officers are needed in the current climate.
1628. **The Chief Constable:** Politically, advocating a drop in police numbers is probably —
1629. **Mr Paisley Jnr:** Suicide.
1630. **The Chief Constable:** It would not be seen as a good thing.
1631. **Mr Paisley Jnr:** It is like asking to cut the number of nurses.
1632. **The Chief Constable:** That said, from a professional basis, I will deliver policing with whatever number of officers I have to the maximum of my ability. We are unique in the sense that we have this notional establishment. Every other force turns on and off the recruitment tap in order to manage expenditure. Many forces are currently turning off the recruitment tap because budgets are going in the wrong direction.
1633. **Mr Paisley Jnr:** If you did that, you would upset the 50:50 balance. Is that right?
1634. **The Chief Constable:** No, it would not. If numbers are cut, the 50:50 balance will be maintained. Patten's view of 30% was his top end of optimism. We will achieve 30%, even if recruitment stops. That does not add up, simply because the retiring officers would be skewed in one direction and the number of new officers — however many come into the force — will be 50:50. The debate is about what is the best policing mix to deliver effective community policing.
1635. The harsh reality — which I referred to at Stevie's funeral and, last night, when I spoke to my colleagues in the Police Superintendent's Association of England and Wales — is that if you respond in London to a call about criminal damage, as that officer was doing, the maximum number of officers that you will send is two, instantly, even in the tough areas of London. In the same situation, we had to send a minimum of five officers, and that still did not work. The increased cost of policing in the current environment is, therefore, very high. We can deliver that. We can also deliver it in different ways.

1636. The numbers argument, therefore, is a red herring. What I want is clarity on what my budget is, and certainty that I can influence that budget and that nothing will suddenly appear from 20 years ago that I will have to fund. That is where the pressures are. It was hearing loss this year, and — notwithstanding the support from the NIO — all of a sudden, claims go up. The potential impact of that on our budget in 2009 is another £3 million. In essence, had we not had that support from Government, that £3 million of notional money — because it will never be spent in 2009 — would have gone into my balance book. I cannot pay it, so I must claw it back from real money in 2010. That is £3 million out of overtime. That is no way to run a business.

1637. **Mr Paisley Jnr:** That is a crazy way to run a business.

1638. A couple of weeks ago, Forensic Science NI made a helpful presentation to the Committee about the modern requirements of forensic evidence and about how its facilities are almost at tipping point. It urgently requires a new facility. Are there any pressures as regards storage of forensic materials which place an additional pressure on policing?

1639. **The Chief Constable:** None that has been brought to my immediate attention. We have reviewed all our property storage. The forensic laboratory, quite rightly, needs be an independent organisation and institution. I understand that there have been plans to rebuild it. Conversations have taken place in that regard. In essence, we probably supply 98% of its business.

1640. **Mr Paisley Jnr:** I will put it another way: is there any pressure on the police with regard to storage of forensic material?

1641. **The Chief Constable:** Nothing has been brought to my attention that we cannot cope with. I am happy to come back to the Committee if there is something specific.

1642. **Mr Paisley Jnr:** In your submission, to which you referred earlier, you have highlighted that as a pressure:

*“To achieve the shortfall of £38.5m in capital budgets, a number of planned developments were delayed, including Cookstown, Ballymoney, Downpatrick, Armagh, Castlereagh, and the purpose built Call Management facilities and new facilities to store forensic exhibits.”*

I do not ask in order to trip you up, Sir; I ask because Forensic Science told us that if they do not get that facility, that will affect their ability to deliver forensic science in a way that lawyers cannot pick apart — which, if they do, lets guilty people go free. They will have huge problems unless that matter is addressed. I wonder whether you have started to feel that pressure, not necessarily in a financial sense, but from a practical point of view.

1643. **The Chief Constable:** Put it this way: new facilities would, certainly, enhance capacity. In recent cases, exhibit storage in the past has been severely criticised. That was many years ago. Just last Sunday, as I have mentioned, I visited the murder investigation unit. No one brought to my attention any concern about storing the mass of exhibits that relate to current inquiries. The issue is about enhancement and the right way of going. I am not sighted. I will get back to the Committee if there is a specific issue causing a problem between us and Forensic Science. I happen to be going there next Tuesday to discuss current cases. I will seek clarification and get back to the Committee.

1644. **Mr O’Dowd:** I apologise for being absent from the meeting for a while; I had to attend another meeting, which, thankfully, did not last too long. Chief Constable, I want to return to a point that my colleague raised with you earlier about the Antrim detention centre and your forecasts for future budgetary matters. Given the concerns raised this morning by Monica McWilliams, the Human Rights Commissioner, and the concerns raised by other groups and political parties, including Sinn Féin, about 28-day detention — which in itself is a debate for another day, and you are aware of Sinn Féin’s opposition to it — if the British Government and the PSNI

- continue to use that legislation, surely you will have to plan for and provide humane, adequate detention centres. The Antrim centre was built for 7-day detention, which itself is an abnormality in domestic law. You are now holding people in that centre for 28 days, and it does not have adequate facilities. Surely, you will have to plan for proper facilities in the future.
1645. **The Chief Constable:** As a matter of record, nobody has been held for 28 days. I had a conversation with the Human Rights Commissioner this morning, and a number of points spring to mind. Monica rang me last night and I gave her instant access, within an hour of her request; she did not rely on any legislation to get access. Her observations this morning relate, in part, to her organisation's objection to 28-day detention, which, as you say, is a debate for another day. As police officers we will use the legislation that is enshrined in United Kingdom law, which we are entitled to use, subject to massive judicial oversight. That was evidenced by one of the hearings before the judge, which lasted for 12 hours and ran to 1.30 am. I do not think that there was any debate around whether the detention was lawful.
1646. There is a debate to be had about the conditions, and I await with interest her report on that this afternoon. She told me — and stated publicly — that no prisoners had complained about the way in which they were being treated or the compliance with human rights legislation by officers. Those officers are independent from the investigation. It is inappropriate to link an objection to current enacted legislation to particular cases where my officers are charged with investigating three of the most brutal murders in the unfortunate history of Northern Ireland. It is a complicated mix.
1647. I have no difficulty with looking at any report that comes out from any organisation — be it the Humans Rights Commission, lay visitors or my own officers — that says that detention facilities need to be enhanced. That proposal would go into the bidding process, and we would look at it. If a decision was reached that a new build was required — as I suspect would be the case — we would build it. We could come back to the proposed costs. There is nothing to benchmark it against, because we have the most modern facility in the United Kingdom.
1648. Mr O'Dowd is right in that the law was different when the Antrim centre was built. However, that does not mean that I have any intention of keeping people in custody a day longer than they should be in custody. That has been evidenced by the way in which the recent cases have been dealt with to date. People have been charged; some have been released, and some are being retained, subject to judicial oversight.
1649. I am happy to have that debate. If it means that we have to build something else, it will have to become part of the bidding process. The Committee will want to reflect on how that could be done. Perhaps it would have to come from schools or hospitals, or something else, if it was within you overall budget allocation. I think that that is how it would work: it would go into the bidding process.
1650. **Mr O'Dowd:** I acknowledge that Monica McWilliams did state —
1651. **The Chairperson:** John, I am reluctant to allow —
1652. **Mr O'Dowd:** I am not going to go into it too much.
1653. **The Chairperson:** We are here to examine the financial implications and issues.
1654. **Mr O'Dowd:** One of the questions —
1655. **The Chairperson:** I have given you some flexibility.
1656. **Mr O'Dowd:** We always ask witnesses whether they are going to return to us in the future and tell us of costs that are required for some project or other. That is why I am exploring this issue. I acknowledge that the Human Rights Commission stated that there are no complaints against any of the officers

- involved in the Antrim centre. The Chairperson has told all witnesses that, if they come back in the future saying that there is £6 million that they thought they might have to spend, but did not tell us about, that will be looked on dimly. If there are concerns, we need to acknowledge them and we need to plan for them into the future.
1657. **The Chief Constable:** On the recommendation of the Police Ombudsman, we routinely respond to concerns about detention and find the necessary money from within the budget. The ombudsman was concerned, for example, about ligature points — that certain parts of police cells could be used by someone in custody to hang themselves. We are finishing our refurbishment of every single cell to remove that risk. We always respond to such issues, but we do so within our budget and our allocation for capital expenditure.
1658. Part of the pressure on our capital stems from legacy issues — as members know, some buildings in the police estate are in an awful state of disrepair. Also, there is no longer any additional money available from Patten. Over time, we will have to manage certain legacy issues by selling what we do not need and keeping what we do. The other day, we were offered £60,000 for one building because of the current economic climate — that is crazy.
1659. Some buildings have a book value of several million, simply because of their security infrastructure, but that is worthless to anyone else. To sell those buildings, we would hit our bottom line to the tune of £1 million, £2 million or £3 million and would, therefore, have to find another £3 million. We are in negotiations with central Government to get that pressure removed. The unique situation here means that is not sensible to penalise my organisation by stating that the book value of a certain building is £5 million when its real value to anyone, even in the current economic climate, is probably 20% of that.
1660. **Mr Hamilton:** It is clear that the current budget within which you operate is, in many respects, crippled by — *[Inaudible due to mobile phone interference.]*
1661. That is not my mobile phone.
1662. **Mr Paisley Jnr:** Guilty!
1663. **The Chairperson:** I always look in one direction, and I just happened to be looking in your direction.
1664. **Mr O'Dowd:** Action should be taken.
1665. **Mr Paisley Jnr:** There is the man to do it.
1666. **The Chief Constable:** Section 44 is always available to us in these circumstances. *[Laughter.]*
1667. **Mr Hamilton:** Your budget is clearly crippled by costs relating to legacy issues and policing the past, and you have outlined some of those issues in detail. At present levels, what percentage of your budget is being spent on legacy matters and the policing of the past?
1668. **The Chief Constable:** That is an extremely good question, and quite hard to answer.
1669. **Mr Best:** A couple of significant issues have arisen recently, and a figure of between £300 million and £400 million to fix those up has been mentioned. The big ones have come recently. The legacy costs, including the HET investigations, are projected to be £15 to £20 million per annum, over the past couple of years and projected forward. However, if members study the new figures for the next couple of years, there is a bigger problem, and the figures mentioned are a fair reflection of that.
1670. **Mr Hamilton:** Upwards of £400 million out of £1.2 billion represents approximately one third of your budget.
1671. **Mr Best:** The Policing Board referred to the cost of reinstating overtime. Potentially, if one includes the bid that was submitted recently in response to the current security situation, a large part of which was to reinstate overtime, those figures will be accurate.

1672. **Mr Hamilton:** That is fairly sizeable — *[Inaudible due to mobile phone interference.]*
1673. **The Chairperson:** Will everyone check their phones again to ensure that they are switched off? It is interfering, as you can hear.
1674. **Mr Paisley Jnr:** I think it is Eamonn Mallie.
1675. **Mr Hamilton:** Before the interruption, I was expressing shock about how one third of the budget is being taken up.
1676. **The Chief Constable:** So much of this is unpredictable. On hearing loss, we do not know how many cases will be settled and how many will go to court each year, how many will be contested or uncontested, or how many we will win. Similarly, we do not know when, or if, we will have to pay out on the equal-pay claims. It is in there somewhere. It is foreseeable, so it is right that it appears in our accounts, and we are obliged to include it.
1677. The figures are, to some extent, projections, and that is what makes it so difficult for me, as Chief Constable, to manage the budget. One minute my budget looks good, and suddenly I am looking at a £15 million overspend, or whatever it is. That amount of money cannot be clawed back in the last six to eight weeks of a budgetary year.
1678. **Mr Hamilton:** The figure of £50 million was mentioned in relation to the current dissident threat. What duration does that amount cover?
1679. **The Chief Constable:** Two years.
1680. **Mr Best:** It covers a two-year period. It is £49 million plus FTR, plus some close protection unit (CPU) projected costs because the CPU is going to be retained longer. Therefore, it is £50 million plus.
1681. **Mr Attwood:** I apologise to the Chairperson and to Sir Hugh; I had a meeting upstairs which meant that I could not be here for the Policing Board's presentation. I hope that I am not going back over issues that may have been covered in the opening submission. However, I would like some clarification. I think that the Secretary of State adjusted his position somewhat on the Eames/Bradley proposal to make a financial acknowledgement of people. He made a comment — I think that it was in a parliamentary answer during Northern Ireland Question Time — in which he opened the door for that possibility. You may want to check that.
1682. You said that you got a letter from the permanent secretary which was quite helpful. Was it helpful because he gave you some reassurance in respect of the additional costs around pensions, hearing loss, legacy issues and so on? Or did he reassure you that those costs may be separated out from your annual budget and dealt with under separate budgetary arrangements outside the PSNI's annual framework? What reassurance are you getting?
1683. **Mr Best:** We have been reassured that the PSNI, the Policing Board and the NIO will agree to set the sums of money aside. Currently, there are no guarantees as to where that funding will come from. There is the potential that all those costs will still have to be recovered from the police budget.
1684. **Mr Attwood:** Those are just the current pressures that you are talking about. You have been reassured that the pressures which have arisen will be met. However, we do not yet know where the funds are coming from.
1685. **Mr Best:** Currently, we do not know where they are coming from.
1686. **The Chief Constable:** Without that letter, we could not have balanced the books this year.
1687. **Mr Attwood:** Is the permanent secretary giving you any reassurance around the demands which you might anticipate over the final two years of the CSR period?
1688. **Mr Best:** One of the big pressures referred to earlier was pensions. If we were to move to a similar scheme, there is a potential pressure of £64 million each year over that two-year period. That is under discussion at the moment.



1689. **Mr Attwood:** Potentially, therefore, there is some reassurance for this year. Somebody said that they hoped to have the financial arrangements around the devolution of policing and justice confirmed by the end of the financial year. Given that there are still issues around pressures over the next two years of the CSR period, are you in a position to say that you have been reassured in respect of those matters? Are you telling the Committee that that reassurance has not materialised?
1690. **Mr Best:** Certainly, from the perspective of the PSNI, at this point in time, we have not received assurances on those issues. Those issues are under discussion.
1691. **Mr Attwood:** My second question is on a slightly broader point, but it does arise from what you said, Sir Hugh. There is a debate to be had around police numbers. Are you currently having that conversation with the NIO, subject to, and mindful of, the security situation that has now arisen? In general terms, given what the NIO and Her Majesty's Inspectorate of Constabulary (HMIC) recommended in respect of overall police numbers, has there been a conversation over recent months concerning the longer term?
1692. **The Chief Constable:** I think that that is a discussion for the Policing Board, in the sense that we have to produce a balanced budget for the board's approval. However, we have reassured the board that next year, we are committed to recruiting 440 people, which will keep the numbers at around 7,500, give or take the normal churn. The HMIC's report on police numbers — which came up with, I think, the figure of 6,026 — made a number of assumptions which have not been met. Indeed, if one looks at the Patten programme, some of his assumptions around normalisation have not been met. It is a debate that currently rests between us and the Policing Board, and that is the right place for it to be. We have to look at our budget and make those hard decisions. We are clear that next year we can balance the books; however, I think that the year after that, there is still a debate to be had.
1693. **Mr Attwood:** I agree that the HMIC assumptions were flawed on a lot of the criteria, but, prior to the recent situation that has arisen, had the NIO asked you whether it is time for you to say that we can get to fewer than 7,500 officers within two, three or four years?
1694. **The Chief Constable:** As I said in my opening remarks, and as I have also told the Policing Board, we cannot fund 7,500 officers next year or the year after. It is unlikely that we can deliver that with the available funding. Likewise, as you pointed out, there is no plan or mechanism to reduce numbers more quickly than natural wastage. When the severance scheme ends in 2011, we predict that the natural wastage will be somewhere between 70 and 90 officers a year. That is assuming the current economic climate. People might stay longer, so it will be a very slow process in terms of legal obligations. We cannot make officers redundant. That is not a situation that I want to be in, and it is not one that is available to me in law anyway.
1695. **Mr Best:** My understanding is that the NIO's position is that 7,500 officers will be retained for 2009-2010 and 2010-11; after that, it will be subject to further debate.
1696. **The Chairperson:** Final question, Mr Attwood. Before you came in, it was indicated that the Chief Constable has time pressures. We are beyond our time, and Danny Kennedy has not got in yet.
1697. **Mr Attwood:** I will be very quick. Given what John O'Dowd said about future accommodation costs in respect of Antrim police station, and subject to what you might hear from Monica McWilliams, do you feel that the accommodation facilities at Antrim are fit for purpose, regardless of whether they are for a detention period of seven days, 14 days or 28 days?
1698. **The Chairperson:** I am not going to allow that question. That answer has already been given to Mr O'Dowd. We are

- discussing purely financial issues here. I made that clear earlier.
1699. **Mr Attwood:** It is a financial issue.
1700. **The Chairperson:** I am sorry, but I am not going to allow that question. You can read the transcript of evidence.
1701. **Mr Kennedy:** I welcome the Chief Constable and his colleagues. I apologise for my unavoidable absence, which might be welcomed by others.
1702. **Mr McCartney:** It is.
1703. **Mr Kennedy:** With regard to the question of ongoing pressures on police resources due to the current level of threat, is it prudent to restrict personal protection weapons (PPWs) to current or former members of the security forces? There seems to be a widespread campaign. It might have a benefit in one sense, but, in another sense, surely it will increase the costs of providing adequate cover to people who feel more vulnerable as a result of that threat. Do you have any comment on that?
1704. Secondly, the Policing Board told us earlier that the closure of police stations was in no way connected to saving money. Do you share that view?
1705. **The Chief Constable:** There is no financial implication to the PPW issue. Deputy chief constable Paul Leighton is reviewing some of the issues around that policy, but, frankly, the biggest danger a PPW has is to its owner. Sadly, since I have been here, more owners of PPWs have committed suicide using them than have died from shots fired in anger or protection, and it is a matter that we are looking at.
1706. With regard to the closure of police stations, we have a huge police estate. It is about 170% of the size of that of any comparable police service. However, much of it is in disarray, falling down, not compliant with health and safety, and needs to be got rid of. In the more recent past, selling it gave us a financial benefit, and we could invest that in the police stations that our officers worked in. Frankly, if police officers are working in inadequate and squalid conditions, it is not the best environment from which to expect them to go out and provide a high-quality service. That is a really important debate.
1707. The reason for closing a police station relates to whether it is needed to provide an effective policing service. There is an inevitable economic benefit to so doing, and common sense dictates that I can only invest in a certain amount of estate. Therefore, there is an economic element to it, but the primary reason is whether we need a particular station to provide a front line service to community policing. The frank answer is that we have far too many police stations.
1708. **The Chairperson:** I have a couple of final points. In relation to parading, which has not been touched on, there is evidence in your submission of a downward trend in the cost of policing parades. We are thankful for that and hope that that trend continues. However, do you project some stability in the cost of policing parades, or will it continue to be a volatile item in relation to the budget?
1709. **The Chief Constable:** That is very hard to predict. The challenge of policing in Northern Ireland — certainly during the parades season — is unlike any other policing practice. I have experience of policing the Notting Hill carnival: predictably, year on year, disorder dropped from 1977 onwards. It went from a public-order situation to a public-safety situation in a clear, definable trend. The 2007 marching season was an extremely bad year, but it was preceded by a good year, and the past two years have been good.
1710. All other things being equal, and with the amount of engagement that I am getting, things are looking good. However, developments can move very quickly. Consequently, planning is unpredictable. My current best guess is that I think that we will be OK this year. Public support for policing is increasing and the amount of community engagement is increasing. The responsibility of the leadership shown around loyalism in relation to

- the current attacks, from top to bottom, suggests that there is an increasing grip that can be used in other ways. All other things being equal, I would like to think that this marching season will be very peaceful. However, I am not in the business of second-guessing the situation this far down the line. Sadly, it will run to the wire.
1711. **The Chairperson:** Everyone who has given evidence to the Committee has been asked about value added tax (VAT). Does the PSNI currently pay VAT and, if it does, is it reclaimed and retained within the budget?
1712. Finally, there is another question that everyone has been asked — and John O’Dowd has mentioned it already. Are there any other issues that you are aware of that could have a material or inescapable consequence on the budget in the future? Is there anything hurtling down the tracks that could cause alarm and that might well have financial implications in the future? If there is, this is an opportunity to give the Committee some idea of what it might be.
1713. **The Chief Constable:** I will ask Mark McNaughten to deal with the technicalities of VAT. As regards anything else that could happen, there is nothing that I can think of, currently. However, to be frank, I did not see the hearing-loss issue coming. You may remember the post-traumatic stress class action that was won by the organisation. At the time, I was far more concerned about that, because it was costed at hundreds of millions of pounds. The hearing-loss issue was a different issue, and I did not see it. Is there anything else like that? Heaven only knows. I cannot see anything huge or out of the ordinary as regards the routine issues that could suddenly hit us and knock us sideways.
1714. By way of reassurance, we will deliver policing with whatever budget we are given. We will deliver efficiency savings with whatever budget we are given, and we will do our best to maximise front line service to the communities and drive the efficiencies out of that. My biggest worry is the uncontrollability of legacy issues that impact on our current policing budget.
1715. **Mr Mark McNaughten (Police Service of Northern Ireland):** We pay VAT as a service, but we also reclaim it, so there is no net cost to the service.
1716. **The Chairperson:** Quite a number of areas have not been covered, because we have not had the time in this session. As with other witnesses, we have several questions that we will send to you before close of play today. We would be grateful if we could have answers to some of those questions before the Secretary of State gives evidence next week. I understand that there may be pressures, but, if it is possible, we would appreciate it if we could have answers to some of those questions, even though you may have to come back to the Committee at a later stage with more details.
1717. Thank you, Chief Constable, and your colleagues for giving evidence to the Committee today. We will be talking to you again.
1718. I remind members that the media has had access to both the visual and audio feeds from the Committee’s proceedings today and the session in the Chamber. We have no plans to issue a press release. I remind members of their responsibilities when issuing press releases or giving interviews on what has been discussed with the witnesses here today. Thank you very much.
1719. **The Chief Constable:** Thank you.

## 31 March 2008

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Simon Hamilton  
 Mrs Carmel Hanna  
 Mr Alex Maskey  
 Mr Nelson McCausland  
 Mr Alan McFarland  
 Mr John O'Dowd  
 Mr Ian Paisley Jnr

### Witnesses:

Mr Shaun Woodward	<i>The Secretary of State for Northern Ireland</i>
Mr Anthony Harbinson	<i>Northern Ireland Office</i>
Ms Hilary Jackson	

1720. **The Chairperson (Mr Spratt):** Good afternoon, Secretary of State. I welcome you to the Committee. I understand that you have time constraints this afternoon, and that you will be able to stay with us for 45 minutes to an hour. Your colleagues Hilary Jackson, political director; and Anthony Harbinson, director of resources, are also very welcome.
1721. Before we start, I ask Members to declare interests. I declare that I am a member of the Northern Ireland Policing Board.
1722. **Mr McCausland:** I am a member of Belfast District Policing Partnership (DPP).
1723. **Mr Paisley Jnr:** I am a member of the Northern Ireland Policing Board.
1724. **Mr A Maskey:** I am a member of the Northern Ireland Policing Board.
1725. **The Chairperson:** I ask members to make sure that mobile telephones are switched off; that also applies to the Public Gallery.
1726. Secretary of State, I understand that you will make a short opening statement, and that you will then be happy to take questions from members. I think that most members will have questions for you. Welcome again, and I ask you to make your opening statement.
1727. **The Secretary of State for Northern Ireland (Mr Shaun Woodward):** Thank you very much, and thank you to all the members of the Committee for being here this afternoon and continuing your extremely important work. I shall begin, Mr Chairman, by referring back to the events of the last few weeks and the last day.
1728. Very clearly, people in Northern Ireland were deeply and rightly concerned about the two terrible criminal attacks that took place: the pre-planned attempt at mass murder that succeeded in killing two very brave young men at the Massereene Army barracks; and the murder of the very brave police constable two days later in Craigavon. What has been demonstrated very clearly — if there is anything good that can be found out of the terrible tragedy for all the families involved — is the strength of the political process that you have all established here. The criminals who wanted to bring about a shaking of confidence have been shown that not only are the political institutions — of which this is a very important part — stronger, but the roots of the political process are deeper and reach far wider.
1729. Members of the Northern Ireland Policing Board who had the privilege of travelling, as I did, to the United States the week before last, will have discovered that people there looked at what happened in Northern Ireland and saw two things. They saw real shock that those events could have happened, but they also saw the people of Northern Ireland unite. They saw all the political parties and their leaders come out together to condemn the attacks and send a very clear signal to the world that the small group of criminals who may be capable of launching and carrying out

- those cowardly attacks cannot succeed in disrupting the extraordinary political progress here because it is so deeply rooted.
1730. I observe that because one of the things I feel even more strongly than I did the last time I came before this Committee is that, rightly based on the principle of establishing confidence and carrying out confidence-building measures in the communities of Northern Ireland, the real answer to the criminals who tested the political institutions and the people of Northern Ireland the week before last — and tried again yesterday with 37 hoax incidents — is to continue the political progress and the work on devolution. It is, of course, precisely because this work is succeeding that these criminals carry out such acts. They fear the consequences of devolution being completed, of the politicians here sharing power of all Government Departments and policing and justice being transferred from me, as Secretary of State.
1731. Politicians here have rightly responded in stating their commitment to continue with the political progress that is being made. It will be built on confidence and clear principles, and I hope that, by answering your questions this afternoon, I can help with that. I firmly believe — as does the Prime Minister, the Taoiseach, and the President of the United States — that the completion of devolution is the best answer of all to the threat that is posed by those criminals, albeit a small number, who refuse to move out of the grip of the past, and who masquerade with some political project that clearly has no place in Northern Ireland today, as was demonstrated so firmly in the very courageous words of the deputy First Minister and others, and in the very strong words of the First Minister.
1732. The best answer that we can all give is the completion of devolution. Having said that, the work that this Committee has done has been extremely important in helping that process achieve the level of confidence that is required in communities.
1733. I know that the Committee wanted to raise a number of issues and one of those concerns protocols and concordats. We are still in process of finalising those, but we are very close to completing them. There are two protocols: one is on policing architecture; the other is on national security. There are two concordats: one each on judicial and prosecutorial independence. Within weeks, I will be able to share them with this Committee and I will be happy to do so. You will find no surprises in them, but it is important that we get them right and, as we are in the process of finalising them, I should just say to you that I will bring them to you as soon as they are ready. There is nothing mysterious about their not being ready: we just need a few more weeks.
1734. I know that you are keen to test me on the area of resources for the Department of justice. The Assembly has yet to decide whether to set it up, what model it wants and when it will choose to request the transfer of power.
1735. I have four things to say about resources. The first is that I stand by the statement that the settlement achieved in the comprehensive spending review was a fair, reasonable and good settlement for policing and justice in Northern Ireland. It is worth saying two things in relation to that.
1736. The first is that you would not find a police service or a chief constable anywhere in the United Kingdom who got as much as they wanted in the settlement. You would find several who would point to Northern Ireland as having got a settlement that was, in their eyes, particularly generous. That does not mean that I do not understand why every single member of this Committee, and every single member of the Policing Board who sits on this Committee, would like to have had more. However, that is something that everyone here would have in common with every police service and force throughout the UK. I believe that it was a good settlement.
1737. The second issue is about some pressures that are genuinely additional



- to those forecast in the CSR settlement. The Chief Constable and others have identified a pressure in relation to claims for hearing loss. That involves a substantial level of claims: a number of been made and more are expected. It is not clear how many will be made. However, to give you some sense of quantum, in the police service in the constituency that I represent, St Helens South in Merseyside, at any one time there might be up to 100 officers armed. However, in Northern Ireland, those numbers go into several thousand.
1738. Northern Ireland has had to deal with a very different kind of problem, and I recognise that. That is one reason why I wanted to set up the Heywood committee, which is looking at a whole series of issues. I must tell you that I would not recognise some of them as additional pressures: they are pressures which must be managed within resources, just as for any other police force in the UK. However, there are some that go beyond that, such as the hearing loss issue. The issue of inquiries has understandably preoccupied people and the Heywood committee will look at that.
1739. I know that you want to raise some issues with me about the future of the Northern Ireland Office, and Hilary Jackson might be particularly well-qualified to deal with that, as we have worked on a number of those issues together. There are the issues that I would not regard as business as usual in respect of the reallocation of priorities, which have arisen as a consequence of the problems that we have seen in the last few weeks in relation to the activities of a small number of criminals who, nonetheless, have the capacity to cause massive traffic disruption on our streets.
1740. The activities of those criminals must be seen in the context that there is no substantial, and almost not any, community support for them. Nonetheless, those activities make a demand on the Police Service. To ensure that we continue with a normal Police Service, the Chief Constable wishes to make some additional demands, about which I am currently in discussion with the Treasury and the Prime Minister.
1741. It is very important that the situation is seen in context. It is not about going back to the past; it is about dealing with a very real and very dangerous threat. That threat is from a small number of dangerous criminals who have little or no community support. It is important that they get a clear political response to the problems that they wish to pose to security issues here. That political response is the united response by the party leaders and the politicians in the Assembly, and it is important that the police have the resources that they need to continue with normal, neighbourhood and good community policing in the face of that type of challenge. I am determined to help the Chief Constable and the Policing Board in seeking to meet those aims.
1742. That is a brief outline of where we are. Good progress is being made on the legislation. Westminster provided for the additional eighth model for the devolution of justice and policing, which deals with a number of technical issues. The Assembly, through the work of your Committee, asked us to do that, and that is now back with the Committee. If it chooses, the Assembly will shortly begin to discuss the work of which model it would wish to choose for a Department of justice.
1743. Assuming that confidence continues to build in the coming weeks and months, the Assembly will be in a position to vote on whether it wants those transferred powers to be effected. I believe most sincerely that the best answer to all of the problems that are posed in Northern Ireland is the completion of devolution stage 2 sooner rather than later. If I can help you today or in the coming weeks, I am happy to be at the disposal of the Committee.
1744. **The Chairperson:** Last week, we heard from the Chief Constable and the chairperson of the Policing Board about the very real pressures that they are

- under. Secretary of State, you also mentioned that, particularly in respect of the hearing loss claim. That claim has substantially increased and continues to do so monthly. The figure of £90 million for that has risen to around £130 million. There is also considerable concern about historical enquiries and other legacy issues, and the equal pay claims in respect of the Civil Service.
1745. An additional pressure, relating to the commutation of police pensions, has emerged in the past two or three weeks. We understand that, as a result of a court hearing, the Home Secretary will announce that an additional period of pensions will be paid across the United Kingdom. We understand that that will result in an additional pressure of £22 million over a two-year period. Pensions are treated differently in other parts of the United Kingdom than they are in Northern Ireland, and we want you to consider that issue sympathetically.
1746. I appreciate that you provided some insight into that. At what stage are the discussions with the Treasury on the pressures that are on the PSNI, and is there likely to be an announcement on that? As the issue rumbles on, it creates unease and difficulties for the Committee and for the Assembly. We need some reassurance on that.
1747. **The Secretary of State for Northern Ireland:** Let me be very clear with the Committee. In the event that the Assembly asks for the powers of policing and justice to be transferred to those who are elected here, it is not the intention of the Government to pass over an underfunded and under-resourced Police Service of Northern Ireland.
1748. However much people may have wished for more, my strong view is that the CSR settlement, set in the context of a policing settlement in any other part of the United Kingdom, is good. The Heywood committee is not yet halfway through its work on the additional pressures. At least two more meetings will take place: one in the coming weeks and one at the beginning of May. The aim is to have achieved a resolution to those issues by 6 May 2009.
1749. The Heywood committee will deal with some issues. Realistically, others will take longer than the committee timetable allows, and those could be used by some as a reason to delay stage 2 of devolution. One such issue that comes to mind is pensions. Debates on several issues could continue indefinitely: whether they are included in the departmental expenditure limit or annually managed expenditure (AME); how much would be included in AME; or how they compare with other parts of the UK. However, if that issue were precipitated more quickly, it might not be in the long-term interest of the stability for which the Chief Constable is arguing in wanting to transfer pensions from the departmental expenditure limit to AME.
1750. One would want some issues to be resolved on principle, and as a matter of urgency, in the context of the Heywood committee: for example, points were raised about understanding historical enquiry issues and an understanding about issues of hearing loss. Although some issues may persist beyond that time, that should not in any way be confused with any lack of good intent by the Government. They want to do what is right for the people of Northern Ireland within the broad parameters of a settlement that can be UK-funded. The Government want a settlement that is not based on people simply trying to re-present arguments from the run-up to the last comprehensive spending review and making another pitch to gain a higher figure than the one for which they settled at that time.
1751. There are difficult issues, but much good progress has been made by Jeremy Heywood's committee, and the Prime Minister and I are keeping a close eye on the process. On 6 May 2009, or shortly thereafter, we hope to have concluded the discussions on financial issues, specifically those relating to pensions and commutation.
1752. **Mr Anthony Harbinson (Northern Ireland Office):** The point is that all

- pension costs throughout the rest of the CSR period are fully funded. Money set aside with the Treasury has funded commutation issues. For the period of the CSR, therefore, I do not see that there is a pension problem. If we move from a departmental expenditure limit to a completely AME-based pension, that might raise some issues, but those are being dealt with, as the Secretary of State mentioned, as part of the Heywood discussions.
1753. **Mr Paisley Jnr:** Secretary of State, thank you for your opening remarks; I know that they were made sincerely.
1754. Let me cut to the chase: there is no doubt that politicians here want the devolution of policing and justice, and it is taken as read that we are on that page. However, that statement has consequences, and your seriousness in wanting us to take on policing and justice will be measured by the financial package and what that delivers, and you said as much. We should recognise how serious you are about that, and perhaps you will tell us.
1755. Our investigations over the past six weeks show a shortfall, or serious pressures, on policing and justice that amount to approximately £660 million over the period of the CSR. That is about one third of the amount that we currently receive. Have you gone to the Cabinet and said that that is a ballpark figure for the settlement to enable you to deliver your commitment on the devolution of policing and justice? You may say that you will hand over to us a fully funded service, but “fully funded” may not cover that shortfall of £660 million.
1756. **The Secretary of State for Northern Ireland:** Let me take you back a stage. Perhaps I should bank those compliments now, because I suspect that my next comments will not earn any plaudits. One should not judge the settlement as a virility test whereby more money demonstrates greater commitment.
1757. To be frank, the commitment that we all, including the Prime Minister, showed in support of the way that the political parties responded to the events of the past few weeks is arguably the greatest measure of all. I do not want to confuse a simple weighing of cash against genuine commitment to the Police Service of Northern Ireland and to the people of Northern Ireland. Particularly in the current economic climate, that will be —
1758. **Mr Paisley Jnr:** That commitment and rhetoric will not pay the bills. It will not build the prisons, it will not fund the lawyers and it will not finance the Police Service.
1759. **The Secretary of State for Northern Ireland:** With huge respect to the lawyers, it may be that they need to earn slightly less.
1760. **Mr Paisley Jnr:** I have no difficulty with that.
1761. **The Secretary of State for Northern Ireland:** I am glad that we can at least agree on that. I caution you, because we will do our best for the people in Northern Ireland, and we will do our best for the Police Service of Northern Ireland. However, it would be extremely foolish to imagine that any supplement can be made regardless of the fact that we face arguably the biggest global recession that any of us have faced in our lifetime or which has been faced at any other time. Therefore, not only a financial commitment must be made, but to the institutions and to the other kinds of commitment that the British Government are prepared to make as part of your virility test of our commitment to the process.
1762. However, I have made it clear that the CSR settlement should not be dismissed as a zero-sum game whereby the achievement of arguably one of the strongest settlements for any police force in the United Kingdom now does not matter. It does matter, because it is an important baseline.
1763. That baseline, however, has met some additional challenges, which is precisely why I set up the Heywood committee and precisely why it is not helpful to provide a running commentary on the

- discussions and negotiations that are taking place. As you know, civil servants from Northern Ireland are represented on that as well as the Treasury, Number 10 and other senior civil servants, with a view to honouring the Prime Minister's commitment to do the best that we can should the Assembly request the transfer of powers. It is important to allow that committee to do its work. The issue should not be judged only by the number that is produced at the end.
1764. When stage 1 and stage 2 were conceived at St Andrews, the Prime Minister felt that it would have been possible to produce a substantial amount of additional financial help for the Executive and the Assembly at the end of 2008. The financial circumstances were very difficult, and that additional financial help was not requested at the time of St Andrews. Nonetheless, the Prime Minister felt that he would be able to provide that help. I ask that the situation be seen in context and in the round, and not by pitting one area against another and measuring success by whether one part achieves a greater sum than another.
1765. **Mr Paisley Jnr:** Have you put the Cabinet on notice —
1766. **The Chairperson:** You are stretching your time, Mr Paisley.
1767. **Mr Paisley Jnr:** I appreciate that, and I do not want to stretch your patience any further.
1768. Have you put the Cabinet on notice that the settlement package could result in a significant requirement for additional funding? You do not want that to come as a shock to the Cabinet. It is not about virility; it is about commitment. Commitment will be measured by our ability to deliver on this. Do not underestimate our desire to deliver, but if we are short-changed, we will not be able to do so. That is the issue, Secretary of State.
1769. **The Chairperson:** Mr Paisley, I will not allow you to come back on that point, because I have to be fair to all members.
1770. **The Secretary of State for Northern Ireland:** With huge respect to the question, I do not put the Cabinet on notice, because that is simply not how Cabinet works. It does not work by putting the Cabinet on notice. One creates a sensible process in which people can sensibly discuss the issue, negotiate the numbers and identify the real pressures from those that are expected to be absorbed from the CSR settlement.
1771. **Mr Paisley Jnr:** Have you done that?
1772. **The Secretary of State for Northern Ireland:** I have done that by establishing the Heywood committee, which senior civil servants attend, including those from Northern Ireland. I am sorry if you had not noticed that we had done that, but we have done it. What matters is that the committee rationally discusses the issues and achieves, if possible, a settlement that recognises, and can distinguish between, legitimate additional pressures and those that are expected to be reordered priorities within an existing CSR settlement — which is exactly what you would expect from any other police force. It is important for Northern Ireland to live in that space: it is the same space that everybody else occupies, and it is a good space to live in. However, that does not mean to say that I do not recognise additional pressures, and that is why I set up the committee.
1773. **Mr A Maskey:** I thank the Secretary of State for his presentation and I thank for his colleagues for joining him.
1774. It is unfortunate that people are bandying around figures, because the Committee has not agreed any figure. It is still in the midst of the important task of reviewing the overall financial position it expects to be in. Following on from Ian Og, obviously we are concerned that we get an appropriate budget for the forthcoming Department. I welcome the Secretary of State's assertion, and I accept that the Government will want to ensure that there is a proper budget in place for when the new Department is set up.

1775. It is a bit premature to be having this discussion, in that the Committee is still in the midst of an inquiry and is carrying out its assessment on the finances. Another important factor is that the Heywood committee is currently carrying out its work. There is still a lot of work to be done and agreements to be reached. Hopefully, it will be on the better side of the budget requirements, whether they are pressures or inescapables. It is unfortunate that figures are being bandied about.
1776. I want to put on the record that the Committee does not have a position on what the shortfall might be at this moment. Suffice it to say that we are anxious that we get an appropriate budget. We are clear in our own minds that there is a need to deal with what are inescapable pressures and budget requirements, as opposed to what we would want to see. Obviously, all of the parties that represent the wider community want to have the maximum budget at their disposal to ensure that they can deliver the best, most efficient and effective criminal justice system when they are duly charged with that responsibility.
1777. Will the Heywood committee consider the ongoing questions around efficiency savings as a factor that might impact on a future Department? Efficiency savings are necessary, and it is important that we continue to do that. However, sometimes efficiency savings become further cuts. Will the Heywood committee look formally at what the consequences may be as regards expectations around efficiency savings?
1778. **The Secretary of State for Northern Ireland:** Thank you for your comments about numbers. It may be helpful to lay before the Committee an example of why I think it is important to be flexible about the issue. The original assessment by the PSNI on hearing-loss claims was £68 million. However, in a short space of time that became £98 million, and, to quote the figure that Mr Paisley used, it is now £130 million. So far, the PSNI has received around 2,900 potential claims. For obvious reasons, it is not entirely clear what the final number will be. Indeed, it is not entirely clear whether some of those who could make a claim in the future might have a hearing-loss problem for a different reason.
1779. Again, it is important to look at the matter on a case-by-case basis. We must recognise that there will be such pressures and the situation might change, which is one of the reasons why we should not produce a number too quickly — and, in some cases, a formula might be better than a number. The Heywood committee may be establishing points of principle, rather than numbers. However, I say that, not because I know where the Heywood committee will be on 6 May, but because I have approached Heywood with an open mind: we have a set of issues to resolve, and the best place to resolve them is in a process that brings together people who can genuinely bring their best intentions to the table with the objective of doing their best for people in Northern Ireland.
1780. In relation to that, the questions that must be asked are: will Northern Ireland have a budget for the policing service that will maintain the levels of confidence that are — and I remind the Committee of this — the highest of any police service, anywhere in the UK; will it have the money to fund its 7,500 officers; and will it be able to meet the challenges that it faces on the streets — such as those encountered in the last few weeks? I am confident that the process will produce an answer to all three of those questions.
1781. Efficiency savings are being examined in every area of public services in the UK, and we must remind ourselves of the purpose of those efficiency savings. They are not implemented to make cuts, but to realise whether we can be more efficient about what we do. If it is possible to be more efficient, more money will be available to redistribute back into public services.
1782. A very good example of that is the money that the Prime Minister delivered for Northern Ireland last year, which the



- Executive used to assist with those in the greatest difficulty — for example, in relation to water. That money would not have been available to people here had the Government not been consistent in its drive for efficiency savings. However, I repeat that efficiency savings and value for money should not be confused with making cuts; instead, they are concerned with whether we can be more efficient about what we do. For those of us who depend on the money that we take from taxpayers for our livelihoods, it is good that we are always seen to be mindful of looking for value for money and efficiency, but not at the expense of services.
1783. **Mrs Hanna:** Good afternoon, Mr Woodward; you are very welcome. The financial climate has certainly changed; there is no doubt about that. That makes it all the more worrying that some of the identified pressures, particularly those around hearing loss and pensions, are so far out.
1784. I want to ask you about the Legal Services Commission, because I cannot get my head around the figures, particularly with respect to the legal-aid bill. That bill, as we know, is more than twice as high here than in other parts of the UK. That is despite the fact that there is a higher number of legal representations there. Has the Northern Ireland Office examined those figures in detail?
1785. **The Secretary of State for Northern Ireland:** We have indeed examined those figures. The Lord Chancellor is responsible for a number of dimensions within the legal service here, and he is as concerned as I am about those issues. That is why he is examining them in the round.
1786. As the Committee will be aware, we have managed to meet the shortfall in legal-aid pressures for 2009, but clearly there is a problem for the coming years that remain inside the CSR. I am very mindful of that, which is why if I had to say that hearing loss was the first issue, I would put it before the Heywood committee. Furthermore, we must address the
- current problem of legal aid here and the long-term issues behind that.
1787. There are issues around efficiency and legal costs that concern the public. For example, the legal fees involved in the Saville Inquiry have fuelled concern in Great Britain. I make no apology for that inquiry because I believe that it was absolutely the right thing to do, and it was absolutely right that it should be independent. Indeed, one could never place a value on that inquiry, because of the confidence that it built, and the fact that it demonstrated that the British Government were prepared to hold the mirror up to everybody, including itself. However, when more than £100 million of what may end up being a total spend of £190 million was spent on legal expenses, and when newspapers such as ‘The Daily Mail’ list many lawyers who have now been remunerated to the tune of seven figures, it undoubtedly throws up the question of legal fees in Great Britain.
1788. You might ask what the price of justice and the best legal representation is, and that is a perfectly legitimate question to ask. Again, I would counsel against simply saying that the alternative must be to set a price for counsel at the lowest possible figure. I am not suggesting that those views would apply to any member of this Committee, but I would counsel against that because it may not always be in the interest of attaining the degree of justice that we want.
1789. There should be some caution about how it is approached, but the Committee should be reassured that we recognise the problem now. We have had to fix it out of spending reserves, for this year. That situation cannot continue indefinitely, and I am mindful of that, as is the Lord Chancellor. That is why it is one of the issues that the Heywood committee is looking at, not only in the short term, but the long term.
1790. **Mrs Hanna:** Thank you for that. I was not thinking of the lost fees for the lawyer, but a cap on the fees. It is taxpayers’ money, and, as you said, Secretary of State, we are in a different

- financial climate now; the money is not there.
1791. **The Secretary of State for Northern Ireland:** I think that you would find a lot of public support for that.
1792. **Mr McFarland:** Thank you, Secretary of State, for appearing before the Committee. I want to talk about the legacy issues. The Chief Constable said that a substantial part of his budget that he might reasonably expect to spend on current policing is, in fact, spent on dealing with the past — as has been the case for some time. You will be familiar with the Eames/Bradley Consultative Group on the Past and its recommendation that we should parcel up a lot of those legacy issues and, perhaps, leave that with you so that policing and justice transfer might continue with money spent on live, current policing rather than on continually dealing with the past. What is your thinking on that?
1793. **The Secretary of State for Northern Ireland:** I accept the problems that dealing with a particular burden of the past poses for the PSNI. The way in which the PSNI has to deal with Northern Ireland's past is different from the way in which other police services elsewhere may have to deal with their pasts. The work of the Historical Enquiries Team is one example. It has 3,000 cases to work through and, as we know, it has begun work on barely more than half of those. That demonstrates the scale of the problem in Northern Ireland, which is why, I think, everyone appreciates that it is different. I appreciate what the Chief Constable says and the amount of time that his officers spend dealing with the past.
1794. I do not want to confuse what I may say about the need to deal with the past with any sense of wanting to draw a line, and not deal with the past. In the future, part of the success of Northern Ireland will be judged on how it gets out of the grip of the past, but is able to live with it in a way that helps people reconcile themselves with it. The future should not only be built on aspiration and hope,
- but on a system and a body of law that is fair and just. Therefore, that has to be part of the way forward.
1795. I am aware that those costs pose a problem for the PSNI. However, the priorities for how the police deal with its budgets are a matter for the Chief Constable and the Policing Board. I think that the Eames/Bradley group has begun to offer some interesting thoughts about how we might move forward. I made clear my position on the idea of recognition payments. It was right to remove that proposal from the table so that the other 30 recommendations could be looked at more carefully.
1796. There is no question that when the current funding for the Historical Enquiries Team runs out in two years' time, the work will not be done. It is almost certain that the team will not have opened half the cases, and it will not have been able to conclude even a fraction of those. That work has to go on, and one must ask whether there is a better way of continuing that work. It may be done in exactly the same way, but inside a different body. In the coming weeks, I will try to begin to lay out a way in which it may be possible to move forward on some of those issues, which, perhaps, would include some of the work in respect of the Police Ombudsman.
1797. Equally, I want to enter a note of caution. That work can only be done by consensus. This is not about the British Government laying down a system for Northern Ireland — I wish to underline that. Most people in this room will know that I will work on those issues only if there is consensus. If we can find consensus on some of the issues — not only with regard to the policing budget, which will be important, but for the benefit of everybody in Northern Ireland — it will be important to begin to find mechanisms that may help us deal with some of the issues of the past. There may be better ways of doing that than the way in which we are doing it currently, as Eames and Bradley have shown on a number of fronts.

1798. It may be a good idea to try to try to bring some of those things together to be looked at by some type of commission. However, those are infant ideas at present; they are not fully developed. It would be inappropriate for me to go further than that this afternoon, except to say that I would like to pay tribute to what Eames and Bradley did. As well as potentially helping to relieve the police of some of the burden they currently shoulder, there may also be proposals in their report that will help communities to find it easier to become reconciled in what have been extremely difficult circumstances.
1799. **Mr Hamilton:** I want to underscore the fact that there is a desire to have policing and justice powers devolved. Many reasons for that have evolved during the course of our Committee work over the last number of weeks on financial issues and systemic problems. It would be nice if local politicians could have a stab at doing a better job than you and your predecessors have done.
1800. I must also emphasise that, if you want the devolution of policing and justice and the whole devolution project itself to be a success, there is a price to pay. As a Committee, we would be foolish not to attempt to extract that price from you and the Government, on behalf of the people of Northern Ireland. I do not want to put an exact figure on that because the Committee has not taken a view on the validity of the bids; but a large number of them seem to be valid and worthy, on the face of it.
1801. You have said that you do not want to hand over an underfunded and under-resourced policing service, but you have also said that you consider the CSR settlement for the police to be good, and to be viewed as such by other police forces in the United Kingdom. Those other police forces do not deal with the history that our police force has to deal with; they do not deal with the consequences of that history and its impact on, for example, the Historical Enquiries Team, the hearing loss claim and the ongoing dissident republican terrorist threat in our midst.
1802. Having said that, am I correct in sensing a more positive attitude from you and the Government to dealing appropriately and satisfactorily with those legacy issues? I refer to the hearing loss claim, which will be inherited by this Administration — and which is very substantial, as the Chairman has pointed out — and issues connected with the policing of the past. If devolution is to be successful when it happens, those issues have the potential through their cost to drive us into a position where it is very difficult to make a success of it.
1803. **The Secretary of State for Northern Ireland:** Let me start by saying that it is not about your detecting a more positive attitude. If I look at the work of my predecessors in achieving the comprehensive spending review settlement, I conclude that everyone has always been very positive and has always wanted to do their best. That is why the settlement for the policing service in Northern Ireland was as it was. It is not strictly comparable with other police services elsewhere. You are right, that is a genuine recognition — not a bonus — of the extra levels of work that are required in Northern Ireland as a consequence of the difficulties that have been faced.
1804. It is not that I am more positive this afternoon about recognising the hearing-loss claim than I was a year ago. A year ago, the estimates on hearing loss were exactly half of what they are currently. Therefore, I point out that I am doing precisely what I always would have done. Genuine new pressures emerge and have to be distinguished from those that may be genuine but are not new, and there may be a case to look at things again. That is why, as a part of the Heywood process, I have done that.
1805. The other thing that it is important to say is that, if we are not careful, there is a danger that we could do two pieces of damage. The first is to suggest that the Police Service of Northern Ireland

- is underfunded, when it is not. The Police Service of Northern Ireland is well funded. Could it use more? Yes. But can more be obtained? That is difficult, but we are trying. It is important to recognise the context, as I discussed with Mr Paisley, of a global financial situation in which many millions of people are losing their jobs, many businesses are going bust and many people are having difficulties paying a mortgage and keeping their homes.
1806. In all that, we have to keep a sense of proportion. That does not mean that we will not do what is right for people in Northern Ireland — of course we will. However, that cannot simply be done despite what is happening in London and despite what is happening in Dublin. Within the island of Ireland, look at the Republic and see what is happening, and then understand the difficulty of simply wishing to meet a set of needs by saying that we can give you the money and that that proves how committed we are to you. That money has to come from somewhere. It has to come from taxpayers. There are now a million fewer people paying tax than a short time ago, for reasons that are perfectly obvious.
1807. That leads me to my second point. I remind you that I will make the best possible case that I can. However, there is a very important — I would argue even more important — issue at stake, and one that has not been talked about much this afternoon. You mentioned devolution in the context of a price. Devolution, I think, needs to be understood for what it is. It seems to me that devolution in Northern Ireland is not about getting, or not getting, more money. Rather, it is about power being in the hands of people who are elected in Northern Ireland.
1808. There is a danger if the discussion is only about money. Of course money is important. However, it becomes fetishised to the extent that one loses the point, which is — if the Assembly asks for it — the powers that I currently hold. I believe that devolution should not be seen only in the context of getting more cash. It is about asking the question: do we want power to be in the hands of people from political parties that share power in Northern Ireland, are elected in Northern Ireland, and, therefore, are seen to be fair to every community in Northern Ireland? That is a really important issue, and one on which everyone here has worked very hard.
1809. As we move toward what might be the final hurdle, I think that it is important not to lose sight of that. It is precisely the strength of that commitment, trust and representation which is allowing this to work. It is not working simply because we are able to dangle large bags of gold in front of people's eyes. The people who came out onto the streets of Antrim that Sunday morning after two soldiers were murdered came out because they wanted to show people the value that they placed on a peace process, which is a political process.
1810. In understanding the questions that the Committee is asking me, one must not lose sight of the value that we all still attach to devolution. It is not just about bringing in more cash, but about truly bringing power back to the people. It about those elected in Northern Ireland being accountable to the people of Northern Ireland. That, above all, seems to me to be the greater benefit of devolution — greater than the amount of cash involved. However, I do not underestimate how important that cash is to everyone in the room.
1811. **Mr McCartney:** Thank you for your presentation. My questions are about the Heywood committee's findings and how those findings will be framed. Will those findings be about the cost and the realistic projections that some of those issues are going to mean; or will they make recommendations as to who should be responsible for carrying things forward, particularly in respect of the legacy issues? Some of the other justice agencies have given presentations to the Assembly and Executive Review Committee, and have talked about their views on underfunding. Are the committee's findings just about costing or will recommendations be made as to who should carry forward the resource work?



1812. **The Secretary of State for Northern Ireland:** Ultimately, the Heywood committee will reach its deliberations and a report will be submitted to the Treasury. That report will be seen by me and by the Prime Minister. It is a safe bet that the Prime Minister will not be short of representations, which will continue to be made when the Heywood committee concludes its work. However, I think that you have identified a number of areas that the Heywood committee is likely to look at and report on. You are right to ask those questions because I believe that the report is likely to move in a number of ways, rather than in one single way. It may not be possible, on some of those issues, to reach a conclusion, because a formula may be more sensible. For example, the issue around pensions may be not decided yet.
1813. Again, it may be that a formula will be more appropriate than a number in dealing with the issue of inquiries for one good reason. I write to Lord Saville on a regular basis to ask him when he will be finished, and he cannot tell me. That is the value of an independent judicial inquiry. Everybody in this room must also feel that frustration. There is some common sense that it might not be sensible to simply tie this up with numbers or formulas as an alternative.
1814. I expect that the Heywood committee will be quite tough on some issues, and it is right that all those issues are looked at. For example, this Committee has taken evidence from the Probation Service, which is an excellent body that has delivered an excellent service, and it has had its largest ever increase. However, it said that it wants £18 million more. That is quite hard to grapple with in these financial circumstances.
1815. Again, I have no doubt that that issue will have found its way on to the table. That is exactly the type of issue that we realistically expect to be dealt with in a comprehensive spending review settlement that has already been made. As I said, I am not running the Heywood committee; rather, I am waiting for its report. Therefore, this is not a conclusion; it is just my judgement.
1816. However, I do think that issues such as hearing loss claims are in a completely different league. Clearly, if there were no capacity to find additional help and resource for issues such as hearing-loss claims — regardless of what is said about the value of devolution as regards the transfer of powers to the people here — it would be extremely difficult for the police service to deliver normal policing. That is a view that is shared in London. It is not a view that is to be sold in London; it is one that is shared in London. The Heywood committee is looking at how to deal with that. Therefore, I am not saying that this is an open-and-shut case, and I am not saying that it has been dealt with — it has not.
1817. We are genuinely trying to reconcile those issues within a difficult economic envelope; however, you should never, for one moment, doubt the Prime Minister's commitment and mind to doing the best possible deal that we can for the people of Northern Ireland, because we want this to work and we will do everything that we can to help.
1818. **The Chairperson:** Will the findings or the recommendations of the report be referred to Northern Ireland at some stage, or is it an internal Cabinet report?
1819. **The Secretary of State for Northern Ireland:** At this stage, the report is an internal document for the benefit of the Treasury and for us to try to achieve a resolution to the financial issues, with a view to genuinely trying to separate out the additional financial pressures from what might be described as the slightly regurgitated pre-CSR pressures. The report also attempts to deal with some of the other issues that have come on to the table in the meantime. I doubt that we will bring together the issues raised around the additional burdens placed on police by the work of criminals over the past few weeks in the Heywood report; however I am not ruling that out, because it may become sensible to do so.
1820. This is really an attempt to get a grip on the precise numbers in order to identify new needs from old needs, as those might be distinguished. I cannot say that



- we will publish the Heywood committee report because it may amount to only a couple of pages. Could those couple of pages be published? I am not Jeremy Heywood, so I cannot answer that. He has done the work for me, so that we are able to achieve this. Those numbers are being shared with members of the Heywood committee with whom everyone here has contact.
1821. However, in so far as I can give you an undertaking, I am happy to discuss with Mr Heywood whether some, if any, of what he may produce can be shared with the Committee at a later stage. I would not hold my breath in expecting that to happen, because, in the end, the report may be a private memorandum between Jeremy Heywood and the Treasury. However, I am happy to raise that question with him to see whether the report can be shared in some form.
1822. **The Chairperson:** We are out of time; I know that you must be away in one hour. However, a number of other questions have not been answered.
1823. **The Secretary of State for Northern Ireland:** I am happy to write to the Committee in response to those questions.
1824. **The Chairperson:** We were going to ask you do that. The Committee has received a lot of evidence on figures. We have not come to any conclusions about those at this point in time, and there have no discussions about them. Obviously, some of the figures that have been raised are aspirational, and we intend to look at those before we commit to a final report.
1825. Thank you very much for coming along today. We appreciate your time, and we appreciate the answers that you have given. Perhaps not everyone appreciates the answers but, at the end of the day, I am sure that we will have further discussions on this issue before we have the final report. I understand that you do not rule out the possibility of coming along to this Committee at some stage before the final report is due.
1826. **The Secretary of State for Northern Ireland:** I am happy to come along again.
1827. **The Chairperson:** Thank you very much.



## 21 April 2009

### Members present for all or part of the proceedings:

Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mrs Carmel Hanna  
 Mr Danny Kennedy  
 Mr Nelson McCausland  
 Mr Alan McFarland  
 Mr Alex Maskey  
 Mr Ian Paisley Jnr

1828. **The Deputy Chairperson (Mr McCartney):** The Committee will now discuss matters relating to the devolution of policing and justice powers. We shall work through the category-2 list of issues. Will Committee members please declare any relevant interests?
1829. **Mr McCausland:** I am a member of the Belfast District Policing Partnership (DPP).
1830. **Mr A Maskey:** I am a member of the Policing Board.
1831. **The Deputy Chairperson:** In Ian Paisley Jnr's absence, I declare that he is also a member of the Policing Board.
1832. Issue A was resolved on 27 January 2009, so we shall begin with issue B. I shall ask each party to comment in turn. I shall then take further comments, before we move on to issue C. Issue B asks:
- "Who might be responsible for appointments to the judiciary?"*
1833. I invite the DUP to make its position known.
1834. **Mr Hamilton:** In order to be consistent with the principle of keeping the judiciary free from political interference, the DUP believes that the issue has been dealt with satisfactorily in legislation.
1835. **Mr A Maskey:** Sinn Féin also believes that issue B has been dealt with in legislation.
1836. **Mr McFarland:** For the record, may we remind ourselves of what that is again? If someone is reading Hansard, it may be useful to know exactly what —
1837. **The Deputy Chairperson:** Issue B asks:
- "Who might be responsible for appointments to the judiciary?"*
1838. **Mr McFarland:** No. What does the legislation state exactly?
1839. **The Deputy Chairperson:** I am sorry. My apologies.
1840. **Mr Paisley Jnr:** I do not have a copy of the legislation on me, Alan.
1841. **Mr McFarland:** If someone reads the Hansard report of this meeting in three to four years' time, and a Committee member has stated that issue B is covered by the legislation, it may be useful were the report to show exactly what the legislation states.
1842. **Mr Paisley Jnr:** We should agree to attach an annex to the Hansard report that details what the legislation is. That would save us from having to read it into the record now.
1843. **The Deputy Chairperson:** If anyone is reading the Hansard Report of this meeting in three or four years' time, questions may be asked as to why.
1844. **Mr McFarland:** Out of interest, is a copy of the legislation available?
1845. **The Committee Clerk:** I do not have a copy of the legislation with me, but I can supply copies to members later today, if that helps.
1846. **Mr McFarland:** Can the Committee be refreshed on the legislation by someone who is familiar with it? Are appointments to the judiciary currently

- the responsibility of the Northern Ireland Judicial Appointments Commission (NIJAC)?
1847. **Mr Hamilton:** Yes, in part.
1848. **Mr McFarland:** Who is responsible for the rest of the appointments?
1849. **Mr Attwood:** The Judicial Appointments Commission will make all judicial appointments in the North, save for the position of Lord Chief Justice, whom the Queen will appoint, on the Prime Minister's recommendation.
1850. **Mr Hamilton:** I was about to say that.  
*[Laughter.]*
1851. **Mr Attwood:** I was simply trying to help the words out of your mouth.
1852. **The Deputy Chairperson:** What is the position of the Ulster Unionist Party?
1853. **Mr McFarland:** We are happy with that.
1854. **The Deputy Chairperson:** What is the SDLP's position?
1855. **Mr Attwood:** I refer the Committee to the SDLP's previous position.
1856. **Mr McFarland:** Which was what?
1857. **Mr Paisley Jnr:** Happy with nothing.  
*[Laughter.]*
1858. **The Deputy Chairperson:** OK. We shall move on to issue C, which asks:  
  
*"What should be the relationship between SOCA and the Security Services and the Minister/Department/Assembly?"*
1859. That issue is linked to issue N in the category-1 list. Issue N asks:  
  
*"What needs to be done to ensure that attention is given to having appropriate measures in place to address issues such as the role of the security services?"*
1860. **Mr Hamilton:** This is a matter on which we await Government indication, as well as memorandums of understanding, and so forth, that the Secretary of State made a commitment to share with the Committee in due course. Therefore, in many ways, we cannot take a firm view on issue C until we have received all that information.
1861. **Mr A Maskey:** Sinn Féin adopts a general position on the likes of SOCA, in that those matters should be dealt with by a democratic and accountable policing service. Therefore, the work of SOCA should be mainstreamed.
1862. **Mr McFarland:** The UUP presumes that the system for the new Department will mirror the system that was introduced among SOCA, the security services and the policing system. That system has memorandums of understanding and protocols in place.
1863. **Mr Attwood:** What is the current position with the memorandums of understanding? Are they still being hidden from the Committee?
1864. **The Committee Clerk:** When the Secretary of State gave evidence to the Committee before the Easter recess, he indicated that the various memorandums of understanding were still being worked on, but that those would be supplied to the Committee. The Committee took the Secretary of State at his word at that stage, and I have not had any further correspondence to indicate that the memorandums of understanding have now been finalised.
1865. **Mr Attwood:** Have they been supplied to the Office of the First Minister and deputy First Minister (OFMDFM)?
1866. **The Committee Clerk:** I am not aware of that.
1867. **Mr Attwood:** Can we enquire as to whether OFMDFM has had sight of the memorandums of understanding?
1868. **The Committee Clerk:** The Secretary of State originally indicated that he wanted to share them with the First Minister and the deputy First Minister before sharing them with the Committee. However, the Committee wrote back and said robustly that it wanted them to be shared simultaneously. That is the formal position.

1869. **Mr Attwood:** That is our formal position, but is it his?
1870. **The Committee Clerk:** I cannot answer for the Secretary of State.
1871. **Mr Attwood:** That is why we should ask OFMDFM whether it has had sight of the memorandums of understanding. The memorandums of understanding have long been available, and they have been long refused to us. I am curious to know, and it would be interesting to know, whether OFMDFM has them. If it has, it would create leverage for us to be able to say to the Secretary of State that we want them. That would put the Committee in a very strong position.
1872. **Mr Paisley Jnr:** We had a very helpful debate on that before. Roles, and the standings of people in each role, were recognised. I realise that Alex is anorakish on the issue of memorandums of understanding, and he is entitled to be so. However, a reasonably good understanding of where the issue lies came out of previous meetings.
1873. **Mr Attwood:** We should still ask, in order to find out whether we are being kept somewhat in the dark while a bit of light is being shone elsewhere. If we do so, we can see what the consequences are. It is only when we see what the memorandums of understanding say or do not say that we can judge whether the relationship in issue C is, as the SDLP views it, structured appropriately.
1874. **The Committee Clerk:** Do you want the Chairperson's letter to be sent only to the First Minister and the deputy First Minister, or do you want a follow-up letter to be sent to the Secretary of State, given that he indicated in his oral evidence that the Committee would be furnished with the memorandums of understanding?
1875. **Mr Attwood:** I want a letter to be sent to the First Minister and the deputy First Minister and to the Secretary of State.
1876. **The Deputy Chairperson:** We shall move on to new issue D, which combines original issues D and E. New issue D asks:
- "What needs to be done to ensure the maintenance of existing North/South policing and justice agreements, and is there a requirement for a Justice Sector of the North/South Ministerial Council?"*
1877. **Mr Hamilton:** Obviously, there are existing North/South relationships. Did not we ask to get more detail on what those relationships are? If we have not asked already, I suggest that we do so, in order that the Committee might have a better understanding of what those agreements are, and how they currently operate. The DUP is not convinced of the need for the issue to be dealt with through the North/South Ministerial Council (NSMC).
1878. **Mr A Maskey:** Sinn Féin believes that the existing arrangements should be maintained and continued under a new Minister and a new Department, and that a justice sector of the North/South Ministerial Council is required.
1879. **Mr McFarland:** The Ulster Unionist Party is comfortable for the existing arrangements to continue. It would be useful to know in some detail exactly what those arrangements are, and we asked for that information some time ago. We, too, are not convinced of the need for a justice sector of the North/South Ministerial Council.
1880. **The Committee Clerk:** As has been agreed, a letter is to go to the Secretary of State about the memorandums of understanding. As I understand it, the justice agreements are protocols, and the Secretary of State also promised to provide the Committee with those protocols. Therefore, both issues can be addressed in the letter that the Committee will write to the Secretary of State.
1881. **Mr Attwood:** The SDLP believes that there should be a North/South justice sector. A mechanism now exists for that matter to be opened up for discussion through the second phase of the review of North/South arrangements, which OFMDFM has said is scheduled to report by the end of 2009. I am highly dubious about whether it will report by then; nonetheless, it represents another



- mechanism by which such a proposal can be advanced. The SDLP has written to the relevant people to say that a North/South justice sector is one of the outcomes that we will look for from the second phase of the North/South review.
1882. The Committee should try to push the boat out a bit, because the North/South element of the British-Irish justice agreement will fall once justice powers are devolved — that is what will happen. If no new North/South justice agreement is in place for elements that are North/South as opposed to British-Irish, on the day of devolution of justice powers, gaps will exist in the justice arrangements and protections on the island of Ireland. Those gaps may extend to understandings between justice structures in the North and the South over, for example, protection of children or vulnerable adults. I do not think that anyone will have an issue with ensuring that arrangements for the protection of vulnerable adults or children are in place, but, at present, the North/South parts of the current justice arrangements will fall on devolution day.
1883. **The Deputy Chairperson:** To inform us on that issue, we need to see the protocols.
1884. **Mr Attwood:** Those papers have been before the Committee on a number of occasions. Simon Hamilton's request is nothing new. We have received that information on numerous occasions, and we have questioned officials on the protocols on a number of occasions. The fact is that part of the North/South justice arrangements will no longer exist on devolution day, because they are in the gift of the Northern Ireland Assembly. On that day, on the island of Ireland, people will be less protected as a consequence. If we are serious about our business, we should state that we cannot have a situation whereby, on the day of devolution policing and justice powers, people, North and South, are less protected than they were on the day before devolution.
1885. Devolution of justice powers may be four, five or six months away, so we need to be satisfied that arrangements for that day will be in place. On that day, it will require the agreement of a justice Minister, a justice Department, or the Executive to have the arrangements in place; otherwise, we will let down the citizens of the North and the South.
1886. These are common-sense observations, not highly political ones. Therefore, we should ask the British and Irish Governments, and the Executive, at what stage they are at in having in place North/South justice arrangements that take into account matters that will fall on devolution. That is just common sense. Therefore, we should write to all three Executives — Dublin, London and Belfast — to ask whether the arrangements will be in place on that day and whether the protections under the current justice arrangements will continue to be in place on that day; otherwise, a message will be sent out to the people that they will be more vulnerable as a consequence. We cannot send out that message.
1887. **Mr Paisley Jnr:** We must be careful not to invent a bogeyman. I understand what Alex is getting at, but the arrangements are less bureaucratic and more practical. There is now practical co-operation between the Police Service and the guards. Information is shared daily without there being the need for legislation.
1888. We need to set a safe parameter for some of Alex's concerns, as they may not be as real in practice as they are in theory. Nevertheless, we should keep a cautious eye on the issue, but, at the same time, we should not allow ourselves to get into a whole flap or create a concern that, suddenly, paedophiles will be rampant on the day of devolution of policing and justice powers. There are issues that should always warrant watchful concern.
1889. **Mr Attwood:** Ian is talking about the arrangement between the police, North and South, but that is a separate issue. The North/South policing agreement will

- not fall on devolution day, because that is an arrangement between the PSNI and the gardaí. However, what do fall are the elements of the justice agreement that was signed off between the British and Irish Governments. On devolution day, elements that are relevant to the British and Irish Governments will continue to be in place, but elements on the justice side that are relevant between the North and South will fall. Therefore, the policing side is already taken care of. As such, it is none of our business, because it is the responsibility of the Garda Síochána Commissioner and the Chief Constable.
1890. However, arrangements on the justice side will fall. We should consider whether we are satisfied that the necessary arrangements are in place for the day on which justice powers will be devolved. I understand that that is not the case. However, as an NIO official told the Committee, it will not be difficult to put the necessary arrangements in place. Therefore, we must ensure that the arrangements are in place. We can send some letters, which can be gently written, to ask what is being done about those elements that may fall. By doing so, we will ensure that the necessary arrangements are in place on the relevant day.
1891. **Mr A Maskey:** I do not see that being a problem, but I do not object to our writing a letter.
1892. **The Deputy Chairperson:** New issue E will be dealt with at next week's meeting, at which the specialist adviser will present a paper based on a previous evidence session.
1893. We now move on to new issue F, which asks:
- "What, if any, consideration should there be of the Ashdown Report on Parading, and is there a need for further clarities of the powers to be devolved, and, if so, should they include matters relating to the Public Processions (Northern Ireland) Act 1998, flags and symbols and recruitment to the PSNI?"*
1894. **Mr Hamilton:** The Ashdown Report is important for policing in general. If we are to devolve policing and justice powers, the sore that is parading must be dealt with. We need to assess the consequences in the context of the new issue E, which concerns financial provisions. It is important that we clarify the current status of the Ashdown Report, because I do not know whether any attempts have been made to do that. However, the report will have a bearing on our conclusions, so we should chase that matter up.
1895. **Mr A Maskey:** How does Simon suggest that we chase that up?
1896. **Mr Hamilton:** The Chairperson or the Committee Clerk should contact the Ashdown review body and the Parades Commission to clarify when a report is expected. The Committee should then consider the report's ramifications, because it will have a bearing on future policing: the role of the police; the impact on resources; and so on.
1897. **Mr A Maskey:** I consider that to be a category-3 issue, but I have no problem with our making a call or writing a letter.
1898. **Mr Hamilton:** The matter can be dealt with. The ball is not really at our foot.
1899. **Mr McFarland:** The parading issue must be sorted out. We cannot devolve policing and justice powers yet leave the parading issue twisting in the wind. I understand that the Parades Commission will exist until December 2009. We need to discuss the Ashdown Report and how to deal with parading. Agreement on flags and symbols was reached in 1998 and should be left alone, and the current system of PSNI recruitment ceases in 2010, when the Patten arrangements finish. At that stage, I presume that a normal recruitment pattern will be followed.
1900. **Mr Attwood:** Four or five weeks ago, somebody said that the Ashdown Report would be published this month, and I disagreed. In fact, the Ashdown Report should not be published ever.
1901. **The Deputy Chairperson:** We recall your wisdom.

1902. **Mr Attwood:** I hope that that will transpire. However, I am sure that people will eventually feel an obligation to Lord Ashdown to publish the report. I felt that it would be published at this stage, because it would simply become another feature in the forthcoming election.
1903. I agree with Alan that we need to bore into the matter. Simon is right when he says that we need to contact Lord Ashdown, or somebody, to determine the report's current status and the time frame in which it may or may not be published. We should consider new issue F further in the near future.
1904. **The Committee Clerk:** There is a handling issue to consider as to whether the Committee can engage directly with Lord Ashdown, because the Government commissioned Lord Ashdown to produce a report. The Committee might be better to write to ask the Secretary of State what his understanding is of the report's status and when he expects to receive it. Any letter should reflect the fact that there is potential implication for the financial aspects of devolving policing powers, and the Committee has always appeared to recognise that. Obviously, depending on the report's recommendations, those implications could be greater or lesser. Given that the Committee wishes to write to the Secretary of State on a number of other issues, all could be captured in one letter to the Secretary of State, rather than its trying to engage with Lord Ashdown.
1905. It is fair to say that the Chairperson had a brief telephone conversation a couple of months ago with Lord Ashdown that did not reveal a great deal. I imagine that there may be more prospect of getting something from the Secretary of State.
1906. **The Deputy Chairperson:** It will be a long letter.
1907. We now move on to new issue G, which asks:
- "In the context of Recommendation 26 of the Committee's original report, to which Department should the Public Prosecution Service be attached?"*
1908. **Mr Hamilton:** The use of the word "attached" is somewhat misleading. It is not really "attached" but independent and separate. However, there is obviously a budgetary issue to consider, and the DUP's position has been stated before. We believe that the Department of Finance and Personnel (DFP) would be a possible place to put the Public Prosecution Service (PPS). There have been suggestions about putting it into the justice Department, but the DUP's position is that it suggests DFP as the place to put the PPS.
1909. **Mr A Maskey:** Sinn Féin's view is that it would be better placed in OFMDFM, because that would provide some symmetry with the position of the Attorney General.
1910. **Mr McFarland:** There must be a perception of some sort of independence, and it would be useful if a non-involved organisation were to administer it. It is just a matter of budgeting and looking after the PPS, but one would not want people to chop budgets, or be perceived to be chopping budgets, or to interfere with the PPS. The Ulster Unionist Party is probably also comfortable with putting it in DFP.
1911. **Mr Attwood:** The SDLP prefers for it to go into the Department of justice, as that is the natural place for it to reside. The evidence of the director of the PPS does not stack up. He said — as far as I recall and subject to the Hansard report — that if it went to the justice Department it might, interfere with the PPS's independence. I do not understand that argument, given that the Committee agreed for a huge range of justice agencies to be attached to the justice Department, yet nobody from any of the other organisations said that that would give rise to any interference with its independence, or to its freedom to act as it deems appropriate. That was a curious argument from the director of the PPS.
1912. It is equally curious that people want the PPS to go to DFP, because that is not a natural place for it to reside. Nobody has made the argument that

- other justice agencies should go to DFP. When Simon Hamilton mentioned DFP as a possibility in a previous Committee meeting, it struck me as being a curious proposal, and I wonder who knew about it in advance. The SDLP's preferred option is for the PPS to be attached to the justice Department, but definitely not to DFP.
1913. **The Deputy Chairperson:** We move on to new issue H, which asks:
- "In the context of Recommendation 27 of the Committee's original report, about examining the independence and accountability of the Public Prosecution Service, before, and following devolution, what consideration should be given to this matter, pre-devolution?"*
1914. **Mr Hamilton:** It may be worth giving some consideration to that matter, although I am not sure about the practicalities of doing so. Perhaps we should commission some research in order to arrive at options. Has any such research been done?
1915. **The Committee Clerk:** Substantial amounts of research were commissioned previously by the Committee. Those pieces of research, which have been distributed to the Committee from time to time, particularly at Mr McFarland's request, deal with the relationship between the Public Prosecution Service and the Assembly. For example, they include some comparisons with other legislatures. The distinguishing feature in this case is that the Attorney General, who would be responsible for reporting to the Assembly, is not an elected member of this legislature. There are some differences, and the comparative analysis does not provide much help in this instance. However, the matter of the independence of the PPS is rehearsed in those research papers. I am happy to redistribute those materials to members if they wish, but I know that they were given out at least once before.
1916. **Mr Hamilton:** I will reflect on those papers.
1917. **Mr A Maskey:** I am not sure what else can be done about that matter. There is a lot of information available, and when we resolve the accountability issue, the matter will have been dealt with, in my opinion.
1918. **Mr McFarland:** This is a key issue, along with the relationships with the judiciary. It is absolutely correct that politicians should not try to second-guess individual court cases. However, there are some in the judicial system who do not want any oversight in respect of their policies and how they carry them out. In due course, the Assembly will wish to talk to key players in the PPS and the judiciary about why — in broad terms, rather than in respect of individual cases — they follow particular policies.
1919. I appreciate that that is a very sensitive area. Other legislatures have sentencing advice committees that steer the judiciary. However, it is early days for us, and we are likely to end up with an agreed system whereby the Attorney General reports to the Assembly. However, we should put down a marker that, as the situation evolves, we are likely to want to have robust discussion with key players about major issues of concern to the electorate. That might include the Director of Public Prosecutions talking to Committees.
1920. **The Deputy Chairperson:** How that will evolve after devolution is a separate matter. In this instance, we are talking about the situation pre-devolution.
1921. **Mr McFarland:** At the moment, I understand that the Attorney General answers for the DPP on the Floor of the House. I am just putting a marker down. My guess is that the political parties will want to hold discussions with the Director of Public Prosecutions, perhaps in some other format.
1922. **Mr Attwood:** Given what Simon and Alan have said about research and the importance of this matter, we should schedule an early meeting for a discussion on it, so that each party can scope out the relevant issues, as they see them, in respect of the future of the

- PPS. It is impossible to do that in any detail by going through the list of issues that is before us, but perhaps we could take some time to scope out, as parties, what we believe the issues to be.
1923. It may be that we could agree that that there are two, three or four issues on which we could do some early work. We should do that work because, over the past 10 years, although attention has been on the Police Service, no similar attention — despite various people's efforts — has been given to the Crown Prosecution Service or the Public Prosecution Service.
1924. Devolution could allow us to do much in the short term to improve the speed and the administration of justice, and public confidence in the Public Prosecution Service and the administration of justice. We have a lead-in time of a number of months, or longer, before devolution, allied with the oversight of SOCA and the security services, North and South. Therefore, that is one of the key areas on which we could do some useful work.
1925. We have done some useful work on the financial side, about which we will hear in the near future. This is a priority area, and, in order to grapple with it, we should schedule a Committee meeting during which parties could scope out what they regard as the relevant issues and assess whether a programme could be worked up.
1926. **Mr A Maskey:** I have no difficulty with that sentiment, but we need to be careful, because it is not our job to overhaul the PPS. We are considering lines of accountability, and so on. I would not stop anyone from having a 45-minute conversation today, but I have no difficulty with coming back to that issue in more detail. In any of these discussions, it is my understanding that we should take as long as we need. I caution that we are not here to overhaul the PPS — much as I or anyone else may want to do that, or may have to do it at some point.
1927. **Mr McFarland:** That is a useful idea. It would pay us to do a bit of homework and return to a discussion about that issue with more time allocated.
1928. **The Deputy Chairperson:** We will return to that issue. We could also discuss the format of such a discussion.
1929. **Mr Attwood:** The Committee Clerk could schedule an agenda within two or three weeks that is dedicated to —
1930. **Mr A Maskey:** Why not just deal with it in the same running order as it is appears today? I am not stopping anyone from having a 45-minute conversation today.
1931. **Mr Attwood:** I am certainly prepared to have that discussion now, or any day. I am just being courteous to the other parties that may not have done preparation on that specific issue before today's meeting.
1932. **The Deputy Chairperson:** We will return to that issue. As outstanding matters condense, we will have more time to discuss it.
1933. We turn to new issue I, which is:  
*“In relation to Recommendation 30 of the Committee's original report, who should undertake the advisory role in relation to the appointment of the Police Ombudsman?”*
1934. **Mr Hamilton:** I reiterate our previously stated position: given the sensitivity and the need for independence in respect of that post, the advisory role should be taken on by the Secretary of State and the NIO.
1935. **Mr A Maskey:** We believe that it is appropriate that OFMDFM undertake that role.
1936. **Mr McFarland:** Much depends on the outcome of the Eames/Bradley process. If the Police Ombudsman performs the original role of the office — which is to examine serving police officers and investigate the past if they are accused of something — that would probably fit with OFMDFM. If a role of rooting around in the past in a one-sided truth commission remains with



- the Ombudsman, the Secretary of State needs to have some control over that.
1937. **Mr Attwood:** We also believe that OFMDFM should have input. We are unaware of another model within the devolved arrangements that could take care of that issue. The matter must be taken care of within the devolved arrangements; it cannot be an issue that is left to the residue of the NIO.
1938. **Mr Paisley Jnr:** It may be helpful to expand on the reasons for that role to be left to the Secretary of State — it is not out of any love for the Secretary of State, or to give him something to do.
1939. Members should reflect on the fact that the Police Ombudsman is a parliamentary office. If it is decided that that office should be appointed, overseen, scrutinised, or run by the Northern Ireland Assembly — by the Office of the First Minister and deputy First Minister — it must be recognised that that would diminish the role of the Ombudsman. If people wish to diminish that role, and remove provisions concerning independence, etc, that is an issue for the Committee.
1940. Our reason for wanting to maintain a role for the Secretary of State, and Parliament, is to allow the office to be independent. The intention is not to diminish the office. Those are issues that members should reflect on. I am not saying that to create a debate, but perhaps members could come to our next meeting with a view on those points.
1941. **Mr Attwood:** Can we just check if Ian's point is right? As I understand it, following devolution, the Police Ombudsman will table her report to the Northern Ireland Assembly.
1942. **Mr Paisley Jnr:** His report.
1943. **Mr Attwood:** His report; sorry.
1944. **Mr Paisley Jnr:** Those were the halcyon days, Alex. *[Laughter.]*
1945. **Mr Attwood:** The Police Ombudsman's annual report will be tabled to the Assembly, and that is provided for under legislation. As far as I am aware, so far, no one has said that that legislation should be revisited. Therefore, if Ian's point is that we are diminishing the role of the Police Ombudsman, on the basis of his argument — if I understand it correctly — that role is being diminished under law, because the Police Ombudsman would report here and not over there.
1946. **The Deputy Chairperson:** The issue is the advisory role.
1947. **Mr McFarland:** That is directly related to the sensitivity of the post. My understanding is that the Assembly Ombudsman, Mr Tom Frawley — who is responsible for the Departments — reports to the Assembly. Logically, if policing and justice powers are to be devolved, and the Police Ombudsman will be fulfilling a similar, non-controversial role, examining current police officers and whether they are behaving themselves, it does not seem unreasonable that the Police Ombudsman should report here too. If we are left with an Ombudsman that carries out a role of dealing with the past, which is a very sensitive matter, that should be left to the Secretary of State.
1948. **The Deputy Chairperson:** New issue J was resolved on 3 February. Therefore, we will move on to new issue K:  
*“What would be the status of the Minister's position in, and relationship with, the Executive Committee; and would the Minister be required to bring significant, or controversial, matters to the Executive Committee?”*
1949. **Mr Hamilton:** That issue requires some further work.
1950. **Mr Maskey:** We are happy to come back to that another day.
1951. **Mr McFarland:** It is our belief that the justice Minister should be a normal Minister, and have a normal relationship with the Assembly and the relevant Committee.
1952. **Mr Attwood:** Our view is that the Minister should have full status and

equality with all other Ministers, and the full responsibilities that arise thereunder.

1953. **Mr Maskey:** That is not different from our position, but we are happy to come back to it another day.

## 28 April 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mrs Carmel Hanna  
 Mr Alex Maskey  
 Mr Nelson McCausland  
 Mr Alan McFarland  
 Mr John O'Dowd  
 Mr Ian Paisley Jnr

### Witnesses:

Mr Victor Hewitt                      *Specialist adviser*

1954. **The Chairperson:** The Committee welcomes back Victor Hewitt.
1955. **Mr Victor Hewitt (Specialist Adviser):** Thank you, Mr Chairman. By the conclusion of the Committee's last evidence-gathering session, we had trawled through a great deal of information through oral presentations and written submissions. The purpose of the paper that I present to the Committee today is to try to trawl through and impose some order on that, particularly in classifying "unavoidable pressures" and "other pressures".
1956. If a Department is asked how important a particular pressure is to it, it will say that it is very important indeed. Therefore, there needs to be some criteria by which one can effectively say: "That is a totally unavoidable pressure." The normal criteria that finance officers would use to do that is that it constitutes a legal or contractual commitment. That is the starting point. All other pressures have to be judged on other criteria, be they political or otherwise.
1957. Therefore, the bulk of this paper is about trying to classify "unavoidable pressures" on that definition, and "other pressures", about whose priority the Committee will no doubt wish to debate in due course.
1958. The summary of pressures is in the form of a table in order to keep it compact, because there is a great deal of information floating around. This is still a moveable feast: the information keeps coming out, even since our last session. For example, another £20 million has come on the table as a backdated PSNI pension commutated cost for 2008-09. That figure was not brought out at any of the evidence sessions.
1959. Another factor that is also a moveable feast is the low-pay claims for the Civil Service as a whole, whereby those numbers have essentially quadrupled. I do not think that people are quite aware of the size of those claims, which are now very large. Again, that is something that could continue to grow in the context of this document.
1960. Using the "unavoidable" classification, the really big pressures are the hearing-loss claims; the equal pay claims; the cost of public inquiries, to which I will return; and legal aid. Other issues, such as the PSNI pensions, are being looked at with regard to switching them from being a pressure on the departmental expenditure limit to being covered under the annually managed expenditure heading, as would be the case in the rest of the UK. There would be some cost in making the switch, but that is not a cost that could be unsupportable.
1961. I will just run down the list of "key unavoidable". The PSNI hearing-loss claims are growing almost every time that we take further evidence on them, and their size increases. There is £131.3 million of claims, and that figure may well increase.
1962. We have an estimate of £50 million over two years for the equal pay claims, which will be unavoidable. I have just referred to the overall bill for the Civil Service, which is growing rapidly, although the figures have not bottomed out yet.

1963. There was also a claim from the NIO that its junior staff would not be affected by equal pay claims. That may or may not be so. The trade unions will certainly be pushing for junior staff in the NIO to come within the same remit as regards back pay, and I have no figures for that at the moment.
1964. The other matters relate to public inquiries, which could be any amount of money, depending on the number of inquiries, and legal aid, which has been running at £30 million a year light on its budget year after year, and it has had to go back and fight for money from the Treasury. The public inquiries money has been funded by using up the end-year flexibility that the NIO had built up — unspent money that it has been carrying forward. It has, effectively, exhausted that as a source of money for public inquiries. That was a contingency, and unless that is rebuilt, the NIO will be unable to meet any of those other claims that are on the table. The inquiries are a key element of the package.
1965. We ran across claims from the Probation Board — about £18 million — which is a good example of where we need to be careful about comparing like with like. The operations of the Probation Board in England are rather different from the Probation Board here, in that some of the things that are covered within the Probation Board spending in England are covered within the Department of Health, Social Security and Public Safety spending in Northern Ireland. We are not exactly comparing like with like, thus that £18 million is a little suspect on those grounds.
1966. I do not want to go through all of the figures in detail, although I will pick up any questions members may have. The additional money for the dissident activity will be an unavoidable cost, but we expect that to be picked up as in-year costs by bids on the Treasury in the year in which they arise, rather than as an addition to the PSNI baseline going forward indefinitely. They are unavoidable: they are not of the same character; they are not a baseline issue, as opposed to an in-year pressure.
1967. I will leave it there, Chairman, and take any questions members may have.
1968. **The Chairperson:** Mr Hewitt, can you clarify the pension commutation costs — the £20 million you referred to? My understanding was that the money came out in the evidence. I questioned the NIO on pensions, and those costs were fully funded. The commutation figure is £22 million: £11 million each year additional. That came out during the evidence and during the Policing Board's presentations at some point. The ready reckoner shows a figure of £924 million, and often the figure talked about for the police budget is £1.2 million. However, I understand that the difference between the £924 million and the £1.2 million is that the difference — whatever the figure is — comes under annually managed expenditure (AME), which relates solely to pension costs.
1969. We need to establish whether that £22 million of additional money, which was the result of an announcement made by the Home Secretary that affected the police service throughout the whole of the United Kingdom, comes under AME. I understand that the Government pick up any additional costs that would be involved. Is that your understanding?
1970. **Mr Hewitt:** Not from the evidence that was given. Members will recall that the Chief Constable expressed concern that his budget was being hit by those pension costs, which suggests to me that they are not currently covered by AME. I will go back and check that, because it is an important issue. According to the available evidence, the £22 million pension commutation was for the next two years. The additional £20 million that I mentioned was for the past year and was backdated.
1971. **The Chairperson:** That is what I wanted to find out.
1972. **Mr Hewitt:** That looks like an additional pressure. That will be covered in-year, so only the £22 million will have an effect on the budgets. Negotiations are taking place with the Treasury about attempting to switch those pressures

- from the departmental expenditure limit (DEL) process to the AME process. I expect that to happen, but I do not have any further information about that at present. I will go back to NIO and check that.
1973. **The Chairperson:** Those figures will have to be clarified so that they are crystal clear.
1974. **Mr Paisley Jnr:** Thank you for your draft report, Mr Hewitt. I have a three-point question. First, can you extrapolate figures that show the consequences of applying the Barnett formula on the figures that you have? Quite rightly, you said that there would be a widening of the gap between the need and resources and that those factors should be recognised. What does that look like in real terms, given the figures that you have?
1975. Secondly, you do not appear to have mentioned the issue of the ability to reclaim VAT on the relevant services. Perhaps you have covered that elsewhere. If that were to happen, based on the figures that I saw, we would save somewhere between £150 million and £200 million. Can that be worked into the report? Have you looked at that possibility?
1976. Last week, after the Budget, Shaun Woodward said that he had got some additional money for policing, and that it was a wonderful thing. I took that with a pinch of salt, because I was not entirely sure exactly how much money we got for policing, or into which cavity it was going. Have you been able to analyse his comments following the Budget statement?
1977. **Mr Hewitt:** I will answer those points one at a time. Under the Barnett formula, we receive what is known as a consequential — a population share of any comparable expenditure in GB. For our purposes, comparable expenditure would be spread between policing and local authorities that hold policing budgets. We have to sort out like for like when it comes to the underlying subprogrammes.
1978. If we do not know what is going into those budgets in future years, we cannot calculate a consequential. However, we could calculate a consequential on the assumption that, within the most recent comprehensive spending review (CSR) period, we had been in a Barnett regime, and would therefore know what had gone into those particular categories in England. We could compare that consequential with the actual amounts of money that went into NIO at that time. The historical amount for the most recent CSR would give us an idea of the discrepancies between the two amounts.
1979. **Mr Paisley Jnr:** It would be useful to see those figures.
1980. **Mr Hewitt:** Yes, it would. We will have a go at calculating that consequential. I have the subprogrammes that are used for that purpose. It should not be difficult.
1981. We did not address the VAT issue in the report because we expect that issue to be resolved. If a Northern Ireland Department takes on that responsibility, it will be able to reclaim VAT just like any other Department. It will not be a significant issue.
1982. **Mr Paisley Jnr:** If we are blowing our own trumpet should we not claim that responsibility and take ownership of it? It was this Committee that put that issue on the agenda.
1983. **Mr Hewitt:** If you are suggesting that where we pay VAT currently, we would simply retain that VAT payment and not have to make it, the Treasury would probably take the view that the Departments were funded because they needed to pay VAT, and if they do not need to pay VAT they are not funded for that.
1984. That is how they currently treat the Northern Ireland block. In the funding rules there is a discount for VAT. That is certainly a debating point; however, I am not sure that it will carry the day. I have not gone over the Budget with Sean Woodward. Unfortunately, I was out of the country last week. However, I will certainly go back and look at that to see in detail exactly what they got. Budget



- figures are often sleights of hand, so we need to look at that carefully.
1985. When considering what proposals you would like to make, the general issue of the Barnett formula, as I have said before, is that we are running an operation that is roughly twice as expensive, on a per capita basis, as in England. Therefore, whatever money you get through Barnett, over time, it is not going to be able to sustain that sort of lead. One of the ideas that you might want to explore, for at least a CSR period, is whether to look for a “Barnett plus” settlement. That would allow you to phase in whatever changes are going to be necessary to accommodate this — I would not describe it as a cuckoo, but it will become one — cuckoo in the nest, which will consume other resources very rapidly indeed.
1986. **Mr McCartney:** Thank you very much for the paper; it was a useful summary of the evidence to date. Our party is now considering it, and it is something that we will come back to in the future. The paper will be better informed when we address who is going to be responsible for the legacy issues. Therefore, we await the outcome of the ongoing discussion between the First Minister and deputy First Minister and the British Treasury. Is there an estimate of what the back pay will affect?
1987. **Mr Hewitt:** Which back pay claim is that?
1988. **Mr Hewitt:** The Civil Service back pay.
1989. **Mr McCartney:** The people affected are those who were, essentially, recruited into the policing bodies through Northern Ireland Civil Service recruitment procedures. As I mentioned, that is a claim which is growing very rapidly. I do not know what figure you have, but the figure that I have for a potential back pay claim is something in the order of £480 million.
1990. **Mr McCartney:** Is that across the Civil Service or specific to this?
1991. **Mr Hewitt:** It is across the Civil Service.
1992. **Mr McCartney:** Is there an estimate specific to this?
1993. **Mr Hewitt:** There is an estimate of around £50 million.
1994. **The Chairperson:** That figure could increase. Did you say that there is a possibility that the NIO could come under that claim?
1995. **Mr Hewitt:** The trade unions in particular will want to try to bring people in the NIO within the remit of any back pay claim. Whether that works or not will depend on the terms under which those people were recruited.
1996. **The Chairperson:** That could have a knock-on effect if it is not sorted out prior to devolution.
1997. **Mr Hewitt:** Yes, of course it could.
1998. **Mr McCausland:** On page 3, “historic” issues are mentioned, including the equal pay claims. You spoke about a figure over a two-year period. That money, I presume, is to pay money that is due to people because of issues from the past. Will all those issues be addressed over the course of two years?
1999. **Mr Hewitt:** There will be two elements to that. First, obviously, is a lump sum to compensate for earnings which they should have been getting and were not. Secondly, following that, the earnings level will have risen, and that will be an ongoing pressure into the future. At the moment, the really big money is in the lump sums.
2000. **Mr McCausland:** Will the lump sum issue be addressed inside the next two years?
2001. **Mr Hewitt:** It should be.
2002. **Mr McCausland:** On page 3, the other issue is that: “Similarly the extra costs of dissident activity are too uncertain to estimate fully but are unavoidable”.
2003. Later, however, the figure of £76 million is given to cover dissident terrorist activity over the next two years of the CSR. On the one hand the paper states that it is too early to estimate that cost, and on the other, there is a figure

- of £76 million given. Is that the Chief Constable's estimate?
2004. **Mr Hewitt:** That is the Chief Constable's estimate from his evidence of 24 March 2009. We view those pressures as being dealt with in-year, as is done with the monitoring rounds in our system. An additional £31 million a year will not be built into the baseline and carried forward for ever and a day thereafter, but depends on the level of the activity with which the PSNI will have to deal. When the Chief Constable appeared before the Committee, his best estimate was £76 million over the next two years of the current CSR period.
2005. **Mr McFarland:** I understand that a major review of the Barnett formula is taking place at Westminster. Is there any indication about where that might lead? If the basis of all our funding is likely to change, that is likely to have an effect on how we view the policing element of budgetary pressures.
2006. **Mr Hewitt:** An ad hoc committee of the House of Lords is considering the Barnett formula. It does not have a Government imprimatur behind it; it is not an official committee as such. The committee was across earlier in April 2009, and I gave some evidence to it. A paper containing our analysis of the Barnett formula is available on our website.
2007. My experience of talking to that committee is that its chairman was keen on a procedure that is used in Australia called the Commonwealth Grants Commission. Australia has a federal system, and that body sits each year and allocates money to the states. I would not be surprised if the House of Lords committee recommended a move away from a formula-based system, which is adjusted at the margins, to a needs-based system, which is more akin to the Australian system.
2008. My view is that the two systems are entirely different. Australia has a federal system in which tax availability to the states is equalised. Our system is not a federal one; it is concerned with putting devolved Administrations on a footing at which they can supply the same level of services, taking some account of the need level through the size of the population.
2009. I do not expect the Barnett formula to be changed or abandoned in the short term. There is too much of an investment in that system, and not only in the formula, which is a simple one. It is embedded in a whole set of rules called the funding rules, which are available from the Treasury. One needs to see the workings of the formula in relation to the underlying rules.
2010. For example, Northern Ireland lost £123 million in last week's Budget because there were cuts in comparable programmes in the UK. That was done through the Barnett formula, but the funding rules would have allowed that to have been done as a straight, across-the-board cut. In the past, we have had interesting experiences in which a straight, across-the-board cut was made to programmes that were then selectively restored in England. The Treasury attempted to return the money to Northern Ireland through the Barnett formula, but, given that the across-the-board cut was much more than what Northern Ireland would get back through the Barnett formula, one must look at the entire range of the funding rules and how they operate. That is a rather long answer.
2011. **Mr McFarland:** It is worth keeping an eye on that issue. In 1999, OFMDFM did a study because there was a received wisdom that Northern Ireland would be better off moving to a needs-based system. When the number crunching was done, it was so frightening that it was decided that we should hold on to the Barnett formula if possible.
2012. **Mr Attwood:** Thank you, Victor, for your report. I am sure that your assessment that £400 million of budget pressures is unavoidable in the next two years of the current CSR period is hard to swallow and very stark. My questions may go beyond your responsibility.

2013. You identify an additional pressure on the Legal Services Commission of £50 million in the next CSR period.
2014. On the basis of the evidence, and independent of any other budgetary issues that might arise, did any other justice agency anticipate budgetary pressures in the next CSR period, similar to that identified by the Legal Services Commission and outlined in your report?
2015. **Mr Hewitt:** All bodies will face pressures in the next CSR period.
2016. **Mr Attwood:** As you say, it is unavoidable
2017. **Mr Hewitt:** The reason why we highlighted the Legal Services Commission pressure was because it has a systemic problem. It has been consistently underfunded, in relation to its base line for the costs of legal aid.
2018. **The Chairperson:** That is an issue that needs to be explored. By comparison to other parts of the United Kingdom, the costs of legal aid are much higher in Northern Ireland. It was explained to us that, for Northern Ireland, one has to multiply costs by a factor of three. Whereas in Scotland and England, one is represented by a single individual, in Northern Ireland, one is represented by three: solicitor, junior counsel and senior counsel. The system needs fixed.
2019. **Mr Hewitt:** Absolutely. Too many cooks spoil the broth. One of the driving forces here is the certificate issued by the judge. It authorises representation at some level: one counsel, two counsels or more. Once that is issued, there is nothing that the Legal Services Commission can do: it must live with the consequences of that. In this respect, autonomous bodies operate in this area, creating repercussions for one another. Primary legislation is required to clarify who decides what the level of representation should be and how it will be funded.
2020. **Mr Attwood:** The Legal Services Commission and the Court Service indicated that they were trying to reconfigure all of that. However, it will be 2014 or 2015 before a new arrangement will be in place. There will be many hangover cases from the current CSR period that will have to be funded under current mechanisms.
2021. There are one or two areas of your draft report where there are potentially other unavoidable pressures. I will not go into detail, except to say, that the Public Prosecution Service should be restructured and its conduct reviewed. We heard evidence that, on recruitment of staff, it is approaching a critical-mass situation. Given that the administration of justice — how cases are progressed, how quickly they are progressed and managed — is such a big issue, politically and publicly, the Public Prosecution Service needs to recruit the staff that it has not recruited until now. Its representatives said that close to 8% or 9% of its staff complement has not been recruited: that is close to critical mass. There are one or two areas where there may be additional unavoidable pressures to be faced sooner, rather than later.
2022. What you said about the regional rate is useful, but however we used that power — if we ever got round to using it — it will not fix the problem. It will deal with the margins of it, but not the big issues.
2023. Your remarks about the Historical Enquiries Team and the Police Ombudsman for Northern Ireland are interesting. The time will come, over the next couple of years — before the British Government does or does not respond to the Eames/Bradley Consultative Group on the Past — when the Historical Enquiries Team and the Police Ombudsman for Northern Ireland will have to get additional funding or they will be in breach of their obligations under European law with respect to taking cases forward. There could be a further pressure there, independent of what may or may not happen to the Eames-Bradley Consultative Group on the Past .
2024. Finally, is it not the case that the additional constraints that last week's

- Budget has placed on the Northern Ireland budget in the next CSR period have cast a huge shadow over this paper? We have anticipated what additional savings will be required in Northern Ireland in the next CSR period. Those calculations are based on the current budget and do not account for a justice and policing budget. I will not provide the figures, because they will alarm people. Whatever the unavoidable pressures are in the next two years, is it not the case that the pressures in the next CSR period will make some of this stuff look minor?
2025. **Mr Hewitt:** I will begin by answering your last question. The Budget estimates that I have seen look totally unrealistic, because they are predicated on rates of growth beyond next year, which no commentator will accept. If those rates of growth do not manifest themselves, the hole in the UK Budget will grow even larger, and, inevitably, the Government will have to look at their spending programmes. So far, they have avoided making major spending cuts; they have made changes to the taxation side. However, delivery on the changes to taxation requires a buoyancy in the economy, and that does not exist now.
2026. If the Government are to keep the borrowing requirements, which are probably beyond bearable at the moment, within bearable limits, they would, almost certainly, have to cut major spending programmes. That would have major repercussions for us if those spending programmes had comparable components here. For instance, we would suffer if the Health Service was no longer going to be protected and had to make major savings. We are in the hands of the gods for the next few years.
2027. Even on present plans, the overall public expenditure levels will grow by only about 0.7%. If we get everything comparable through the Barnett formula, we can sustain growth of about three quarters of that percentage. For every 1% growth in England, we can sustain about three quarters of a per cent, and that is not sufficient to sustain our existing programmes. Costs related to the inflation rate and such areas as health are massively beyond that. I know that everyone quotes the retail prices index (RPI) and so on, but the real rate of inflation in such areas as healthcare is massively above that. Therefore there will be enormous pressures on programmes here in the future.
2028. I apologise if that sounds pessimistic, but that is the reality of the situation.
2029. **Mr Attwood:** I agree with your assessment.
2030. **Mr Hewitt:** My experience of the Treasury is that it will settle with us on what it can identify as being genuine and unavoidable pressures. The other issues, which they will see as day-to-day housekeeping, will have to be operated by ourselves, and we will have to decide what areas need a little bit more money and what areas can make do with less.
2031. The Treasury will not give you an open-ended commitment to keep coming back again and again on those issues.
2032. We devised a useful formula during the CSR period at the time when the Prison Service was being shaped. That formula stated that we would cover all foreseeable pressures and get that into the agreement as a statement of principle. That left the door open for claims to be made on foreseen pressures, in principle. However, the Treasury will not give you a blank cheque ongoing.
2033. **The Chairperson:** Does any other member have a question on the paper?
2034. There is a number of questions to which we will require answers. There needs to be some discussion about the paper and about where we go from here, because work needs to be done. I know that Victor is going to raise some of the issues, but there are some questions that we need to ask.
2035. Your paper refers to the “key unavoids”. I would be reluctant in any final paper to have, as your paper states:
- “Legal Aid [unlikely that HMT will fund?]”*



- We need to go down the route of saying that that is money that is required and it will be for others, particularly the First Minister and deputy First Minister and the Minister of Finance and Personnel, to go to the Treasury or wherever to seek funding. We need to have a discussion about whether, at the stage at which we now are or when we get more answers, we need to have the First Minister, the deputy First Minister and the Minister of Finance and Personnel around the table specifically to discuss the Committee's findings and, perhaps, to present them with a final paper to allow them to comment .
2036. There is also the Heywood Committee, from which the Secretary of State indicated that he is expecting a report to himself and the Prime Minister around the end of the first week in May. There is a question of when the information from that will be shared. There is also the Ashdown Report, about which the Committee has just written to inquire about its financial implications. That report might make recommendations for policing and justice that have financial implications. There has been speculation about that, but we do not yet know. The report might well ease pressures on policing, but there is, obviously, always pressure on the policing budget from contentious marches and suchlike. The Committee needs to see the recommendations of the Ashdown Report in order to know that there are no possible major financial implications for the devolution of policing and justice.
2037. There is no inkling of that report being published. The last time I inquired, I was told that it would be out in three or four weeks' time, but it has still not appeared. As a result of a discussion at last week's Committee meeting, a letter has been sent inquiring about its progress, and a copy of that letter is in members' information packs. There are, therefore, a number of matters that the Committee needs to flesh out. Perhaps members might like to suggest what the Committee's next move should be.
2038. **Mr McFarland:** Two areas could do with being refined. The first is to have rough agreement on the areas that the Committee would see as being historical, and, therefore, being reasonably left to the NIO, and how the situation would look if they were removed. The second is whether it is possible to change the legal system with regard to support for legal aid sooner than 2015. Members spoke about making changes in a number of areas that would improve things. It would be useful to refine some of those areas so that we know what can be achieved and in what timeframe. That might help us in our decision-making.
2039. **The Chairperson:** Is that possible, Victor? I know that you have been reluctant to do that so far in your paper, but is there enough information from what the police and others have provided about historical matters? The Secretary of State recognised that there were historical factors, and he indicated that he wanted an equitable policing and justice budget to reflect those. I suspect that it would do no harm to have that aspect separated, and a line or paragraph in the final report suggesting that there are historical areas that need to be taken out of the budget equation.
2040. The Chief Constable always makes that argument. He talks about policing the here and now as opposed to policing the past. Given the resources and amounts involved, that has a fairly big effect on the police budget. It might be helpful to take that issue away from the main in some sort of silo.
2041. **Mr Hewitt:** It can be done. On paper, it could be moved to another category.
2042. The issue should be left with the NIO to fight with the Treasury about the figure. It would no longer be a concern of the devolved Administration. I reiterate the practicalities of dealing with the Treasury: it dislikes intensely making open-ended commitments and much prefers to pay people off with a lump sum. However, we can put those legacy issues to one side, and say that the NIO, not the devolved Administrations,



- will deal with those matters in the future. Of course, there will need to be a mechanism for that. Some sort of board could be set up in the NIO to deal with claims against the police, which, at that time, will be devolved. It could cause some complication.
2043. **The Chairperson:** That point may be for others to argue. It is not our job.
2044. **Mr McFarland:** As the Eames/Bradley group recommended, it is time to establish a principle to deal with live policing from now on and leave the past in the past. I understand that the House of Commons Committee will report in early September and expects the Government to produce a statement on the Eames/Bradley report in September. That might provide more direction as to whether they accept that those matters should be packaged and separated. As the Chief Constable and the policing board have said, if we continue to be dogged with historical issues, the situation will be open-ended and could bankrupt the police in two or three years.
2045. **Mr Attwood:** Alan's point about trying to differentiate between historical and current issues is useful. Putting all unavoidable issues into the historical section would be even more desirable. As the Chairperson said, in order to manage the paper, we need to have a conversation with either the Department of Finance and Personnel or the First Minister and the deputy First Minister soon. We have drawn up a paper, but half those matters — or, perhaps, none — may have been addressed in ongoing conversations outside the Committee. We do not know.
2046. Therefore, given that OFMDFM said that it hoped to conclude budgetary issues by the beginning of April — presumably that has not happened — there is a risk that our paper could interfere negatively with ongoing conversations elsewhere if it is known that an Assembly Committee thinks that there will be £631 million of budgetary pressures in the next two years on justice and policing alone. That might scare some horses or jeopardise current negotiations. Therefore, given
- that we our draft report can be adjusted, we need to have that conversation as soon as possible.
2047. It is six months since the First Minister and the deputy First Minister met the Committee. Therefore, their attendance would be timely. However, if they do not meet the Committee immediately, we might, potentially, go down some dead ends, make some mistakes, or be so unsighted about relevant conversations that we cause damage. All those scenarios have political consequences. Moreover, our parties, at some level, need to consider the draft report, because some of the issues are graphic. The report is detailed, and Committee members' eyes are wide open about some matters.
2048. Therefore, as regards general management, I believe that it would be useful to have a conversation with our own parties; certainly, with our party leaderships.
2049. **Mr Paisley Jnr:** There is a great deal of merit in that suggestion, not only because it would broaden discussion; it would create a stalling point at which we could ensure that we are absolutely clear on the competences of what we are engaged in and on what the thing should actually look like.
2050. It would also be interesting to get a quick update or indication, whether it is from the First Minister and the deputy First Minister or from the Secretary of State, on where his Haywood Committee is at present, because, you are right; that argument could promote and accelerate the devolution of policing and justice: equally, it could stop it for ever. We need to realise exactly what the consequences are; to address those issues; and to ensure that all parties are content politically. Everyone knows where we want to be. Now, we need to ensure that we can get there.
2051. **The Chairperson:** Do members agree, therefore, that we suggest a round-table discussion with the specialist adviser? Clearly, there is more work to be done and questions that have already been

- discussed to be answered. Obviously, given the work that is ongoing, the meeting with the First Minister, the deputy First Minister and, say, the Finance Minister would be held in closed session.
2052. I agree with Alex that there also needs to be discussion within parties. However, more work must be done beforehand. We are working from a draft document. Some issues need to be clarified. I have no doubt that parties will have their own discussions.
2053. **Mr McFarland:** Certain members who are present are also members of the Policing Board. My party's two Policing Board members are not Committee members. It will be quite useful to have a discussion with them because they, like the Policing Board members who are present, will have a more in-depth knowledge of policing than, perhaps, the rest of us do.
2054. **The Chairperson:** I do not see a need to widen the discussion beyond Committee members. I am reluctant to bring in other MLAs.
2055. **Mr McFarland:** I am just saying that if we agree to talk to our party leaders, which we just have done, those parties who have Policing Board members on the Committee have a distinct advantage over me and Danny, as neither of us sits on the Policing Board. Our party's Policing Board members are unsighted on all of that because they have not been included in discussion thus far. If other parties' Policing Board members are included —
2056. **Mr Paisley Jnr:** Please do not bring Basil into the discussion.
2057. **Mr McFarland:** I do not mean that I will bring him to a meeting. I mean that I will talk to him, rather than bring him to the Committee.
2058. **Mr Hamilton:** He will bring the whole thing down. All progress will be reversed.
2059. **The Chairperson:** I am not getting embroiled in that particular discussion —
2060. **Mr Paisley Jnr:** Please, we beg you, do not bring Basil — for your own sake.
2061. We should take it step by step. The first step should be discussion between Committee members and their party leaderships, after which we will come back to the Committee and start the process. We will not rule anything out.
2062. **The Chairperson:** Are we happy to go down that route? Do you want us to start the process and suggest that that might happen, subject to the diaries of the First Minister, the deputy First Minister, and the Minister of Finance and Personnel? Members can go off and have discussion —
2063. **Mr Paisley Jnr:** Should we not have the discussion first and come back to the Committee afterwards?
2064. **The Chairperson:** I am happy to do it whatever way the Committee wants.
2065. **Mr Paisley Jnr:** Ultimately, the two parties that will have those discussions with their party leaders are those that will fill those roles anyway.
2066. **The Chairperson:** OK. Let us do that and come back. Victor, is there any other information that we might be able to assist in getting or are you relatively happy?
2067. **Mr Hewitt:** I am happy as long as the Committee is happy that I have discussion on an official level with DFP and NIO in order to keep on top of figure work, because, obviously, it moves around. That figure is roughly 10 days old, and may well have moved on in the meantime. Therefore, as long as the Committee is happy enough that I do that, I will proceed.
2068. **The Chairperson:** Do we put historical stuff into a silo on its own?
2069. **Mr Hewitt:** Yes. We will redraft it and I will have a go at the Barnett estimations, and so on.
2070. **Mr O'Dowd:** We should be conscious that although there are major financial obstacles ahead with policing, if we take the view that we should not deal with policing because of finance, we would not have devolved health or education either. By the end of budgetary period, we will wish to ourselves that we had

not devolved any of those matters. We will all be up the Suwannee without a paddle because finances will be tight. Therefore, although financial considerations are important, they are not —

2071. **Mr Paisley Jnr:** They are not the be all and end all.
2072. **Mr O'Dowd:** That is correct.
2073. **The Chairperson:** We have been able to tease out some points that, perhaps, were not in the public domain at the start of the meeting. That is a scary figure. I appreciate what you have said, John. Certainly, it is not be all and end all.
2074. Thank you, Victor, for your helpful presentation. I understand that you have to get your head around quite a lot of figures. We appreciate the work that you have done thus far. We will, undoubtedly, have further discussions in coming weeks. Thank you very much indeed.



## 28 April 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mrs Carmel Hanna  
 Mr Nelson McCausland  
 Mr Alan McFarland  
 Mr John O'Dowd  
 Mr Ian Paisley Jnr

2075. **The Chairperson (Mr Spratt):** We will now discuss the devolution of policing and justice. I declare that I am a member of the Northern Ireland Policing Board.
2076. **Mr McCausland:** I am a member of the Belfast District Policing Partnership.
2077. **The Chairperson:** Ian Paisley Jnr has left the room.
2078. We will now discuss the category 2 list of issues. The original issue C relates to the Serious Organised Crime Agency (SOCA) and the security services. I remind members that a letter was sent to the Secretary of State on that issue, and we are awaiting his response. Are members happy to park that issue?

#### Members indicated assent.

2079. **The Chairperson:** The position is similar with regard to new issue D, which deals with the North/South policing and justice agreements, and the question of a justice sector of the North/South Ministerial Council. A letter was sent to the Secretary of State in relation to that on 22 April, as was the letter in relation to the previous matter. Are members content to park that issue?

#### Members indicated assent.

2080. **The Chairperson:** New issue E questions the extent of financial provisions for a Department that would exercise the range of policing and justice functions,

how, when and by whom the financial negotiations with the NIO should be conducted, and whether a budget should be ring-fenced. A number of those issues are currently being dealt with.

2081. Bearing in mind the discussion that we had during the closed session of the meeting, the specialist adviser will carry out some additional work on a lot of those issues. It may be putting party representatives on the spot to ask for views now, given that we are awaiting some answers on those matters. Are members content to park that issue?

#### Members indicated assent.

2082. **The Chairperson:** New issue F asks what, if any, consideration there should be of the Ashdown report on parading, whether there is a need for further clarity on the powers to be devolved, and, if so, whether they should include matters relating to the Public Processions (Northern Ireland) Act 1989, flags and symbols, or recruitment to the PSNI. Again, that issue has been raised with the Secretary of State in the letter of 22 April, and we await a reply on that. Are members agreed to park that issue?

#### Members indicated assent.

2083. **The Chairperson:** We will move on to discuss new issue G. In the context of recommendation 26 of the Committee's original report, to which Department should the Public Prosecution Service (PPS) be attached?
2084. **Mr Hamilton:** My party's position on that issue has not changed from that stated last week. It is a non-ministerial body, so the only issues are budgetary ones. I reiterate our suggestion that the PPS should be attached to the Department of Finance and Personnel (DFP).

2085. **Mr McCartney:** Our position remains that it should be attached to the Office of the First Minister and deputy First Minister (OFMDFM).



2086. **Mr McFarland:** Our party's position is that it should be attached to DFP. However, we were hoping to receive some further guidance from the Republic of Ireland and Scotland after visits to ascertain how it was done there. Subject to any dramatic changes, our position remains the same.
2087. **Mr Attwood:** I would like to ask Simon Hamilton why the PPS should be attached to DFP. Why is the PPS such a different creature from all the other justice agencies that will be the responsibility of the justice Department? Why is the prosecution service unique, and why must it be attached to DFP as opposed to another Department, such as the justice Department? The Probation Board, the Policing Board, nor the PSNI have raised any problems with being attached to the justice Department. Given the range of responsibilities, and the sensitivities around those issues, why must the PPS be attached to DFP, whereas the police and the Policing Board need not be?
2088. **Mr Hamilton:** I understand the points raised that Alex raised, and I am happy to further explore those issues.
2089. I recall from some of the evidence, and some of the suggestions in the PPS submissions, that concern has been expressed in the past about potential conflicts of interest. Our argument for the PPS being in DFP is that if, in the future, it is a non-ministerial body, and there is an argument over budgetary matters, the persuasion of its own parent Department, for want of a better phrase, would be easier than taking the more convoluted route of going through another Department or office.
2090. We are happy to seek the experience of others on how that has worked in practice, as Alan mentioned, but we are not hung up on how it is done. Placing the PPS in DFP is a neutral suggestion. That would solidify the aspect of its being non-ministerial, and get away from any confusion that there might be over any conflict of interest.
2091. The persuasion of its own parent Department on budgetary matters may be more straightforward than might otherwise be the case. I am happy to examine and explore the idea further, and look at it in the context of experiences elsewhere.
2092. **Mr Attwood:** It might be useful to spend 10 or 15 minutes doing that some time, because the Chief Constable has not made any point of that nature in respect of his responsibilities — for instance, that the funding Department of the PPS being the justice Department represents a conflict of interest, interferes with his responsibilities or compromises him in some way. The Chief Constable does not make that point at all; it does not even register on his radar.
2093. No one has raised any issue so far about where policing should be placed in terms of its funding authority. I find it unusual that the PPS should be treated differently and separately. I understand that there may be some issues among one or two parties that the PPS funding authority would be OFMDFM.
2094. We had that problem before when one party raised an issue about the appointment of judges, and a residual power that fell to OFMDFM. I could understand if that was the point that was being made, but that point has not been made. That is why I am even more curious why the PPS, of all bodies, should go to DFP. There is no precedent for that. There is no compelling organisational or management argument for it. It seems to me that if we explore that matter a bit more, we could possibly convince people that if there are objections in respect of the PPS going to OFMDFM, it should go to the justice Department.
2095. **Mr Hamilton:** We are happy to discuss that at a later point if some issues are clarified. I certainly would not close my ears to that discussion.
2096. **The Chairperson:** Are we happy, then, to have that discussion at a later stage?
2097. **Mr McFarland:** Part of the reason that this issue has arisen is that there is sensitivity over it. As I recall, Alex has

- been very sensitive in the past about whether people were being prosecuted, and whether there was interference and public statements being issued. The Director of Public Prosecutions (DPP) expressed fairly strong reservations when he appeared before the Committee — not the last time, but on the previous occasion — about the need for the absolute independence of that body; to have a home where there was no chance of anyone interfering with its budget or influencing matters by cutting back on its administrative support. That was one of the points that were made, and I am sure that that is included in the report of the meeting.
2098. Given that sensitivity, there is an issue about whether it might be possible to influence where the PPS is placed. We think that it should initially be put somewhere where no one would have a reason to interfere with it, which they would not if it were an administrative area within DFP. It is possible that our visit to Scotland and Dublin may show us a better place to put it. Possibly, with a bit of experience, it might go somewhere else. To ensure its independence, as the DPP himself initially said, it seems sensible to put it in DFP to remove all accusations of influence or interference with it.
2099. **Mr Attwood:** But the DPP is in a minority of one. None of the other heads of justice agencies in the North raised any issues about their responsibilities or about the funding responsibilities falling to the Department of justice. The Director of Public Prosecutions seemed to make the point that he was unique among the chief executives of the justice agencies in the North. Therefore, I would draw conclusions about what everyone else seems to be content with rather than what the Director of Public Prosecutions is content with.
2100. In any case, going to DFP does not solve the problem. Why, if there was going to be an attempt to interfere with the PPS, would it be more or less likely to come from DFP than from the justice Minister? The point that was made in respect of concerns about interference in the prosecution of cases is a fair one, except, obviously, that responsibility for those cases of concern is not going to be devolved to a Northern Ireland justice Minister or the Executive anyway. Responsibility for all the terror cases is going to be retained by London. The PPS responsibility for such cases will be to London through the Advocate General, not to us through the Attorney General.
2101. **The Chairperson:** OK. Perhaps parties can hold some discussions and come back to explore the issue further. Are members content with that?
- Members indicated assent.**
2102. **The Chairperson:** We will now move to issue I: in relation to recommendation 30 of the Committee's original report, who should undertake the advisory role in relation to the appointment of the Police Ombudsman?
2103. **Mr Hamilton:** I restate the DUP position as outlined last week, which is that there is a need for sensitivity and independence, and that the role should be retained by the Northern Ireland Office and the Secretary of State.
2104. **Mr McCartney:** My party's position is the same as it was last time — that the responsibility should lie with the Office of the First Minister and deputy First Minister.
2105. **Mr McFarland:** It depends on where the Eames/Bradley process ends up. If the role of rooting around in the past is removed from the Police Ombudsman, it can sit with OFMDFM. If that role is retained — the idea of a one-sided truth commission — the responsibility to decide who should give advice and who should get it must lie with the Secretary of State.
2106. **Mr Attwood:** That function should not be retained by the NIO. It should fall to the devolved institutions in the form of OFMDFM. However, we are prepared to be convinced as to whether it should pass to the Department of justice or not.
2107. **The Chairperson:** According to my adding up, there is no consensus.

Are members agreed that there is no consensus and that we should return to that issue?

**Members indicated assent.**

2108. **The Chairperson:** We will now move to issue J: what procedures and protocols will there need to be between the Minister, an Assembly Committee and any newly established department and its associated agencies?
2109. This was an additional question, which was introduced to the category 2 list following a decision on 25 November 2008 to relocate it from the category 1 list as issue O.
2110. **Mr Hamilton:** We provisionally agreed a position on that matter, did we not? This is issue J, which concerns Committee relationships. I believe that we agreed that the relationships would be of the regular order.
2111. **Mr McCartney:** That is agreed.
2112. **Mr Attwood:** It is provisionally agreed.
2113. **Mr Attwood:** May I ask Mr Hamilton another question? Why does the DUP believe that the Minister should have exactly the same relationship with the Assembly and the Committee as every other Minister, when it has been arguing that the Minister would not be a fully-fledged Minister on a par with every other Minister at the Executive table? To treat a Minister in the same way as other Ministers for one purpose, but treat him or her differently for another purpose, would create a lot of tension.
2114. **Mr Hamilton:** I am not sure that Alex's characterisation of my party's position is accurate. I do not see any reason why a justice Minister's relationship with a Committee would be any different in an operational sense from that of any other Minister. His comments about the Executive are not an entirely accurate reflection of the position that my party has put forward on that matter.
2115. **The Chairperson:** That issue has largely been sorted, but there has not been a final stamp of approval.

2116. **Mr McFarland:** Presumably, the reason that there has not been a final stamp of approval is that, as Alex has said, it depends on the outcome of issue K. It could be argued that how the Minister will operate within the Executive has a direct relationship with how the Minister will operate with the Assembly and other agencies. I presume that the issue has been provisionally parked due to the fact that it is logical to deal with it and issue K together. That can happen when we receive clarity on parties' position on issue K.

2117. **The Chairperson:** Could we return to and agree that issue after our visits to the various legislatures?

**Members indicated assent.**

2118. **The Chairperson:** We now move to issue K: what would be the status of the Minister's position in, and relationship with, the Executive Committee; and would the Minister be required to bring significant, or controversial, matters to the Executive Committee?
2119. **Mr Hamilton:** If the Committee agrees, I am happy to take more time to resolve issue K.
2120. **Mr McCartney:** The Minister's position in, and relationship with, the Executive should be the same as those of all other Ministers. However, we are willing to return to this matter.
2121. **Mr McFarland:** Our party's view is that the Minister should operate in the same way as every other Minister.
2122. **Mr Attwood:** I refer to the position that our party has outlined previously, which is that the Minister should be a fully fledged Minister with all the entitlements that that brings. I wish to ask Simon another question: why have we not —
2123. **The Chairperson:** This session is not a cross-examination. Each party should state its position on each issue. I am not going to allow any more such questions. I ask you to state your party's position on issue K.

2124. **Mr Attwood:** The Committee will run out of credibility if, week after week, we rehearse exactly the same positions on exactly the same issues. We get no further insight from the main parties, the DUP and Sinn Féin, on the outstanding matters of the deal on the devolution of policing and justice. Frankly, it is no longer good enough that we spend week after week rehearsing well-worn positions without being given any clarity from other parties on when those matters may be resolved.
2125. It is disrespectful to the authority of an Assembly Committee that, week after week, we have to listen to people saying that they wish to revisit certain issues. That is not a credible position for us to be in six months after the DUP and Sinn Féin worked out a deal on the devolution of policing and justice. That may well be the position that the DUP and Sinn Féin want to be in, and those parties will have to answer for that. However, I do not see why other Committee members should have to sit here, waiting until the cows come home, because no cow ever comes home.
2126. With all due respect to you, Chairman, it is absolutely right that I, on behalf of the SDLP and the people that we democratically represent, ask other parties questions to which we have not yet received any answers. Equally, it is your duty as the Chairperson to bring that to the attention of other parties. It is not good enough that, after six months, we are revisiting the same issues without having been given any clarity or answers. It is not a proper way for business to be conducted.
2127. **Mr Hamilton:** I am happy —
2128. **The Chairperson:** Let me answer first, Simon; I am happy to let you in after that.
2129. A great amount of progress has been made, and it is wrong for Mr Attwood to sit there and portray that that is not the case. There was a fair degree of movement even in the financial discussions that we had in closed session today. Some of the issues now hinge on replies that we are waiting to receive. We have sent the relevant letters, and it may be easier to resolve some of the issues when the replies to those letters arrive. I do not accept that there has been no progress. There has always been a process by which each party is invited to state its position on each issue until those are cleared from the agenda. I have done that systematically. It is also my job to keep issues on the agenda that need to be kept on the agenda, and it is for parties to indicate their positions, and they have done so.
2130. **Mr Hamilton:** I agree that progress has been made. That is a well-recognised aspect of our discussions on the devolution of policing and justice. There are inherent difficulties, but progress has been made. The issue may not be progressing at a pace that everybody likes, but many of the gaps have been bridged, and a lot of progress has been made on areas where many “wise folk” might have thought that it would have been impossible.
2131. Alex may not agree with that analysis, but my party shares the view that there are great sensitivities around many of these issues, including this particular point. He may not agree with that, but that is the position that we take, and it is the position to which we hold, and, if it takes some time to resolve those issues to our satisfaction, we will take that time. That may not be to Alex's satisfaction, and it may not happen at the pace that he wants it to, but it is much better for the Assembly that the issues are resolved to our satisfaction, rather than rushing them and getting them wrong. That is our party's position. Work is ongoing, and, as I said at the start, there are issues of great difficulty inherent in the whole exercise. That is why some issues will take longer to resolve than others. We will take that time, and we will get it right, rather than rushing it and getting it wrong.
2132. **Mr McFarland:** Progress has been made, albeit slow, so I sympathise with Alex. However, there is an issue around how fast the issue can progress. It is slightly confusing, but it is clear that

- there is negotiation going on outside the Committee involving Sinn Féin, which wants a non-DUP Minister — it does not want a “half Minister” under control — and “Lord Ford” and the Alliance Party over whether it will take the post and how it is all going to work. The Committee is not part of that, and, presumably, we are obliged to wait until those discussions have taken place and the white smoke appears.
2133. **The Chairperson:** Nelson McFarland — sorry; Nelson McCausland.
2134. **Mr McCausland:** Can I sue you for that? *[Laughter.]* I am also interested in the fact that Mr Ford has now been elevated.
2135. **The Chairperson:** I saw white smoke outside and was wondering whether that announcement has been made. *[Laughter.]*
2136. **Mr McCausland:** I am interested in the fact that Alan McFarland has elevated Mr Ford and given him a peerage. He rejected David Trimble’s peerage, but nevertheless. The point was well made that there is huge sensitivity around the issue, and nobody is more aware of it, or should be more aware of it, than Alex Attwood. The issues are also complex. We received a financial statement and other information this morning, and it is clear that the scope and scale of the problems that we face are only too apparent. Therefore, I take the view that we are making progress, albeit slow, but we should just keep at it, rather than getting irritable about these things.
2137. **Mr McCartney:** Every week, we come to the Committee and put our position on the table, and we will continue to do so.
2138. **Mr Attwood:** There are six or seven issues under the category 2 list of issues in appendix 1 on which, for more than four months, we have made no progress at all.
2139. **The Chairperson:** I do not accept that. Progress has been made, because the relevant letters have been sent, and we have agreed to examine the financial issues and other matters. I have already clarified that. I hear what you are saying, and I have heard you saying it before.
2140. **Mr Attwood:** I will conclude my point, so that you can fully understand what I am saying. There are six or seven issues in the category two list of issues in appendix 1. Since 27 January, we have not got to the green-ink-handwriting point of resolving those issues. One of those matters touches on the financial issues. We have a lot more information, which Nelson referred to, and it will be very interesting how that information now gets handled.
2141. However, five or six other non-financial issues — involving decisions about where authority resides, the Minister’s powers, relationships with the Committee, and so on — have not been resolved in the past four months. I do not believe that they will be resolved in the next four weeks. Given the current financial figures and wider economic environment, it would not surprise me if that becomes an even bigger hurdle to the devolution of justice and policing.
2142. Why can there not be some clarity and closure on even one or two of those five or six matters? What is the big impediment? Why is that so difficult? The Committee knows that it is a sensitive area. For 153 days, the Government was suspended because of that sensitivity, and other issues. Why are we now, almost 153 days later, apparently no nearer closure on those matters? That is not credible.
2143. **The Chairperson:** It has already been stated, with the support of members of the Committee, that matters have moved forward, and continue to do so. Mr Attwood says that he keeps hearing the same things, but I keep hearing the same thing from his end of the table.
2144. There is certainly no consensus on the matter of issue K. Therefore, does the Committee agree to park issue K and return to it later?

**Members indicated assent.**



## 5 May 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mrs Carmel Hanna  
 Mr Alex Maskey  
 Mr Nelson McCausland  
 Mr Alan McFarland

2145. **The Chairperson (Mr Spratt):** We move to policing and justice matters. I declare an interest as a member of the Northern Ireland Policing Board.

2146. **Mr McCausland:** I am a member of Belfast District Policing Partnership.

2147. **The Chairperson:** Alex Maskey has left the room for the moment, but he is a member of the Northern Ireland Policing Board. He will rejoin the meeting shortly.

2148. We move back to the category 2 list of issues. I will not go through the procedures because members know what they are. I will read out each issue, after which parties may state their position. We move to the original issue C:

*“What should be the relationship between SOCA and the Security Services, and the Minister/Department/Assembly?”*

2149. **Mr Hamilton:** I do not think that anything has changed since last week — which may be a recurring theme throughout the session. We are still awaiting protocols and memoranda of understanding. When we receive those, we can advance the issue further.

2150. **Mr McCartney:** Our position has not changed.

2151. **Mr McFarland:** Our position has not changed.

2152. **Mr Attwood:** Our position is as before.

2153. **The Chairperson:** We move to issue D: “What needs to be done to ensure the

maintenance of existing North/South policing and justice agreements, and is there a requirement for a Justice Sector of the North South Ministerial Council?”

2154. **Mr Hamilton:** We are still waiting for the response from the Secretary of State. We remain to be convinced of the merits of a justice sector of the North/South Ministerial Council (NSMC).

2155. **Mr McCartney:** Our position is the same as it was last week. We argue that there should be a justice sector.

2156. **Mr McFarland:** We are awaiting the response from the Secretary of State. We do not see any reason to have a North/South justice sector.

2157. **Mr Attwood:** There is a need for a new North/South justice agreement and a sector of the NSMC for justice matters.

2158. **The Chairperson:** OK. We will park that issue.

2159. Issue E asks:

*“What is the extent of the financial provisions for a justice department which would exercise the range of policing and justice functions?”*

2160. That has been parked. The Committee will be receiving papers and information from the specialist advisers. Work is ongoing on that issue. We are certainly not at the end of that. There is no point in gauging the opinion of parties until we have fuller information. Some of the questions that we would pose to the specialist adviser on that work will be done in closed session.

2161. Issue F asks:

*“What, if any, consideration should there be of the Ashdown Report on Parading, and is there a need for further clarity of the powers to be devolved, and, if so, should they include matters relating to the Public Processions (Northern Ireland) Act 1989, flags and symbols and recruitment to the PSNI?”*

2162. Members are aware that a letter was forwarded to the Secretary of State on 27 April. There has been no reply to that letter, and the issue has been parked on that basis. I do not consider that there is any point in discussing that issue until we receive some substantive replies. Are members agreed?

**Members indicated assent.**

2163. **The Chairperson:** We move to issue G: “In the context of Recommendation 26 of the Committee’s original report, to which Department should the Public Prosecution Service be attached?”

2164. **Mr Hamilton:** To restate our position, for the reasons previously stated, we believe that it should be attached to the Department of Finance and Personnel.

2165. **Mr A Maskey:** Our position is the same as it was previously.

2166. **Mr McFarland:** There is no change in our position either; we believe that it should be attached to DFP initially, with the possibility of looking at another Department later.

2167. **Mr Attwood:** We believe that it should go the justice Department along with all of the other justice organisations.

2168. **The Chairperson:** OK. There is no consensus on that issue, so we will park it for now.

2169. We will move to issue H:

*“In the context of Recommendation 27 of the Committee’s original report about examining the independence and accountability of the Public Prosecution Service, before, and following devolution, what consideration should be given to this matter, pre-devolution?”*

2170. **The Committee Clerk:** The Committee has examined issues G and H from time to time, and they have been intermingled during those conversations. Members have previously asked for various research papers on issue H and have reflected on evidence that was presented during the Committee’s original inquiry into the devolution of policing and justice matters.

2171. Following last week’s discussions, I reviewed all those papers and I have picked out an extract from the report of Sir Alastair Fraser’s oral presentation of 16 October 2007 on the prospective roles and relationships of the Attorney General and the Public Prosecution Service. One of the subsequent research papers — which is contained in the pack that has been provided to members for the work that they are doing now — restates that the responsibility for the funding of the PPS should lie with the Office of the First Minister and deputy First Minister, because it was Sir Alastair Fraser’s understanding at that time that OFMDFM would be responsible for appointing the Attorney General. Those specific extracts have been selected to save members trawling through all the documents that they have, and might inform consideration of the issue at a future meeting.

2172. **Mr Hamilton:** If we are to revisit issue H at some length in future, I will reserve comment until then.

2173. **Mr A Maskey:** We are happy to leave our position on the record.

2174. **Mr McFarland:** Issue H should be properly discussed at some stage, but our visits to other jurisdictions will be useful. We will be able to see how other people do things.

2175. **Mr Attwood:** It is my understanding that we agreed to put an opportunity to look into those matters on the agenda for a future meeting. It would be better to do that before we visit other jurisdictions, because we could scope out where our conversation might go. That might help us to probe the other jurisdictions about the structures that they have established around their prosecution services. We need to have a conversation some time between now and the end of May about the issues that are outlined in the research excerpts so that we can, at least, ask some of the hard and immediate questions.

2176. **The Chairperson:** Alan has suggested that we discuss those issues after our visits to the various jurisdictions.
2177. **Mr McFarland:** I do not mind having that discussion before we embark on our visits. We just need some time to argue out all of the issues, because several of them will be key elements in the success of this process once devolution takes place. We may as well get it right.
2178. **The Chairperson:** Shall we schedule that issue for discussion at a future meeting?
- Members indicated assent.**
2179. **Mr Attwood:** Before the end of May?
2180. **The Chairperson:** Yes.
2181. We will move on to issue I:
- “In relation to Recommendation 30 of the Committee’s original report, who should undertake the advisory role in relation to the appointment of the Police Ombudsman?”*
2182. **Mr Hamilton:** As I have previously stated, given the sensitivity of the position and the need for independence, that role should be retained by the NIO.
2183. **Mr A Maskey:** We have already indicated our preference for the advisory role to be undertaken by OFMDFM.
2184. **Mr McFarland:** As I said before, it depends on the Eames/Bradley recommendations. If the role of the Police Ombudsman to wander around in the past as a one-sided truth commission is retained, that role should stay with the Secretary of State. If that goes off with the NIO, as has been recommended by Eames/Bradley, then we do not have a problem with OFMDFM.
2185. **Mr Attwood:** Our position is as stated before.
2186. **The Chairperson:** There is no consensus on that issue. Do members agree that the issue should be parked?
- Members indicated assent.**
2187. **The Chairperson:** We move on to new issue J: “What procedures and protocols will there need to be between the Minister, an Assembly Committee and any newly established department and its associated agencies?”
2188. Some of that came up in conversation during our closed session this morning. Again, we need to have a look at the replies from the Secretary of State. Do members want to state party positions or are you happy to park the issue until we receive the relevant information?
2189. **Mr Hamilton:** Mr Chairman, there are issues that need to be resolved, and that will take some time. I do not want to go into those now, but we need to take more time on some of those specific matters at a later juncture.
2190. **The Chairperson:** I am reluctant to get into a conversation that could lead to the discussion that we had in closed session. Those points were well made in the session that has just ended.
2191. **Mr Attwood:** Who prompts or takes ownership of those issues? I said that those “rubbing” issues would arise sooner or later. We should anticipate them and work out how they might be managed — if we can. Who will be responsible for identifying and working out the Committee’s authority and rights of access to information? Who will do that work? It was clear from the director that he felt that he could not go any further.
2192. **The Chairperson:** I want you to be careful what you say. I do not want to breach a private conversation. I suggest that I might write a confidential note to the director, highlighting the points that were raised with him. I might also write to the Secretary of State in relation to some of the issues that were raised.
2193. **Mr McFarland:** Regarding the issue about rubbing points between the NIO, as there will be, and any potential Committee in relation to national security — which is what Alex was talking about — we will receive memoranda of understanding from the Secretary of State, which will tell us how the NIO proposes to deal with a Committee. That is not a matter for much discussion. The issue is how this Committee will relate to the

Department of justice and the Policing Board. My guess is that it will fall to us to take the lead on that further down the line.

2194. **The Chairperson:** It is important for the Committee to see the memoranda. Shall we park the issue until we receive the memoranda?
2195. **Mr Attwood:** It might be useful to write to the Secretary of State to say that the issue of what a justice Committee has access to has been identified, and that we await the memoranda of understanding, which we presume will address that matter.
2196. **The Committee Clerk:** To answer the strategic question about who should take the lead or who has the responsibility, effectively this Committee was charged by the Assembly to give consideration to any matters relating to the devolution of policing and justice and has identified that particular issue as one of the category 2 issues for such consideration. To all intents and purposes, this Committee has all the authority that it needs to delve into that matter to the extent to which it wishes to delve into it.
2197. **The Chairperson:** We intend to do that. There is no suggestion that we are not going to do that.
2198. **The Committee Clerk:** The Committee could also explore that matter in respect of the visits to other legislatures. However, members may wish to write to the Secretary of State in the meantime.
2199. **The Chairperson:** I believe that the pertinent issues have been raised. Does the Committee agree to proceed by writing those letters?

**Members indicated assent.**

2200. **The Chairperson:** Hopefully, the memoranda will arrive in the not-too-distant future. That deals with issue J.
2201. Issue K asks:

*“What would be the status of the Minister’s position in, and relationship with, the Executive Committee; and would the*

*Minister be required to bring significant, or controversial, matters to the Executive Committee?”*

2202. **Mr Hamilton:** I would like the Committee to revisit issue K at a later point.
2203. **Mr A Maskey:** We are happy to come back to that.
2204. **Mr McFarland:** We believe that the relationship should be normal and akin to any other Minister’s. However, we can revisit that.
2205. **Mr Attwood:** Our position is as stated before.
2206. **The Chairperson:** The consensus is that the Committee park issue K. That concludes our discussion on policing and justice matters.

# 12 May 2009

**Members present for all or part of the proceedings:**

Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Nelson McCausland  
 Mr Alan McFarland  
 Mr Alex Maskey  
 Mr John O’Dowd

2207. **The Deputy Chairperson (Mr McCartney):** We will now discuss matters that relate to devolution of policing and justice. I ask members to declare their particular interests.
2208. **Mr McCausland:** I am a member of Belfast District Policing Partnership.
2209. **Mr A Maskey:** I am a member of the Policing Board.
2210. **The Deputy Chairperson:** We shall follow the same procedures as previously. If anything has changed, members can make the Committee aware of it. I refer members to the original issue C: “What should be the relationship between SOCA and the Security Services and the Minister/Department/Assembly?”
2211. **Mr McCausland:** My party will revisit that matter when it gets an update.
2212. **Mr A Maskey:** My party’s position remains the same.
2213. **Mr McFarland:** So, too, does my party’s position.
2214. **Mr Attwood:** My party’s position also remains the same.
2215. **The Deputy Chairperson:** I refer members to new issue D: “What needs to be done to ensure the maintenance of existing North/South policing and justice agreements, and is there a requirement for a Justice Sector of the North South Ministerial Council?”
2216. I refer members to the British Secretary of State’s recent letter, which is dated 8 May 2009.
2217. **Mr McCausland:** People want time to digest the letter’s contents and to receive supplementary information. My party’s position has not changed.
2218. **Mr A Maskey:** My party’s position remains the same.
2219. **Mr McFarland:** As I understand from the latest letter, the policing part will continue unaffected and the justice part will be subject to an exchange of letters that will set up a relationship between the Northern Ireland Executive and the Irish Government, which, theoretically, solves the first part. My party’s view is that there is no requirement for a justice sector.
2220. **Mr Attwood:** I refer to questions that were asked earlier in the meeting about what the Secretary of State’s letter means.
2221. **The Deputy Chairperson:** I now turn to new issue F: “What, if any, consideration should there be of the Ashdown Report on parading, and is there a need for further clarity of the powers to be devolved, and, if so, should they include matters relating to the Public Processions (Northern Ireland) Act 1998, flags and symbols and recruitment to the PSNI?”
2222. I again refer members to the letter that is dated 8 May 2009.
2223. **Mr McCausland:** Again, until we see what Ashdown produces, it is difficult to come to a position on that matter.
2224. **Mr A Maskey:** I have nothing further to add to my party’s previous position.
2225. **Mr McFarland:** My party’s position has not changed since last week. Have we skipped new issue E, which deals with finance?
2226. **The Deputy Chairperson:** Sorry. That is my mistake. We will return to it.



2227. **Mr Attwood:** I refer to what we said previously, but I am surprised that the Secretary of State has given a shot in the arm to Ashdown. Ashdown was quietly going to sleep — not Ashdown himself, but the impetus behind his strategic review of parading. In his letter to the Committee that is dated 8 May 2009, Mr Woodward said: “I am however confident that when the Report is published it will offer a sustainable long term solution to the issues surrounding parading in Northern Ireland.”
2228. I see that as the British Government giving a shot in the arm to the Ashdown review to get the DUP lined up for future developments. The Ashdown review should have been history by now, but the British Government are lining that up to accommodate DUP interests in the near future.
2229. **The Deputy Chairperson:** OK. I will return to new issue E: “What is the extent of the financial provisions for a department which would exercise the range of policing and justice functions?”
2230. **Mr McCausland:** Is that about whether the budget should be ring-fenced? I have nothing further to add to that today.
2231. **Mr A Maskey:** We have nothing to add.
2232. **Mr McFarland:** We have nothing to add.
2233. **Mr Attwood:** We have nothing further to add.
2234. **The Deputy Chairperson:** We will move on to new issue G: “In the context of Recommendation 26 of the Committee’s original report, to which Department should the Public Prosecution Service be attached?”
2235. I remind members that we will visit other legislatures to inform our decision on new issue G.
2236. **Mr McCausland:** We are waiting until the visits are out of the way.
2237. **Mr A Maskey:** We have nothing further to add.
2238. **Mr McFarland:** We have nothing further to add.
2239. **Mr Attwood:** We have nothing further to add.
2240. **The Deputy Chairperson:** New issue H: “In the context of Recommendation 27 of the Committee’s original report, about examining the independence and accountability of the Public Prosecution Service, before, and following devolution, what consideration should be given to this matter, pre-devolution?”
2241. **Mr McCausland:** We have nothing further to add. Although, at some point, if possible, we would like to listen to the views of the prospective Attorney General.
2242. **Mr A Maskey:** We have nothing further to add.
2243. **Mr McFarland:** We have nothing further to add.
2244. **Mr Attwood:** We have nothing further to add.
2245. **The Deputy Chairperson:** Are we going to set a time to have a discussion on that issue? Perhaps the Committee Clerk could slot it in over the next couple of weeks.
2246. **Mr McFarland:** That should happen after we have received the updated report that we have just asked for, and after the visits. The idea is that we should sit down with all the available information on how the system works in other places. Only then can we have a proper discussion and, presumably, take decisions.
2247. **Mr Attwood:** I do not agree with that. There will be a lot more conversation after the visits, because whatever we pick up on will concentrate minds. We need to have a stocktaking session on the issue of the Public Prosecution Service (PPS). Much of what we learn from the other jurisdictions will be of a structural and operational nature, which is a good thing, but we also need to bore into some of the fundamental issues about the management and practices of the PPS.

2248. **Mr McFarland:** I stand corrected, and I apologise. We had agreed to do that before the end of May.
2249. **The Committee Clerk:** Do members have a preference as to whether that discussion should take place next week or on 26 May 2009? I remind members that 26 May is the notional date on which the special adviser will come back to the Committee to present a paper in closed session. I am not saying that we cannot deal with both issues on the same day, but the special adviser is scheduled to be here on that date. It is a matter of whether members wish to discuss the matter next week or defer it until 26 May, bearing in mind that it was decided that it should be discussed before the end of May. I suspect that it will not be the final discussion on the matter and that we will be better informed after next week.
2250. **The Deputy Chairperson:** Are members content to schedule that discussion for next week?
- Members indicated assent.**
2251. **The Deputy Chairperson:** New issue I: “In relation to Recommendation 30 of the Committee’s original report, who should undertake the advisory role in relation to the appointment of the Police Ombudsman?”
2252. **Mr McCausland:** We have nothing further to add.
2253. **Mr A Maskey:** We have nothing further to add.
2254. **Mr McFarland:** We have nothing further to add.
2255. **Mr Attwood:** We have nothing further to add.
2256. **The Deputy Chairperson:** New issue J: “What procedures and protocols will there need to be between the Minister, an Assembly Committee and any newly established department and its associated agencies?”
2257. **Mr McCausland:** We will revisit that matter after the visits, and so on. We have nothing further to add at this stage.
2258. **Mr A Maskey:** We have nothing further to add.
2259. **Mr McFarland:** We have nothing further to add.
2260. **Mr Attwood:** We have nothing further to add.
2261. **The Deputy Chairperson:** New issue K: “What would be the status of the Minister’s position in, and relationship with, the Executive Committee; and would the Minister be required to bring significant, or controversial, matters to the Executive Committee?”
2262. **Mr McCausland:** We are still considering that matter.
2263. **Mr A Maskey:** We have nothing further to add.
2264. **Mr McFarland:** We have nothing further to add.
2265. **Mr Attwood:** We have nothing further to add.
2266. **The Deputy Chairperson:** OK. That ends the session.



# 19 May 2009

**Members present for all or part of the proceedings:**

Mr Raymond McCartney (Deputy Chairperson)  
 Mrs Carmel Hanna  
 Mr Nelson McCausland  
 Mr Alan McFarland  
 Mr Alex Maskey  
 Mr Ian Paisley Jnr

2267. **The Deputy Chairperson (Mr McCartney):** We will now discuss issues about the devolution of policing and justice. Rather than read through the list of category two issues, if no one has anything to add, we will proceed to the discussion about the independence and accountability of the Public Prosecution Service (PPS). Are members content to do that?

**Members indicated assent.**

2268. **The Deputy Chairperson:** As this session is being recorded by Hansard, members should declare any relevant interests.

2269. **Mr Paisley Jnr:** I am a member of the Policing Board.

2270. **Mr McCausland:** I am a member of Belfast District Policing Partnership.

2271. **Mr A Maskey:** I am a member of the Policing Board.

2272. **The Deputy Chairperson:** Members may remember that on 12 May 2009, Alex Attwood requested that the Committee should spend some time discussing this matter. As per the agreed format, I will ask a representative of each party whether they have anything to say about the issue, after which we can have a discussion if required.

2273. **Mr Paisley Jnr:** I am happy to hear Alex's views on the matter.

2274. **Mr McFarland:** The discussion about this issue was instigated by Alex on the grounds that he had a great deal to say about it. Perhaps he has managed to pass all the details to Carmel. However,

given that we were to mine into the issue, it is slightly strange that the person who wanted to do the mining is not here.

2275. **Mrs Hanna:** His neighbour died two days ago, and he had to go to the funeral this morning. He did pass his concerns on to me, so we can discuss the issue if members want. Alternatively, I am happy to defer the discussion.

2276. **Mr McFarland:** I was not having a go at him. I was simply saying that he was adamant that he wanted to get down into the issue.

2277. **Mrs Hanna:** I think that he does.

2278. **Mr McFarland:** My point is about whether it is worth holding off on the discussion until Alex is present.

2279. **Mr Paisley Jnr:** I am happy to go ahead with it.

2280. **The Deputy Chairperson:** Carmel, what do you think?

2281. **Mrs Hanna:** I do not mind either way. It is up to members of the Committee.

2282. **Mr A Maskey:** I am happy either way. However, as I said last week, I am also mindful that we have a number of site visits arranged over the next couple of weeks. I have nothing further to add on behalf of our party. I am content to let the matter sit. If Carmel wants to raise the issue from her party's point of view or from Alex Attwood's point of view, I am happy to listen to it.

2283. **Mrs Hanna:** If it is going to be dealt with on another day, that is fine. However, if it is not, I want to raise the issues today.

2284. **The Deputy Chairperson:** Are members content to defer the discussion until next Tuesday?

2285. **The Committee Clerk:** The special adviser will be present next Tuesday. However, that meeting can go on for

as long as it takes. If necessary, I can organise lunch. Alex Maskey made a point about the planned visits, and there is an issue about whether those visits will better inform the Committee's discussion. There may be a question about whether it should be rescheduled for discussion next week or for after the visits. I want to be clear about that to enable us to put it on the agenda at the most appropriate time.

2286. **The Deputy Chairperson:** Does anyone have any comments about whether we should have a brief discussion next week or defer it until after the visits?
2287. **Mrs Hanna:** I am content as long as it goes back on the agenda.
2288. **Mr A Maskey:** It will have to be on the agenda anyway, because it has to be discussed.
2289. **Mrs Hanna:** Yes; it does need to be discussed.
2290. **The Deputy Chairperson:** OK.



## 26 May 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mrs Carmel Hanna  
 Mr Danny Kennedy  
 Mr Alan McFarland  
 Mr John O'Dowd

### Witnesses:

Mr Victor Hewitt      Specialist Advisor

2291. **The Chairperson (Mr Spratt):** We will now receive a presentation from the specialist adviser, Victor Hewitt. Members have been provided with a pack that contains the replies from the various organisations that we gave a final chance to in order to provide information on any additional expenditure.

2292. Victor, you are very welcome. I assume that you will brief the Committee on your paper. Thank you for the additional work that you have done. I know that it was done from afar, but it has worked out very well. We appreciate you doing that work during your break, and we hope that it did not interrupt your holiday too much. Without any further ado, I invite you to proceed with the presentation, after which I assume you will be happy to take questions.

2293. **Mr Victor Hewitt (Specialist Adviser):** Thank you, Chairman. I trust that a copy of the paper has been circulated to all members. We are trying to get an update on the information that was previously given to the Committee. Although we had a lot of information about the remaining two years of the 2007 comprehensive spending review (CSR) period, namely this year and next year, I was concerned that we had comparatively little information about forward pressures into the next CSR period. The paper refers to post-CSR 2007, which is the period up to 2014. It

is useful that many of the returns hinted at expenditures in those forward years.

2294. All the figures in the paper were taken from the returns, with a couple of exceptions. Obviously, some pressures will carry over from the current CSR period into the next CSR period. One example of those pressures is the hearing-loss claims, which will not be cleared within the next two years. Another example is the pressures on the Compensation Agency, which has previously indicated that it is running approximately £30 million light every year. I have indicated where I thought it prudent to put in an estimate for the forward years when it had not been given to us formally by the bodies involved. I am happy to take members' questions about that process.

2295. A degree of re-phasing of expenditure has taken place since the last time, especially in respect of capital spend. Some of that capital-spend money has been pushed out of the 2007 CSR period, which runs until 2011, and into the next CSR period. A good example of that can be seen in the £100 million that was allocated for the refurbishment of the Court Service estate. Some £15 million of that £100 million is now thought to fall within the 2007 CSR period, with the remaining £85 million pushed into the future. Capital spend is always liable to be pushed forward, particularly if other pressures are to be met.

2296. The other assumption that is being made from the returns is that relatively small new pressures will effectively be absorbed in the CSR 2007 period. A number of new pressures will appear over the next two years, but the assumption is that the bodies that will be affected by that will live within their existing budgets. They are not being registered as inescapable new pressures to be met. If that assumption were to be violated, the figures would, to

- some degree, change again. I can deal with the individual figures in response to questions that members may have.
2297. The bottom line is that the totals are reasonably substantial. From the 2007 revised period, there is £571 million, which, because of the re-phasing, is down from the previous figure of £631 million. There is a substantial indication for the post-2007 period of £463 million, which is probably something of an underestimate. That £463 million does not cover the cost of new prison facilities. Those were mentioned when we took evidence from the Prison Service and in its further return. The Prison Service merely said that it was constructing a business case, and it has not put a figure on that.
2298. The figure of £250 million for a new prison and new women's facilities is also an estimate. It is probably not an unreasonable estimate, but I have not included it in the main body of the calculations. It is there as an additional factor to be taken into account. With that as background, I am happy to take questions.
2299. **The Chairperson:** Thank you very much, Victor. You said that the police hearing-loss claim will go beyond the CSR period. Do you have an indication of what that figure might be?
2300. **Mr Hewitt:** When the Chief Constable gave evidence, he said that the pressure from hearing-loss claims was estimated at £69.5 million for 2009 and £61.8 million for 2010-11. That was based on there being 200 new cases each month. That has now been revised to 275 cases emerging each month, and, as a result, the estimated cost for hearing loss claims has risen to £93.9 million for 2009 and to £84.2 million for 2010-11. Those costs will all be included in the current CSR period.
2301. Potentially, approximately 20,000 people may or may not have a claim for hearing loss. That is running between 200 and 300 a year, so it could run for a considerable period. I asserted an additional pressure of approximately £80 million a year on the police on the basis of between 200 and 250 cases a month.
2302. **Mr Kennedy:** Thank you for your presentation. Were the post-CSR figures that you presented estimates or guesstimates?
2303. **Mr Hewitt:** They are based on extrapolating trends. For example, we knew that the Compensation Agency had been running £30 million light per annum for a considerable period. At the beginning of each year, it knew that it did not have enough money and it had to go back to the Treasury. In that case, we took the figure of £30 million and extrapolated it over three years, so a figure of £90 million appears against the Compensation Agency.
2304. The costs for the prison have not been included in the main calculations, because, to some degree, that is a guesstimate of what a new prison and prison facilities would typically cost. I do not have the firm business case from the Prison Service, so I have not put that into the main figure work. I have merely noted it as a potential additional pressure.
2305. I have also put a couple of question marks in one of the columns. A figure of £27 million was mentioned for a new laboratory for the Forensic Science Service. However, having experience of capital projects, I feel that that figure seems to be light for the type of facility that is being talked about. Laboratories are specialist facilities, and they tend to be relatively expensive. I have not altered the figure, but I have put a question mark against it. No figure was supplied in the further update, but a figure of £27 million was given in the original estimates.
2306. **The Chairperson:** I remind people who have just arrived that this is a closed session, and the figures that are being discussed are confidential.
2307. **Mr McFarland:** A number of non-governmental organisations (NGOs) receive funding for criminal justice matters and policing work. Where do

- they fit into these figures? Are they included in the NIO's budget?
2308. **Mr Hewitt:** No; they should have their own budgets. There are approximately 30 bodies within that family, and they are grant-aided by the NIO. The bodies were contacted individually, and they made individual returns.
2309. **Mr McFarland:** Where do they fit into this document?
2310. **Mr Hewitt:** The bodies that made submissions about new pressures appear in this document. Other bodies said that they had no trouble with their existing budgets. What we are looking at here is additional pressures.
2311. **Mr McFarland:** I understand that, but a plethora of NGOs get funding for criminal justice work, and some of them get it from the NIO. Presumably, when policing and justice is devolved, that funding will go to the Department of justice, and it will issue all the grants. Is that what is likely to happen?
2312. **Mr Hewitt:** Yes. The NGOs will have a baseline within the existing funding from the NIO, and that baseline will transfer to the new devolved Administration. We understood that the Committee was interested in whether that baseline would be adequate for existing and future pressures. That is why we focused on whether there was anything new coming along that the existing baseline would not be able to meet. That is where the evidence has fallen. I could find no mention in any previous or current returns of the expense of setting up a Department of justice. However, clearly, it will be an expense. The NIO carries that at the moment, but there is no estimate of what a Department of justice will actually cost. It will need the usual finance for staffing, private offices, and so on.
2313. **Mr McFarland:** From reading Secretary of State's letter, there appear to be some unresolved issues. He said that the Heywood committee is dealing with a number of those issues. We have no idea what that committee will recommend about the setting up of the new Department and all the other issues. Therefore, we are still not clear on a key area, which is whether some of it will be taken off us and will remain with the NIO and the Government.
2314. **The Chairperson:** That is a fair comment.
2315. **Mr McFarland:** Is there no indication of when we may hear about that?
2316. **The Chairperson:** No; there is still no indication of when we might hear about that. There are no replies that I am aware of, and I certainly have not received any replies on that matter. We were told that the Heywood report would be published soon. A number of meetings have taken place, and the Secretary of State said that he expected to receive a paper, but he indicated that it would go to him and to the Prime Minister. At the meeting, we asked about sharing that paper, and he said that it would be a matter for the Treasury and the Prime Minister. He made clear at that meeting that the Department of Finance and Personnel (DFP) and others were involved in that process. I hope that we will get some indication when that becomes clear, but there is no indication that that has happened yet, and I have not heard anything to that effect.
2317. Do you have any indication as to what is unavoidable, and what would be desirable or aspirational in the figure of £571 million from the 2007 revised period and particularly the £464 million beyond that period? Obviously, some capital work may well spin out over a number of years. There are aspirations to build and, for some of those projects, it may be some time before that will be granted.
2318. **Mr Hewitt:** In a previous paper, we tried to use a classification based on the rather strict definition of inescapability, which was legally or contractually bound. Taking that as a starting point, anything to do with the hearing-loss claims would be inescapable; whatever the figure may turn out to be.
2319. Anything to do with the Legal Services Commission's legal aid figure will be inescapable once the judge has issued

- the certificate for legal aid. It may be manageable in the longer term, and there are indications of developments in the longer term, but for the moment, that is not in the control of the Legal Services Commission. It simply has to take what comes.
2320. Other inescapable expenses could result from low-pay claims, which would affect the PSNI and any other bodies that recruited through the Civil Service recruitment service. There may also be knock-on effects on their budgets from those claims. The low-pay claim would take the form of a lump sum to pay back what people should have been paid in the past, but it will also raise their forward pay. That would be an inescapable commitment in the future.
2321. You are quite right about the capital; that is always somewhat moveable, and facilities can be maintained over time at a cost, rather than be replaced. Facilities such as the forensic science lab could consistently be pushed forward, as could any newbuilds such as prisons, but there would be a growing cost to maintain the system.
2322. **The Chairperson:** You mentioned legal aid. One indication was that the system would probably need to be changed to help to reduce that. Amazingly, they were saying that it would take until 2015 to sort that out. I would have thought that if a Department was set up, that could be done a lot sooner than 2015. Do you have any views on that?
2323. **Mr Hewitt:** I know that anything coming from m' learned friends tends to go slowly at times. One of the problems is that there would probably be cases in the pipeline, which might run on for some years.
2324. I am certainly no expert on the structural changes that would be necessary for the legal aid system, but that would involve negotiations with the judiciary. The judiciary has the independence to say how many counsels a particular defendant is entitled to depending on the nature of the case. I would not be at all surprised if 2015 is the target date.
2325. **Mr Attwood:** Thank you, I apologise that I missed the earlier part of your presentation. I have some questions that are probably simple to answer. The only organisation that you have commented on about equal-pay costs is the Policing Board. Does that mean that the equal-pay costs are covered from within other Civil Service budget lines for all the other organisations and do not have to be found as a separate funding stream?
2326. **Mr Hewitt:** The information that we have is that people who were recruited through the Northern Ireland Civil Service recruitment procedures fall within the low-pay claim bracket. Some people who work for the Policing Board and the PSNI as civilians were recruited in that fashion. The NIO has said that its recruitment procedures are outside that system, and therefore the low-pay claim does not apply to it. However, trade unions will press the point that the low-pay issue should be extended to anyone employed in Northern Ireland, be that by the NIO or anyone else.
2327. However, that is the basis on which the low-pay claim is currently restricted to a limited number of bodies within the competence.
2328. **Mr Attwood:** Will it be difficult to determine whether people will fall inside or outside the equal-pay claim award, if and when it comes? It could be that 20 other organisations that are involved with justice in the North will have equal-pay responsibilities to their staff. That is still a possibility.
2329. **Mr Hewitt:** It is a possibility. The current advice is that equal-pay legislation affects people who were recruited through the Civil Service's recruitment process. If the trade unions are able to press the matter beyond those people, the number of people that will be affected will, obviously, grow. The underlying amount of money associated with Civil Service and public service equal-pay claims is becoming very large; it is approaching £500 million. Originally, it involved £100 million; however, that figure is now approximately £470 million.

2330. **The Chairperson:** Most of the people who are employed by the police are civil servants who simply transferred. At an earlier stage, some of them may have been specifically recruited, but it was only in the latter part of last year that staff members were given the option of either staying with the Civil Service or fully transferring to the Policing Board. Although those people work for the police, they are still civil servants and have always had the option of going back to other parts of the Civil Service. The situation was only finally sorted out this year.
2331. **Mr Attwood:** The point that I was making is slightly different.
2332. **The Chairperson:** You are probably right; there are probably people in other parts of the justice family who fall into the same category, so I imagine that an equal-pay claim will be made on their behalf.
2333. **Mr Attwood:** I have not seen the papers, but the NIO might be stretching the point by saying that because the people who are employed in all those other organisations went through a different recruitment process, they have somehow ended up not being entitled to equal pay. I presume that equal-pay provisions apply to everyone in the public sector. One cannot differentiate between people based on the interview procedure that they underwent. My sense is that the unions might be right when they say that equal-pay provisions apply to everyone in the public sector and one cannot differentiate or pick and choose between various categories.
2334. As a result of Alistair Darling's emergency Budget, Northern Ireland Departments must find £123 million of cuts or savings. What is the NIO's share of those cuts or savings? You said that the NIO has identified new efficiency savings, but what are they?
2335. **Mr Hewitt:** £17 million.
2336. **Mr Attwood:** Is that all? Did it say that it will achieve those savings within NIO HQ, or will it spread them between all the other organisations?
2337. **Mr Hewitt:** It has not given any indication of where the savings will be found. However, making £17 million of savings would place considerable pressure on HQ. I imagine, therefore, that it will probably try to spread the savings out.
2338. **Mr Attwood:** So, that £17 million is an added pressure, over and above everything else?
2339. **Mr Hewitt:** Yes, it has come about as a result of the Budget.
2340. **Mr Attwood:** Figures are being bandied about regarding savings to be found by Northern Ireland Departments, which amount to millions of pounds a year for four or five years. Do the figures that organisations have identified as post-07 CSR pressures take account of those additional and significant savings to be made by Departments, or do they refer only to post-2011 pressures that were already anticipated?
2341. **Mr Hewitt:** The latter; they are merely indications of things about which they know. Other factors will depend on the Budget at the time.
2342. **Mr Attwood:** Do you have a view, or even a broad indication, of the justice pressures that will arise in 2011 and annually thereafter as a result of wider Budget considerations in London?
2343. **Mr Hewitt:** That very much depends on the operation of the Barnett formula at that particular time. We are used to the Barnett formula increasing the Budget here when there are increases in comparable spending areas in the rest of the UK. However, if there cannot be reductions in the baseline spending in those comparable areas in the next CSR, we would take the consequential, which would be a negative. The £123 million calculated this time was calculated as a negative consequential through the Barnett formula.
2344. **Mr Attwood:** Are you saying that you have no idea what it might be but you feel that it will be very large?



2345. **Mr Hewitt:** It could be substantial. We will not know until we see what the reductions are across the water.
2346. **Mr Attwood:** Last week, someone — I cannot remember who it was — flagged up to me the fact that they felt that the cost of a new justice Department would be significant, because there is no culture or experience here of how to run such a Department.
2347. I am surprised that the Police Ombudsman has written back stating that the pressures are currently non-identified. That is based on the Police Ombudsman doing nothing further with respect to examining the past. However, there is uncertainty as to what is going to happen as a result of the Eames/Bradley report. If anything does happen — which I hope is not the case — it may not be for two or three years. However, the Police Ombudsman has an obligation to investigate certain matters from the past, and it does not have the budget to do so over the next two years, never mind thereafter. Therefore, I am a bit surprised that the Police Ombudsman has not flagged up the fact that he will require funding to fulfil his statutory responsibilities over the next two years, independent of what may or may not happen as a result of the Eames/Bradley report.
2348. The letter — which is from Al Hutchinson, the Police Ombudsman, not the chief executive of that organisation — says nothing about that. That surprises me because the legal requirement to investigate certain matters must be met one way or the other, and that could be a somewhat additional pressure, over and above the other pressures that we have identified.
2349. **Mr Hewitt:** I am constrained to work with the material that I have received from the different bodies. I have not included in my report any information that I have may have garnered from other sources, because it has no official provenance. Some of the responses are surprising in that they have not flagged up issues that might occur, but it is outside my remit to include any other information.
2350. **The Chairperson:** That is exactly the way that it should be; it is not for any of us to make speculations. If the Police Ombudsman says that he does not have additional pressures, we must accept that. Thank you very much for your presentation, Victor.
2351. **Mr Hewitt:** At a previous meeting, Mr Paisley Jnr asked us to perform some calculations that would demonstrate what would have happened if the NIO had been funded through the Barnett formula in the last CSR. We have completed those calculations, and I will send a short paper through to the Committee for information purposes. The results are actually quite interesting.
2352. **The Chairperson:** OK. Thank you for that, Victor.
2353. We have received the additional information and the figures that were required. The Committee is due to meet again on 9 June 2009, when Victor will be making a presentation, but we still have no indication of whether the First and deputy First Ministers are available to attend. However, the Finance Minister has indicated that he would be happy to attend that meeting, if his diary permits.
2354. If the First and deputy First Minister can attend the meeting on 9 June 2009, it will include that presentation; if not, it will be a normal meeting. The Committee has no meeting next week; therefore, do members agree to the Committee sending a short reminder to the First and deputy First Ministers to ascertain whether they will be available?
2355. **Mr Attwood:** I am sure that we will get a reply after the 4th.
2356. **Mr Hamilton:** Of July?
2357. **The Chairperson:** I am sure that we will, but I am not going to get into that debate. *[Laughter.]*
2358. **Mr McFarland:** Will we share the paper with the Finance Minister and OFMDFM

- before they come before the Committee, or will we keep it as a surprise?
2359. **The Chairperson:** Are members agreed to the Committee sharing the paper? It would probably be in our interest to do so. It would also allow them then to feed into the Heywood committee and what might be happening there. The Committee can question them on the day about whether they know where the Heywood committee stands and whether a report has been made. Would members be happy that the Committee shares that paper with them prior to the meeting? Ministers need to be briefed beforehand.
2360. **Mr McFarland:** It might be quite fun to see their surprise, but that is not a terribly constructive approach to getting results.
2361. **Mr Attwood:** I am concerned about the principle of a Committee sharing with other people confidential information that it has not shared with the Assembly, which gives us our authority.
2362. **The Chairperson:** We will be sharing the information with the Assembly when we make our report.
2363. **Mr Attwood:** It seems to me that, on principle, it is to the Assembly that the Committee answers and with which we share intelligence and information. Can the Committee Clerk inform us whether this is a new precedent of sharing confidential information from a Committee inquiry with Ministers in advance of the Committee agreeing a report, or a report going to the Assembly Floor?
2364. **The Committee Clerk:** I think that there is a precedent, although it is unusual.
2365. **Mr McFarland:** The problem is that OFMDFM has, I believe, asked the Committee to look at this matter. The Office of the First Minister and the Deputy First Minister and the Finance Minister were supposed to be having discussions with the Treasury and the Prime Minister on the issue. They will have all the information that we have, because it has come from them. Therefore, there should be absolutely nothing new, other than whatever good work Victor has done in the margins in uncovering other areas that their Departments might not have volunteered to them, or making sense of it in a way that their Departments might not have suggested.
2366. Logically, therefore, there is nothing here that they will not already have, if they have done their job. However, there might be angles that Victor has come across that they might not have spotted and that might make our discussions with them more useful, if they were to have a heads up on what the Committee will be asking them. On the other hand, they might have done none of this or, judging from our history with some of those Departments, they might not have quite got around to it yet. Therefore, that information might be very useful to them and might facilitate productive discussions.
2367. I appreciate the point made by Alex, and there is an issue here about whether we share confidential information. However, we are trying to find some common ground, whereby the Committee and those Ministers pressure the Treasury and the Prime Minister to provide a solution to the problems that we have identified. We cannot go to the Assembly until we have constructive suggestions on the matter, and we cannot have constructive suggestions until we know what is happening with the Heywood committee, the Ashdown report, OFMDFM and the Finance Minister — if that all makes sense.
2368. **The Chairperson:** Almost.
2369. **Mr McFarland:** Therefore, it would be more productive for us if we were to have a discussion with OFMDFM that is based on a common starting point, and Victor's paper could be that starting point, if we were to share it with them.
2370. **Mr Attwood:** There are two issues. The first is to establish what is the right convention. I am prepared to be guided by precedent. I would like to share as much as we can as long as it is appropriate to do so, because we can then have a better conversation.

2371. **The Chairperson:** The First and deputy First Ministers have indicated that they have had discussions with some of the groups. The Heywood committee is ongoing. It has already been indicated that DFP is involved. Therefore, my guess is they are aware of 80% or 90% of the information in the paper; one or two matters might have been picked up on as a result of the Committee's probing. It is in all our interests that all the financial issues are out in the open so that others can argue for the deal that is needed to bring about the devolution of policing and justice.
2372. **Mr Attwood:** I am not opposed to the principle of sharing material, provided that doing so is appropriate and is covered by a convention. However, there may be wider political points, as Alan McFarland hinted.
2373. The NIO and the Secretary of State tried to stop the Committee doing this work. Already, NIO types are trying to give briefings to the effect that these figures are not as credible as the Committee believes them to be. There is a lot of politics at play. The Office of the First Minister and the Deputy First Minister may have had the conversations, but it has not taken evidence in the same way that the Committee has done. It may be that the qualitative nature of the Committee's work is different from that done by OFMDFM. I do not know whether that is the case, because the Committee has not had sight of what OFMDFM has done, and none of its representatives has come to the Committee to inform us about it.
2374. There are a lot of issues around this inquiry; the NIO does not like it and OFMDFM may have held conversations that were intense but not as extensive as the Committee's. Therefore, I am anxious for the Committee to protect the integrity of its work, because some people will want to say that it does not present the true picture or that it has been talked up, or whatever.
2375. **The Committee Clerk:** The Committee is in an unusual situation, one aspect of which was flagged up by Mr McFarland.
- When the First Minister and the deputy First Minister gave evidence in closed session last autumn, they talked about a parallel process and stated that the Committee's work would complement work being done elsewhere. On that basis, the Committee pressed on and challenged the Secretary of State's assertion that the Committee should not be involved in the process.
2376. It is also fair to say that, once the transcripts were cleared, the oral evidence sessions with witnesses have been published. Therefore, that information is in the public domain and is accessible to everyone. That brings us to the position posed by the confidential paper that Victor Hewitt presented this morning. As far as I am concerned, as the Committee Clerk, and in respect of the Committee's responsibility to the Assembly, it appears difficult for the Committee to do anything other than try to participate in the parallel process and to share that information.
2377. At some point the Committee must present all its investigations and findings in the form of a report. However, that report is to address all the category 2 issues and given that a number of those has yet to be resolved, the Committee might want to consider publishing an interim report on financial matters. If the report on all the category 2 issues is to be the means by which the Assembly will indicate that devolution should proceed, it seems to me that the report will be published too late to inform the negotiations on the required financial settlement.
2378. That is an unprecedented dilemma. Ordinarily, a Committee report is brought to the Chamber for debate, is adopted and is then referred for ministerial action; however, because we are dealing with reserved matters, that course cannot be followed. In some respects, the approach has been different because new ground is being broken as part of a parallel process in which the Committee decided to engage.
2379. **Mr McFarland:** We are missing key pieces of the jigsaw. We do not yet know the

- outcome of the Eames/Bradley report, we are missing the conclusion of the Heywood committee, and one could also argue that we are missing the Ashdown report. Until those pieces of the jigsaw are fitted in, we will not know what our report will say. The difficulty is that those areas are outwith our control. We will not know what the final policing and justice Bill will include until those pieces of the jigsaw are available and are slotted into the appropriate places. It could be that if a chunk of this is taken back and kept with the NIO, the drop will be fairly dramatic. On the other hand, if it is being left with us, it could be even worse than we currently think that it is. Until we find out the missing information, it is difficult for us to do anything.
2380. **The Chairperson:** Due to the time frame for the Eames/Bradley report, it will not be included in our report; it falls outside our time frame.
2381. **Mr McFarland:** The Secretary of State said that the Government are due to take a view on the Eames/Bradley report by the end of June. That will not give us an indication of when things will happen, but it will inform us of whether something will happen in this CSR period, the next one or the one after that. If the Government are categorical about not revisiting any of the historical issues, we are, at least, a stage further on. We will know not to expect any change in respect of the costs for the Historical Enquiries Team and the Police Ombudsman, for instance.
2382. **Mr O'Dowd:** We are getting into the realms of that famous speech about things that we know that we do not know and things that we do not know that we do not know. In all forward-looking political or financial programmes, things will arise for which one cannot plan. At this stage of the process, we have tasked ourselves with completing the report and presenting it to the Assembly.
2383. The original question was about whether we could divulge certain information to the Departments. If the Committee Clerk says that there is a precedent for doing so, we have no difficulty with doing that.
- We will go ahead: we will share that information with the Departments; we will invite the Ministers before us next week; and we will proceed from that point.
2384. **The Chairperson:** It is not next week; it is the following week — 9 June. They have got the invitation, and we are awaiting confirmation.
2385. As the Committee Clerk has indicated, most of the information in the report came out in the evidence sessions, which were held in public session. Furthermore, most of the additional information that has come in — such as that relating to the capital projects — is also in the public domain already. Are members happy that the information is shared, to enable us to have some sort of constructive discussion with the three Ministers, after Mr Hewitt makes his presentation?
2386. **The Committee Clerk:** In case there is any doubt, I do not believe that there is a precedent for sharing this type of information. We are in an unusual situation. I do not know whether the Assembly would be offended if a Committee were to share information with the First Minister, deputy First Minister and the Finance Minister before presenting that information to the Assembly. However, I return to what I said before — the Committee engaged in a parallel process, and implicit in that was the knowledge that the time would come when the Committee would share information with the First Minister, deputy First Minister and the Finance Minister.
2387. If it would help the Committee, I will check whether there is a precedent, but that will require me to report back to the Committee, so we will need a special meeting before the 9 June meeting and before the release of any information that is included in Mr Hewitt's report. It is up to the Committee to decide what to do, because I do not think that there is a precedent in the Assembly for the circumstances in which the Committee finds itself. If you want me to try to get advice, I will do so.

2388. **Mr Attwood:** The Committee Clerk anticipated my question: where was the precedent? There appears not to have been a precedent. Therefore, I do not know how the Assembly will react.
2389. Secondly, there has been a parallel process, but those are merely words; there has not been any sense of sharing between OFMDFM and the Committee. At best, it has been minimal; at worst, it has been non-existent. So, yes, we have a parallel process, and the processes may eventually converge at some point. For that process to be credible, we must build in some requirements. Despite all our correspondence with OFMDFM, it has never told us anything about its negotiations with NIO in London other than that it “hoped” that those negotiations would be concluded by the end of the last financial year. Since then, we have heard nothing from OFMDFM about what has happened over the last two months in its part of the parallel process.
2390. Will OFMDFM share with us information on where it is? If there is a parallel process to the point of sharing, and this Committee is to decide to share information with other Departments prior to sharing it with the Assembly, is OFMDFM similarly obliged to share with us what it knows? If it is, will it do that before we meet on 9 June? If OFMDFM is going to have sight of what we know, we should have sight of what it knows, so that we can have a proper conversation. That would be a fair outcome. The parallel process is meant to stack up; there is meant to be sharing to facilitate a better understanding of where things are. That is the basis on which we should share information with OFMDFM.
2391. Having said all that, I do not know that we should share at all. If there were an inquiry by another Committee, would that Committee share some of its draft report with a Minister if that Minister was to be called to give evidence to that inquiry? I think not. The Committee might indicate the terms of reference or provide a list of questions that the Minister might be asked, but it would not share with a Minister a working draft of an inquiry report into an issue that especially concerned that Minister. We are in an area where there is no precedent; therefore, we need to be mindful and be sure that we set a correct precedent. If this sets a precedent, and this is a parallel process, we will share only if they share. We want to share: are they prepared to do the same?
2392. **Mr O’Dowd:** I do not know where to start. There is a difference between having negotiations and preparing a report. The Office of the First Minister and the Deputy First Minister (OFMDFM) is involved in negotiations with the Treasury and others to secure a financial package for the establishment of a Department of policing and justice. We are involved in preparing a report that will reflect the financial pressures created by any new justice system. There is a difference between sharing those two types of information.
2393. I am easy, one way or the other. If the Committee is minded not to share the evidence, so be it. It will not make a whole lot of difference to the debate. One way around it, as Raymond has said, is to share the Hansard report of the evidence sessions with OFMDFM. Those hearings were held in public; if OFMDFM wants to, it can find out what was said by referring to ‘The Irish Times’, the ‘Newsletter’, or ‘The Irish News’. It is not highly classified information. If that is a way around Alex’s concerns, we can do that. However, a bartering session with OFMDFM would not be a useful way of spending the Committee’s time. If nothing else, taking the attitude of “you show us, and we will show you” is immature politics. There are a number of ways to move the debate on. The important thing is to get OFMDFM and the Finance Minister before the Committee to discuss the issue of finance.
2394. **Mr McFarland:** I am a great defender of Committees and their rights, but I think that Alex is not quite on the ball on this issue. The idea that Committee members from Sinn Féin, the DUP, or any party will not share the Committee’s findings with their Ministers, albeit



- illegally, before those findings are presented on the Floor of the House, is not realistic.
2395. We are in a unique position: the devolution of policing and justice is the last brick in the wall of the Belfast Agreement. This is a unique Committee; it is not a departmental Committee.
2396. However, Alex does have a point: if we are going to share — and I believe that we should — it is not unreasonable to ask them to give us a heads-up as to where they are in their discussion so that we can have a better conversation with them when they appear here.
2397. I am aware that there is no precedent for doing so and that they have been obstructive all along. However, if we are going to share, and in order to have a proper conversation, it would be sensible to find out what discussions the Finance Minister and OFMDFM have had.
2398. My understanding from another meeting that party leaders had is that there has been little agreement with the Treasury. It will almost certainly come down to a negotiation with the Prime Minister. Therefore, we will probably not get a great deal of information from them. However, they must have discussed that issue, and it would be useful if they could share those details with us at the same time that we are sharing with them.
2399. **The Chairperson:** I am happy either way. What is the Committee's view?
2400. **Mr Attwood:** I do not want to be unhelpful. However, I will be difficult.
2401. **The Chairperson:** We have had a fair discussion on the matter.
2402. **Mr Attwood:** If we share the Hansard report and the Committee Clerk speaks to the relevant official in OFMDFM about Victor's paper, I hope that they extend the same courtesy to us by way of sharing information so that we have some prior notice about where they believe the situation to be. I am relaxed about whether the information is shared through the Committee Clerk or, indeed, through the Chairperson and Deputy Chairperson.
2403. **The Chairperson:** There is no meeting next week anyway. We have still not received an indication from the First Minister and the deputy First Minister. We have received one only from the Finance Minister. We agreed earlier that we would check their availability for 9 June 2009.
2404. Are members happy enough that the Deputy Chairperson and I share some of that information and indicate to them that it would be helpful if they could advise us as to the position of their discussions with the Treasury? Perhaps the Finance Minister could give us some indication as to what is happening with Heywood. It was made clear to us at an earlier stage that DFP was involved in that discussion.
2405. **Mr McFarland:** That would be useful, Chairperson.
2406. **The Chairperson:** Given Alan's indication of the party leaders' meeting and that discussions with the Treasury were difficult, are members happy enough that we receive some verbal indication as to the position of those discussions?
- Members indicated assent.**
2407. **The Chairperson:** Thank you very much, Victor. I am sorry that you had to sit through all that discussion.
- We will now review the outstanding issues on the devolution of policing and justice. I declare that I am a member of the Northern Ireland Policing Board. If no other members have any interests to declare, we will move on to the category two list of issues. Rather than my reading out the issues, members should indicate whether their parties have any updates on the previous proceedings.
2408. **Mr Hamilton:** I have nothing further to add.
2409. **Mr McCartney:** I have nothing further to add.
2410. **The Chairperson:** Mr Attwood, perhaps when your private meeting with Mrs

Hanna is finished, you could let us know your party's position.

2411. **Mr Attwood:** What was the issue?

2412. **The Chairperson:** Does your party have any updates on the category two list of issues regarding the devolution of policing and justice? While you were having your private meeting, the representatives of the other parties said that they had nothing further to add.

2413. **Mr Attwood:** We were discussing whether we wanted to share any update with you, but we have decided not to.

2414. **The Chairperson:** Thank you. As there are no updates, are members content to park those matters?

**Members indicated assent.**

## 9 June 2009

**Members present for all or part of the proceedings:**

Mr Jimmy Spratt (Chairperson)  
Mr Raymond McCartney (Deputy Chairperson)  
Mr Alex Attwood  
Mr Simon Hamilton  
Mrs Carmel Hanna  
Mr Alex Maskey  
Mr Alan McFarland  
Mr John O'Dowd

2415. **The Chairperson (Mr Spratt):** Moving to the devolution of policing and justice matters, I declare an interest as a member of the Northern Ireland Policing Board. Do any other members wish to declare any interests?
2416. **Mr A Maskey:** I am also a member of the Policing Board.
2417. **The Chairperson:** A number of issues in the category 2 list remain to be clarified. Therefore, before I go through them one by one, I will ask the parties to indicate whether there are any changes from their previous positions.
2418. **Mr Hamilton:** No.
2419. **Mr A Maskey:** No change.
2420. **Mr McFarland:** No.
2421. **Mr Attwood:** No.
2422. **The Chairperson:** Given that there is no change, I do not propose to go through the issues for the sake of having a discussion. We discussed issue K, but members will be happy to learn that that was not recorded for the Hansard report.
2423. However, I stress that we need to return to the category 2 issues in the not too distant future, once the Committee has visited other legislatures.



## 23 June 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mr Danny Kennedy  
 Mr Alex Maskey  
 Mr Alan McFarland  
 Mr John O'Dowd  
 Mr Ian Paisley Jnr

2424. **The Chairperson (Mr Spratt):** On Tuesday 16 June, the Committee travelled to London and had a meeting with the Lord Chancellor and Secretary of State for Justice, Jack Straw. The meeting lasted much longer than had been anticipated, and it was a very good and frank meeting. A fair amount of information came out of it, which will, eventually, make its way back to the report.

2425. We discussed rubbing points in relation to the listing of cases. The Lord Chancellor explained that cases are to go to court and are then taken off the list at short notice, and he talked about the problems that this creates in the system. It is a problem that exists in all the jurisdictions. We discussed that problem and the working relationships that are required between the Attorney General, the Home Secretary and the Justice Committee. We had a frank discussion about that, and the Lord Chancellor offered various pieces of advice.

2426. The Lord Chancellor talked about his workload when something goes wrong in the system. He made it clear that if that happens, it is important that he takes responsibility for it. He indicated that that is the way that anyone in charge of justice should approach the job. He was very frank about that. There was also a discussion about high-cost cases, which have implications for the financing of the justice system. The cost of the legal aid system in Northern Ireland, which

is higher than in any other part of the United Kingdom, was also discussed. The Lord Chancellor listened to the points that we made about that. He also made it clear that the Ministry of Justice was ready to facilitate the transfer of justice-related functions at any time.

2427. We appreciate the work that was put into arranging the meeting, and I thank the Committee Clerk and his staff who facilitated the meetings in both London and Edinburgh. Committee members appreciate the work that went into that; those meetings were not easy to arrange, and quite a few changes had to be made along the way. That covers the points that were raised with the Lord Chancellor. Do members have any observations to make?

2428. **Mr Paisley Jnr:** I also thank the officials and the Committee Clerk in particular. I was only there for the London meeting, but it was beneficial because of Jack Straw's complete candour and the fact that he was so open with Committee members. I am sure that the notes that the Committee Clerk and his staff took on the relationship and balance that has to be struck between the Executive and the judiciary, and how to get that balance right, will give us an incredible insight into how the job is done and how the Department is run. The issue of fees was set out in an accurate, yet colourful, way. The meeting that we had with the Justice Committee later in the day was also beneficial, because it gave us a useful insight into how the Committee can stay on course with its own issues instead of getting waylaid and sidetracked by irrelevant issues. Perhaps that is a lesson for our Committees. It was a worthwhile effort.

2429. **Mr Kennedy:** I thought that the meeting with Jack Straw was insightful and useful. He talked about getting involved in individual cases, and about how it was necessary to have separation.



- Jack Straw is clearly in control of his brief; therefore, it was important to take the opportunity to meet him. I thank the Committee Clerk and his staff for arranging those meetings.
2430. **The Chairperson:** As Ian said, we had a meeting with the Justice Committee, which was chaired by Sir Alan Beith. He and the Committee members highlighted the sensitivities that exist between Parliament, the Attorney General and the prosecution service with regard to independence and the Attorney General's accountability for the prosecution service. There was a frank discussion around that area, and they were very willing to offer advice. They had quite a number of papers, which the secretariat now has. I assume that some of those will be part and parcel of the report. The Committee also answered questions, which we found to be very helpful.
2431. We travelled to Edinburgh on Wednesday morning —
2432. **Mr Paisley Jnr:** Sorry to interrupt, Chair, but I think that an interesting point had been lost, in that the Westminster Committee has responsibility for justice issues in Northern Ireland, yet it has not explored many of the interesting things that have arisen recently. For example, even since we have been sitting, the Ombudsman's report into deaths in prison custody has taken place, yet such investigation would normally be right up street of that Committee. The Committee members recognise that there has perhaps been a bit of a gap in the work that they could have been doing.
2433. **The Chairperson:** The Committees in London and Edinburgh were at pains to point out the volume of legislation that has to go through a justice Committee. That debars them from doing essential work that they might want to do with the police service and within the justice system. Some of the other work that they feel they should be doing, scrutinising various issues within the justice system and the police service, actually falls by the way, although the Home Secretary in London deals with
- all of the policing issues. It was a good meeting.
2434. We then met the Justice Committee in Edinburgh, and discussed issues around legislation and new laws that were going through. There was so much work in the beginning that two Committees were formed in Scotland to deal with that volume, because it was impossible to be proactive given the amount of work that they needed to get through.
2435. The Committee made a very helpful slide presentation that explained the whole justice system. We picked up on that at a very early stage, and the Committee Clerk has been tasked with doing the same thing here. Sometimes, there are so many strands within the justice system that it is difficult to understand where you are with various bits and pieces in the Northern Ireland system. That presentation is being prepared and will be shared with members as soon as it is sorted out.
2436. We had two sessions with the Justice Committee, one in the afternoon and one in the evening. Those sessions were very worthwhile, and a lot of questions and issues were discussed that were of mutual benefit. The following morning, we had a discussion with the Solicitor General for Scotland, Frank Mulholland. He took time out of his busy schedule, and gave us considerably more time than had been allocated. He is in the Lord Advocate's Office, which is separate from the Parliament, although they sit on the Executive.
2437. **The Committee Clerk:** They are Ministers, but they do not take their place in the Cabinet under the Government arrangements this time around.
2438. **The Chairperson:** They answer questions from the Government Front Bench in relation to some justice issues and can make ministerial statements to the Scottish Parliament. That is done infrequently; it is not a regular exercise that is conducted, particularly making statements. Those would be on serious issues of major importance to Scotland. They can also open debates

- on legislation in the Scottish Parliament. Therefore, the Solicitor General may well open the debate on a piece of legislation, dealing with the professional elements from a totally legal stance. They also provide the Government with confidential legal advice that is not published.
2439. We had an interesting, frank and free meeting with the Minister for Justice, Kenny MacAskill. He told us that it was important to get the structures right. They take a pragmatic approach with the police and the authorities. The Scottish Parliament are more in favour of giving advice and warnings to prisoners, as opposed to making arrests, etc. They acknowledge that Scotland is a small place and that it is inevitable that, as with Northern Ireland, people will know one other. However, Mr MacAskill was at pains to point out that, from a Minister's, the Lord Advocate's and an MSP's point of view, it was important that they respected one other's roles and that there should not be any lobbying or questioning on specific issues. They meet socially on occasions, but that is part and parcel of everyday life, given the nature of Scotland being a much smaller place. However, they were able to work that professionally without it impinging on anyone's professionalism.
2440. Mr MacAskill was at pains to point out that it is absolutely necessary to have, and make use of, efficient resources as regards budgets and everything else within the systems, and one needs to do that continually, along with the systems in the police service. There are eight chief constables in Scotland, and the Minister for Justice meets regularly with the chief constables of the various forces.
2441. Mr MacAskill was adamant that the prison service should be staffed by public-sector employees and that there should be no privatisation of the staffing of prisons within the Scottish system. He was open to receiving questions and it was a worthwhile meeting.
2442. **Mr Kennedy:** The meeting with the Scottish Justice Committee was particularly useful, as it has a very good approach to issues. We could learn much from them, and regular contact would be useful.
2443. **The Chairperson:** Do members have any questions? We proceed to the devolution of policing and justice. I declare an interest as a member of the Northern Ireland Policing Board.
2444. **Mr Paisley Jnr:** I am a member of the Policing Board.
2445. **The Chairperson:** We move to the category 2 list of issues. Before I go through the issues, has there been movement on any of them?
2446. **Mr Hamilton:** No.
2447. **Mr O'Dowd:** No.
2448. **Mr Paisley Jnr:** Considering that we are meeting the First Minister and deputy First Minister on 29 June, it might be useful to inform them, by letter or by head, that there are a couple of areas in which we have not made significant progress, and ask them to comment on those issues.
2449. **The Chairperson:** I will come to that. Does anyone else want to declare an interest?
2450. **Mr A Maskey:** I am a member of the Policing Board.
2451. **The Chairperson:** We have received the DUP and Sinn Féin positions. What about the Ulster Unionists and the SDLP?
2452. **Mr McFarland:** There have not been any changes since our previous discussions.
2453. **Mr Attwood:** We have no further comments.
2454. **The Chairperson:** I am keen that we have a discussion prior to the next meeting, as has been suggested. It is important that we go through the list. I intend to go through the entire list during the public session of the next meeting; I do not intend to do it today. I want colleagues to provide updates on the outstanding issues.

2455. Item 6 on the agenda relates to the financial implications of the devolution of policing and justice matters. In keeping with arrangements for a similar meeting last autumn, for which the Committee agreed that Hansard would not be required, the meeting will be held in closed session. Are members content?

**Members indicated assent.**

2456. **The Chairperson:** I confirm that the meeting will begin at 11.00 am and that the specialist adviser will be available for a brief discussion with the Committee before the First Minister and deputy First Minister arrive. We understand that the Finance Minister will join us at 11.30 am. We do not yet know how long the Ministers will be able to stay with us, but we will remain in closed session for as long as they are able to be with us. We will try to confirm the times to facilitate anyone who wishes to be in the public gallery for the public session.

2457. Ministerial officials will attend with the respective Ministers, as is normal practice. Are members content?

**Members indicated assent.**

2458. **Mr Attwood:** I return to the issue of whether the meeting should be held in public or private session. I recall the discussion on the previous occasion.

2459. It seems to me that part of the meeting should be in public. I appreciate that we should be in private session when the Finance Minister attends for the financial part of the meeting. It is very welcome that he is attending, because it will give us a much better idea about the comparison between the Committee's financial assessments and those of the Executive. However, the First Minister and the deputy First Minister appeared before the Committee in November 2008, and there was a fanfare about their proposals, but it is now seven months later. In November, they outlined a 37-step process in their proposals, and the wider community, as well as the Committee, will be interested in hearing some of that. Therefore, certain sections of what we discuss can be

differentiated from other elements, and those elements can be heard in public.

2460. **The Chairperson:** My understanding is that the Committee agreed with the Ministers that the meeting will be in closed session. The main issues for discussion are financial issues. However, if there are other issues and there were agreement, the public could be facilitated. However, the financial issues are the main issues for discussion with the First Minister, the deputy First Minister and the Finance Minister.

2461. **Mr Attwood:** — *[Interruption.]*

2462. **The Chairperson:** Let me finish. I will be happy to have a discussion on the matter at the end, rather than doing it piecemeal. It might be easier to do it that way, because we might cover some of the points that you want to raise.

2463. The First Minister and the deputy First Minister were invited to supply a paper on their involvement in discussions on the devolution of policing and justice by 25 June 2009, in time for inclusion in the pack, which will be issued to members on 29 June 2009. That is still the position, and we expect to get a paper. The Secretary of State was also invited to comment on the emerging findings of the special adviser by 25 June 2009. Again, that paper is due for inclusion in the pack for the meeting on 29 June 2009. I anticipate that after the special adviser's presentation, there will be scope for discussions and questions with the First Minister and the deputy First Minister in relation to the paper. The paper had gone to members, and I must say that I am most disappointed that a confidential paper has been leaked to the press at some point. Yesterday evening, a journalist held up a copy of the paper, which is a working paper: I did not see it but I understand it to be the case. In fact, information in the paper has now been clarified, and figures in it have now changed. Therefore, it is most unhelpful that such papers are leaked to the press. There will be an updated paper, which changes

- figures, and that will be available to members prior to next week's meeting.
2464. I am sure that we can ask the First Minister and the deputy First Minister about the other issues. However, first, we have to find out about timings and about their availability. They indicated, at the meeting that the Deputy Chairperson and I had with them, that they will be prepared to answer questions on some of the other issues. Therefore, we will raise the issues that you highlighted, Mr Attwood, when we are clarifying the timings with them. Is that OK?
2465. **Mr Attwood:** That is useful clarification. However, going back to the core point, if the financial issues are to be discussed in private, but the Ministers have agreed that they will answer questions on other matters, will those other matters be held in public session?
2466. **The Chairperson:** We need to clarify that with them. As I said, we will have a discussion with the Office of the First Minister and deputy First Minister. I am sure that we can have that discussion because we will be looking for their paper and we will then clarify all those issues, including the timing. We clearly want to have a discussion primarily on financial issues to see what parallel processes have been going on between the Northern Ireland Office, the First Minister and deputy First Minister and the Heywood committee and to see what various strands of discussions there have been.
2467. I suspect that we could talk about that all day, but we do not know exactly what the timing will be. Certainly, some of the issues raised in the correspondence in members' information packs have already been raised with the First Minister and deputy First Minister and with the Secretary of State.
2468. **Mr Attwood:** I agree with all that. However, the meeting cannot be about financial issues only. The Committee has, to some degree, been treading water for a number of months on category 2 issues. I sense — I hope not inaccurately — a bit of frustration on the Chairperson's part about that, particularly as he indicated that we need to return to those issues and discuss them further, presumably next week. However, given that we have been treading water on a number of important matters and part of the reason for that — which Alan articulates better than me — has been that other people might have greater influence than the Committee in determining those matters, it seems appropriate to ask OFMDFM questions about the particular matters that have been lying unresolved on the table for months.
2469. **The Committee Clerk:** It might be helpful if members refer to the letter that the Committee sent to the First Minister and deputy First Minister on 12 June. That letter identifies that the financial implications will be part of the agenda and it refers to the request for a short paper and general discussion on, to all intents and purposes, the category 2 list of issues. It also specifically requests their views on the role and functions of the Attorney General and how they envisage that person reporting and relating to the Assembly.
2470. The content of the letter was based on the decision taken by the Committee to hold that meeting in closed session. The letter clearly indicates that the session will be closed in its entirety. Therefore, if the Committee wants part of the meeting to be held in open session, the First Minister and deputy First Minister would need to be notified of that. That would overturn an earlier decision to have the meeting in closed session. Furthermore, the Chairperson has indicated his intention to have more focused discussion on the category 2 list of issues in open session after the meeting with the First Minister and deputy First Minister.
2471. **The Chairperson:** That is the point that I was making earlier; the decision had been made that the meeting would be held in closed session. That is the information that the Deputy Chairperson and I conveyed at our meeting with the First Minister and deputy First Minister, as that was our understanding of the

Committee's position. I would not be comfortable with a decision that the Committee has made being overturned.

2472. **Mr McFarland:** The Committee did agree on the meeting being held in closed session. It is important that we have a proper discussion on financial issues, and we can do that only in closed session. The category 2 issues will be resolved when the two parties involved in making the decision sit down and make the decision. The Committee will then be told about it. That is what happened last November on the initial agreement and what has happened on everything since. Either the two parties have got round to doing that, in which case they will undoubtedly tell us, or they have not, which I suspect is the case. Until that discussion happens, whether in public or in private, and there is agreement between the DUP and Sinn Féin on how this matter will progress, we will not make any progress in camera or in open session.
2473. **The Chairperson:** I assume that the Committee is happy with the decision that has already been made and that we should proceed on the basis of the letter that has been issued. Is the majority of the Committee happy that we continue on that route, let the meeting take place and see what comes out of it?
2474. **Mr Attwood:** I am content with that, unless OFMDFM consents to some of the meeting being held in public.
2475. **The Chairperson:** It seems that we are going back on a letter that has already been sent. Is the Committee content to let the meeting take place in the context that had been agreed to?

**Members indicated assent.**



## 29 June 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mrs Carmel Hanna  
 Mr Danny Kennedy  
 Mr Alex Maskey  
 Mr Nelson McCausland  
 Mr Alan McFarland  
 Mr John O'Dowd

2476. **The Chairperson (Mr Spratt):** The first item on the agenda under matters arising is the Committee's visit to Dublin last week. Raymond McCartney was going to present the report of that visit, but he has had to go to the Chamber. I will ask the Committee Clerk to present it. If any members who were there have any points to make, they can chip in.

2477. **The Committee Clerk:** Thank you, Chairperson. There were four meetings, and some of the points that were covered were covered in more than one meeting. In chronological order, the Committee delegation, on which all four parties were represented, met with the deputy to the Attorney General first of all.

2478. The headlines of that meeting were as follows. The Attorney General is appointed by the Taoiseach. He attends Cabinet meetings, but he is not a member of the Government. He provides support and represents the Government in court cases and provides legal advice and legislative drafting expertise to Departments. Most of the advice given by the Attorney General's office deals with constitutional matters, especially attacks on laws that conflict with the Constitution or the European Convention on Human Rights. The Attorney General expressly does not deal with criminal prosecutions; those are a matter for the director of public prosecutions. In connection with that, the director of public prosecutions is independent by statute and is not answerable to the

Attorney General or to any Minister in Dáil Éireann.

2479. Legislation does, however, provide for statutory consultation between the Attorney General and the Director of Public Prosecutions (DPP). For reporting purposes, the Taoiseach answers for the Attorney General in Dáil Éireann. However, there is no relationship with the Justice, Equality and Law Reform Committee. The director general, who is the most senior civil servant in the Attorney General's office, is responsible for publishing an annual report on matters relating to administration and finance, and would routinely expect to appear before the Committee of Public Accounts in relation to that office's spending.

2480. The second meeting was with the Minister of Foreign Affairs and was held at his express request. The ground covered in that session took the form of a situation report on the work of the Assembly and Executive Review Committee on the devolution of policing and justice matters. There was some discussion about parading, the dissident threat and areas of possible cross-border co-operation. The meeting then branched out into discussion about the Irish economy, which was not necessarily the remit of the Assembly and Executive Review Committee.

2481. The Committee then met the Committee on Justice, Equality, Defence and Women's Rights. The important message from that meeting was the re-emphasis on the independence of the justice system and that most of the Committee's work was dedicated to the scrutiny of legislation.

2482. The delegation met with the Justice Minister, Dermot Ahern, and the Garda Commissioner, Fachtna Murphy. That was a joint meeting, and the Minister made it very clear that he was responsible for policy and legislation. He

- acknowledged, and the Commissioner concurred, that the Commissioner was responsible for operational policing, including national security matters; that the Commissioner appears before the Committee of Public Accounts on the spending of his office and his organisation; and that the Minister and the Commissioner both have occasion to appear before the Committee on Justice, Equality, Defence and Women’s Rights. However, it was pointed out that national security matters are not scrutinised by that Committee, but that there is a National Security Committee, the composition of which does not include political representatives.
2483. The Justice Minister was keen to stress the independence of the DPP, and that was a recurring theme throughout all meetings. The Taoiseach’s office provides the line of funding for the DPP’s office. Finally, the Justice Minister identified the alignment of legislation between the two jurisdictions on the island as a significant matter and one that he imagined would come up, particularly if there was to be devolution of policing and justice powers.
2484. **The Chairperson:** Does anyone have anything to add to the report?
2485. **Mr McCausland:** What is meant by the “alignment of legislation”?
2486. **The Committee Clerk:** The Justice Minister did not elaborate on that. I think that he was pointing to the fact that there may be a need — in his view — for some alignment. That returns to a point raised, on which Mr Attwood may wish to comment, on the issue of the memorandum of understanding and the protocols relating to sex offenders and so on; matching them up to ensure continuity. Mr Ahern mentioned it in passing; I do not know whether Mr Attwood wants to elaborate on it.
2487. **The Chairperson:** Some issues have already been identified; particularly that of sex offenders. That is a very good example of where there needs to be co-operation on how sex offenders should be monitored, not only North/South, but in Europe and elsewhere. I thank the Committee Clerk for that report.
2488. We move to discussion on the devolution of policing and justice. I declare an interest as a member of the Northern Ireland Policing Board.
2489. **Mr McCausland:** I declare an interest as a member of Belfast District Policing Partnership.
2490. **Mr A Maskey:** I am a member of the Policing Board.
2491. **The Chairperson:** Before we go through the entire list of category 2 issues, has there been movement on any particular issue? I ask parties to indicate whether they want to raise any issue before we proceed?
2492. **Mr Hamilton:** My party does not have anything new or different to add.
2493. **Mr A Maskey:** My party does not wish to raise any new issue.
2494. **Mr Attwood:** We have nothing further.
2495. **The Chairperson:** OK. Well, that deals with that issue.
2496. We are now moving into the summer recess, which runs from 4 July to 6 September 2009. The Business Committee is due to meet on 8 September to schedule business for the first plenary sitting after the recess, which will be on Monday 14 September. Unless there is movement on outstanding issues in category 2, I do not anticipate that we will meet before that. Earlier, I had a short discussion with the Deputy Chairperson on that matter. It is not normal that we would meet during the summer period. It is difficult to achieve a quorum because people are off on holiday, etc, at various times. Can we agree, however, that if there is urgent business, the Deputy Chairperson and I will liaise with the Committee Clerk’s office and will attempt to schedule a meeting at short notice at a time that suits members? Is that agreed?
2497. **Mr Attwood:** Now that we are in public session, I am not sure how much I can

say. The First Minister and the deputy First Minister indicated where they are in their process, and that there might be developments on one matter that would enable them to move to another.

2498. **The Chairperson:** Any further meeting would be held on that basis. Just be aware that that part of the meeting was confidential. Be careful what you say about the discussion that we had with the First Minister and the deputy First Minister. It is on that basis that the Deputy Chairperson and I — obviously, with the assistance of the Committee Clerk's office — will contact members if there are developments during the summer recess. That is one issue on which I would wish to bring the Committee together at the earliest available opportunity.
2499. **Mr Attwood:** That is fine. My point is that there is a range of issues that the Committee has not resolved. Those are issues that could contribute to the successful outcome of any process. However, the Assembly cannot decide on them. Therefore, in the absence of decisions being made by either the Committee or the Assembly, it seems that even OFMDFM's best intentions might come up short. Action cannot be taken because the Assembly has not agreed on what those matters might be.
2500. **The Chairperson:** I assume that their intention would be to bring those matters before the Assembly. I assume that the Committee would have discussions and an input into that.
2501. **Mr McFarland:** As we said last week, if the First Minister and the deputy First Minister agree on an issue, their parties have the ability to push it through the Assembly. Short of rebellion by the two big parties involved, if they agree, the Assembly will agree because that is the way that things are at present. Agreement is not needed from parties other than the two big parties. They indicated that they might have consultation with the rest of us. Hopefully, that will take place. However, my guess is that nothing will progress

until those two parties have made a decision.

2502. **The Chairperson:** Let us get back to the subject of discussion. If such matters are brought to the Deputy Chairperson's attention and mine, we will call a meeting. I am seeking agreement on that. Is that agreed?

**Members indicated assent.**



## 15 September 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Nigel Dodds  
 Mr Simon Hamilton  
 Mrs Carmel Hanna  
 Mr Danny Kennedy  
 Mr Alex Maskey  
 Mr Alan McFarland  
 Mr John O'Dowd  
 Mr Ian Paisley Jnr

2503. **The Chairperson (Mr Spratt):** In incoming correspondence to the Committee, there is an enclosure from Adrian Donaldson, the Chief Executive of the Northern Ireland Policing Board, regarding a requirement to find £17 million of efficiency savings in the policing budget.
2504. Members are reminded that policing remains a reserved matter, and as such, they must be careful about any remarks that they make. However, I will allow some latitude on comments because of the obvious connection to the Committee's work on the financial implications of the devolution of policing, and the implications of the letter.
2505. **Mr Paisley Jnr:** I am concerned about the letter from Peter May of the NIO. The Committee is trying to get an accurate handle on the costs that will be involved in the devolution of policing, and that letter represents a provocative interference from the NIO, and an attempt to impact on the budget for policing. That should be noted for the record. That interference jaundices some of the work that the Committee is undertaking, and it is very unhelpful.
2506. Whatever the issues are for the Police Service of Northern Ireland — and those of us who sit on the Policing Board have obviously already held discussions on that point — the issue for the

Committee is to get an overview on what is happening with the policing budget. The Peter May letter demonstrates an attempt from the NIO to perhaps tip the pitch a little, and to try to tell the Committee that the policing budget is really not so bad. There are serious and significant financial needs for policing, and the NIO should not be allowed to try to alter the situation by the back door, as it has tried to do with that letter.

2507. **The Chairperson:** Thank you, Ian. At this point, Ian and myself should declare that we are members of the Policing Board for the purposes of the Hansard report of this meeting. Are there any other comments from members?
2508. **Mr Attwood:** I am also a member of the Policing Board.
2509. **The Chairperson:** Yes. Alex Attwood is also a member of the Policing Board.
2510. **Mr Paisley Jnr:** Are you back on the board? It was not the same without you Alex — it was better.
2511. **The Chairperson:** Are there any other comments in relation to the correspondence?
2512. **Mr Attwood:** Will the Committee be copying the NIO's letter to Victor Hewitt? Clearly, that letter has some marginal relevance, and perhaps more, to the work that he is undertaking.
2513. This is the Committee's first meeting following the summer recess, and because of the content of the correspondence and the other things that have happened since our last meeting, the First Minister and the deputy First Minister have an obligation to inform the Committee about where things now reside with respect to their discussions with the Exchequer. It has been two months since we last met, and the receipt of a stocktaking letter from them would be helpful.



2514. **The Chairperson:** The Committee will discuss the financial matters as it proceeds through its agenda.
2515. **Mr Attwood:** OK. I will defer any further comment until then.
2516. **The Chairperson:** Are there any other comments on that letter from the NIO? Is the Committee happy to copy that letter to Victor Hewitt and make him aware of its contents?
- Members indicated assent.**
2517. **The Chairperson:** Thank you. We now move to item 7 on our agenda: the Department of Justice Bill. I refer members to tab 5 of their packs, which includes a copy of that Bill and related explanatory notes; a covering letter from the First Minister and the deputy First Minister to the Chairperson of the OFMDFM Committee; a copy of the Northern Ireland Act 2009 and related explanatory notes; and a briefing note from the Committee Clerk.
2518. Members should note the timetabling of the Bill and the fact that its Second Stage is due to take place next Tuesday, 22 September 2009, possibly during the time when the Committee is due to meet. I assume that some Members will want to speak during that debate, including members of the OFMDFM Committee and this Committee.
2519. The problem that the Committee has with the Bill is that it is unaware whether any ministerial statements will be made next week. I require some direction from the Committee with respect to its meeting next week, and whether we should find an alternative time or date to meet, or indeed cancel the meeting. I am quite happy to do either, but I have asked the Clerk to examine members' availability.
2520. Monday is a possibility. On Tuesday, Ian Paisley and the Agriculture Committee have a meeting at 12.30 pm and Raymond McCartney has a meeting with the Procedures Committee at 2.00 pm. On Wednesday, a number of members are tied up in meetings, with John O'Dowd attending the Education Committee; Ian Paisley attending the Finance Committee; Danny Kennedy, Alex Attwood and I attending the OFMDFM Committee at 2.00 pm, and Raymond McCartney attending the Regional Development Committee at 10.30 am. Some of us, myself included, have other outside plans. Thursday is also something of a mishmash, with members involved in various Committees most of the day; and we are not very happy about meeting on Friday, which is traditionally Members' constituency day.
2521. **Mr McFarland:** I suggest that we try to stick to Tuesday. We will know by Thursday whether there is extra business and, if there is, we might try to hold the meeting at 2.00 pm, with Raymond getting some sort of exemption from the Procedures Committee. If not, we could meet in the morning.
2522. **Mr Paisley Jnr:** I partially agree with Alan. I think that we should stick to Tuesday. However, why not meet at 10.00 am and get that extra hour in the morning?
2523. **The Chairperson:** How does that sound to members?
- Members indicated assent.**
2524. **The Chairperson:** We will play it by ear, and if we need to adjourn for the debate, we will. Members who speak in the debate on the Second Stage of the Bill should declare that they are members of this Committee. Danny, you are the Chairperson of the OFMDFM Committee. Have you any comments on the Bill?
2525. **Mr Kennedy:** The Bill was reviewed by members of the OFMDFM Committee last Wednesday. There was an initial discussion and an initial vote was taken on a motion that requested the Executive and the Department not proceed with the Bill, and that vote was lost. I expect members of the OFMDFM Committee to contribute to the debate. There will probably be a short statement from me at the outset as Chairman of the Committee, giving the factual position of the Committee's view, but

it is likely to be short, given that there may not be unanimity around the table. Nevertheless, the debate will provide an opportunity for the various political parties to set out their stalls.

2526. **The Chairperson:** If there are no other comments, are members happy to note and to deal with that matter from our own perspectives?

**Members indicated assent.**

2527. **The Chairperson:** The next item on the agenda is Chairperson's business. Can we defer that discussion until we have discussed the devolution of policing and justice matters?

**Members indicated assent.**

2528. **The Chairperson:** Alex, do you wish to declare your interest as a member of the Northern Ireland Policing Board?

2529. **Mr Attwood:** Yes.

2530. **The Chairperson:** We move to agenda item 9: the devolution of policing and justice matters. In respect of the financial implications of devolving policing and justice, the specialist adviser has just submitted a further revised version of his paper on additional financial pressures. We asked Victor Hewitt to hold discussions with DFP officials on our behalf.

2531. I seek members' permission to call the specialist adviser, who was not available for today's meeting, and is not available next week either, to the meeting on 29 September, which is the first available date. Are members agreed that Victor should come before the Committee to make a presentation of that paper in closed session, as is normal procedure?

**Members indicated assent.**

2532. **The Chairperson:** I suggest that it would be useful if we wrote to the Secretary of State to ask him to update the Committee on the Heywood report; to ask him to indicate how much of the NIO's existing budget would transfer, should the transfer of policing and justice be requested; and what portion of that would remain to deal with the

part of the Northern Ireland Office that will still be intact. Do members agree that a letter along those lines be sent to the Secretary of State?

**Members indicated assent.**

2533. **The Chairperson:** Alex, we will pick your point up in the letter as well. Will you reiterate that?

2534. **Mr Attwood:** I would like to have some formal correspondence from the First Minister and deputy First Minister about the point at which they now assess the financial discussions to be.

2535. **The Chairperson:** Do members want to raise any other points in that letter? Some issues may come up, for instance the Ashdown report, which I think should be included in a letter to the Secretary of State about the category 2 list of issues. We do not know what the financial implications are of that report, or whether it may have an effect on local government in the future. We need to clarify issues around that.

2536. There is also the memorandum of understanding, which the Secretary of State said that he would share with us whenever it became available. We will discuss that, but those two issues may need to be included in that letter, and I ask members to bear that in mind. Is there agreement that a letter should go to OFMDFM in relation to Alex's proposal?

2537. **Mr Paisley Jnr:** What was Alex's proposal?

2538. **The Chairperson:** It was to seek an update on what point the financial discussions have reached.

**Members indicated assent.**

2539. **Mr McFarland:** I think that 7 October is the closure date for the Secretary of State's consultation on the Eames/Bradley process, which will affect whether that role will be left with the NIO or will be transferred to us. That would have fairly enormous financial implications. Hopefully, we will get some clarity on that issue some time in October.

2540. **The Chairperson:** Do members want that issue to be included in the letter?

2541. **Mr Hamilton:** We need to be aware of it.
2542. **The Chairperson:** I imagine that there will be questions to ask when the result of the consultation is known. I appreciate that that may well have an impact on the work that we are doing.
2543. **Mr McFarland:** Our view was that that role should not be transferred with policing and justice, because it will entail enormous cost, and will trouble us greatly for the next 50 years if it were to transfer here. We were talking about leaving it with the NIO to finance and sort out. The understanding was that the NIO was going to keep the enquiries, but that the rest of the role would transfer.
2544. In my view, that is a really dodgy issue that needs to be sorted out quite clearly before we accept policing and justice. It is on the list of matters on which we need some clarity before we accept.
2545. **The Chairperson:** The Secretary of State indicated in his evidence that he recognised that some historical issues would remain in the NIO. If my memory serves me, he included in that group issues around the loss-of-hearing claim cases, for instance.
2546. **Mr McFarland:** I think that he is proposing to transfer the Historical Enquiries Team and Eames/Bradley group issues, both of which are fairly toxic.
2547. **The Chairperson:** I will now move through tab 7 of members' packs and allow the parties to present their up-to-date positions on the category 2 list of issues. For the purpose of the record, it is necessary to read out the issue. Original issue C reads:  
  
*"What should be the relationship between SOCA and the security services and the Minister/Department/Assembly? What needs to be done to ensure that attention is given to having appropriate measures in place to address issues such as the role of the security services?"*
2548. **Mr Hamilton:** The DUP position remains the same. We are riding blind on this, and we still have not received communication from the Secretary of State in respect of the detail of these memoranda and protocols. We will await receipt of those.
2549. **Mr McFarland:** There is no change from the Ulster Unionist Party. We are awaiting the memoranda of understanding and the protocols, and we will have a better idea of what the Secretary of State is proposing once we receive those.
2550. **Mr Attwood:** Those memoranda of understanding have been long prepared and long signed off on, and, probably, have had test runs in some sort of fictional world. We should be getting those to let us see what the letter reveals. When we get the memoranda of understanding, what input will we have into adjusting and refining them?
2551. **The Chairperson:** It does not matter. We are going round the table. Perhaps I am mixing up everyone.
2552. **Mr A Maskey:** You have had too long a holiday.
2553. **The Chairperson:** I will get back into the sequence when we go to the next issue, if members are not too cross about being called out of sequence on this one.
2554. **Mr A Maskey:** Sinn Féin has nothing further to add. In fact, I will go further and say that we have nothing further to add on any of the outstanding matters. I am happy to deal with it on that uniform basis for today, rather than going through every outstanding item.
2555. **Mr Hamilton:** Our position remains unchanged. I will be merely repeating the previously stated position.
2556. **The Chairperson:** Are we happy to include of the issues? I was going through them to try to clarify the issues in relation to the letter that will be going to the Secretary of State. Do members accept that the memoranda should be raised?
2557. **Mr Hamilton:** They should be raised.
2558. **The Chairperson:** Are members content that financial issues and issues around the Ashdown report be raised with the Secretary of State in the letter? I am

happy so long as the Committee is clear that all of those issues are raised.

2559. **Mr Paisley Jnr:** There is one slight caveat to that, and that is the new item G in the context of recommendation 26 on page 7. The Committee's original report asked: "To which Department should the PPS be attached?"
2560. We could wait for the Secretary of State, but would it also be useful to write to the current Public Prosecution Service to ask what it believes is a good form of governance for it? That might give us a steer as to where it rests. It would help to inform us.
2561. **Mr McFarland:** I thought that we had already asked everyone.
2562. **Mr Paisley Jnr:** We did not get a view on that point.
2563. **Mr McFarland:** From whom?
2564. **Mr Paisley Jnr:** We did not get a view from the PPS.
2565. **The Chairperson:** Ian is suggesting that we write to the Director of the PPS about new issue G on page 7 of tab 7 to get a steer and to find out what ideas he might have about where the Department should lie. That would be for information purposes.
2566. **Mr Paisley Jnr:** Yes.
2567. **The Chairperson:** Given that we are writing to the Secretary of State and to the deputy First Minister and First Minister, we could also seek a response from the PPS. Does anyone have any strong objections to that? Are members happy enough that we do that?

**Members indicated assent.**

2568. **Mr Attwood:** We could usefully probe further on a number of matters in the various categories. In appendix 1, for example, we previously referred to the fact that the role of the Attorney General should be full time, and we are not revisiting that.
2569. Last week, however, Danny's Committee received information that the person identified as the candidate for Attorney

General had been asked to produce a scoping paper on his office, and that information was to be contained in a financial report. I was slightly surprised because I presumed that, after we had given our view about the Attorney General, some information would come back to us about what form that office would take. However, we have not received that information. It would be useful, therefore, for us to be copied in on that scoping paper when it is completed. I have no doubt that it will deal not only with financial matters but administrative matters connected to his office and, perhaps, the relationships between his office, the Minister, the Assembly and the justice Committee. That would not surprise me.

2570. **The Chairperson:** Will you clarify what you mean? I am not with you. I will ask the Committee Clerk about the scoping paper. I am not aware of any such paper. The person named as the designated Attorney General has not appeared before this Committee.
2571. **Mr Attwood:** I note that point, but he has been asked to produce a paper.
2572. **The Chairperson:** Will you clarify who asked him to do so?
2573. **Mr Attwood:** I presume that OFMDFM made the request because it stated that it wanted that person to be the Attorney General.
2574. **Mr Paisley Jnr:** Are you suggesting that he is writing his own terms of reference?
2575. **Mr Attwood:** I am not suggesting anything, but I would like to know what he is writing. As I understand it, Danny, he has been asked to produce a scoping paper on the cost of his office.
2576. **The Chairperson:** I am not aware that the individual has been asked to produce such a paper.
2577. **Mr Attwood:** He has been asked to do so.
2578. **The Chairperson:** Is any other member aware of such a request?
2579. **Mr Kennedy:** I can confirm that something has been requested, but I

- am not sure who made that request and whether it was, as Alex said, OFMDFM. I am happy to explore the matter and keep the Chairperson of this Committee informed.
2580. **The Chairperson:** Is anyone else aware of the paper?
2581. **Mr Paisley Jnr:** No. It would be peculiar for an individual to write his or her own terms of reference.
2582. **Mr Attwood:** I was not stressing that point. The report came before the Committee for the Office of the First Minister and deputy First Minister under a financial heading, and it stated that the individual was preparing a paper on the financial requirements of his future office. However, in working out those financial requirements, he would have to work out the structure, requirements and demands that might be placed on his time and that of his staff. Presumably, that would include the relationship with the justice Minister, the justice Committee, the Assembly, and so forth.
2583. It could, therefore, cross from being a purely financial paper into a paper on more material matters on which he should have a view, but for which he could not have responsibility. I am worried that defining those matters will be done in the absence of an input from this Committee and the Assembly. That is not appropriate. This Committee and the Assembly should have such an input. That is why we should be asking OFMDFM precisely what it has asked of the Attorney General designate, and for a copy of his report. Should we now be making our views known on any of those matters if any are relevant?
2584. **The Chairperson:** Is the Member suggesting, therefore, that the Committee asks OFMDFM in the letter whether a paper has been commissioned and whether there have been discussions? Are members happy enough that we go down that route, given that we are asking other questions about financial implications and suchlike?
- Members indicated assent.**
2585. **Mr Attwood:** This matter was, I believe, referred to previously on page 8. The PPS had clearly decided to have a discussion on matters relevant to it. That was scheduled for a meeting, which I was unable to attend because I had to attend funerals. I prepared a briefing note for Carmel, but the Committee decided that it was better to have the conversation when there was a fuller representation. However, we never had that conversation. We now need to have that conversation as a matter of urgency.
2586. **The Chairperson:** We never had the conversation because members said that their positions on the category 2 list were unchanged.
2587. **Mr Attwood:** We agreed, though, that we would have a dedicated conversation. I suggested an hour to scope out various parties' views on the issues regarding the PPS. The need to have that conversation, as agreed, is now more acute.
2588. **Mr McFarland:** As I recall, we were waiting for the visits to conclude. We then tried to have a discussion, but Alex was not able to attend. Given that it was his key subject, so to speak, we did not manage it before the summer break. Maybe it is now sensible to have that discussion.
2589. **Mrs Hanna:** It is my recollection that we agreed to defer it.
2590. **The Chairperson:** OK, it has been deferred. The Committee Clerk suggests that there was a conversation on that matter. I am quite happy to have that discussion.
2591. **Mr Hamilton:** Can we schedule it in?
2592. **The Chairperson:** For the next meeting?
2593. **Mr Hamilton:** Yes, and copy any papers into members' packs. We have an infamous folder, do we not?
2594. **Mr A Maskey:** We decided to wait until after we completed our meetings and visits to other legislatures before having that discussion. Obviously, in deference that day to Alex Attwood not being able



- to attend, it was deferred. It was also deferred on the basis that parties, my own included, were not prepared for a discussion in that we had not fully developed our own position that we wanted to expound on. We could have that discussion now, but Sinn Féin would not be adding anything to it.
2595. The Chairperson made the point a moment ago that part of the reason why it was deferred was because parties were not prepared to elaborate on their earlier positions. I am still in that position on Sinn Féin's behalf. We will have that discussion, but I would argue that we have it as part of the ongoing discussion about the remaining category 2 issues. I would wish to have a fulsome debate on all these issues and to have it completed by now, but that is not the case. Sinn Féin is easy about when we schedule such a discussion, but that will be dependent on parties having altered their views on the matter.
2596. **Mr McFarland:** There is no point in having a discussion if we are not at a stage when parties can discuss the matter. When the two large parties agree, this, like most other issues before the Committee, will go through. Have we any idea when they might get round to having a talk and agreeing some of this so that we can put clarity on it?
2597. **The Chairperson:** I am wearing my chairman's hat. Are there any comments on that?
2598. **Mr Paisley Jnr:** No comment.
2599. **Mr Hamilton:** No.
2600. **The Chairperson:** No answer?
2601. **Mr McFarland:** There is no point in having a discussion with Alex if the two largest parties, which will decide this thing in the end, have nothing to add. Alex can chat away; we can all chat away, but nothing is decided until the DUP and Sinn Féin get together and decide what they are doing.
2602. **Mr Attwood:** That discussion should be about the independence and the accountability of the PPS; not about structural issues such as where the PPS should be located. We should have a much broader conversation about whether issues around the PPS could be identified now on which cross-party agreement could be found that might inform a further phase of reforms. The discussion should go beyond the immediate hard politics about some of the issues to do with the PPS, over which the DUP and Sinn Féin have a particular influence. We should have that broader conversation.
2603. **The Chairperson:** A few minutes ago, we agreed that that could be scheduled into a future programme. It would then be up to members to decide whether they want to have that conversation; I cannot force anyone to discuss something that they do not have a party position on. I will be guided by a majority of the Committee.
2604. **Mr McFarland:** It is fair to say that all of the parties felt the need to discuss this topic further. That is why we decided to have the discussion.
2605. **The Chairperson:** There is no argument about having the discussion. I am quite happy that that has been clarified.
2606. **Mr McFarland:** Implicit in that was a suggestion that there might be room for some discussion. If more than one party has said that it does not yet have a view on it, it is difficult to have a discussion that might lead to agreement.
2607. **The Chairperson:** We shall put it on a future agenda, and it will be up to each party to clarify its position.
2608. **Mr McFarland:** May we get sight of Alex Attwood's paper? Is it for general distribution beforehand as a discussion document?
2609. **Mr Attwood:** Yes, I will share something with the Committee.
2610. **The Chairperson:** If you let the Committee Clerk have it, that paper will be distributed in future members' packs.
2611. I understand that the position on all of the other category 2 issues is unchanged and that members wish to

discuss them en bloc. Alex, do you have another issue?

2612. **Mr Attwood:** I do not wish to raise it at this meeting. I can understand why people say that other conversations are taking place among people who, potentially, have more authority than the Committee. I am getting to the point of making formal proposals on some of the outstanding issues to try to define the issues and get some outcomes. It is not credible for us to defer a whole range of matters; we have to get to the point of either agreeing some of those matters or not. I am getting to the point at which we will make hard proposals to try to concentrate minds, rather than continuing to defer to other people.

2613. **The Chairperson:** I shall take a decision based on the view of the majority of the Committee. As Chairperson of the Committee, I have tried to steer it in that direction. I thought that we had progressed some of the issues, and a number of letters are being sent to seek clarification. In previous correspondence with the Committee, the Secretary of State said that he would share the memoranda and the protocols with us. He did not see a problem in sharing those, and I do not know whether OFMDFM has seen those yet.

2614. As Chairperson, I contacted Lord Ashdown to ask for material in connection with his review, so there is a whole history and a paper trail on that. It may well have financial implications that the Committee would be interested in looking at.

2615. Letters will be sent to OFMDFM and the Secretary of State's office today or tomorrow. I know that it sometimes takes longer for replies to come back, but I cannot change that. Are members happy that there are no other issues on category 2?

**Members indicated assent.**

## 22 September 2009

### **Members present for all or part of the proceedings:**

Mr Jimmy Spratt (Chairperson)  
Mr Alex Attwood  
Mr Simon Hamilton  
Mr Alex Maskey  
Mr Alan McFarland  
Mr John O'Dowd  
Mr Ian Paisley Jnr

2616. **The Chairperson (Mr Spratt):** We move to the discussion of the devolution of policing and justice matters. I remind members that this part of our meeting is being reported by Hansard. The usual procedure is to move around the table to seek the position of the various parties. However, bearing in mind the discussions that we have held during the past number of weeks, perhaps members could indicate whether there has been any progress on any of the category 2 issues.
2617. **Mr Hamilton:** I am happy for us to go through the issues, but I would not have anything different to add to the position as previously stated.
2618. **Mr A Maskey:** I have nothing further to add, Mr Chairman.
2619. **Mr McFarland:** Nothing further, Chairman. I understand that there seems to have been some progress on the financial situation, according to newspaper reports. Presumably, we will hear more about that in due course.
2620. **The Chairperson:** I have not been invited to tomorrow's trip to America. Any other members who have packed their cases should unpack them.
2621. **Mr Hamilton:** There is a disconsolate look on your face, Chairman.
2622. **Mr Attwood:** I have nothing further to add, Chairman.
2623. **The Chairperson:** OK. We shall leave those issues until our next meeting.



## 29 September 2009

### **Members present for all or part of the proceedings:**

Mr Jimmy Spratt (Chairperson)  
Mr Nigel Dodds  
Mr Simon Hamilton  
Mrs Carmel Hanna  
Mr Danny Kennedy  
Mr Alan McFarland  
Mr Alex Maskey  
Mr John O'Dowd

2624. **The Chairperson (Mr Spratt):** I ask Committee members to declare any interests. I am a member of the Policing Board.
2625. **Mr A Maskey:** I am a member of the Policing Board.
2626. **The Chairperson:** There are no other declarations of interest.
2627. I do not intend to go through the category 2 list of issues one by one unless it is indicated around the table that that is what members want me to do. Therefore, I am happy for a party to lead the discussion. Has there been any change in the parties' positions?
2628. **Mr A Maskey:** There has been no change, Chairman.
2629. **Mr Hamilton:** No.
2630. **The Chairperson:** That completes today's business on the devolution of policing and justice matters.





## 20 October 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mr Danny Kennedy  
 Mr Alan McFarland  
 Mr John O'Dowd  
 Mr Ian Paisley Jnr

2631. **The Chairperson (Mr Spratt):** At last week's meeting, members agreed to write to the First Minister and deputy First Minister. Can we note that letter?

#### Members indicated assent.

2632. **The Chairperson:** We have dealt with our reply to the letter from the Policing Board in closed session. There is a letter from the Bar Council on behalf of its chairman, John O'Hara, and its vice chairman requesting a meeting in relation to proposals for the future of criminal and civil legal aid in Northern Ireland. The letter states:

*"As a matter of courtesy I am also writing to the other political parties asking for similar meetings."*

2633. Members may recall that we have already received and discussed a letter from the Prisoner Ombudsman. As most of those issues are outside the remit of the Committee, I am not sure that it is entirely appropriate for us to deal with the Bar Council. I suggest that we note the letter and reply to the Bar Council to that effect, to keep the continuity of what we have been doing.

2634. **Mr McFarland:** Chairman, the tone of the letter and the way that it has been addressed suggest that it was written to you in your capacity as a party member. Although it addresses you as Chairman of the Committee, it looks as if the Bar Council is writing to each party.

2635. **The Chairperson:** I have to circulate any correspondence that is sent to me as Chairperson. The letter did come to the Committee Clerk's office, rather than coming directly to me. Can we note that letter and reply to it? Individual parties can have whatever discussions they feel are necessary. Are members content that the Committee send an appropriate letter?

#### Members indicated assent.

2636. **The Chairperson:** The Committee received a letter from the Northern Ireland Office. We have been waiting for that reply, and it covers a number of issues, including the Heywood process.

2637. **Mr Attwood:** For completeness, the Committee should copy that letter to the Office of the First Minister and deputy First Minister (OFMDFM). I am not sure what the contents of the letter of 17 September were, but we still have not received any information about the memorandum and protocols in respect of the sharing of information. It is inconceivable that those are not complete, yet we have not had sight of any documentation in that regard, despite repeated requests and fairly consistent pressure from the Committee.

2638. **The Chairperson:** We got a reply to some of that before the summer.

2639. **Mr Attwood:** Yes, but nothing has been shared with us.

2640. **The Chairperson:** My recollection is that we got a reply. I do not have the letter with me.

2641. **The Committee Clerk:** Towards the end of June, the Committee looked at a specific reply on the treatment of sex offenders. That memorandum was fairly explicit. The last paragraph of this letter from the Secretary of State refers to:

*"finalising the necessary amendments with the Irish Government."*

2642. **Mr Attwood:** That is not the point that I raised. The point that I raised was about sharing the protocols and memoranda of understanding around the security services. There have been discussions with OFMDFM on that, and there was some understanding that we would have sight of those prior to devolution. That is not referred to in the letter.
2643. **The Committee Clerk:** That is accurate. The summary of the category 2 list of issues states that a reply from the Secretary of State is awaited on issue C about the relationship between the Serious Organised Crime Agency (SOCA) and the security services, the Minister, the Department and the Assembly.
2644. **The Chairperson:** Again, we can highlight that again. We know what the issues are.
2645. **Mr Attwood:** It is more than highlighting; there has been a chain of correspondence between the Committee and the Secretary of State's office, and there have been various vague undertakings or obligations to share with us. If we are in the run down to the devolution of justice, which I trust that we are, then we need to see that information. We should be saying that as time is running on, we expect a sharing of information in the very near future. Those documents were completed a long time ago, whatever some people might say. They were ready for consideration some time ago and should now be in a position to be shared.
2646. **Mr Paisley Jnr:** It would be helpful if Alex spelt out in detail the documents that he thinks are not available to him. We have vague notions of documents and papers that Alex says are complete; let us spell them out very clearly. This may not be the place; perhaps he needs to write a list and say that these are the precise documents that he thinks he is entitled to see. Some of the material that he is talking about may not be complete or may be available through other channels, such as the Policing Board. I am a bit lost in the vagueness of some of the stuff that Alex is asking for.
2647. **Mr Attwood:** I am surprised that anyone has any issue about vagueness. We have written letters that specifically refer —
2648. **Mr Paisley Jnr:** The fact that the replies are vague might indicate that we are being vague in what we are asking for. Maybe we need to spell it out a bit more clearly, Alex.
2649. **Mr Attwood:** No, I am referring to the correspondence to and from the Secretary of State. The Secretary of State acknowledges that there are memoranda and protocols that are being drafted about sharing information with the devolved institutions. That is what he says, not what I say. Whatever those memoranda and protocols are, he said they would be shared with the Committee prior to devolution. He says that they have issued memoranda and protocols: let us see any and all of them.
2650. **The Chairperson:** In fairness, you are suggesting that these protocols are complete.
2651. **Mr Attwood:** I am sure that they are.
2652. **The Chairperson:** Let us read what the Secretary of State says. We can only go by that:
- “Discussions have been ongoing with the Irish Government on what amendments are required to the Intergovernmental Agreement on Cooperation on Criminal Justice”.*
2653. That says to me that there are ongoing discussions on the memoranda, and that they are probably not complete at this moment in time. That is how I view it.
2654. **Mr Attwood:** I am not referring to that paragraph; I am referring to the correspondence about national security memoranda and protocols. The letter dated 17 September is silent on that point. I think that we should remind them about that issue.
2655. **The Chairperson:** I am quite happy to send another letter highlighting that. In fairness to the Secretary of State, he indicated that as soon as those documents were available, they would be shared. I am happy to send yet another letter.

2656. Two letters have been tabled for members to note: one, from Lord Morrow, is in relation to procedures, and the other is from the Prisoner Ombudsman.
2657. **Mr Paisley Jnr:** I propose that we note the letters.
2658. **The Chairperson:** OK. Is the Committee happy to note those letters?
- Members indicated assent.**
2659. **The Chairperson:** The Committee will now move on to consider the category 2 list of issues in relation to policing and justice. Ian, do you wish to declare your interest?
2660. **Mr Paisley Jnr:** I am a member of the Northern Ireland Policing Board.
2661. **The Chairperson:** Both Alex Attwood and I already declared our interest in closed session.
2662. Before the Committee moves into the full detail of the category 2 issues, it is customary for me to check if there has been any movement on those matters.
2663. **Mr Hamilton:** I am going to send you a message telepathically, Chairperson.
2664. **The Chairperson:** OK. I think that I have got that message.
2665. **Mr Hamilton:** No.
2666. **Mr McFarland:** No.
2667. **Mr McCartney:** No.
2668. **Mr Attwood:** I will make some proposals with respect to the outstanding matters.
2669. **The Chairperson:** Someone has their mobile phone switched on, and it is affecting the recording of the meeting. Can all Committee members, and those in the Public Gallery, please ensure that their phones are switched off?
2670. **Mr Attwood:** New issue K deals with the status of the new justice Minister and his or her Executive authority. The issues have been usefully outlined by the Committee staff, who have collapsed all of the issues onto two pages.
2671. There are two issues: the status of the Minister, and whether that Minister is required to bring significant and controversial matters to the Executive. The Committee should at least be able to deal with the first issue:
- “the Minister’s position in, and relationship with, the Executive Committee”.*
2672. The Committee should be able to deal with that because sections 20 and 21 of the Northern Ireland Act 1998 govern the authority and status of Ministers and describe how Ministers are appointed and states that those Ministers will be members of an Executive Committee, et cetera. That authority and status governs any and all Executive Ministers.
2673. There has been no proposal to amend the 1998 Act in that respect, and any change in relation to the status of any Minister, including a future justice Minister, would require Westminster legislation to be enacted. The political realities suggest that that is not likely to arise. Therefore, in order to create certainty on the future justice Minister’s status, and given that those provisions are governed by law, which would need to be changed before the status could be changed, I propose that the Committee agree that the new justice Minister’s status shall be as under the provisions of the Northern Ireland Act 1998. That would bring the matter to a conclusion, with any other option requiring Westminster legislation.
2674. **The Chairperson:** OK. That is a proposal. Are there any other comments from members?
2675. **Mr Paisley:** The Committee should note it as a proposal and consider it.
2676. **Mr Attwood:** I formally propose it.
2677. **The Chairperson:** I have accepted your proposal. You only need to propose it; it does not need to be seconded.
2678. **Mr O’Dowd:** I understand the frustration at the slow progress in resolving a lot of the issues. Coming here week after week and reporting no progress is frustrating to us all. However, we have

- to be mindful that, in other places, discussions are going on to bring the matter to a conclusion, to resolve it, and to ensure that we move forward towards the position that we all want to reach: the devolution of policing and justice.
2679. I listened carefully to what Alex said, and I note his comments about the 1998 Act. It is in the legislation, and there is no proposal, as yet, to change that legislation. For the sake of a few weeks, we would be safer to report, as usual, that there has been no progress, and to allow others a fair wind to bring the discussions to a conclusion.
2680. **The Chairperson:** Mr Attwood, will you give us the wording of your proposal again?
2681. **Mr Attwood:** That the Committee agrees that the status of the Minister should be as under the relevant sections of the Northern Ireland Act 1998.
2682. **Mr McFarland:** From the start, our position has been that the status of the justice Minister should be that of a normal Minister. However, in the end, the two largest parties will decide in secret the status of that Minister, and, eventually, tell us all.
2683. **The Chairperson:** Does everybody understand what they are voting on?
2684. **Mr Hamilton:** Is there any need to have a vote?
2685. **Mr Paisley Jnr:** The proposal is not something around which there is hostility; it is worth considering and factoring in. We will certainly consider the proposal, and we would not want to rule it out at this stage. The point has been made.
2686. **Mr Hamilton:** We are not going to endorse the proposal at this stage, but that does not mean that it should be ruled out. I would rather not have to say no and have that be misinterpreted.
2687. **The Chairperson:** You understand my position as Chairperson. Are you happy with that suggestion, Mr Attwood?
2688. **Mr Attwood:** No, Chairperson. The Committee minutes confirm that, on seven occasions since 26 May, there has been nothing further to report on this and other matters. Although I hear what Ian Paisley Jnr says, there has already been more than enough time to consider and factor in the matter. Therefore, I wish my proposal to stand.
2689. **The Chairperson:** I put the proposal to the Committee.
- The Committee divided:*  
Ayes 3; Noes 3; Abstentions 2.
- Ayes**  
Mr Attwood, Mr Kennedy, Mr McFarland.
- Noes**  
Mr Hamilton, Mr Paisley Jnr, Mr Spratt.
- Abstentions**  
Mr McCartney, Mr O’Dowd.
- Proposal accordingly negated.**
2690. **Mr Attwood:** The second proposal is the second part of new issue K:  
*“would the Minister be required to bring significant, or controversial, matters to the Executive Committee?”*
2691. Although I do not like some of the changes that have been made further to the St Andrews Agreement, new mechanisms were created in that agreement, and put into law, whereby all Ministers had less independence and freedom that theretofore had been the case. Therefore, built into how the Executive now conduct their business, are all sorts of mechanisms around what a Minister does or does not have to bring before the Executive Committee. I am sure that that will be as valid, if not more so, for the proposed justice Minister.
2692. Those mechanisms include the provision that any matter, on the wish of three members of the Executive Committee, can be brought before the Committee. Three is not a very high threshold, given that there will be 13 Ministers around the table. I do not agree with



- that provision; however, that is the law. Given the powers that are already in law through the St Andrews Agreement, talking further about whether anything else needs to be done to require a Minister of justice to bring significant or controversial matters to the Executive seems, to me, to be a pretty pointless exercise.
2693. In any case, given the nature of the office — for example, how nominations will arise, and how people will be subject to a cross-community vote — it seems that there will be all sorts of inevitable political constraints upon the justice Minister. That is the real political world that he or she will face. Consequently, I propose that the Committee not identify any further requirement for a future justice Minister to bring significant and controversial matters to the Executive Committee beyond that which is already established in law.
2694. **Mr O'Dowd:** Again, I do not disagree with Alex. My thoughts on the matter are bound by the fact that we are in a delicate place at the moment. Our objective is to achieve the devolution of policing and justice. Although I recognise the frustration of people around the table, people need a wee bit of space. While the Committee clearly has a role within the Assembly structures and wants to be in a position to publish a report, we have to be sensible. I want to put on record again that, had Alex's party got its way in the Assembly a number of weeks ago, the devolution of policing and justice would have been scrapped. If the enabling powers that were before the Assembly a number of weeks ago had been voted down, the process would be all over. It would be a done deal; it would be finished. I am asking for a wee bit of common sense, political leadership and patience. Perhaps patience is the wrong word, because people's patience has been stretched. However, we need more time to resolve the issues.
2695. **Mr Paisley Jnr:** I propose that we note the proposal for further consideration at a later date.
2696. **The Chairperson:** OK, there are two proposals, one of which is to note the proposal as an amendment. I can put the question on either proposal first. Given John O'Dowd's comments, do you have anything else to say, Alex?
2697. **Mr Attwood:** There is a lot of shared frustration around the table. For the record, as John knows, the SDLP opposed a piece of legislation that interferes with the democratic inclusion mechanisms of the Good Friday Agreement and creates an exclusion mechanism for nationalism. That is the only thing that the SDLP opposed, unlike Sinn Féin. The Good Friday Agreement said that the devolution of policing and justice would happen in the context of the implementation of policing and justice change. Between 2002 and 2007, the republican movement did anything but interfere with that outcome through some of its activities, whereas the SDLP, through the Policing Board and its drive to make justice changes in other ways, complied with the wishes of the people of Ireland and their endorsement of the Good Friday Agreement. The proposal on the table stands and has to be voted on first.
2698. **The Chairperson:** I am happy to put your proposal first. What is your proposal again, Alex?
2699. **Mr Attwood:** I propose that the Assembly and Executive Review Committee agrees that there should be no further or additional requirements on the justice Minister to bring significant or controversial matters to the Executive Committee.
2700. **Mr Paisley Jnr:** Why has my amendment not been taken first?
2701. **The Chairperson:** I was advised that I could do it either way, and I made the call to take the proposal first. However, I am easy.
2702. **Mr Paisley Jnr:** I urge you and the Clerk to consider whether it would be more streamlined to take the amendment first. If the amendment goes through, the actual thrust of the motion can travel without being ruled out.

2703. **Mr McFarland:** It is a question of whether it is a contrary motion or an amendment. It looks like a contrary motion, in which case a vote on the first proposal will achieve the same answer anyway. I presume that that is why the advice was given.

2704. **The Committee Clerk:** Equally, there is nothing to prevent the Committee, having taken a vote on Mr Attwood's proposal, taking a further vote on Mr Paisley's proposal.

2705. **The Chairperson:** That is the advice that I received, and that is what I am running with. I will take the amendment first.

2706. **Mr McFarland:** Is Alex saying, in his roundabout way, that the current procedure for the Executive, which is that Ministers bring significant and controversial matters to the Executive, should remain? Is he saying that the system that is followed by Ministers should remain?

2707. **Mr Attwood:** I am saying that the obligations upon the justice Minister should be no more and no less than upon any other Minister in the Executive.

2708. **Mr McFarland:** It should be the current system.

2709. **Mr Attwood:** I do not like the current system, but I acknowledge that that is the law. The essence of my proposal is that there should be no further burden on the justice Minister to do anything more or anything less than any of his colleagues.

2710. **The Chairperson:** I will put the proposal to the Floor. Following that, I will put the question on the amendment.

2711. Who is in favour of the proposal?

*The Committee divided:*

Ayes 3; Noes 3; Abstentions 2.

**Ayes**

Mr Attwood, Mr Kennedy, Mr McFarland.

**Noes**

Mr Hamilton, Mr Paisley Jnr, Mr Spratt.

**Abstentions**

Mr McCartney, Mr O'Dowd.

**Proposal accordingly negated.**

2712. **Mr Paisley Jnr:** I withdraw my proposal.

2713. **The Chairperson:** Mr Attwood, do you have any other issues?

2714. **Mr Attwood:** Other matters will be proposed, further to amendments to the Department of Justice Bill. One other issue has arisen from the paper in respect of which Department the Public Prosecution Service (PPS) will be attached to. I will delay that proposal until we discuss the paper.

2715. **The Chairperson:** Once we move from the category 2 list of issues, we will be on the PPS paper. Have you more issues on the category 2 list?

2716. **Mr Attwood:** I have no other issues, apart from the one that I will raise on the paper in respect of where the PPS is located.

2717. **The Chairperson:** We move to the consideration of the SDLP paper on the Public Prosecution Service. Members will remember that, last week, Mr Attwood at some length presented that paper. The Committee decided that parties would look at the paper on their own.

2718. **Mr Attwood:** The paper is as it was, and the Clerk has tried to filter its contents. That is useful. I had a conversation with the Clerk in relation to the matter, as I said I would following last week's meeting. As a starting point, I am prepared to accept the paper from the Clerk. We should do all that we can on this critical matter on all the issues that are outlined in the paper. The list of issues is not exhaustive, but, as a starting point, the Committee Clerk's treatment of the category 3 and category 2 issues in the SDLP paper is useful.

2719. In summary, we have to decide what the funding relationship between the Assembly and the PPS will be. Which Department will have responsibility for the PPS? We

- must also establish what the appropriate management structure around the PPS will be. They are category 3 issues. There is some crossover in the category 2 issues. One of the issues is the future staffing of the Department of justice and how the recommendations of the Criminal Justice Inspectorate will be pursued in order to ensure full implementation of its recommendations. I think that the Committee could take some actions and decisions that could help to inform all of that.
2720. The experience of victims must always be in the forefront, because that is what this is all about; it is about getting the proper governance management and credibility around the PPS so that the experience of victims and witnesses, and all those who go through the public prosecution system, is as it should be. As our paper indicates, there is good evidence from a number of victims that the experience is not all that it should be. That fact should always be in the forefront of our minds when it comes to understanding the proper relationships between the political institutions and the PPS and how the PPS will conduct its affairs.
2721. **The Chairperson:** Are there any comments?
2722. **Mr McFarland:** As I understand it, the key part of the Committee Clerk's paper is where it states:
- "The issues detailed in Paras 26 onwards"*
2723. Those are the only ones that are remotely relevant to the Committee at this time; is that correct?
2724. **The Chairperson:** Yes.
2725. **Mr McFarland:** OK. So, if we start with paragraph 26 and move forward, we have a couple of pages. Paragraph 27 of the SDLP's paper states:
- "Developing new governance arrangements within the PPS...would require new legislation and a period of some delay".*
2726. Clearly, therefore, that is not something that we can do now either. It is a question of weeding out from paragraph 26 onwards those bits that we can do something about now, and those bits that are likely to need further thought down the line. Is that where we are?
2727. **The Chairperson:** Yes. I think that the Committee should also bear in mind the last paragraph of the Clerk's paper, where it refers to:
- "inevitable consequences for the Forward Work Programme of the Committee in terms of any decision taken and Members may wish to keep in mind paragraph 49 of the First Report on the Arrangements for the Devolution of Policing and Justice Matters".*
2728. The Clerk has, very helpfully, included the paragraph relating to the second report. Of course, those are issues for the Committee to decide, but it would have an effect, given that we have to make a report to the Assembly in 2009, obviously before the end of December. We have already had a discussion about that as regards the forward work programme.
2729. The Committee is open to comments. Mr Attwood, you want to speak again.
2730. **Mr Attwood:** The Committee Clerk's view, which I am not going to challenge, is that paragraph 26 and those thereafter lend themselves to the work of the Committee, and that we should deal with the various recommendations or discuss the recommendations in the SDLP's document. That would be a good starting point and a substantial starting point, as it deals with substantial matters. In order to try to move the situation on, I would like to hear what people have to say about dealing with the issues identified from paragraph 26 onward. Are there any actions that the Committee can take that will help to move the Public Prosecution Service on?
2731. **The Chairperson:** Are there any comments?
2732. **Mr Paisley Jnr:** I would like the Committee to note the paper. There is stuff in it that is akin to an anti-Civil Service rant. Fair enough, one is entitled to that view if one has that view on the Civil Service currently operating in

the Northern Ireland Office. Part of the paper outlines the SDLP's hopes and aspirations, which it is entitled to have; and whether we, as a Committee, agree or disagree is neither here nor there. There are issues that may be of some interest to us regarding management structure, although I imagine that we would have to get to the point of resolving other issues before we can get into the depths of some of the management structures, and that might end up being a matter for the new Minister, if and when he or she is appointed, and the new Department. Therefore, the report lends itself to nothing more at this stage other than the Committee noting its last three pages.

2733. **Mr McFarland:** There are issues, such as the setting up of oversight boards. Such boards come with enormous bills for manpower, financial support and secretariat services. In the initial stages, the new justice Minister would, I presume, wish to take a view on where the money will come from to do all that. Those are real issues which need to be discussed. However, it is debatable whether the Committee has the knowledge at present about how a future justice Minister will think about these things. Perhaps the parties who have had discussions with potential justice Ministers know where their minds lie, but the Committee probably does not.
2734. **Mr McCartney:** The paper is being considered by Sinn Féin. Alex Maskey made the point last week that although a lot of issues in the paper are worthy of discussion, it is our belief, on first read, and from even the three main themes outlined, that it is not the focus of the Committee's work. Sinn Féin feels that the Committee should be focusing on what is holding up the transfer of policing and justice powers. The other issues can be discussed at a later date, much as the Committee has done with matters such as the Court Service and other models.
2735. **Mr Attwood:** I am grateful for what members have said, although it

does not stretch us by any means. Recommendation 27 of the Committee's original report, which was endorsed by the Assembly, states:

*"The Committee recommends that the independence of the PPS and its accountability to the Assembly should be examined before, and following, the devolution of policing and justice matters to produce recommendations which would, in turn, be considered by the Assembly."*

2736. I recall, and I believe that it will be confirmed by the Hansard report, that it was my proposal to insert "before, and following" or at least "before", because at that stage I was anticipating that there was work for the Committee to do before the devolution of policing and justice. Therefore, whether that recommendation is interpreted broadly or narrowly, it is clearly the Committee's responsibility, as well as the mandate from the Assembly, to look at issues surrounding the independence and accountability of the PPS before the devolution of policing and justice.

2737. I make a number of proposals arising from that, none of which should put anyone on the back foot. Rather, they will put the Committee on the front foot. For example, the Committee Clerk, in his paper, says that paragraph 27 of the SDLP document, entitled "Reform of the Public Prosecution Service", falls within the remit of the Committee. The Committee Clerk says:

*"Toward the end of the paper there are issues which sit more easily within the remit of the Committee's work both as conducted to date and as outlined in its remit."*

He then says:

*"At paragraph 27 the SDLP note that their call for changes could slow progress and to prevent this they call for a "Patten" like panel of specialists to ensure changes after devolution."*

2738. In order to try to shape that up, it would be useful if the Committee invited the Criminal Justice Inspector to appear before it, because, as the SDLP report outlines, the CJI made a wide range of recommendations about the PPS and

- agencies that have a relationship with the PPS. The 2007 baseline review in particular, which was updated in June 2009, made some stark reading. In order for the Committee to get a sense of the scale or otherwise of the issues surrounding the PPS, we should listen to one of the best experts and one of the people best qualified to advise us.
2739. If the Committee hears what the CJI has to say — and I have read some of the reports and have met him recently — that would help us take forward a piece of work that is essential and cannot wait. John explained the frustrations surrounding the devolution of justice. Those frustrations may evaporate in the near future, and I hope that they will.
2740. We need to get our heads round this work, because it is the most critical piece of work in respect of the North's criminal justice institutions. It would be worth hearing the views of the CJI on some of these matters, because his perspective is not speculation or a rant. It is informed by the report, and the CJI has made hard, evidence-based, recommendations. In the event of the devolution of policing and justice, the new Department and new Minister will have obligations concerning the CJI's recommendations. I also think that those recommendations alone will not bring about the required level of change to the PPS.
2741. It would be helpful to borrow people from Patten and other panels of experts. It would be great if the PPS could do all the work itself, but that would probably require changes to its governance and management. As was indicated in the SDLP report, that will take a period of time, because new legislation would also be required. However, a lot of good work could be done in the meantime, and we should listen to people to determine what the Committee can do in the context of its mandate. If the CJI were to appear before the Committee, it would be right and proper to invite the PPS also, in order to give us a sense of the nature of the reports, and I will make that proposal in a moment.
2742. While we are waiting for the First Minister and deputy First Minister to come back to us regarding various matters, we should invite the head of Civil Service to appear before the Committee. We could ask him about his understanding about the staffing arrangements in a devolved justice Department. We have had all sorts of discussions on the matter, and the Committee Clerk's report states that staffing arrangements are germane to the Committee's work. Indeed, the First Minister commented on that matter on the Floor of the Assembly in his response to the debate on the Department of Justice Bill.
2743. I have said before that senior posts should be open to public competition. It should not be presumed that those who hold senior posts in the NIO will become senior people in the Department of justice. Such people should be able to apply for the posts, but it would not be a good way to do business for them to become senior staff as a matter of course. I do not know whether that is the intention, so I would like to hear from the head of the Northern Ireland Civil Service on the matter.
2744. There are other people whose views we should listen to, but I will start with those proposals for the purposes of the meeting and in order to take the work forward. Subject to what the Committee Clerk says, and consistent with his comments on this, I make two proposals. The first is that we invite the CJI's chief inspector and the PPS to speak to the Committee about how the various evidence-based recommendations should be taken forward. The second is that we invite the head of the Civil Service to give his views on the relevant issues while we wait for the First Minister and the deputy First Minister to come forward.
2745. **The Chairperson:** I must clarify that the letter from the Secretary of State to the Committee, which we noted earlier, clearly sets out the transfer of assets, staff and accommodation.



2746. **Mr Paisley Jnr:** Valid as Alex Attwood's position is, and he is entitled to have that position as a member of the SDLP, I do not know whether pursuing these lines of enquiry is relevant for the Committee. Some of what he said sounds like a major fishing expedition, or justifying positions, or attacking the PPS or Civil Service personnel whom he does not particularly like. That is not what the Assembly and Executive Review Committee is about; we have to focus on what we should do.
2747. All sides have mentioned their frustration in settling some of the issues, but there is a negotiating process ongoing and it is very well documented. Part of that process is being played out in public, and we can see what is going on at Downing Street; but to create a platform where the head of the Civil Service can be brought here and disabused of some of his views is not what this Committee is supposed to be about. Alex is entitled to his views, and some of them are valid for him and his party, but he had an opportunity to debate the issues in the House, and he lost that argument.
2748. We are happy with only one of the four recommendations outlined in the Committee Clerk's paper. Alex is not going to find consensus on the rest, and he knows that. He wants to establish another Patten-like panel of specialists, but in the current climate, do we have the resources to do that? He wants to carry out a staffing search of the PPS and the Civil Service, and he wants to examine other models of operation for the PPS that are similar to the Policing Board. It is fine for Alex and his party to navel-gaze on those issues and talk to other parties behind the scenes, but this Committee should not be the cockpit for such discussions or one-party issues.
2749. I propose that we note Alex's paper and thank him for taking the time to present it to the Committee. There are relevant issues that will come back for discussion, but he is proposing to take the Committee on a huge fishing expedition elsewhere that we do not need.
2750. **Mr O'Dowd:** In principle, I have no difficulty with Alex's proposals. The difficulty is that the Committee is working to a time frame and we must produce a report before the end of the 2009 session. That must be our focus now. None of the issues that Alex has raised are an impediment to the transfer of policing and justice powers. There are issues that require further analysis, investigation and scrutiny by a justice Committee. Alex's proposal to set up a panel of specialists is worthy of further consideration, although I note that every time the SDLP runs into difficulty now it wants to set up a panel of specialists. Specialists will be very busy in the coming months if the SDLP has its way. Nevertheless, we would not rule out that proposal.
2751. My party's focus is on completing the transfer of policing and justice. There is a danger that Alex's proposals will open new chapters of negotiation that could further delay the transfer of policing and justice, and could be used by those who are resisting it — *[Interruption.]*
2752. I am sorry, did I say 2010?
2753. **Mr McCartney:** You said that the report must be completed before the end of the session. It must be completed before the end of 2009.
2754. **Mr O'Dowd:** I apologise.
2755. It is possible that the people who wish to use those issues to resist the transfer of policing and justice powers could lengthen the negotiations. We are trying to close chapters, not open new ones. Although I support Alex's proposals in principle, this Committee is not the place to discuss them. Let us complete our report and get policing and justice transferred so that a justice Committee can examine the issues that Alex has raised.
2756. **Mr McFarland:** There has been some useful analysis, but I worry that we are getting ahead of ourselves. It is worth reminding ourselves what it is that we are supposed to be doing. Issue G is the question as to which Department the PPS should be attached to. Although

- Alex seems to suggest that we go into details, recommendation 27 of the Committee's report is about deciding what consideration should be given to the independence and accountability of the PPS pre-devolution? It does not mean that we should examine it pre-devolution: that is not what recommendation 27 says. It says that we are to examine what level of consideration should be given to the matter pre-devolution. We are way ahead of ourselves, even though the SDLP paper is a worthy one.
2757. **Mr Attwood:** I tabled a proposal, and I will push it. However one might wish to interpret it, the Committee decided what it decided in its first report. How to take on board the report's findings was not decided unilaterally by me; it was decided unanimously. However, as we know, a number of matters in the first report were not decided —
2758. **The Chairperson:** Alex, we are not discussing the first report. Let us get to the nub of the matter. There are three recommendations on the table. I do not want to go through the whole thing again. You have already explained your position on most of those.
2759. **Mr Attwood:** And if I am allowed to do so, I will explain and answer the various points that members raised, which, I think, is the minimum to which a Committee member is entitled. Secondly, I did not impose this paper on the Committee. I was asked to look into it by the Committee. It was not my decision. As soon as the Chairperson proposed that I should do so —
2760. **Mr McFarland:** To be fair, Alex said that he had a paper, and we asked him to go away and study it.
2761. **The Chairperson:** That is more to the point.
2762. **Mr McCartney:** We did not want to say no.
2763. **Mr Attwood:** You should have said that you did not want to see the paper.
2764. **Mr McFarland:** We did not want to be rude.
2765. **Mr Attwood:** You cannot complain about discussing a paper if, one way or another, you asked to see it.
2766. **Mr McCartney:** You suggested that we asked you to do it.
2767. **The Chairperson:** OK folks; please make your comments through the Chair.
2768. **Mr Attwood:** I remember the conversation very clearly. The Chairperson said that if I had something I should share it with everyone. Check the Hansard report; but, because I think that I had some further work to do on it and had only given a briefing note to Carmel Hanna. Either way, no one said that they did not want to see it.
2769. **Mr McCartney:** We are very polite.
2770. **Mr Paisley Jnr:** Now that we have seen it, it has not been worth coming to see it.
2771. **Mr Attwood:** Thirdly, in an attempt to get consensus in the Committee, I made narrow proposals today about how to move the matter forward. I could have been, and was inclined to be, a lot more extravagant. However, given my sense of the Committee's position, I made very narrow proposals to hear from three people on matters that the Committee Clerk indicated are consistent with its mandate. My proposals are based not just on what I consider to be appropriate but on what appears to be appropriate to the Clerk.
2772. **Mr Paisley Jnr:** Your comments in previous Committee meetings and in the debate let the cat out of the bag about your real agenda with respect to the head of the Civil Service, but we are not here to have a go at him. If you do not like the head of the Civil Service, or his staff, that is an issue for you, but you should not drag the Committee formally into the little invective world that you sometimes inhabit when it comes to civil servants. It is wrong and it is unfair to the Civil Service.
2773. **Mr Attwood:** It has nothing to do with —
2774. **The Chairperson:** I propose that —
2775. **Mr Attwood:** I have a right to reply.

2776. **The Chairperson:** One minute, please. I am going to put a number of proposals to the Committee, because we are being drawn further into an argument and into something that is not in the Committee's remit.
2777. **Mr Attwood:** That is not what the Committee Clerk said.
2778. **The Chairperson:** I do not care what the Clerk said. I am speaking at this second in time, OK.
2779. **Mr Attwood:** I am glad that you put that on the record.
2780. **The Chairperson:** OK, it is on the record now.
2781. **Mr Attwood:** That will impress all the Committee Clerks.
2782. **The Chairperson:** Well, it is on the record.
2783. **Mr Attwood:** It is, and you cannot withdraw it.
2784. **The Chairperson:** Please: are you going to continue?
2785. **Mr Attwood:** I would like to continue —
2786. **The Chairperson:** I am going to allow you to quickly draw your remarks to a close. Comments from anyone else should be made through the Chair.
2787. **Mr Attwood:** This has nothing to do with who is the head of any organisation; it is a matter of attempting to build confidence in the justice Department's staffing complement, particularly its senior staff. The SDLP thinks that there is a way to do that bit of business so that anybody who has an interest can apply, be interviewed and, perhaps, be appointed. This has nothing to do with invective against anybody. It is about trying to judge the best way to structure the justice Department and living with the outcome of a proper public consultation process.
2788. Regarding a report in 2009, the Committee produced a report previously in which a number of matters were not resolved and to which we said that we would come back. By the end of the year, we will be in a position to produce a report on all the matters that we can conclude, and I hope that we can do so. Today, I made a proposal to try and conclude some of those matters in order to get a report to the Assembly before Christmas.
2789. If there is no agreement on those matters, which may well be the case, they can go into a future report, if that is what the Committee decides. There is absolutely nothing prejudicial about doing this bit of work now that would impede any report going to the Assembly before Christmas. If such an argument is being made, it is completely inconsistent with the fact that we previously adopted a report that went to the Floor of the Assembly and was adopted by a majority vote.
2790. These are pretty basic recommendations about how to deal with some important issues. I made minimum recommendations. If I am able to get these over the line, I assure members that I will make bigger ones next week. However, in any case, I propose that we invite the head of the Criminal Justice Inspection (CJI) to give evidence in respect of his reports on the PPS, invite the PPS to give its perspective on those reports, and, separately, to invite the head of the Civil Service to discuss staffing arrangements in respect of a proposed Department of justice once it is set up.
2791. **The Chairperson:** To clarify, the Clerk said that the essential question for the Committee was the extent to which the Committee should examine the independence and accountability of the PPS before and following devolution. He made that point very clearly in the paper, but that has been ignored.
2792. **Mr McFarland:** The next time Alex volunteers a paper, my sense is that the Committee may not be minded to receive it.
2793. **The Chairperson:** I could not possibly comment.
2794. As I understand it, there are three proposals on the table; two from Alex Attwood and one from Ian Paisley Jnr.

The first one is that the Committee should call the chief inspector —

2795. **Mr McCartney:** We will also make a proposal.
2796. **The Chairperson:** That will be the fourth proposal.
2797. **Mr McCartney:** In relation to Alex's proposal, we want to include it at the conclusion of the Committee's second report.
2798. **The Chairperson:** Is that on both proposals?
2799. **Mr McCartney:** Yes.
2800. **The Chairperson:** The first proposal is that we call the chief inspector of Criminal Justice Inspection Northern Ireland and the PPS to the Committee.
2801. **Mr Paisley Jnr:** It is that HOCS, PPS and CJI should be brought to the Committee. It is really an amendment to say that we will wait until the conclusion of the report.
2802. **The Chairperson:** We will take the proposal first on both of the issues. I assume that that proposal is also in relation to the head of the Civil Service. We will then take a vote on the amendment. Alex, are you happy if we include the Civil Service in one, rather than having two separate proposals?
2803. **Mr Attwood:** If people are inclined to go down that road, and given that the structure of the Department is one of the most germane issues, I suggest to people that they may want to split that issue. The head of the Civil Service should come sooner, even if members want the others to come later.
2804. **The Chairperson:** OK. We will vote on them separately. It was just for clarification.
2805. Are members content with the first proposal about the CJI and the PPS?

*The Committee divided: Ayes 1; Noes 7.*

#### **Ayes**

Mr Alex Attwood.

#### **Noes**

Mr Hamilton, Mr Kennedy, Mr McCartney, Mr McFarland, Mr O'Dowd, Mr Paisley Jnr, Mr Spratt.

#### **Proposal accordingly negated.**

2806. **The Chairperson:** OK. Are members content with the second proposal, which is to call the head of the Northern Ireland Civil Service to the Committee?

*The Committee divided: Ayes 1; Noes 7.*

#### **Ayes**

Mr Alex Attwood.

#### **Noes**

Mr Hamilton, Mr Kennedy, Mr McCartney, Mr McFarland, Mr O'Dowd, Mr Paisley Jnr, Mr Spratt.

#### **Proposal accordingly negated.**

2807. **The Chairperson:** We then have the amendment to both of those proposals.
2808. **Mr McCartney:** We are going to withdraw the second one, which is in relation to the head of the Civil Service.
2809. **The Chairperson:** So it is just the first amendment, in relation to the chief inspector of CJI and the PPS?
2810. **Mr McCartney:** Yes.
2811. **Mr McFarland:** Can I clarify that that will be after the conclusion of the second report?
2812. **The Chairperson:** Yes.
2813. **Mr Attwood:** Will it be immediately after the conclusion of the second report?
2814. **The Chairperson:** Let us not get into those semantics.
2815. **Mr O'Dowd:** He thrives on it.
2816. **The Chairperson:** I imagine that another Committee will be formed then. Are members in favour of the amendment?

*The Committee divided: Ayes 3; Noes 3.*

#### **Ayes**

Mr Attwood, Mr McCartney, Mr O'Dowd.

**Noes**

Mr Hamilton, Mr Paisley Jnr, Mr Spratt.

**Abstentions**

Mr Kennedy, Mr McFarland.

**Proposal accordingly negatived.**

2817. **The Chairperson:** There is another proposal for the Committee to note the recommendations in the SDLP paper.

2818. **Mr Paisley Jnr:** I withdraw that.

2819. **The Chairperson:** Therefore, there is no such proposal. Are there any other issues regarding that paper?

**Members indicated dissent.**



## 3 November 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Nigel Dodds  
 Mr Simon Hamilton  
 Mrs Carmel Hanna  
 Mr Danny Kennedy  
 Mr Alan McFarland  
 Mr A Maskey  
 Mr John O'Dowd

2820. **The Chairperson (Mr Spratt):** The first item on the agenda is correspondence. We are now in possession of a letter from the First Minister and deputy First Minister. We also have a paper from the specialist adviser, which analyses the Prime Minister's letter. There is also an acknowledgement to Lord Morrow; a reply to the Bar Council of Northern Ireland that we discussed at the previous meeting; a letter to the First Minister and deputy First Minister sharing information that was provided by the Policing Board; a letter from the First Minister and deputy First Minister asking for a further update on the efficiency review panel; a letter to the First Minister and deputy First Minister sharing information that was provided by the Secretary of State; a letter of thanks from the Northern Ireland Policing Board; and a letter to the specialist adviser sharing information from the Northern Ireland Policing Board, as agreed at the previous meeting. I ask members to note those letters.
2821. **Mr Attwood:** Are we going to discuss —
2822. **The Chairperson:** Those are just the outgoing letters.
2823. Members have a copy of a letter from the Prime Minister, which has pretty much been in the public domain. There is also a letter from the Secretary of State in reply to the Committee's letter of 7 October 2009 about the costs of the training college and the destruction of DNA records. We also have a letter from the Policing Board to the First Minister and deputy First Minister about issues that arose during a special meeting of the board on 23 October 2009. The board agreed to copy that letter to the Committee. There is also a paper from the specialist adviser that contains an analysis of the Prime Minister's letter of 21 October 2009 in response to the decision taken on behalf of the Committee just before the Halloween recess to invite him to provide comment. A letter from the First Minister and deputy First Minister arrived late yesterday afternoon, and that is now being tabled. I understand that that has also been copied to Danny Kennedy, in his role as Chairperson of the Committee for the Office of the First Minister and deputy First Minister. I saw an e-mail last night with that letter attached, which is about our request for a meeting with the First Minister and deputy First Minister. I will give members a few moments to read that letter. The Prime Minister's letter, which everyone has already seen, is attached.
2824. **Mr McFarland:** Is the specialist adviser going to come before the Committee?
2825. **The Chairperson:** No. His response has been provided, and is included in members' packs.
2826. **Mr McFarland:** Is he going to come before us to discuss that?
2827. **The Chairperson:** No, he is not coming.
2828. **Mr Kennedy:** Why is that? Is he not available?
2829. **The Chairperson:** The Committee had not decided to invite him at this point, although I am quite happy to call him if members want him to attend a subsequent meeting.
2830. **Mr Kennedy:** We should discuss that.

2831. **The Chairperson:** Everyone has had a chance to read letter, so it is now open for discussion.
2832. **Mr McFarland:** Although some bits of the Prime Minister's letter are clear, other bits are not quite so clear in what is being referred to or what is behind it. Many of us have been involved in such issues for 10 years now, and we know that behind every letter, there is a lot of detail that is not always clear. Hopefully, when the First Minister and deputy First Minister come before us, they will be willing to explain what it all means.
2833. It would be useful if we get our specialist adviser to talk us through the implications, as Danny suggested. There has been talk in the press of this being a £2 billion package, but the letter identifies approximately £700 million. There appears to be a disparity between what has been spun in the press and what has been identified in the letter.
2834. **Mr Attwood:** I agree with Alan. To understand the letter, we need to get in our own adviser and an official, because if we were to merge the questions that were raised by Mr Hewitt and those that were raised in the letter from Barry Gilligan, a substantial piece of work would be required to work out the possible consequences. Therefore, although I agree with bringing in Victor Hewitt, to more fully understand the letter, we also need to bring in officials from the Department of Finance and Personnel (DFP) and the NIO. Furthermore, Victor Hewitt should have access to those officials so that he can understand the letter more fully and give us best advice.
2835. I welcome the fact that the letter from the First Minister and deputy First Minister got back to us, but I do not see why they are arguing that any session should be held in private.
2836. **The Chairperson:** We have always discussed financial issues in private, as we did with discussions about the Policing Board.
2837. **Mr Attwood:** Precisely, but the difference now is that the Prime Minister has published a letter, so he has decided that some of those matters can be discussed in public. Whatever the requirements for privacy heretofore, the Prime Minister has decided that those matters can be probed and discussed in public, and other people have not dissented from that. Therefore, given how important financial issues have been for the devolution of policing and justice and that the privacy principle has been breached, which I welcome, it is appropriate to discuss the matters in public session. Of course, there is another reason: no report about any of the financial discussions to date has been brought to the Assembly. I was minded to raise a point of order with the Speaker about that. Given that privacy is no longer an issue, our discussions are all but concluded and those matters are in the public interest, there should be a public conversation, which should happen next week. In addition, we should determine from the First Minister and the deputy First Minister how early they can attend the meeting.
2838. **The Chairperson:** They said 10.30 am.
2839. **Mr Attwood:** They should come earlier because, on that basis, they could give us up to an hour and a half. However, depending on business in the House, it could end up being only half an hour, and, given that they will have met us only twice in the course of a year, we will need a minimum of half an hour and a maximum of an hour and a half. Therefore, to ensure that we do not run out of time, we should ask them how early they can come. We need an hour and a half with them.
2840. **The Chairperson:** We can check that out, but I imagine that it should not be a problem.
2841. **Mr Kennedy:** On a practical basis, if we need to hear from Victor Hewitt and/or officials — and it would be helpful to do so — it would be important to have that briefing before we meet the First Minister and deputy First Minister. That might lead us into logistical problems. It might be necessary to meet Victor Hewitt and the officials on Monday,

- which is not ideal because it is a sitting day, but we will need time to digest the responses from the special adviser.
2842. **Mr McFarland:** Logically, given that the First Minister and deputy First Minister will probably have only a short time when they get here, having and understanding Victor's take on what it all means would probably lead to a more productive discussion with them.
2843. **The Chairperson:** Obviously, we will have to check whether the specialist adviser will be available, and that can be done reasonably quickly. Do you know of his availability?
2844. **The Committee Clerk:** No; but, if it helps, we can make that call now. One option is an earlier start on Tuesday morning, and the other is a separate meeting on Monday. It would be helpful to know what option the Committee prefers so that that can be conveyed to the specialist adviser, and, while the Committee continues with its discussions, we could probably even call officials in the NIO and DFP and alert them to the Committee's preference.
2845. **The Chairperson:** First and foremost, we need to know how members are fixed with Committee meetings or whatever else they are involved in on Monday.
2846. **Mr A Maskey:** We are not opposed to that idea. However, first, I would have thought that we need hear from the First Minister and deputy First Minister and then take it from there. If people want to meet on Monday, and if it is feasible, I will not object, but I am not sure whether I will get much more out of it. Victor's letter is Victor's letter, and his analysis is in front of us. People around the table have had opportunities to discuss the matter at length, including with the Chief Constable. I am not sure what additional light it will shed. It might help if Victor were to give us a bit of a critique after we hear from the First Minister and deputy First Minister.
2847. **The Chairperson:** If people are not objecting to a Monday meeting, we can set it up. We will have to make a telephone call now. I imagine that we will be able to get a room as Monday is not the busiest day for Committee meetings.
2848. **Mr Kennedy:** I do not think that there is a lot of business scheduled for Monday. Perhaps we could meet immediately after Question Time?
2849. **The Chairperson:** I can make myself available at whatever time suits. I do not have any objections, and I am happy to do that. Do members agree that we should try to slot a meeting in for Monday and to bear with the Committee Clerk in making the best arrangements for the time of the meeting? Obviously, that will have to tie in with when Victor is available.
- Members indicated assent.**
2850. **The Committee Clerk:** We need to clarify whether that meeting will be in public or in private session.
2851. **The Chairperson:** We will clarify whether both meetings are in public or private session. Alex Attwood raised an issue about meeting in private or public session. The First Minister and deputy First Minister have requested a closed session. Until now, we have dealt with all such issues in closed session. What are the Committee's views?
2852. **Mr Hamilton:** I understand the point that Alex Attwood made about the letter being in the public domain. Given the previous practice of holding meetings in closed session and the freedom that that has given everyone — Committee members and witnesses — it would be right and proper that we continue in that vein.
2853. **Mr McFarland:** We are happy with that. In my experience, a lot more information can be gleaned during meetings that are held in closed session, as opposed to everyone being guarded if they are held in open session. We need to know what some of the content means. Clearly, a lot of understandings have been given throughout this process at the meetings in Downing Street, and it would be useful if we had some idea of what those understandings were. At the moment, lots of questions are left begging. It would be useful to know what other discussions have taken place,

- what they mean and where it is all going. We are more likely to get answers to those questions in a private session than a public session.
2854. **The Chairperson:** The consensus seems to be —
2855. **Mr Attwood:** I want to put the matter to a vote, simply because there is no evidence from our previous conversations with the First Minister and deputy First Minister that having the meeting in private would add much enlightenment. The evidence base is not there to say that things will necessarily be better in private session.
2856. **Mr Hamilton:** Maybe the questions were not probing.
2857. **Mr Attwood:** We had the chance to ask only two questions, and even that was a stretch.
2858. **The Chairperson:** I will come to the questions in a moment. I want to be fair to all Committee members.
2859. **Mr Attwood:** The Committee has an obligation to the wider public. There has been a great deal of toing and froing over the devolution of policing and justice powers. We are where we are now, but we have an obligation to fulfil our responsibilities to the people by holding further discussions in public.
2860. Such discussions would confirm the good parts to the offer and parts where ambiguity endures, even though we may never get any further clarification to such ambiguity. Therefore, I propose that our meeting with the First Minister and deputy First Minister should be held in public.
2861. **Mr A Maskey:** The Office of the First Minister and deputy First Minister (OFMDFM) asked for the meeting to be held in closed session, so it might be useful for the Committee to ask that Department why that is the case. As Alan McFarland suggested, OFMDFM may come back and say that the First Minister and deputy First Minister do not want to appear in front of the Committee in a public session. I do not know whether that is the case, but I am happy for OFMDFM to be consulted.
2862. **The Chairperson:** The Committee Clerk has held discussions with departmental officials in OFMDFM; perhaps he can give the Committee his view?
2863. **The Committee Clerk:** Departmental officials from OFMDFM have discussed not whether the session should be closed but whether there should be a transcript of the proceedings of a closed session. Those officials indicated that that transcript could be used as part of the Committee's report and, as such, could constrain the conversation between the First Minister and deputy First Minister and the Committee.
2864. As a precedent, the officials cited the previous appearance of the two Ministers before the Committee when the meeting was held in closed session and there was no transcript. The officials suggested that the same arrangement should apply in the future.
2865. **The Chairperson:** That concurs with what Mr McFarland said a few moments ago.
2866. **Mr Attwood:** That is a useful suggestion, but Alex Maskey's suggestion that the Committee should check whether OFMDFM will agree to the session being held in public is a better one.
2867. What I do not understand is that the letter before the Committee is a joint letter, which refers to continued sensitivity in the discussions between OFMDFM and the Prime Minister and Treasury. I understood from at least one of the authors of the letter that those discussions had concluded. Therefore, in those circumstances, there should not be any continued sensitivity. However, I am prepared to suspend my proposal on the basis that the Committee consults OFMDFM, as Alex Maskey said.
2868. **The Chairperson:** Before I put the proposals to the Committee, a telephone call must be made to OFMDFM. Hopefully the Committee will get an answer, although it is not the easiest thing to get from OFMDFM. The Committee Clerk has had to make a

number of telephone calls in the past, and Committee members will know how many letters the Committee has written to the Department.

2869. However, with the Committee's agreement, I will suspend the meeting for five to 10 minutes to allow us to try to get an answer to the suggestion. A definitive answer from the Department would probably prevent us from needing to have a great deal of chat about the issue.

**Committee suspended.**





## 3 November 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Nigel Dodds  
 Mr Simon Hamilton  
 Mrs Carmel Hanna  
 Mr Danny Kennedy  
 Mr Alex Maskey  
 Mr Alan McFarland  
 Mr John O'Dowd

2870. **The Chairperson (Mr Spratt):** I declare an interest as a member of the Northern Ireland Policing Board.
2871. **Mr A Maskey:** I am a member of the Policing Board.
2872. **Mr Attwood:** I am a member of the Policing Board.
2873. **The Chairperson:** The Committee will now consider the remaining issues on the category 2 list, as detailed in members' papers. Rather than proceed with each issue in turn, I invite members to state whether there have been developments on any of those matters.
2874. **Mr Hamilton:** No, Chairperson.
2875. **Mr A Maskey:** Nothing additional.
2876. **Mr McFarland:** I have nothing new to report.
2877. **Mr Attwood:** As with our previous meeting, I have several proposals to make in respect of the category 2 list of issues. We are six weeks away from the Christmas recess, which means that the Committee must have a report signed off within four weeks so that it can be discussed by the Assembly before the recess. Given the tight time frame within which we are working, in order to honour our Assembly mandate, and with so many issues still unresolved, we must create certainty around some of those matters.
2878. If the Committee were self-serving, there could be a risk that, sooner or later, somebody may claim that the devolution of justice cannot happen because the Assembly and Executive Review Committee has not concluded its business. I would not be surprised if somebody points a finger at the Committee over the coming weeks for not concluding some matters. Whatever the truth of that might be, and wherever else the responsibility might lie, I do not think that the Committee should be exposed to any allegations that we are not trying to conclude our business in a manner that is consistent with our mandate.
2879. Given the direction in which policing issues are now moving, we need to bring clarity to some matters. Therefore, I have some proposals for the Committee. I will begin by addressing issue A.
2880. Although we have decided that the role of the attorney general should be full-time, we still have not received from OFMDFM the report that the attorney general designate was asked to produce in respect of that office. We do not even know whether that report, which was commissioned by OFMDFM, has been produced, although I would be surprised if it has not. Given that we do not know whether the report has been produced, and, if it has, we do not know what is in it, we should ask the attorney general designate to appear before the Committee.
2881. The role of the attorney general designate will be very important in the context of the devolution of policing and justice, and he has been asked to spend some time considering what that role might be. However, there is a potential conflict of interest when a person designated for a role prepares a document about that person's office. For all those reasons, I think that it would be very useful if the attorney general designate attended a Committee meeting to advise members on how he

- sees matters in respect of his future office and any other matters he has identified that he thinks should be reported to the Assembly, just as he is reporting to OFMDFM.
2882. I propose that we schedule a meeting over the next four weeks with the attorney general designate so that we can examine those matters.
2883. **The Chairperson:** Perhaps the Committee Clerk can provide some clarification on some of those points.
2884. **The Committee Clerk:** In his opening remarks, Mr Attwood referred to the timing of the Committee's report. To make it clear to members, in the Committee's first report on the arrangements for the devolution of policing and justice matters, paragraph 49 indicates that: "The Committee proposes to make a second report on the arrangements for the devolution of policing and justice matters to the Assembly in 2009".
2885. Paragraph 49 goes on to state:
- "that report will address residual issues from the Category One List, as well as those issues on the Category Two List."*
- The first report is no more specific than that about the particular date or time by which the second report should be produced.
2886. In relation to what Mr Attwood said about the attorney general designate, the First Minister and deputy First Minister did indicate in correspondence to the Committee that they had received a paper from the attorney general designate, which they are considering, and, in due course, that they will be in touch with the Committee in relation to that. In its letter of 7 October, inviting the First Minister and deputy First Minister to appear again before the Committee — on a range of issues, including the role of the attorney general — the Committee expressly stated that it requires more information about the role of the attorney general.
2887. We can conclude from that that the First Minister and deputy First Minister have received a paper and have been considering it. That is the state of play.
2888. **Mr Attwood:** Although I was on holiday when the letter was received about OFMDFM having received a paper, I welcome that. However, given that that paper has not been forwarded to the Committee, and given the importance of the role of the attorney general, it seems to me to be entirely consistent for the Committee to ask for a conversation with the attorney general designate around what we consider to be relevant matters arising from his future position.
2889. We do not know when the First Minister and deputy First Minister may, or may not, share that paper with us. The Clerk will also confirm that if we are to comply with the original requirement to report to the Assembly by the end of 2009, we will have to table a document within four weeks.
2890. **The Committee Clerk:** The timing will be extremely tight.
2891. **Mr Attwood:** It may not even be four weeks, so we have to shift gears very quickly. It would be bizarre if we were to say to the general population that there will be an attorney general in Northern Ireland whom we have never met or had a conversation with about how he sees his office operating. Given the very important relationship that he will have with the PPS and how that will reflect back on the Assembly, it is self-evident that we should invite him to this Committee. Time is of the essence.
2892. **The Chairperson:** To clarify the situation in respect of the letter, everyone gets a meeting pack, whether or not they are on holiday. The Clerk's office sends them out to everybody.
2893. **Mr Attwood:** I appreciate that, Chairperson.
2894. **The Chairperson:** Are there any other comments on Mr Attwood's proposal?
2895. **Mr McFarland:** I am amazed that Alex is still surprised, even at this stage.
2896. **Mr Attwood:** The outstanding matters —

2897. **Mr McFarland:** Those will be decided by the First Minister and the deputy First Minister, and the DUP and Sinn Féin. They can do it in two minutes next week, the week after, tomorrow — or whenever. They will come to this Committee and push them through. The timescale is not an issue because their approach to the SDLP and my party, throughout this process, has been to bulldoze matters through. There is no doubt that that will happen in the case of the rest of the issues.

2898. Alex has a point: it would be quite useful for us to meet the attorney general designate to hear his ideas. It would not do any harm for this Committee to get some sort of heads-up on where he thinks that role is going, if and when he takes it over.

2899. **Mr Kennedy:** On a point of clarification in relation to the date on which the second report is due from this Committee, what sanctions are available if we do not meet those deadlines and if there is no report by the end of 2009? Is there a sanction in place that the Assembly or Speaker could impose?

2900. **Mr McFarland:** The document uses the word “intends”.

2901. **The Committee Clerk:** It states that: “The Committee proposes to make a —”

2902. **Mr Kennedy:** So it is an intention.

2903. **Mr A Maskey:** I do not necessarily support the idea of setting a timeframe within which we want the attorney general designate to appear before this Committee. That is the responsibility of OFMDFM, and we are content for that to continue.

2904. **The Chairperson:** Are there any other comments? We have a proposal. Please clarify the wording, Mr Attwood.

2905. **Mr Attwood:** I propose that, at a suitable date within the next four weeks, the attorney general designate be invited to attend a meeting of the Committee in order to discuss issues in respect of his future office.

*The Committee divided: Ayes 4; Noes 3.*

#### **Ayes**

Mr Attwood, Mrs Hanna, Mr Kennedy, Mr McFarland.

#### **Noes**

Mr Maskey, Mr O’Dowd, Mr Spratt.

2906. **The Chairperson:** Mr Hamilton and Mr Dodds have abstained. The proposal is passed.

2907. **Mr Attwood:** The next issue is the Ashdown report on parading. The category 2 list asks:

*“What, if any, consideration should there be of the Ashdown report on parading?”*

In recent days, there has been various commentary about the Ashdown review of parading and the Parades Commission. The Secretary of State, in his letter to the Committee two weeks ago, said that even in the absence of the publication of the Ashdown report, which he thought would happen shortly, the British Government would endorse its recommendations, were prepared to pay for its recommendations, and were prepared to claim that it would be a sustainable way forward. Those are the Secretary of State’s words, not mine.

2908. We should request that Lord Ashdown attend the Committee, because his report — even though we have not seen its final conclusions — has already been endorsed by the Government, and that seems to be a back-to-front way of doing business. Also, given the political profile that this issue has now achieved, we must cut to the chase, and that requires Lord Ashdown helping the Committee by explaining his proposals and how those may or may not develop thereafter. To create a degree of certainty about the parades issue, I propose that we invite Lord Ashdown to give evidence to the Committee.

2909. **The Chairperson:** Mr Attwood is proposing that the Committee invites Lord Ashdown to give evidence.

2910. **Mr McFarland:** My understanding is that not all people on Lord Ashdown's committee agreed the report. From recent discussions in the press, it appears that two key players on that committee who represent substantial organisations did not agree it. Is that correct?
2911. **The Chairperson:** I remember that last time that the Committee asked me to speak to Lord Ashdown — the conversation lasted all of eleven and a half seconds.
2912. **Mr Kennedy:** Oh aye, there was a famous phone call.
2913. **The Chairperson:** Yes, and it lasted eleven and a half seconds. He told me that the Secretary of State was still considering the report. I do not know what the response to your letter will be, Mr Attwood, but I will be interested to learn the outcome.
2914. **Mr McFarland:** It will be useful to get some clarity on where we are with this issue. My understanding is that the draft report was not agreed by Lord Ashdown's committee. Is that correct?
2915. **Mr O'Dowd:** There was a draft report and they are waiting for a substantive one.
2916. **Mr Dodds:** It was an interim report.
2917. **Mr McFarland:** From our discussions the other day, my understanding was that Mr Murray and another person did not even support the draft report; rather, they supported only bits of it. I think that Mr O'Dowd was one of the people who told me that. So, I am not clear about what the status —
2918. **The Chairperson:** Do not look to me for answers. *[Laughter.]*
2919. **Mr Kennedy:** You have his number. *[Laughter.]*
2920. **Mr A Maskey:** There is not much point in getting one person to tell us what he thinks, when others appear to have other points of view. Therefore, I object to the proposal.
2921. **Mr Dodds:** I have no objections to Lord Ashdown coming to the Committee. I do not know whether he will attend in light of the report's current status. However, I have no difficulties with him coming along to discuss the issue, because it is very important.
2922. **The Chairperson:** We will put the matter to a vote. The proposal is that we invite Lord Ashdown to discuss his report with the Committee.
- The Committee divided: Ayes 7; Noes 2.*
- Ayes**
- Mr Attwood, Mr Dodds, Mr Hamilton, Mrs Hanna, Mr Kennedy, Mr McFarland, Mr Spratt.
- Noes**
- Mr A Maskey, Mr O'Dowd.
2923. **The Chairperson:** The proposal is carried.
2924. **Mr Attwood:** The second issue that arises from the letter that the Secretary of State's that was sent to the Committee two weeks ago —
2925. **Mr Kennedy:** You are aiming for a hat-trick. It is astonishing.
2926. **Mr Attwood:** The Committee should send a letter to the Secretary of State. Lord Ashdown has not published his report, but the British Government endorsed it. They said that they will fund it and that they believe that it is a sustainable way forward.
2927. At long last, the Secretary of State has written to the Committee, and I welcome that. However, the Secretary of State and the British Government must explain how they can endorse recommendations, which, according to other people, have not yet been concluded.
2928. Given the issues that have been raised about who did or did not sign off on the interim Ashdown report, we must find out whether Ashdown has finished his report and has handed it to the British Government. Is that the basis on which the British Government have said that they agree with his recommendations



- and will fund them, or is it the case that Ashdown has not finished his report and that the members of the Ashdown group have not endorsed any report? If that is the case, how can the British Government say that they endorse its recommendations, never mind that they will fund them or that they are a sustainable way forward? There may be an explanation, and I want to hear it. It does not seem to be consistent for the British Government to endorse a document that has not been agreed, published or forwarded to them. We must find out from them the basis on which the Secretary of State has made those commitments. It does not seem to be backed up by evidence about what stage the report is at.
2929. **Mr Dodds:** Alex has set out his position. I have no difficulty with the Committee writing to the Secretary of State. However, if Alex reads the Hansard report from last week, he will know, as I know, the Secretary of State's exact view, as outlined by Mark Durkan. He will also know Paul Goggins's view. Therefore, we can read what will be said; it is already on record. It is not as if a letter will elicit anything new from Sean Woodward.
2930. **Mr Attwood:** We will not be asking him to come here, Nigel. We will be asking him how he came to his assertions that are outlined in the penultimate paragraph of his letter of two weeks ago. How could he make those assertions if Ashdown has not yet reported?
2931. **The Chairperson:** OK. Will you clarify the wording?
2932. **Mr Attwood:** The Committee should write a letter to the Secretary of State to ask him, further to his most recent letter to us, to confirm whether he has received a copy of Ashdown's final report, and if he has not received that report, and it has not been published, how could the British Government commit to its conclusions and recommendations and agree to fund them?
2933. **Mr O'Dowd:** Do you mean if an agreed document has not been published?
2934. **Mr Attwood:** Any document, whether it is agreed or not.
2935. **Mr Dodds:** If we send a letter to ask how the British Government could commit to those recommendations, he will assert that that is not his position.
2936. **Mr Attwood:** It is stated in writing, Nigel. It is in the letter that we received from the Secretary of State.
2937. **Mr Dodds:** I do not mind.
2938. **Mr Kennedy:** Perhaps, it would be easier to ask the Secretary of State to clarify the up-to-date position.
2939. **Mr Attwood:** That is fine. I am sure that Hansard report will inform us.
2940. **Mr Chairperson:** Are you happy with the proposal that we get clarity on the up-to-date position of the Ashdown report, Alex?
2941. **Mr Attwood:** Yes.
2942. **The Chairperson:** Does everyone agree?
- Members indicated assent.**
2943. **Mr Attwood:** I want to discuss two other matters that I held back on because I do not think that they will win approval.
2944. **The Chairperson:** There were three matters. Now, you are telling me that there are five.
2945. **Mr Attwood:** The next one is from the category two list of issues. We have a situation in which the British Government confirm that the existing North/South justice agreement is being reworked so that on the day that policing and justice powers are devolved, the elements in the current agreement that fall to the Dáil and the Assembly will go live. That is the proper way to proceed, but our argument is that there should be a justice sector of the North/South Ministerial Council. My proposal is that the Committee endorses that sector to ensure that the matters that fall to the Oireachtas and to the Assembly on the day of the devolution of policing and justice powers are all managed through that sector.

2946. We are running out of time on this issue. There will be tension around a new North/South justice agreement between the Oireachtas and the Assembly and not having a parallel mechanism to bring those matters forward through a justice sector of the North/South Ministerial Council. Therefore, to have convergence on a date for devolution of those powers, there should be a requirement to have that sector in place. That is independent of the good grounds for having a justice sector in the North/South Ministerial Council. As a matter of good practice and process, we should aim to have convergence on the day that the devolution of those powers takes place by having the agreement and the sector in place.

2947. **Mr McFarland:** We have had this discussion for several years now. We are more than happy to continue with the existing arrangements that were set up some time ago to deal with this issue. There is no reason to increase cross-border activity at the moment. The current system works well, and we are against the proposal.

2948. **Mr Hamilton:** Ditto from me in respect of what Alan said. As a party, we are supportive of cross-border co-operation where it is of mutual benefit. There is existing cross-border co-operation on a justice sphere, and it is helpful and useful. Our trip to Dublin was cited as such by the head of the gardaí and by the Minister for Justice, Equality and Law Reform, but we see no argument for or ideological commitment to the North/South Ministerial Council per se, never mind expanding it.

2949. We oppose any extension to include a justice sector, because there is no need for it, and the current arrangements seem to be operating pretty well. It is just a matter of ensuring that those arrangements are kept in place.

2950. **Mr A Maskey:** We previously argued for the proposal that Alex Attwood outlined.

2951. **The Chairperson:** We will put it to a vote. The proposal is that the Committee

endorses a justice sector of the North/South Ministerial Council.

*The Committee divided: Ayes 4; Noes 4.*

#### **Ayes**

Mr Attwood, Mrs Hanna, Mr A Maskey, Mr O'Dowd.

#### **Noes**

Mr Hamilton, Mr McFarland, Mr Kennedy, Mr Spratt.

2952. **The Chairperson:** The proposal falls.

2953. **Mr Attwood:** My final issue is about the relationship between the Serious Organised Crime Agency (SOCA) the security services and the new Department, and the fact that we are still awaiting a reply from the Secretary of State about that issue. I propose that the Committee expresses its concern that the relevant memoranda and protocols have still not been shared with the Committee, and that the issue should be rectified by the Secretary of State without delay. If passed, that proposal should go to the Secretary of State.

2954. It is self-evident that those memoranda and protocols are in place. I have no doubt whatsoever that the British Government is already sharing security briefings with people in the North on a private basis. However, the British Government have not shared the information that we requested, which is relevant to the authority of the Assembly. We repeatedly requested sight of the memoranda and the protocols. Consequently, we will be on the back foot if policing and justice powers are devolved quickly, because we will have received documentation very late in the process. The Committee and the Assembly deserve more respect from the British Government. More importantly, we must get sight of the documentation that we requested so that we can critically assess the make-up of future relationships, what will be shared and how it will be shared. To do that, we need to see the memoranda and the protocols. I ask Committee members to think about that issue.

2955. Members of the Policing Board know the importance of handling properly the sharing of information. In spite of my better self, I am not suggesting that we get involved in issues that we are not meant to. However, information to which the Assembly or this Committee is entitled to should be forthcoming. We should have received that information long before now.
2956. By not giving us that documentation, the British Government are not taking us seriously; it was prepared long ago, and should have been shared with the Committee then. Therefore, I propose a motion that expresses the Committee's concern that the British Government are yet to share that information with the Committee, and urges them to do so forthwith.
2957. **The Chairperson:** Before I put the proposal, I draw members' attention to a document that was helpfully prepared by the Committee Clerk. It summarises the position on the information that was sought on memorandums of understanding and protocols. The issue was discussed on 20 October 2009, and the Committee Clerk prepared the document in response to that discussion. I will give members a couple of minutes to read the document, after which, I will invite comments.
2958. **Mr McFarland:** In January 2009, we were told that the information would be available in the next few weeks, and in May 2009, we were told that it would be available soon. If the information was ready at that stage, there is an issue as to why the Committee has yet to receive it. I think that it was agreed that we would receive it at the same time as OFMDFM. Therefore, the question is whether the First Minister and the deputy First Minister have got the information, and we have not.
2959. **The Chairperson:** I cannot answer that question.
2960. **Mr Hamilton:** I never thought that this would ultimately end up as an issue in the Executive, although, maybe Alex wanted it to. Nevertheless, the Committee has shown an interest in the subject, has requested material and has been given some level of assurance that it will receive the material. Considering the chronology, it is poor that we have been led a bit of a merry dance. However, that is not to say where the issue may end up. We have requested sight of the information and we have been assured that we will receive sight of it, and it is only right and proper that we see that the lines that have been suggested.
2961. **The Chairperson:** The proposal is that the Assembly calls on the Secretary of State for Northern Ireland to provide to the Northern Ireland Assembly forthwith all the memorandums of understanding and protocols that will apply at the point of the devolution of policing and justice matters.
2962. **Mr Attwood:** It may be better to say "protocols and concordats" because that is the words that they use.
2963. **The Chairperson:** Do members agree to the proposal with that slight change?
- Members indicated assent.**
2964. **The Chairperson:** If no other member has anything to raise about the category two list of issues, that concludes that part of the meeting.



## 17 November 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mrs Carmel Hanna  
 Mr Alan McFarland  
 Mr John O'Dowd  
 Mr Ian Paisley Jnr

2965. **The Chairperson (Mr Spratt):** We move to matters arising. I refer members to item 3 and item 6 of the minutes of proceedings of our meeting on Monday 9 November, and to item 4 of the minutes of proceedings of our meeting on Tuesday 10 November. I also refer members to the memo from the Clerk at tab 2 of their meeting packs. Those papers relate to the Committee motion. I ask the Clerk to talk members through his paper.
2966. **The Committee Clerk:** The paper reflects on the decision that was taken by the Committee on 3 November, and the subsequent deferrals of any further progress on submitting the Committee motion to the Business Office, or on rescinding that decision. The paper reflects conversations and discussions during last week's meetings. If the Committee wishes to rescind the decision on the motion, it will have to follow the arrangements set out at annex B. However, the Committee is at liberty to take other decisions, and some of those options are discussed on the second page of my paper. I remind members that there is a formal arrangement for rescinding a Committee decision.
2967. **The Chairperson:** There are three options that are open to the Committee.
2968. **Mr McFarland:** Did the Secretary of State agree to our request to receive the memoranda of understanding at the same time as the First Minister and deputy First Minister?
2969. **The Committee Clerk:** I will table a letter dated 31 May that the Secretary of State sent to the Committee, in which he indicates that it was his intention to share the memoranda of understanding and protocols with the Committee at the same time as they were cleared for the First Minister and deputy First Minister. That letter was the result of pressure that has previously been applied by the Committee to request sight of those papers. That letter is being distributed to members.
2970. **Mr McFarland:** It would be useful to know why that did not happen, whether First Minister and deputy First Minister were unhappy that the Committee would have those papers at the same time as them, or whether the Secretary of State forgot about it. Why is it that, having agreed to provide the papers to us at the same time, the First Minister and deputy First Minister have had their copies for some time?
2971. **The Chairperson:** Perhaps option 3 might be the way forward. That is to rescind the Committee's decision on the motion and to write to the Secretary of State to say that the Committee has been informed by the First Minister and deputy First Minister that they have received the papers.
2972. **Mr Attwood:** I will continue to press my motion for the reasons that have emerged on the day of our meeting with the First Minister and deputy First Minister. First, there are four memoranda, one of which refers to the work of the Serious Organised Crime Agency (SOCA) in the North. Last Tuesday, SOCA commenced an exercise involving a person in the North, which gave rise to various political views and public debate. Without prejudice to what anybody said at that stage, the fact is that there was that intervention by SOCA, and the consequences of that only justify to me why we need to see



- the memoranda. If there was ever an example that proved why this Committee should see papers relating to the work of SOCA, that is it, and it is a good reason why we should press on with our motion.
2973. Secondly, the First Minister and deputy First Minister confirmed that they have had those documents since the summer. We do not have a Hansard report, and they did not indicate exactly when they received the papers, but it was during the summer. That means that they received the documents up to three months ago. We have been chasing the Secretary of State for the same documents, and three months after OFMDFM got them, we have not received sight of them. That is not a good way of doing business on sensitive and important matters.
2974. Thirdly, and I will come back to this under “Matters Arising”, there are four Committee meetings scheduled before the Christmas recess. When we finish here in an hour, we will have just three more meetings. We are not doing our job if we do not probe into those memoranda and protocols. Regardless of proposals to have a debate before Christmas, which I want to talk about under “Matters arising”, we are not being real about dealing with this work if we do not get those documents. The Secretary of State knows that we have had this conversation over the past couple of weeks, but have we received anything? Are there any officials in the room today? I do not know. We all know that the Northern Ireland Office knows that we have had this conversation, and nothing has been forthcoming. Therefore, I want to press ahead with the motion.
2975. **Mr O’Dowd:** If the objective is to get our hands on the memorandums and concordats, option 3 progresses that, and if the objective is to stand in the Chamber and make lofty speeches, then proceeding with the motion is the way forward. Our objective is to get our hands on the memorandums of understanding and to study them. Option 3 is a fair enough way forward, and it allows us to return to the question of a motion at a future date, if we so wish.
2976. **Mr McFarland:** Am I correct in recalling that, on at least two occasions since this letter, we have asked the Secretary of State for the memoranda of understanding and that he has written to us to state that they were still under consideration? I understood that we could not have them because they were still being looked at. That is why it is disconcerting to discover that OFMDFM has had them since the summer.
2977. **The Chairperson:** I do not know whether the Secretary of State has written back in the terms that you have described.
2978. **Mr McFarland:** Since the summer, we have asked for the memoranda of understanding twice, and we have been told that they were not ready and that they would be forwarded to us in due course. I seem to recall a recent letter in which we were told that the memoranda of understanding were still being considered and that we would get them as soon as they were ready. If OFMDFM has had them since the summer, I do not think —
2979. **The Chairperson:** The intention has always been to share them with the Committee in parallel with the First Minister and deputy First Minister.
2980. **Mr McFarland:** I think that we have written to the Secretary of State on a couple of occasions since the summer and told him that we are getting agitated about these matters. We have been told on several occasions that they were not ready, that we would get them in due course, and that is why we have ended up with Alex’s motion. If we were told in May that we would get them in parallel with OFMDFM, and it has had them since the summer, we have been deliberately denied them at someone’s request, and it is not clear whether it was at the request of OFMDFM or the NIO.
2981. **The Chairperson:** They were never requested of OFMDFM.
2982. **Mr McFarland:** They were not, but someone has made the decision not

- to send them to us and OFMDFM, in parallel. That has been a conscious decision by someone.
2983. **The Chairperson:** I would not say “in parallel”. There might be a debate around what that means.
2984. **Mr McCartney:** I do not like straying into what, last week, was agreed would be a private and confidential meeting.
2985. **The Chairperson:** Yes. I am getting concerned about the thrust of the conversation.
2986. **Mr McCartney:** My recollection is that, in response to a question from Alex, OFMDFM said that it was considering the memoranda of understanding. In fairness, there was a position which was not explored: they may not yet be agreed.
2987. **The Chairperson:** If we are going to stray into any further discussion in relation to what was agreed at a private meeting, I will clear the room.
2988. **Mr McFarland:** We do not need to discuss last week’s discussion.
2989. **The Chairperson:** Can I have that assurance from all Committee members?
2990. **Mr McFarland:** You have that assurance from me. Most people will believe that “in parallel” means “at the same time as”. We asked to receive the memoranda of understanding at the same time as OFMDFM, and the Secretary of State wrote back to tell us that we would receive them at the same time. On at least two occasions since then, we have asked for them, and that is why Alex has got so fed up.
2991. Leaving aside the fact that we discovered last week that they have been with OFMDFM since the summer — and that is as much as I am going to go into that discussion — there is something very strange going on, because we were assured that we would get them at the same time as OFMDFM. They got them in the summer and, on two occasions since then, NIO officials, who said that they would release them at the same time, told us that we could not have them, because they had not finished with them. There is something odd about that.
2992. **Mr McCartney:** I am not 100% certain that they said last week that the protocols had been finally agreed.
2993. **Mr McFarland:** They do not have to be agreed. We asked to see them at the same time.
2994. **The Chairperson:** Please address your remarks through the Chair.
2995. **Mr Hamilton:** I do not think that we have ever had a difficulty with pursuing sight of the documents, where it is appropriate for the Assembly to be involved in seeing them. We have always made it clear, particularly on issues relating to national security, that there was scope for the Committee or the Assembly to interfere, and we are very defensive of that position. Even though we have supported the pursuit of sight of the documents, I do not think that we have shared the position of other Committee members in respect of what the end result would be of having had sight of them.
2996. If I have understood Alex’s comments correctly, and his remarks about SOCA confirm some of my worries, and our position may alter somewhat. I have said before that I have no issue with having sight of the memoranda. Our collective understanding from previous correspondence from the Secretary of State was that we would receive the memoranda of understanding at the same time, but having gone back and looked at his letter, we see that the words “in parallel” were used, and, of course, things can be parallel, but behind. Different parallel points can be on the same line.
2997. I do not wish to get into a semantic word game, but I think that the Committee had the distinct impression that we would get the memoranda of understanding at the same time as OFMDFM. I am still content that we pursue sight of them, but I am not convinced that, at this stage, a motion in the Assembly is the way to achieve that aim. In fact, it may make it more

- difficult. The motion can be held in the arsenal and used at some stage, but before we get to that stage, it might be useful to go back to the Secretary of State to tell him that our understanding was that we would get the memoranda of understanding at the same time as OFMDFM. That has not happened, and we know that the Office of the First Minister and deputy First Minister have had them for some time. Could we ask why have we not got them, and whether we can expect to have sight of them soon? I would include the caveat that although our party is happy to have sight of them, if people want to try to negotiate them or to force an opinion on what they include, that is a no-go area for us. In short, there is an option to rescind the decision on the motion and write a letter. Perhaps we could write a letter along the terms that have been described and see what response comes back. The option of the motion will still be there if the Committee believes that it is required at that point.
2998. **The Chairperson:** I have been told that further pursuit of the Committee motion could be deferred in the meantime.
2999. **The Committee Clerk:** However, the Committee will still be obliged to address the issue of what it should do with the Committee motion that was, effectively, agreed at Committee on 3 November.
3000. **Mr Attwood:** Following Simon's point about where parties may want to go with the issue, the SDLP would like all of it to be revisited — we do not deny that. We know that, because what has been agreed include transferred, reserved and excepted matters, there are some areas that we will not be able to pursue, despite our ambitions and intentions. In any case, there would not be much agreement around the table on that. Although the SDLP might wish to go in certain directions, we are not naive, and we realise that it is not possible to go in those directions.
3001. The Assembly can act consistently with its transfer function and with the letter of 31 May 2009 from the Secretary of State. In that letter, the Secretary of State confirmed what he will and will not share with this Committee, and he outlined what might ultimately be shared with a future justice Committee. In two subsequent paragraphs, he outlined, as one would expect, the parameters of national security and accountability. His letter then indicates what could be shared, not with a justice Minister, OFMDFM, the Policing Board or the Chief Constable, but with a justice Committee of the Assembly.
3002. Given that, to some degree, this Committee has the responsibility of working out that issue and relationship, we should have sight of those documents to see how far we can go. I am not suggesting that we go ultra vires, but we should see how far we can go.
3003. I wish to reassure Simon of the reason why I raised the example of what arose with SOCA last week. I do not wish to go into the details, but without prejudice to anyone's views on the matter, it demonstrates a potential rubbing point in the future, post-devolution. In the view of some people, it has been a rubbing point pre-devolution. Given that experience and the fact that other similar experiences could emerge, it seems sensible to plot our way through that by looking at the various protocols on national security, SOCA, the independence of the Public Prosecution Service, and so on. That is the height of what we are discussing; it is not about bringing something to the Floor of the Chamber to make a lofty speech. I have given enough evidence to suggest that the matter is certainly relevant to the authority of the Assembly and how it will function in the future, and on where issues, perhaps acute ones, could arise.
3004. The Secretary of State, through one of his officials, told us that everything could be devolved by May 2008. Therefore, one can only work on the assumption that those protocols were in a fit state at that time. Eighteen months later, we are still chasing our tail trying to get them. The Secretary of State cannot explain how devolution of justice, which would have involved all those protocols and concordats,

- could have taken place 18 months ago, but we cannot have the memoranda of understanding yet.
3005. We can go off and plead, but, two weeks after the motion first arose and has, presumably, been reported somewhere, we have not received anything. If members think that the Secretary of State will respond to a letter, they should learn from the past two weeks, when the NIO has not responded to our conversation. It does not need a letter; it ignored our conversation in a situation in which we are trying to get the devolution of justice over the line in a short space of time. That is why I am pressing on with the motion, and I so propose it.
3006. **The Chairperson:** That is, of course, a matter for the Committee, and we will test that shortly.
3007. **Mr Attwood:** I am proposing a motion.
3008. **The Chairperson:** Just hold on. Other members wish to speak. You made it clear at the start of the meeting that you wished to propose the motion.
3009. **Mr Paisley Jnr:** Last night, a debate took place in the Assembly on fishing, and I think that that is continuing now — the motion is just a fishing exercise, and if the Committee were to pursue it, it would end up looking ridiculous.
3010. The wording of the motion will only be relevant to whoever decides that it is relevant. It will not be relevant to us. The intergovernmental agreement on North/South justice matters is available for everyone to see. We have been given information about the project advisory groups, and it appears to me, from reading the letter, that work is ongoing, especially on forensics, drawing up better management sequences, and handling exhibits. There appears to be ongoing work between the PSNI and the guards on public-notice activities and the Youth Justice Agency. A lot of that work appears to be at a developmental stage. The Committee will look pretty ridiculous if it fishes for documents without knowing what it is after.
3011. Alex has been on a crusade for a number of years to gain access to information that is, frankly, information that John le Carré knows but no one in the Northern Ireland Office knows. Moreover, it is information that — it is spelt out loudly and clearly in three paragraphs of the Secretary of State's letter — we cannot see for national security reasons. If we see that information, we will damage national security and, more importantly, probably let crooks off the hook. We must get real on these matters. Alex is on a crusade to get sight of information; sometimes we have to accept that we cannot see certain information. Some realism must be injected into the discussion. The motion would make the Committee look completely ridiculous.
3012. **The Chairperson:** We have three suggestions in front of us.
3013. **Mr McFarland:** We were told that we could see the memoranda of understanding, and it is vital to know how the process will operate. We were told that they were ready and that we could see them in parallel with OFMDFM. Normally, I am more than happy to indulge Alex's enjoyment of the Chamber. He spent an hour and a half on his feet in the Chamber last week. However, in this case, I am content that his suggestion would not solve anything.
3014. The Committee needs to find out why, having been promised sight of the documents, it has since been told that they were not available, even though they have been available for several months. Why has the Committee been left out of the loop? We need to see those papers; they will be non-contentious and will not be full of secrets. However, they will outline how functions will operate after devolution, and it is perfectly valid for the Committee to see that information.
3015. **The Chairperson:** I understand that there are three proposals in front of us; someone can correct me if they are not proposals. First, Alex Attwood has proposed to press ahead with the motion as laid out. Secondly,

- John O’Dowd suggested that we run with option 3, through which the motion would be rescinded. I remind members that, in order to comply with conventions, the Committee would have to deal with that issue next week. Therefore, we cannot rescind it today. Moreover, he suggested that we write a letter to the Secretary of State. Is that a fair reflection of your suggestion, John?
3016. **Mr O’Dowd:** Yes. Raymond has pointed out that we should perhaps check matters with OFMDFM because we are, in a sense, reporting the conversation on option 3 that we had with officials last week.
3017. **The Chairperson:** The third suggestion came from Simon Hamilton.
3018. **Mr Hamilton:** I did not make a suggestion or a proposal; I am happy to go with option 3.
3019. **Mr McFarland:** I think that Simon’s suggestion is good, because it parks the motion until we find out what has gone wrong with the memoranda of understanding. That seems like a good idea. If we decide to rescind the motion, we will have to return next week to do so. However, if we agree to park it, it will remain on the shelf somewhere. We should try to find out what has happened to the memoranda of understanding and, if possible, look at them. That would solve the problem.
3020. **Mr Hamilton:** I did not propose anything; I simply asked whether the Committee could do that.
3021. **The Chairperson:** The advice is that we could. Therefore, we have two proposals in front of us.
3022. **Mr McFarland:** What Simon enquired about would be quite a good idea, because it would save a whole hoo-ha —
3023. **The Chairperson:** It was not a proposal but a suggestion of a way around —
3024. **Mr McFarland:** If he were to make it a proposal, it would be sensible.
3025. **The Chairperson:** I think that he has made it clear that he is not going to do that.
3026. I will put the proposal on option 1 for dealing with the Committee motion.
- Question put, That the Committee agree and sign the motion, and forward it, with recommendations on the scheduling and duration of the debate, to the Business Committee.*
- The Committee divided: Ayes 2; Noes 6.*
- Ayes**
- Mr Attwood, Mrs Hanna.
- Noes**
- Mr Hamilton, Mr McCartney, Mr McFarland, Mr O’Dowd, Mr Paisley Jnr, Mr Spratt.
- Question accordingly negated.**
3027. **The Chairperson:** We now move to the next suggestion, which is option 2. Members should bear in mind that the decision on the motion cannot be rescinded today but must be returned to in Committee next week. If it is rescinded, we will then write to the Secretary of State to say that we were informed by the First Minister and the deputy First Minister that they had received the memorandums of understanding, protocols and concordats, and ask why they had not been provided to us in line with the Secretary of State’s letter to the Committee of 31 May 2009. Do members agree?
- Members indicated assent.**
3028. **Mr O’Dowd:** To clarify, are the First Minister and the deputy First Minister happy for us to report that conversation?
3029. **The Chairperson:** Yes.
3030. **Mr McFarland:** The First Minister and the deputy First Minister were aware of the Secretary of State’s letter, so we could ask why they did not think to pass it to us. Unless they were told not to.



3031. **Mr Hamilton:** They cannot pass the letter to us; it is not theirs to do so.
3032. **The Chairperson:** Let us not get into another debate. There is a proposal before the Committee. Members should bear in mind that the proposal has to come back before the Committee next week.

*Question put,* That the Committee should agree to bring a proposal to the Committee seeking to rescind the motion to the Assembly and write to the Secretary of State to say that the Committee had been informed by the First Minister and deputy First Minister that they had received the memoranda of understanding, protocols and concordats and to ask why they had not been provided to the Committee in line with the Secretary of State's letter to the Committee of 31 May 2009.

*The Committee divided:* Ayes 6; Noes 0.

#### **Ayes**

Mr Hamilton, Mr McCartney,  
Mr McFarland, Mr O'Dowd,  
Mr Paisley Jnr, Mr Spratt.

#### **Question accordingly agreed to.**

3033. **The Chairperson:** No abstentions have been recorded.
3034. **The Committee Clerk:** I need some clarity on the suggestion that we seek clarity from OFMDFM. Is that clarity to be sought today, in time for the formal consideration of rescinding the decision, and in time to draft and send a letter to the Secretary of State after the Committee has that discussion next week?
3035. **Mr O'Dowd:** We had a private meeting with the First Minister and deputy First Minister, and we agreed that they would not be recorded and the conversation would not be repeated. This is a minor issue, but we are repeating some of that conversation here, and we are proposing to repeat it to the Secretary of State, so only a courtesy call to OFMDFM is needed, on order to ensure that we are not breaching that agreement.
3036. **The Chairperson:** To clarify, I pointed that out to members who raised the

matter. If we have future conversations about the meeting with the First Minister and the deputy First Minister, which was confidential, they will be in private session. I will stop any conversations that members are having and clear the room. We will have that conversation in private because, everybody around the table made a commitment that the meeting with the First Minister and the deputy First Minister was to remain confidential.

3037. **Mr McFarland:** It is fair to say that that commitment was to do with our private discussions rather than anything that we take to the specialist adviser. What is to stop us from writing to the Secretary of State now, ahead of the decision? Surely we want to know anyway, whether or not the decision is rescinded next week. We would still like to know what has gone wrong. Why can we not write to the Secretary of State pending next week's decision?
3038. **The Chairperson:** Do members have any problems with that suggestion?
3039. **Mr Paisley Jnr:** Alan is arguing from a position that something has gone wrong. There is a very explicit intention to share information with the Committee in parallel with the First Minister and the deputy First Minister. Nothing has changed in that regard. There are clearly matters that will be shared with us. The issue is whether we get up-front sight of certain material, and it is pretty clear that we do not. We have to wait for other things to happen before information is shared with us. I know that the Committee has been an example of patience, but we have to be a little more patient about getting access to some of the material.
3040. What has gone wrong for some parties is that they did not get their way. That is not a matter on which the Committee can make a point. Alan suggests writing to the Secretary of State, asking him to amplify what he means in the first paragraph of his letter. I am happy for us to do that. However, we are getting to the point at which we are looking to be nursemaided through this stuff.

3041. **Mr McFarland:** It is fair to say that we have had several —
3042. **The Chairperson:** A couple of other members wish to speak, Alan.
3043. **Mr McFarland:** It is just on that particular point.
3044. **The Chairperson:** I am sure that they are looking to speak on to the same point.
3045. **Mr O’Dowd:** I wish to draw the Committee’s attention to a procedural matter. We are in limbo at present. We have decided to propose a rescinding motion at our next meeting, so the status quo remains until the Committee rescinds its intention to bring the motion to the Assembly. To all intents and purposes, the Committee still intends to bring a motion to the Assembly. Alan McFarland’s suggestion precedes doing that. I have no difficulty with our writing to the Secretary of State but, procedurally, we must rescind our motion and then write to the Secretary of State. That will keep us correct.
3046. **Mr Attwood:** I refer Ian Paisley Jnr to the comments that his colleague made on Monday 9 November on how we have been treated by the Secretary of State. Simon Hamilton referred to the paper and described the Secretary of State as “weak”. That was the term used.
3047. **Mr McFarland:** One would think that this has come out of the blue. We have now spent two months agitating with the Secretary of State to have sight of the memoranda of understanding, and we have had two replies from NIO. We were promised back in May that we would see them. We did not reach Alex Attwood’s point of bringing something to the Assembly quickly. It came at the end of a very long road, and we had been assured that the memoranda of understanding were not ready. It is in order for the Committee to wonder why, if the memoranda of understanding are not ready, why OFMDFM had them in the summer. The Secretary of State said that he would share them with us and OFMDFM at the same time.
3048. It was not just the letter. We had him in front of us and he said, at that stage, that he was happy enough to let us have them. I am just confused. This is a separate issue from Alex Attwood’s agitation for a debate in the Chamber. The Committee was outraged three weeks ago when Simon made his comments at being treated like this. I do not see how the Committee can not be any less concerned with the latest information, which we discovered last week. It is in order for us to try to find out why we are not being treated properly.
3049. **Mr O’Dowd:** I am not arguing with any of the points that Alan McFarland has made. All that I am saying is that the Committee has just made a decision to set in course a procedure. We need to follow that procedure, and then what Alan is arguing may be enacted.
3050. **The Chairperson:** There seems to be a difference of opinion on the letter, and so on. I detect that the Committee is split down the middle on that. Members do not object to the letter, and it will go after next week’s meeting.
3051. Can we leave option 3 and return to it next week? Then the letter can go off to the Secretary of State. Is that agreed?
- Members indicated assent.**
3052. **The Chairperson (Mr Spratt):** We will move to our consideration of the devolution of policing and justice powers. The meeting is being recorded by Hansard. I declare an interest as a member of the Northern Ireland Policing Board.
3053. **Mr Paisley Jnr:** I am a member of the Policing Board.
3054. **Mr Attwood:** I am also a member of the Policing Board.
3055. **The Chairperson:** I suppose that I should ask the question that I normally ask. Before I ask it, however, I refer members to new issue E. Do members feel that there is further work to do on that issue? Several issues under new issue E involve the specialist adviser. The Committee Clerk will have to put

- some suggestions to us about that in the not too distant future. We have retained the specialist adviser beyond the period for which he was appointed, although he has done some additional work for us. It would be wrong of me to talk about figures, but we will have to have a discussion on the subject in closed session to allow the Committee Clerk to obtain the necessary finance for the additional work that the specialist adviser has had to do.
3056. Do members envisage the need for the specialist adviser to do any other work, particularly on finance matters?
3057. **Mr Hamilton:** It is not obvious at this stage.
3058. **Mr McFarland:** Some areas are still not fully clear, but there is none on which work can be done immediately. There may be more decisions to make on parading or on the Eames/Bradley group.
3059. **The Chairperson:** I will probably call him back at that stage. Does anyone else have any comments to make?
3060. **Mr O'Dowd:** We are happy enough to conclude.
3061. **The Chairperson:** Can we agree that, from our point of view, the work that has been done on new issue E has been concluded?
3062. **Mr Hamilton:** The broad swathe of the Committee's work on the issue has been done. Much of it was about informing others about the issues that existed, and we have identified those. There is no overall agreement on the issue of finance at this point. As a result of that, we can say that we have done most of our work. However, I can envisage a time when we will have to get involved in finance issues. I would not put a lid on new issue E at this stage. The specialist adviser could seek advice and opinions when finance becomes an issue, or if there are developments on certain aspects of the financial package.
3063. **The Chairperson:** Will we suggest that most of the work has been done on new issue E? We may need to revisit some matters in the run-up to a report's being produced. However, if I am accurately reflecting what has been said, we do not envisage asking the specialist adviser for further support. We should park the issue to allow the Committee Clerk to come back with a paper on financial issues to be agreed by the Committee.
3064. **Mr McFarland:** We should thank the specialist adviser for the work that he has done.
3065. **The Chairperson:** We will do that.
3066. **Mr O'Dowd:** Send him a Christmas card.
3067. **The Chairperson:** I am happy to do that, Mr O'Dowd.
3068. **Mr Attwood:** How will that be recorded in the minutes of the meeting? I agree with Sinn Féin that the work has been concluded. I do not envisage that there will be a requirement to invite Mr Hewitt back to the Committee.
3069. **The Chairperson:** Alan said that we may need assistance if there is movement on the financial issues to do with parading. Like Simon, I do not envisage his having to be brought back unless something new emerges.
3070. **Mr Hamilton:** A distinction must be drawn between "our work" and "the work".
3071. **The Committee Clerk:** The Committee effectively asked the specialist adviser to do additional work. The number of days that was originally designated in his contract has increased, and I will have to get the Committee's permission to pay him for those additional days' work. There is one remaining element of his contact, which is that he assists in drafting a section of the Committee's report based on his papers. There is scope for that work to be done separate to the additional work that he did over additional days. The specialist adviser's work is essentially done, but, if necessary, he could assist the Committee in drafting the report and on clarifying issues.
3072. **The Chairperson:** Are Members in agreement on that?

**Members indicated assent.**

3073. **The Chairperson:** Has any further progress been made on the category two list of issues?
3074. **Mr Hamilton:** No; there is none to report.
3075. **Mr O’Dowd:** Unfortunately, there has not been any further progress.
3076. **Mr Attwood:** I have a number of proposals and will deal first with issue A on the category two list of issues. Mindful of our previous conversation, we should write to OFMDFM to ask whether it has received a copy of the report from the Attorney General designate and whether it is in a position to share that report with us. I understand that the Attorney General designate has not yet responded to our request for him to attend the Committee.
3077. **The Chairperson:** I will now put Mr Attwood’s proposal to a vote.  
*Question put,* That the Committee write to OFMDFM to request that they share the Attorney General’s report with the Committee.
3078. **The Chairperson:** I count four members in favour.
3079. **Mr McFarland:** What are we voting on?
3080. **The Chairperson:** The vote is on whether we should send a letter to OFMDFM to ask about the Attorney General designate’s report.
3081. **Mr McFarland:** Did we not enquire about that last week or the week before?
3082. **The Committee Clerk:** Yes. The Committee did ask, and the First Minister and the deputy First Minister declared that they had received a report and were considering it.
3083. **Mr McCartney:** Are we going to rerun that meeting?
3084. **The Committee Clerk:** Before last week’s discussion in closed session, there was a formal indication that the First Minister and the deputy First Minister had received a paper, that they were considering that paper, and that they would be in touch with the Committee in due course. I am not breaching confidentiality in referring to the remarks that they made at the end of the meeting in response to a question. They indicated that they were willing to come back to the Committee to discuss the category two list of issues and the role of the Attorney General.
3085. **Mr McFarland:** Do we need to do it again?
3086. **Mr Hamilton:** We do not need to do it. It is superfluous.
3087. **Mr Attwood:** It is asking for the First Minister and the deputy First Minister to share that report with us.
3088. **Mr McFarland:** I thought that we did.
3089. **The Chairperson:** We have voted on it. Four members —
3090. **Mr Hamilton:** I think that it is totally against the —
3091. **Mr McCartney:** The proposal is to write a letter asking whether the First Minister and the deputy First Minister have the report and, if so, whether they will share it with us.
3092. **Mr Hamilton:** We have already asked that.
3093. **The Chairperson:** We are repeating ourselves, but that is nothing unusual.
3094. **Mr Attwood:** We are asking whether OFMDFM is in a position to share it with us. That is different from asking whether OFMDFM has received anything.
3095. **Mr Hamilton:** The indication was that it is not.
3096. **Mr Hamilton:** I wish to be registered as voting against that proposal.
3097. **Mr McFarland:** I am for it.
3098. **Mr Hamilton:** It is absolutely pointless.  
*Question put,* That the Committee write to OFMDFM to request that they share the Attorney General’s report with the Committee.

*The Committee divided: Ayes 5; Noes 1.*

**Ayes**

Mr Attwood, Mrs Hanna, Mr McCartney, Mr McFarland, Mr O'Dowd.

**Noes**

Simon Hamilton.

3099. **The Chairperson:** I abstained from that vote. What is your next proposal, Mr Attwood?
3100. **Mr Attwood:** My next proposal is on new issue D. Given that the Secretary of State has indicated that the new North/South justice agreement that would be in place on the devolution of justice powers is being finalised with the Government in Dublin, we should write to him asking whether he is in a position to share the details of that. It is not a new North/South justice agreement, but an amended version of the existing British-Irish justice agreement, dealing with what falls to Dublin and what falls to Belfast on devolution. I understand that there is no difference of opinion, so are they willing to share that amended document with us?
3101. **The Chairperson:** You are proposing a letter to the Secretary of State?
3102. **Mr McFarland:** Go for it.
3103. **The Chairperson:** Is everybody agreed to that?
3104. **Mr Hamilton:** Have we requested that in the past?
3105. **The Chairperson:** No; we have not. It is a new one.
- Question put, That the Committee write to the Secretary of State to ask, given that he has indicated that the amended British Irish justice agreement is being finalised with the Government in Dublin, whether he is in a position to share the amended document with us.*
3106. **The Chairperson:** What is the next proposal?
3107. **Mr Attwood:** On new issue F, Paddy Ashdown wrote a highly helpful letter in

which — one has to give it to him — he cut through many of the issues around his report.

3108. **The Chairperson:** In your view.
3109. **Mr Attwood:** Yes, in my view. Given that we previously had a seven-second conversation with him, he clearly took some time to put matters on the record accurately from his point of view, whether you think it clears issues up or not. It is clearly a very helpful letter. However, there seems to be a tension between what Lord Ashdown is saying in that letter and what the Secretary of State said in a letter to this Committee, when he indicated that he was content with the Ashdown proposals, believed they were a sustainable way forward and would fund them. However, the letter from Lord Ashdown indicates that he could not appear before the Committee — he is right to make this point — because there is no final report and there are matters about which he is still in conversation with his colleagues. We should send a copy of the letter from Lord Ashdown to the Secretary of State for his information.
3110. **The Chairperson:** The Committee did write to the Secretary of State to clarify his comments about the Ashdown report in a previous letter.
3111. **Mr McCartney:** He has it already.
3112. **The Chairperson:** We have not yet received a reply to that.
3113. **Mr Attwood:** Mindful of that, we should pass a copy of Lord Ashdown's letter to the Secretary of State for information, in order to keep us right as a Committee, although no doubt it has been copied to him anyway.
3114. **The Chairperson:** Are we agreed on sending that letter?
3115. **Mr O'Dowd:** What has happened thus far?
3116. **The Chairperson:** A letter has been sent to the Secretary of State from the Committee asking for clarification about his comments on the Ashdown report. We have not received a reply to that yet.



3117. **Mr O’Dowd:** OK.

3118. **The Chairperson:** Are we happy to send another letter, which is basically a —

3119. **Mr McFarland:** We will just copy the Ashdown letter, as has been suggested.

**Members indicated assent.**

## 24 November 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mr Alan McFarland  
 Mr Alex Maskey  
 Mr John O'Dowd

3120. **The Chairperson (Mr Spratt):** We move to discussion of the Committee motion. I ask members to make any declarations of interest. I declare that I am a member of the Northern Ireland Policing Board.

3121. **Mr A Maskey:** I am a member of the Policing Board.

3122. **Mr Attwood:** I am a member of the Policing Board.

3123. **The Chairperson:** I remind members that the rest of the Committee proceedings are being reported by Hansard. It was necessary to return to the matter of the Committee motion at today's meeting. Members have the relevant papers.

3124. **The Committee Clerk:** When the Committee discussed this matter last week, it agreed to consider a proposal today to rescind its decision of 3 November to proceed with a Committee motion, and instead to write to the Secretary of State to ask why he had not provided the memoranda of understanding, concordats and protocols as he had indicated previously, particularly in his letter of 31 May, that he would. During the Committee's discussions last week, some other opinions were expressed about holding the motion "in the arsenal", to quote the Hansard report, and parking the Committee motion. However, neither of those suggestions was formally proposed.

3125. The Committee then agreed that, in the first instance, a letter should be sent to the First Minister and deputy First

Minister to seek clarity around the fact that the Committee had discovered during a closed session with the First Minister and deputy First Minister that they had in their possession memoranda of understanding, concordats and protocols. The Committee noted that correspondence, which was issued last Tuesday, just a few moments ago. The letter called for a reply from the First Minister and deputy First Minister in time for the Committee's consideration today. There has been no reply, and although my staff have been in touch with OFMDFM, there has been no indication that a letter is forthcoming. Before the Committee decides on any further action on rescinding its earlier decision, it may wish to take into account what the First Minister said yesterday evening in the course of the Further Consideration Stage of the Department of Justice Bill. A note of those comments is being distributed to members.

3126. In essence, the First Minister indicated that he saw no reason why the Committee should not see drafts of those various documents, and that he would do what he could to encourage that to happen. Therefore, in some respects, that represents an answer to the letter that was sent to the First Minister and deputy First Minister last week. That is the background, but I wish to offer procedural advice to the Committee if it wishes to rescind its earlier decision. If that is the Committee's wish, it must be done formally. The wording of the motion to rescind the earlier decision should be along the following lines:

*"That the Committee rescinds the decision taken on 3 November 2009 to proceed with the following Committee motion:"*

The wording of that motion was:

*"That this Assembly calls on the Secretary of State for Northern Ireland to provide, to the Northern Ireland Assembly, all the Memoranda*

*of Understanding, Protocols and Concordats which will apply, at the point of devolution of policing and justice matters, forthwith.”*

3127. The proposal to rescind the motion must be made formally by a member, and the Committee must agree.
3128. **The Chairperson:** Members have heard the Clerk’s advice on the procedure for rescinding the motion, if that is the Committee’s wish. Do members wish to make any comments?
3129. **Mr Attwood:** There is always more than one way to skin a cat, and those have been explored over the past two or three weeks. These matters were discussed, in one way or another, during yesterday’s plenary debate, and at two meetings of the Assembly and Executive Review Committee. I presume that some sense of what was said during yesterday’s debate and in Committee has been conveyed to the NIO. The words that were used by the First Minister yesterday also move matters on, because he did not see any reason why the protocols in their current form could not be shared. I am content for the matter to rest. The cat has been well and truly skinned, and I have no difficulty in assenting to the motion to rescind, because the purpose of the prospective plenary debate has been fulfilled.
3130. **The Chairperson:** Are you proposing that the motion be rescinded?
3131. **Mr Attwood:** Yes.
3132. **The Chairperson:** There being no further comments, are members content that the motion be rescinded?
- Members indicated assent.**
3133. **The Chairperson:** We move to the remaining issues on the category 2 list. As usual, before going through the list issue by issue, I ask members whether there has been any movement. I ask parties to indicate whether they wish to discuss the full list.
3134. **Mr Hamilton:** I have nothing additional to report at this stage, Chairman.
3135. **Mr A Maskey:** Nothing additional, Chairman.
3136. **Mr McFarland:** Nothing additional, Chairman.
3137. **Mr Attwood:** I have no proposals this week, Chairman, you will be glad to hear. However, I have a number of questions. Has there been an acknowledgement from the attorney general designate to the letter inviting him to come before the Committee to discuss his role?
3138. **The Committee Clerk:** We have not received an acknowledgement. That letter was issued as a result of a decision of the Committee on 3 November, and it expressly indicated the Committee’s wish that he appear before the Committee within four weeks. That four weeks will be up next week, and I have a note in my diary to remind the Committee that there has not been a response, save to say that the First Minister and the deputy First Minister, towards the end of the session that was conducted in private, indicated a willingness to come back to the Committee to discuss the role of the attorney general, as well as the category 2 list of issues.
3139. **Mr Attwood:** Lord Ashdown went out of his way to respond quickly to the Committee’s invitation to appear, and he did so in quite elaborate terms — certainly not in the terms of his previous conversation with you, Chairman. That represented a significant and welcome change of approach. Subject to the caveat that he has received the letter, it is not the best state of affairs that a person suggested to be attorney general designate has not acknowledged or indicated whether he feels it appropriate to come before the Committee within the time frame that was suggested. Matters could be handled a bit better.
3140. **Mr McFarland:** The word “designate” is one that Alex has applied. My recollection is that the official line was that the First and deputy First Minister — you or Simon may be able to confirm this, Chairperson — were “minded” to appoint a person. That has been taken

to mean that the person involved is likely to be, will be or could be termed the attorney general designate. If the situation has got only as far as being that the First Minister and the deputy First Minister are minded to appoint an individual to the post, a stranger has received a letter from a Committee that has nothing to do with him asking him to do things. If the First Minister and the deputy First Minister are just minded to appoint that individual, and he has not received a letter or something that confirms that he is attorney general designate, it is perhaps not surprising that he has decided to treat the letter as if he officially has nothing to do with us yet, because he remains a normal barrister presumably. Therefore, it would be interesting to clarify the official position.

3141. **Mr Attwood:** An utterly reasonable explanation could exist for our not having received a response. The reason that Alan suggests may not be an utterly reasonable explanation, because an individual minded to be appointed by the First Minister and the deputy First Minister has, it appears, responded to correspondence from them on the proposed office of attorney general. Furthermore, the First Minister and the deputy First Minister have confirmed that they have received a reply and a report from the person whom they are minded to appoint. Therefore, the individual does appear to accept that there is some intention to appoint him, and he is acting as if that is the case. However, our Committee has yet to receive an answer from him.
3142. **The Chairperson:** We wrote to the First Minister and the deputy First Minister on 19 November 2009 on the matter. In that letter, I suggested:
- “The role of the Attorney General featured as part of these discussions and Members agreed that I should write to you and ask if you were yet in a position to share, with the Committee, the paper submitted to you, sometime ago, by John Larkin QC.”*
3143. Therefore, we have already written to the First Minister and the deputy First Minister, and I think that it was said
- earlier that the First Minister and the deputy First Minister indicated that they were happy to come back before the Committee to discuss that issue and the category 2 list of issues. I think that the way in which the language was couched was that that would happen in the near future.
3144. You have raised the issue, Mr Attwood. We will chase up that letter. Is the Committee happy to wait until we see what the position is?
3145. **Mr Attwood:** Yes, the Committee Clerk may wish to make some contact.
3146. **The Chairperson:** Do members have any other issues?
3147. **Mr Attwood:** If it is in order, Chairperson, I have one other comment to make. The Committee has two weeks of work remaining before it breaks for the Christmas recess. If we were to receive any outstanding documentation, be it from the Secretary of State or from the First Minister and the deputy First Minister, that would provide a catalyst for the work that we will do in the next two weeks. The First Minister indicated in the House yesterday that drafts of the documents that he has seen run to many pages. At one stage, I think that that the First Minister referred to one document or another's being 80 pages. Whether he meant that one document is 80 pages long or that all the documents total 80 pages, I do not know. That aside, if we are to progress some of the work very quickly, getting information from the relevant people, be that the Secretary of State or OFMDFM officials, from whom we have to receive outstanding documents, will help to galvanise our work in the run-up to the Christmas recess.
3148. **The Chairperson:** It was indicated that we should chase some of that information up this week, and we will do that. If we were to obtain documents on the memoranda of understanding, protocols and concordats, I assume that, given the sensitive nature of some of the documents, a discussion on them

would have to be held in closed session.  
Would that be the Committee's view?

3149. **Mr McFarland:** I would have thought so.

3150. **Mr Hamilton:** Yes; absolutely.

3151. **The Committee Clerk:** In the light of what has been discussed, if I am to contact either formally or by telephone particularly Mr Larkin QC, but also the Secretary of State's office and the Northern Ireland Office, is there a sense that, in order to assist the Committee's consideration of the memoranda of understanding, protocols and concordats, officials may need to appear before the Committee to explain, for example, the subtlety of any possible difference between the present arrangements and the arrangements contained in the various documents, if indeed any changes are to be made?

**Members indicated assent.**

3152. **The Chairperson:** Any work that can be done on the documents will help. I do not think that anybody would be opposed to your doing that.

3153. **The Committee Clerk:** It would allow me to convey to officials that the Committee needs that information and allow me time to schedule a meeting.

3154. **The Chairperson:** We can hope that the Northern Ireland Office will have looked at the documents and read yesterday's Hansard this morning. I think that the First Minister suggested that he hoped that they read Hansard over breakfast each morning. Whether that is the case, I do not know, but I am sure that what the First Minister said yesterday will be fed back to officials shortly after this meeting ends, so perhaps we will receive something in the next few days.

3155. Members have no other issues to raise. I will assume that we agree that we are not going over the category 2 list issue by issue today.



# 1 December 2009

## Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Nigel Dodds  
 Mr Simon Hamilton  
 Mrs Carmel Hanna  
 Mr Alan McFarland

3156. **The Chairperson (Mr Spratt):** We will now discuss the devolution of policing and justice matters. I declare an interest as a member of the Northern Ireland Policing Board.
3157. **Mr Attwood:** I am a member of the Policing Board.
3158. **The Chairperson:** As usual, I will ask whether there has been any movement on the category 2 list of issues.
3159. **Mr Hamilton:** We have nothing further to report at this stage.
3160. **Mr McCartney:** We have nothing further to report.
3161. **Mr McFarland:** We have nothing further to report.
3162. **Mr Attwood:** We have nothing further to report.
3163. To return to the issue of the letter from the attorney general designate, is there any indication of whether he is inclined to appear before the Committee? If so, would he be able to come next Tuesday? I presume that he has no inclination to do so.
3164. **The Committee Clerk:** As I explained, I did not get to speak directly to John Larkin QC. As I understand it, a letter is on its way that will indicate that he is unlikely to be prepared to come before the Committee, at least until he has had received some response from the First Minister and the deputy First Minister to the paper that he submitted to their office. That is my understanding, but
- I did not hear that directly from John Larkin.
3165. **The Chairperson:** The source for that is the Committee Clerk's crystal ball. *[Laughter.]*
3166. **Mr Attwood:** The broader evidence suggests that the lack of a quick response indicated a lack of enthusiasm for the invitation. Regardless of the paper, there are elements of the attorney general's relationship with the Assembly that we need to get our heads around. Mr Larkin's paper was on the administration and architecture of the office, as well as the costings. Those matters are important and are of interest to us, but they are separate from other relevant matters. I do not think that it represents a good start when the person who is likely to get the post of attorney general does not make himself available to have a discussion about the post.
3167. **The Chairperson:** The First Minister and the deputy First Minister offered to come back before the Committee to discuss those matters.
3168. **Mr Attwood:** We should indicate to the attorney general designate that we have issues to discuss with him beyond any reply that he might receive from the Office of the First Minister and deputy First Minister (OFMDFM) on the contents of his paper.
3169. The post of attorney general is absolutely critical. It will be the interface between us and the Public Prosecution Service (PPS). One need only look at the history of the role and conduct of previous Attorneys General on the British side to realise how critical and important the job will be. Therefore, a conversation in the round will be important, as will the Committee's having an understanding of what Mr Larkin views his statutory function under the law to be.

3170. This may come as a surprise to the Committee, but, as you know, Chairperson, the report that Mr Larkin gave to the First Minister and the deputy First Minister was referred to in discussions on quarterly monitoring returns at last Wednesday's meeting of the Committee for the Office of the First Minister and deputy First Minister. Lo and behold, it appears that the budget for the attorney general's office will be £1.6 million a year, with initial costings of £500,000 to set it up. Some in-year provision will be made in the event that devolution of justice powers should happen. That is all fine and good, but we have not been told anything about what is in that document. Finance officials, acting on behalf of OFMDFM, appeared before that Committee to explain how money is getting managed in-year, in-house, for the purposes of the attorney general's office, yet we have been asking for a long time now for a bit of information and have not even got that. That does not seem to be a serious way in which to do business.
3171. **The Chairperson:** That reflects exactly what was said at the Committee for the Office of the First Minister and deputy First Minister.
3172. **Mr Hamilton:** I know that the position technically does not exist, as the person has not been appointed to the position yet. However, as Mr Attwood pointed out, much work is going on, and we know that the paper has been produced. Mr Larkin may feel that he is in some sort of limbo between being the likely nominee and the individual who holds the post, and it may be a problem to issue an invitation to him to come to the Committee to give evidence in the traditional manner. Therefore, a different format for giving evidence may be more helpful in allowing him to come and be a bit freer than he may be capable of being in a public format. If that were communicated to him, it might overcome some of the problems.
3173. **Mr Attwood:** I am prepared to facilitate whatever his issues may be in order to have the conversation. Therefore, I agree with Simon. If there are other ways to get to speak to Mr Larkin, we should pursue them. However, I do not think that is the issue, Simon.
3174. Mr Hamilton: I understand the issues that you are painting for us, Alex.
3175. **The Chairperson:** Can we wait to see the letter to which the Committee Clerk has referred? No doubt we will have it by next week, and we can have a conversation about it then. Unless you want to do something else, Mr Attwood?
3176. **Mr Attwood:** We may get a negative response because Mr Larkin has not received whatever from OFMDFM, although it is curious that OFMDFM is acting on the basis of that paper in respect of in-year monitoring returns and putting moneys into place, which are good things to do. It seems that that paper has some authority and has been accepted in some respects, if not fully.
3177. We should be saying that we want him to come. Can members imagine the situation? We could be facing the devolution of justice powers — I hope that it is soon — and none of the politicians in the Assembly has had a conversation with the attorney general designate apart from the First Minister and the deputy First Minister? Publicly and politically, that is not a credible place for us to be. We have not had a conversation with the person who is going to be the attorney general. That is not the right way of doing things. We should be saying to Mr Larkin, in a positive and encouraging manner, that we want to have a conversation with him.
3178. I will not table a proposal, because I accept, for one day, where my proposals go. However, it is not good that officials can report to a Committee about the contents of a paper, yet the political people on this Committee and in the broader Assembly do not know what is being talked about, because they have not seen the paper. I do not think that appropriate.
3179. It is appropriate for the officials to advise in the way that they did that money is to be put aside for the attorney

- general's office. However, it seems unbalanced for officials to speak to a paper and the Assembly and Executive Review Committee not to have sight of what is in that paper, despite its requests. That is not the right way to do business. Officials take forward some stuff, and politicians take forward other stuff. We are not in a position to do so, yet they are in a position to do so, and that is not a balanced way in which to make progress on the matter.
3180. We should say that to OFMDFM. I am not hopeful that the Committee will agree with me, but it is not a great position to be in. Officials know and make decisions and plans, following political direction, and are saying that the attorney general's office will cost £1.6 million a year to run, yet we do not know anything about those £1.6 million costs entail.
3181. The Chairperson: Are you suggesting that we write to OFMDFM on that point?
3182. Mr Attwood: We should write a gentle letter to the effect that we note that the Committee for the Office of the First Minister and deputy First Minister has been advised of some matters, as was right and proper. We are not in any dispute over what they have been advised on, but is it not appropriate that we should also be advised on those matters and any other relevant matters in the way in which we have asked?
3183. **The Chairperson:** To clarify, the issue arose came up in the monitoring round briefing that the Committee for the Office of the First Minister and deputy First Minister was given last Wednesday.
3184. **Mr McFarland:** It is unfortunate but not surprising, because this is the way in which things have operated — wrongly in our view. I support Simon's idea. Other Committees have operated in that way as well. Sometimes, for a variety of reasons, it is not appropriate to have someone appear officially before a Committee, but sometimes that Committee can meet such people in informal session.
3185. If there is any possibility of Mr Larkin's being willing to meet us informally over a cup of coffee, we can have some form of discussion. The situation may start to move quickly over the next while. We may be left with some fairly major gaps in work that we are supposed to have been doing but have not been able to do, so if we can somehow fill in those gaps, informally or however, we should take that opportunity.
3186. The Chairperson: I will ask the Committee Clerk to put feelers out. I am sure that we could arrange that in closed session.
3187. Are members agreed that a letter will be sent to the First Minister and the deputy First Minister that covers issues that were mentioned in the monitoring round meeting and that reflects the issues that Mr Attwood raised? We might then have an informal discussion with the attorney general designate if he is of a mind to do so.

**Members indicated assent.**



## 8 December 2009

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Attwood  
 Mr Dodds  
 Mr Hamilton  
 Mr Kennedy  
 Mr McFarland  
 Mr A Maskey  
 Mr O'Dowd

3188. **The Chairperson (Mr Spratt):** Incoming correspondence includes a letter from John Larkin QC, which was received after the last Tuesday's Committee meeting. In the letter, Mr Larkin declines the Committee's original invitation for a meeting. Discussions took place on that matter, which I ask the Committee Clerk to clarify.
3189. **The Committee Clerk:** Last week, the Committee received an indication that Mr Larkin was planning to write to decline the Committee's invitation for a meeting. I was asked to get in touch with him and I put to him a different proposition for a meeting in either an informal or closed session.
3190. Although I did not get to speak to John Larkin directly, I conveyed the message, which I understand he received, that the Committee would be willing to meet him in an informal or closed session. I said that the Committee was less interested in a discussion with him about the architecture of the attorney general's office, and was rather more interested in a discussion on the role of the attorney general and his or her relationship with the various elements of the justice sector, the justice Minister, the justice Committee and the Assembly. I also said that any discussion that the Committee might hold with Mr Larkin would be in parallel with its engagement with the First Minister and the deputy First Minister on the role of the attorney general, and the relationships that I have just mentioned. I received a further letter from Mr Larkin yesterday afternoon, which is now being distributed to members.
3191. **The Chairperson:** The letter simply reiterates the position that Mr Larkin set out in his original correspondence. Do members have any comments?
3192. **Mr Attwood:** The First Minister and deputy First Minister have not replied to the Committee's request to share the report.
3193. **The Chairperson:** They have not yet replied.
3194. **Mr Attwood:** When did we last ask them to share the report with us?
3195. **The Chairperson:** Last week.
3196. **The Committee Clerk:** The letter was sent last week.
3197. **Mr Attwood:** In the two or three weeks before that, was there any correspondence from them on the matter?
3198. **The Committee Clerk:** There was no explicit correspondence. There was a reference to it during a closed session in which they gave a commitment to come back to the Committee at some stage in the future to discuss the role of the attorney general and the category 2 list of issues. That was on 10 November 2009.
3199. **Mr Attwood:** I have two issues. John Larkin relies on what is or what is not transpiring in OFMDFM as one of the reasons why he cannot come before the Committee at present.
3200. That report has been with OFMDFM since September, so presumably it has been with them for three months or more. As we know from last week's meeting, the conclusions of that report have entered the financial planning process through OFMDFM in the quarterly returns, with a £1.6 million budget line and £500,000 set-up costs.



- I know that this issue is tangled up with all the other matters, but it seems to me that, without prejudice, OFMDFM should have been in a position to release the document.
3201. The document concerns the role of the office and the architecture around it, as far as I can conclude from what people have been saying. I do not understand why that document cannot be shared. Knowing what it says does not commit anyone to anything. We are being frustrated from doing our job. Whatever the politics may be in respect of the devolution of justice, we are being frustrated from making the appropriate arrangements, which is part of our mandate. I am exasperated. The document could have been released, subject to what I am about to say, without prejudice. We have a duty to try to move these matters forward.
3202. In respect of Mr Larkin's letter, we have to rely on what he says: that he finds it difficult to talk to the Committee in respect of the functions of the attorney general because those matters are all subject to the agreement of the First Minister and deputy First Minister. I do not see why the person who will become attorney general should not have a conversation with us as well. Whatever about the relationship of the report to OFMDFM, I do not understand why that conversation cannot be held with us as well. There may be areas that he must say are matters for future agreement, but having the conversation with him in respect of the relationships with PPS, the justice Minister and the Assembly seems to me to be sensible business for us. Some of those matters may be yet to be agreed, but giving his view, without committing anyone else to that view, and conversing about matters that might not be in the report anyway seems to be a small step in moving matters forward.
3203. **Mr McFarland:** I admire Alex. He keeps going down the same road and hoping that he will reach a different destination. We keep hoping that the situation will change and that everyone will become involved. However, the reality is that Sinn Féin and the DUP will discuss these matters with Mr Larkin, eventually, and then tell us what they have decided. After two years of pleading for them to involve everyone in this discussion we can hope for a different outcome, but my guess is that the Committee will not get any more indulgence than OFMDFM has shown until now. We must simply wait and see what they are going to do, however wrong that may be.
3204. **Mr Dodds:** The letter from John Larkin indicates that he is willing to brief the Committee. However, it is inevitable that, if he comes along without having had a response to some of his questions from the responsible Ministers, many of his answers will not be meaningful. He refers to a "meaningful" discussion. He could have a discussion with the Committee, but how meaningful it would be at this stage, I do not know.
3205. It is up to the Ministers in OFMDFM to decide their views, to make their decisions, and then to communicate that. That is the natural way of it. However, I assure Alan that all parties will be clearly involved in the decisions that have to be made. They will not be able to dodge that.
3206. **The Chairperson:** We have written to OFMDFM regarding the report. That happened only last week, and we have not received a reply yet. The letter probably only arrived a few days ago. However, it is with OFMDFM at the minute, and we await a reply. Are Members content to note that?
- Members indicated assent.**
3207. **The Chairperson:** We have received other correspondence, including a letter from Brendan Garland, the chief executive of the Bar Council, asking for a meeting. A letter of reply was sent on 26 October. Those letters obviously crossed paths. The Committee has declined that offer because it is not within our remit to discuss legal aid because it is not a devolved matter.
3208. **Mr McFarland:** Before you leave that matter, Chairman, can I confirm that the sequence of events is that he

wrote to us on 13 October, you replied on 26 October, he wrote again on 26 November, but we have not replied to that letter yet?

3209. **The Chairperson:** No, we have not. However, I have spoken to Brendan Garland to explain that a reply — one that he was not aware of — was sent in October. He now understands the position.
3210. **Mr McFarland:** I see — he did not receive the letter of 26 October.
3211. **The Chairperson:** That is correct. There is a letter from the First Minister and deputy First Minister to all MLAs, requesting nominations for the position of justice Minister. Are Members content to note that?
- Members indicated assent.**
3212. **The Chairperson:** There is a letter from the Secretary of State regarding Lord Ashdown's strategic review of parading. If there are no issues in relation to that letter, are members happy to note it?
- Members indicated assent.**
3213. **The Chairperson:** We move to the devolution of policing and justice. I declare an interest as a member of the Northern Ireland Policing Board.
3214. **Mr Attwood:** I am a member of the Policing Board.
3215. **Mr A Maskey:** I am a member of the Policing Board.
3216. **The Chairperson:** Before we move to the category 2 list, I ask members if there has been any movement on those matters.
3217. **Mr A Maskey:** Nothing further, Chairman.
3218. **Mr Hamilton:** Nothing further.
3219. **Mr McFarland:** Nothing further.
3220. **Mr Attwood:** In the letter from the Secretary of State, did he say that it was the intention of the British Government to fund the Ashdown proposals? He previously said that the British Government

have agreed to fund that, and that he believed that Ashdown would provide a steer on a way forward. However, I cannot recall whether that reference was in respect of the interim report or in respect of the final report. As we know from Lord Ashdown's letter of two weeks ago, there is now an agreed final report, which he hopes to make available in due course. I am just trying to reconcile the latest letter from the Secretary of State with the previous one.

3221. **The Committee Clerk:** I cannot answer that immediately; I will need to check that.
3222. **The Chairperson:** We will come back to that issue once the Committee Clerk has checked the relevant correspondence. We have moved to the category 2 list of issues.
3223. **Mr A Maskey:** Mr Attwood relied heavily on that letter during recent debates in the Assembly, so if he checked his remarks in the Hansard reports, he might find the answer.
3224. **Mr Attwood:** I know precisely what I said about the Ashdown review during the debates on the justice Bill. However, I am trying to determine whether the latest letter, which refers to seeking "widespread community support" for the Ashdown proposals in the event that he produces a final report, is consistent with the previous letter. That is a simple question.
3225. **The Committee Clerk:** There has been substantial correspondence, and I genuinely cannot recall, off the top of my head, whether that is the case. I will try to get a copy of the letter to which you are referring.
3226. **The Chairperson:** We will come back to that in due course.
3227. **Mr Attwood:** The penultimate paragraph of the Secretary of State's letter refers to seeing whether the Ashdown strategic review is a "long-term and sustainable" way of dealing with the parading disputes. That is the language that he uses.

3228. **The Chairperson:** We will come back to that. I think that we are only guessing at the moment.

3229. **The Committee Clerk:** There are letters dated 3 and 5 November, but I do not have all of that correspondence with me.

3230. **The Chairperson:** We will come back to that. I take it that no other members wish to raise any other issues about that letter — we had moved to the category 2 list of issues. Mr Attwood, do you wish to add anything on that matter?

3231. **Mr Attwood:** No; nothing further.

## 12 January 2010

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mr Danny Kennedy  
 Mr Alan McFarland  
 Mr Alex Maskey

3232. **The Chairperson (Mr Spratt):** We now move to devolution of policing and justice matters. Before going through the list of issues, I ask whether there has been any movement on parties' positions.
3233. **Mr Hamilton:** No.
3234. **Mr McFarland:** We have nothing further to add.
3235. **Mr Attwood:** I have nothing further to report.
3236. **Mr A Maskey:** We have nothing further to add.
3237. **The Chairperson:** That deals with the category two list of issues.
3238. We have outgoing correspondence and documentation on policing and justice matters. On 1 December 2009, the Committee sent a letter to the First Minister and deputy First Minister to remind them of their commitment to appear before the Committee to discuss the category two list of issues and the role of the attorney general. The Committee has not yet received a reply. We previously sent four letters regarding the role of the future attorney general and the report of John Larkin QC. Those letters were sent on 12 June 2009, 17 September 2009, 7 October 2009 and 24 November 2009. The Committee last sent a letter to the Secretary of State on 5 November 2009 to request an update on the position of the strategic review of parading in Northern Ireland. I assume that discussions are ongoing; that has

been indicated. Discussions took place yesterday, and, as far as I know, further discussions are taking place today.

3239. Committee members may wish to discuss some of the issues. Alternatively, they may wish to wait to see the possible outcome of discussions over the next few days. Are members happy to wait over the next few days?

**Members indicated assent.**





## 19 January 2010

### **Members present for all or part of the proceedings:**

Mr Jimmy Spratt (Chairperson)  
Mr Raymond McCartney (Deputy Chairperson)  
Mr Danny Kennedy  
Mr Alan McFarland  
Mr John O'Dowd

3240. **The Chairperson (Mr Spratt):** We now move to devolution of policing and justice matters, and the category 2 list of issues. As has been the case in recent weeks, I intend to ask members whether there has been any movement on those matters. I have not received any such indication.
3241. Before proceeding, I declare an interest as a member of the Northern Ireland Policing Board. No other Committee members who need to declare an interest are at the table. Only two parties are represented at the table at the moment. I have received no indication from the other two parties that there has been any change in their position. I ask members to clarify whether there has been any movement.
3242. **Mr McCartney:** We have no change to report.
3243. **Mr McFarland:** We have nothing to report.



## 26 January 2010

### **Members present for all or part of the proceedings:**

Mr Jimmy Spratt (Chairperson)  
Mr Raymond McCartney (Deputy Chairperson)  
Mr Simon Hamilton  
Mr Alan McFarland  
Mr John O'Dowd

3244. **The Chairperson (Mr Spratt):** We move to devolution of policing and justice matters, and the category 2 list of issues. I declare that I am a member of the Northern Ireland Policing Board. Before going any further, as is customary, I ask members whether there has been any movement on any of the issues.
3245. **Mr Hamilton:** No, Chairman.
3246. **Mr McFarland:** No, Chairman.
3247. **Mr McCartney:** Nothing further, Chairman.



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## 2 February 2010

**Members present for all or part of the proceedings:**

Mr Jimmy Spratt (Chairperson)  
Mr Raymond McCartney (Deputy Chairperson)  
Mr Alex Attwood  
Mr Simon Hamilton  
Mr Alan McFarland  
Mr Alex Maskey  
Mr John O'Dowd  
Mr Paisley Jnr

3248. **The Chairperson (Mr Spratt):** We move to devolution of policing and justice, and the category 2 list of issues. I declare that I am a member of the Northern Ireland Policing Board.

3249. **Mr Paisley Jnr:** I am a member of the Policing Board, Mr Chairman.

3250. **Mr Attwood:** I am a member of the Policing Board, Chairman.

3251. **Mr A Maskey:** I am a member of the Policing Board, Chairman.

3252. **The Chairperson:** Before we go into the substantive issues, I ask parties to indicate whether there has been any movement. *[Laughter.]*

3253. **Mr Hamilton:** No, Chairman.

3254. **Mr Paisley Jnr:** I cannot tell you.

3255. **Mr A Maskey:** No; not for the purposes of this meeting.

3256. **The Chairperson:** Mr Attwood? I know that you laughed, but is your answer no?

3257. **Mr Attwood:** It was a rhetorical question, Chairman, was it not?

3258. **The Chairperson:** OK. Thank you, Mr Attwood.

3259. **Mr Paisley Jnr:** What is happening, Alex? Alex Attwood, that is.

3260. **The Chairperson:** Make remarks through the Chair, please.

3261. **Mr Paisley Jnr:** Sorry, Mr Chairman.

3262. **The Chairperson:** OK. There is no further progress to report.

3263. **Mr Hamilton:** Not at this meeting, Mr Chairman.





## 9 February 2010

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mr Danny Kennedy  
 Mr Alex Maskey  
 Mr Alan McFarland  
 Mr Declan O'Loan  
 Mr Ian Paisley Jnr

3264. **The Chairperson (Mr Spratt):** We move to devolution of policing and justice matters. In light of the Hillsborough Castle Agreement and the outcome of discussions over the past weeks, we need to go through the category 2 list of issues, item by item. I declare that I am a member of the Northern Ireland Policing Board.
3265. **Mr Paisley Jnr:** I declare that I am a member of the Policing Board.
3266. **Mr O'Loan:** I am a member of Ballymena District Policing Partnership.
3267. **Mr A Maskey:** I am a member of the Policing Board.
3268. **The Chairperson:** It seems a long time since we went through the category 2 list of issues in detail. A number of issues are still to be resolved. The first is issue A, which concerns the role of the attorney general. Members will recall that a commitment was given by the First Minister and deputy First Minister towards the end of last year to appear before the Committee to discuss the role of the attorney general, after they had considered the paper in respect of John Larkin QC. Do members agree that we should write to the First Minister and deputy First Minister to ask them to come before the Committee at an early stage that is convenient to them over the next number of days or weeks? Given the timescales that have been laid out, we do not have a lot of time.

The indications are that that meeting will take place. I will have an opportunity to raise that matter in a question that I will put this afternoon in the House on the OFMDFM statement on the outcome of the Hillsborough talks.

3269. **Mr Paisley Jnr:** Securing an early and urgent meeting with the First Minister and deputy First Minister is the best way forward. Indeed, if they came to the Committee, they could deal with item A; item C, which concerns national security arrangements; item E, which is about finance; and item F. I would be interested to hear their position on those points, and on many of the points that will be raised today, to gain clarity, certainty and sign-off on a number of matters. I agree with any proposal to invite them to appear as a matter of urgency.
3270. **The Chairperson:** I am seeking consensus in the Committee. I intend to address each issue individually, and issue C is one for the Secretary of State. The Committee had decided that we need to call the Secretary of State about the memoranda of understanding (MOUs), the protocols, and so on. Therefore, I am quite happy to include those two issues at this point because that is necessary to progress matters. Are members content that we issue invitations to the First Minister, the deputy First Minister and the Secretary of State today to ask them to meet us to discuss national security and the Serious Organised Crime Agency (SOCA) at their earliest convenience?

### Members indicated assent.

3271. **The Chairperson:** We move to issue B, which concerns appointments to the judiciary. The Committee agreed previously that it was content with the existing and planned legislative arrangements for appointments to the judiciary. My view is that we had already cleared that issue and agreed that the matter will remain with the Judicial

Appointments Commission (JAC). Do members agree?

**Members indicated assent.**

3272. **The Chairperson:** We need formal agreement to call the Secretary of State to the Committee to deal with issue C on national security and SOCA. Are members agreed?

**Members indicated assent.**

3273. **Mr McFarland:** Can we try to get the MOUs before the Secretary of State visits?

3274. **The Chairperson:** We intend to do that. My recollection is that there were some modifications to one or two MOUs. We will endeavour to get those pretty quickly and distribute them to members as soon as they arrive at the Clerk's office. The MOU on national security has not been forthcoming. We need to push that one.

3275. **The Committee Clerk:** Altogether, there are seven documents: the memorandum on national security; the intergovernmental agreement on co-operation on criminal justice matters; a concordat on the independence of the judiciary; the protocol on policing architecture; the intergovernmental agreement on policing co-operation; a concordat on the independence of the Public Prosecution Service (PPS); and a memorandum of understanding on sex offenders. Some of those drafts have been shared and, in one case, a revised draft has been submitted to the Committee. The Committee decided that it might want to talk to the Secretary of State about all those documents at a meeting that it will confirm soon. I will request that all drafts are provided in advance of the meeting.

3276. **The Chairperson:** Issue D concerns North/South policing and justice arrangements, and the possibility of a North/South Ministerial Council justice sector. I remind members that, on 8 December 2009, NIO officials briefed the Committee on the updated intergovernmental agreement on co-operation on criminal justice matters. On 15 December, officials briefed the Committee on the concordat between

HM Government and the Northern Ireland Executive on the independence of the judiciary and on the protocol on policing architecture.

3277. On 15 January, the Committee received a briefing from officials on the intergovernmental agreement on police co-operation, the concordat on the independence of the PPS, and a further briefing on the joint working groups on criminal justice. On 26 January, the Committee considered a revised draft of the concordat on the independence of the judiciary.

3278. Do members agree that, in keeping with the proposed handling of the agreement on national security, we should write to the Secretary of State to ask him to provide the concordats, including the one on national security?

3279. **Mr Paisley Jnr:** I state for the record that my party is opposed to a North/South Ministerial Council justice sector. That has been stated on numerous occasions, but I repeat it for the sake of clarity.

3280. **Mr A Maskey:** I do not think that we have agreement on that at this stage. The matter is still to be discussed. Our view is that there needs to be North/South justice sector.

3281. **Mr Attwood:** I formally proposed in November that we recommend to the Assembly the establishment of a North/South Ministerial Council justice sector at the time of devolution. That continues to be our view. Clearly, there is another process under way in respect of the working group. We proposed our support for the establishment of a NSMC justice sector at Hillsborough.

3282. I hear what Ian is saying, but given that there was no issue with the North/South justice agreement being amended to become a Belfast/Dublin arrangement, it would seem to me natural that we move to the point of having a justice sector in the North/South Ministerial Council.

3283. **The Chairperson:** We need to discuss progress on the report before the end

- of the meeting, given the signposting that is now in place. It may well be that we will have to report to the Assembly that we cannot come to a consensus. There may be a divide on the issue, and it may need to be discussed elsewhere. I remind the Committee that our time is reasonably short, given some of the calendar signposting that is now in place.
3284. There is no consensus that aspect of issue D at the moment, and no one has indicated that they have any other comments on that issue.
3285. We move to issue E, which relates to finance. We have done a lot of work on this issue. The one issue that is outstanding and remains a question that has been asked is for the NIO to indicate what part of the block budget for policing and justice would be devolved and what part would remain for the issues that are not being devolved as reserved matters. That question has to be asked of the Secretary of State. I expect that, when he comes before the Committee, he and his officials will be able to give us some indication of that.
3286. **Mr Paisley Jnr:** I welcome the work that has been done on the budget. This Committee was the frontiersman in making sure that there was a proper economic settlement. I think that we should be very pleased with those efforts and foundation work that we did. However, it would be useful if we could get some clarification on particular aspects of that.
3287. If the Secretary of State is coming, I would like him to indicate to us how the £20 million that is set aside for the part-time reservists will be paid, and when it will start to be paid out. There seems to be a proposal that that money is available, but there is no clarity on the mechanism. I would like clarity about how and when the mechanism starts.
3288. **The Chairperson:** Are there any other comments? I must leave the room to speak to somebody for a minute. If there are no other issues on that subject, I propose to move on to issue F.
- (The Deputy Chairperson [Mr McCartney] in the Chair)**
3289. **The Deputy Chairperson:** Issue F asks:
- “What, if any, consideration should there be of the Ashdown Report on Parading, and is there a need for further clarity of the powers to be devolved, and, if so, should they include matters relating to the Public Processions (Northern Ireland) Act 1989, flags and symbols and recruitment to the PSNI?”*
3290. Do members have any comments?
3291. **Mr Paisley Jnr:** I understand that a meeting on that issue will proceed today in line with the Hillsborough arrangements. I welcome that development and I hope that the working group dealing with the issue concludes soon. I do not know if we can add anything to our most recent stated position, which, I think, was in December 2009.
3292. **Mr McFarland:** I think that the business of dealing with the parading issue is ongoing. The Ulster Unionist Party sees no need to reopen the issue of flags and emblems, which was settled in the first Assembly. The PSNI's 50:50 recruitment policy has been extended for a final year, after which it should end.
3293. **Mr A Maskey:** At this moment, as far as Sinn Féin is concerned, those matters are being taken forward or have been dealt with.
3294. **Mr Attwood:** My comments are by way of observations, because, clearly, the Committee will take a majority view about how this matter is to be handled. The Committee Clerk may be able to advise me, but I cannot remember when we agreed on the category 2 list of issues. Was that list made last year?
3295. **The Committee Clerk:** The final agreement would have been when the Committee completed its report on the category 1 list of issues.
3296. **Mr Attwood:** That was in January last year.
3297. **The Committee Clerk:** Yes.
3298. **Mr Attwood:** For over a year, this Assembly Committee, without any

- objections from any of its members, has agreed that we, as a fully functioning Committee, should be looking at the issue of parading and the Ashdown report. We have had correspondence with Lord Ashdown, and so on, but the authority to consider the matter rested with this Committee. Last week, that authority was taken elsewhere in a move that is being publicly justified. Therefore, there is a tension between the Committee taking forward issues around parading, and other people deciding that it falls to them to take those issues on. I find a tension in that approach to managing the parading issue.
3299. Secondly, I want to make it very clear that paragraph 4 of the section on parading in the Hillsborough Castle Agreement states that the Ashdown report is back on the table. I think that paragraph 4 of section 2 refers to “building on” the interim recommendations of the Ashdown strategic review of parading. We are very anxious about that, because, as I have said in this Committee, and as my party has said elsewhere, we believe that Ashdown’s model is deeply flawed in that it escalates responsibility for parading disputes from a local council level to a high political level. That is folly.
3300. We submitted a paper at the Hillsborough discussions on how we thought that issues around parading could be best managed, taken forward and developed. Throughout all the reviews on parading — by Ashdown, Mandelson, Quigley and another governmental review that people do not remember much about — we have always argued that there are ways in which the Parades Commission’s constitution can be developed and enhanced. However, it is the Parades Commission that gets developed and enhanced. In particular, its mediation efforts can be made more specialised and upgraded. We consider that the way to go, but it is quite clear that that is noted, but ignored.
3301. Given that we will not get an opportunity to have an input because of yesterday’s announcement, we want to make it very clear that the essential architecture around parading and the Parades Commission must be retained because, despite making a number of bad decisions, it has made many good ones. We are prepared to publish our proposals on how to upgrade and enhance the Parades Commission. We are also prepared to outline how we think mediation can be specialised and developed. However, those proposals are in the context of the architecture of the Parades Commission — which has, by and large, served the North well — remaining in place.
3302. **Mr Paisley Jnr:** It is all very well for members to give a history on how the Committee has handled things, but a flawed history should not be allowed to sit on the record unchallenged. Someone once said that victors, not the vanquished, should write history, because otherwise there will be an inaccurate spin put on events.
3303. Since October last year, Lord Ashdown has been unavailable to meet the Committee, despite efforts by the Committee to arrange a meeting. To say that nothing happened between January 2009 and October 2009 is unrealistic, given that events happened both on the ground and behind the scenes. Members of the Committee were involved in those events. One cannot reach the conclusion that the Ashdown model is deeply flawed when it has not been published and is not available for members to see, other than in draft form.
3304. There has to be a realisation that, when representatives of almost 60% of elected representatives, who are from the majority section of the community, reject the current Parades Commission model, jumping up and down and protesting that you want to keep it because it works bears no semblance to what is happening on the ground and is not a sustainable position.
3305. It is wrong for any member of the Committee to claim that he or she does not have any input into the discussion. We are having a discussion today, our table of events and our calendar show



- that there have been numerous discussions on parades and that Mr Attwood made contributions at meetings of the Committee and, importantly, in discussions with the Governments of the United Kingdom and the Republic of Ireland, and with other parties. For him to say that he has had no input is false, and, although he is entitled to take that position, it is flawed, inaccurate and wrong.
3306. **Mr McFarland:** It is unfair for Alex Attwood to say that the Committee sat back and did nothing; we tried on several occasions to get Lord Ashdown to meet with us. It became clear, from comments made elsewhere, that there was no agreement, even on a draft report. Members of the review group chaired by Ashdown made it clear that they were not even signing up to the draft report. Therefore, there is no point in us getting excited when Lord Ashdown was not prepared to discuss the proposals with us, and his review group would not stand over the draft report that it had produced. Therefore, it is unfair for Alex Attwood to say that we all sat back and did nothing for a year.
3307. **Mr A Maskey:** It is very unfair to sit and make statements that are factually incorrect. The Committee does not have a remit to solve the issue of parades, and it never agreed to resolve the issue of parades. That must be put on record. If people want to start putting things on record, the facts need to be put on the record.
3308. This morning, we are looking at what, if any, consideration the Committee can give to the issue of parading. People's views on an Ashdown report are neither here nor there. I want to make it clear that, at no time, did the Committee agree that its job was to solve the issue of parading. People should not be telling lies, if that is what they are trying to do. Everybody will have an input into the debate. As far as I am concerned, that matter has been taken forward, and I am happy to leave it sitting as it is. As time goes on, Members will have all the opportunities that they need to have input on the debate.
3309. **Mr Attwood:** On one level, lies are unparliamentary, but I will not even bother asking for that sort of comment to be withdrawn. I never said that the Committee had to resolve the issue of parades, which is the comment that Alex just made. What I said was that over the past year we, the Committee, put down — in the terms that it is put down there — any consideration that there has been of the Ashdown report on parading without anybody objecting. I also said that this Committee is made up of four parties from the Assembly to look at the Ashdown report on parading, and that those parties were taking that forward in an agreed way.
3310. Now, what arose from last Friday — this is where Ian is wrong — was that in taking that forward, two of those parties have said that a group of six will look at the issue of parading and building on the interim recommendations of the strategic review. Therefore, whatever Ashdown has or has not got in his head about his final report — Ian is right that nobody has seen that, although he seemed to indicate that perhaps somebody has seen it — my point was that the conversation that is beginning today is based around the interim report. We are perfectly entitled to comment on the interim report, and it is necessary to comment on that given its seriously flawed nature. It is not the case that Ashdown is in never-never land. In today's papers, members can again read what Paul Goggins wrote to the Committee about the interim report:
- "The Government is committed to the Strategic Review of Parading and to funding the proposals which it is hoped will ensure a long-term sustainable solution to parading on Northern Ireland."*
3311. They clearly had some sense of what was happening when they wrote that letter in, I think, August 2009. They clearly had some sense of what was emerging and what the authority of the issue was. I am simply pointing out that we had a method of dealing with that matter, which was not to resolve the issue of parading, but to consider the issue of the Ashdown report. That

has now been replaced by a process involving two parties that are considering the issue of parading and are building on the interim recommendations. I think that there was a better way to handle all of that, but other people have decided otherwise. I again point to the comments that I made about how the parading architecture can be upgraded but not dumbed down. As for Ian's opening comments about the victors and the vanquished —

3312. **The Deputy Chairperson:** Issue F states:

*“What, if any, consideration should there be of the Ashdown Report on Parading”.*

3313. **Mr Paisley Jnr:** I do not care about other members' opinions, positions and analysis of Northern Ireland and where it is going; they are entitled to those positions. However, what I do care about is a member sitting there in splendid isolation and impugning the reputation of the entire Committee, of which he is a blinking part. You said that the Committee has done nothing, but what did you do for the past year and four months? I recall that you have spoken twice on the subject during the entire history of the Committee, and that on those occasions you spoke passively and passed over the issue. You sit there and impugn the reputations of everyone here by saying that we are doing nothing, but questions are being asked of, and fingers are being pointed at, you, Mr Attwood.

3314. Through you, Mr Deputy Chairman, why did he not raise the issue every week? If it is so central to him and so important to the Committee, why did he not jump and down about that? Why was he not the dynamo in here driving the issue and bringing that forward. Let us be clear about what is happening here. As an observer, I, honestly, do not really mind if Alex wants to have a pop at Sinn Féin and slag it off for the Hillsborough agreement. Go ahead, if that is what you want to do, but do not drag that into the Committee and waste our time when there are valuable issues that we must deal with. That is all that we are seeing today; this is just a spectacle. The

issue of parades is on the agenda only because other people put it there. It was not put on the agenda by the SDLP. To be blunt: it was not put on the agenda by Sinn Féin. We brought it to the table. It is an issue that is important to our community, and although the fallout of the issue is important to the entirety of Northern Ireland, we are quite happy to say that we have been driving the issue and doing so deliberately.

3315. For a member to sit here and impugn everyone as if they have done nothing, and he sits there in splendid isolation, really takes the biscuit. I think that members are right to have their backs up about the arrogance and the attitude of a member to impugn the entire drive of this Committee because he has failed and now wants to make some cheap political dig at another political party. Well, make those digs outside in the Great Hall.

3316. **Mr Attwood:** I think that the Hansard report will confirm that I never once impugned the work of the Committee. I said that the Committee had identified a stream of work, and that having agreed what we would be doing, and had the authority from the Assembly to do so, that there was now another process meaning that the role of the Committee now seemed to have been replaced by another process. I never impugned any member or the Committee itself. The Hansard report will confirm that.

3317. The Hansard reports of this Committee's meetings detail the number of times that I proposed that we contact Lord Ashdown in respect of this matter, asking him to come here to take forward item F in the category 2 list of issues. That is on public record. I am prepared to stand over what the public record is and what the Hansard report will be of what I said earlier. I think that that will deal with the issues that Ian has raised.

3318. **Mr McFarland:** A number of issues were taken away from the Committee, including the financial issue. I suggest that colleagues agree to move on. Everyone has said their piece on that.

3319. **Mr A Maskey:** This Committee does not have the responsibility to resolve all those problems. I want that to be made clear. We cannot solve all those problems. We are trying to map out a way forward and trying to understand what the issues are, even the financial issue. How can this Committee resolve that issue? We made sure that it was on the agenda and we got as much accurate information as we possibly could. The report will be tabled. We cannot solve those issues. We do not have a budget and we are not going to be responsible for delivering a budget or for holding anyone to account for how they spend the budget.
3320. It is unfortunate that people are introducing party politics, because there is important work for this Committee to consider. Yes, we could be doing a lot more, but that is the nature of the politics that we are involved in. Now that we are in a position to move forward, our job is to expedite the work of this Committee as soon as we can. We should be doing that on the basis of honesty.
3321. I do not want to use unparliamentary language, but I am sick of listening to people trying to make points when they are saying things that are clearly not true. The Committee never agreed that we were going to solve the issue of parading, and we never agreed that we were going to go through the entrails of the Ashdown report. It is quite simple what we agree to do: to consider whether there was anything we want to do, which is a hell of a lot different from what Alex Attwood was suggesting. People need to be a bit more honest and get on with the work that we are supposed to be doing.
- (The Chairperson [Mr Spratt] in the Chair)**
3322. **The Chairperson:** That was a good time to leave the room.
3323. We will move to issue G, which is about to which Department the Public Prosecution Service should be attached to for funding purposes. Do members have any views?
3324. **Mr Hamilton:** As I said before, we have nothing to add at this stage. More work needs to be done on that issue.
3325. **The Chairperson:** Are we agreed that more work needs to be done reasonably quickly on that issue?
3326. **Mr McCartney:** Yes.
3327. **Mr Attwood:** I suggest that a very short paper, which has probably already been prepared by the Committee Clerk, should be tabled at the next meeting outlining three options on which Department the PPS should be attached to. I think that the DUP mentioned OFMDFM as an alternative to the Department of Finance and Personnel (DFP), so it would be a very short paper. I do not know if there will be consensus on that issue. There may be some level of agreement on that issue somewhere in the room.
3328. **The Chairperson:** All parties should have some discussion over the coming days, and before our meeting next week, to try to resolve some of the issues. Again, I go back to the signposting and where we are with getting a report to the Assembly. Has such a paper been prepared?
3329. **The Committee Clerk:** Mr Attwood summarised it in that there was an option of which of three Departments it should be attached to, and views were expressed by some of the witnesses who came before the Committee. I am happy to draw that together in a short paper.
3330. **The Chairperson:** If members could get that paper as soon as possible, it may be helpful in whatever discussions are ongoing.
3331. Issue H is about the independence and accountability of the PPS. That was pretty well covered in the Hillsborough agreement.
3332. **Mr McFarland:** Is there an MOU for that issue? Was that not one of the matters that we covered in detail?

3333. **The Chairperson:** Yes. Are members satisfied?
3334. **Mr Hamilton:** Yes.
3335. **Mr A Maskey:** Yes.
3336. **The Chairperson:** Issue I is about the advisory role in relation to the appointment of the Police Ombudsman.
3337. **Mr Paisley Jnr:** Our position has been reasonably uncontroversial. An ombudsman, by definition, is an officer of Parliament who is appointed by Parliament. That independence and oversight should remain in the independence of the office and from this place in respect of how the person is appointed. Our general position has been that that should remain with Westminster, probably through the Northern Ireland Office. It is a general rule that ombudsmen should be appointed from that place as opposed to being appointed here.
3338. **Mr McFarland:** Eventually, it may be that it is repatriated. However, given its history, it would be quite useful if we left it with the Secretary of State until things settle a bit more.
3339. **Mr A Maskey:** That is not our view. We have taken the view that that appointment could be made by OFMDFM. I do not think that we will get a consensus on that here today.
3340. **Mr Attwood:** We definitely think that the power should be devolved. If her appointment falls to Westminster, it will look very awkward and there will be all sorts of tensions around the fact that the Police Ombudsman investigates complaints against the police and has a relationship with the Policing Board, and no doubt would come before an Assembly Committee one way or the other. It would only be a bit of devolution on the policing side, which would look messy.
3341. **Mr McFarland:** Alex, are you stuck in the past?
3342. **The Chairperson:** Please speak through the Chair.
3343. **Mr Paisley Jnr:** Al Hutchinson is not a “her”.
3344. **Mr McFarland:** He said “her appointment”.
3345. **Mr Attwood:** Sorry.
3346. **Mr Paisley Jnr:** Halcyon days.
3347. **Mr Attwood:** It seems inconsistent to devolve all policing powers, apart from terrorist and SOCA matters, and to have a person appointed to a public office in the North, who is responsible for complaints against the Police Service, but with his or her appointment still falling to Westminster. I do not think that that is the better outcome. That looks like a messy outcome. We are prepared to be convinced about whether the appointment should be made by OFMDFM or another Department. Our preference is that it is OFMDFM, but I cannot recall fully what Patten said about that.
3348. **Mr Paisley Jnr:** That is not a die-in-a-ditch issue. There is talk of tensions; we need to chill a little. I do not think that the tension that Mr Attwood sees exists; it certainly does not exist at present. There is a huge degree of independence in police accountability in Northern Ireland through the Policing Board. On a frequent basis, the Police Ombudsman, and his predecessor, willingly came to the Policing Board. Therefore, I do not see any reluctance or a guard being put up.
3349. There is merit in having a completely independent authority as the appointment body. As I said, it is not a die-in-a-ditch issue, but in the interests of independence, which the concept of an ombudsman embodies, it would be best for Westminster, or, in this instance, by the Northern Ireland Office, to retain the power of appointment.
3350. **The Chairperson:** Given that it is not a die-in-a-ditch issue, I urge parties to have some discussion about it in the coming week and come to the next meeting with some views. It may well be that there will be no consensus in the Committee on the issue, which is what

- we will ultimately have to report to the Assembly.
3351. Issue J is about the procedures and protocols between the justice Minister, an Assembly Committee and any newly established Department and its associated agencies. Some of those issues have been dealt with in the Hillsborough agreement.
3352. **Mr Paisley Jnr:** A justice Committee would be established with the same statutory powers —
3353. **The Chairperson:** Sorry, I should have said that issue K has been dealt with, but issue J has not been fully dealt with.
3354. **Mr McFarland:** Surely, issue J is subject to the detailed memorandum that we had some sight of. That went back to the NIO, which changed bits of it. It has gone to the Policing Board. Have we seen it?
3355. **The Chairperson:** It is a different issue.
3356. **Mr Paisley Jnr:** It is about where parties stand.
3357. **The Chairperson:** Yes, it is.
3358. **Mr McFarland:** Is it not to do with the procedures between the Department, the Minister, the Committee and the Policing Board, and so on?
3359. **The Chairperson:** No. Some of the procedures that we are talking about are matters for the Committee on Procedures, of which Raymond McCartney is a member. Issue J is about protocols and procedures in place in the Assembly for a justice Committee and its relationships.
3360. **Mr Paisley Jnr:** We previously declared interests as members of the Policing Board. There is a danger of creating problems that do not exist. I do not see any of the work that we have done altering the status, standing or activities of the Northern Ireland Policing Board. The Policing Board plays an obvious and distinct role and will complement what will occur in the Assembly, providing that all goes well, if there is a justice Committee holding a Minister to account.
3361. We should work towards the view that the issue is about services complementing each other as opposed to competing with each other and trying to take things from one another. Although people are always precious about their territory, I do not see anything in the papers in this place or in the Policing Board that contradict the role of the Policing Board.
3362. **The Chairperson:** I am a bit reluctant to get into a debate on the Policing Board, which is a totally different issue.
3363. I remind members that, on 3 February 2009, the Committee provisionally agreed that the procedures and protocols between the Minister, an Assembly Committee and any newly established Department and its associated agencies would be the same as those that exist for other Ministers. That is our position. The protocols and procedures are for the Committee on Procedures to put into practice. I imagine that that would not be different for any other Department.
3364. **Mr McFarland:** I agree with you, and, on reflection, I think that we have already said that. The key is that if there is a timescale for the devolution of policing, we must ensure that the Committee on Procedures is aware that it will have to do some work on that. I suspect that that will be quite simple because that timescale is similar to other ones, but that Committee needs to be made aware of it. No doubt Raymond will inform the Committee of that.
3365. **Mr McCartney:** Work is already being done on Standing Orders.
3366. **The Chairperson:** Are members agreed that that issue is basically dealt with and that the Committee on Procedures will deal with those issues, which goes back to our agreement of 3 February 2009?
3367. **Mr Paisley Jnr:** Agreed.



3368. **Mr Attwood:** The issue is slightly broader here than it is in the UK. Is the NIO going to come back to the issue of the tripartite relationship?
3369. **The Chairperson:** That is one of the issues.
3370. **Mr Attwood:** Has that already been agreed?
3371. **The Chairperson:** The Secretary of State is coming to talk about all the protocols.
3372. **Mr Attwood:** Has the NIO formally shared the amended protocol?
3373. **The Chairperson:** No.
3374. **Mr Attwood:** I find it curious that the Policing Board gets sight of an amended protocol and is asked to sign off on that within a matter of days, and yet, the Assembly Committee is not given sight of that. It has now been seven weeks since the NIO was here with that first protocol.
3375. **The Chairperson:** That is a valid point, and you have made it on a number of occasions. You need to raise that issue with the Department and the Secretary of State. We are happy to flag that up in the letter that we are sending. It is an issue, because those of us who sit on the board know that that other protocol exists.
3376. **Mr Paisley Jnr:** It is only fair to put on record that the difference between the current protocols and proposed new protocols is as thin as a cigarette paper. The new protocols will tidy up rather than change or alter the calibration of the current relationships. It is a tidying-up exercise.
3377. **The Chairperson:** There were some issues with some of the protocols that we discussed in closed session, and I think that it is fair to say that we were less than happy. Dust had been blown off those protocols, and they were brought here without any basic amendment. We have made our views known on that, and I will take it no further at this point.
3378. **Mr Attwood:** I wish to confirm that we do not agree with Ian's assessment that difference between the current and proposed amendments on the police architectural protocols is as thin as a cigarette paper. Substantial changes — way beyond what was set out in the original protocol, which, in our view, should have been consistent with Patten — have been made to role of the Assembly Committee and the responsibilities of the Minister.
3379. **The Chairperson:** Issue K deals with the Minister's position in, and relationship with, the Executive. I think that that has been fully covered in the Hillsborough agreement. Are we all agreed on that?
3380. **Mr McFarland:** We do not necessarily agree with that, but it is in the Hillsborough agreement.
3381. **The Chairperson:** You do not necessarily disagree with it, though. Is that correct?
3382. **Mr McFarland:** I am just saying that we are still examining the famous Hillsborough agreement.
3383. **The Chairperson:** It is pretty straightforward; basically, a Minister of justice will have the same powers, except for those on quasi-judicial issues, as other Ministers.
3384. **Mr Attwood:** I recognise that my next point is new territory and that it is, therefore, beyond our current mandate, but I just wish to flag it up. Subject to what the national security protocol might say, I have a sense that it will deal with some issues but that it might not necessarily deal with the relationship between the PPS and the British Attorney General and whether what happens in that relationship should be brought to the attention of the Minister of justice here. We will have this odd situation in which the director in Belfast will look to here for advice on some matters but look to London for advice on others. I suspect that the national security protocol will not deal with that fully. If that is the case, we will need to consider at some future date — although it is not part of our mandate, and, in any case, time is running out —

whether something could be put in place to manage the relationship among the PPS, the Advocate General in London and the institutions here. I flag that up because it will become an issue sooner or later.

3385. **The Chairperson:** It is an issue that we can raise with the appropriate Committees, or whatever, in future. It could also be raised with the Secretary of State.

3386. Are members happy that issue K has been dealt with?

**Members indicated assent.**

3387. **The Chairperson:** Let us move to the forward work programme. We need to discuss a preferred date for publishing the Committee's report, bearing in mind the need to schedule meetings with the Secretary of State and the First Minister and deputy First Minister. We need to schedule meetings to reach agreement on outstanding issues, but there may not be agreement; it may be that there is no consensus and we may have to report to the Assembly on that basis. We also need meetings to consider drafts and a final version of the report.

3388. My view, which I have discussed already with the Committee Clerk and Raymond, is that we may have to meet over the next two or three weeks on a number of occasions. My understanding is that we need to have published a finalised report by about 23 February 2010. Is that the correct date?

3389. **The Committee Clerk:** There is no imperative for the Committee to report by a particular date. However, if we look at some of the dates that are listed in the Agreement at Hillsborough Castle, two are obvious and key. The first is the 9 March 2010, when there will be the "resolution" on the request for powers to be transferred, which will require a cross-community vote. The other key date is 12 April 2010, which is the indicative date for the devolution of the powers.

3390. It strikes me that if the Committee is keen to publish a report, it could usefully do that before 12 April 2010. Whether

it would be capable of achieving the publication of the report before 9 March 2010 is a matter for the Committee to decide, given that there are issues that have still not been resolved.

3391. **Mr McFarland:** It strikes me that, on 9 March 2010, the Assembly is being asked to agree a fairly major step forward. Colleagues would find it difficult to understand why all the information that may influence their decision was not available to them at the time at which they took that decision. They will be aware of most of the matters, such as the finance, because it is already in the public domain. However, if the Committee has done work, it seems sensible to put that in front of colleagues before they are all required to make a decision. It is unlikely to make any difference to their decision, but it would be slightly strange if we produced facts afterwards that technically could have changed somebody's mind or attitude.

3392. **Mr A Maskey:** I agree with the Chairman's assessment: we should plan and be prepared to meet as and when we can to expedite the Committee's work, because that is what we are about. We hope that we can do it fairly soon and work to that end.

3393. **The Chairperson:** A number of meetings will probably be needed. Through no fault of our own, our progress has been slowed up by various issues along the way. Thankfully, however, we are now at the end or are moving towards a conclusion. It will mean a bit of extra work, and I would appreciate it if members of the Committee could prepare for an extra few meetings. The Committee Clerk and the Committee staff have been preparing the report. As members know, it is pretty well prepared at this point. We have cleared a number of issues this morning. There are other issues that we can hopefully have some clarity on by the next meeting, and which then can be added to the paper.

3394. We are coming to the crunch time. If we are not going to obtain consensus on an issue within the next week, let us

- say so and report that to the Assembly. Members have expressed a view that some of what was discussed are not “die-in-a-ditch issues”. Remember that all of the issues in front of us came from party positions. Four parties made their positions clear in letters at the beginning of this process. We have moved on now. I think that the report will be printed around 23 February 2010.
3395. **The Committee Clerk:** I will talk the Committee through the implications. The Committee has agreed to meet the Secretary of State and the First Minister and deputy First Minister. That needs to be fitted in before the Committee could consider final drafts of any report. There is an issue of timing around those two meetings.
3396. The Chairperson has encouraged parties to talk to each other in the coming week on at least 24 two issues, with a view to coming to some conclusion, whether consensual or otherwise, for the meeting next week. I can have a draft of the report ready for the week beginning the 22 February, but that will take absolutely no account of what the Secretary of State or the First Minister and deputy First Minister will have said to the Committee, had those meetings not taken place at that stage.
3397. **The Chairperson:** You outlined what I have urged members to do. I also urge the First Minister and deputy First Minister to meet us at their earliest possible convenience. I am sure that what has been said here this morning will not go unheard. Those meetings may well have to take place on a date outside one of our Tuesday meetings. We are quite happy to have a meeting on a date that suits their diaries, and the diary of the Secretary of State, because we appreciate that they are busy people. However, we urge that they meet us within days so that we can get some conclusion on the report and bring it to the Assembly.
3398. Is it a possibility that we could table the report for discussion on the morning of 9 March 2010 if the announcement or the other process was scheduled in, because Members would have a copy of the report three or four days beforehand, which picks up on Alan’s point.
3399. **The Committee Clerk:** If the purpose of the report was to inform the debate on the “resolution”, convention would suggest that the report would need to be published either on Wednesday 3 March 2010 or Thursday 4 March 2010 to give Members time to look at it in advance of the debate on Tuesday 9 March 2010. In counting back from that, Committee members would have to agree the terms of a final report and order it to be printed in the week beginning 22 February 2010, which is less than two weeks away. The next question is whether the Committee is seeking to schedule the meetings with the Secretary of State and the First Minister and deputy First Minister next Tuesday or on another date next week.
3400. **Mr McFarland:** The Chairperson’s idea is the best. There is a roll on this now; everyone understands the urgency and it strikes me that as soon as the Secretary of State can see us, and as soon as the First Minister and deputy First Minister can see us, we should see them. That then gets the MOUs out of the way, and that will presumably clear a bit of extra time for the Committee Clerk to do what is required.
3401. My sense is that people will be quite keen. Either we can sort the other issues out in the next day or two or we cannot. It does not seem to me to be insoluble. We need to get a move on.
3402. **The Chairperson:** We have probably progressed more in this meeting than any other meeting — for whatever reason — and I will not suggest why. I thank members for their constructive attitudes in taking matters forward this morning. Our next meeting is scheduled for next Tuesday, but members may be called for meetings before then. I would appreciate it if members could try to facilitate the Committee Clerk and Committee staff as much as possible if we can indeed get the First Minister and the deputy First Minister and the Secretary of State to attend.

# 18 February 2010

## Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Simon Hamilton  
 Mr Danny Kennedy  
 Mr Alex Maskey

## Witnesses:

Mr Shaun Woodward *The Secretary of State  
for Northern Ireland*

Mr Anthony Harbinson *Northern Ireland  
Office*

Ms Hilary Jackson

Mr Gareth Johnston

3403. **The Chairperson (Mr Spratt):** Good morning, Secretary of State. I ask members to declare any interests. I am a member of the Northern Ireland Policing Board.
3404. **Mr A Maskey:** I am a member of the Policing Board.
3405. **Mr Attwood:** I am a member of the Policing Board.
3406. **The Chairperson:** Thank you for that.
3407. In light of the Hillsborough Castle Agreement, the Committee decided that it wanted to publish its report in time to inform the debate on 9 March. We are grateful to you, Secretary of State, and to your officials for coming along this morning. I know that your flight was delayed and that you are now working to a tight schedule. We will do our best to assist you in any way possible.
3408. The Secretary of State is here to speak about the agreements, the concordats, the protocols and the memoranda of understanding relating to the devolution of policing and justice matters. As I normally do, I intend to allow each member of the Committee to ask a question. Members may ask one question initially, and if the Secretary

of State has additional time, I will allow members to come in on a party basis.

3409. Without further ado, I hand over to the Secretary of State to make an opening comment, after which we will ask questions.
3410. **The Secretary of State for Northern Ireland (Mr Shaun Woodward):** Thank you very much. My colleagues are Hilary Jackson, who is director general for politics at the Northern Ireland Office; Anthony Harbinson, who is director of resources; and Gareth Johnston, who is deputy director of criminal justice. They will probably have to assist me as I answer the Committee's questions. I apologise for our delay, but it was something beyond our control. I am just glad that our plane had enough fuel to stay in the air for as long as it did, otherwise my colleagues might have had even more work to do this morning.
3411. It might be helpful, on the back of the work on the financial agreement and the Hillsborough Castle Agreement, to say one or two things about the continuing progress and to say something about one or two of the protocols that are before the Committee.
3412. The Committee will want to know that the Assembly's legislation to create the new justice Department was given Royal Assent on 12 February. The necessary Westminster transfer Orders will be completed in the next two weeks, so they could be laid before Parliament as soon as the cross-community vote in the Assembly has been agreed. Our aim, for the benefit of the Committee, is that the transfer Orders will complete their passage through Parliament by 25 March.
3413. The finances are in place to ensure that when policing and justice powers are transferred, the justice Department will have a secure and sufficient financial basis. The Committee will have

- questions on those arrangements, but, overall, the sum that will be transferred to the Northern Ireland Executive for policing and justice is £1.328 billion. That is all but £26 million of the NIO's current policing and justice budget, and all of the £132 million of the Northern Ireland Court Service's budget, which is part of the Ministry of Justice, rather than the NIO.
3414. In addition, the Northern Ireland Executive will have the additional £800 million financial package that was agreed by the Prime Minister in October 2009. I do not have to remind the Committee that that money will only be available if the Assembly agrees to the request for the transfer of powers. It is important to remind the Committee that the vote on 9 March is the only way in which that money will be secured. The package covers a number of elements, and includes continued access to the reserve to meet exceptional security pressures relating to policing and justice.
3415. The Committee has previously raised this question, so I wish to clarify that there will be no requirement for that money to be repaid, as is usual with reserve claims. A further ability to access the reserve in respect of the cost of any legacy hearing loss claims, which amount to more than £12 million in any one year, is in the package, and HM Treasury (HMT) has agreed to assist the Executive in meeting that potential pressure. To repeat, there will be no requirement to repay any reserve claim.
3416. The four military sites at Lisanelly, St Lucia, Ballykelly and Ballymena, which will enable the building of the proposed cross-community education campus in Omagh, will be gifted, and additional baseline funding for legal aid has been agreed, which, if required, will allow for even further access to the reserve up to the sum of £39 million. Furthermore, exceptional arrangements for unallocated funding of £30 million in 2010-11 will restore end-year flexibility, and exceptional provision has been made to enable capital budgets in the next comprehensive spending review (CSR) period to complete the
- police training college, and to allow the Executive to prioritise new capital expenditure, including at Magilligan.
3417. The Committee has received several of the protocols, including now the protocol on national security. The Committee has previously seen all but the protocol on national security, and it has been given the chance to comment on them. Some of those comments have been reflected in the texts that are before the Committee.
3418. Two existing agreements with the Irish Government underpin the now well-established cross-border co-operation on policing and criminal justice matters, and there are also concordats that safeguard the independence of the Public Prosecution Service (PPS) and the judiciary. Those concordats must be agreed by the Executive, but they provide public assurance that the judiciary and the Public Prosecution Service will remain independent of the justice Minister, as is currently the case with me.
3419. The draft protocol on policing architecture was drawn up in consultation with the Policing Board, the PSNI and Office of the First Minister and deputy First Minister (OFMDFM) officials, and it is intended to provide a starting point for the Assembly. Once devolution occurs, the landscape will, of course, change, but clarity about the relationship, which is, understandably, a concern for some Committee members, is a matter on which I am anxious to allay any concerns. However, decisions on how that will work in practice, for example in respect of a future justice Committee, are not a matter for me, but for the Assembly.
3420. It may be helpful to make some comments on the national security protocol. That protocol relates to the justice Minister and the Secretary of State. It is not a legal document, but a practical expression. It is also flexible and is in draft form. Nonetheless, national security means national security for the United Kingdom, and is the responsibility of the British Government.



3421. National security in Northern Ireland is, understandably, viewed through the historical prism of terrorism related to the Troubles. Today, we face a different threat from dissident republicans and, as the Independent Monitoring Commission (IMC) said, the early devolution of policing and justice powers will act as a potent intervention against that form of terrorism. However, we are very realistic about the work, challenges and threats ahead, about which we are not — and never will be — complacent.
3422. However, those threats are not the only ones that Northern Ireland is likely to face now or in the future, and good planning means that we must anticipate the threats that may face us. I hasten to say that there is no direct intelligence to support that the view that there is currently any immediate threat from al-Qaeda, or related terrorist groups, in Northern Ireland. However, Northern Ireland is a part of the United Kingdom, and the UK faces severe threats from those organisations. Therefore, in considering issues of national security, it is important not only to look to the past and the present, but to where threats are likely to come from in the future, and the arrangements in that protocol must reflect both the present and the future, and the importance of national security. Therefore, national security will remain a matter for the Secretary of State for Northern Ireland, although I am equally conscious that policing and justice matters in Northern Ireland cannot be completely separated from matters of national security.
3423. It is vital, therefore, that the Secretary of State and the justice Minister establish clarity about their respective statutory responsibilities and that the justice Minister have access to information necessary and proper to fulfil those responsibilities.
3424. When issues of national security arise, there will be an interface between the justice Minister and the Secretary of State. That interface needs to be practical, flexible, based on principle, and, of course, ensure that both can meet their statutory responsibilities. The protocol is based on the presumption of consultation and communication and on the sharing of relevant and appropriate information. That means regular meetings, and it places a burden on the Secretary of State to share relevant information with the justice Minister. I remind the Committee that the Secretary of State is, of course, subject to parliamentary accountability. That role cannot be delegated. Should the Secretary of State make a mistake, which is unimaginable, of course, he or she will be held accountable to Parliament. If he or she does not exercise discretion with propriety, he or she will be judicially reviewable.
3425. I also draw the Committee's attention to the role of the independent reviewer contained in the national security protocol. That exceptional role is, I judge, to recognise the exceptional position of Northern Ireland and the need to ensure that everyone maintains confidence in the system. I recognise that matters of national security in Northern Ireland have a complex history that has different connotations for different people, and although I would be the first to say that the security services have played a very important role in protecting the lives of many people in Northern Ireland, there have, of course, been errors. Those errors were on all sides. We can all point to pain and regret. Nonetheless, I understand the suspicion that may exist.
3426. Let us be clear: the Secretary of State and the Home Secretary are responsible and accountable to Parliament. The protocol contains a presumption that there will be communication, and the implied structure points only in that direction. It is a protocol founded on principle. It is flexible and practical. I ask the Committee to consider the protocol with the great care that it has generously given to every matter that we have put before it. I believe that, as confidence in all the arrangements for the devolution of policing and justice grows with the passage of time, people will see that, in the arrangements of this protocol, we have, I hope, anticipated

- many of the present requirements as well as those that may emerge.
3427. **The Chairperson:** Thank you very much indeed, Secretary of State, for those opening remarks. You have partially answered my first question on the budget that the NIO will make available to the justice Department. Can you break down the figures for the various organisations that will deliver the policing and justice functions? Members will then ask questions.
3428. **The Secretary of State for Northern Ireland:** I am happy to take specific questions on the budget and to supply information on individual areas. Let me take one example that was in the ether: the so-called long list of additional pressures. That is a matter for the justice Department. In the considerable work that went on through the whole of last year — and I thank the Committee for its help on that — we went through the pressures that were immediately ahead for the Department to make sure that the financial settlement would, if the Assembly requests the transfer of powers on 9 March, ensure that a new justice Department would be stable, and, crucially, able to meet the critical pressures that will arise from dealing with legacy issues.
3429. For example, we judged it extremely important — and the Prime Minister was particularly anxious to ensure that that was the case — that we could enable the justice Department to meet the challenges of claims on hearing loss.
3430. Those need to be individually tested. Nonetheless, it was important, given the potential size of the claim, that the Department of justice would not be fundamentally destabilised at the moment of its inception. That is why the mechanism that was established for the hearing loss cases, and the help that HMT was exceptionally prepared to make in those circumstances, recognised the basis on which we think that the claims are likely to be made; the volume that is likely to come to the Department of justice; and the way that it is most likely to happen over a period.
- However, we also recognised that it is possible that exceptional circumstances will arise. In that one example, we have tried to create a package that will ensure stability for the Department.
3431. I remind members that if they want to raise specific issues on that area, I am happy for my colleagues to engage in discussions on those today, or it may be more helpful if members wrote to us with their concerns. We will be happy to respond to them in writing.
3432. **The Chairperson:** You said that £1.328 billion would come to the NIO for the Department of justice. It would be helpful if you could provide us with a written breakdown, over the next couple of days, of how that money will be divided between the different areas.
3433. **The Secretary of State for Northern Ireland:** I am happy to do that, but I remind the Committee that the financial package does not set the individual budgets. We try to anticipate where the pressures may be, and we try to ensure that the Department of justice will not be destabilised by any exceptional claims or in fulfilling the requirements of dealing with the past.
3434. **Mr A Maskey:** I would like to address two issues, at least one of which you have covered to some extent, Secretary of State. It would be remiss of me, as you know, not to put on record that Irish republicans do not define national security interests in the same light as you, and we do not believe that British national security interests are paramount to us.
3435. Notwithstanding that, I would like to see two key points further addressed. First, with regard to protocols or policies, there should always be a presumption of disclosure of any matters of interest to a justice Minister. Sinn Féin suggests that that could be managed or regulated through a consultative framework or a regulatory role performed by the judiciary or the attorney general, for example.
3436. Secondly, I want to address the position of the PPS and the new role for the attorney general. The current

arrangement provides for a consultative role, as opposed to a superintendent or directional role. The consultative role has not yet been road-tested here. Given the importance of ensuring the independence of both facilities, the role should be kept under review as it unfolds and works its way out, with a view to allowing us to move back towards something closer to superintendent or directional, if that is deemed to be more appropriate.

3437. **The Secretary of State for Northern Ireland:** Hilary and Gareth will comment on the points that you raised around the attorney general, and I will cover the first question on national security.
3438. This was a set of arrangements, on which, I know, people have different views. However, a firm principle was set at St Andrews that national security must remain, as it does for all the other settlements across the United Kingdom, a matter that rests with the British Government, which is why it is excepted. That said, I am conscious of the need to recognise the concerns that are being raised, as I said in my opening remarks. That is why it was extremely important that we heard the various things that people had to say. However, it was also important that we carefully examined those comments in the light of day.
3439. There were a number of proposals looking at how we might deal with issues around, for example, transparency. One proposition that was put forward was the idea that there should be some presumption for disclosure. The idea is that, in principle, people want transparency and openness wherever possible. The national security protocol has a basis for a presumption for communication. However, we looked at the context for that, and, importantly, looked at it within the context of the separation of powers that exists. It is important that everybody recognises that the split between the executive and judiciary is an important split that is established in British law.
3440. Only as recently as last week, in the Binyam Mohamed judgement — not a

judgement that everybody in the British Government is entirely comfortable with according to some newspapers — that separation was set out very clearly. It was stated:

*“As a matter of principle, decisions in connection with national security are primarily entrusted to the executive, ultimately to Government Ministers, and not to the judiciary. That is inherent in the doctrine of the separation of powers”.*

Precisely because it is recognised that Ministers do have to make those decisions, and are responsible and accountable to Parliament, that separation nonetheless leaves the opportunity for judicial review. What some people may have been proposing would have muddied that distinction. That would not be helpful if, and I hope that it is not the case, there is a need to seek clarification in the future.

3441. I have considered the national security protocol incredibly carefully. I point out to the Committee that the protocol is a draft. It reflects a great deal of considered thinking to ensure that there is stability about the issue. As such, it is not a legal document, and, in the course of time, it may be that there can be revisions to the document. However, I do not think that there can be revisions to the principles. The principles are very clear: national security is “national” security. There are statutory responsibilities that must be met, and which can be met only in the context of national security being understood as “national” security. Nonetheless, as I pointed out to the Committee, there will be issues, which one can see arising almost immediately, between a justice Minister and a Secretary of State who, after the devolution of policing and justice takes place, has very few responsibilities left other than that of national security. There will be an interface, because the Secretary of State will have information that it is important for the justice Minister to know about.
3442. I stress to the Committee that it is my firm commitment that, as I laid out in the protocol, the presumption

is to communicate. Critically, that is the direction of the protocol. The presumption is to consult, and there is a responsibility on the Secretary of State to do so. Not to do so would leave that Secretary of State accountable to Parliament.

3443. For some issues — for example, redactions to ombudsman’s reports in the interest of national security — we have, as a matter of course, included a role for the independent reviewer, so that that can all be checked and so that there can be reassurance, on every side, that we can proceed with confidence. That is not because I have any presumption that people will not do what they should do or that which they are required to. However, it is important to be sensitive to the context. That is why I believe that the role of Lord Carlile will be extremely important. Similarly, and of comfort to everybody on the Committee, whichever particular perspective they may have, if there are instances that arise outside the course of an annual review, it is entirely open to Committee members to ask that those instances be checked by the independent reviewer. I view that as an exceptional arrangement and one that is sensible for and sensitive to Northern Ireland. That does not, in any shape or form, undermine the principles of national security. However, I believe that it will help to establish confidence and build trust.

3444. It is very difficult to make a case that people are doing anything here that could undermine trust. I want to build trust, and I view that as a helpful mechanism to build and sustain trust and confidence across the community, which I believe will be of enormous value. Hilary or Gareth may wish to comment on the question about the attorney general.

3445. **Mr Gareth Johnston (Northern Ireland Office):** In answer to Mr Maskey’s question, of course, the Assembly and the Executive can keep the nature of the relationship between the attorney general and the PPS under review.

During the drafting of the current legislation, it was judged that the most important part of building community confidence was the manifest independence of prosecutorial decisions. Therefore, that relationship with the attorney general is consultative, not supervisory. The point that we have made all along is that a consultative relationship can still be very meaningful and challenging, but, ultimately, that relationship remains consultative. There is a wide variety of different models in other jurisdictions for the delivery, management and superintending of prosecution services. That relationship can be kept under review when the Assembly takes on legislative responsibility for justice. It does not have to be the answer for all time.

3446. **Mr Kennedy:** I welcome the Secretary of State and his officials. I wish to ask a couple of questions that, hopefully, are relatively straightforward.

3447. There is a variety of agreements, concordats, protocols and memoranda of understanding on the possible transfer of policing and justice. Are you in a position to confirm whether those agreements will become individual agreements between the Northern Ireland Assembly and Executive and their various partners, including the Government of the Irish Republic, at the point of devolution of policing and justice or whether they will remain the ultimate property of Her Majesty’s Government?

3448. That leads on to the issue of North/South co-operation, which has been a fairly central tenet of previous agreements under devolution, including the Belfast Agreement and the St Andrews Agreement, and the checks and balances that exist under those agreements, such as the presence of representatives from the two political traditions in Northern Ireland at North/South joint meetings. There has been some silence on that issue and on the North/South co-operation concordat that is linked to it. I would like some clarity on that.

3449. **The Secretary of State for Northern Ireland:** What clarity are you seeking specifically?
3450. **Mr Kennedy:** I seek clarity in relation to the custom and practice that were established under the Belfast Agreement and the St Andrews Agreement, whereby a Minister from the unionist tradition is accompanied by a Minister from the nationalist/republican tradition at all North/South ministerial meetings. If there is North/South co-operation on matters of policing and justice, will the Northern Ireland Minister for policing and justice attend such meetings without the safety net that was established under the Belfast Agreement for it to be clearly seen that there is unionist participation at such events?
3451. Finally, I wish to ask about the protocol on the handling arrangements for national security-related matters after devolution of policing and justice, which makes for quite interesting reading.
3452. The protocol states:
- “After devolution of policing and justice, the Northern Ireland Minister of Justice (hereafter referred to as the Minister of Justice) will be responsible for policing and criminal justice policy.”*
- There is a footnote to that, which states:
- “Except in respect of any reserved matters that the Assembly has not requested should be transferred — eg 50/50 recruitment and parading”.*
- For the sake of clarity, I want to know whether responsibility for both those matters is going to be transferred with the devolution of policing and justice powers.
3453. **The Secretary of State for Northern Ireland:** I will take your questions in reverse order and see whether I can provide a bit of light. I cannot guarantee that I will, but I will give it a go.
3454. I am almost encouraged by what you said about 9 March, but I will not be presumptuous.
3455. **Mr Kennedy:** Please do not be, because you have had a difficult morning already.
3456. **The Secretary of State for Northern Ireland:** Yes, circling round and round and waiting. However, we were eventually cleared to land, so I only hope that the same thing will happen here.
3457. As the timetable in the Hillsborough Castle Agreement shows, progress on parading is envisaged as the year goes on so that a transfer of responsibility could take place. As I understand it, such a transfer is not about to be requested, because it will require a cross-community vote.
3458. We remain responsible for 50:50 recruitment but we anticipate that the requirements for which the policy was established will be met within a year.
3459. **Mr Kennedy:** So, the responsibility will not be transferred.
3460. **The Secretary of State for Northern Ireland:** Responsibility for 50:50 recruitment will remain with us, but, as I said, the Patten requirements will be met within a year. That is one issue on which we can all hope for the same outcome, because it is a good outcome. We will get to the 30% mark, which all of us will be very pleased to see. The special arrangements that had to be put in place will remain only for another year.
3461. As I said, my expectation about the transfer of responsibility for parades is that there will be a cross-community vote on it at some point in the Assembly. If, as a result of that vote, a transfer of those powers is requested, we will be only too happy to effect that.
3462. I am not sure whether to call any document on North/South co-operation a concordat or an agreement. There was quite a lot of conversation on the plane about the difference between concordats, agreements, protocols and memorandums of understanding.
3463. **Mr McCartney:** Is that why you were delayed?
3464. **The Secretary of State for Northern Ireland:** That is why we were delayed, because there was a lot for us to cover.



3465. Mr Kennedy, you were correct to make the point that you did. At present, it would be possible for a justice Minister to meet with, for example, the Irish Minister for Justice, unaccompanied by somebody from another group. That is the position at the moment, but it is important to note that if, after the transfer of policing and justice powers — I will be optimistic about that — it is decided that the document should be amended, it can be. There is no requirement for it to remain unchanged, which brings me on to your first question about the status of all the various concordats, protocols, memorandums of understanding and agreements.
3466. Each one is different, because each one has been cast differently. For example, the agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland on police co-operation is legally binding between those two countries. Therefore, in order to rightly include the request that the Committee has made for the Minister of justice to be a party to that agreement, we have to seek amendment through the British Government to the Irish Government, because only the British Government can make treaties. That is why that agreement has to be changed in that way.
3467. Therefore, it may be helpful if I ask my officials to write to the Committee to provide the status of each of the seven documents. After seeing that, I am sure that you will have been entertained, although I suspect that it will not have fundamentally changed any views that you have. However, clarity is always helpful.
3468. **The Chairperson:** It would be a case of writing to the Committee rather than to Mr Kennedy directly.
3469. **The Secretary of State for Northern Ireland:** We could do that in the next day or two to give the Committee precise clarity on the status of each agreement, each memorandum, each concordat and, of course, the protocol.
3470. **Mr Attwood:** I will make two brief comments, after which I will ask a question. It is not accurate to say that the requirements of the Patten report will be met when 30% of police officers come from a Catholic background. Patten said that it is necessary to achieve a representative police service and that special measures might need to continue after 10 years were up. In my view, you have chosen not to adopt the Patten model, recommendations or outcome. It will now take up to 30 years to achieve a balance of police officers and, on the basis of current figures, 60, 70 or even 80 years to achieve balance on the civilian side of the PSNI.
3471. You said that the national security protocol was developed with a “great deal of considered judgement”. I do not agree with you. Paragraph 8i of the national security protocol completely misrepresents the relationship between the Minister of justice and the policing and justice agencies. It states:
- “Northern Ireland policing and justice agencies are accountable to the Minister of Justice on all devolved policing and justice matters;”.*
- That is not the case. Therefore, a document that contains a “great deal of considered judgement” has got that point fundamentally wrong.
3472. Alex Maskey asked a good question about the duty to disclose, and you confirmed that there would be a duty only to communicate on national security matters. Paragraph 5 of the national security protocol states that that duty, and on what terms information is provided, will be determined by the British Government. That is not a satisfactory way in which to deal with potentially critical cases such as a collapsed trial in the vein of the Donaldson/Kearney trial, an MI5 operation that goes wrong, or when the Serious Organised Crime Agency (SOCA) seizes assets of a senior republican or a senior loyalist. It will not reassure the public of the North to know that the British Government will decide what information is shared,

- and on what terms that information is shared. Although I recognise your good intentions, there is nothing concrete in paragraph 5 of the national security protocol to bring about the required level of trust and confidence.
3473. The Good Friday Agreement's single biggest achievement has been on policing. The Policing Board was never suspended, nor did it reach a position of not meeting for 150 days. It was never on the verge of collapse, because political parties, especially in the first mandate, knew that that institution was too precious to jeopardise. However, the protocol on policing architecture does precisely that.
3474. I have one question: did you not heed the warning in paragraph 6.15 of the Patten report? It states:
- "It is ... vital that the clock is not turned back to the situation before 1969, when the police were seen to be subject to direction by the Minister of Home Affairs."*
3475. How do you reconcile that very strong wording in the Patten report with your proposal on the protocol, given the relationship that there is to be between the Minister of justice and the Chief Constable? The danger is that your proposal will replicate the situation that existed before 1969. A wise man has said that the proposal will profoundly distort the effective working of a tripartite structure and will have the effect of ditching the carefully crafted statutory provisions that deal with the termination of the appointment of Chief Constables and that provide the fundamental safeguards to their independence.
3476. I have asked you to consider the protocol, Secretary of State. We have been in correspondence, and, last night, you told me that, at present, the British Government have no intention of imposing it. Today, I ask you to withdraw the protocol. It is so flawed and is in such conflict with good practice on policing over the past 10 years that if you do not withdraw it, you will be leaving a document on the table that is dangerous for the future of policing in the North.
3477. **The Secretary of State for Northern Ireland:** Thank you for your comments. You are right to say that we have corresponded. Let us be very clear about this: we share a fundamental commitment to Patten. I do not desist from a word of Patten's vision, which has, by and large, been achieved. Although it is not the only example of the success of the process, it is one of the greatest successes.
3478. Of course it matters to get this right. I would be foolish if I left this Committee thinking that even though I think that I have got this right, I will not promise to look one more time at our proposals for you. Nonetheless, bear in mind that although this is a high-level description, it is one that tries to make sense of the statutory responsibilities that have been imposed on various individuals and institutions and of the necessary tripartite arrangements. It recognises, for example, the role that a justice Committee would, and should, want, although that is a matter for you to decide, and it does so in a way that does not diminish the responsibility of the Policing Board but that leaves people with clarity about their responsibilities and accountability.
3479. I do not feel that I am fundamentally, in any shape or form, doing something that is other than in the spirit of Patten. Nonetheless, it is important, notwithstanding my arguments, that I look over our proposals one more time, and I will undertake to do that. However, we need to suggest an architecture by which this can work. It is important to remember, as Patten said:
- "that the Secretary of State ... should be able to set long-term governmental objectives or principles; the Policing Board should set medium-term objectives and priorities; and the police should develop the short-term tactical plans for delivering those objectives."*
3480. Patten recognised the difference between scrutiny and accountability. I believe that the arrangements that we have recommended are likely to work.

- Having said that, I am not deaf, and I will undertake to go back one more time. If specific proposals remain from where we are sitting, Alex, come back to me and let me look at them again. I do not want to create false optimism that I will recommend a different protocol or, rather, a different set of arrangements, but I am happy to consider things again. None of us should be so intransigent that because we think that we have got to a certain point, that is it. I want to think that, but let me look at it again, and if there are specific areas that you think that we need to look at, we will burrow in on those and examine and test them. However, we have to test them against recognising statutory responsibility and against, as you rightly pointed out, the spirit of Patten. I believe that we are much closer to the spirit of Patten than we are apart from it.
3481. **Mr Hamilton:** Thank you, Secretary of State. I will try to ask my question with less theatrics. I am sorry, Danny, I should apologise.
3482. **Mr Kennedy:** Thank you.
3483. **Mr Hamilton:** The national security protocol contains a section on dispute resolution and the power to vary the terms of the protocol. How do you envisage that working in practice if, post devolution of policing and justice powers, there would be any such disputes or agreement that there is a need to vary the terms of the protocol? Are you able to draw on any experience, say from Scotland, as to how such circumstances are dealt with?
3484. **The Secretary of State for Northern Ireland:** Again, remember that this is not a legal document. It is a practical arrangement, and, undoubtedly, the relationship between the justice Minister and the Secretary of State will be extremely important in building trust. However, there is a presumption to communicate. There is a regular process that needs to take place, which contains measures to safeguard any concerns that may arise.
3485. This is like the evolution of the Assembly and the devolutionary arrangements. Matters may arise shortly after the devolution of policing and justice, assuming that it takes place, which may raise questions that we have not anticipated. However, I would like to think that we have anticipated them. The member's comparison with Scotland is helpful. However, the problems that Scotland is most likely to face from threats from terrorist organisations are, by and large, likely to be different, which I think is one of Alex's concerns, and which are the sorts of concerns that people have here.
3486. Whatever people's individual views on the matter, this is, for obvious reasons, a much more sensitive issue in Northern Ireland than in Scotland. I am not saying that it is not a sensitive matter in Scotland, but it tends to be sensitive there simply as a matter of principle. Nonetheless, the British Government has maintained their principle that national security is national. In Northern Ireland, for reasons that everyone would and should want to understand, it is different. That is why there are exceptional arrangements here, and why the protocol was required to be drawn up in its current form.
3487. I hope that I or any future Secretary of State would be sensitive to that, because this is about confidence and trust. However, it is not a game to be fought by one side against another. This issue, as everyone here knows, is about people's lives. The reason that we need to deal with the threat from dissident republicans is because everyone in Northern Ireland is at risk; not just a particular community or faith. The last individual who was very nearly murdered was a Catholic police officer. The two soldiers who were murdered last year were not in Northern Ireland to serve any function; they were here as they might be garrisoned in any other part of the world, preparing for a humanitarian mission in Afghanistan.
3488. Therefore, this is an issue for everyone. It does not belong to any one side. No one has ownership of this in that if

- one does this, it is a good thing, and if one does that, it is a bad thing. This affects everyone. I put that on the table not because there is any direct intelligence to suggest an imminent threat to Northern Ireland from al-Qaeda or related organisations. However, it is inconceivable that in the coming months and years that the threats experienced in Great Britain or the Republic of Ireland will not also be threats in Northern Ireland. To imagine that there could not, or would not, be such threats, and to take no precautions on that basis, would be very foolish.
3489. These arrangements, therefore, have to stand up to not only where the threats have been in the past and where we may see the threats now but to the threats for the future. The sharing of information with the justice Minister has to ensure that there is confidence for all the politicians in Northern Ireland and the justice Minister, and confidence, for example, that a foreign power, which shares information with us on matters of national security, can be confident that the arrangements in place in any jurisdiction in the United Kingdom will protect the passage of that information. Such information may not come from our service, but from another service, and that passage, and those protocols, have to reassure Governments around the world.
3490. Therefore, this is a test for not only here; it is a bigger test than that. In saying this, however, I do not, in any shape or form, marginalise the concerns being raised here. I respect them.
3491. **Mr McCartney:** Thank you for your presentation. You spoke about the timetable for the legislative process. Are you confident that all aspects of that process are in place, and that the transfer will be smooth?
3492. **The Secretary of State for Northern Ireland:** Yes. The biggest issue is the vote on 9 March, and if the Assembly has the confidence to pass that vote, I am confident that we will meet all the requirements. However, as I said in my opening remarks, Raymond, Northern Ireland is looking at £800 million that it will not get otherwise. It is looking for a stability that will allow us, as the Independent Monitoring Commission said, to make the most effective intervention on the activities of the very small number of people who refuse to accept that people in Northern Ireland want to follow a peaceful political path wholly and entirely.
3493. Without that vote, regardless of the political difficulties that would follow, we would all lose our ability to make the biggest possible impact to deal with those who want to bring down the political institutions and drag Northern Ireland back to a place to which nobody wants to go. However, they have little or no community support; that is why the vote on 9 March matters so much. It is important that everyone vote for it because it would send a unanimous signal that nobody will allow individual differences to be bigger than the ability to unite in Northern Ireland and for people to take responsibility for everything that they possibly can. It would also send a signal to the men of violence who see a very different future: instability and the disruption and destruction of the peace process.
3494. There is much at stake: £800 million is a great deal of money that would not come otherwise; however, much more is at stake. A unanimous vote would be a signal that politics has won and that we are never going back. It would be a signal that Northern Ireland's politics has so matured that, despite outstanding issues and differences, the time has come to say that we can handle this, we are bigger than this, and that our politics will endure. It would send a signal that, despite the difficulties, Northern Ireland will embrace politics as its future.
3495. **The Chairperson:** Thank you, Secretary of State. I know that you have gone almost 15 minutes over a tight schedule. The Committee will be working to a very tight timetable over the next few days on the responses, the breakdown, the budget and the status of the seven documents about which Mr Kennedy asked. We have a deadline of 10.00 pm on Tuesday 23

- February to allow us to get the report printed for 9 March.
3496. **The Secretary of State for Northern Ireland:** We will try to get that information to the Committee by the end of tomorrow.
3497. **The Chairperson:** I appreciate your coming along this morning. All members had the opportunity to ask a question. I am sorry that they did not get a second opportunity, although most of them sneaked in more than one question. Thank you, Secretary of State.
3498. **The Secretary of State for Northern Ireland:** Thank you very much.
3499. **The Chairperson:** Members, do we need a discussion about what we heard from the Secretary of State? The session was recorded by Hansard.
3500. **Mr Kennedy:** The additional information will probably require a discussion. However, we cannot have that until we get the information.
3501. **The Chairperson:** It is important to be quorate this afternoon and that members stay to deal with the outstanding category 2 list of issues. We have to reach consensus, or not, today so that that can be recorded in the report in relation to the category 2 list of issues.
3502. I must also impress upon members that we need to meet on a number of occasions next week, given the tight schedule for the report. Committee staff will be working during this weekend and next to get everything in place. I want members' co-operation during the next number of days. We will try our best to schedule meetings to suit members.
3503. If there is no other business, I want to discuss one further issue. At our meeting on 9 February 2010, members agreed to seek views on the issue regarding the Police Ombudsman. I want to revisit that issue this afternoon. It would be helpful if members could have a conversation from their various party perspectives on that issue.
3504. Are members content that we suspend the session until 2.30 pm?
3505. **Mr Attwood:** I believe that I informed you, Chairman, that I will have difficulty getting to this afternoon's session. Later, the Policing Board will meet to discuss some important business. At the same time, there is a meeting of the Assembly Commission. Another problem is that Declan O'Loan may have to attend a funeral. I need to flag that up.
3506. **The Chairperson:** Quite frankly, I also have urgent business at the board this afternoon, for which I really should be there. I had to prioritise. Other members have to do the same. If the meeting is quorate this afternoon, which I hope that it will be, it will proceed.
3507. The Secretary of State pulled out the stops to get to the meeting, as did the First Minister and the deputy First Minister. We agreed that the meeting would go ahead to coincide with their diaries, given the tight timescale. I appreciate where you are coming from, Alex. However, there are pressures. We must continue the meeting this afternoon.
3508. **Mr Attwood:** I am not saying that we should not have the meeting; I am simply pointing out that it may be difficult.
3509. **The Chairperson:** I understand. I also have a funeral to attend, which I am going to now. I will come back here for 2.30 pm. That is the situation. The meeting is suspended until 2.30 pm. Thank you.



## 18 February 2010

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Nigel Dodds  
 Mr Simon Hamilton  
 Mr Danny Kennedy  
 Mr Alex Maskey  
 Mr Declan O'Loan

### Witnesses:

Mr P Robinson *The First Minister*  
 Mr M McGuinness *The deputy First Minister*

3510. **The Chairperson (Mr Spratt):** I welcome the First Minister and the deputy First Minister. In light of the Hillsborough Castle Agreement, the Committee decided that it wanted to publish its report in time to inform the debate on 9 March. The Committee is grateful to both of you for agreeing to appear at short notice.
3511. The First Minister and the deputy First Minister agreed to appear before the Committee to discuss the category 2 list of issues, in particular the role of the attorney general and the financial implications of devolution. I will ask the First Minister and the deputy First Minister to make some opening remarks and, as has been the Committee's procedure to date, and as the Ministers' time is limited, members will ask questions in the order in which they indicate to me. If there is any additional time, I will be happy to take further questions. However, will members ask one question initially to allow everyone a chance to ask a question?
3512. I invite the First Minister to make his opening remarks.
3513. **The First Minister (Mr P Robinson):** That you very much, Mr Chairman. We welcomed our interaction with the Committee when the subject was discussed previously. We have corresponded, and we took part in the debate in the Assembly on the Committee's initial report, and we welcomed the support that the Assembly gave it. We believe that we can commend the agreement that arose from the Hillsborough Castle talks to the Committee and to the wider community, as it has significant benefits for our whole community. It envisages how we would move forward on a number of key issues, not least policing and justice but also parading and, importantly, some other areas, such as the functioning of the Executive, the delivery of Executive decisions, and looking at outstanding matters from the St Andrews Agreement.
3514. In many ways, we have gone where no man has gone before on reaching agreement on issues that previous negotiations dared not even broach, knowing that they could not reach agreement. We have reached a significant milestone. The agreement removes from devolution in general an issue that has been difficult and which has been an obstacle to progress in other areas. To some extent, we will now be able to flush the system much more cleanly and get matters moving, and that is what those who elected us want to see. They want to see decisions being taken and they want to see devolution working better.
3515. We have set a clear timetable for a motion on policing and justice in the Assembly, and we will be looking for all the parties in the Assembly to give it their support on 9 March. That will be followed by devolution and the election of a justice Minister in early April.
3516. Alongside that, a process is continuing rapidly on parading. As we sit, colleagues are dealing with the parading issue. We have given them a tight

- timetable to provide us with a report by 23 February.
- Soundings from the working group indicate that progress is being made. Indeed, it has already invited interested parties and stakeholders to talk to it about parades.
3517. We welcome this further opportunity to clarify any issues that might have arisen from the Hillsborough agreement or the general issues of policing and justice and parading. If we can be of any assistance to the Committee, we will, and if we cannot give the Committee an answer today, we will do our best to get an answer to it later.
3518. **The deputy First Minister (Mr M McGuinness):** Like Peter, I thank the Committee for making this meeting possible. This is the fourth occasion that we have appeared before it since November 2008, when we first presented our assessment of how best to progress the transfer of policing and justice powers.
3519. Like most sensible people in the political process and in our society, I warmly welcome the important developments of the past weeks, particularly the Agreement at Hillsborough Castle. The public, and every Member of the Assembly, will be aware that the transfer of policing and justice powers was highly contentious; it became a millstone round our necks that held up progress on many matters that the Assembly needed to deal with.
3520. I see the outcome at Hillsborough as a chance for a fresh start for the Executive and the Assembly. I agree with Peter: looking across the table at the people who are involved in the negotiations, we can see that they want the process to work; then we can forge agreements and move on. I hope that the outcome at Hillsborough will be a solid foundation on which we can all build.
3521. I want to pay tribute to the Assembly and Executive Review Committee. The work that it has done, at our request, has been invaluable. Without it, we would have been unable to come to the position that we did during the discussions at Hillsborough.
3522. I look forward with considerable optimism and with a strong belief that the motion that the First Minister and I will table on 9 March will lead to the transfer of policing and justice powers on 12 April. As Peter said, despite many people thinking that we would not crack this issue, the fact that we did should inspire everyone with an example of how we can all move forward to resolve other difficult issues.
3523. As the First Minister said, the working group on parades has set about its work with considerable vigour and with a full understanding of the timescale towards which it was working. Many in the media felt that the timescale was unreasonable, given that, according to your view of history, our problems go back hundreds of years. However, we were always confident that the working group would present a report that could be legislated on and put out to public consultation and that the direct rule Ministers would transfer powers on parading to the Assembly.
3524. We were also confident that all the commitments made to that transfer would be honourably met by everyone involved in the process by the end of the year. When making an agreement, it is very important that people honour their word. We are determined to honour our word and to press on to ensure that the new opportunities that the agreement presents can be seized by everyone and that we can begin to instil confidence in the community in the institutions for which it voted.
3525. This represents a new beginning. We are approaching it with renewed vigour and determination. We want the institutions to work; there is no other road to take. We know that there are people outside these institutions who are hell-bent on trying to bring them down. Some are them are within the political process; others are outside the political process and are involved in armed groups, which have no support in our community. Our example has to be that politics

- is working and that we are moving forward decisively to bring fundamental change to our society and to build a better future for our children and our grandchildren. I thank the Assembly and Executive Review Committee for the role that it has played in all of that.
3526. **The Chairperson:** Thank you very much for those comments. We declared interests this morning, but it is important for the record for members to declare them again. I am a member of the Northern Ireland Policing Board.
3527. **Mr A Maskey:** I am a member of the Policing Board.
3528. **Mr O’Loan:** I am a member of Ballymena DPP
3529. **The Chairperson:** I will take questions in the order in which members indicate that they wish to ask them. I will start off the questions. You have both spoken about the ongoing negotiations on parading. Are you satisfied that the signposted timescale in the agreement to deal with the issue of parades can be met in order to draft legislation and all the rest of it?
3530. **The First Minister:** We have established a very tight time frame for the working group that we have set up. That group has advice from people who have wide experience, including experience as members of the strategic review of parading group, which was chaired by Paddy Ashdown. The members of the group have been making progress. It is a difficult schedule for them to keep to, but whether they have to burn the midnight oil or not, they are determined to keep to it.
3531. If that is completed by 23 February, the intention is that the draftsmen will start their work, and they will have approximately one month to complete it. The group, as I understand it, has reached a number of elements of agreement already and will, therefore, give those elements of agreement to the draftsmen in advance so that their work can happen in parallel, which will speed it up. The draftsmen have indicated that they should be able to complete their work on time. The deputy First Minister and I have some hard experience in our past of seeing agreements not faithfully represented in legislation. Therefore, we want to ensure that the draft legislation faithfully represents the agreement that will be reached by the working group, so some proofing of that will be required.
3532. We then want to carry out a full-scale consultation on the basis of the draft Bill. The deputy First Minister and I will seek to have the legislation taken through the Northern Ireland Assembly, so all of its stages will be in the Assembly, and the Committee for the Office of the First Minister and deputy First Minister (OFMDFM) will have a considerable role in dealing with the Committee Stage of that Bill. We have already had the opportunity to speak with the Chairperson of that Committee, and we have agreed how we can usefully interact. We will provide the Committee with some of the consultation responses — or rather all of the responses; I had better be very careful here — which will save it from having to carry out duplicate work.
3533. The procedures that we have set in place can meet the timetable. If not, of course, the Chairperson of that Committee is quite happy to forgo his summer holidays and keep his Committee working to ensure that it is done on time.
3534. **Mr Kennedy:** I would like that in writing.
3535. **The deputy First Minister:** Obviously, the challenge is to ensure that the improved regulatory framework is capable of bringing about cross-community support. When we set the working group the task of coming back to us with the outcome of its deliberations by the end of next week, it was very ambitious in the eyes of many people, but we always thought that it was doable.
3536. The progress reports, which the First Minister and I receive daily, lead us to believe that we will meet the ambitious target some time next week. That will be a tremendous outcome, because that will go forward to be legislated on. It will come back to the Assembly. The

- Committee will be involved in it, and all the parties will have an opportunity to look at it and to be part of the consultation process.
3537. Even if people think that the task of getting the legislation through by, say, December, is ambitious, it is doable, with goodwill on all sides. We are determined to make that happen.
3538. **The Chairperson:** Given that we were involved in the parading issue from the start, should we include that in our report, or are you satisfied that the ongoing talks, the legislation, the framework and the briefing on the issue that you will give to the Assembly will be sufficient?
3539. **The First Minister:** We always welcome the Committee's views on matters. If members wish to comment on the issue, we will take their conclusions seriously.
3540. The working group will work on the structures. There will be a full consultation on that, and, at a later stage, the issue will go through the OFMDFM Committee. Therefore, there will be plenty of exposure to the Assembly throughout the process.
3541. **Mr A Maskey:** I thank the First Minister and deputy First Minister for their opening remarks. It was important to remind us of what has been happening in recent weeks and of how we got here. It is encouraging to hear that a certain number of strands of work are in progress and are heading towards a successful conclusion.
3542. A number of protocols, memorandums of understanding and concordats are in place or are to be in place. Are you satisfied that the work around those is progressing, has progressed and will not stand in the way of the successful transfer of policing and justice powers?
3543. **The deputy First Minister:** I do not believe that they will stand in the way. All protocols and concordats are kept under review. They are under consideration by us, and I know that you have received some of them in the past number of days and that they will be further considered by the Committee. We are in uncharted territory. The protocols, memorandums of understanding and concordats will be subject to ongoing review. We can be well satisfied that a huge amount of work has been done on the protocols and the concordats. In keeping them under review, we will always be willing to improve their performance on the objective that we are all seeking, which is a proper outcome that will enhance the policing service and will provide the support and assistance that the community clearly needs.
3544. **The First Minister:** They are still being considered, but I think that we agree that they are all capable of being resolved. We do not believe that they will be an obstacle to making progress.
3545. **Mr Kennedy:** I welcome the First Minister, deputy First Minister and officials. My first question relates to the role and office of the attorney general and his relationship with the Minister, the justice sector and the Assembly. Mr Larkin, who is earmarked as the prospective attorney general, provided you with a report in September 2009. We have not yet received a copy of that report, although we would be interested in getting one. What is your sense about the role and responsibilities of the attorney general?
3546. With regard to the policing architecture of the Department, how will the Minister of policing and justice interact with the Executive, the Policing Board and the scrutiny Committee for the new Department?
3547. How do you envisage the scrutiny Committee being constituted, and what process would you advocate for determining its membership? It has been suggested that the d'Hondt mechanism will be used. Can you confirm that?
3548. It appears that the Chief Constable will continue to be accountable to the Northern Ireland Policing Board and that the Minister will be accountable to the Assembly Committee. Can you provide some clarity on how a balance will be struck?

3549. With your indulgence, Chairman, I have one final question on North/South co-operation and the issue of checks and balances. The justice Minister may attend meetings with his or her counterpart in the other jurisdiction on this island. To what extent will the Minister's reporting back to the Executive and Assembly on those meetings be scrutinised? In the architecture of the Belfast Agreement, and in that of the ongoing arrangements that are in place as a result of the St Andrews Agreement, North/South ministerial contact between the two jurisdictions has always been provided for, as has the balancing act that a unionist Minister be accompanied at meetings by a nationalist Minister. That is not what is being advocated in this case. Therefore, I want to know what checks and balances are in place to compensate for that.
3550. **The deputy First Minister:** With your permission, Chairman, I will answer the first set of questions, and the First Minister will answer the second set.
3551. The role of the attorney general will cover a range of functions, including legislative and legal functions such as referring the legislative competence of Assembly Bills to the Supreme Court and defending the public interest in matters of civil law. The role will also include functions that relate to the Director of the Public Prosecution Service; for example, the attorney general will appoint the director and arrange for the Director's annual report to be laid in the Assembly. The attorney general will also have consultative and advisory roles, which include issuing guidance on human rights standards and being consulted on the programme of criminal justice inspections.
3552. In addition, we intend to invite the attorney general to be the chief legal adviser to the Executive. The Justice Act 2002 provides for the attorney general to participate in the proceedings of the Assembly to the extent that is permitted by its Standing Orders. It is envisaged that that participation might involve the attorney general answering questions on the exercise of his responsibilities to the Public Prosecution Service and on the work of his own office. Of course, the attorney general will have no voting rights in the Assembly.
3553. The attorney general will prepare an annual report on the exercise of his functions, which the First Minister and I, acting jointly, must lay before the Assembly. We are considering a report that John Larkin prepared on the establishment of the office of the attorney general and its potential role, after which we will make arrangements with the Assembly authorities for the preparation of suitable Standing Orders. As to sharing the report with the Assembly and Executive Review Committee, we are still considering the report, and we believe that it is best read in conjunction with our response to its recommendations. We intend to provide the Committee with both documents in the near future.
3554. Mr Kennedy asked about the architecture of the agreements. Paragraph 3.1 of the annex to the national security protocol clearly states that nothing in the protocol diminishes the Policing Board's powers or alters in any way the legislation that underpins the board's statutory remit.
3555. As I said earlier, this is uncharted territory. The protocols and concordats, like all protocols and concordats, will have to be reviewed on an ongoing basis; that is exactly what we intend to do.
3556. **The First Minister:** As with any new arrangements, everyone wants to have a clear picture of how the jigsaw fits together. The agreement clearly supports the operational independence of the Chief Constable in carrying out his functions. We have no intention of interfering or overlapping with the role of the Policing Board. The Policing Board is protected by statute, and we have no intention of reducing its remit in any way. I hope that there will be a relationship with the Policing Board, because that will be necessary for the smooth operation of policing and justice generally.



3557. It will ultimately be a matter for the Assembly to decide how it elects the Committee. However, I will not dodge the question. Indeed, the leader of the SDLP put the same question to me in a party-leaders' meeting two days ago. Off the top of my head, and without having done any work on the figures on how the parties might come out of the various permutations, I told her that it would seem most fair for the Assembly to run d'Hondt afresh to determine the Chairperson, the Deputy Chairperson and even the Committee members.
3558. Having taken the time since to consider how that will affect political parties, I think that I gave her exactly the right answer. It seems to be the sensible thing to do. Each party will probably examine how it may come out of a rerunning of d'Hondt and take a position based on that. The new Committee will be very important for the Assembly, and I imagine that it will be an early choice for political parties in the operation of d'Hondt.
3559. The justice Minister will act in the Executive with the same standing as any other Minister. The justice Minister will vote, and have access to all the papers, in exactly the same way as any other Minister. The justice Minister will carry out the same operational role in his or her Department that every other Minister carries out in his or her Department.
3560. Executive agreement could be required for the Minister of justice to deal with North/South issues. That is entirely a matter for the Executive, but the Executive have not reached any agreement on how to deal with those matters. The member is right: arrangements will need to be put in place, and we will need to consider those.
3561. **Mr Kennedy:** I have a question for the deputy First Minister regarding the report of Mr Larkin QC. He indicated that he intends to share that report with the Committee. Will it be shared with the Committee in time for us to include consideration of it in our second report to the Assembly?
3562. **The deputy First Minister:** We think that that is about two weeks away, but, yes, we hope that we can do that.
3563. **The Chairperson:** It will not be included in our report if it will not happen for two weeks. The deadline for our report is probably next Tuesday. We will have to work on our report on a number of occasions next week to allow time for the printing process and so on.
3564. **The deputy First Minister:** Our best guess is that it will take at least two weeks to get our response and the report to the Committee.
3565. **The Chairperson:** You mentioned, deputy First Minister, that the attorney general will have the right to speak and answer questions in the Assembly. Will those be questions for written answer? There may be occasions when the attorney general will have to address the Assembly. I assume that procedures will have to be put in place to allow the attorney general to do that. We would like clarity on that, because it is one of the issues that came up at Committee from time to time.
3566. **The deputy First Minister:** It is our view that that issue would be best resolved by the Assembly; it is entirely within the remit of the Speaker and the Business Committee.
3567. **The First Minister:** The prospective attorney general is not a shrinking violet; he would welcome any opportunity that he was given.
3568. **Mr O'Loan:** I apologise for being late. As I came in, the deputy First Minister was being very upbeat about the Hillsborough agreement. We all accept that the Hillsborough agreement has a lot of potential, but there has always been a lot of potential. Whether that potential becomes a reality is yet to be tested.
3569. The Hillsborough negotiations produced a date and three working groups. The SDLP will always be constructive in its approach to the work of those working groups and anything else that ensues from the Hillsborough agreement. However, we are equally entitled to

- highlight weaknesses in what has come before or what is being potentially built into the future. We are entitled to ask why, when the largely two-party system of government failed before, that mechanism was maintained in the talks at Hillsborough and in the structuring of the parades group.
3570. I want to ask a question about parading, and I would appreciate a response from both the First Minister and the deputy First Minister, because their positions might not be the same. What is wrong with the Parades Commission model? It is not enough to say that the Orange Order or the unionist parties do not like it. We need to know what is wrong with it in principle. Are you going to set out to undermine the principles, which are —
3571. **The Chairperson:** Will you come to your question instead of making statements?
3572. **Mr O’Loan:** I was asking a question. I may have asked it at length, but the issues are, as you would agree, quite important.
3573. **The Chairperson:** Will you come to your question, because I am trying to let every member ask questions?
3574. **Mr O’Loan:** Yes, but I am raising quite an important issue. Are you going to undermine the principle that the mutually competing interests involved must be brought to the table: the rights of those who want to parade and the rights of communities? Do you support the Ashdown interim recommendations to create a political mechanism to resolve the most contentious parades?
3575. **The Chairperson:** Much of what you asked was covered before you arrived, Mr O’Loan.
3576. **The deputy First Minister:** First, the Hillsborough agreement was welcomed by President Obama, United States Secretary of State Clinton, the Taoiseach, the British Prime Minister, the Irish Minister for Foreign Affairs, Micheál Martin, and by all the leaders of the parties in Leinster House.
3577. I found it interesting to hear the leader of the SDLP yesterday morning telling radio listeners that she was on her way to Dublin to talk to the leaders of political parties and canvass opposition to the “undemocratic nature” of the Hillsborough agreement. I was gobsmacked that she was prepared to go to Dublin to talk to the very people who applauded the decisions taken by Sinn Féin and the DUP, which led to the agreement at Hillsborough. I stood beside the Taoiseach, and the First Minister stood beside the British Prime Minister when they applauded the outcome of our deliberations.
3578. The overwhelming majority of people in our community have welcomed the outcome of the deliberations as a real opportunity to move forward to resolve the issues covered by the agreement as well as many other issues that affect them in their daily lives.
3579. For too long, we have been burdened with the failure to agree an outcome on the transfer of policing and justice powers. We have agreed the outcome, which should be welcomed and supported by every political party that participates in the institutions.
3580. Over the past couple of weeks, I noted that a number of SDLP spokespersons said that they were in favour of an improvement to the framework for parading.
3581. Essentially, we hope that an improved regulatory framework will emerge that has, at its heart, an acceptance of the need for dialogue in local communities. I say that as someone who has been involved in trying to resolve parades’ issues in my part of the North by encouraging the business community, the Loyal Orders, the Bogside Residents Group and many others in the city to bring about a process of dialogue and respect for each side. The outcome of that has shown that dialogue works. I also agree that we should not transplant a resolution from one part of the North to another. However, we can transplant — I say this without fear of contradiction — the absolute need, in any contentious

- situation, for people to sit down as sensible, mature human beings and work out solutions to the problems that exist.
3582. Everybody should withhold judgement on the outcomes, which will, hopefully, emerge from the working group in a short while. This is a sincere and genuine effort to deal with the concerns of all sides. Although some people in the broad nationalist community are content with decisions made by the Parades Commission, I have talked to many other people who are very discontented with those decisions. We are trying to improve the situation and to bring about increased dialogue and respect among contending groups and the resolution of an issue that has been to our detriment for many years.
3583. **The First Minister:** When the deputy First Minister listed the range of people who support the Hillsborough Castle Agreement, he could have gone beyond the British Government and pointed out that the leader of the Conservative and Unionist New Force, who is well respected by many people in Northern Ireland, wholeheartedly welcomed the agreement. I am sure that, in doing so, he spoke for everybody who accepts his influence and authority.
3584. **Mr Kennedy:** His proper title is the leader of the Conservative and Unionist Party.
3585. **The Chairperson:** The Member should speak through the Chair.
3586. **Mr Kennedy:** Sorry.
3587. **The First Minister:** I am glad that the Ulster Unionist Party identifies with Mr Cameron. I hope that it identifies with his remarks and his very warm welcome for the agreement, as evidenced by what he said in the Chamber of the House of Commons and by what he told me privately. The Liberal Democrats also share that view. Therefore, all the main parties have made it very clear that this is the way forward and have welcomed the agreement.
3588. It was encouraging to hear the confession of the Member for North Antrim, who admits the failure of the two-party system that those parties established and operated when they were the largest in the Assembly. We have chosen to change that system, to embrace it and to make it more inclusive. That is why we have set up the four working groups that are currently operating. It is important that we have a collective responsibility Executive. That collective responsibility Executive has massive potential.
3589. However, it is not good enough for politicians to simply talk about potential. It is up to politicians in every party to show leadership to gain that potential. Sitting on the sidelines or on your hands and murmuring, whingeing or gurning will not help to gain the full potential that can arise from this kind of agreement. Everybody must pitch in and get behind the agreement rather than try to pick up party political points here and there. The possibilities are massive. However, if people are not prepared to embrace it, and, if political parties do not show the leadership to gain respect and support from the community for it, it could fall and we will do away with devolution altogether. It requires us to grasp the potential and not lose the opportunity that exists.
3590. I can respond to the question about the failings of the Parades Commission. All of us on both sides of the community who have met the Parades Commission can see its weaknesses. We are looking for a system that encourages greater engagement and relies more on mediation and arbitration than on systems of adjudication. However, when we have to go to adjudication, we want a system that provides transparent and open processes and fair outcomes.
3591. Not only does the agreement allow us to look at the adjudication systems, it allows us to recognise that certain parades have had difficulties attached to them, and to the protests that surround them, for a very long time. We recognise that that is not a job that is going to be resolved in the week or two before a parade takes place. It requires all-year-round activity to try to ensure that we have the right atmosphere and

- the right understanding about how we might move forward. It is a welcome new step, and I trust that it will be embraced by residents' groups and the marching Orders so that we can move forward in a new direction. If one considers the massive costs that there have been, particularly for policing, it is something that we should all encourage rather than being negative about it.
3592. **Mr Dodds:** Mr O'Loan asked why people were against the Parades Commission. I refer him to the answer that has been given 10,000 times previously over the past decade. I welcome the First Minister, the deputy First Minister, their officials and staff. I also welcome what they said at the outset of the meeting.
3593. The First Minister talked about the costs associated with parading. The other costs, which were to do with the devolution of policing and justice powers, formed a major part of negotiations in the earlier part of the process. The First Minister gave a comprehensive report on all those matters in a previous Committee meeting. Those costs are a substantial part of our discussions, and they comprise various elements. How will the timescale for all the various elements be rolled out? Some of those costs will roll out over a number of financial years, such as the hearing loss payments and the payments to part-time PSNI officers. Which costs will be met immediately, and what proportion will be met in the medium and longer term? What are the plans for the military bases? The UK's honouring of its commitments to the plans for the military bases was a welcome development. Three bases are due to be sold, but what will happen in the meantime? How will they be used, and how much will they cost? Who bears that cost?
3594. **The First Minister:** The Member is right to draw our attention to the financial agreement. Sometimes I read in the press that there will be £800 million for policing and justice. I remind members that that is an additional £800 million on top of a budget of £1.2 million —
3595. **The Chairperson:** Do you mean £1.2 billion?
3596. **The First Minister:** Yes. Do the maths, and you will see how significant it was, particularly in the context of a period of considerable financial restraint. However, the access that we got to the reserve, should there be any increase in expenditure because of an increase in violence, for example, or any other element of the policing and justice responsibilities, was just as important as the additional £800 million. That access was a very important factor, because many of us were concerned that, if there was an increase in activity, the Minister of Finance and Personnel would be required to take money back from health, education, housing and other budgets.
3597. During the negotiations, just by chance, the Chief Constable and the chairman and deputy chairman of the Policing Board were at Hillsborough Castle for a meeting with the Minister of State with responsibility for security. The job that they were there to do was to start looking at their budgets. At that stage, they could not take for granted that there would be an agreement, and they were looking at the likely impact should they have to rely on the existing budget. The Chief Constable and the chairman made it abundantly clear that they could lose 1,200 policemen should the agreement not go ahead.
3598. Most of us know the pressure that exists on the Police Service, and that our constituents feel that there are already not enough police personnel. How would they have reacted had there been a significant cut in police manpower? It was the view of the Chief Constable that, whereas a loss of 1,200 policemen would be sufficient to deal with the shortfall, the need to pay redundancies might make the figure even greater. It was critically important that the matter was resolved satisfactorily.
3599. The hearing-loss issue will go according to its own timescale. It is a matter for lawyers, medical consultants and the legal processes generally. At least



- we have procedures in place so that funds will be available. This Committee reckons that that could be up to £400 million, if things go the way most people expect. Does the deputy First Minister want to touch on the issue of the military bases?
3600. **The deputy First Minister:** It was critically important during the course of that negotiation to get matters such as the hearing-loss situation resolved. To fail to do so would have had a massive impact on Departments such as the Department of Health and the Department of Education, and all other Departments across the board. The burden would have been unbearable for the Executive and the Assembly.
3601. It is important that the financial package kicks in at the point of transfer of powers; that means it will be delivered in April. Some other issues will kick in at that point, including resources for policing and legal aid, which is very important. The former military bases should also transfer as soon as possible. We are committed to maximising the economic potential of the sites. As many people know, all political parties in the West Tyrone constituency support the educational project at Lisanelly, which is hugely important, not just in developing education in the Omagh area but in freeing up other vital sites in Omagh, which can then be used for the regeneration of Omagh.
3602. **Mr Attwood:** I apologise that I was not present for the earlier part of the meeting; I was attending a meeting of the Policing Board.
3603. I do not know whether the deputy First Minister was gobsmacked by what Margaret Ritchie said yesterday. However, I welcome the reliance that he and others now have on democratic government in Ireland, the parties in the South, and democratic governments in America and elsewhere. I welcome the fact that you, like others, now place great faith in the wish and will of democratic governments and recognise that they are important when it comes to how we conduct our political affairs.
3604. The deputy First Minister referred to improvements in the framework on parading. That is not the language that the SDLP has used. As I am sure you learnt from our meeting with the working group, we tried to make positive proposals about how to upgrade mediation and enhance understanding of the marching tradition. However, we advised that that be done in the context of the Parades Commission, because we, and many others, are concerned that there could be some political fixes on the Parades Commission and some local fixes when it comes to parading issues. You will have picked up on that.
3605. The First Minister made comments about everyone showing leadership. We could have a big conversation about that. However, one of the best examples of leadership in the past 10 years has been what the political parties have achieved around policing and the Policing Board. I have said regularly that, in my view, the Ulster Unionist Party and the Democratic Unionist Party did some of their best political work on the first Policing Board. It would be very easy for people to walk from the Policing Board in the same way that they walked from other institutions. However, none of the parties that made that commitment in 2001-02 reneged on it.
3606. In more recent years, all parties shared that responsibility. The protocol on policing architecture that was drafted by the British Government begins to upset what has been achieved over the past 10 years.
3607. An hour and a half ago, the Policing Board decided to send the British Government the opinion of a Patten commissioner and the Crown Solicitor on the policing protocol. Their comments very much put in doubt the content of the protocol. I ask both of you, given what all our parties achieved, in whatever time frame they achieved it —
3608. **The Chairperson:** Do I detect a question coming?



3609. **Mr Attwood:** Yes, I have a question. I ask you to seek out that advice and, even at this late stage, try to prevail upon the British Government not to go down the road of that protocol. I ask that because, as the Patten commissioner said in his opinion to the Policing Board, the delicate architecture that was built was created for a very good reason; that is, because of our experience of policing in the past. That is particularly the case in respect of the relationship between the justice Minister and the Chief Constable, the powers of the justice Minister and the powers of the Committee. He considered that protocol to be extraordinary, given our experience of policing issues in the past, and, to quote him, it “profoundly distorts” how policing would work, and: “makes the Chief Constable dependent on the goodwill of the justice Minister”.
3610. We have spent a lot of time talking about all that, but I am asking that, given what has happened on policing, together, and, in more recent times, across all the parties, we should be very cautious about that protocol, which you have added to with the power of the justice Committee. I ask you to look at that. The Secretary of State said that he would look at it, and we need to do so urgently if we are to not potentially put in jeopardy some of the achievements on policing of the past 10 years.
3611. **The deputy First Minister:** First of all, this is not a politics class. I do not need a lecture from you or anyone else about the history of Ireland or of the North of Ireland. There has been widespread support for the Hillsborough agreement from the President of the United States, Secretary of State Clinton, the Taoiseach and all party leaders in the South. Peter mentioned that the leader of the Opposition in Britain also supports the agreement, as does the British Prime Minister.
3612. That argues for all of us in the Assembly moving forward on the basis of giving support to the need for the transfer of policing and justice powers. The SDLP was particularly confused during a number of stages of the Department of Justice Bill in the Assembly, at one stage voting against, at another stage abstaining, and at the Final Stage voting in favour. I want to see that confusion out of the way.
3613. I hope that when we come to placing the motion before the Assembly on 9 March, all parties represented here will support what the vast majority in our community see as an important agreement, not just in the context of the transfer of policing and justice powers, or even on the issue of parades, but in presenting a new opportunity for us to move forward in a much more positive and constructive way to deliver proper government for people who are suffering as a result of losing their jobs, for elderly people living in fear as a result of attacks on them and for children living in poverty. Those are all issues that we need to address.
3614. When it comes to discussing parades, many people can be concerned about what has been a difficult history of dealing with that issue. According to whatever historian you speak to, you could be going back hundreds of years. However, these are the principles that underwrite the whole approach, and I would like to know which of them the SDLP does not agree with. Those principles include: local people providing local solutions; respect for the rights of those who parade and respect for the rights of those who live in areas through which they seek to parade, which includes the right of everyone to be free from sectarian harassment, while recognising at all times that those are competing rights. There is also the issue of transparency, openness and fairness, and there is the issue of independent decision-making.
3615. We are trying to bring about an improved framework. Many members of the SDLP know that there is a real opportunity to do that. You should try to avoid political point-scoring because it does not really get us anywhere. It certainly will not get the SDLP anywhere because the people whom I represent have made their judgement time and again about the process going forward and the decisions that have been taken by whatever

- party they wish to represent them in negotiations.
3616. All that we can do is move forward on the basis of trying to be positive and constructive. We are trying to build a better future and trying to tackle head on very difficult issues that affect communities in a small number of places. It must be remembered that there are a couple of thousand Orange and Loyal Order parades in any given year, the vast majority of which pass off peacefully.
3617. You mentioned the issue of architecture. We all know that all of that has yet to be finalised. There is nothing in the policing architecture protocol that changes the Policing Board's statutory remit. The protocol was endorsed by the Assembly's recommendation that devolution should not diminish the powers of the Policing Board. As you and everybody else know well, all those protocols will be reviewed on an ongoing basis. If there is a particular problem at this time, we should be made aware of it, and we should discuss it and attempt to find solutions.
3618. We are trying to move forward on the basis of resolving problems. I think that you talked about fixes. We are not looking for fixes; we are looking for common-sense solutions to issues that have a detrimental effect on the people whom we represent.
3619. **The First Minister:** The specific question was about the protocols and the legal advice or opinion that is being passed on by the Policing Board. Neither the deputy First Minister nor I have any emotional capital tied up in the wording of the protocols that came from the NIO. In some respects, we believe that there are areas in which they could be worded better. If there are some specific issues, we would be very happy if correspondence were passed to us so that we can look at the issues and see whether there are suitable ways of dealing with problems that arise.
3620. **The deputy First Minister:** Absolutely.
3621. **Mr Attwood:** The deputy First Minister asked whether the SDLP disagreed with any of those principles, so I think that I should have the opportunity to reply to that question.
3622. **The Chairperson:** Other members want to ask questions. You have had your opportunity.
3623. **Mr Attwood:** I would welcome the opportunity to reply.
3624. **Mr A Maskey:** You can do that another day, somewhere else.
3625. **Mr McCartney:** The purpose of today's meeting was to assist us in formulating our second report. If people want to make political speeches, they should do it elsewhere or ask for a private meeting with the First Minister and deputy First Minister.
3626. The last question that was put to Shaun Woodward this morning was whether everything was in place for the handover of all the apparatus of policing and justice. Are we, at this end, ready to accept everything when it is handed over?
3627. **The First Minister:** My party and I are certainly ready, and I think that the deputy First Minister will give a similar answer. I wait to hear the answer from the other parties.
3628. **The deputy First Minister:** Yes, absolutely. A tremendous amount of work has been undertaken, not least by this Committee over the past 14 or 15 months. We are as ready as we ever could be to ensure that we move forward very decisively on 12 April. Like everything else, it will be a whole new experience. There will be an entirely new Department. There will be a learning curve, but that is what taking powers and responsibilities is all about. I am well satisfied that the institutions of which we are part are more than capable of managing the transition to devolved policing and the devolving of responsibility for the courts to our Administration.
3629. **The Chairperson:** Thank you for the answers that you have provided. There are one or two areas that we have not

- touched on. The Committee has to clear up the category 2 list of issues after you leave. I wish to ask you both for any views that may inform the discussion that will take place shortly.
3630. The first issue concerns the funding and administration of the Public Prosecution Service. Three different views have been expressed in the Committee: that financing, etc, should lie with OFMDFM, DFP or the Department of justice. Do you have any views on where that responsibility should lie?
3631. There are references in the Agreement at Hillsborough Castle to a review of the Executive's operations. Will that affect the role of this Committee, given its remit under the St Andrews Agreement? Do you envisage any change in the future role of the Committee and the remit that it was given?
3632. Finally, with regard to the appointment of the Police Ombudsman, you have an advisory role in recommending who the Crown might appoint to that office. Do you consider that that should remain the case, or should the justice Minister also provide advice, given that devolution will have taken place before there is another appointment to that office? I ask you to express any views that could be helpful to our discussion.
3633. **The First Minister:** I will take the middle question and dump the other two on the deputy First Minister.
3634. On the future of the Assembly and Executive Review Committee, I am pretty sure that the outworking of the task that is being carried out by the working group that is dealing with issues that arise from the St Andrews Agreement will produce a programme of work that, if one were to cast an eye around to see who is best placed to perform some of it, is bound to come this Committee's way. I expect that more work, rather than less, will be heading in the Committee's direction.
3635. Certainly, we have found the Committee's work valuable with regard to our specific remits. Therefore, I expect that, shortly, when you see the outcome of work by the group on the St Andrews Agreement issues, there will be some matters that the Committee will want to address and, hopefully, to progress.
3636. **The deputy First Minister:** We support the recommendation in the Committee's report of March 2008 that the PPS should be a non-ministerial body. It will, effectively, be a free-standing body, and funded as such.
3637. The appointment of the Police Ombudsman will not be devolved. However, it will be for the First Minister and me to act jointly to make a recommendation for appointment. We will also be able to call for the ombudsman to resign, in limited circumstances. We will want to take the views of the Minister of justice before we make a recommendation for that appointment, or if, God forbid, we have to call for the ombudsman to resign.
3638. **The Chairperson:** Thank you both very much indeed for coming before the Committee this afternoon. We hope to produce a report to assist the debate on 9 March 2010, provided that I can keep a quorum in the meeting for the rest of the afternoon.
3639. **The First Minister:** Thank you.
3640. **The deputy First Minister:** Thank you.



## 18 February 2010

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Nigel Dodds  
 Mr Simon Hamilton  
 Mr Danny Kennedy  
 Mr Alex Maskey  
 Mr Declan O'Loan

3641. **The Chairperson (Mr Spratt):** Members, we have to address the entire category 2 list of issues. You will understand the importance of that, given that we are now on a tight time schedule. As I said this morning, the Committee staff will work during this weekend and next to get the report to print so that we can produce it to assist the debate on 9 March 2010.
3642. If members are content, we shall move directly to the category 2 list of issues. Relevant declarations of interest were made earlier today. I will take members through the list. There is already agreement on some of the issues.
3643. The first matter is issue A, which concerns the role of the attorney general. Members need to consider the evidence that has been provided by the First Minister and the deputy First Minister on the role that they envisage for the attorney general, and how they expect that office to be set up. The issue of cost is probably outside our remit at this moment. Members also need to consider how the attorney general might report to the Assembly — an issue that was raised with the Ministers — and the paper that John Larkin submitted to their office, which they told us would not be available for another two weeks, but would be presented to the Assembly, if I understood them correctly.
3644. Are members content to concur on the role of the attorney general as outlined
- by the First Minister and the deputy First Minister?
3645. **Mr Kennedy:** We are at a slight disadvantage in respect of the final compilation of the report, in that we will not have access to that document, although it appears that we will have access to the document before the Assembly debates it. Perhaps it could be published as supplementary evidence as an addendum in some shape or form. However, it would be important to study the content of that document, rather than give it carte blanche approval in advance.
3646. **The Chairperson:** I understand that caveat in respect of the report. However, I understood the Ministers to say that the paper would be made available, but probably not for two weeks, which is outside our timescale. With that caveat, do members agree issue A?
3647. **Mr Attwood:** That the post should be full time?
3648. **The Chairperson:** On all of the issues that I just mentioned.
3649. **Mr Kennedy:** There is an important caveat. I urge some caution in reserving our position on that. We would like to see the detail of that paper.
3650. **The Chairperson:** We will make that clear in the report. Members will be discussing the draft report over the next week or so.
3651. **Mr Kennedy:** It would be helpful if that issue could be reflected in the report.
3652. **The Chairperson:** Yes.
3653. **The Committee Clerk:** Mr Kennedy has put forward one proposition, which is to publish the document as an addendum, if it were to arrive in time. However, the Committee might wish to write to the First Minister and the deputy First Minister to indicate that, because of



the difficulties and challenges with our time frame, the onus and responsibility is on them to publish the paper, rather than it forming part of the Committee's report. That issue could be picked up in the course of the debate on the motion. In the circumstances, the debate will go wider than the content of the report, because the debate will be on the motion to transfer powers. That might be a potential solution. I can explore that option with the Office of the First Minister and deputy First Minister.

3654. **The Chairperson:** Are members satisfied that we write to the First Minister and the deputy First Minister with that suggestion? They were pretty clear in indicating that they were happy to share the report.

**Members indicated assent.**

3655. **The Chairperson:** Issue B relates to who might be responsible for appointments to the judiciary. I remind members that that matter was resolved at the Committee meeting on 21 April 2009. On 9 February 2010, members reaffirmed their earlier decision that appointments to the judiciary would continue to be dealt with through current legislation. Do members reaffirm that position?

**Members indicated assent.**

3656. **The Chairperson:** Issue C relates to the Serious Organised Crime Agency (SOCA) and the security services. Members heard the Secretary of State's evidence this morning. Is there any consensus on the memoranda that were discussed this morning?
3657. **Mr Attwood:** I doubt it. We do not accept the protocol.
3658. **Mr McCartney:** We have reservations, as outlined by Alex Maskey this morning to the Secretary of State.
3659. **The Chairperson:** The Secretary of State indicated during this morning's meeting that there will be some continuing discussions, but that national security will remain a matter for Her Majesty's Government. Therefore, the Committee

has not reached consensus on that issue, and it will report to the Assembly accordingly. Is that agreed?

**Members indicated assent.**

3660. **The Chairperson:** Issue D concerns the North/South policing and justice arrangements. Are members content that the seven documents that have been supplied by the NIO will ensure the maintenance of existing North/South policing and justice agreements? Sorry, that will be six documents, given that we do not have consensus on the protocol on national security.
3661. Furthermore, is there any consensus on the possibility of a justice sector of the North/South Ministerial Council?
3662. **Mr Hamilton:** I would guess not.
3663. **Mr Kennedy:** The Secretary of State indicated that he was going to provide additional clarity on the memoranda and concordats. It would helpful to receive that clarity.
3664. **The Chairperson:** The NIO indicated that it would write to the Committee by Friday 19 February. That may be a tall order given how long some of the letters have taken to arrive in the past. However, it did indicate that it would write to the Committee by that date, and I impressed again that Tuesday 23 February was the deadline.
3665. **The Committee Clerk:** A solution could be that when I am drafting the Committee's report over the weekend, I do not draft that particular section. That would allow the Committee time to discuss the response from the Secretary of State on the clarity of the protocols before it considers the draft report on 23 February. However, that would require the Committee to meet again later next week, even if there are no other suggested revisions or need to redraft any of the other sections of the report. The Committee will need to reconvene to agree something for me to draft on the back of the discussions at the early part of the meeting on 23 February.

3666. **The Chairperson:** Does the Committee agree to that?

**Members indicated assent.**

3667. **The Chairperson:** Issue E relates to finance. Are members content with the answers that the Secretary of State gave about the proportion of the existing NIO budget that will be transferred to the Department of justice? The NIO indicated that it would break that figure down, and I think that the overall figure was £1.328 billion, plus £800 million, which has been classed as additional money. Does the Committee wish to include a recommendation in its report about ring-fencing the police and justice budget?

3668. **Mr Attwood:** Yes.

3669. **The Chairperson:** Is the Committee agreed?

3670. **Mr Dodds:** What do you mean by ring-fencing?

3671. **Mr Attwood:** The £1.328 billion must be used for the policing and justice sector.

3672. **Mr Dodds:** For ever and a day?

3673. **Mr Attwood:** No. However, in the first instance, the money that comes across should stay in the policing and justice sector. You know what I am getting at. The Department of Finance and Personnel may look at that sum and say:

*"We'll take some of that, thank you very much."*

3674. **Mr Hamilton:** I am surprised that you are not looking for that money to go to social housing newbuilds.

3675. **Mr Dodds:** I am just trying to protect you, Alex. When Margaret Ritchie hears that you have said that, she will go ballistic.

3676. **Mr Hamilton:** I am sure that you could build a few houses with that money.

3677. **The Chairperson:** Members should remember that the session is still being recorded for the Hansard report.

3678. **Mr Attwood:** If you are making that point, you should support my point and ring-fence that money.

3679. **Mr Dodds:** In all seriousness, the concept of ring-fencing is an interesting one. All Ministers and all Departments would like to have their expenditure ring-fenced.

3680. **Mr Attwood:** It is an interesting concept. There is a distinct budget, with everything save £26 million, plus the money for the Court Service. Given all the issues around policing and justice, it seems prudent to endorse the principle of ring-fencing for policing and justice during the current CSR period. We would have to take our chances with any future Budget.

3681. **Mr Dodds:** Do you mean ring-fencing in respect of the transferred powers, but thereafter the budget for them would be treated in the same way as every other budget? I am not saying what should happen thereafter, but is that is what you are saying?

3682. **Mr Attwood:** It should be ring-fenced thereafter, but for the purposes of our report —

3683. **Mr Hamilton:** For the next financial year?

3684. **The Chairperson:** Therefore what is transferred should be ring-fenced; beyond that, it is open for debate. We are agreed that the budget should be ring-fenced for the year 2010-11. We are also content with the information given by the Secretary of State. Does the Committee agree that once it has ordered the report to be printed, the finance section of the report can be provided to the Committee for Finance and Personnel for information?

**Members indicated assent.**

3685. **The Committee Clerk:** Before you move on, Chairperson, given that the Secretary of State said that he will provide a detailed breakdown of the £1.328 billion by tomorrow, will the Committee also give permission for that detailed breakdown to be shared with the Committee for Finance and Personnel, given the work that it will be required to do on the Budget Bill?

3686. **The Chairperson:** That stands to reason. Are members agreed?
- Members indicated assent.**
3687. **The Chairperson:** Issue F relates to parading. What comments do members have, especially in relation to section 2 of the Agreement at Hillsborough Castle, to establish how parading should be dealt with in the Committee's report? Should the report simply reflect the fact that parading is now considered to be dealt with in the Agreement at Hillsborough Castle and that no further elaboration is required?
3688. **Mr Attwood:** There is no consensus on that.
3689. **The Chairperson:** You are making your point. What about everybody else?
3690. **Mr Kennedy:** The Hillsborough Castle Agreement supersedes the Ashdown report. No outcomes have been determined. A working group has been set up and is gainfully employed on the issue at the moment, but there is no known outcome at this stage so we will simply have to reserve our position until an outcome has been determined.
3691. **The Chairperson:** Our consideration is what, if any, consideration should be given to the Ashdown report on parading and whether there is a need for further clarity on the powers to be devolved. If so, should they include matters relating to the Public Processions (Northern Ireland) Act 1998, flags and symbols, and recruitment to the PSNI?
3692. **Mr Dodds:** That is the crucial point: what consideration should be given to parading? We are content that there is now a requirement that the matter be dealt with as part of the Hillsborough agreement.
3693. **The Chairperson:** Are you content that there is a requirement for parading to be dealt with, given the caveat that you have included?
3694. **Mr Kennedy:** The caveat is important. There seems to be a requirement, but whether that requirement can actually be met is the issue.
3695. **Mr McCartney:** I thought that we agreed at our last meeting that those issues were no longer a matter for the Committee.
3696. **The Chairperson:** That was my understanding as well. It was agreed at the last meeting that it was no longer an issue because it was being dealt with by means of the Hillsborough agreement. That was the position.
3697. **Mr Attwood:** The minutes state that, at the meeting on 9 February, no consensus was reached on how to proceed on the issue; that was the height of what was agreed. There is no consensus on whether the Hillsborough agreement was the right way to proceed.
3698. **The Chairperson:** I am trying to gauge whether there is consensus, and that will be accurately reported. There is no consensus from your position, Mr Attwood.
3699. **Mr McCartney:** My recollection is that there was a debate around the phrase "if any". We said that our work had concluded. However, Alex's recollection is obviously different.
3700. **The Chairperson:** Your position is that the Hillsborough agreement concludes the matter as far as we are concerned.
3701. **Mr McCartney:** It may not conclude the matter. However, it concludes our work.
3702. **Mr Dodds:** The question is what, if any, consideration should there be of the Ashdown report on parading. We are not going to have a substantive debate and then claim that there was no need for that because the Hillsborough agreement addressed the issue. Therefore, the answer to the question is that there does not need to be any consideration. That takes account of Danny's point and is why, in those circumstances, the caveat "if any" is relevant.
3703. **Mr Attwood:** The minutes of the previous Committee meeting were agreed earlier. Those agreed minutes state that members could not reach consensus on that issue of what

- consideration there should be. There was absolutely nothing said about the matter being addressed by the Hillsborough agreement and, therefore, that was the way in which it was going to be pursued. That was not agreed.
3704. **The Chairperson:** If there is no consensus, I will put this matter to a vote.
3705. **Mr Dodds:** It is a question only of what our view on it is. I was not at the previous meeting and, therefore, do not know what was agreed.
3706. **Mr McCartney:** The minutes do not reflect what Alex says.
3707. **The Chairperson:** I need to resolve this. However, I am not going to get into a long debate about it. I will put it to a vote and that will decide whether it is part of the report.
3708. **Mr McCartney:** The question, as it was asked, goes beyond the Ashdown review. That is the point that I am making. We said that we had no more work to do on the Ashdown review.
3709. **Mr Hamilton:** I understand that there are divergent views on whether the process that was agreed at Hillsborough deals satisfactorily with the issue of parading. There will be some disagreement over that, as has been expressed today. The point is not whether we agree with the process. The point is whether the Committee thinks that there should be consideration of that issue. Clearly, the answer to that is that a process has been agreed at Hillsborough, whether people like it or not, that deals with the issue of parades and, therefore, takes it away from us. If we agree that that is being dealt with in the agreement, the Committee does not need to consider the issue further.
3710. **The Chairperson:** That is my understanding. We can listen to what people have to say and allow them to make their points at the debate that will take place on 9 March. There may be more clarity around the parading issue before that time. However, given the position that we are in today — that of agreeing the report, the question is whether members are agreed that a process is now taking place, as was agreed at Hillsborough. I get the feeling that there is a majority consensus around the table that a process is taking place, and that the issue is whether we need to say anything further. A process is taking place and, therefore, we do not need to do anything further at this time.
3711. You, Mr Attwood, will, undoubtedly, make your points during the debate on 9 March, as everybody has a right to do.
3712. **Mr Attwood:** I have no difficulty with the narrative that records the history of what the Committee has or has not done on the issue of parades and the fact that, at Hillsborough, arrangements were entered into, and that those arrangements were x, y and z. I have no difficulty accepting that there was no consensus around what the Committee should or should not do. That probably captures all members' viewpoints — I see that the Committee Clerk is nodding enthusiastically, so I am sure that I am right — and I have no problem with saying that. However, I am not going to say that the arrangements agreed at Hillsborough are the be-all and end-all.
3713. **The Chairperson:** Nor am I asking you to. Can we agree that there is no consensus, but that the issue is being dealt with elsewhere, namely, as part of the Hillsborough agreement?
- Members indicated assent.**
3714. **The Chairperson:** We move to issue G: consideration of the Public Prosecution Service. I refer members to the briefing paper that was requested at last week's meeting. The second paragraph of page 3 of the concordat on the independence of the PPS is based on the assumption that funding for the PPS will be routed through DFP. You heard the deputy First Minister's answer on that. Do members wish to comment on that?
3715. **Mr Kennedy:** It should be routed through DFP.
3716. **Mr Hamilton:** That is the DUP's position as well. The argument has been put forward that it should come through

the Department of justice. I can see an argument as to why that view might be put forward, notwithstanding the concerns that have been raised in the Committee and by others about the potential conflict of interest in that Department. I am keen to hear how that matter would be addressed.

3717. **Mr McCartney:** We believe that the funding should be routed through OFMDFM.
3718. **Mr Kennedy:** I did not catch that, and it is not Raymond's fault.
3719. **Mr McCartney:** Sinn Féin believes that the funding should be routed through OFMDFM; that was our original position.
3720. **Mr Attwood:** I could not hear what Simon Hamilton said.
3721. **Mr Hamilton:** Perhaps we should hold up cards or throw paper aeroplanes.
3722. **Mr Attwood:** Are you DFP?
3723. **Mr Hamilton:** I am DUP.
3724. **The Chairperson:** Let us not stray off the point. There are a few more issues to discuss. When they have been discussed, you can stay here and have a jolly time for an hour, but I will not be here.
3725. **Mr Attwood:** I thought that I heard Simon Hamilton say that there was an argument for funding to come through the Department of justice. That is our position.
3726. **Mr Hamilton:** I said that we have heard the argument for the Department of justice, and that we can understand why the argument was made. Perhaps we need megaphones.
3727. **The Chairperson:** Obviously, there is not consensus on this matter. The issue was raised through party papers. There is quite a pot of money, and I am sure that somebody will decide where it is going to and where it will be allocated from. For the purposes of the report, can we record that there is no consensus on that matter?

**Members indicated assent.**

3728. **The Chairperson:** Issue H concerns the independence and accountability of the PPS. Are members content that that matter has been covered?

**Members indicated assent.**

3729. **The Chairperson:** We turn to issue I, which concerns the Police Ombudsman, and relates to recommendation 30 of the Committee's original report. The protocol on national security states: "The Minister of Justice is responsible for the process of appointing the Police Ombudsman ("PONI") and for sponsoring his/her office (although the appointment is made formally by HM The Queen on the recommendation of the First and deputy First Minister). In relation to all devolved matters PONI reports to the Minister of Justice. In relation to reserved or national security matters, PONI reports to the Secretary of State and the Secretary of State may issue guidance to PONI on matters relating to national security."
3730. Is there consensus on that? The deputy First Minister indicated a similar position.
3731. **Mr Attwood:** I do not see those words. Are they in the documentation?
3732. **The Chairperson:** They are in paragraph 3.2 of the annex to the protocol on national security; it is in my brief. It sounds to me like a direct lift from the present position, and the deputy First Minister reiterated that position.
3733. **Mr Attwood:** I need to see the words.
3734. **The Chairperson:** I read out the words a second ago. Do you want me to read them again?
3735. **Mr Attwood:** I would like to see the words. Given the concerns about the national security protocol, I need to see and understand those words.
3736. **The Committee Clerk:** It is on page 6 of the paper at tab 5G in members' packs, at paragraph 3.2.
3737. **Mr Attwood:** I may agree to that next week, but I will not agree to it today. I want to check whether —



3738. **The Chairperson:** Remember that the report will be drafted over the weekend. I am quite happy to leave that section out and return to it on Tuesday morning.
3739. **Mr Attwood:** I want to check whether it is legally correct, because other aspects of the protocol are not legally correct.
3740. **The Chairperson:** I will not discuss the rest of the protocol; we have already heard your position on that. I am asking specifically about the position of the Police Ombudsman.
3741. **Mr Kennedy:** Are we deferring that matter until Tuesday?
3742. **Mr Chairperson:** Yes; we will defer it until Tuesday morning. However, we need agreement on Tuesday morning. I want to reiterate that the schedules are very tight. Members need to either co-operate on the matter or tell us that there is no consensus, and we will happily reflect that in the report.
3743. Issue J relates to the procedures and protocols that will need to exist between the Minister and the Assembly Committee. I remind members that, on 9 February 2010, the Committee reaffirmed its earlier decision that procedures and protocols among the Minister, an Assembly Committee and any newly established Department and its associated agencies, will be the same as those that exist for other Ministers. Are members content to reaffirm that position?

**Members indicated assent.**

3744. **The Chairperson:** Issue K concerns the Minister's relationship with the Executive. At the Committee meeting on 9 February 2010, members agreed that that issue was dealt with in the Agreement at Hillsborough Castle and, in particular, in section 1 of that agreement. Are members content to reaffirm that position?

**Members indicated assent.**

3745. **Mr Kennedy:** Was that agreed unanimously?

3746. **The Chairperson:** I have not heard any dissenting voices, so I will move on.
3747. **Mr Kennedy:** I meant to ask whether it was agreed unanimously at the meeting on 9 February.
3748. **The Chairperson:** Yes. Are members, therefore, content?

**Members indicated assent.**

3749. **The Chairperson:** Our Committee had recommended that there should be a Standing Order to preclude members of the Policing Board and the district policing partnerships (DPPs) from holding membership of the justice Committee. The NIO's protocol on policing architecture, which is in members' information packs, suggests that members of the Belfast DPP subgroups also be precluded. Do members agree to that?
3750. **Mr Hamilton:** Why should they be precluded?
3751. **Mr McCartney:** The subgroups are smaller versions of the DPPs.
3752. **The Chairperson:** Yes, they are. Belfast has four subgroups.
3753. **Mr Attwood:** Why does it not ask that members of all DPPs be precluded?
3754. **The Chairperson:** It is members of all DPPs. The NIO also wants to include the four Belfast subgroups. If members of DPPs and the Policing Board are to be precluded, it makes sense to preclude members of the Belfast DPP subgroups. Do members agree to ask the Committee on Procedures to reflect that?

**Members indicated assent.**



## 23 February 2010

### Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Attwood  
 Mr Nigel Dodds  
 Mr Simon Hamilton  
 Mr Alex Maskey  
 Mr Alan McFarland  
 Mr Declan O'Loan  
 Mr Ian Paisley Jnr

3755. **The Chairperson (Mr Spratt):** We move to the devolution of policing and justice, and the category 2 list of issues. I declare that I am a member of the Northern Ireland Policing Board.
3756. **Mr A Maskey:** I am a member of the Policing Board.
3757. **Mr Attwood:** I am a member of the Policing Board.
3758. **Mr O'Loan:** I am a member of Ballymena District Policing Partnership (DPP).
3759. **Mr Paisley Jnr:** I am a member of the Policing Board.
3760. **The Chairperson:** We will move straight into the category 2 list of issues. During the Committee's meeting of 18 February 2010, agreement and conclusion was reached on several of those issues. Therefore, the Committee will consider only the issues that are yet to be resolved.
3761. One of the issues to be resolved by the Committee pre-devolution that may require further consultation is issue A, which deals with the role of the attorney general. During the meeting of 18 February 2010, Committee members agreed to ask the First Minister and the deputy First Minister to publish the paper by John Larkin QC, and their response to it. Following on from earlier Committee discussions, do members wish to discuss issue A further, in light of the letter tabled by the First Minister and deputy First Minister.
3762. **Mr Paisley Jnr:** We note that the report and the response to the report are to be published in the Assembly Library in the next couple of weeks. There is nothing else that we can say until we see those documents.
3763. **Mr Hamilton:** I think that we only can note that.
3764. **The Chairperson:** The Committee Clerk or I could request that a copy of the documents be sent to members of the Committee at the same time that they are placed in the Library. That is my understanding of the suggestion that was made earlier. Do members have any comments on that?
3765. **Mr Attwood:** There is a very small window for the Committee to consider that issue between the documents being placed in the Library and the proposed date for the devolution of policing and justice. There will have been a period of approximately six months between John Larkin writing his report and the Committee receiving a copy of it, and I can only imagine why there was such a delay in the Office of the First and deputy First Minister sharing it more broadly.
3766. However, the critical issue in respect of the attorney general is the interface between the Assembly and the Public Prosecution Service (PPS). How will that work and be managed? What will Assembly Members be able to do? That is going to be one of the critical relationships. Such a relationship and the conduct that will be involved is something that no Member of the Assembly will have had any experience of. Nor will we have had any experience of the conduct that will be involved in respect of cross-border prosecutions. Matters can be difficult even in the relationship between Members and the Chief Constable and the PSNI.
3767. It is unfortunate that the Committee has not had more of an opportunity to

- consider what the document means. However, there will be a window between the second week in March and the middle of April when the Committee can determine whether there any matters on which it can make suggestions to OFMDFM.
3768. **Mr Paisley Jnr:** I have no difficulty with that. We all want to see what is contained in Mr Larkin's report and would like the opportunity to say that we have at least scrutinised and tested it, and seen the response. I do not imagine that the delay is all one-sided.
3769. **Mr Attwood:** It is three-sided.
3770. **Mr Paisley Jnr:** I think that it is two-sided. I have no problem with the Committee having an opportunity to consider and examine that report once it has been placed in the Assembly Library. I do not know whether we will require another Committee report, but we should at least have a chance to see Mr Larkin's report.
3771. **The Chairperson:** The Committee on Procedures probably need a steer from this Committee about whether the attorney general should have speaking rights in the Assembly. We must deal with that issue. However, as someone suggested earlier, once the devolution of policing and justice has taken place, the matter may have to become the property of the future justice Committee pretty quickly.
3772. **Mr Attwood:** But not before the middle of April.
3773. **The Chairperson:** No. I appreciate that.
3774. **Mr Attwood:** Regardless of what may arise constitutionally thereafter, the Committee should have some locus on what will happen until then. I am not sure whether we will cover this issue today, but I do think that the attorney general should have speaking rights in the Assembly, and we should have the capacity to question him, just as we do in the case of Ministers.
3775. **Mr Paisley Jnr:** Do you envisage those speaking rights being through a Committee or on the Floor of the House?
3776. **Mr Attwood:** I would go for the maximum model and give the attorney general speaking rights on the Floor of the House. However, I am unsure what the precedent is for that.
3777. **Mr Paisley Jnr:** That would not necessarily provide the opportunity for maximum scrutiny; rather, it would just provide a sounding board.
3778. **Mr Attwood:** I meant that the attorney general should be given speaking rights on the Floor of the Assembly, and that a Committee would be empowered to require his attendance to make enquiries about appropriate matters. Therefore, the maximum model would involve the attorney general having a responsibility to a Committee and on the Floor of the House.
3779. **The Chairperson:** Committee members will remember that, during our visit to the Scottish Parliament, the deputy head of the Procurator Fiscal Service gave a presentation that outlined that they do have speaking rights in the Scottish Parliament and can make statements, but that they cannot be questioned on individual cases. It would be entirely wrong for the attorney general to be obligated to answer questions or make statements only on policy issues, and so on.
3780. **Mr Paisley Jnr:** In this House, the attorney general would potentially answer for the Director of the Public Prosecution Service. There is an issue about that relationship and about whether the voice says what the body wants. Such a relationship would require some sort of test.
3781. **The Chairperson:** That is the very point.
3782. **Mr A Maskey:** It is new territory, and people will want to have opportunities to ask questions. As Peter Robinson and Martin McGuinness told the Committee last week, the attorney general will also probably want such opportunities. That is all subject to the issue of independence. Even if there are tensions further down the road about some of these matters, they will not be insurmountable. We should make sure

- that the attorney general has speaking rights. It is about ensuring a level of scrutiny and accountability, within the confines of guaranteeing people's independence.
3783. **The Chairperson:** We have had a helpful discussion on this matter.
3784. **Mr McFarland:** I thought that these matters had been set out in some form of advice from the NIO. I understood that the attorney general would be able to take questions, but would not be able to vote. Was that not laid down somewhere already?
3785. **The Committee Clerk:** There is legislative cover for the attorney general to report, but it is no more specific than that. The advice does not specify that such reports should be made orally or in writing; or to the Assembly in plenary or to a Committee. The Committee on Procedures would develop Standing Orders for the purposes of the conduct of business on the Floor of the Assembly. I understand that that Committee would expect to take a lead from the Assembly and Executive Review Committee on what those Standing Orders might reflect. My understanding is that the entire purpose of the Committee asking to have sight of John Larkin's paper, and the response of the First Minister and deputy First Minister, was to see the extent to which those matters were covered, and, if they were covered, whether this Committee would endorse those approaches, add to them, or suggest alternatives.
3786. **The Chairperson:** We have had a wide discussion on that matter, and a number of points have been raised. We need to see that paper when it is placed in the Assembly Library. If there is time for a Committee meeting before that paper goes before the Assembly, we will have it, with the agreement of members.
3787. Can we note the comments that have been made, and agree that they will be reflected in our report?
- Members indicated assent.**
3788. **The Chairperson:** Does the Committee agree that we have dealt with issue A?
- Members indicated assent.**
3789. **The Chairperson:** We move to the next matter that remains outstanding: issue C, which relates to the Serious Organised Crime Agency (SOCA) and the security services. The Committee agreed that there was no consensus on that issue. However, members may wish to consider, in light of the NIO's letter of 19 February, whether there are any further matters for discussion, or whether we continue to maintain that there is no consensus.
3790. **Mr A Maskey:** There is nothing new to say, Chairman. There is no consensus.
3791. **The Chairperson:** There was a suggestion that we simply note the protocol.
3792. **Mr A Maskey:** Are we dealing with the protocol overall?
3793. **The Chairperson:** Issue C asks: "What should be the relationship between SOCA and the Security Services and the Minister/Department/Assembly?"
3794. Issue N in the original category 1 list of issues asks:
- "What needs to be done to ensure that attention is given to having appropriate measures in place to address issues such as the role of the security services?"*
3795. That came from the category 1 list of issues and became part of issue C in the category 2 list. That is the history of the matter, and that is what the Committee is being asked to address. We now have the protocol before us, and there has been some discussion about that inside and outside this room in the past few days.
3796. **Mr A Maskey:** Without getting into a long argument, there are matters that my party does not accept. That is why I said that we are happy to note the various concordats and protocols, with the big caveat that my party may or may not take issue with a number of matters. We will do that through party spokespersons and through Martin McGuinness's office as deputy First



- Minister. We take the view that we are dealing with some issues that are set in law, whereas protocols and concordats are not. We have been given assurances from the Secretary of State and from the First Minister and deputy First Minister that those matters will be kept under review. There are issues that we wish to deal with.
3797. I made it clear last week that we do not subscribe to the same notion of national security interests as the British Government or as other people in this room. Therefore, there would not be consensus on that issue. We do not accept the status of organisations such as SOCA. We believe that the work of those organisations should be incorporated into police work here. However, we are dealing with the legislative and legal framework as we move forward. The protocols, concordats, and so on, are subject to review. They are not the law. Alex Attwood said earlier that these provisions will come in by default. That may be the case, but they are not the law. They are subject to change and negotiation, some of which might even be going on as we speak.
3798. Obviously, the SDLP is making arguments, we are making arguments, and I presume that others are making similar or other types of arguments. However, we note that the protocols are there, but we do not afford them any particular status. They do not go beyond the legislative framework within which we are taking transfer of powers forward.
3799. **Mr Attwood:** First, the national security protocol is in a category apart from other protocols, because elements of the other protocols would be devolved, whereas national security is not a devolved matter. I am not going to go over the history of all of that, but we can look at the national security protocol differently from the other protocols, because it is a matter that remains in the hands of the British Government. Therefore, the likelihood of it being kept under review, or being changed significantly after review, despite what it says in the protocol, is much less likely, given that the matter is a responsibility retained by London, and, unfortunately, we do not have much control over it.
3800. Secondly, there are a lot of errors in the protocols, but there are two fundamental errors in particular. Paragraph 8(i) of the national security protocol states that all justice and policing agencies in Northern Ireland are accountable for all matters to the minister of justice. I am recalling that from memory, but I think that that is verbatim. However, that is simply not the law. The British Government making that statement reverses a lot of the past 10 years, which have been good years in respect of policing progress and of politicians and the community taking responsibility for policing matters. I find it bizarre that they could include a statement like that, which is utterly without foundation.
3801. Thirdly, an issue came up last week about the presumption to communicate, but there is not a presumption to disclose when it comes to national security matters. Moreover, the presumption to communicate will be determined exclusively by the British Government as to what and how they share. In my view, and we have made this clear to the Secretary of State, that is not a sensible principle on which to start the relationship following devolution. As it states in paragraph 5 of the national security protocol, it is strictly the responsibility of the British Government to decide what is shared and how it is shared. There should be more principles laid down than just that one because, as I said to the Committee last week, there could be a high-profile collapse of a criminal prosecution due to some public interest matter or frenzy around some SOCA activity, or the PSNI doing something gravely wrong when they are under the direction of MI5 in respect of national security or an anti-terror operation, and those are going to be the rubbing points. Those rubbing points could arise very quickly, because, unfortunately, we live in a situation where that sort of development could arise.
3802. It is our view that a set of principles can be worked up to try to map out

- how that sort of business would be handled. We are on the same page as Sinn Féin in that we did not agree that the national security function should be taken from the Chief Constable, and thought that there were good, objective local arguments as to why that should be retained by the Chief Constable. However, that matter has moved on. In moving on, we need get the principles right in respect of what information is shared, how it is shared, when it is shared, in what sense it is shared, and what could then happen in respect of the Minister of justice letting people more widely know that information, not just on the political side but on the public side, because there will be a heightened awareness.
3803. I can imagine what Ian is going to say. However, although noting the usual exchanges, the point is, as I understand it, that a lot of time was taken up at Hillsborough with what the Minister of justice would or would not share with the Executive. Those are very difficult issues to manage, and I do not agree fully with what is in the Hillsborough agreement. We submitted a paper to the British Government outlining in more clarity what could happen, what information should and should not be shared, and how that might be shared. At Hillsborough, people were occupied by that issue, and there was some development around what the Minister of justice would or would not share with the Executive. Therefore, it seems to me that it would have been useful for the Committee to spend some time trying to work out principles, similar to what happened at Hillsborough, that mitigate the risks that we are trying to identify around what should be shared, when it should be shared, and with whom. That could have happened if we had received the document earlier than last week. We have advised the British Government in writing that we reject that, and we will meet them next week.
3804. **The Chairperson:** We received the national security protocol only last week.
3805. **Mr McCartney:** The minutes of last week's meeting state that we could not reach consensus on the issue, and that we agreed to report to the Assembly accordingly. We all know our positions.
3806. **The Chairperson:** I have allowed everybody to have their say.
3807. **Mr Paisley Jnr:** It is refreshing that today there is recognition of the factual and legal position that national security is "national" security, and not a regional issue. Although there is a regional interest, as there is for any other region in the UK, national security remains a national issue in fact and in law. Refreshingly, even Alex Attwood recognises that that is unlikely to change. This is probably the first time that we have got to the crux of the matter: we can talk about it as much as we want, but national security is exactly that. Therefore, for that reason, there is a limited role that we can play. It is important that that be noted.
3808. It is worth noting that we have to make do with the protocols, and, although people may have other aspirations, which they are entitled to, the factual and legal position is as set out. Therefore, we are noting a legal position, even though some may have aspirations to change that. I do not believe that anyone on this side of the table shares those aspirations, because, patently, the protocol makes good sense and it is logical that national security is not regionalised.
3809. Paragraph 8(i) of the protocol on national security outlines a theoretical position, which could be interpreted as saying that, ultimately, all relevant powers are devolved from Westminster and from the sovereign Parliament. There may be issues that could be tidied up, but, essentially, we are noting a position. Some members have indicated that they would like a different position. However, it does no violence to anyone's position to note it. I welcome the fact that, for the first time in a long time, there is at least consensus around the table to note that and to move on.
3810. **The Chairperson:** To clarify, paragraph 8(i), which, having first been raised by

Mr Attwood, has come up on a number of occasions, reads:

*“Northern Ireland policing and justice agencies are accountable to the Minister of Justice on all devolved policing and justice matters”.*

That was just slightly different to what you said.

3811. **Mr Attwood:** Yes, but there was no effective difference.

3812. **Mr Paisley Jnr:** There could be; it depends where the emphasis is placed. There is a difference between all devolved matters and all matters.

3813. **Mr Attwood:** I am talking only about devolved matters.

3814. **The Chairperson:** I am simply clarifying the position so that everyone is aware of it.

3815. **Mr McFarland:** I recall the first Policing Board, which Alex and I sat on back in 2001. Alex was always greatly exercised about national security. I want to reiterate that national security is an excepted matter. It is not and will not be devolved. The handling arrangements are an excepted matter. It does not matter how much Alex twiddles around with it or wishes otherwise, that is the way it is. Sooner or later, he will have to live with it.

3816. **Mr A Maskey:** We are now moving to conclude this particular debate, which we spoke about only last week. On behalf of Sinn Féin, I made it clear to the Secretary of State that there needs to be a presumption of disclosure on all such matters. As we said in the past, national security, as defined by the British Government and people around this table, pollutes a lot of matters. At the end of the day, we are talking about what this Committee should include in its report. I put our points on the record for the Hansard report last week. We are not going to reach consensus on this issue. It is as simple as that. Therefore, I do not want to sit for another half an hour talking about an issue that I know we are not going to reach agreement on.

3817. **The Chairperson:** The Committee agreed at the previous meeting that there was no consensus on this issue. From what I have heard today, there is still no consensus. Do members agree that there is no consensus?

**Members indicated assent.**

3818. **The Chairperson:** We will move on to issue D, which is about North/South policing and justice arrangements. I remind members that they agreed to consider this issue at today’s meeting following further clarification from the Secretary of State. Is there any consensus on the requirement for a justice sector of the North/South Ministerial Council? Furthermore, are members content with the seven agreements, that is, the relevant agreements?

3819. **Mr Paisley Jnr:** It is similar to the situation with the previous issue in that we all have our stated ideological positions on this issue. Therefore, there will be no consensus, but we should agree to note that.

3820. **Mr McFarland:** At the previous meeting, my colleague Danny Kennedy asked the Secretary of State about this matter. Safeguards exist for any other North/South contacts in that a unionist Minister and a nationalist Minister have to be present and must agree. The proposal on co-operation on criminal justice matters seems to allow a Minister for justice here to meet his counterpart and for entire secretariats to meet without any such safeguards. I think that, in the first case, the Ministers would meet at least once a year and that the others would meet at least twice a year. Those could develop into weekly meetings, which technically would become a North/South ministerial link without any of the previous protections that were designed for North/South relationships. Although one is not against any issue of co-operation, there is a danger that the outcome of the document, as it is written, would expand into what would effectively be another North/South body by any other name.

3821. **Mr Attwood:** Previously, there was agreement that the part of the North/South justice agreement that fell to Dublin and Belfast would remain in place after the devolution of policing and justice powers. No one had any issue with that. Some technical issues must be addressed, but there was no difference in principle on that matter. We do not have a responsibility to North/South policing arrangements, because they are between the PSNI and the guards. I trust that we are not going to invade their operational responsibilities. I previously proposed the creation of a justice sector of the North/South Ministerial Council, but there was no consensus for that among Committee members. Therefore, I am not inclined to propose it again.
3822. **Mr Hamilton:** It was rejected.
3823. **Mr Attwood:** The Committee has covered all the issues on that matter as fully as possible.
3824. I am unsure what the Chairperson meant when he said “seven agreements”.
3825. **The Committee Clerk:** Those are the seven agreements including protocols, memoranda of understanding and concordats, which the Secretary of State said would “underpin” the devolution of policing and justice. Some of those seven agreements relate to matters of co-operation between Northern Ireland and the Republic of Ireland, such as those on sex offenders and policing and justice. Therefore, it was the relevant documents that were referred to.
3826. **The Chairperson:** Those are all normally areas of co-operation. You were right to say that the Committee did agree the other document. It did, though, need to be tweaked to allow for devolution and the new set up here. However, it is just the old document with an add-on.
3827. **Mr McFarland:** The policing co-operation document started off as a national agreement between London and Dublin.
3828. **Mr Attwood:** No; that was an agreement between the PSNI and the gardaí.
3829. **Mr McFarland:** The document that I am referring to was signed off by John Reid and John O’Donoghue. It deals with policing co-operation between the Irish and UK Governments. Will that agreement fall, or will it be translated into a new agreement?
3830. It is interesting because it refers to “respective Governments”, and if policing is devolved here and we are to become responsible for policing and what the Chief Constable does, it would presumably become the responsibility of the Minister for justice and the Irish Government.
3831. **The Chairperson:** That is where the change has come. Perhaps the Committee Clerk would elaborate on that issue.
3832. **The Committee Clerk:** The matter was discussed with the Secretary of State when he appeared before the Committee on 18 February. He acknowledged that, because it was an agreement between two Governments, there would need to be a formal agreement to change the document that was co-signed in 2002. A process will be required for that. The Secretary of State also acknowledged that the Committee had drawn attention to the need to identify the relevant responsibilities of a justice Minister and the Policing Board.
3833. **Mr McFarland:** Will that document be superseded by a new one that will eventually be signed by the new justice Minister?
3834. **The Committee Clerk:** That is my understanding.
3835. **The Chairperson:** That issue was also raised with some of the officials who appeared before the Committee.
3836. **Mr A Maskey:** Obviously, Sinn Féin wants maximum matters transferred. However, the current situation is about providing for the transfer of powers and ensuring that everything is in place that needs be at the point of transfer. Sinn Féin is satisfied that it is a key issue.

3837. **The Chairperson:** Would members find it helpful if the Committee Clerk grouped issues C and D in the Committee's report, and that the report records the fact that, as a result of the Committee's scrutiny of those documents, revisions will be made to some of them?
3838. **Mr Attwood:** Which documents? Are you talking about the protocols?
3839. **The Chairperson:** Yes. Some of the issues that have been raised and have been recorded in the Hansard report would be brought together for the report.
3840. **Mr McFarland:** It could be drafted that revisions "may be made", because they will not necessarily be made.
3841. **The Chairperson:** Yes. It would pick up the points that Committee members have made, but issues C and D would be grouped for the purposes of the Committee's report.
3842. **Mr McFarland:** Issue C and issue D are about entirely different issues.
3843. **The Chairperson:** If the Committee agrees to group those issues, we can go through them during Thursday's closed session on the report. That is when we can make any changes. Members may feel the need to separate them again, but for ease of drafting —
3844. **Mr Attwood:** They do not seem to fit naturally. Issue C and issue D are different.
3845. **Mr Hamilton:** Keep them separate.
3846. **The Chairperson:** OK. We are happy to draft them as two issues. It was only a suggestion from the Committee Clerk. I do not know whether it would have made the Committee Clerk's life easier. At any rate, he was trying to be helpful, but the result is, "No, thank you, and sorry."
3847. We will move to issue E. Most of the financial issues have been agreed. Members may, though, wish to consider, in light of the letter from the Secretary of State, any further issues. If members have no points to raise from the earlier discussion about the £22 million for the part-time Reserve, I ask whether members are content to agree that issue E is complete and that the report should recommend that the policing and justice budget should be ring-fenced for 2010-11 as was discussed at our previous meeting.
- Members indicated assent.**
3848. **The Chairperson:** The final issue is the Public Prosecution Service. Members agreed that — *[Interruption.]* I am sorry; there is a private meeting going on. Please make your remarks through the Chair. Members agreed that there was no consensus on issue G. Are members agreed that the Committee Clerk should draft a recommendation asking for an assurance that there should be proper scrutiny of the prosecution policy of the PPS, but not its decisions, and of the justice Department's spending and administrative matters?
3849. **Mr Attwood:** Yes. I would like to see the wording of that.
3850. **The Chairperson:** That will be made available to you.
3851. **Mr Attwood:** Given that we do not have a consensus about what the funding relationship should be, what will be the default position?
3852. **Mr McFarland:** It will be the responsibility of the Department of Finance and Personnel (DFP). It is written down in the NIO briefing note at the beginning of the documents that we were given. Do you want me to read it out, Chairperson?
3853. **The Chairperson:** That comment is in the document, and I am sure that everyone has read it.
3854. **Mr McFarland:** It says that it is the responsibility of DFP.
3855. **The Chairperson:** Yes, but it is subject to any comments that this Committee might make.
3856. **Mr Attwood:** Presumably, all the money goes to DFP, and in the absence of somewhere else to go, it stays with DFP.



3857. **Mr McFarland:** Yes, but non-ministerial departments are based on an entirely different system, as I understand it.
3858. **The Chairperson:** We were at the point at which there was no consensus. Everyone had their own views, and I do not think that we need to rehearse them. I assume that those views have not changed.
3859. **Mr Hamilton:** They have been well aired.
3860. **Mr McFarland:** I want to make a quick point. There is a throwaway reference to a website, which is to do with the protocol between the attorney general and the prosecuting Departments. The website contains a fascinating document, which is extant in GB, about how PPS policy is handled. Presumably, we will have one of those —
3861. **The Chairperson:** That document was given out last week.
3862. **Mr McFarland:** OK.
3863. **The Chairperson:** Issue I deals with the Police Ombudsman. Members agreed to consider the issue in light of the further clarification from the Secretary of State on the agreements, concordats, protocols and memoranda of understanding. At the Committee meeting on 9 February 2010, members agreed to consult their parties on issue I and to revisit it at today's meeting. Is this matter best left to the joint Office of the First Minister and deputy First Minister, or should the justice Minister provide the relevant advice? Should all three Ministers have a role? The protocol on national security, which was recently supplied to the Committee, details the position as follows:
- “The Minister of Justice is responsible for the process of appointing the Police Ombudsman (“PONI”) and for sponsoring his/her office (although the appointment is made formally by HM The Queen on the recommendation of the First Minister and deputy First Minister). In relation to all devolved matters PONI reports to the Minister of Justice. In relation to reserved or national security matters, PONI reports to the Secretary of State and the Secretary of State may issue guidance to PONI on matters relating to national security.”*
- At last week's meeting, Mr Attwood said that he wanted to consider that matter further. Do members have any concerns with that issue? If so, will you enlighten us as to those concerns?
3864. **Mr Attwood:** I cannot recall what Patten said about that. I will stick with whatever Patten said. *[Laughter.]*
3865. **Mr McCartney:** That is a shock.
3866. **Mr Attwood:** Patten probably said that OFMDFM should have the advisory role. Am I right?
3867. **Mr McCartney:** Yes.
3868. **Mr Attwood:** How do you know that?
3869. **Mr McCartney:** You said it one day in the Chamber.
3870. **Mr Paisley Jnr:** That does not make it true. *[Laughter.]*
3871. **The Chairperson:** Perhaps you are all jolly because we are coming to the end of the report. However, I have a wee bit more work to do to get us to the end. That is the exact wording of the national security document. Are members content?
3872. **Mr A Maskey:** That is only a reference to a protocol.
3873. **The Chairperson:** Do members agree?
- Members indicated assent.**
3874. **The Chairperson:** We now move into closed session, and I ask members of the public to leave.
3875. **Mr Paisley Jnr:** Before we move to closed session and while the session is still being recorded by Hansard, I have issues with issue A, which is about the attorney general. I am interested in the issue of reporting and how that takes place, as was discussed earlier. It would be useful to get clarification on where the office will be based, the number of staff that will be located in it, who will appoint those staff and the budgetary requirements for the office.
3876. **The Chairperson:** All those issues will be in the report.

3877. **Mr Attwood:** The answer to the final question is £1.6 million a year and a £500,000 set-up cost.

3878. **The Chairperson:** We now move into closed session.



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Appendix 11

# List of Witnesses



## List of Witnesses

Mr Robin Masefield, Director General Mr Mark McGuckin, Director of Finance & Personnel Mr Max Murray, Director of Operations Ms Anne McCleary, Director of Services	Prison Service
Mr Davie Weir, Director of Community Services Mr Phil Tooze, Director of Juvenile Justice Centre Mr Gareth Bell, Accountant	Youth Justice Agency
Mr Brian McCaughey, Director of Probation Mr David Van Der Merwe, Chief Management Officer Ms Cheryl Lamont, Deputy Chief Probation Officer Ms Maura Canavan, Assistant Chief Officer (Finance)	Probation Board
Mr David Lavery, Director Mr Paul Andrews, Head of Public Funded Legal Services Mr David Thompson, Head of Finance Ms Jacqui Durkin, Head of Court Operations	NI Court Service
Mr Jim Daniell, Chairman Mr Gerry Crossan, Chief Executive	Legal Services Commission
Mr Robert Crawford, Chief Executive Mr Ray Jones, Head of Operations Mr David Whitcroft, Accountant	Compensation Agency
Mr Stan Brown, Chief Executive Mr Peter Connon, FSNI Accountant Mrs Janet Kirkwood, Director of Reporting Services Mr David Brooks, New Accommodation Co-ordinator	Forensic Science NI
Sir Alasdair Fraser, Director of Public Prosecutions Mr Jimmy Scholes, Acting Deputy Director Mr Ian Hearst, Assistant Director	Public Prosecution Service
Professor Sir Desmond Rea, Chairman Mr Barry Gilligan, Vice Chair Mr Adrian Donaldson, Chief Executive Mr Sam Hagen, Director of Corporate Services	Policing Board



<p>Sir Hugh Orde, Chief Constable</p> <p>Mr David Best, Director of Finance and Support Services</p> <p>Mr Mark McNaughten, Strategic Financial Manager</p>	<p>PSNI</p>
<p>Mr Shaun Woodward, MP</p> <p>Mr Anthony Harbinson</p> <p>Ms Hilary Jackson</p> <p>Mr Gareth Johnston</p>	<p>Secretary of State</p> <p>Northern Ireland Office</p>
<p>Mr Peter Robinson, MP</p> <p>Mr Martin McGuinness, MP</p>	<p>First Minister</p> <p>deputy First Minister</p>



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Appendix 12

# Written Submissions



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## List of Written Submissions

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# Standard Letter to Organisations from the Committee Clerk 20th January 2009



Mr Stephen Graham  
Clerk to Assembly and  
Executive Review Committee  
Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

20 January 2009

Dear,

As you may know, the Assembly and Executive Review Committee of the Northern Ireland Assembly is giving further consideration, presently, to a range of issues relating to the devolution of policing and justice matters.

Whilst all of the issues are considered to be for 'political resolution', the Committee has decided to invite views from selected individuals, bodies and organisations, on the financial information provided by the NIO in the context of the potential devolution of a range of policing and justice matters. A list of those to whom this letter has been issued is attached at Appendix 1.

So far as responding to this letter is concerned, you will wish to note that the Chairperson of the Committee wrote to the Secretary of State for Northern Ireland to impress on him the need for all the relevant bodies, and organisations, to co-operate, fully, with the work of the Committee and he was assured that would be the case. Therefore, you should provide, directly to me, a full and complete response, on behalf of your own organisation only, to the four questions listed below. However, if you find you are unable to provide a full and complete response, you should explain clearly why you consider that to be the case.

## Questions

Do you consider that the budgetary estimates for your organisation, details of which were provided to the Committee by the Northern Ireland Office (copy attached), are adequate, and, if not, why not?

What significant, additional, requirements do you envisage, in future years, and could any of these be dealt with through an adjustment to your organisation's existing plans/priorities?

In the present Comprehensive Spending Review, please provide details of any unsuccessful bids and how you expect to deal with these in the future.

Can you please provide, for each main spending area, the breakdown between Resource and Capital DEL, Annually Managed Expenditure and administration costs for each of the years 2005/06 to 2010/11, that is the outturns for the three years prior to Spending Review 07 and the plans for the three years of the Review?

The Committee considers that the views of your organisation will inform its subsequent deliberations.

The Committee invites you to make a written submission on these issues. The deadline for receipt of written submissions is 6 February 2009 and should be made to:

**The Committee Clerk, Mr Stephen J Graham, Room 428, Parliament Buildings,  
Stormont, BT4 3XX.**

Or alternatively by e-mail to

committee.assembly&executivereview@niassembly.gov.uk

Information regarding the Committee can be obtained from the Assembly's website -

[http://www.niassembly.gov.uk/assem\\_exec/2007mandate/assem\\_exec.htm](http://www.niassembly.gov.uk/assem_exec/2007mandate/assem_exec.htm)

If you have any queries, please contact me on 028 9052 1784.

Yours sincerely



Stephen J Graham  
Committee Clerk

## ANNEX A

Chart of the Organisations in the Criminal Justice and Policing Fields

Body	Current Status	Current Sponsor	2008/09 Resource DEL budget £k	Future Status	Future Sponsor
NIO	Department of State	N/A	1,339,600 In which is included the following:	Northern Ireland Department	N/A
PPS	Non-Ministerial Department	Ministerial superintendence of the Attorney General; resourced by the NIO	36,548	Non-Ministerial Department	Consultative relationship with the Attorney General for Northern Ireland; resourced by a Northern Ireland Department
Northern Ireland Prison Service	Agency	Fraser Figure: Director General, Policing and Security	134,868	Agency	Fraser Figure within the Department of Justice
Forensic Science Northern Ireland	Agency	Fraser Figure: Director, Criminal Justice	2,420	Agency	Fraser Figure within the Department of Justice
Youth Justice Agency	Agency	Fraser Figure: Director, Criminal Justice	21,086	Agency	Fraser Figure within the Department of Justice
Compensation Agency	Agency	Fraser Figure: Director, Criminal Justice	49,989	Agency	Fraser Figure within the Department of Justice
PSNI	Police Force (not quite equivalent to any other category)	Policing and Security Directorate	924,411	Police Force	Department of Justice
Northern Ireland Policing Board	Executive NDPB	Policing and Security Directorate	8,666	Executive NDPB	Department of Justice
Office of the Police Ombudsman	Executive NDPB	Policing and Security Directorate	9,482	Executive NDPB	Department of Justice
Northern Ireland Police Fund	Executive NDPB and Company Limited by Guarantee	Policing and Security Directorate	1,849	Executive NDPB and Company Limited by Guarantee	Department of Justice
RUC GC Foundation	Executive NDPB	Policing and Security Directorate	154	Executive NDPB	Department of Justice
Criminal Justice	Executive NDPB	Criminal Justice	1,453	Executive NDPB	Department of

Inspection Northern Ireland		Directorate			Justice
Probation Board	Executive NDPB	Criminal Justice Directorate	16,778	Executive NDPB	Department of Justice
Northern Ireland Law Commission	(Advisory) NDPB	Criminal Justice Directorate	500	(Advisory) NDPB	Department of Justice
Independent Assessor for PSNI Recruitment Applications	Advisory NDPB	Policing and Security Directorate	25	Advisory NDPB	Department of Justice
Parades Commission	Tribunal NDPB	Policing and Security Directorate	1,141	Tribunal NDPB	Department of Justice, depending on agreement
Police Rehabilitation and Retraining Trust	Company Limited by Guarantee	Policing and Security Directorate	2,234	Company Limited by Guarantee	Department of Justice
Independent Monitoring Boards, Maghaberry, Magilligan, Hydebank Wood.	Independent Monitoring Boards	Criminal Justice Directorate	Included within the Prisoner Ombudsman budget	Independent Monitoring Boards	Department of Justice
Prisoner Ombudsman	Independent Statutory Body	Criminal Justice Directorate	729	Independent Statutory Office Holder	Department of Justice
Life Sentence Review Commissioners	Independent Statutory Body	Criminal Justice Directorate	801	Independent Statutory Office Holders	Department of Justice
Commissioner for Hearings under Prison Rule 109B (Loss of Remission Commissioner)	Independent Statutory Body	Northern Ireland Prison Service	-	Independent non-Statutory Office Holder	Department of Justice/Prison Service
The State Pathologist	Employed by the NIO	Criminal Justice Directorate	2,190	Employed by the Department of Justice	Department of Justice
Medical Appeal Tribunals	Ad hoc tribunal	Policing and Security Directorate	-	Ad hoc tribunal	Department of Justice/Courts and Tribunals Service

Body	Current Status	Current Sponsor	2008/09 Resource baseline £k	Future Status	Future Sponsor
Northern Ireland Court Service	Department of the Lord Chancellor	N/A	133,468 In which is included the following:	Agency	Fraser Figure within the Department of Justice

Northern Ireland Legal Services Commission	Executive NDPB	Northern Ireland Court Service	65,000	Executive NDPB	Department of Justice
Judicial Appointments Commission	Executive NDPB	Northern Ireland Court Service	1,540	Executive NDPB	OFMDFM
Judicial Appointments Ombudsman	Independent Statutory Body	Northern Ireland Court Service	125	Independent Statutory Office Holder	OFMDFM
Criminal Injuries Compensation Appeals Panel for Northern Ireland	Tribunal NDPB	Criminal Justice Directorate	766	Tribunal NDPB	Department of Justice/Courts and Tribunals Service



# Appendix 1

- 1 Criminal Inquiries Compensation Appeals Panel for NI** **Oliver Loughran**  
(Chairman)  
The Appeals Panel Belfast  
2nd Floor  
The Corn Exchange Building  
31 Gordon Street  
BELFAST  
BT1 2LG
- 2 Police Rehabilitation and Retraining Trust** **Eddie Gaw**  
(Chief Executive)  
Maryfield Complex  
100 Belfast Road  
Holywood  
Co. Down  
Northern Ireland  
BT18 9QY
- 3 Independent Monitoring Boards, Maghaberry, Magilligan and Hydebank Wood**  
Independent Monitoring Boards for Northern Ireland - Secretariat  
22nd Floor  
Windsor House  
Bedford Street  
Belfast  
BT2 7FT
- 4 Prisoner Ombudsman** **Pauline McCabe**  
22nd Floor,  
Windsor House,  
Bedford Street  
Belfast BT2 7FT
- 5 Life Sentence Review Commissioners (former title):**  
**Parole Commissioner**  
**Loss of Remission Commissioner**  
**Sentence Review Commissioner**  
**Remission of Sentence Commissioner**  
  
Ms. Moya Cushley, Secretary  
5th Floor  
Windsor House,  
9-15 Bedford Street,  
BELFAST  
BT2 7SR
- 6 The State Pathologist** **Professor Jack Crane**  
State Pathologists Department  
Institute of Forensic Medicine  
Grosvenor Road  
Belfast  
BT12 6BS

- 
- |           |  |                                   |
|-----------|--|-----------------------------------|
| <b>7</b>  | <b>Medical Appeals Tribunal</b><br>Cleaver House<br>3 Donegall Square North<br>Belfast<br>BT1 5GA  | <b>Edward Gorringe (Chairman)</b> |
| <b>8</b>  | <b>NI Courts Service<br/>General</b><br>Information Centre,<br>Windsor House,<br>9-15, Bedford St,<br>Belfast,<br>County Antrim<br>BT2 7LT | <b>David A Lavery (Director)</b>  |
| <b>9</b>  | <b>NI Legal Services Commission</b><br>2nd Floor,<br>Waterfront Plaza,<br>8 Laganbank Road,<br>Mays Meadow,<br>Belfast,<br>BT1 3BN         | <b>Jim Daniel (Chairman)</b>      |
| <b>10</b> | <b>Judicial Appointments Commission</b><br>Headline Building<br>10 - 14 Victoria Street<br>Belfast<br>BT1 3GG                              | <b>Sir Brian Kerr (Chairman)</b>  |
| <b>11</b> | <b>Judicial Appointments Ombudsman</b><br>6th Floor<br>Bedford House<br>Bedford Street<br>Belfast<br>BT2 7DS                               | <b>Mr Karamjit Singh</b>          |
| <b>12</b> | <b>Public Prosecution Service</b><br>Belfast Chambers<br>93 Chichester Street<br>Belfast<br>BT1 3JR<br>02890 542444                        | <b>Sir Alasdair Fraser</b>        |
| <b>13</b> | <b>Prison Service (NIO)<br/>General</b><br>Dundonald House<br>Upper Newtownards Road<br>BELFAST BT4 3SU                                    | <b>Robin Masefield (Director)</b> |

- |           |  |  |
|-----------|--|--|
| <b>14</b> | <b>Forensic Science Agency (NIO)</b><br>151 Belfast Road<br>Carrickfergus<br>Co Antrim<br>BT38 8PL<br>02890 361888                                 | <b>Stan Brown (Chief Executive)</b>        |
| <b>15</b> | <b>Youth Justice Agency (NIO Executive)</b><br>Corporate Headquarters,<br>41-43 Waring Street,<br>Belfast,<br>BT1 2DY<br>02890 316400              | <b>Bill Lockhart OBE (Chief Executive)</b> |
| <b>16</b> | <b>Compensation Agency (NIO Executive)</b><br>Royston House<br>34 Upper Queen Street<br>Belfast BT1 6FD<br>02890 249944                            | <b>Robert Crawford (Chief Executive)</b>   |
| <b>17</b> | <b>PSNI</b><br>Brooklyn PSNI HQ,<br>65 Knock Road,<br>Belfast,<br>BT5 6LE  | <b>Sir Hugh Orde</b>                       |
| <b>18</b> | <b>Policing Board (Chairperson)</b><br>Waterside Tower<br>31 Clarendon Road<br>Clarendon Dock<br>Belfast<br>BT1 3BG<br>02890 408500                | <b>Prof. Sir Desmond Rea</b>               |
| <b>19</b> | <b>Office of the Police Ombudsman</b><br>New Cathedral Buildings,<br>St Anne's Square,<br>11 Church Street,<br>Belfast,<br>BT1 1PG<br>02890 828600 | <b>Al Hutchinson</b>                       |
| <b>20</b> | <b>Northern Ireland Police Fund</b><br>Maryfield Complex<br>100 Belfast Road<br>Holywood<br>BT18 9QY   | <b>David McClurg (Chairman)</b>            |

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- |           |   |                                     |
|-----------|---|-------------------------------------|
| <b>21</b> | <b>RUC GC Foundation</b><br>Brooklyn,<br>65 Knock Road,<br>Belfast,<br>BT5 6LE  | <b>Mr Jim McDonald (Chairman)</b>   |
| <b>22</b> | <b>Criminal Justice Inspection<br/>Inspector)</b><br>6th/7th Floor<br>14 Great Victoria Street,<br>Belfast<br>BT2 7BA             | <b>Dr. Michael Maguire (Chief</b>   |
| <b>23</b> | <b>Probation Board NI<br/>Probation)</b><br>80-90 North Street<br>Belfast<br>BT1 1LD<br>02890 262400                              | <b>Brian McCaughey (Chief</b>       |
| <b>24</b> | <b>Northern Ireland Law Commission</b><br>Linum Chambers, 8th Floor<br>2 Bedford Square<br>Bedford Street<br>Belfast, BT2 7ES     | <b>Sir Declan Morgan (Chairman)</b> |
| <b>25</b> | <b>Independent Assessor for PSNI</b><br>Recruitment Applications<br>The Consensia Partnership<br>PO Box 268<br>Belfast<br>BT1 5PH | <b>Richard Chambers QC</b>          |
| <b>26</b> | <b>Northern Ireland Office</b><br>Block B<br>Castle Buildings<br>Stormont Estate<br>Belfast<br>BT4 3SG                            |                                     |

# Written Submission from Appeal Tribunals Northern Ireland 9th February 2009

6<sup>th</sup> Floor, Cleaver House  
3 Donegall Square North  
Belfast

BT1 5GA

Telephone: 028 9051 8548  
Fax Number: 028 9051 8543

*President@AppealServiceNI.gov.uk*

Mr S Graham  
Clerk to Assembly and  
Executive review Committee  
Room 428  
Parliament Buildings  
Stormont Estate  
Belfast

BT4 3XX

9 February 2009

Dear Mr Graham

Mr MacLynn has asked me to reply to your letter and attachments of 20 January 2009.

Firstly I should explain the way in which appeal tribunals are currently organised. The Medical Appeal Tribunal no longer exists under that title, instead it has been subsumed with a number of other social security based tribunals under the heading of Appeal Tribunals. The current responsibility for these tribunals lies with the Department for Social Development and the contact in relation to this is Mr Barney McGahan, Deputy Secretary, 5th Floor, Lighthouse Building, Gasworks Business Park, 2-4 Cromac Avenue, Belfast.

The Office of the President of Appeal Tribunals is a separate organisation from the Department for Social Development. The President, Mr MacLynn is responsible for the judicial aspects of these tribunals. The funding for his office is however provided by the Department.

Negotiations are currently underway to transfer responsibility for both the Appeal Tribunals and the Office of the President, to the Northern Ireland Courts and Tribunal Service. The contact in the Courts is Mrs Siobhan Broderick, Laganside House, 23-25 Oxford Street, Belfast.

Given the above it would in our view be more appropriate to contact the Department for Social Development for the information required.

Yours sincerely

N Burns (Mrs)  
Secretary to the President



# Final Request to Appeals Tribunal Northern Ireland

## 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

12th May 2009

Mr C MacLynn  
Office of the President of Appeals Tribunal  
6th Floor  
Cleaver House  
3 Donegall Square North  
Belfast  
BT1 5GA

Dear Mr MacLynn,

### **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission to the Assembly and Executive Review Committee, recently.

As you will know, the Committee also conducted some oral evidence sessions in which witnesses were asked to indicate if there were any additional financial pressures they wished to identify to the Committee.

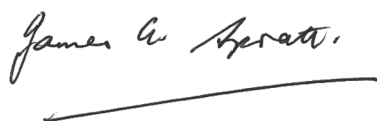
The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of new pressures, or easements, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details to the Committee Clerk by midday, 18 May 2009 to the following address

[stephen.graham@niassembly.gov.uk](mailto:stephen.graham@niassembly.gov.uk)

Yours sincerely



**Jimmy Spratt**  
Chairman

# Response from Appeals Tribunal Northern Ireland 13th May 2009

## President of Appeal Tribunals Northern Ireland

6<sup>th</sup> Floor, Cleaver House  
3 Donegall Square North  
Belfast  
BT1 5GA

*Telephone: 028 9051 8548*  
*Fax Number: 028 9051 8543*  
*Email: President@AppealServiceNI.gov.uk*

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
BT4 3XX

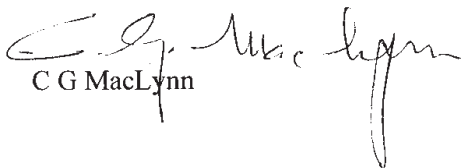
13 May 2009

Dear Mr Spratt,

### **The Financial Implications Relating to the Devolution of Policing and Justice Matters**

I acknowledge receipt of your letter dated 12 May and confirm that the position I declared in written evidence remains accurate and up to date.

Yours sincerely,

  
C G MacLynn

# Written Submission from the Compensation Agency 5th February 2009

The Compensation Agency  
Royston House  
34 Upper Queen Street  
Belfast  
BT1 6FD



The Committee Clerk  
Mr Stephen J Graham  
Room 428  
Parliament Buildings  
Stormont  
BT4 3XX

5 February 2009

Dear Stephen

Thank you for your letter of 20th January seeking information regarding our present and future funding. For ease of reference I shall address your questions in the order raised:

1. The budgetary estimate provided to you represents the allocation to the Agency prior to the result of the November 2008 monitoring round. The Agency now has a resource budget of £54,246k for the current year. The increase is due to our drawing forward some resource from later years. This is sufficient for our present needs, and we have not made a bid to the Northern Ireland Office for additional resources.
2. Our main area of resource expenditure is provision for compensation claims primarily in the areas of criminal injury and criminal damage. The Agency operates in a demand led environment and on this basis we work mainly with trend data to project future expenditure on caseloads. On current projections we do not see the need to raise any significant requirements for additional funding beyond the CSR07 allocation. We recognise however that this could change should there be a sustained increase in claims at any future date.
3. The Compensation Agency did not have any unsuccessful bids for resources in the Comprehensive spending review.
4. The table below shows the breakdown for resource and capital DEL for the main areas of expenditure. The Agency does not have any AME.

DEL 2005/06 - 2010/11	Actual expenditure			Budgeted expenditure		
	£000's 2005/06	£000's 2006/07	£000's 2007/08	£000's 2008/09	£000's 2009/10 ***	£000's 2010/11 ***
<b>Resource Cash</b>						
Staff costs	2,700	2,358	2,022	2,189	2,239	2,317
Running costs	1,847	1,620	1,582	1,246	1,436	1,410
Agency receipts	(517)	(283)	(204)	(171)	(300)	(300)
<b>Total resource cash</b>	<b>4,030</b>	<b>3,695</b>	<b>3,400</b>	<b>3,264</b>	<b>3,375</b>	<b>3,427</b>

DEL 2005/06 - 2010/11	Actual expenditure			Budgeted expenditure		
	£000's 2005/06	£000's 2006/07	£000's 2007/08	£000's 2008/09	£000's 2009/10 ***	£000's 2010/11 ***
<b>Resource non-cash</b>						
Criminal Injury (1988) Order	10,295	11,377	14,216	17,813		
Criminal Injury (2002) Order	14,986	12,821	13,421	13,916		
Criminal Damage	15,349	920	25,075	17,874		
Terrorism Act 2000	186	125	130	67		
Other non-cash	167	(626)	(127)	1,312		
<b>Total resource non-cash</b>	<b>40,983</b>	<b>24,617</b>	<b>52,715</b>	<b>50,982</b>	<b>8,173</b>	<b>12,181</b>
<b>Total Resource DEL</b>	<b>45,013</b>	<b>28,312</b>	<b>56,115</b>	<b>54,246</b>	<b>11,548</b>	<b>15,608</b>
<b>Capital DEL</b>	<b>427</b>	<b>30</b>	<b>206</b>	<b>430</b>	<b>830</b>	<b>70</b>

\*\*\* Note that the non-cash resource split for these financial years has not yet been carried out. Totals are significantly down in 09/10 and 10/11 years due to the substantive drop in new claim numbers over the past 5 years. Future provision is only needed for future cases as the value of all current cases has been covered by previous provision.

I hope that this answers your questions, however please do not hesitate to contact me should you require any further information.

Yours sincerely



**Robert Crawford**  
**Chief Executive**

# Further Questions to the Compensation Agency

## 13th March 2009



Mr Jimmy Spratt MLA  
Chairman of the Assembly and  
Executive Review Committee  
C/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

Tel: (0)28 9052 1784  
Fax: (0)28 9052 5917

13 March 2009

Mr Robert Crawford  
Compensation Agency  
Royston House  
34 Upper Queen Street  
Belfast  
BT1 6FD

Dear Mr Crawford

On behalf of the Assembly and Executive Review Committee, I would like to convey my thanks to you, and your colleagues, for your attendance at the Committee meeting on 10 March 2009.

As you will recall, the Committee agreed to forward any further questions to you in writing. Following consultation with the Specialist Adviser, a number of outstanding issues have been identified and are attached at Annex A.

I would be grateful if you would provide a written response to the questions to assist the Committee in its consideration of the financial implications of devolving policing and justice matters.

Yours sincerely



**Jimmy Spratt**  
Chairman

## Annex A

- In evidence you suggested that the number of staff had fallen below Framework complement. Can you explain why staffing costs are rising over the CSR period?
- Do your estimates take any account of the further efficiency savings we understand the Treasury is seeking from UK departments?



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# Supplementary Response from the Compensation Agency 20th March 2009

James Spratt Esq MLA  
Chairman  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

20 March 2009

Thank you for your letter of 13 March, with which you enclosed a number of further questions following the Compensation Agency's attendance at the Executive Review Committee meeting on 10 March 2009. The answers to these questions are set out below.

**Question 1: In evidence you suggested that the number of staff had fallen below Framework complement. Can you explain why staffing costs are rising over the CSR period?**

The Agency's actual staffing **costs** are not rising. The figures provided to the Committee represent the Agency's **budget** for the CSR07 period. The figures show the revised budget for the 2008/09 period after the Agency gave £95k back to the Department during the current year. The figures provided previously therefore show a current budget of £2,189k for 2008/09, whereas our original CSR07 settlement was £2,284k. The figures for 2009/10 and 10/11 are based upon a complement of 75 staff (reduced from a complement of 80 in 2008/09) with a 3.5% inflationary uplift in 2010/11.

The Agency's Framework Document commits us to reduce staff during the CSR07 period, to 75 full-time equivalent posts in 2009/10 and 2010/11. As explained to the Committee on 10 March, the Agency has for some time been operating below its target of 75 posts. We have been able to do this because the Agency has very experienced and well-motivated staff, and a low rate of sickness absence (currently running at 2.6%). In the absence of any significant increase in claims received by the Agency, I would anticipate that the Agency's actual staffing level during the remainder of the CSR07 period will continue to be below our approved complement of 75.

I am not in a position to offer the Committee precise revised estimates of the Agency's staffing costs for 2009/10 and 2010/11. A staffing review is currently underway to inform our 2009/10 business plan. However, as has been the case in 2008/09, the Agency will not seek to fill posts unless this is required to meet its workload. Unless there is an increase in that workload, I am confident that the staff costs for 2009/10 and 2010/11 will be below the budgeted figures of £2,239k and £2317k.

**Question 2: Do your estimates take any account of the further efficiency savings we understand the Treasury is seeking from UK departments?**

No. The Agency is committed to achieving total value for money savings of £3.8m during the CSR07 period, and the figures provided to the Committee take account of this. No further efficiency savings have been included in the estimates.

I hope that the above information provides full answers to the Committee's further questions. Should you require any clarification or further information, please do not hesitate to contact me.

**Robert Crawford**  
Chief Executive

# Final Request to Compensation Agency

## 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

12th May 2009

Mr Robert Crawford  
Compensation Agency  
Royston House  
34 Upper Queen Street  
Belfast  
BT1 6FD

Dear Mr Crawford,

### **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission and for appearing before the Assembly and Executive Review Committee to give oral evidence, recently.

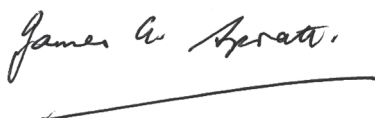
The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month. However, you will recall that, during the oral evidence session, you were asked to indicate if there were any additional financial pressures you wished to identify to the Committee.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of any easements, or new pressures, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details, electronically, to the Committee Clerk by midday, 18 May 2009 at the following address

[stephen.graham@niassembly.gov.uk](mailto:stephen.graham@niassembly.gov.uk)

Yours sincerely



**Jimmy Spratt**  
Chairman

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# Response from Criminal Injuries Compensation Appeals Panel for Northern Ireland 18th May 2009

CICAPNI  
The Corn Exchange Building  
2nd Floor, 31 Gordon Street, Belfast, BT1 2LG  
Tel: 028 90924408 Fax: 028 90924420  
E-mail: cicapni@nics.gov.uk

Chairman: Oliver Loughran

Office Manager: Anne Spurling

Mr Stephen Graham  
Clerk to Assembly and Executive  
Review Committee  
Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

18 May 2009

Dear Stephen,

**RE: Criminal Injuries Compensation Appeals Panel for Northern Ireland (CICAPNI)**

Thank you for your letter of 12 May inviting me to confirm the financial position of CICAPNI for purposes of the Committee's consideration of the financial implications of the devolution of policing and justice matters.

I am pleased to confirm that the position as previously declared (see below) has not changed significantly in respect of CICAPNI.

**Extract from Response:**

CICAPNI are not aware of any unsuccessful bids in the current Comprehensive Spending Review. CICAPNI transferred to NICTS after the CS07 bids were agreed. NICTS agreed figures for the 3 year period with NIO, and these figures were then transferred via the PES transfer as follows:

2008/09	£767
2009/10	£790
2010/11	£814

The letter was addressed to the Chairman of CICAPNI, Mr. Oliver Loughran and he has given his permission for me to reply on his behalf as Office Manager and budget holder.

Yours Sincerely

Anne Spurling  
Business Manager

# Written Submission from Criminal Injuries Compensation Appeals Panel for Northern Ireland 6th February 2009

CICAPNI  
The Corn Exchange Building  
2nd Floor, 31 Gordon Street, Belfast, BT1 2LG  
Tel: 028 90924408 Fax: 028 90924420  
E-mail: cicapni@nics.gov.uk



Chairman: Oliver Loughran  
Mr Stephen Graham  
Clerk to Assembly and Executive  
Review Committee  
Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

Office Manager: Anne Spurling

6 February 2009

Dear Stephen,

## RE: Criminal Injuries Compensation Appeals Panel for Northern Ireland

I refer to your letter of 20 January 2009, addressing questions on behalf of the Assembly and Executive Review Committee.

### Background

In 2006 the then Secretary of State for Northern Ireland announced a programme of tribunal reform which initially focused on the transfer of administrative responsibility for Northern Ireland tribunals from Northern Ireland departments and the Northern Ireland Office to the Northern Ireland Court Service (NICtS). As a consequence, on 1 December 2007 responsibility for the administration including budgets of the Criminal Injuries Compensation Appeals Panel for Northern Ireland (CICAPNI) transferred from the Northern Ireland Office (NIO) to NICtS.

This transfer was facilitated via a Machinery of Government and Public Expenditure System (PES) transfer.

An Accounts Direction was then given by the Secretary of State for Justice on 22 February 2008, directing that the Accounting Officer for the NICtS shall prepare a Statement of Account in respect of CICAPNI for the year ending 31 March 2008 and each successive year. Accounting Officer responsibilities passed to the Accounting Officer of the NICtS on 1 December, when responsibility for the administration of the Panel transferred to the NICtS. With effect from the date of transfer to the Court Service the Panel became a named business unit (Cost Centre) within the Tribunals Division.

I took over as Office Manager and budget holder on 6th October 2008 when the previous Manager retired. Oliver is the Chairman of CICAPNI and would give guidance to all Panel members but he does not get involved in any budget issues and has given his permission for me to reply on his behalf.

- Q1. Do you consider that the budgetary estimates for your organisation, details of which were provided to the Committee by the Northern Ireland Office (Copy attached), are adequate, and, if not, why not?

### Response:

CICAPNI presently foresee that their existing budgetary estimates, quoted in Annex A of your letter of 20 January 2009, will be adequate. This is providing that case throughput and listing remains at existing levels.

It is also worth noting at this stage, an amendment which is required to Annex A. Currently CICAPNI's sponsor has been quoted as 'Criminal Justice Directorate'; this should read Northern Ireland Court Service.

- Q2. What significant, additional, requirements do you envisage, in future years, and could any of these be dealt with through an adjustment to your organisation's existing plans/priorities?

### Response:

CICAPNI do not envisage any significant additional resource requirements in future years.

When responsibility for the administration of CICAPNI, transferred from NIO to NICtS, there was no provision made in relation to capital expenditure for the remainder of the CSR 07 period in the NICtS budget. Consequently, current anticipated capital expenditure on CICAPNI over the next 10 year period is nil.

NICtS is currently taking forward an Estates Strategy. It is intended that the Strategy will include the consideration of tribunal accommodation needs in Northern Ireland (following the implementation of the tribunal reform programme and including those of CICAPNI). However, the NICtS will not be clear about potential capital spend until such time as the Estates Strategy report issues. It is intended that the report will form the basis of negotiations for capital funding beyond the CSR 07 period.

- Q3. In the present Comprehensive Spending Review, please provide details of any unsuccessful bids and how you expect to deal with these in the future.

### Response:

CICAPNI are not aware of any unsuccessful bids in the current Comprehensive Spending Review. CICAPNI transferred to NICtS after the CSR07 bids were agreed. NICtS agreed figures for the 3 year period with NIO, and these figures were then transferred via the PES transfer as follows:

2008/09	£767
2009/10	£790
2010/11	£814

Q4. Can you please provide, for each main spending area, the breakdown between Resource and Capital DEL, Annually Managed Expenditure and administration costs for each of the years 2005/06 to 2010/11, that is outturns for the three years prior to Spending Review 07 and the three years of the Review?

## Response:

	Outturn figures			CSR 07 – Budget Figures		
	2005/2006 £'000	2006/2007 £'000	2007/2008 £'000	2008/2009 £'000	2009/2010 £'000	2010/2011 £'000
Resource - DEL	588	705	669	767	790	814
Capital - DEL	-	7	-	-	-	-

The 05/06 and 06/07 outturn figures have been taken from CICAPNI's published accounts. The 07/08 outturn figures have been taken from the published NICTS Annual Report and Resource Accounts.

Yours Sincerely

**Anne Spurling**  
**Business Manager**



# Final Request to Criminal Injuries Compensation Appeals Panel for Northern Ireland

## 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast BT4 3XX

12th May 2009

Mr Oliver Loughran  
The Appeals Panel Belfast  
2nd Floor  
The Corn Exchange Building  
31 Gordon Street  
Belfast BT1 2LG

Dear Mr Loughran,

### **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission to the Assembly and Executive Review Committee, recently.

As you will know, the Committee also conducted some oral evidence sessions in which witnesses were asked to indicate if there were any additional financial pressures they wished to identify to the Committee.

The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of new pressures, or easements, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details to the Committee Clerk by midday, 18 May 2009 to the following address

[stephen.graham@niassembly.gov.uk](mailto:stephen.graham@niassembly.gov.uk)

Yours sincerely



**Jimmy Spratt**  
Chairman

# Written Submission from Criminal Justice Inspection Northern Ireland 3rd February 2009

3 February 2009

Stephen Graham  
Clerk to Assembly & Executive Review Committee  
Room 428  
Parliament Buildings  
Stormont Estate  
BELFAST BT4 3XX



Dear Stephen

The Chief Inspector has asked me to respond to your letter of 20 January 2009.

In response to your 4 questions our response is as follows:

1. We consider that the budgetary estimates for Criminal Justice Inspection Northern Ireland (CJINI) are broadly adequate.
2. At this time we do not envisage any significant additional requirements. However the full effects of the devolution of Justice and Policing are at this stage not known. We have taken some prudent steps to ensure that any increased demand on the inspectorate can, in so far as is reasonably possible, be catered for. We will of course keep the situation under constant review.
3. We have not made any bids in this current Comprehensive Spending Review period.
- 4.

<b>Actual Expenditure</b>	<b>2005/06</b>	<b>2006/07</b>	<b>2007/08</b>	<b>Proposed Expenditure</b>	<b>2008/09</b>	<b>2009/10</b>	<b>2010/11</b>
Resource	£1,264,518	£1,234,823	£1,375,461		£1,452,613	£1,475,000	£1,549,000
Capital	£13,200	£11,087	£12,396		£10,650	£50,000	£12,000
Totals	£1,277,718	£1,245,910	£1,387,857		£1,463,263	£1,525,000	£1,561,000

The £50,000 capital expenditure in the 2009/10 financial year includes £39,000 for replacement of CJINI's computer hardware (pc's and printers) and software. We do not have any Annually Managed Expenditure or administration costs.

I trust this is of assistance.

Yours sincerely

**Brendan McGuigan**  
Deputy Chief Inspector of Criminal Justice in Northern Ireland

# Final Request to Criminal Justice Inspection Northern Ireland 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast BT4 3XX

12th May 2009

Dr Michael Maguire  
Chief Inspector Criminal Justice Northern Ireland  
14 Great Victoria Street  
Belfast BT2 7BA

Dear Dr Maguire,

## **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission to the Assembly and Executive Review Committee, recently.

As you will know, the Committee also conducted some oral evidence sessions in which witnesses were asked to indicate if there were any additional financial pressures they wished to identify to the Committee.

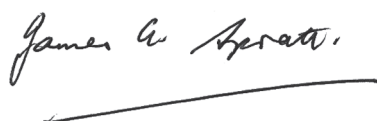
The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month.

My purpose in writing to you is to afford you **a further opportunity to confirm that the position you declared in your written evidence remains accurate and up to date**. You should direct any such confirmation to the e-mail address below, by midday 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of new pressures, or easements, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details to the Committee Clerk by midday, 18 May 2009 to the following address

stephen.graham@niassembly.gov.uk

Yours sincerely



**Jimmy Spratt**  
Chairman

# Response from Criminal Justice Inspection Northern Ireland 13th May 2009

From: Brendan McGuigan [mailto:brendan.mcguigan@cjini.org]  
Sent: Wednesday, May 13, 2009 12:13  
To: Graham, Stephen  
Cc: Lennox, David

## Subject: The Financial Implications Relating to the Devolution of Policing and Justice Matters

Dear Stephen

I refer to the letter from the Chairman of the Assembly Executive Review Committee in respect of the above. I can confirm that the position declared in my written evidence to the Committee dated 3 February 2009 remains accurate and up to date.

Yours Sincerely

Brendan McGuigan  
Deputy Chief Inspector

Written Submission from  
Forensic Science Northern Ireland  
6th February 2009



151 Belfast Road Carrickfergus    **Email:** forensic.science@fsni.gov.uk  
Co.Antrim BT38 8PL                    **Web:** www.fsni.gov.uk  
**Tel:** +44 (0)28 9036 1888            **Fax:** +44 (0)28 9036 1900

**Stan Brown**  
**Chief Executive**  
**Direct Line (0)28 90361 800**  
**e-mail [Stan.Brown@fsni.gov.uk](mailto:Stan.Brown@fsni.gov.uk)**

**Mr Stephen Graham**  
**Clerk to Assembly and Executive Committee**  
**Room 428**  
**Parliament Buildings**  
**Stormont Estate**  
**BELFAST BT4 3XX**

**6 February 2008**

Dear Stephen

Thank you for your letter dated 20 January 2009.

Please find attached written response on behalf of Forensic Science Northern Ireland.

Yours sincerely

A handwritten signature in black ink, appearing to read "Stan Brown".

**Stan Brown**  
Chief Executive

## **NORTHERN IRELAND ASSEMBLY QUESTIONS**

*Do you consider that the budgetary estimates for your organisation, details of which were provided to the Committee by the Northern Ireland Office (copy attached) are adequate, and, if not why not?*

### **Financial Context**

FSNI is a Net funded Executive Agency within the NIO and, unlike other areas, is not gross funded for its total costs. The corporate goal is to become self sustaining by 2011/12. However to achieve this, some investment is required.

The budgetary estimate for 2008/09, after the November 2008 Monitoring Round, is £1,535k after easements. This funding is provided directly to the Agency by NIO. The majority of the Agency's funding is however received from FSNI's primary customers, namely PSNI, State Pathologist, Police Ombudsman and Historical Enquiries Team, etc. with PSNI providing by far the lion's share.

SLA's cover these revenue streams and are currently under review in collaboration with the customers to more appropriately match projected revenues to resources and demand.

Income earned from the main customers in 2008/09 is budgeted at £9,233k. The agency's total resource allocation for 2008/09 will now be £10,768k for the first year of the CSR07.

It should be noted, however, that included in the figures above are amounts which may be included in the PSNI (£8.4m) and State Pathologist (£311k) budgets noted in the NI Assembly letter dated 20/01/09 for services purchased from FSNI.

FSNI has, since 1992, been operating out of temporary accommodation, which is increasingly unsuitable for its needs. A NIO project is well underway to provide new accommodation, but has been delayed due to difficulties in securing an appropriate site. An OBC is due for submission to NIO FSD in the next 2-3 months. Monies (£25m) have been set aside by NIO for the CSR in respect of this investment but it should be noted that the latter stages of the project will extend beyond the current CSR and the balance will need to be funded in the next spending review.



*What significant, additional, requirements do you envisage, in future years, and could any of these be dealt with through an adjustment to your organisation's existing plans/priorities?*

There are some requirements emerging, for example the need to maintain a strategic explosives service within FSNI and the impact of possible new legislation requirements arising out of the recent European Court of Human Rights ruling on the holding of DNA profiles of those released without charge or acquitted.

We are exploring how these may be funded from within existing resources and / or from Home office and PSNI respectively.

*Can you please provide, for each main spending area, the breakdown between resource and Capital DEL, AME and admin costs for each of the years 2005/06 to 2010/11, that is the outturns for the three years prior to Spending Review 07 and the plans for the three years of the review?*

#### Resource DEL

	2005/06 (£k)	2006/07 (£k)	2007/08 (£k)	2008/09 (£k)	2009/10 (£k)	2010/11 (£k)
NIO Funding	1,446	1,437	1,927	1,535	2,130	1,765
PSNI income	7,508	7,817	8,509	8,400	8,694	8,998
State Pathology income	283	292	301	402	322	333
Other Customers	391	320	280	491	540	559
<b>Total</b>	<b>9,628</b>	<b>9,866</b>	<b>11,017</b>	<b>10,828</b>	<b>11,686</b>	<b>11,655</b>

#### Capital DEL

	2005/06 (£k)	2006/07 (£k)	2007/08 (£k)	2008/09 (£k)	2009/10 (£k)	2010/11 (£k)
NIO Funding	371	1,260	1,524	1,343	1,541*	1,900
<b>Total</b>	<b>371</b>	<b>1,260</b>	<b>1,524</b>	<b>1,343</b>	<b>1,541*</b>	<b>1,900</b>

\*additional £520k requested to be ring fenced from 2008/09 in November 08 monitoring round. Awaiting response. Total capital requested in 2009/10 £2,061k.

Main spending areas within administration costs.

	2005/06 (£k)	2006/07 (£k)	2007/08 (£k)	2008/09 (£k)	2009/10 (£k)	2010/11 (£k)
Staff costs	5,847	6,237	6,079	6,531	7,482	7,744
Depreciation	461	565	565	775	687	687
Interest on capital employed	107	153	170	212	200	200
Central Charge to NIO	237	237	10	249	249	249
Notional Costs	31	119	36	47	49	51
Travel and Subsistence	117	109	114	126	131	135
Staff training	78	55	92	111	126	130
Other admin	2,124	2,028	3,076	2,777	2,762	2,459
<b>Total</b>	<b>9,002</b>	<b>9,503</b>	<b>10,142</b>	<b>10,828</b>	<b>11,686</b>	<b>11,655</b>

Note from December 2008, FSNI expenditure is now classified as programme.

---

# Further Questions to Forensic Science Northern Ireland 13th March 2009



Mr Jimmy Spratt MLA  
Chairman of the Assembly and  
Executive Review Committee  
C/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

Tel: (0)28 9052 1784  
Fax: (0)28 9052 5917

13 March 2009

Mr Stan Brown  
Forensic Science Northern Ireland  
151 Belfast Road  
Carrickfergus  
BT38 8PL

Dear Mr Brown

On behalf of the Assembly and Executive Review Committee, I would like to convey my thanks to you, and your colleagues, for your attendance at the Committee meeting on 10 March 2009.

As you will recall, the Committee agreed to forward any further questions to you in writing. Following consultation with the Specialist Adviser, a number of outstanding issues have been identified and are attached at Annex A.

I would be grateful if you would provide a written response to the questions to assist the Committee in its consideration of the financial implications of devolving policing and justice matters.

Yours sincerely



**Jimmy Spratt**  
Chairman

## Annex A

- In evidence you indicated that there had been significant under-spend in 2007/08 in relation to the NIO grant. Can you provide information on the shortfalls/longfalls in both resource DEL and capital DEL for each of the 3 years 2005/06 to 2007/08?
- You suggested that the move to self funding regime would only cover operating costs and not research and development (R & D) spend. What is your R & D now and projected to be, in terms of actual spend and as a percentage of total resource DEL.
- Will provision of new accommodation be through conventional procurement or a vehicle such as Public Private Partnerships?
- Do your estimates take any account of the further efficiency savings we understand the Treasury is seeking from UK departments?

# Supplementary Response from Forensic Science Northern Ireland 26th March 2009



Forensic Science Northern Ireland  
151 Belfast Road  
Carrickfergus  
BT38 8PL

26th March 2009

Mr Jimmy Spratt  
Chairman of the Assembly and Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

Re: FSNi response to Follow-up questions

Dear Mr Spratt,

Further to your letter of 13th March, I have pleasure in providing the following answers to your questions.

**Q1) A summary of the underspends in resource and capital DEL are noted in the table below:**

<b>Resource DEL</b>	<b>2005/06 (k)</b>	<b>2006/07 (k)</b>	<b>2007/08 (k)</b>
NIO Funding	1,446	1,437	1,927
Funding Utilised	820	1,074	1,052
Unutilised Funding	626	363	875

<b>Capital DEL</b>	<b>2005/06 (k)</b>	<b>2006/07 (k)</b>	<b>2007/08 (k)</b>
NIO Funding	371	1,260	1,524
Funding Utilised	345	477	649
Unutilised Funding	26	783 *	875**

### **2005/06 and 2006/07 Resource DEL**

The Treasury through NIO committed £2M investment to the modernisation of FSNI. This project was funded over a 3 year period and was agreed to be ring fenced in years where monies were not spent as planned. The underspend in both of these years relates to the balance of the modernisation fund. The modernisation programme had two main components; the first aimed at improvements in service delivery and the second at continual development and professionalism of the service. Directors were recruited with specialist skills in forensic science, commercial and HR areas to design and deliver an organisational change process. The budget was committed to investment in new technology, the development of more efficient and effective processes, support and changing the culture of the whole organisation to a customer focussed service contributing to the CJ aims of Northern Ireland. The £2m was ring fenced for this project and the under spend in 2005/06 and 2006/07 were carried forward into subsequent years.

### **2007/08 Resource DEL**

The unutilised funding balance of £875k comprises of the following:

- Modernisation project balance unspent of £262k.

The remaining underspend of £613k was due to delays in obtaining funding approval within monitoring rounds meant that procurement arrangements on some complex expenditure elements could not be completed within the financial year as follows:

- Funding set aside for brokering (i.e. sub-contracting of excess work to other forensic science providers in GB) could not be spent because the provider did not have process capacity to carry out all of the work.
- Funding set aside for facilities modifications were predicated upon decisions on demand specifications which were to be made by our principal customer but were not made.

## **Capital DEL**

### **2006/07 Capital DEL**

£562k of the £783k noted above was awarded in January 2007. There was insufficient time to procure and receive significant capital assets by the 31 March 2007. The remaining assets which were not delivered by the 31 March 2007 related to a number of expensive items which took longer to procure than anticipated.

### **2007/08 Capital DEL**

£1,190k was awarded in 28 December 2007. There was insufficient time to procure and receive significant capital assets by the 31 March 2008 therefore resulting in the deficit of £875k.

It is the nature of a forensic science organisation that predicting customer demand and supply capacities is intrinsically difficult, while the procurement processes are also technically difficult. The timelines for staff recruitment and training are likewise unusually long. These factors together contrive to make in-year financial planning and expenditure realisation both for Capital and Resource more difficult than would be the case for most other Government Agencies. FSNI and NIO are aware of this issue and the Agency's Framework agreement will require further modifications to allow greater end-year flexibilities and roll-over of funding, as well as retention of receipts.

- Q2) Expenditure on R&D was £140k for 08/09 and is planned to be £120k for 09/10. However, this is acknowledged to be too low a level and we anticipate spending 5% of running costs on R&D (i.e. ca. £500k) as soon as clarification as to how this is to be funded is agreed with the Department.



- Q3) The New accommodation is expected to be procured through conventional rather than PPP route. It is however a NIO departmental project, rather than an Agency-run project and I would refer you to the Department for any clarification.
- Q4) As a revenue generating Agency with a goal of becoming financially self-sustainable and competing in a mixed public-private marketplace, FSNI is not subject to headcount caps or reduction targets, as this would be a wholly inappropriate impediment to satisfying customer demand. Instead the drive for efficiency is realised through the need to ensure that revenues sustainably exceed costs.

In relation to Q1, if you require any more detailed breakdown, please let me know.

Yours sincerely,

**Stan Brown**

Chief Executive

Forensic Science Northern Ireland

# Final Request Forensic Science Northern Ireland

## 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

12th May 2009

Mr Stan Brown  
Forensic Science Northern Ireland  
151 Belfast Road  
Carrickfergus  
BT38 8PL

Dear Mr Brown,

### **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission and for appearing before the Assembly and Executive Review Committee to give oral evidence, recently.

The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month. However, you will recall that, during the oral evidence session, you were asked to indicate if there were any additional financial pressures you wished to identify to the Committee.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of any easements, or new pressures, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details, electronically, to the Committee Clerk by midday, 18 May 2009 at the following address

[stephen.graham@niassembly.gov.uk](mailto:stephen.graham@niassembly.gov.uk)

Yours sincerely



**Jimmy Spratt**  
Chairman

# Response from Forensic Science Northern Ireland 18th May 2009

Mr Jimmy Spratt  
Chairman of the Assembly and Executive Review Committee  
c/o Room 428  
Parliamentary Buildings  
Stormont Estate  
Belfast  
BT4 3XX

18 May 2009

## The Financial Implications Relating to the Devolution of Policing and Justice Matters

Dear Mr Spratt,

Thank you for your letter of 12th may 2009. I am writing to confirm that FSNI has no additional pressures other than those previously highlighted to the Assembly and Executive Review Committee. Although the Agency does have a number of significant projects identified, these cannot be quantified at this stage. The Agency also has a number of smaller projects, the costs of which will be met either from within FSNI or the Department.

Should you have any queries, please do not hesitate to contact me.

Yours sincerely,

Stan Brown  
Chief Executive

Forensic Science Northern Ireland  
151 Belfast Road Carrickfergus BT38 8PL  
Tel: +44 (0)28 9036 1940  
Fax: +44 (0)28 90 36 1900  
Web: [www.fsni.gov.uk](http://www.fsni.gov.uk)

# Written Submission from the Northern Ireland Law Commission 4th February 2009

Mr Stephen J Graham  
Committee Clerk  
Clerk to the Assembly and Executive Review Committee  
Northern Ireland Assembly  
Room 428  
Parliament Buildings  
Stormont Estate  
BELFAST  
BT4 2PP



4 February 2009

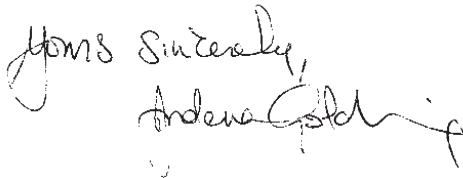
Dear Stephen

You wrote to Mr Justice Morgan, Chairman of the Northern Ireland Law Commission on 20 January 2009. I am responding on behalf of the Chairman and the Commission.

In your letter to the Chairman you sought financial information in relation to the Commission and its work.

Please see attached our response to the questions raised in your letter.

I am happy to discuss or if there is any other information required please let me know.



**JUDENA GOLDRING**  
Chief Executive

# Northern Ireland Law Commission

## Q1.

Budgetary estimates provided to the Committee by the Northern Ireland Office, do not reflect the Department of Finance and Personnel's (DFP) 50% funding contribution with effect from 2008/09 onwards. For 2008/09, this brings the Commission's total 2008/09 Programme Resource budget allocation to £1m.

In addition DFP separately fund the salary costs of two lawyers working on the Commission's land law project. A Senior Principal Legal Officer and a Principal Legal Officer are paid directly by DFP - Land and Property Services. It is anticipated that these two lawyers will continue to be funded by DFP until the project is completed by the end of 2010. The total amount of this project specific funding is around £102k per annum.

The Commission does have concerns about its funding levels and its ability to undertake more than one or two major law reform projects. In addition to its baseline figure of £1m the Commission may therefore have to seek project specific funding. The land law project is an example of this approach.

## Q2.

There have been no additional bids submitted under the current Comprehensive Spending Review.

## Q3.

The Northern Ireland Law Commission was established on 16 April 2007. During the first year of start-up, the majority of expenditure related to the setting up of the Commission including premises fit-out, office furnishings and initial office equipment costs, which were incurred by the NIO Criminal Justice Policy Unit sponsor body. Although these Direct Resource Programme costs were allocated against the Commission's accounts, they did not fall under the accounting responsibilities of the Commission itself.

<b>Year</b>	<b>Capital DEL (£k) (Programme)</b>	<b>Resource DEL (£k) (Programme)</b>
2007/08	-	1,500
2008/09	-	1,000
2009/10	-	1,028
2010/11	-	1,054

# Final Request to Northern Ireland Law Commission

## 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

12th May 2009

Sir Declan Morgan  
Northern Ireland Law Commission  
Linum Chambers  
8th Floor  
2 Bedford Square  
Bedford Street, Belfast

BT2 7ES

Dear Sir Declan,

### **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission to the Assembly and Executive Review Committee, recently.

As you will know, the Committee also conducted some oral evidence sessions in which witnesses were asked to indicate if there were any additional financial pressures they wished to identify to the Committee.

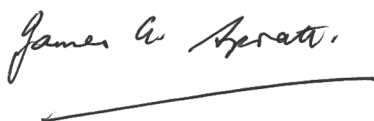
The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of new pressures, or easements, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details to the Committee Clerk by midday, 18 May 2009 to the following address

[stephen.graham@niassembly.gov.uk](mailto:stephen.graham@niassembly.gov.uk)

Yours sincerely



**Jimmy Spratt**  
Chairman



# Response from Northern Ireland Law Commission 18th May 2009

**By e-mail**



Mr Stephen Graham  
Committee Clerk  
Northern Ireland Assembly  
Parliament Buildings  
Stormont Estate  
BELFAST  
BT4 3XX

**18 May 2009**

## **THE FINANCIAL IMPLICATIONS RELATING TO THE DEVOLUTION OF POLICING AND JUSTICE MATTERS**

Mr Jimmy Spratt, MLA, Chairman to Assembly and Executive Review Committee wrote to Mr Justice Morgan, Chairman of the NI Law Commission on 12 May 2009 on the above matter.

I am responding on the Chairman's behalf to confirm that the position as set out in my letter of 4 February 2009 remains the same.

A handwritten signature in black ink, appearing to read "Judena Goldring".

**JUDENA GOLDRING**  
Chief Executive

# Written Submission from Northern Ireland Court Service 23rd January 2009

Stephen J Graham Esq  
Clerk of the Assembly and Executive  
Review Committee  
Room 428  
Parliament Buildings  
Stormont  
BELFAST  
BT4 3XX

23 January 2009

Thank you for your letter of 20 January inviting me to provide a written submission to the Assembly and Executive Review Committee on the budgetary position of the Northern Ireland Court Service.

The Northern Ireland Court Service will be pleased to assist the Committee in its deliberations and we shall endeavour to let you have the requested submission by 6 February.

It occurs to me that as the Court Service is the sponsor department for several of the other organisations listed in the Annex to your letter, there may be a benefit in our co-ordinating some or all of the responses from these other organisations. This would have the advantage of letting the Committee have a single, standardised response on behalf of those organisations for whom the Court Service is responsible. The relevant organisations for which the Court Service is responsible are the following –

Criminal Injuries Compensation Appeal Panel for Northern Ireland  
Northern Ireland Legal Services Commission  
Northern Ireland Judicial Appointments Commission  
Northern Ireland Judicial Appointments Ombudsman.

Because of this, I am sending copies of this letter to Oliver Loughran (CICAPNI), Jim Daniell (NILSC), Edward Gorringe (NIJAC) and to Audrey Fowler (Office of the NI Judicial Appointments Ombudsman).

**D.A. LAVERY**

DAL23Jan09

# Letter to NI Court Service

## 28 January 2009

Stephen J Graham  
Clerk to the Assembly and Executive Review Committee  
Northern Ireland Assembly  
Room 428  
Parliament Buildings  
Stormont Estate  
Belfast

28 January 2009

Mr David Lavery  
Director  
NI Court Service  
Laganside House  
23 – 27 Oxford Street  
Belfast  
BT1 3LA

Dear David

### **DEVOLUTION OF POLICING AND JUSTICE MATTERS**

Thank you for your letter of 23 January in which you indicated your intention to respond to the Committee's letter of 20 January 2009, by the deadline of 6 February.

At its meeting on 27 January 2009, the Committee noted the fact that the Northern Ireland Court Service acts as the sponsor department for several organisations.

As you suggest, a standardised response on behalf of those organisations would be most helpful. However, it is the wish of the Committee that each of these organisations should respond individually.

I have copied this letter to those organisations outlined in your letter of 23 January.

I look forward to hearing from you in due course.

Yours sincerely

**Stephen J Graham**  
Committee Clerk

# Written Submission from Northern Ireland Court Service 29th January 2009



NORTHERN IRELAND

**COURT  
SERVICE**

From the Director

Laganside House  
23-27 Oxford Street,  
Belfast, BT1 3LA  
Telephone: (028) 9041 2244  
Fax: (028) 9072 8946

Stephen J Graham Esq  
Assembly and Executive Review  
Committee  
Room 428  
Parliament Buildings  
Stormont Estate  
BELFAST  
BT4 3XX

29 January 2009

*Dear Stephen,*

## DEVOLUTION OF POLICING AND JUSTICE MATTERS

Thank you for your letter of 28 January in reply to my letter of 23 January.

I note that the Committee has indicated that it would wish to receive responses from each individual organisation from whom you have requested budgetary information, including those organisations for which the Court Service is the sponsor department.

We shall, of course, respect the Committee's wishes in this regard. I shall provide the response on behalf of the Northern Ireland Court Service by 6 February as requested.

I am sending copies of this letter for information to Oliver Loughran (CICAPNI), Jim Daniell (NILSC), Edward Gorringe (NIJAC) and to Audrey Fowler (Office of the NI Judicial Appointments Ombudsman).

*Yours Sincerely  
David A. Lavery*

**D.A. LAVERY**

DAL35Jan09



INVESTOR IN PEOPLE

The Northern Ireland Court Service is a Department of the Lord Chancellor

# Written Submission from Northern Ireland Court Service 9th February 2009



Mr Stephen J Graham  
Clerk of the Assembly and Executive  
Review Committee  
Room 428  
Parliament Buildings  
Stormont  
BELFAST  
BT4 3XX

NORTHERN IRELAND  
**COURT  
SERVICE**

From the Director  
Laganside House  
23-27 Oxford Street,  
Belfast, BT1 3LA  
Telephone: (028) 9041 2244  
Fax: (028) 9072 8946

9 February 2009

*Dear Stephen,*

## **THE NORTHERN IRELAND COURT SERVICE**

I refer to your letter of 20 January requesting a written submission on the budgetary position of the Northern Ireland Court Service. Separate responses will be provided by the other organisations for which we are responsible, namely:

- Northern Ireland Legal Services Commission (NILSC);
- Northern Ireland Judicial Appointments Commission (NIJAC);
- Northern Ireland Judicial Appointments Ombudsman (NIJAO); and
- Criminal Injuries Compensation Appeals Panel Northern Ireland (CICAPNI).

### Background

The Court Service's CSR07 settlement for the financial years 2008/09 to 2010/11 reduced 'near cash' resource spending by 3.2 per cent per year in real terms (£1m per annum based on the 2007/2008 baseline), non-cash resource by 1.5 per cent per year in real terms, and total resource by 2.9 per cent per year in real terms over the CSR07 period.

In addition, HM Treasury requires the Court Service to deliver real year on year savings coupled with the containment of price and volume funding pressures over the three year period to live within the settlement. Key assumptions made by HMT within the CSR07 settlement are a five per cent real reduction in administration budgets and that the basic award within pay settlements will be no more than two percent per annum.

Our responses to the questions posed in your letter are set out in the following paragraphs.



INVESTOR IN PEOPLE

# Further Questions to Northern Ireland Court Service 5th March 2009



Mr Jimmy Spratt MLA  
Chairman of the Assembly and  
Executive Review Committee  
C/o Room 428  
Parliament Buildings  
Stormont Estate  
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5 March 2009

Mr David Lavery  
NI Court Service  
Information Centre,  
Windsor House,  
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Co Antrim  
BT2 7LT

Dear Mr Lavery

On behalf of the Assembly and Executive Review Committee, I would like to convey my thanks to you, and your colleagues, for your attendance at the Committee meeting on 3 March 2009.

As you will recall, the Committee agreed to forward any further questions to you in writing. Following consultation with the Specialist Adviser, a number of outstanding issues have been identified and are attached at Annex A.

I would be grateful if you would provide a written response to the questions to assist the Committee in its consideration of the financial implications of devolving policing and justice matters.

Yours sincerely



**Jimmy Spratt**  
Chairman



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## Annex A

- How robust are the Court Service's anticipated volumes of business projected in the CSR07 settlement? What are the current trends in criminal, civil, family, tribunal and coroner cases? How likely is there to be a significant increase in business volumes and has any sensitivity analysis been performed to indicate the potential risk to the budget?
- Excluding legal aid, can the inescapable pressures of staff devolution costs (£0.4m), Judicial costs (£7.5m), Tribunal reform (£0.5m) and inquests (£2.0m) be met, in whole or part, from efficiency savings?
- Do your estimates take any account of the further efficiency savings we understand the Treasury is seeking from UK departments?
- As sponsor department for the Northern Ireland Legal Services Commission how do you ensure that the LSC legal aid pressure is properly estimated or projected?
- In your evidence you suggested that one area of duplication of effort between the Court Service and the Legal Services Commission was that of policy work. Can you elaborate further on this and indicate how this might be eradicated?
- What is the scope for a more joined up approach amongst ALL the agencies working in the justice system? Do you envisage 'efficiency savings' as a consequence of a more joined up approach, and, if so, what would be the timescale for those efficiencies and how significant would the savings be?
- The Court Service envisage a need to improve the court estate including new replacement court houses and this is estimated to require a capital budget of £100m. Has an economic appraisal with an appropriate range of options been conducted?
- The Court Service indicate that the capital budget is only sufficient to cover maintenance and running costs of the current court estate, but surely a capital budget cannot be used to cover running costs. Can this be explained further?
- What is the Court Service exposure to VAT and how much would this reduce by if you became an agency of a NI Department of Justice?

# Supplementary Response from Northern Ireland Court Service 24th March 2009

Jimmy Spratt Esq MLA  
Chairman of the Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

24 March 2009

Thank you for your letter of 5 March following-up on the Court Service evidence session before the Assembly and Executive Review Committee on 3 March.

I am grateful for the opportunity to assist the Committee in its consideration of the financial implications of devolving policing and justice.

I have attached the Court Service response to the further questions which the Committee has raised. I hope this is helpful.

**D.A.Lavery**

# Northern Ireland Court Service

**Q1 How robust are the Court Service's anticipated volumes of business projected in the CSR07 settlement? What are the current trends in criminal, civil, family, tribunal and coroner cases? How likely is there to be a significant increase in business volumes and has any sensitivity analysis been performed to indicate the potential risk to the budget?**

The Northern Ireland Court Service regularly monitors court business volumes to inform business planning and resource allocation, taking into account historic trends and anticipated changes in business due to external and other influences. These include the crime rate and detection of crime (criminal business), the economic climate (civil business and debt recovery), and social factors such as levels of separation and divorce proceedings (family business). Front line services are required to be reactive to the activities and access to justice needs of criminal justice organisations, statutory agencies, private and voluntary sector organisations and individual citizens.

Using this information, the Court Service can redeploy available resources or make a business case to meet specific pressures. There is no specific risk to the Court Service budget from current or anticipated fluctuations in court business.

Current trends in criminal, civil, family, tribunal and coroner cases are set out below.

## **Criminal Business**

Criminal business received (Crown Court, Adult Magistrates' Court and Youth Court defendants) increased by 10% between 2004/5 and 2007/8. Crown Court cases increased by 4% and Youth Court defendants by 74% (reflecting the inclusion of 17 year olds in the jurisdiction of the Youth Court). Business disposed of increased by 11% and criminal court sitting days increased by 14% in the same period.

Provisional figures for the period April-December 2008 show an 8% decrease in new criminal business against a 10% increase in Crown court sittings and 3% increase in adult Magistrates' Court sittings compared to the same period in 2007.

## **Civil Business**

High Court and County Court civil business received decreased 4% from 2004/05 to 2007/08, business disposed of increased by 1% and court sittings increased by 9% in the same period.

Figures for April to December 2008 show an increase in new business of 9%, an increase in case disposals of 16% and an 8% increase in court sittings compared to the same period in 2007. Of particular note are a 31% increase in Queen's Bench sittings in the High Court and 104% increase in the number of mortgage repossession applications disposed of.

## **Family Business**

Children Order applications have decreased by 9% in April-December 2008 compared to the same period in 2007. Divorce proceedings have increased by 8% in the same period. Sitting days have remained broadly constant.

## **Enforcement of Judgments Office (EJO)**

The Enforcement of Judgments Office (EJO) provides a centralised system for the enforcement of civil court judgments in Northern Ireland. EJO business volumes have significantly increased from 2007 to 2008. Notices of intention to enforce a debt have increased by 64% and applications to enforce a debt by 14%. This has resulted in the debt lodged for enforcement increasing by 52% to £15.2 million. Property repossessions have also increased by 9% and evictions by 48%.

Most recent figures for January and February 2009 show that notices of intention to enforce a debt have increased by 136%, applications to enforce by 87% and repossessions by 88% compared to the same period in 2008. These business trends are indicative of the current economic climate.

### **Tribunals**

The Court Service is responsible for a number of tribunals – the Social Security Commissioners and Child Support Commissioners (OSSC), the Pensions Appeal Tribunal (PAT), the Criminal Injuries Compensation Appeals Panel for Northern Ireland (CICAPNI), and two tribunals which the Court Service manages on behalf of other NI departments – Traffic Penalty Tribunal (TPT) and Northern Ireland Valuation Tribunal (NIVT).

Business volume in OSSC and PAT is relatively small (approximately 230 and 220 cases per annum respectively), as is the case with TPT and NIVT (approximately 510 and 40 cases respectively). We do not anticipate any significant business volume increase in these tribunals.

CICAPNI levels of business have declined, from 1,011 in 2006/07 to 859 in 2007/08 (740 cases are projected in 2008/09). However the new proposed Criminal Injuries Compensation Scheme 2009, which will come into force later this year, is expected to lead to an increase in the number of appeals lodged.

The tribunal reform programme envisages the transfer of administrative responsibility for all NI departmental tribunals to the Court Service. These other tribunals are currently the responsibility of various NI departments.

### **Coroners Service**

The number of deaths reported to the coroner has increased by 3% during the period April 2008 to January 2009 compared to the same period last year.

The Coroners Service faces significant challenges over the next few years due to the number of ‘legacy’ cases dating back to the “troubles”. These cases are highly complex and sensitive. There are currently 29 deaths in this category which may result in 19 complex inquests. The anticipated financial impact of these cases (£2m) has been declared in the evidence already presented to the Committee.

### **Q2 Excluding legal aid, can the inescapable pressures of staff devolution costs (£0.4m), Judicial costs (£7.5m), Tribunal reform (£0.5m) and inquests (£2.0m) be met, in whole or part, from efficiency savings?**

Of these declared pressures, only those in relation to tribunal reform (£0.5m) are provided for within our budgetary plans for the CSR07. As explained during the evidence session on 3 March, the other declared pressures are unfunded and cannot be met through efficiency savings, either in whole or in part.

### **Q3 Do your estimates take any account of the further efficiency savings we understand the Treasury is seeking from UK departments?**

No. Any requirement to deliver further efficiency savings, above those already planned for, would impact adversely on the delivery of frontline services.

The Northern Ireland Legal Services Commission has not been asked to deliver further efficiency savings in 2010/11. The current CSR settlement provided additional funding for the Commission’s Grant in Aid to improve its delivery of core services and to develop a reform programme for civil legal aid. To require efficiency savings would jeopardise both these initiatives.

**Q4 As sponsor department for the Northern Ireland Legal Services Commission how do you ensure that the LSC legal aid pressure is properly estimated or projected?**

In 2007 the Court Service, with the support of the Northern Ireland Legal Services Commission, commissioned an independent review of the Legal Aid Fund forecast. This review produced a comprehensive forecasting model based on historical business trends and cost patterns. The projection for 2007/08 proved to be robust for normal business and has now been updated for current business trends and to take account of proposed reform initiatives. The forecasts for the current and next CSR period have been shared with the Committee. The main risk to the forecasting model remains the impact of Very High Cost Criminal cases.

**Q5 In your evidence you suggested that one area of duplication of effort between the Court Service and the Legal Services Commission was that of policy work. Can you elaborate further on this and indicate how this might be eradicated?**

There has been a longstanding arrangement in which the Court Service takes the lead on criminal legal aid reform while the Commission leads on civil legal aid reform. The Court Service also provides policy advice to Ministers on all aspects of legal aid policy and legislation.

On devolution it would be possible to concentrate the policy function for both criminal and civil legal aid in one body, either the core department or within the NILSC. To maximise efficiencies the core department and the NILSC will have to work as one in developing and delivering reform.

Q6 What is the scope for a more joined up approach amongst ALL the agencies working in the justice system? Do you envisage “efficiency savings” as a consequence of a more joined up approach, and if so, what would be the timescale for those efficiencies and how significant would the savings be?

Potential for efficiency improvements as a consequence of a more joined up approach may arise from:

- innovation in the delivery of services;
- creating a unified tribunal service;
- working efficiently with other justice partners;
- participation in shared service arrangements, such as HR, Finance, ICT, training and development; and
- cost containment through joint procurement.

**Q7 The Court Service envisage a need to improve the court estate including new replacement court houses and this is estimated to require a capital budget of £100m. Has an economic appraisal with an appropriate range of options been conducted?**

The Court Service last completed a formal review of its accommodation needs in 2006. This review included an assessment of need, an options appraisal and indicative costs.

The Court Service is currently developing a new Court Estate Strategy which will report in the Spring 2009 and will set out costed options in an outline business case for the future of the court estate in the short (1-2 years), medium (3-5 years) and longer term (5-10 years). We would be happy to share the Strategy with the Committee once developed.

**Q8 The Court Service indicate that the capital budget is only sufficient to cover maintenance and running costs of the current court estate, but surely a capital budget cannot be used to cover running costs. Can this be explained further?**

The Court Service capital budget for the CSR07 period is £21.8m. £17.1m has been allocated to capital works, both major and minor relating to the estate, and £4.7m for IT infrastructure and development of business systems.

All other annual running costs of the court estate, such as service charges, rates, heating and lighting, cleaning and security costs, amount to £21m for 2008-2009 and are met from resource allocations – not from the capital budget allocation.

**Q9 What is the Court Service exposure to VAT and how much would this reduce by if you became an agency of the NI Department of Justice?**

The main areas of expenditure where the Court Service is unable to recover VAT are electricity/fuel, telephones, stationery and capital expenditure.

Excluding capital expenditure, a review of the costs to date for 2008-09 indicates that approximately £300,000 of VAT might be recovered if Court Service was an agency of an NI Department. VAT applicable to capital expenditure which is not zero rated or exempt would also be recoverable. It is not possible to quantify this saving, as the amount of capital expenditure in any year will be dependent on the nature of the capital programmes that are in place at the time.

In respect of legal aid, as an NDPB, the Legal Services Commission cannot reclaim VAT paid to the legal profession for the provision of publicly funded legal services. The Legal Services Commission in England and Wales is in the same position. The following table indicates the cash amounts paid in respect of VAT in the specified years.

	VAT paid to;		
	Solicitors £'000	Counsel £'000	Totals £'000
2006/07	4,864	4,116	8,980
2007/08	5,556	3,681	9,237
<b>Grand Total</b>	<b>10,420</b>	<b>7,797</b>	<b>18,217</b>

Devolution would not in itself change the Commission's ability to reclaim VAT. For the Commission to be able to reclaim VAT the Department of Finance and Personnel would need to agree this policy with Her Majesty's Revenue and Customs. Agreement might be more likely if the Commission was established as an Agency of the proposed Justice Department rather than as an NDPB.

[24/03/09]



# Final Request Northern Ireland Court Service

## 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

12th May 2009

Mr David Lavery  
Northern Ireland Court Service  
Laganside House  
23-27 Oxford Street  
Belfast  
BT1 3LA

Dear Mr Lavery,

### **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission and for appearing before the Assembly and Executive Review Committee to give oral evidence, recently.

The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month. However, you will recall that, during the oral evidence session, you were asked to indicate if there were any additional financial pressures you wished to identify to the Committee.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of any easements, or new pressures, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details, electronically, to the Committee Clerk by midday, 18 May 2009 at the following address

stephen.graham@niassembly.gov.uk

Yours sincerely



**Jimmy Spratt**  
Chairman

# Response from Northern Ireland Court Service

## 18th May 2009

Mr Jimmy Spratt MLA  
Chairman  
Assembly and Executive Review  
Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
BELFAST  
BT4 3XX

18 May 2009

Dear Chairman

### The Financial Implications Relating to the Devolution of Policing and Justice Matters

Thank you for your letter of 12 May inviting me to confirm the current financial position of the Northern Ireland Court Service.

I am pleased to confirm that – subject to the two detailed points outlined below – the budgetary position of the Northern Ireland Court Service remains as outlined in my letter to the Committee Clerk dated 9 February and the Joint Memorandum on legal aid, dated 26 February, submitted to the Committee by the Court Service and the Northern Ireland Legal Services Commission.

#### **Legacy Inquests –**

In my letter of 9 February I stated that the Court Service faced an inescapable pressure of £2m in relation to a number of ‘legacy’ inquests. In the course of my oral evidence to the Committee on 3 March, I explained that this was our best assessment of the costs associated with these cases, but I acknowledge that the final cost could well be greater. We have subsequently worked with the Coroners Service to develop a more robust projection of the costs likely to be incurred in dealing with these cases. I am attaching a short background note on these cases and the associated costs. It should, however, be noted that this latest projection is based on the known caseload of 18 ‘legacy’ inquests, and it is quite likely that the associated costs could increase if other cases come to light and are referred back to the Coroners Service by the Attorney General with a direction to hold an inquest. This has led us to conclude that the legacy inquests will give rise to a pressure of £2m during the remainder of the current CSR07 period and an additional pressure of £3.2m in the subsequent CSR period, giving a total current unfunded pressure of £5.2m.

#### **Capital Pressures –**

In my letter of 9 February, I explained that the Court Service is developing a Court Estate Strategy and that the current projection is that a capital budget of £100m would be required to give effect to this. Pending the development of the Estate Strategy, the Court Service faces an immediate unfunded pressure on our capital budget of £15m for the remainder of the CSR07 period. This immediate pressure relates to extensive remedial work required at Londonderry and Ballymena Courthouses and a number of other locations, for which we do not currently have funding in our capital budget.

Subject to the points of detail outlined above, our budgetary position remains as outlined in my earlier submissions to the Committee. This means that, in summary, our unfunded budgetary pressures are as summarised in the following table –

<b>Funding Pressure</b>	<b>Resource £m</b>
Resource	
Staff Devolution Costs	£0.4m
Judicial Costs	£7.5m
Inquests	£5.2m
Tribunal Reform	£0.5m
Legal Aid	£60.0m
Total Resource Pressure	£70.4m
Capital	
Court Estate Programme	£100.0m*
Tribunal Reform	£0.4m
Total Capital Pressure	£100.4m

(\*of which £15m falls during CSR07)

The Northern Ireland Court Service is grateful for this opportunity to assist the Committee with its deliberations.

Yours sincerely  
D.A. Lavery

D.A. LAVERY

DAL19May09

# Written Submission from Northern Ireland Legal Services Commission 22nd January 2009

Mr Stephen Graham  
Clerk to Assembly and Executive Review Committee  
Room 428  
Parliament Buildings Stormont Estate  
Belfast  
BT4 3XX

22 January 2008

CEO Ref: 09/38

Dear

**Assembly and Executive Review Committee (AERC)**

Thank you for your letter of 20 January to in which you are seeking information on behalf of the AERC in relation to organisations within the criminal justice field.

I can confirm that we are currently attending to your request and have noted your deadline for the return of written submissions.

Yours,

Jill Herron  
**Secretary to the Board**

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# Written Submission from Northern Ireland Legal Services Commission 9th February 2009

Mr Stephen Graham  
Clerk to Assembly and Executive Review Committee  
Parliament Buildings  
Stormont Estate  
Belfast BT4 3XX

9 February 2009

Dear Stephen

Thank you for your letter of 20 January seeking information on behalf of the Assembly and Executive Review Committee. We welcome the opportunity to address the funding issues that the Legal Services Commission is facing during the existing CSR period and beyond. I apologise for the delay in responding, but we are currently revisiting the Commission's cash and resource requirements over the remainder of the CSR period and wanted to ensure that you had the latest available assessment.

The Northern Ireland Legal Services Commission was established in 2003 as a non departmental public body, sponsored by the Northern Ireland Court Service. The Commission assumed responsibility for the administration of civil and criminal legal aid from the Legal Aid Department of the Law Society of Northern Ireland.

The Commission's financial settlement for the financial years 2008-09 to 2010-11 was agreed in December 2006. The settlement provided funding of £65m per annum.

By way of a general introductory comment, the Committee may wish to note that the legal aid fund is demand led in that the relevant legislation requires decision-makers to grant legal aid if an applicant satisfies statutory means and merits tests. The combination of the demand led nature of the legal aid fund and the variety of life cycles of cases means that legal aid certificates can crystallise for payment several years after they are granted. These factors, together with increases in the average costs per case, have resulted in significant annual pressures on the legal aid fund over many years. It is important to bear in mind that a substantial proportion of the expenditure identified in the tables below for the remainder of the CSR period has already been committed through the granting of legal aid certificates.

Our responses to the questions posed in your letter are set out in the following paragraphs. We have based the figures contained in the tables on a forecasting exercise carried out jointly by the Commission and the Court Service at the end of 2007 – updated in the light of payment patterns that have so far emerged in 2008/09 and our assessment of what they may mean for the final two years of the CSR period.

1. Do you consider that the budgetary estimates for your organisation, details which were provided to the Committee by the Northern Ireland Office are adequate, and, if not, why not?

The table below illustrates that the Commission is facing significant budgetary pressures over the CSR period. The in-year pressure has been addressed following the Chief Secretary's decision to approve additional cash funding of £20m for legal aid in the current financial year through the Spring Supplementary Estimate process. The total Supplementary Estimate will be for £22m (of which £2m represents a transfer from Court Service funds). In addition the Commission had a brought forward cash balance of just over £2m.

<b>Cash</b>	<b>2008/09 £m</b>	<b>2009/10 £m</b>	<b>2010/11 £m</b>	<b>Total CSR £m</b>
Civil business	31	30	30	91
Criminal business	34	34	33	101
Total "normal" business	65	64	63	192
Very High Cost Cases	17	26	22	65
Total grant requirement	82	90	85	257
Grant in aid	7	8	7	22
Total cash requirement	89	98	92	279
Main estimate	65	65	65	195
Brought forward	2	-	-	2
Supplementary estimate	22	-	-	22
Total cash available	89	65	65	219
Surplus / (Shortfall)	0	(33)	(27)	(60)

<b>Resource</b>	<b>2008/09 £m</b>	<b>2009/10 £m</b>	<b>2010/11 £m</b>	<b>Total CSR £m</b>
Civil business	29	31	31	91
Criminal business	31	31	32	94
Total "normal" business	60	62	63	185
Very High Cost Cases	14	18	23	55
Total grant requirement	74	80	86	240
Grant in aid	8	9	9	26
Total resource requirement	82	89	95	266
Main estimate	65	65	65	195
Supplementary estimate	22	-	-	22
Total resource available	87	65	65	217
Surplus / (Shortfall)	5	(24)	(30)	(49)

The Commission, together with its sponsor body, will continue in the coming months to keep under review the projections for the final two years of the CSR, in resource as well as cash terms. In doing so we will take account of patterns in current outturn, any changes in service requirements on the Commission and what we know of cases being processed through the system.

2. What significant, additional, requirements do you envisage in future years, and could any of these be dealt with through an adjustment to your organisation's existing plans/priorities?

Under the Comprehensive Spending Review 2007 the Commission knows the funding that has been allocated to it for the financial years 2008/09, 2009/10 and 2010/11. As previously stated, the funding will be insufficient to address the value of bills which will be presented and assessed for payment during these years. The Commission requires adequate funding to enable it to discharge its known liabilities during these



years and those liabilities that will accrue in future as a result of the granting of legal aid certificates in accordance with legislation. The scope for varying the likely financial demands on the Commission for the remainder of the CSR period is very limited, for the reasons given at the fourth paragraph above.

The primary pressure facing the Commission arises from Very High Cost Criminal Cases (VHCCs). These are cases that are certified as being likely to exceed 25 days if they go to trial and where the fees are determined by the Taxing Master (a member of the judiciary). The incidence of such cases and their cost has been much greater than had been expected when the CSR bid was prepared. This is an area where forecasting is extremely difficult, given the large sums that can be involved in individual cases and uncertainties over the timing of determinations by the Taxing Master.

The figures given for VHCCs in the table above reflect the interim payment scheme introduced at the start of this year and allow for the possibility of re-determinations by the Taxing Master in the event of appeals by practitioners. On the basis of past experience it is also necessary to allow for the possibility of the occasional "one-off" highly complex case that can result in very substantial payments. While every effort has been made to produce a realistic forecast of the cost of VHCCs based on what we know about cases already in the system and the likely incidence of such cases in the future, the actual funding requirement could vary significantly from the figures given in the table above; this particular cost head will be monitored closely and the projected spend kept under review to ensure that the figures are as robust as possible.

3. In the present Comprehensive Spending Review, please provide details of any unsuccessful bids and how you expect to deal with these in the future.

The Commission has had no unsuccessful bids during the CSR. Discussions continue in respect of the shortfalls identified in years two and three.

4. Can you please provide, for each main spending area, the breakdown between Resource and Capital DEL, Annually Managed Expenditure and administration costs for each of the years 2005/06 to 2010/11, that is the outturns for the three years prior to Spending Review 07 and the plans for the three years of the Review?

Please see the table below. The Committee will note that the funding which the Commission receives from the Court Service is by way of cash grant with no separate capital DEL. None of the Commission's expenditure is processed under AME. Administration costs are represented by the grant-in-aid figures.

<b>Cash Outturn/Allocation 2005-2011</b>						
	<b>Outturn</b>			<b>Allocation</b>		
	<b>2005/06 £m</b>	<b>2006/07 £m</b>	<b>2007/08 £m</b>	<b>2008/09 £m</b>	<b>2009/10 £m</b>	<b>2010/11 £m</b>
Grant	57.1	68.5	71.5	82.2	57.3	57.7
Grant-in-aid	5.1	5.5	6.1	6.6	7.7	7.3
Total outturn/ allocation	62.2	74.0	77.6	88.8	65.0	65.0
Grant shortfall	-	-	-	-	33.0	27.0

<b>Resource Outturn/Allocation 2005-2011</b>						
	<b>Outturn*</b>			<b>Allocation</b>		
	<b>2005/06 £m</b>	<b>2006/07 £m</b>	<b>2007/08 £m</b>	<b>2008/09 £m</b>	<b>2009/10 £m</b>	<b>2010/11 £m</b>
Grant	76.5	73.2	74.6	79.3	56.1	56.5
Grant-in-aid	5.8	5.9	6.4	7.7	8.9	8.5
Total outturn/ allocation	82.3	79.1	81.0	87.0	65.0	65.0
Grant shortfall	-	-	-	-	24.0	30.0

\*It should be noted that the resource outturn figures for 2005-2008 have not yet been signed off by the C&AG.

In conclusion, I should say that the Commission has embarked on a major reform exercise in relation to civil legal aid in accordance with the provisions of the Access to Justice (NI) Order 2003; this should enhance predictability of spend, facilitate financial control and better enable us to prioritise expenditure in the light of available resources. With similar aims in mind, the Northern Ireland Court Service is making changes to the criminal legal aid schemes that we administer with a focus on standard fees and introducing new arrangements for Very High Cost Cases.

More generally, the Commission is actively examining options for maximising value for money in this area, for example by looking critically at the level of representation in the courts in legally aided cases. It is important to bear in mind that there is a substantial lead in time before any changes will impact on the level of spend out of the Legal Aid Fund. The Commission also wishes to ensure that Legal Aid Impact Assessments are carried out by the relevant departments and appropriate financial provision made when new legislation is introduced that impacts on the Fund.

I hope that this letter deals satisfactorily with all of your questions. I will be pleased to answer any additional questions that the Committee might have.

Yours sincerely

**J A Daniell**

Chairman

Further questions to  
Northern Ireland Legal Services Commission  
5th March 2009

Mr Jimmy Spratt  
Chairman of the Assembly and  
Executive Review Committee  
c/o Room 428  
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5 March 2009

Mr Jim Daniell  
Legal Services Commission  
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Belfast  
BT1 3BN

Dear Mr Daniell

On behalf of the Assembly and Executive Review Committee, I would like to convey my thanks to you, and your colleagues, for your attendance at the Committee meeting on 3 March 2009.

As you will recall, the Committee agreed to forward any further questions to you in writing. Following consultation with the Specialist Adviser, a number of outstanding issues have been identified and are attached at Annex A.

I would be grateful if you would provide a written response to the questions to assist the Committee in its consideration of the financial implications of devolving policing and justice matters.

Yours sincerely



**Jimmy Spratt**  
Chairman

## Annex A

- The legal aid fund is demand led and there have been increases in average costs per case, leading to pressures on the legal aid fund over many years and frequent recourse to supplementary funding. If this has been evident over a long time period why has there been no progress in securing a more realistic budget?
- Primary pressure arises from very high cost criminal cases where you said that the incidence of such cases is difficult to forecast. Can you provide more detail on the main factors driving the costs of such cases?
- Your written evidence refers to the rising costs of administering legal aid which reflects the cost of creating a research and policy capacity, yet what evidence is there that this capacity has been utilised to explain and project the rising cost of legal aid?
- LSC project that a further £50m will be required across the next CSR period. Can you confirm the extent to which the proposed reforms will reduce this additional pressure on legal aid expenditure?
- The evidence, both written and oral, suggests that the Northern Ireland average criminal legal aid costs are more than double those in England & Wales. Reference was made to the difficulty of comparing like with like but that alone could not explain such a gap. Can you provide further detail on how these comparisons could be improved?
- Can you specifically explain the scale of fees and charges for each type of legal representation (QCs, barristers and solicitors) and provide illustrative figures?
- Can you explain how the complexity of legislation and level of representation impacts on legal aid costs?
- It was suggested that one area of duplication of effort between the Court Service and the Legal Services Commission was that of policy work. Can you elaborate further on this and indicate how this might be eradicated?
- Do your estimates take any account of the further efficiency savings we understand the Treasury is seeking from UK departments?
- What is your exposure to VAT and how would this change if your organisation was devolved?

# Supplementary Response from Northern Ireland Legal Services Commission 25th March 2009

Jimmy Spratt Esq MLA  
Chairman of the Assembly and Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

25 March 2009

Dear Mr Spratt

Thank you for your letter of 5 March requesting further information following our appearance before the committee on 3 March.

We welcome the opportunity to assist in this way and have attached the material which you sought. If there are further questions or points of clarification we would be pleased to assist perhaps by providing further written material or through discussion with your Specialist Adviser.

Yours sincerely

J A Daniell

## Responses to Questions of 5 March 2009 from Northern Ireland Legal Services Commission

**Question 1. The legal aid fund is demand led and there have been increases in average costs per case, leading to pressures on the legal aid fund over many years and frequent recourse to supplementary funding. If this has been evident over a long time period, which has there been no progress in securing a more realistic budget?**

**Response:** The Commission and its predecessor body, the Legal Aid Department of the Law Society, has worked closely with the Northern Ireland Court Service, its sponsor body, to seek appropriate funding for legal aid. As demonstrated by the Joint Memorandum submitted to the Committee, in every year since 2001/02 the original allocation proved to be inadequate. Historically HM Treasury has been reluctant to uplift the legal aid baseline, despite overwhelming evidence that such an increase was necessary. The approach adopted by HM Treasury was usually to agree an in-year supplementary allocation based on funding from the Court Service, or from the Lord Chancellor's ministerial allocation. As can be seen from the table at paragraph 6 of the Joint Memorandum, in the SR 04 settlement HM Treasury did agree to an increase in the baseline but a further increase was not agreed in the CSR07 settlement, a significant factor in the current pressure.

One result of this constant year on year shortfall has been to divert the efforts of the Commission's senior management and finance staff, and those of its sponsor body, into seeking additional funds to meet liabilities that have already accrued. This takes up a lot of time and resource that would be better spent on improving budgetary and financial management and developing new ways of delivering quality service on a value for money basis. Devolution presents an opportunity to establish a realistic budget for legal aid, which is consistent with the level of commitment already in the system, thereby allowing the Commission and its sponsor's energy to be targeted on reforming legal aid to enable it to live within properly assigned budgets.

**Question 2. Primary pressure arises from very high cost criminal cases where you said that the incidence of such cases is difficult to forecast. Can you provide more detail on the main factors driving the costs of such cases?**

**Response:** Very High Cost criminal cases represented a significant financial pressure. Forecasting these cases has proved to be problematic on three levels. First, there have been more cases certified as very high cost that had been envisaged. Certification means that the standard fee framework used for other Crown Court cases does not apply. Second, the nature of some cases prosecuted in recent years means that there are significant costs attached, for example the criminal trial arising from the Omagh bomb which was prolonged and included significant forensic evidence; murder trials which had international aspects, including evidence being secured and expert witnesses provided from international locations and a number of significant fraud cases which involved fuel and money laundering. Third, as these cases are assessed only once a case is disposed of and the assessment process itself can be complex, there can be a significant delay in establishing the total cost of a case. Since the introduction of very high cost cases in 2005 there have been relatively few cases assessed so it is difficult for the Commission and its sponsor body to establish with any certainty the difference between the costs claimed by lawyers and those allowed on assessment. There is a significant body of cases currently being assessed and in the coming months a clearer picture of the costs of very high cost cases will emerge, including cases which will be finalised on appeal. The Commission is supporting its sponsor department in seeking to address each of these three levels.



**Question 3. Your written evidence refers to the rising costs administering legal aid which reflects the cost of creating a research and policy capacity, yet what evidence is there that this capacity has been utilised to explain and project the rising cost of legal aid?**

**Response:** This is an important question. Prior to the establishment of the Commission the Lord Chancellor's Legal Aid Advisory Committee, in expressing concern about the increasing cost of legal aid, highlighted the absence of a research function:-

'Your Committee has now for several years complained about the lack of analysis and comment by the Department upon trends....No-one appears to be responsible for analysis and comment or to perform this function. We recommend that this be remedied'<sup>1</sup>

When established in 2003, the Commission sought to fill this lacuna by developing a discrete policy and research function headed by an Executive Director, focusing on civil legal aid (the NI Court Service is responsible for policy on criminal legal aid policy). The Commission's aim is to 'provide high quality, customer-focused services that target those in greatest need, promote social inclusion and demonstrate value for money'. The Policy and Service Development Directorate was established from a standing start in September 2004 and plays an important role in enabling the Commission to achieve this aim and associated objectives by conducting evidence-based research and analysis to inform policy development within the Commission. However, it must be pointed out that the focus of a large part of that directorate's work is in developing reforms to civil legal aid under the auspices of the Access to Justice Order (NI) 2003 and that, even with consultancy support, the resource devoted to research remains limited.

The directorate's capacity has been developed in a challenging funding environment and to meet very challenging targets set by the Lord Chancellor in relation to the reform of civil legal aid in Northern Ireland. In doing so, the directorate is dealing with fundamental issues in relation to access to justice and advice relevant to the Northern Ireland jurisdiction as a whole and public administration generally. The projects being taken forward by the directorate include the development of a Northern Ireland Funding Code enabling civil legal aid to be controlled and targeted where it is needed most; a new set of Financial Regulations that will simplify the means test and enable greater application of the statutory charge; new legislation enabling fees to be paid to the legal profession on a value for money basis. The Commission's Policy and Service Development Directorate has also taken forward a programme of evidence-based research to project and explain rising costs in civil cases and used this analysis to introduce successfully standard fees for remuneration in some Children (NI) Order 1996 cases negotiated on a value for money basis with both the Law Society and the Bar Council in the years 2005/2008. This led to negotiated settlements with the legal profession which saw decreases in the average cost of family cases in the High Court during 2005 to 2008. The Policy and Service Development Directorate is also responsible for bringing forward reform to the Statutory Charge and establishing a Registration Scheme for legal aid practitioners in Northern Ireland. In addition work is about to commence on a review of payments to expert witnesses across civil and criminal business areas.

Annex A shows the key elements in the Commission's running cost budget since 2003/04 and the running costs of the Commission's predecessor body, the Legal Aid Department from 2001/2. There have been a number of key drivers behind the increase in running costs, including

- (a) Moving to new accommodation on the establishment of the Commission
- (b) the costs of the reformed accountability and reporting arrangements associated with the establishment of the Commission as an NDPB, including the appointment of Commissioners;
- (c) an enhanced finance capacity to enable the introduction of resource accounting, changes to accounting methods required by the Audit Office, improved financial and budgetary procedures and to ensure that payments are properly made to those who are eligible;

<sup>1</sup> Legal Aid, Annual Report of the Law Society and of the Lord Chancellor's Advisory Committee 2000-2001, p58

- (d) improving and upgrading IT (where much remains to be done);
- (e) developing from a zero-base the capacity in the Commission to deliver on the demanding reform objectives for civil legal aid set for the Commission on its establishment.

Annex B shows the increase in staffing numbers and related costs across the Commission since its establishment.

**Question 4. LSC project that a further £50m will be required across the next CSR period. Can you confirm the extent to which the proposed reforms will reduce this additional pressure on legal aid expenditure?**

**Response:** The financial pressure of £50m across the next CSR period, as set out at paragraph 13 of the Joint Memorandum, was calculated net of savings projected in respect of the initiatives to reduce costs outlined at paragraphs 17 and 18 of the Joint Memorandum. The Commission and its sponsor body will focus on delivering these reforms. It may be possible to deliver further changes designed to secure value for money but it is unlikely that these will produce savings sufficient to make a substantial reduction in the £50m shortfall.

**Question 5. The evidence, both written and oral, suggests that the Northern Ireland average criminal legal aid costs are more than double those in England & Wales. Reference was made to the difficulty of comparing like with like but that alone could not explain such a gap. Can you provide further detail on how these comparisons could be improved?**

**Response:** When comparing costs of Crown Court cases in Northern Ireland and England and Wales there are four critical differences which distort comparisons:

- (a) information is not collated on the same basis in both jurisdictions so there is no common measurement which is already in place;
- (b) in England and Wales there are some types of case which are dealt with in the Crown Court which would be dealt with in the Magistrates Court in Northern Ireland;
- (c) there is a statutory scheme in England and Wales which seeks to prescribe circumstances in which two counsel are assigned to a defendant. It is believed that this produces lower instances of two counsel being assigned in England and Wales than in Northern Ireland;
- (d) there are different remuneration systems in the two jurisdictions which, it is believed, produce levels of remuneration in England and Wales which would be lower than those in Northern Ireland.

The Commission’s sponsor body is currently engaged in projects to establish an evidence base which would identify a clearer basis for comparison and allow reforms to be brought forward which would allow us to move closer to the arrangements in England and Wales in respect of points (c) and (d) in a far as this is appropriate in Northern Ireland.

Since the Commission and its sponsor body gave evidence to the Committee further work has been undertaken by the Court Service to establish a comparison and to answer a Parliamentary Question. The answer to the Parliamentary Question indicated that the average bills paid to solicitors and counsel in Crown Court Cases in Northern Ireland for the last three years was as follows:

Financial Year	Solicitor	Counsel
2005/06	£3,276	£4,324
2006/07	£4,888	£6,612

Financial Year	Solicitor	Counsel
2007/08	£4,142	£4,872

The Parliamentary Answer indicated that these figures mean that typically the average defence cost for a Crown Court Case in Northern Ireland in 2007/08 would be between £9,015 and £13,887 depending on the number of legal representatives assigned to a defendant.

In England and Wales the estimated average legal aid bills paid for a case during each of the last three years in the Crown Court was as follows:\*

Financial Year	Category	Average Cost
2005/06	Prepared for trial, guilty plea or trial	£6,900
	Very high cost case trials	£395,000
2006/07	Prepared for trial, guilty plea or trial	£6,600
	Very high cost case trials	£427,000
2007/08	Prepared for trial, guilty plea or trial	£6,100
	Very high cost case trials	£530,00

\* The figures exclude appeal and committal for sentence hearings

In addition a separate Answer to a Parliamentary Question states that a review of cases commenced in the Crown Court in Northern Ireland in 2008 suggests that of those defendants in receipt of legal aid 36% were represented by a solicitor, junior and senior counsel. All other defendants in receipt of legal aid were represented by a solicitor and a junior counsel. Information provided from England and Wales suggests that in that jurisdiction defendants are represented by more than one counsel in approximately 2% of cases. (we need to do more research into the extent to which that difference is explained by the differing balance of caseload in the Crown Court in the two jurisdictions).

**Question 6. Can you specifically explain the scale of fees and charges for each type of legal representation, (QCs, barristers and solicitors) and provide illustrative figures?**

**Response:** Annex 3 shows the range of fees that the Commission pays in assessing claims for civil and criminal legal aid work. The rates of remuneration for all criminal work are set in Rules made by the Lord Chancellor and the Commission assesses claims against these rates. There are a number of other scales used in the assessment of civil legal aid claims, some set by the Commission (e.g. Family Care Centre cases since 2005) and some set by Rules Committees chaired by members of the judiciary.

**Question 7. Can you explain how the complexity of legislation and level of representation impacts on legal costs?**

**Response:** The Commission's analysis of costs in civil legal aid indicates that the increased cost is driven by expenditure in children and family cases, particularly proceedings brought under the Children (NI) order 1996. This increase in civil legal aid expenditure in Northern Ireland follows similar increases in the England and Wales jurisdiction where children cases are brought under the Children Act (1989) that is almost identical to the legislation introduced in this jurisdiction. This legislation, inter alia, facilitates the transfer of cases between courts, from the Family Proceedings Court (Magistrates Court) to the Family Care Centre (County Court) and on to the High Court, depending on the complexity of the issues requiring determination. The issues in such cases can cover serious child abuse, leading to a recommendation from Social Services that the child should remain in permanent care or be adopted. The Court is the final decision-maker and must ensure that the rights of parent

and child are upheld, especially when a permanent break in the link between natural parent and child is at issue. These can be complex matters involving, for example, the consideration of harm done to a child and the risk of further harm in the future as well as the strength of the relationship between parent and child. The more straightforward cases are heard by the Family Proceedings Court and usually the parties are represented by solicitors. In more complex cases there can be enhanced representation with the use of junior and sometimes senior counsel as well, which increases costs substantially, with senior counsel generally being paid 50% more than juniors. The Children Order allows for the separate representation of the child, parent and other family members such as grandparents (if they have a sufficient interest); funding significant numbers of legal representatives in this way in individual cases is inevitably a cost driver and it should be borne in mind that Social Services too are legally represented. Scotland has a very different process for dealing with cases involving children and that goes a long way towards explaining the cheaper spend per head there on civil legal aid (see the Joint Memorandum paragraph 14).

Another example of how legislation can impact on legal aid spend comes with the new sentencing framework for violent and sex offenders introduced in the Criminal Justice (NI) Order 2008. This introduces the Indeterminate Custody Sentence and the Extended Custody Sentence for violent and sex offenders where it is considered that there is a risk of their inflicting serious harm through committing similar offences in the future. Recipients of both types of sentence will have their cases reviewed by the Parole Commission with a view to determining suitability for release and there will be cases where the Commission has to decide whether to recall an offender to prison after release. The prisoners/offenders concerned will be eligible for legal advice and representation at Parole Commission hearings. It will be some time before these cases come before the Parole Commission in any numbers and it is difficult to predict the scale of the impact on legal aid expenditure; while the cost in legal aid will not be anything approaching the scale of Children Order cases, it is an illustration of the importance of considering the potential impact on legal aid when new legislation is introduced.

**Question 8. It was suggested that one area of duplication of effort between the Court Service and the Legal Services Commission was that of policy work. Can you elaborate further on this and indicate how this might be eradicated?**

**Response:** The Commission is responsible for the development of civil legal aid policy, specifically to achieve the objectives set by the Lord Chancellor in relation to the reform of civil legal aid. This policy work is evidence-based and requires liaison with the NI Court Service as the sponsoring department on a range of issues relating to the management of legal risk and oversight. The task of securing Ministerial approval for policy proposals and for consultation documents produced by the Commission and of drafting subordinate legislation based on that policy falls to the Court Service. Negotiating and setting fees for some civil work is the responsibility of the Commission but it has to secure the approval of fee levels from the Court Service, sometimes based on the submission and consideration of quite complex business cases. The Court Service is responsible for the development of criminal legal aid policy which requires liaison with the Commission on a range of operational matters given that it is the Commission that implements the policy and develops procedures and control mechanisms to support it.

The teams in both organisations are very small in relation to the workload that they are required to take forward. While the people concerned liaise and work together well, the arrangements outlined above inevitably raise questions about duplication of effort, efficient decision-making processes and about whether in such a small operation compared with England and Wales the responsibilities are split in a way that makes the best possible use of resources. There may be a case for concentrating the policy functions in one organisation; whatever model is in place it is essential that those responsible for all aspects of policy development and operational service delivery work as one to achieve a quality service while maximising efficiency. However, if a change to the current architecture were to be considered

it must be borne in mind that while the Commission remains an 'arms-length' body sponsorship arrangements for civil and criminal legal aid will still be required; and any change to the Commission's NDPB status would require primary legislation. These issues are being examined with a view to our being in a position to advise incoming Ministers on devolution.

**Question 9. Do your estimates take any account of the further efficiency savings we understand the Treasury is seeking from UK Departments?**

**Response:** The Commission's sponsor body has not asked the Commission to deliver further efficiency savings in 2010/11. The Commission received additional funding in the current CSR settlement to improve its delivery of core services and to develop a reform programme for civil legal aid. If the Commission was asked to produce efficiency savings this would jeopardise both these initiatives. The Commission is committed to reductions in its Grant in Aid after the current reform programme has been completed and new systems, fully supported by IT, are embedded.

**Question 10. What is your exposure to VAT and how would this change if your organisation was devolved?**

**Response:** As an NDPB the Commission cannot reclaim VAT paid to the legal profession for the provision of publicly funded legal services. The Legal Services Commission in England and Wales is in the same position. The following table indicates the cash VAT amounts paid over the last two years.

	<b>VAT paid to: Solicitors £'000</b>	<b>Counsel £'000</b>	<b>Totals £'000</b>
2006/07	4,864	4,116	8,980
2007/08	5,556	3,681	9,237

Devolution would not of itself change the Commission's ability to reclaim VAT. For that to happen would depend on DFP agreeing such an approach with Her Majesty's Revenue and Customs. The extent to which NDPB, as opposed to perhaps agency, status, is an issue that would affect the likelihood of securing such an agreement may need to be considered.

Annex A - NI Legal Services Commission/Legal Aid Department Running Costs analysis 2001/02 to 2008/09

Annex B NI Legal Services Commission staff numbers and staff costs by directorate 2003/04 to 2008/09

Annex C - Schedule of fees applied across civil and criminal assessment processes

Northern Ireland Legal Services Commission

Annex A

	CASH ACCOUNTS				RESOURCE ACCOUNTS					
	2001-2002 £'000	2002-2003 £'000	TOTAL 2003-2004 £'000	7 months 2003-2004 £'000	audited 5 months 2003/04 £'000 (5 month period)	audited 2004/05 £'000	audited 2005/06 £'000	2006/07 £'000	2007/08 £'000	2008/09 £'000 (10 mths to Jan 09)
Staff costs including commissioner & committee remuneration	2,150	2,346	2,500	1,393	1,048	2,871	2,932	3,255	3,927	3,528
Commissioner & Committee costs	148	169	253	108	168	390	433	384	382	376
Accommodation	384	383	345	221	215	518	527	541	559	518
Employee related expenses	50	74	81	21	73	212	111	209	118	167
IT expenditure	224	166	258	30	205	478	488	450	334	305
Legal expenses	82	94	77	39	55	232	225	151	139	62
Consultancy	87	44	40	13	122	143	182	170	261	200
Audit fees	5	1	13	12	85	85	35	35	35	32
General	219	301	232	89	146	369	373	371	348	291
<b>Total cash based costs</b>	<b>3,349</b>	<b>3,578</b>	<b>3,799</b>	<b>1,926</b>	<b>2,117</b>	<b>5,298</b>	<b>5,306</b>	<b>5,566</b>	<b>6,103</b>	<b>5,479</b>
Non cash costs										
Permanent diminution					112	0	76	25	9	0
Depreciation					167	385	417	399	322	234
Cost of capital notional charge					20	48	34	-17	-22	38
Taxing Master notional charge					18	46	50	53	57	45
SSA notional charge					187	511	494	505	443	460
Pension interest (FRS 17 Retirement benefits disclosure)					17	19	-8	-58	-38	-



	CASH ACCOUNTS				RESOURCE ACCOUNTS					
	2001-2002 £'000	2002-2003 £'000	TOTAL 2003-2004 £'000	7 months 2003-2004 £'000	audited 5 months 2003/04 £'000 (5 month period)	audited 2004/05 £'000	audited 2005/06 £'000	2006/07 £'000	2007/08 £'000	2008/09 £'000 (10 mths to Jan 09)
Total non cash costs					521	1,009	1,063	907	771	777
	CASH									
Total costs for year	3,349	3,578	3,799	1,926	2,638	6,307	6,369	6,473	6,874	6,256
Total cash expenditure for year	3,349	3,578	3,799	1,926	1,873	5,810	5,080	5,461	5,649	5,628
					765	497	1,289	1,012	1,225	628

**Notes:**

- Cash accounts ie LAD will include capital expenditure

- In addition to working capital movements, notional recharges from NICTS form a significant amount of the difference between cash and resource expenditure in years 2006/07 onward

# Northern Ireland Legal Services Commission

## Annex B

### Resource expenditure

<b>Salary costs</b>	<b>2004/05</b>	<b>2005/06</b>	<b>2006/07</b>	<b>2007/08</b>	<b>to Jan 09 2008/09</b>
Policy and Service Development	56,270	199,766	340,156	561,288	434,851
Service Delivery	1,751,839	1,575,899	1,648,617	1,758,453	1,660,034
Corporate Services	901,317	869,414	925,999	1,221,966	1,095,013
Office of the Chair and ChEx	162,400	287,268	340,304	385,376	338,031
<b>Total resource</b>	<b>2,871,826</b>	<b>2,932,347</b>	<b>3,255,076</b>	<b>3,927,083</b>	<b>3,527,929</b>
<b>Staff Numbers at 31 March</b>					
Policy and Service Development		3	13	14	
Service Delivery		51	67	75	
Corporate Services		49	30	28	
Office of the Chair & ChEx		8	8	9	
<b>Total</b>		<b>111</b>	<b>118</b>	<b>126</b>	

# Current Fee Rates Civil Business Area

## Annex C

### 1. LAA

#### A. Legal Advice & Assistance Rates (Green Form) Financial Limit £88.00 from 10/6/96

**Table 1 - Solicitor Fees**

Work Type	Rate
Hourly Rate Advice	£43.25
Advocacy Rate	£54.50
Waiting/Travel Time	£24.25
Letters/ Telephone Calls	£3.35
GF1 Code	£39.14
GF2 Code	£53.30
GF3 Code	£64.11
Mileage Rate	35.7p per mile

Notes:

GF codes are fixed fees which include a figure for advice and letters relating to specific matters. The code will be assigned provided there are no extensions granted, contributions due, travel and mileage involved and no outlay claimed.

GF1 = 45 mins + 2 letters; GF2 = 1 hr + 3 letters; GF3 = 1 hr 15 mins + 3 letters

The following categories of advice fall into the GF codes:

GF1	GF2	GF3
Criminal including bail	Divorce / Ancillary Relief	Children Order including Wardship
Criminal Matters	Judicial Separation	Mental Health Tribunal
Prison Issues	Maintenance & Other Matrimonial Issues/ Adoptions	Unlawful removal / retention of property
	Criminal Charges more than one	Conveyancing
	Child Support Agency	
	Change of Name by Deed poll	
	Non Molestation advice only / Injunctions	
	Police & Security Force Matters / ASBO's	
	Consumer Issues	

<b>GF1</b>	<b>GF2</b>	<b>GF3</b>
	Housing Matters excluding Conveyancing	
	Debt / Employment Matters	
	Probate including wills	
	Disputes with Neighbours	
	Small Claims Court including release of monies held in Court	
	Education Issues excluding education appeal tribunal	

All other case types are assessed manually using the fees applicable in Table 1.

**B. Legal Advice & Assistance Rates (Green Form) PACE Financial Limit £200**

**Table 2 - Solicitor Fees**

<b>Work Type</b>	<b>Rate</b>
Advice Unsocial	£57.67
Travel/ Waiting Time Unsocial	£32.33
Pace Telephone Call	£19.75
Pace Telephone Call Unsocial	£26.33
Mileage Rate	35.7p per mile

Notes:

- Advice under PACE during normal hours (9.00am to 7.00pm) is paid at the current Green Form Rate.
- Unsocial Hours is applicable from 7.00pm to 9.00am Monday to Sunday including Bank and Public Holidays.

**2. Magistrates / Family Proceedings Court****A. Children Order Family Proceedings Court - Children (Northern Ireland) Order 1995****Table 3 - Solicitor Fees – Hourly Rates**

<b>Work Type</b>	<b>Rate</b>
Advocacy Solicitor Alone	£64.00
Advocacy Solicitor with Counsel	£32.50
Consultation with Counsel	£32.50
Preparation	£58.00
Waiting/Travel	£29.25
Letters Written	£3.65
Letters Received	£1.85
Telephone Calls	£3.65
Non Standard Telephone Call (over 5 minutes)	£58.00 per hour
Mileage	35.7p per mile

**Table 4 - Solicitor Fees – Composite Fee**

Private Law	£250
Public Law	£400
Mileage ( Travel not payable)	35.7p per mile

Notes:

- Composite Fee includes Green Form Advice
- Children Order Panel members entitled to an uplift of 5%

**Table 5 - Junior Counsel Fees – Composite Fee**

<b>Work Type</b>	<b>Junior</b>
On an unopposed application or a procedural issue	Standard £76.25 Maximum £127.00
On trial of a cause or matter on the hearing of an application where the hearing lasts for Half Day	Standard £140.00 Maximum £268.00
Full Day	Standard £317.75 Maximum £508.50
More than a Full Day	£140 in addition to the attendance fee
Consultation	£35.50 per hour
Complex items of work (opinions, affidavits)	£82.75 per item
All other written work	£50.25 per item
Travel Time	£12.00 per hour
Mileage	35.7p per mile

**B. Magistrates Court****The Family Homes and Domestic Violence (Northern Ireland) Order 1998****Police and Criminal Evidence (Northern Ireland) Order 1989****Prevention of Terrorism Act 2005**

**Solicitor fees in the above legislation can be assessed on the basis of either a Composite Fee or Hourly Rates.**

**Table 6 - Solicitor Fees – Composite Fee**

<b>Work Type</b>	<b>Rate</b>
PACE/PTA Proceedings	£352.00
Non-Molestation only	£352.00
Occupation Order	£352.00
Non Molestation/Occupation application withdrawn with undertakings	£352.00
Non-Molestation & Occupation Order	£416.00
Second Hearing- Contested	£192.00
Second Hearing-Uncontested	£96.00
Variations/Discharges- Contested	£352.00
Variations/Discharges- Uncontested	£192.00
Adjournments	£30.00
Nominal Adjournments	£15.00
Withdrawn	£30.00
Summons not served	£30.00
Letters & Telephone Calls	£3.65
Letters Received	£1.85
Non-routine telephone calls in excess of 5 minutes	£58.00 per hour
Travel time	£29.25 per hour
Mileage rate	35.7p per mile

**Solicitor Fees – Hourly Rates as per Children Order Legislation see Table 3 above.**

**Notes:**

- Composite Fee includes Green Form Advice
- The Composite fee is taken to include up to 7 letters and telephone calls under 5 minute duration. Any further letters or telephone calls can be claimed in addition to the composite fee provided they are itemised.

**Counsel Fees – Composite as per Children Order Legislation see Table 5 above.**



**C. Magistrates Court****Domestic Proceedings (Northern Ireland) Order 1980****Table 7 – Solicitor Fees - Composite Fee**

<b>Work Type</b>	<b>Rate</b>
Separation & Maintenance	£140.00
Variation of Maintenance & Revival Summons	£83.50
Debt & Ejectment	£62.00
Case withdrawn at any stage before hearing and up to strikeout	£66.00
Part Hearings	£29.00
Adjourned Hearings in excess of 20 minutes	£29.00
Adjourned Hearings less than 20 minutes	£15.50
Nominal Adjournment Fee no court attendances	£12.00
Dismissed Cases	£124.50
Letters and telephone calls (not included in the basis fee)	£3.35
Discontinued cases ( no proceedings issued) advice less than one hour	£45.00
Discontinued cases ( no proceedings issued) advice of one hour	£50.00
Discontinued cases ( no proceedings issued) advice in excess of one hour	£55.00
Travel	£24.25
Mileage Rates	35.7p per mile

**Notes:**

- Composite Fee includes Green Form Advice
- Composite Fee includes the first 7 letters or telephone calls or a combination of both
- Claims in excess of 10 letters or telephone calls should be itemised
- The following letters and telephone calls **will not** be authorised for payment:

To the Legal Services Commission,

Letters or Telephone calls with Counsel unless authority to engage Counsel has been specifically granted by the Legal Service Commission.

**Counsel Fees – Composite as per Children Order Legislation see Table 5 above.**

### 3. Other Proceedings – Tribunals

#### A. Mental Health Review Tribunals

The fee structure is intended to cover the work carried out by **solicitor or counsel but not both**.

**Table 8 - Solicitor or Counsel Fees**

Work Type	Rate
Current Solicitor Basic Fee (Old rate)	£140.00
Representation before the Tribunal	£370.00
Adjournments	£76.25
Travel Solicitor	£24.25 per hour
Travel Counsel	£12.00 per hour
Mileage	35.7p per mile

Notes:

- The fee of £140 will be paid to the Solicitor if a Junior Counsel is instructed under a Mental Health Review case. Going forward under a Value For Money Scheme only one fee will become payable (£370) either to the Solicitor or the Counsel but not both.
- For the purpose of those cases currently held in a backlog for Junior Counsel the Commission purposes to pay Counsel the fee of £370

**B. Life Sentence Review Cases- Hearings before the Commissioners.****Table 9 - Solicitors Fees – Hourly Rates**

<b>Work Type</b>	<b>Rate</b>
Hourly Fees	£100.00 per hour up to a maximum fee of £800
Travel	£24.25 per hour
Mileage	35.7p per mile
Green Form (if applicable )	£88.00 maximum

Notes:

- Extensions may be granted by the LSC to exceed the maximum amount payable of £800. These must be applied for prior to commencing any additional work. Work for which no extension has been granted will not be paid by the LSC.

**Table 10 - Counsel Fees – Composite Fee Payable up to and including 31<sup>st</sup> December 2008**

<b>Work Type</b>	<b>Senior Counsel</b>	<b>Junior Counsel</b>
Brief Fee	£4500	£3000
Refresher Fee Full Day	£600	£400
Refresher Fee Half- Day	£300	£200
Travel	£15 per hour	£15 per hour
Mileage	35.7p per mile	35.7p per mile

**From the 1st January 2009 Counsel will be paid the following fees:**

<b>Work Type</b>	<b>Senior Counsel</b>	<b>Junior Counsel</b>
Brief Fee	£2250	£1500
Refresher Fee Full Day	£600	£400
Refresher Fee Half- Day	£300	£200
Travel	£15 per hour	£15 per hour
Mileage	35.7p per mile	35.7p per mile

**1. Family Care Centre**

**A. Children Order Family Care Centre – Children (Northern Ireland) Order 1995**

**Table 11 - Solicitor Fees – Hourly Rates - Children Order**

<b>Work Type</b>	<b>Rate</b>
Advocacy Solicitor Alone	£64.00
Advocacy Solicitor with Counsel	£32.50
Consultation with Counsel	£32.50
Preparation	£58.00
Waiting/Travel	£29.25
Letters Written	£3.65
Letters Received	£1.85
Telephone Calls	£3.65
Non Standard Telephone Call (over 5 minutes)	£58.00 per hour
Mileage	35.7p per mile

**Table 12 - Solicitor Fees – Composite Fee – Children Order**

Private Law	£250
Public Law	£400
Mileage ( Travel not payable)	35.7p per mile

**Table 13 - Junior & Senior Counsel Fees – Composite Fee – Children Order Non Article 3 Cases**

<b>Work Type</b>	<b>Junior</b>	<b>Senior</b>
On an unopposed application or a procedural issue	Standard £76.25 Maximum £127.00	Standard £114.37 Maximum £190.50
On trial of a cause or matter on the hearing of an application where the hearing lasts for Half Day	Standard £140.00 Maximum £268.00	Standard £210.00 Maximum £402.00
Full Day	Standard £317.75 Maximum £508.50	Standard £476.62 Maximum £762.75
More than a Full Day	£140 in addition to the attendance fee	£210.00 in addition to the attendance fee
Consultation	£35.50 per hour	£53.25 per hour
Complex items of work (opinions, affidavits)	£82.75 per item	£124.13 per item
All other written work	£50.25 per item	£75.38 per item
Travel Time	£12.00 per hour	£12.00 per hour
Mileage	35.7p per mile	35.7p per mile

**Notes:**

Composite Fee includes Green Form Advice

**Table 14 - Solicitors Fees - Article 3 Articles 50/44 only – Children Order**

Fees in line with the Legal Aid (Remuneration of Solicitors and Counsel in County Court Proceedings) Order (Northern Ireland) 1981

<b>Work Type</b>	<b>Rate</b>
Art 50/44 Sol Fee	£3500.00
Art 50/44 Add Days Full Day	£400.00
Art 50/44 Add Days Half Days	£200.00
Art 50/44 Jud Fee	£150.00
Art 50/44 35% Sol Fee	£1225.00
Art 50/44 20% Sol Fee	£700.00

**Table 15 – Solicitor Fees - Article 3 Other Proceedings - Children Order**

<b>Work Type</b>	<b>Rate</b>
Other Children Type Proceedings Sol Fee	£2000.00
Add Days Full Days	£400.00
Add Days Half Days	£200.00
Judgement Fee	£150.00
35% Sol Fee	£700.00
20% Sol Fee	£400.00

**Solicitor Travel – Children Order**

<b>Travel</b>	<b>Mileage</b>
£29.25 per hour	35.7p per mile

**Table 17 – Junior and Senior Counsel Fees – Article 3 Private and Public Law Cases**

<b>Work Type</b>	<b>Junior</b>	<b>Senior</b>
B. Fee	£2000.00	£3000.00
Directions & Written Work	£600.00	£900.00
Ref Full Day	£400.00	£600.00
Ref Half Day	£200.00	£300.00
Interlocutory Hearings Full Day	£400.00	£600.00
Interlocutory Hearings Half Day	£200.00	£300.00
Jud Fee	£150.00	£225.00
Post Hearing Review	£76.25	£114.38
Late Sitting	£200.00	£300.00
35% Brief fee	£700.00	£1050.00
20% Brief fee	£400.00	£600.00

**Junior and Senior Counsel Fees Article 3 Appeals: No New Evidence**

<b>Work Type</b>	<b>Junior</b>	<b>Senior</b>
B. Fee	£800.00	£1200.00
Directions & Written Work	£150.00	£225.00
Ref Full Day	£400.00	£600.00
Ref Half Day	£200.00	£300.00
Interlocutory Hearings Full Day	£400.00	£600.00
Interlocutory Hearings Half Day	£200.00	£300.00
Jud Fee	£150.00	£225.00
Post Hearing Review	£76.25	£114.38
Late Sitting	£200.00	£300.00
35% Brief fee	£280.00	£420.00
20% Brief fee	£160.00	£240.00



**Junior and Senior Counsel Fees Article 3 Appeals: New Evidence**

<b>Work Type</b>	<b>Junior</b>	<b>Senior</b>
B. Fee	£1500.00	£2250.00
Directions & Written Work	£240.00	£360.00
Ref Full Day	£400.00	£600.00
Ref Half Day	£200.00	£300.00
Interlocutory Hearings Full Day	£400.00	£600.00
Interlocutory Hearings Half Day	£200.00	£300.00
Jud Fee	£150.00	£225.00
Post Hearing Review	£76.25	£114.38
Late Sitting	£200.00	£300.00
35% Brief fee	£525.00	£787.50
20% Brief fee	£300.00	£450.00

**Counsel Family Homes and Domestic Violence Order**

<b>Work Type</b>	<b>Junior</b>	<b>Senior</b>
B. Fee	£2000.00*	£3000.00
Directions & Written Work	£600.00	£900.00
Ref Full Day	£400.00	£600.00
Ref Half Day	£200.00	£300.00
Interlocutory Hearings Full Day	£400.00	£600.00
Interlocutory Hearings Half Day	£200.00	£300.00
Jud Fee	£150.00	£225.00
Post Hearing Review	£76.25	£114.38
Late Sitting	£200.00	£300.00

\* Children Order rates apply to cases where transfer to the Family Care Centre under the Family Homes and Domestic Violence (Allocation of Proceedings) Order (Northern Ireland) 1999 is because the respondent is a child. For other cases transferred the £1000 brief remains.

**B. Adoption**

**Solicitor – Article 3 Adoption Cases**

Work Item	Solicitor
Brief Fee	£2,000????????????????????
Refresher (full day)	£400
Refresher (half day)	£200
Delivery of judgement	£150
Directions and Written Work	-

**Counsel Article 3 Contested Adoptions Cases**

Work Type	Junior	Senior
B. Fee	2500.00	3750.00
Directions & Written Work	600.00	900.00
Ref Full Day	400.00	600.00
Ref Half Day	200.00	300.00
Interlocutory Hearings Full Day	400.00	600.00
Interlocutory Hearings Half Day	200.00	300.00
Jud Fee	150.00	225.00
Review after the first day of hearing	100.00	150.00
Late Sitting	200.00	300.00

**Counsel Article 3 Adoptions**

Work Type	Junior	Senior
B. Fee	1150.00	1725.00
Directions & Written Work	240.00	360.00
Ref Full Day	400.00	600.00
Ref Half Day	200.00	300.00
Interlocutory Hearings Full Day	400.00	600.00
Interlocutory Hearings Half Day	200.00	300.00
Jud Fee	150.00	225.00
Post Hearing Review	76.25	114.38
Late Sitting	200.00	300.00

**Mixed Proceedings**

Highest Fee payable awarded, then additional payments of 30% in relation to the first related proceedings and 20% in relation to the 2nd and related proceedings.

**Solicitor Article 3 Freeing Orders only**

<b>Work Item</b>	<b>Solicitor</b>
B. Fee	£2400.00
Refresher (full day)	£400.00
Refresher (half day)	£200.00
Delivery of judgement	£150.00
Directions and Written Work	–
35% Brief fee	£840.00
20% Brief fee	£480.00

**Junior and Senior Article 3 Freeing Orders only**

<b>Work Type</b>	<b>Junior</b>	<b>Senior</b>
B. Fee	£2500.00	£3750.00
Directions & Written Work	£600.00	£900.00
Ref Full Day	£400.00	£600.00
Ref Half Day	£200.00	£300.00
Interlocutory Hearings Full Day	£400.00	£600.00
Interlocutory Hearings Half Day	200.00	£300.00
Jud Fee	£150.00	£225.00
Review after first day of hearing	£100.00	£150.00
Late Sitting	£200.00	£300.00
35% Brief fee	£875.00	£1313.00
20% Brief fee	£500.00	£750.00

**Solicitor Article 3 Freeing Orders with Art 50 Proceedings only.**

Work Item	Solicitor
B. Fee	£5000.00
Refresher (full day)	£500.00
Refresher (half day)	£250.00
Delivery of judgement	£150.00
Directions and Written Work	–
35% Brief fee	£1750.00
20% Brief fee	£1000.00

**Junior and Senior Article 3 Freeing Orders with Art 50 Proceedings only.**

Work Type	Junior	Senior
B. Fee	£3520.00	£5280.00
Directions & Written Work	£900.00	£1350.00
Ref Full Day	£400.00	£600.00
Ref Half Day	£200.00	£300.00
Interlocutory Hearings Full Day	£500.00	£750.00
Interlocutory Hearings Half Day	£250.00	£375.00
Jud Fee	£200.00	£300.00
Review after first day of hearing	£125.00	£187.50
Late Sitting	£200.00	£300.00
35% Brief fee	£1232.00	£1848.00
20% Brief fee	£704.00	£1056.00

**Counsel Travel – Children Order**

Work Type	Junior	Senior
Travel	£12.00 per hour	£12.00 per hour
Mileage	35.7p per mile	35.7p per mile

**C. Appeals (Non Article 3 cases) – Children Order**

**Solicitor Fees – Hourly Rates as per Children Order Legislation in the FCC see Table 11 above.**

**Counsel Fees – Composite as per Children Order Legislation in the FCC see Table 13 above.**

**Table 21 - Solicitor Fees – Article 3 Articles 50/44 Appeals – Children Order**

<b>Work Type</b>	<b>Rate</b>
Art 50/44 Sol Fee	£1400.00
Art 50/44 Add Days Full Day	£400.00
Art 50/44 Add Days Half Days	£200.00
Art50/44 Jud Fee	£150.00
Art50/44 35% Sol Fee	£490.00
Art 50/44 20% Sol Fee	£280.00

**Table 22 - Solicitor Fees - Article 3 Other Proceedings Appeals – Children Order**

<b>Work Type</b>	<b>Rate</b>
Other Children Type Proceedings Sol Fee	£800.00
Add Days Full Days	£400.00
Add Days Half Days	£200.00
Judgement Fee	£150.00
35% Sol Fee	£280.00
20% Sol Fee	£160.00

**Article 3 Non-Molestation and Occupation Orders only**

<b>Work Type</b>	<b>Solicitor</b>	<b>Junior Counsel</b>
Non Molestation Order	£528.00	£415.00
Occupation Order	£528.00	£415.00
Non Molestation & Occupation Order	£624.00	£490.00
Non Molestation/Occupation Order withdrawn with undertakings	£528.00	£415.00
Second Hearing		
Contested:	£288.00	£230.00
Uncontested:	£96.00	£70.00
Variations/Discharges		
Contested:	£528.00	£415.00
Uncontested:	£192.00	£154.00

**Article 3 Mixed Proceedings Children Order Cases Solicitor and Counsel**

It is proposed that all Article 3 cases with different combinations of Children Order proceedings be assessed as follows:

Highest fee payable awarded, then additional payment of 20% in relation to each respective brief fee for the related proceedings to establish base fee.

e.g in a case awarded Article 3 certification involving Article 50 and Article 8 proceedings, the solicitor would receive £3500 in respect of the Article 50 proceedings as the base fee. An additional fee element equivalent to 20% of the fee associated with the related proceedings would also be payable. In this case the resultant fee would be £3900

**Article 3 Mixed with Domestic Violence Cases:**

It is proposed that a total fee for such a case should be the relevant Children Order Article 3 fee plus the full FPC composite fee for the related Family Homes and Domestic Violence Order (NI) 1998 proceedings. The full FPC fee relates to the base brief fees of £352 for a Non-Molestation order or Occupation order and £416 for cases involving both. It is not proposed that additional payments would be due in respect of additional calls, travel or additional hearings. This fee would cover all work relating to these proceedings.



**2. County Court****A. Divorce - Matrimonial Causes (Northern Ireland) Order 1978****Table 25 - Solicitors Fees - Hourly Rates**

<b>Work Type</b>	<b>Rate</b>
Hourly Rate	£30
Letters/ Telephone calls	£3.35
Mileage	35.7p per mile

Notes:

- The above fees are applicable in proceedings which have been withdrawn, abandoned or discontinued.

**Table 26 – Counsel Fees Taxing Master Directions Proceedings by Petition**

<b>Type</b>	<b>From 1<sup>st</sup> April 2008</b>	<b>From 3<sup>rd</sup> May 2000</b>
Petition or Answer	£80	£60
Other Pleadings	£60	£45
Brief on Hearing of Summons or Motion	£95	£70

**Solicitor & Counsel Fees for cases which go to full hearing will be paid on the basis of a taxed bill. LSC will apply a 5% statutory deduction.**

**B. Adoption Cases The Adoption (Northern Ireland) Order 1987**

**Table 27 – Solicitor & Counsel Fees - Step-Parent/Uncontested Adoptions Non-Article 3**

Work Item	Solicitor	Junior	Senior
Brief Fee	£400	£300	-
Refresher (full day)	£80	£80	-
Refresher (half day)	£40	£40	-
Delivery of Judgement	£50	£50	-
Directions and Written Work	-	£75	-
Travel			
Mileage			

**Table 28 – Solicitor & Counsel Fees – Composite Fees Adoption Cases**

Work Item	Solicitor	Counsel
Basic Fee	£193.50	£129.00
Adjournments	£51.60	£32.25
Mileage (no travel payable)	35.7p per mile	35.7p per mile

Notes:

- 50% extra will be paid on the basic fee for each additional child in the same case

**C. Maintenance and Other Matrimonial**

**Includes Ancillary Relief Matters, Married Woman’s Property Act & Miscellaneous Matrimonial Matters.**

**Solicitor Fees – Hourly Rates as per Divorce case types in the County Court see Table 25 above.**

**Counsel Fees – Taxing Master Practice directions as per Divorce case types in the County Court see Table 26**

**Solicitor Fees & Counsel Fees – on the basis of a taxed bill.**

**D. Appeals****Table 29 - Solicitor & Counsel Fees - Matrimonial Appeal Fees from the Magistrates Court**

<b>Work Type</b>	<b>Solicitor</b>	<b>Counsel</b>
Basic Fee irrespective of Full or Half Day	£422.00	£110.00
Cases withdrawn at hearing	£347.00	£110.00
Cases withdrawn prior to hearing	£211.00	£55.00
Adjournments	£51.50	£34.00
Travel between 20 & 50 miles	£20.00	£20.00
Travel in excess of 50 miles	£40.00	£40.00

Notes:

- No fees are payable for journeys of less than 20 miles.

**Tables Numbers 30-38 are all covered by The County Court (Amendment) Rules (Northern Ireland) 2007**

**E. Ordinary Civil Bill Scale****Table 30 - Solicitors & Counsel Fees - Plaintiff's and Defendants Costs**

<b>Work Type</b>	<b>Solicitor</b>	<b>Counsel</b>
Does not exceed £1000	£517	£173
Exceeds £1000 but not £2500	£1092	£253
Exceeds £2500 but not £5000	£1552	£368
Exceeds £5000 but not £7500	£2012	£460
Exceeds £7500 but not £10,000	£2299	£540
Exceeds £10,000 but not £12,500	£2529	£615
Exceeds £12,500 but not £15,000	£2759	£690
Travel between 20 & 50 miles	£23.00	£23.00
Travel in excess of 50 miles	£46.00	£46.00
Drafting Notice or a Reply for Further Particulars. Payable to either the Solicitor or Counsel	£41	£41
Additional Days	1/3 of Counsel's scale fee	1/3 of Counsel's scale fee
Mileage	N/A	N/A

**Table 31 - Solicitor and Counsel Fees in Criminal Damage Cases**

<b>Work Type</b>	<b>Solicitor</b>	<b>Counsel</b>
Up to and including £250	£167	£65
Up to and including £500	£206	£79
Up to and including £750	£259	£106
Up to and including £1000	£295	£124
Up to and including £2000	£331	£139
Up to and including £3000	£371	£155
Up to and including £4000	£409	£162
Up to and including £5000	£445	£175
Up to and including £6000	£486	£186
Up to and including £7000	£525	£200
Up to and including £8000	£560	£209
Up to and including £9000	£602	£223
Up to and including £10,000	£640	£235
Up to and including £15,000	£815	£298
Up to and including £20,000	£1011	£366
Up to and including £25,000	£1187	£432
Up to and including £30,000	£1381	£509
Up to and including £35,000	£1557	£576
Up to and including £40,000	£1746	£656
Up to and including £45,000	£1925	£704
Up to and including £50,000	£2102	£809
Up to and including £60,000	£2384	£935
Up to and including £70,000	£2662	£1064
Up to and including £80,000	£2933	£1197
Up to and including £90,000	£3214	£1341
Up to and including £100,000	£3479	£1478
Up to and including £125,000	£3658	£1574
Up to and including £150,000	£3851	£1680
Up to and including £175,000	£4040	£1812
Up to and including £200,000	£4221	£1896
Up to and including £250,000	£4589	£2111
Up to and including £300,000	£4680	£2173
Up to and including £350,000	£4772	£2227
Up to and including £400,000	£4856	£2282
Up to and including £450,000	£4948	£2336

<b>Work Type</b>	<b>Solicitor</b>	<b>Counsel</b>
Up to and including £500,000	£5037	£2398
Up to and including £600,000	£5224	£2519
Up to and including £700,000	£5403	£2637
Up to and including £800,000	£5588	£2757
Up to and including £900,000	£5775	£2888
Up to and including £1,000,000	£5952	£3013

## F. Equity Civil Bill Scale

**Table 32 - Solicitors and Counsel Fees**

<b>Work Type</b>	<b>Solicitor</b>	<b>Counsel Fee for advising proceedings defence, settling, and advising proofs</b>	<b>Counsel fee on Hearing of equity civil bill or petition.</b>
Does not exceed £5000	£517	£88	£257
Exceeds £5000 but not £10,000	£1092	£119	£329
Exceeds £10,000 but not £15,000	£1552	£146	£440
Exceeds £15,000 but not £20,000	£2012	£192	£513
Exceeds £20,000 but not £25,000	£2299	£221	£588
Exceeds £25,000 but not £35,000	£2529	£289	£734
Exceeds £35,000 but not £45,000	£2759	£355	£882
Travel between 20 & 50 miles	£23.00	£23.00	£23.00
Travel in excess of 50 miles	£46.00	£46.00	£46.00
Additional Days	1/3 of Counsel's scale fee	1/3 of Counsel's scale fee	

**G. Other Miscellaneous Costs Scales****Table 33 - Solicitor and Counsel fees for the Applicant – Criminal Injuries**

<b>Work Type</b>	<b>Solicitor</b>	<b>Counsel</b>
Up to and including £500	£259	£106
Up to and including £750	£356	£145
Up to and including £1000	£445	£170
Up to and including £2000	£486	£187
Up to and including £3000	£510	£208
Up to and including £4000	£550	£228
Up to and including £5000	£575	£248
Up to and including £6000	£602	£253
Up to and including £7000	£626	£261
Up to and including £8000	£649	£272
Up to and including £9000	£677	£283
Up to and including £10,000	£703	£295
Up to and including £15,000	£806	£326
Up to and including £20,000	£929	£371
Up to and including £25,000	£1058	£402
Up to and including £30,000	£1184	£435
Up to and including £35,000	£1315	£485
Up to and including £40,000	£1442	£536
Up to and including £45,000	£1570	£585
Up to and including £50,000	£1692	£640
Up to and including £60,000	£1848	£696
Up to and including £70,000	£2040	£789
Up to and including £80,000	£2296	£901
Up to and including £90,000	£2549	£1019
Up to and including £100,000	£2805	£1138
Up to and including £125,000	£3188	£1327
Up to and including £150,000	£3313	£1412
Up to and including £175,000	£3444	£1486
Up to and including £200,000	£3569	£1559
Up to and including £225,000	£3701	£1627
Up to and including £250,000	£3826	£1693



**Table 34 – Solicitor and Counsel Fees – Plaintiff’s & Defendants Costs in Ejectment Proceedings for the Recovery of Property**

<b>Work Type</b>	<b>Solicitor</b>	<b>Counsel</b>
Sol Ejectment	£127	£62
Valuation < £500	£309	£118
Valuation > £500	£440	£221
Travel between 20 & 50 miles	£23.00	£23.00
Travel in excess of 50 miles	£46.00	£46.00
Additional Days	1/3 of Counsel's scale fee	1/3 of Counsel's scale fee

**Table 35 – Solicitor and Counsel Fees - Interlocutory Applications**

<b>Work Type</b>	<b>Solicitor</b>	<b>Counsel</b>
Instructions, Drawing Notice of Motion, ect	£114	£114
Attending before Judge on Notice or Ex parte	£57	£57
Drawing up documents under Order 15	£40.45	£40.45

**Table 36 – Solicitor and Counsel Fees – Plaintiff’s costs in Remitted Actions (Cases commenced in the High Court and subsequently remitted to the County Court )**

<b>Work Type</b>	<b>Solicitor</b>	<b>Counsel</b>
Does not exceed £1000	£517	£173
Exceeds £1000 but not £2500	£1092	£253
Exceeds £2500 but not £5000	£1552	£368
Exceeds £5000 but not £7500	£2012	£460
Exceeds £7500 but not £10,000	£2299	£540
Exceeds £10,000 but not £12,500	£2529	£615
Exceeds £12,500 but not £15,000	£2759	£690
Travel between 20 & 50 miles	£23.00	£23.00
Travel in excess of 50 miles	£46.00	£46.00
Drafting Notice or reply for Further Particulars. Payable to either the Solicitor or Counsel	£41	£41
Additional Days	1/3 of Counsel's scale fee	1/3 of Counsel's scale fee

**Table 37 – Solicitor and Counsel Fees – Defendant’s costs in Remitted Actions ( Cases commenced in the High Court and subsequently remitted to the County Court )**

Work Type	Solicitor	Counsel
Fees Payable	£2759	£690
Travel between 20 & 50 miles	£23.00	£23.00
Travel in excess of 50 miles	£46.00	£46.00
Drafting Notice or reply for Further Particulars. Payable to either the Solicitor or Counsel	£41	£41
Additional Days	1/3 of Counsel's scale fee	1/3 of Counsel's scale fee

**Table 38 - Occasional Costs County Court**

Work Type	Rate
Affidavit of Service	£2.62
Other Affidavit	£1.08
Preparing Recognizance	£3.00
Drawing, issuing, serving witness summons	£8.75
Drawing Costs and copies per page	£6.48
Attending Taxation	£10.95

**Table 39 – Solicitor and Counsel Fees for Limited Certificates in the County Court**

Type	Solicitor	Counsel
Counsel Opinion	£75	£30
Opinion up to 5 pages	£75	£50
Opinion up to 7 pages	£75	£65
Engineers Report	£100	N/A
Engineers Report ( no details provided	£75	N/A
Medical Report	£50	N/A
Issue & Service of CB Replies & Discovery	£200	N/A
Stamp Duty	£50	N/A
Stamp Duty with other Limitation	£100	N/A
Discovery	£50	N/A

**Asylum & Immigration Fees-Solicitor or Counsel Fees – Currently under Review**

<b>Work Type</b>	<b>Rate</b>
Representation at a Case Management Review Hearing for an AIT Appeal	£175.00
An Appeal before the an Immigration Judge at an Asylum and Immigration Tribunal	£1200.00
Remuneration for adjourned hearings which are part-heard or re-listed to be concluded on separate date	£170.00 per day
Fee for an Onward Appeal (Reconsideration Hearing)	£1200.00
Appeal withdrawn prior to substantive hearing (20% of fee)	£240.00
Appeal withdrawn on the day of the substantive hearing (35% of fee)	£420.00
Risk premium associated to a section 103 D order awarded for an onward appeal, applicable post 30th April 2007, where a Section 103D cost order has been granted by the Immigration Judge (the level is based on a 35% uplift on a fee of £1200 for an onward appeal) <sup>1</sup>	£420.00
Asylum and Immigration Bail Hearings	£400.00

## Notes

- **All of the above remuneration structure is intended to cover the work carried out by solicitor or counsel but not both.** The fees are expected to cover the costs of time taken for travel, waiting, consultations, preparation and representation/advocacy by, solicitor and/or counsel, routine letters and telephone calls. The fees does not cover the following disbursements<sup>1</sup> i.e. interpreters fees, photocopying, and mileage.
- <sup>1</sup>The quantum of this aspect/payment is at the discretion of the Commission- (35% figure is based on the uplift as applied by the LSC E/W)
- Interpreters fees will be paid at a rate up to but not exceeding £30 per hour + Vat
- Mileage will be paid at the current rate of 35.7 pence per mile.
- Photocopying will be paid at a rate of 10pence per page, the time spent photocopying is included in the fees.

**3. High Court**

**A.**

**Table 40 - Solicitor Fees – Belfast Solicitors Association High Court Costs for cases concluded after 1st January 2006**

**The above fees are applicable in proceedings which have been withdrawn, abandoned or discontinued.**

Type	After Writ	After Statement of Claim	After Defence	After Warned List	Within 21 Days of Trial
£0 - £14,999	£2515	£3165	£3565	£4230	£4885
£15,000 - £19,999	£2910	£3565	£3960	£4755	£5680
£20,000 - £24,999	£3435	£4090	£4485	£5012	£6075
£25,000 - £29,999	£3690	£4360	£4755	£5410	£6470
£30,000 - £34,999	£3960	£4620	£5155	£5805	£6870
£35,000 - £39,999	£4230	£4885	£5410	£6205	£7260
£40,000 - £44,999	£4485	£5155	£5805	£6600	£7655
£45,000 - £49,999	£4720	£5410	£6205	£7000	£8050
£50,000 - £54,999	£5015	£5680	£6600	£7395	£8450
£55,000 - £59,999	£5280	£5940	£7000	£7795	£8845
£60,000 - £64,999	£5550	£6205	£7395	£8190	£9245
£65,000 - £69,999	£5805	£6470	£7795	£8580	£9640
£70,000 - £74,999	£6075	£6730	£8190	£8975	£10,035
£75,000 - £79,999	£6330	£6985	£8580	£9370	£10,435
£80,000 - £84,999	£6600	£7290	£8975	£9770	£10,830
£85,000 - £89,999	£6870	£7525	£9370	£10,165	£11,220
£90,000 - £94,999	£7130	£7795	£9770	£10,560	£11,615
£95,000 - £99,999	£7395	£8050	£10,165	£10,960	£12,010

**Table 41 – Counsel Fees - Supreme Court Practice Directions Chancery Division**

Type	From 1st April 2008	From 3rd May 2000
Writ	£35	£25
Statement of Claim	£105	£80
Defence	£80	£60
Defence & Counterclaim	£105	£80
Reply & Defence & Counterclaim	£60	£45
Reply	£30	£20

**Table 42 – Counsel Fees - Supreme Court Practice Directions Originating Proceedings**

Type	From 1st April 2008	From 3rd May 2000
Originating Summons or Notice of Motion	£60	£45
Brief on Hearing of Summons or an Ex-parte application	£95	£70
Minute of Judgment	£70	£50
Motion for Judgment	£120	£90

**Table 43 – Counsel Fees - Supreme Court Practice Directions Proceedings by Petition**

Type	From 1st April 2008	From 3rd May 2000
Petition or Answer	£80	£60
Other Pleadings	£60	£45
Brief on Hearing of Summons or Motion	£95	£70

**Table 44 – Counsel Fees - Supreme Court Practice Directions Queens Bench Division**

Type	From 1st April 2008	From 3rd May 2000
Writ general endorsed	£30	£20
Writ specially endorsed	£70	£50
Statement of Claim (running down non_fatal)	£75	£55
Statement of Claim all other cases	£100	£75
Defence	£70	£50
Defence & Particulars	£75	£55
Defence & counterclaim	£85	£65
Reply & defence to Counterclaim	£70	£50
Reply simple	£15	£10
Third Party Notice	£70	£50
Brief on Ex-parte Hearing	£70	£50
Brief on Hearing of Summons or Motion	£100	£75
Brief on Hearing of minor settlement	£100	£75

**Table 45 – Counsel Fees - Supreme Court Practice Directions Family Division Probate**

Type	From 1st April 2008	From 3rd May 2000
Motion Paper	£85	£65
Motion	£85	£65
Writ	£40	£30
Brief on Ex-parte Hearing	£80	£60
Brief on Hearing of Summons or Motion	£95	£70
Statement of Claim or Defence	£95	£70
Defence & Counterclaim	£85	£65
Reply & Defence to Counterclaim	£55	£40
Reply simple	£15	£10

**Table 46 – Counsel Fees - Supreme Court Practice Directions Bankruptcy**

Type	From 1st April 2008	From 3rd May 2000
Examination of Witness	£130	£100



**Table 47 – Counsel Fees - Supreme Court Practice Directions General**

Type	From 1 <sup>st</sup> April 2008	From 3 <sup>rd</sup> May 2000
Affidavits	£55	£40
Notice of Motion/Summons	£40	£30
Notice for Particulars/Answer	£55	£40
Notice of Admit Facts	£60	£45
Replies to Notice to Admit Facts	£60	£45
Interrogatories & Answers	£90	£70
Proofs Liability Admitted	Sen Csl £200 Jun Csl £170	Sen Csl £150 Jun Csl £125
Proofs Liability Denied	Sen Csl £290 Jun Csl £240	Sen Csl £220 Jun Csl £180
Opinions, Liability & Quantum	£170	£125
Opinions Liability only	£125	£90
Opinions Quantum only	£125	£90
Further Opinion	£75	£55
Notice of Appeal	£80	£60
Consultation up to 1 hour	Sen Csl £170 Jun Csl £115	Sen Csl £120 Jun Csl £80
Consultation thereafter per ½ hour	Sen Csl £70 Jun Csl £45	Sen Csl £50 Jun Csl £35

**Table 48 – Solicitor - High Court Hourly Rates**

Work Type	High Court Current	High Court 1/4/05
Hourly Rate	£94	£85.00
Letters/ Telephone calls	£9.40	£8.50
Mileage	35.7p per mile	35.7p per mile

**Table 49 – Solicitor and Counsel Fees - Tariff Hearings High Court**

Work Type	Junior Counsel	Senior Counsel
Brief Fee	£2666	£4000
Travel	£12 per hour	£12 per hour
Mileage	35.7p per mile	35.7p per mile

**B. High Court Bail Cases Fees applicable to cases prior to the 5/9/08****Table 50 - Solicitor and Counsel Fees**

Work Type	Solicitor	Junior Counsel
Full Brief	£100.00	£70.00
Part Brief	£75.00	£70.00
No Brief	£50.00	£70.00
Adjournment	£20.00	£20.00
Jointly Charged 2/5	£40.00	£28.00
Part Brief Jointly charged 2/5	£30.00	N/A
No Brief Jointly charged 2/5	£20.00	N/A
Adjournment jointly charged	£8.00	£8.00
Travel	£15.00 per hour	N/A
Mileage	35.7p per mile	N/A

**New Bail Hearing fees as from the 5<sup>th</sup> September 2008**

Work Type	Solicitor	Junior Counsel
Brief Fee	£180.00	£180.00
Travel	£15.00 per hour	N/A
Mileage	35.7p per mile	N/A

**Table 51 – Solicitor and Counsel Fees - Asylum and Immigration Appeals and Bail Hearings**

Work Type	Solicitor	Counsel
Bail fee	£400.00	£400.00
Appeal ( Pre-hearing Prep)	£400.00	£400.00
Appeal ( Hearing Fee )	£400.00	£400.00
Appeal before the Adjudicator	£1200.00	£1200.00
Post hearing Fee	£400.00	£400.00

**Notes**

- Fees payable above are applicable to either the Solicitor or Counsel if appearing alone.
- If both the Solicitor and Counsel appear together at the same hearing then only one fee will be payable and split on a 50% basis.

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# Final Request

## Northern Ireland Legal Services Commission

### 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast BT4 3XX

12th May 2009

Mr Jim Daniell  
Legal Services Commission  
Waterfront Plaza  
8 Laganbank Road  
Mays Meadow  
Belfast BT1 3BN

Dear Mr Daniell,

#### **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission and for appearing before the Assembly and Executive Review Committee to give oral evidence, recently.

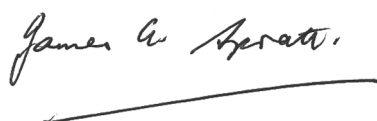
The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month. However, you will recall that, during the oral evidence session, you were asked to indicate if there were any additional financial pressures you wished to identify to the Committee.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of any easements, or new pressures, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details, electronically, to the Committee Clerk by midday, 18 May 2009 at the following address

[stephen.graham@niassembly.gov.uk](mailto:stephen.graham@niassembly.gov.uk)

Yours sincerely



**Jimmy Spratt**  
Chairman

# Response from Northern Ireland Legal Services Commission 18th May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

18 May 2009

Dear Mr Spratt

## The Financial Implications Relating to the Devolution of Policing and Justice Matters

Thank you for your letter of 12 May 2009, providing the Commission with a further opportunity to confirm that the position we declared in our written and oral evidence remains accurate and up to date. You were particularly concerned to establish if there were any potential additional financial pressures known to us.

I am writing to confirm that I would not intend to amend the written and oral evidence provided to your Committee in relation to the NI Legal Services Commission, save for the following clarification in relation to anticipated IT expenditure by the Commission.

The Commission is currently developing its IT strategy, of critical importance in improving the efficiency of its service delivery and in ensuring that existing systems do not break down. It is possible that in the next CSR period we will need to replace key parts of the current system, which could result in expenditure of around £750, 000, probably spread over two years.

In relation to expenditure on publicly funded legal services, I would not propose any changes to the estimates at this time. I would, however, take the opportunity to re-iterate points made in our evidence about the demand led nature of expenditure out of the legal aid fund and the challenges associated with forecasting spend accurately. The following are examples of factors that could increase spend beyond that which we have forecast:-

- (a) the Very High Cost Cases resulting from long and complex criminal trials – we have made an informed attempt at estimating their numbers and possible scale (and will be introducing a contractual basis for funding these cases that will enhance predictability and control) but there is always the possibility of one or two very big cases that can upset our calculations ;
- (b) the number of civil high cost drivers, like potential asbestosis or pleural plaque, are rarer but equally difficult to predict;
- (c) cases which relate to incidents over the past thirty years still have a potential to add to costs;
- (d) the introduction of new legislation that increases the demand on legal aid – this can be to some extent ameliorated by the use of legal aid impact assessments when new policies/legislation are being proposed; and,

- (e) at times of economic downturn demand for legal aid is likely to increase as more people become eligible by virtue of reduced income and because acquisitive crime, family breakdown and other social pressures are liable to increase.

The Commission will need to liaise closely with its partners and colleagues in the proposed Department of Justice in order to manage the forecasting and funding of the impact of these drivers on legal aid expenditure.

I would like to thank you again for the opportunity to present evidence to the Committee on behalf of the Commission.

**Jim Daniell**

Chairman

# Written Submission from Northern Ireland Police Fund 26th January 2009

26<sup>th</sup> January 2009

Mr Stephen Graham  
Clerk to the Assembly and Executive Review Committee  
Room 428  
Parliament Buildings  
Stormont Estate  
Belfast

BT4 3XX

Copy sent by e mail

Dear Mr Graham

**Re: NIPF**

The Chairman has asked that I respond on his behalf to your letter dated 20<sup>th</sup> January 2009 about funding for the Northern Ireland Police Fund.

In answer to the questions raised I can confirm that the current budget estimates for the Northern Ireland Police Fund are deemed adequate. We do not envisage at this stage any need for a significant adjustment to these resources in future years other than to account for inflation. However if the future development of the Fund to meet its clients needs identifies additional requirements that cannot be met from within existing funds then we may need to seek additional funding.

We have no had unsuccessful bids in the current Comprehensive Spending Review. Finally I have set out below a table showing our actual and forecast spend as appropriate for the financial years 2005/06 to 2010/11. All funding is resource DEL.

<b>Year</b>	<b>2005/06</b>	<b>2006/07</b>	<b>2007/08</b>	<b>2008/09</b>	<b>2009/10</b>	<b>2010/11</b>
Amount £K	2096	1800	1750	1849	1899	1949

If you need any further information please do not hesitate to contact me.

Yours Sincerely

Colin Ashe  
**Chief Executive**



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# Final Request to Northern Ireland Police Fund

## 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

12th May 2009

Mr David McClurg  
Northern Ireland Police Fund  
Maryfield Complex  
100 Belfast Road  
Holywood  
BT18 9QY

Dear Mr McClurg,

### **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission to the Assembly and Executive Review Committee, recently.

As you will know, the Committee also conducted some oral evidence sessions in which witnesses were asked to indicate if there were any additional financial pressures they wished to identify to the Committee.

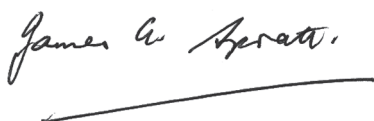
The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of new pressures, or easements, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details to the Committee Clerk by midday, 18 May 2009 to the following address

[stephen.graham@niassembly.gov.uk](mailto:stephen.graham@niassembly.gov.uk)

Yours sincerely



**Jimmy Spratt**  
Chairman

# Response from Northern Ireland Police Fund 18 May 2009

021 / PJ

18<sup>th</sup> May 2009

## Response from Police Fund

David McClurg from the Police Fund has spoken with Stephen Graham and confirmed that there are no changes to his original written submission.

# Written Submission from Northern Ireland Policing Board 6th February 2009



Professor Sir Desmond Rea  
Chairman

Date: 6 February 2009

Mr Stephen Graham  
Assembly and Executive Review Committee  
Room 428  
Parliament Building  
BELFAST  
BT4 3XX

Dear Mr Graham

I refer to your letter dated 20 January 2009 requesting details and views on various financial issues relating to the Devolution of Policing and Justice matters.

I have responded below to the questions raised in your letter in the order the issues were raised.

### Question 1

**Do you consider that the budgetary estimates for your organisation, details of which were provided to the Committee by the Northern Ireland Office (copy attached), are adequate, and if not, why not?**

#### NIPB Reply:

The budgetary estimate of £8,666million for 2008/09 is considered adequate in the 2008/09 financial year. The NIPD sets balanced budget forecasts at the beginning of each financial year and has developed its business plan in line with the available funding allocation for that period.

### Question 2

**What significant, additional requirement do you envisage in future years, and could any of these be dealt with through an adjustment to your organisation's existing plans/priorities?**

#### NIPB Reply:

The NIPB has set its business plan in line with the allocations made under the CSR07, and does not foresee any significant additional requirements in the normal steady state business areas. However, there is one area outside of the normal business areas that has the possibility of being significant: the current ongoing discussions in relation to the equal pay claim by junior level civil servants will impact financially upon the NIPB, to date it has not been possible to estimate a value for the claim and we await guidance from NIO and DFP on the issue; the NIPB has not provided for any expenditure in relation to this potential pressure within our current projections.

#### Northern Ireland Policing Board

Waterside Tower, 31 Clarendon Road, Clarendon Dock, Belfast BT1 3BG

Record No: 104650

**Tel:** 028 9040 8500 **Fax:** 028 9040 8544 **Textphone:** 028 905217668

**Email:** [information@nipolicingboard.org.uk](mailto:information@nipolicingboard.org.uk) **Web:** [www.nipolicingboard.org.uk](http://www.nipolicingboard.org.uk)





In its submission to the Assembly and Executive Committee inquiry into the devolution of policing and justice, the Board set out its position as follows:

“The role and powers of the Board should not be diminished under the devolution of policing and justice, including that the Chief Constable should remain accountable solely to the Board for the delivery of a policing service in Northern Ireland”.

This principle is consistent with Recommendation 21 of the Independent Commission on Policing (Patten Report); is consistent with paragraph 13.7 of the Government's discussion paper on Devolving Policing and Justice in Northern Ireland (February 2006); and was also a conclusions unanimously agreed by the Assembly's Committee on the Preparation for Government when it reported on law and order issues in September 2006.

Therefore, the Board does not foresee any significant additional requirements in future years nor does it foresee any significant easements that could be realised by an adjustment to existing plans or priorities.

### **Question 3**

**In the present Comprehensive Spending Review (CSR), please provide details of any unsuccessful bids and how you expect to deal with these in the future?**

#### **NIPB Reply:**

The NIPB made a number of bids for additional funding over and above the CSR07 allocation. An additional amount of £71k relating to funding for the Belfast District Policing Partnership (DPP) was made; the pressure arose from legislative changes – the 'Belfast Clauses' - after the St Andrew's Agreement. The 'Belfast Clauses' contained within the Police (Northern Ireland) Act 2003 led to changes in the composition of the Belfast DPP along with additional directly associated costs. The bid was unsuccessful.

The NIPB also made a bid for funding for an additional member of staff to undertake the duties associated with Devolution of Policing and Justice from a Board's perspective. The bid was unsuccessful.

Following notification of the bids being unsuccessful, NIPB adjusted its current work plan and budgets in order to address the issues and stay within its current budgetary allocations.

**Question 4**

**Can you please provide, for each main spending area, the breakdown between Resource and Capital DEL. Annually Managed Expenditure and administration costs for each of the years 2005/06 to 2010/11, that is the outturns for the 3 years prior to CSR 07 and the plans for the 3 years of the Review?**

**NIPB Reply**

Appendix 'A' attached to this letter provides the details as requested. It should be noted, that all Board expenditure is categorised under Resource and Capital DEL, there is currently no AME within the Board's ambit.

Having considered the Committee's request for information carefully and in particular paragraph 3 of your letter, the NIPB would wish to register its serious concerns at the availability of funding for frontline policing over the remainder of the CSR07 period, and in future periods. The Board has a statutory obligation to provide the Chief Constable with funding for police purposes and is currently working through a process to agree a balanced budget on the Police Grant for the 2009/10 year, with the Chief Constable. The current projections highlight a significant funding gap for the final 2 years of the CSR07 period. The NIPB is aware that the Chief Constable has also been contacted by the Committee in relation to the Police Grant, and that the Chief Constable will be making a comprehensive response. Given the Board's statutory role in police finances, and the work carried out to date in relation to the Police Grant, the Board requests that it is included in any oral evidence session undertaken by the Committee in relation to the Police Grant.

Please contact the Board's Chief Executive if you require further information.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Desmond Feeley".

APPENDIX A

**NIPB - Expenditure 2005/06 to 2010/11**

	2010/11	2009/10	2008/09	2007/08	2006/07	2005/06
	CSR	CSR	CSR	Final	Final	Final
	Allocation	Allocation	Allocation	Audited	Audited	Audited
				Outturn	Outturn	Outturn
Programme salary costs	2810	2715	2620	2,392	2433	2307
Programme Other current	6185	6042	6006	5,718	5566	5391
Depreciation	40	40	40	42	39	49
Diminution				1	4	15
Cost of Capital						
Notional						
Provisions						
Programme Current Grants						
Receipts				-9	-54	
<b>Total Resource Expenditure</b>	<b>9,035</b>	<b>8,797</b>	<b>8,666</b>	<b>8,144</b>	<b>7,988</b>	<b>7,762</b>
Capital						
Buildings						
Tangible asset	350	15	15	32	23	36
Profit/loss on Disposal				1		9
Receipts NBV						
<b>Total Capital Expenditure</b>	<b>350</b>	<b>15</b>	<b>15</b>	<b>33</b>	<b>23</b>	<b>45</b>

Trim 104379



# Further Questions to Northern Ireland Policing Board 24th March 2009



Mr Jimmy Spratt MLA  
Chairman of the Assembly and  
Executive Review Committee  
C/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

Tel: (0)28 9052 1784

Fax: (0)28 9052 5917

24 March 2009

Prof. Sir Desmond Rea  
N.I Policing Board  
Waterside Tower  
31 Clarendon Road  
Clarendon Dock  
Belfast  
BT1 3BG

Dear Sir Desmond

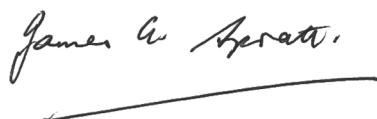
On behalf of the Assembly and Executive Review Committee, I would like to convey my thanks to you, and your colleagues, for your attendance at the Committee meeting today.

As you will recall, the Committee agreed to forward any further questions to you in writing. Following consultation with the Specialist Adviser, a number of outstanding issues have been identified and are attached at Annex A.

I would be grateful if you would provide a written response to the questions to assist the Committee in its consideration of the financial implications of devolving policing and justice matters.

An electronic reply by 2.00pm on Friday 27 March 2009 would be most valuable and would allow the Committee to raise these issues with the Secretary of State on Tuesday 31 March 2009.

Yours sincerely



**Jimmy Spratt**  
Chairman

## Annex A

- In your estimation, what will the financial implications be, for the Northern Ireland Policing Board, in relation to the equal pay claims by junior civil servants?
- In your submission you indicated that the role and powers of the Policing Board should not be diminished under the devolution of policing and justice. In your estimation, are there any areas of your business which you feel could be, or will be, diminished? And if so, would these changes lead to an easement on your budgetary pressures?
- In your submission you stated that, as a result of legislative changes and staffing issues, the NIPB adjusted its current work plan to stay within its budgetary allocations. Will there be a knock on effect for future budgets as a result of these actions? And, could these adjustments be monitored and managed on an ongoing basis to relieve the pressure of budgets?
- Are you aware of any proposed changes to legislation which may impact on your budget in the foreseeable future?
- What effect has there been on the workload of the Policing Board as a result of the Criminal Justice Order?
- In the case of fluctuating utility and other prices, the general principle is that organisations manage such costs within their budget. Are there compelling reasons why the Policing Board cannot do this?
- In what is a demand led environment, what are the developments in the criminal justice system which might present additional financial pressures?
- Is an element of the Policing Board budget being used to provide services which are more appropriate to other agencies?
- Is there, presently, duplication of effort, and spending, between, for example, the Policing Board and the PSNI and/or other agencies, and what steps are being taken to eradicate that duplication?
- Do your estimates take any account of the further efficiency savings we understand the Treasury is seeking from UK departments?
- In many areas of law and order we are finding that expenditure is proportionately twice that of England & Wales. Is this the case for the PSNI? If so, how are you going to prevent the police budget from consuming a disproportionate part of the overall Northern Ireland budget as time goes on?

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# Supplementary Response from Northern Ireland Policing Board 26th March 2009

Date: 26 March 2009

Mr J Spratt  
Chairman  
Assembly & Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont  
Belfast  
BT4 3XX

Dear Mr Spratt

**Written Response to Executive and Review Committee**

In response to your letter dated 24 March 2009, please find attached the written responses to your questions.

Yours sincerely



**Professor Sir Desmond Rea**  
Chairman

## Question 1

In your estimation, what will the financial implications be, for the Northern Ireland Policing Board, in relation to the equal pay claims by junior civil servants?

### Answer

We are waiting for Departmental guidance on the assumptions to use in making an accurate estimate. Some of the uncertainties relate to which staff on which to base the estimate upon, is it our current staff or do we carry the liability for those who worked in the Board over the period the claim relates to, but have subsequently moved to another location. Also, we have not been advised of the level of the claim in either monetary value or percentage terms. Based on the current numbers of staff in the Admin and Executive Officer grades, the claim would relate to approximately 30 staff. If the value of the claim was £15k per staff member, then the value in total would be £450k. This will vary if the grades of staff making the claim differ from AA/AO, or if the value per staff Member differs from £15k. The Board has not included any estimate of the cost within its budget over the CSR 07 period as we understand that funds will be made available from a central Government source to meet the liability rather than coming from the Board's current resources.

## Question 2

In your submission you indicated that the **role and powers of the Policing Board should not be diminished under the devolution of policing and justice**. In your estimation, are there any areas of your business which you feel could be, or will be, diminished? And if so, would these changes lead to an easement on your budgetary pressures?

### Answer

In stating that there should be no diminution of the Policing Board's role and powers, the Board advised this position was consistent with Recommendation 21 of the Independent Commission on Policing (Patten Report); paragraph 13.7 of the Government's Discussion Paper on Devolving Policing and Justice in Northern Ireland (February 2006); and was also a conclusion unanimously agreed by the Assembly's Committee on the Preparation for Government when it reported on law and order issues in September 2006. The Board does not therefore foresee that any areas of its business can, or will, be diminished.

## Question 3

In your submission you stated that, as a result of legislative changes and staffing issues, the NIPB adjusted its current work plan to stay within its budgetary allocations. Will there be a knock on effect for future budgets as a result of these actions? And, could these adjustments be monitored and managed on an ongoing basis to relieve the pressure of budgets?

### Answer

The Board has set its Corporate 3 year plan and its annual business plan to stay within the budget allocations it received under CSR 07. We do not envisage future knock on effects from these business planning decisions, and the budget issues have been dealt with through the decisions already taken. The decisions already taken should not lead to additional pressures on budgets.

---

## Question 4

Are you aware of any proposed changes to legislation which may impact on your budget in the foreseeable future?

### Answer

Yes, at present the overall annual budget for the DPPs and CSPs is close to £8 m, and 60% of this is consumed by administration and expenses. The proposal to more closely align the existing DPP and CSP partnerships will require changes to legislation and open up the opportunity to revisit how this money is spent. The Board will also monitor any additional obligations that may arise following the devolution of policing and justice powers.

## Question 5

What effect has there been on the workload of the Policing Board as a result of the Criminal Justice Order?

### Answer

The Criminal Justice Order has not impacted on the work of the Board to date. The Board does have a statutory obligation to monitor PSNI compliance with Human Rights legislation, and in this respect may in the future consider practice arising from changes introduced in the Criminal Justice Order. The Board has not received any of the £14m package made available to deliver changes arising from this legislation.

## Question 6

In the case of fluctuating utility and other prices, the general principle is that organisations manage such costs within their budget. Are there compelling reasons why the Policing Board cannot do this?

### Answer

The Board is operating within the general principle as stated, and is managing fluctuating utility and other prices from within the existing budget allocation. As an organisation the Board is not a heavy user of utilities, although the cost has increased over the past year, with the largest increase relating to Rates. We do not predict a compelling reason why the Board cannot continue to meet its utility costs from within existing budget allocations.

## Question 7

In what is a demand led environment, what are the developments in the criminal justice system which might present additional financial pressures?

### Answer

The Board is not currently aware of any specific changes in the criminal justice system which might present additional financial pressures, however, the Board will monitor any additional obligations that may arise following the devolution of policing and justice powers.

## Question 8

Is an element of the Policing Board budget being used to provide services which are more appropriate to other agencies?

### Answer

No. The Board's statutory role and responsibilities, arising from implementation of recommendations of the Patten Commission, have ensured the delivery of an effective, efficient, impartial, representative and accountable police service. The structure of the Board, its membership, powers and functions are specifically designed to achieve this objective and to continue to build community confidence in policing.

## Question 9

Is there, presently, duplication of effort, and spending, between, for example, the Policing Board and the PSNI and/or other agencies, and what steps are being taken to eradicate that duplication?

### Answer

Yes, it has been the Board's long standing view that the current structures for local engagement, planning, delivery and monitoring in the policing and community safety field are not ideal. Despite the best efforts of those working on the ground to support these existing structures, having CSPs and DPPs operating in broadly the same field, with often overlapping responsibilities and frequently overlapping membership can, and has, contributed to duplication of effort and spending. Government now recognises this in its recently published consultation document which proposes having integrated partnerships in place for the reconstitution of councils by 2011. Beyond this the Board is very clear about its statutory role and responsibilities which have been exercised consistently since its formation in November 2001.

## Question 10

Do your estimates take any account of the further efficiency savings we understand the Treasury is seeking from UK departments?

### Answer

The Board has not been advised by the NIO of any additional savings that are required. The Board's efficiency savings are built into its annual budget allocation, and to deliver within budget means that the Board meets its efficiency savings. Our estimates do not currently take account of any additional efficiency savings that may be required from Treasury.

## Question 11

In many areas of law and order we are finding that expenditure is proportionately twice that of England & Wales. Is this the case for the PSNI? If so, how are you going to prevent the police budget from consuming a disproportionate part of the overall Northern Ireland budget as time goes on?



## Answer

A large proportion of the PSNI budget consists of staff costs, both current staff costs and pension costs of previous police officers. The Patten Review recommended 7,500 police officers, which has been achieved through the severance programme. The elements of the PSNI budget relating to staff costs, including pensions are inflexible and cannot be changed unless there is a change to the establishment number of 7,500 police officers. The staff cost element of the police budget equates to approximately 80% of the overall PSNI budget. The remaining 20% of the PSNI budget has been closely examined and cuts made in order to remain within the CSR 07 budget allocation, and the Board considers there is no opportunity to make further reductions in this area without impacting on service delivery. The Board, in consultation with the Chief Constable, considers that the cost of legacy issues should be separated from current policing costs. Current policing costs can be controlled, unlike the legacy costs of enquiries, pensions and injury awards which are volatile and inflexible and cannot be controlled by either the Board or the PSNI.

# Final Request Northern Ireland Policing Board

## 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

12th May 2009

Sir Desmond Rea  
Northern Ireland Policing Board  
Waterside Tower  
31 Clarendon Dock  
Belfast  
BT1 3BG

Dear Sir Desmond,

### **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission and for appearing before the Assembly and Executive Review Committee to give oral evidence, recently.

The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month. However, you will recall that, during the oral evidence session, you were asked to indicate if there were any additional financial pressures you wished to identify to the Committee.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of any easements, or new pressures, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details, electronically, to the Committee Clerk by midday, 18 May 2009 at the following address

[stephen.graham@niassembly.gov.uk](mailto:stephen.graham@niassembly.gov.uk)

Yours sincerely



**Jimmy Spratt**  
Chairman

# Response from Northern Ireland Policing Board

## 15 May 2009

Professor Sir Desmond Rea  
Chairman

Date: 15 May 2009

Cllr Jimmy Spratt MLA  
Constituency Office  
Lynden House  
15 Cregagh Road  
BELFAST BT6 8PX

Dear Cllr Spratt

### The Financial Implications Relating to the Devolution of Policing and Justice Matters

Thank you for your letter dated 12 May 2009 giving a further opportunity to confirm the financial position previously indicated to your committee.

In my submission dated 6 February 2009, I have indicated that no significant additional requirements on the normal steady state business areas within the Board were foreseen; this remains the case. I also indicated there to be one area outside the normal business area that had the potential to be significant; the equal pay claim by junior civil servants, which will impact on the budgets. Our current estimate is that if successful, the claim could be up to £450k, depending on individual settlement figures. We had not placed a figure on the potential liability in the previous submission.

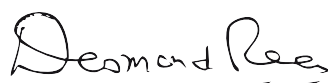
I have been in contact with the Police Service and understand they are also making a further submission, and in relation to the information I had provided on the first PSNI finances to the Committee previously, there have been a number of changes:

- The hearing loss estimate for 2009/2010 has increased again and is closer to £100 million
- The Security bid has now been confirmed by the NIO at £28.7 million
- The impairments on disposal of estates has been confirmed as a charge to AME and is no longer a potential DEL pressure
- A previous understanding that £7.7 million would be reinstated to the 2009/2010 police budget is not agreed by the NIO, and will be subject to a bid to Treasury
- The recent Home Office decision to set up a scheme for payment of lump sums to those survivors of police officers killed in the line of duty who have lost their pension on remarriage. The appropriate level of support will be up to £20,000 per person and there is currently estimated to be 34 individuals from Northern Ireland who will fall into the category. This will be an additional pressure of up to £680k which was not known about or indicated in the previous submission.

I understand the PSNI response will give further details on the issues in relation to the Police Grant.

Please contact the Board's Chief Executive if you require further details.

Yours sincerely



# Written Submission from Northern Ireland Prison Service 6th February 2009



From: The Director  
Stephen Graham  
Clerk to the Assembly and Executive Review Committee  
Room 428  
Parliament Buildings  
Stormont Estate  
BELFAST  
BT4 3XX

6 February 2009

Dear Mr Graham

## NI Prison Service - Budgetary Position

Thank you for your letter of 20 January 2009 requesting financial information about the NI Prison Service. I have carefully considered your questions and provided responses to each as set out below.

### Adequacy of Budgetary Estimates

NIO colleagues have already shared with AERC the 2008/09 resource budget for NIPS totalling £134.9m from the (Comprehensive Spending Review 2007) Departmental baseline settlement.

All Government Departments and public bodies are facing challenging times ahead as improvements are sought in efficiency and value for money. The Prison Service is certainly not exempt from these financial pressures and is particularly sensitive to financial risk as we are a demand led service having to respond to developments elsewhere in the criminal justice system. In addition there is the need to address pressures arising from fluctuating utility and other prices.

The Prison Service has a major strategic development programme underway, which includes the modernisation of the prison estate to make it fit for purpose and to deal effectively and efficiently with the increasing prisoner population. (See graph attached.) New accommodation directly delivers more efficient staffing, although it has resource costs in terms of recurrent cost of capital and depreciation charges.

There is no doubt that the Northern Ireland Prison Service, as with many other public sector bodies in Northern Ireland and elsewhere, is having to operate within tighter financial constraints. The Prison Service Management Board have had to make some difficult choices to prioritise needs but we are on target to achieve financial breakeven in the current year against our resource baseline. The Service has been able to absorb significant financial pressures as a result of the implementation and delivery of its £29m VFM (Pay and Efficiency) Programme, which started in 2007/08 and continues across the CSR07 period. This programme yielded significant in-year cash savings from a three-year pay and efficiency agreement with the POA in 2007, with a 10% up-front reduction (150) in Main Grade Officer posts, the introduction of lower paid Operational Support Grade (OSGs) staff and combining in-house the Prisoner Escort and Court Custody functions including those previously contracted-out.

## Significant Additional Requirements

The Prison Service envisages financial pressures over the remainder of the CSR07 period, from 2009/10 onwards, as a result of the continued rise in prisoner numbers, the introduction of the CJO, and other unavoidable emerging pressures. We are bringing on line new prisoner accommodation to meet the increasing population, to reduce the unacceptable level of doubling of prisoners in single cells, and to upgrade the existing estate. As noted above inevitably this capital expenditure is adding to our resource pressures. Current financial projections suggest that NIPS will need to develop and deliver a further ambitious Cost Reduction Plan, requiring more internal re-prioritisation for future years, so that we can live within existing resource baseline budgets. It is of note that HMPS introduced last year a major cost reduction that ends the core regime week for prisoners at Friday lunch-time. There are no similar plans for NIPS as yet, but it reflects the sort of hard choice that prison services are having to make to live within their means.

## Comprehensive Spending Review 2007 – Unsuccessful Bids

During the CSR07 bidding process, the Prison Service identified one specific major workload increase, arising from the implementation of the Criminal Justice Order. This bid was broadly successful and allows the Prison Service to build our capacity to handle the incremental impact of the Order over the period. In line with other spending areas in the Department the Prison Service was constrained not to make any other funding bids as part of the CSR07 process, notwithstanding the pressures we had identified. Instead a Financial Strategy was developed, spanning the CSR07 years, to live within baselines funded from the delivery of its £29m VFM Programme, re-prioritisation of services and if necessary through implementation of further cost reduction initiatives.

## Budget and Out-turn Analysis

Table 1 below highlights Capital and Resource budgets and financial out-turns as requested.

**Table 1 – Budgets and expenditure patterns**

	<b>2005/06</b> <b>£m</b>	<b>2006/07</b> <b>£m</b>	<b>2007/08</b> <b>£m</b>	<b>2008/09</b> <b>£m</b>	<b>2009/10</b> <b>£m</b>	<b>2010/11</b> <b>£m</b>
Admin	15.1	15.5	13.8	15.5	15.1	14.7
Programme	116.5	119.9	121.2	119.4	124.7	129.8
<b>Resource Budget</b>	131.6	135.4	135.0	134.9	139.8	144.5
Admin	14.2	14.1	13.6	n/a	n/a	n/a
Programme	116.7	122.5	120.2	n/a	n/a	n/a
<b>Resource Out-turn</b>	130.9	136.6	133.8	n/a	n/a	n/a
<b>Annual Managed Spend</b>				Nil	Nil	Nil
<b>Capital Budget</b>	9.7	13.0	20.9	23.4	23.2	26.4
<b>In-year Spend</b>	9.7	12.9	20.9			
Approved re-profiling	0.6	-	3.2			
<b>Total Capital Out-turn</b>	10.3	12.9	24.1	On track	n/a	n/a

Footnote 1. The 2007/08 capital out-turn exceeded the original capital baseline budget by £3.2m. This capital expenditure was planned and approved by the Departmental Finance Committee in order to use unspent capital at year end from slippage across the Department.

The NIPS 2008/09 opening capital budget was adjusted downwards by this amount with NIPS Board agreement to reflect this accelerated spending pattern.

## Conclusion

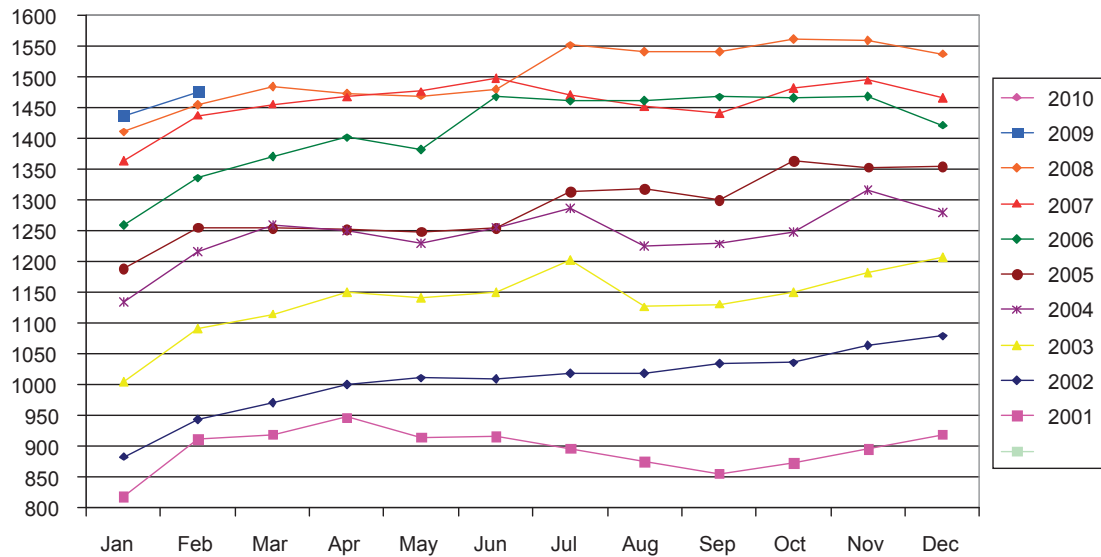
You will appreciate the significant financial and management challenges that the Service faces going forward but I hope you are assured by the fact that we have a comprehensive programme in place to improve our financial management capacity and delivery capability to address those challenges.

Yours sincerely



**ROBIN MASEFIELD**

### Prison Population 2001-2010



Figures as at first Monday in every month.



# Final Request Northern Ireland Prison Service

## 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

12th May 2009

Mr Robin Masefield  
Prison Service  
Dundonald House  
Upper Newtownards Road  
Belfast  
BT4 3SU

Dear Mr Masefield,

### **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission and for appearing before the Assembly and Executive Review Committee to give oral evidence, recently.


The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month. However, you will recall that, during the oral evidence session, you were asked to indicate if there were any additional financial pressures you wished to identify to the Committee.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of any easements, or new pressures, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details, electronically, to the Committee Clerk by midday, 18 May 2009 at the following address

[stephen.graham@niassembly.gov.uk](mailto:stephen.graham@niassembly.gov.uk)

Yours sincerely



**Jimmy Spratt**  
Chairman

# Response from Northern Ireland Prison Service

## 18th May 2009

From: The Director  
 Jimmy Spratt  
 Chairman  
 Assembly Executive Review Committee  
 Parliament Buildings  
 Stormont Estate  
 BELFAST

18 May 2009

Dear Mr Spratt

Your letter of 12 May requested an update to the previously provided written and oral evidence on the Prison Service financial position going into devolution. This letter provides that update.

As I pointed out in my evidence, the Prison Service continues to face financial pressures over the remainder of the CSR07 period as a result of the anticipated rise in prisoner numbers, and other unavoidable emerging pressures. We are continuing to develop new prisoner accommodation to meet the increasing population, to reduce the unacceptable level of doubling of prisoners in single cells, and to upgrade the existing estate. As previously reported this capital expenditure creates a resource pressure by increasing capital charges. The quantum of the pressure has not changed significantly since my earlier evidence. However, Prison Service management engaged in the development and delivery of a Cost Reduction Plan, involving internal re-prioritisation to enable us to live within existing resource baseline budgets. A range of options are being considered in what will be a challenge for the Prison Service but one we need to achieve.

The 2008/09 Statutory Accounts have yet to be audited. The Prison Service has however interim financial out-turn figures for 2008/09 and some capital budget re-profiling adjustments in 2009/10 and 2010/11 which update the previous information provided in my letter of 6 February to the Committee. The updated figures are contained in Table 1 below.

**Table 1 – Updated budgets and expenditure patterns**

	2005/06 £m	2006/07 £m	2007/08 £m	2008/09 £m	2009/10 £m	2010/11 £m
Admin	15.1	15.5	13.8	15.2	15.1	14.7
Programme	116.5	119.9	121.2	118.7	124.7	129.8
<b>Resource Budget</b>	131.6	135.4	135.0	133.9*	139.8	144.5
Admin	14.2	14.1	13.6	13.3	n/a	n/a
Programme	116.7	122.5	120.2	121.1	n/a	n/a
<b>Resource Out-turn</b>	130.9	136.6	133.8	134.4	n/a	n/a
Annual Managed Exp.				Nil	Nil	Nil
<b>Capital Budget</b>	9.7	13.0	20.9	23.4	17.5	32.2
<b>In-year Spend</b>	9.7	12.9	20.9			
Approved re-profiling	0.6	-	3.2	23.3	On-track	n/a
<b>Capital Out-turn</b>	10.3	12.9	24.1			

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\*This reflects a reduced budget against that previously reported. The Service surrendered £0.75m to the Department for in-year efficiencies and a further £0.25m funding transfer went to DHSS&PS to reflect the in-year funding requirement for the transfer of Addiction Services. Had it not been for the requirement to provide efficiencies in year, the Prison Service would have come within budget. The Service also met its cost per prisoner place £81,170 against a target of £81,500 [subject to audit].

The Service continues to plan for a replacement Adult Male Prison at the Magilligan site to deal with the anticipated growth in population which, I had suggested to the Committee at our oral evidence session on 24 February, could grow to some 2,200 over the next 15 years. We are also currently conducting an options appraisal in respect of a replacement Female facility. Both of these would fall outside of the CSR07 period and, although having a more staff efficient design, would have increased resource cost implications.



Yours sincerely

**Robin Masefield**

# Written Submission from Northern Ireland Judicial Appointments Commission 6th February 2009

From: Johnston Caroline [CarolineJohnston@nijac.org]  
Sent: 06 February 2009 12:25  
To: +Comm. Assembly & Executive Review Public Email  
Cc: Anthony.Harbinson@nio.x.gsi.gov.uk  
Subject: NI Assembly - Assembly and Executive Review Committee response  
Attachments: JAC response to NI Assembly letter of 20 Jan.doc

Dear Stephen

Thank you for your letter of 20 January 2009 to the Lord Chief Justice, inviting the views of the Judicial Appointments Commission. The Lord Chief Justice, as Chairman of the Commission, has asked that I reply to your questions as Chief Executive.

I have set out our replies in the document attached. Please do not hesitate to contact me if you require any further information.

As requested, I am copying this email to Anthony Harbinson, Director of Resources NIO.

Edward Gorringe  
Chief Executive

**Caroline Johnston**  
**PA to Chief Executive**

Northern Ireland Judicial Appointments Commission  
Headline Building  
10-14 Victoria Street  
Belfast  
BT1 3GG  
Tel: 02890 728551  
Fax: 02890 728566  
Web: <http://www.nijac.org>

# Northern Ireland Judicial Appointments Commission

Questions and replies:

Q. Do you consider that the budgetary estimates for your organisation, details of which were provided to the Committee by the NIO (£1,540,000) are adequate, and, if not, why not?

Yes the budget for 2008/9 is adequate. We expect that the budget for 2009/10 will also be adequate to meet our demanding programme of work. There may be a pressure as a consequence of devolution – see below.

Q. What significant additional requirements do you envisage in future years, and could any of these be dealt with through an adjustment to your organisation's existing plans/priorities?

Significant additional requirements may arise as a result of devolution of justice<sup>1</sup>. These will include:

the costs attached to any new areas of work that the Commission will become responsible for under devolution. The announcement in November by the FM/ dFM envisaged the JAC having a greater role in respect of appointments and removals. The detail is not clear and so it is not possible to be precise about the amounts required. There will almost certainly, however, need to be a transfer of some staff or the recruitment of additional staff. (These staff/ posts would have mostly transferred to the OFM/dFM on devolution of policing and justice).

There may be additional costs to obtain corporate services. These are currently provided by the Northern Ireland Court Service but this may change on devolution.

The Commission is researching an IT system to manage its recruitment processes. A provisional estimate for this is a cost of up to £100,000 for development and installation with costs spread over the next two years. It is anticipated that the existing budget will meet the running costs.

Q. In the present CSR please provide details of any unsuccessful bids and how you expect to deal with these in the future.

There have been no unsuccessful bids.

Q. Can you please provide, for each main spending area, the breakdown between Resource and Capital DEL, Annually Managed Expenditure and administration costs for each of the years 2005/6 to 2010/11, that is the outturns for the three years prior to Spending Review 07 and the plans for the three years of the Review?

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1 A pressure for a small organisation such as the JAC can have a major impact if it is not met.

<b>Northern Ireland Judicial Appointments Commission</b>	<b>2005/06 £'000</b>	<b>2006/07 £'000</b>	<b>2007/08 £'000</b>	<b>2008/09 £'000</b>	<b>2009/10 £'000</b>	<b>2010/11 £'000</b>
Resource DEL:						
Administration costs	884	1,246	1,287	1,403	1,400	1,400
Programme costs	132	187	159	137	200	200
Total Resource DEL	1,0161	1,433	1,446	1,540	1,600	1,600
Capital DEL:	0	0	0	0	0	0
AME:	0	0	0	0	0	0

Northern Ireland Judicial Appointments Commission  
 Headline Building  
 10-14 Victoria Street  
 Belfast  
 BT1 3GG  
 Telephone: 02890728559  
 Fax: 02890728566  
 Web: <http://www.nijac.org>



# Final Request to Northern Ireland Judicial Appointments Commission 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast BT4 3XX

12th May 2009

Sir Brian Kerr  
Lord Chief Justice  
Judicial Appointments Commission  
Headline Building  
10-14 Victoria Street  
Belfast BT1 3GG

Dear Sir Brian,

## **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission to the Assembly and Executive Review Committee, recently.

As you will know, the Committee also conducted some oral evidence sessions in which witnesses were asked to indicate if there were any additional financial pressures they wished to identify to the Committee.

The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of new pressures, or easements, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details to the Committee Clerk by midday, 18 May 2009 to the following address

stephen.graham@niassembly.gov.uk

Yours sincerely



**Jimmy Spratt**  
Chairman

# Written Submission from Northern Ireland Judicial Appointments Ombudsman

## 5th February 2009

The Committee Clerk  
Mr Stephen J Graham  
Room 428  
Parliament Buildings  
Stormont  
BT4 3XX

February 2009

Dear Stephen

The Northern Ireland Judicial Appointments Ombudsman (NIJAO)

I refer to your letter of 20 January 2009 requesting a written submission to the Assembly and Executive Review Committee on the budgetary position of the Northern Ireland Judicial Appointments Ombudsman.

Our responses to the questions posed in your letter are detailed below:

- 1. Do you consider that the budgetary estimates for your organisation, details which were provided to the Committee by the Northern Ireland Office are adequate, and, if not, why not?**

NIJAO currently foresees that their existing budgetary allocation, as detailed in Annex A to your letter, for the year 2008/09 will be adequate.
- 2. What significant, additional, requirements do you envisage, in future years, and could any of these be dealt with through an adjustment to your organisation's existing plans/priorities?**

NIJAO currently envisages its budgetary allocation across the CSR07 period to be adequate. It should be noted however that its costs are partly dependant on the volume of business it receives.
- 3. In the present Comprehensive Spending Review, please provide details of any unsuccessful bids and how you expect to deal with these in the future.**

NIJAO are not aware of any bids during the current Comprehensive Spending Review which were unsuccessful.
- 4. Can you please provide, for each main spending area, the breakdown between Resource and Capital DEL, Annually Managed Expenditure and administration costs for each of the years 2005/06 to 2010/11, that is the outturns for the three years prior to Spending Review 07 and the plans for the three years of the Review?**

The information requested above has been summarised in the table below.

\*It should be noted that the NIJAO was only established on 25 September 2006 and therefore there are no results for 2005/06 and the 2006/07 year is a partial year.

	Actual Outturn			CSR07 Budget Allocation		
	2005/06 £'000	2006/07* £'000	2007/08 £'000	2008/09 £'000	2009/10 £'000	2010/11 £'000
Resource DEL	0	60	108	125	125	125
Capital DEL	0	0	0	0	0	0
AME	Nil	Nil	Nil	Nil	Nil	Nil
Administration Costs	0	60	108	125	125	125

If you have any queries, please do not hesitate to contact me.

Yours sincerely

Karamjit Singh CBE  
Northern Ireland Judicial Appointments Ombudsman  
6th Floor  
Bedford House  
Bedford Street  
Belfast  
BT2 7DS

# Final Request to Northern Ireland Judicial Appointments Ombudsman 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast BT4 3XX

12th May 2009

Mr Karamjit Singh  
Judicial Appointments Ombudsman  
6th Floor  
Bedford House  
Bedford Street  
Belfast BT2 7DS

Dear Mr Singh,

## **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission to the Assembly and Executive Review Committee, recently.

As you will know, the Committee also conducted some oral evidence sessions in which witnesses were asked to indicate if there were any additional financial pressures they wished to identify to the Committee.

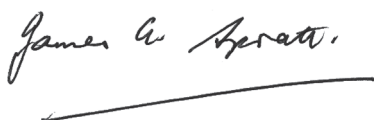
The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of new pressures, or easements, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details to the Committee Clerk by midday, 18 May 2009 to the following address

[stephen.graham@niassembly.gov.uk](mailto:stephen.graham@niassembly.gov.uk)

Yours sincerely



**Jimmy Spratt**  
Chairman

# Response from Northern Ireland Judicial Appointments Ombudsman 13th May 2009

From: Fowler Audrey [mailto:audreyfowler@courtsni.gov.uk]  
Sent: Wednesday, May 13, 2009 11:10  
To: Graham, Stephen  
Subject: Financial- devolution of justice

Mr Graham,

I am in receipt of the letter dated 12 May 2009 from Mr Jimmy Spratt, Chairman to the Assembly and Executive Review Committee in which he seeks confirmation of the financial position of the Office of the Northern Ireland Judicial Appointment Ombudsman, as declared in the written to the Committee in February.

I can confirm that the position remains as declared in that letter.

Regards

Audrey Fowler  
Office of Northern Ireland Judicial Appointments Ombudsman

# Written Submission from Parole Commissioners for Northern Ireland 3rd February 2009

Mr Stephen Graham  
Clerk to Assembly and  
Executive Review Committee  
Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX



Dated: 03 February 2009

Dear

## Response to Questions raised by the Assembly and Executive Review Committee

Thank you for your letter dated the 20th January 2009 regarding the provision of financial information from this organisation.

On a matter of detail I can advise you that with the commencement of the Criminal Justice (NI) Order 2008 in May last year, the Life Sentence Review Commissioners have now become the Parole Commissioners for Northern Ireland.

In response to your questions I can advise you that the estimated financial allocation, provided by NIO, is adequate for the running of the Parole Commissioners' Secretariat and that the projected figures have taken into account the development needs of the Office over the CSR period, including the increased forecasted figures in respect of caseload anticipated by the Northern Ireland Prison Service.

I am delighted to report that we have had no unsuccessful bids for additional resource during the course of the present comprehensive spending review.

As requested I have set out below the spending information that you have asked for.

£'000s	05/06 Outturn	06/07 Outturn	07/08 Outturn	08/09 Budget	09/10 Plans	10/11 Plans
Admin	170	161	182	0	0	0
Prog	176	468	559	831	951	1271
<b>Total Resource DEL</b>	<b>346</b>	<b>629</b>	<b>741</b>	<b>831</b>	<b>951</b>	<b>1271</b>
Capital DEL	0	0	0	0	0	0
AME	0	0	0	0	0	0

I hope this is sufficient. If there is any further information that I can help you with please do not hesitate to get in touch.

Yours sincerely

Moya Cushley  
Secretary to the Parole Commissioners for Northern Ireland.



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# Final Request to Parole Commissioners for Northern Ireland 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

12th May 2009

Ms Cushley  
Parole Commissioners for Northern Ireland  
Windsor House  
9-15 Bedford Street  
Belfast  
BT2 7PH

Dear Ms Cushley,

## **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission to the Assembly and Executive Review Committee, recently.

As you will know, the Committee also conducted some oral evidence sessions in which witnesses were asked to indicate if there were any additional financial pressures they wished to identify to the Committee.

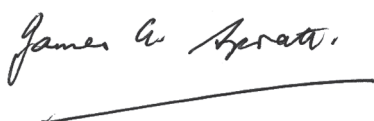
The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of new pressures, or easements, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details to the Committee Clerk by midday, 18 May 2009 to the following address

[stephen.graham@niassembly.gov.uk](mailto:stephen.graham@niassembly.gov.uk)

Yours sincerely



**Jimmy Spratt**  
Chairman

# Response from Parole Commissioners for Northern Ireland 3rd May 2009

Mr Stephen Graham  
Clerk to Assembly and  
Executive Review Committee  
Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

Dated: 03 May 2009

Dear

## Response to Questions Raised by the Assembly and Executive Review Committee

Thank you for your letter dated of the 12th May requesting an update to the submission I presented to you in February past.

I can advise you that circumstances have changed within the Office of the Parole Commissioners as we move towards the appointment of new Commissioners and the expansion of the work in general. To this end we have recently submitted a business cases to the Criminal Justice Division within NIO to cover the provision of additional staff for the Secretariat and are in the process of developing another business case to cover the provision of new accommodation.

I am hopeful that both these business cases will be approved accordingly.

Yours sincerely  
Moya Cushley  
MOYA CUSHLEY

# Written Submission from Probation Board Northern Ireland 6th February 2009

80/90 North Street  
Belfast BT1 1LD  
T: 028 9026 2400  
F: 028 9026 2450  
E: info@pbni.org.uk  
W: www.pbni.org.uk

Brian McCaughey, Director of Probation

6 February 2009

Mr S J Graham  
Committee Clerk  
Room 428  
Parliament Buildings  
Stormont Estate  
BELFAST BT4 3XX

Dear Mr Graham

The Probation Board for Northern Ireland (PBNI) was invited, in your letter dated 20 January 2009 to provide its view on the financial information provided by the NIO in the context of the potential devolution of a range of policing and justice matters.

The response from PBNI is attached and refers to the views of PBNI, only in relation to its own responsibilities and obligations and does not consider the funding of other Criminal Justice organisations.

I understand that in considering this and the other submissions that have been invited the Committee is likely to consider oral evidence. PBNI would be very happy to provide oral evidence.

If you have any queries, please contact me on 028 9026 2437.

Yours sincerely

BRIAN McCAUGHEY  
Director of Probation  
Encl

The aim of PBNI is to help reduce crime and the harm it does

# Supplementary Response from Probation Board Northern Ireland 23rd March 2009

23 March 2009

Mr J Spratt  
Chairman  
Assembly & Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
BELFAST  
BT4 3XX

Dear Mr Spratt

Thank you for the opportunity your Committee afforded PBNI on 24 February 2009 to inform the Committee's deliberations on the financial implications of devolving a range of policing and justice matters.

In your concluding remarks you sought clarification of the amount and make-up of the shortfalls that PBNI had referred to in its written submission to the Committee.

I can confirm that PBNI believes that it requires an additional £18.5m per annum in revenue budget allocation as set out below:

Sentencing Framework Implementation after 1 April 2011	£ 4.8m
Revision of Offender Supervision Ratios (also includes the CSR07 Deficit)	£11.1m
Community Development Funding	£ 2.6m
	<b>£18.5m</b>

In addition PBNI believes that it requires a one off capital budget allocation of £1.3m to enable integration of the PBNI Case Management System with the Causeway System.

The identified deficits in respect of the CSR07 period of £4.1m ('08/'09 £1.0m, '09/'10 £1.5m and '10/'11 £1.6m) have been subsumed into the calculation of the amounts making up the £18.5m referred to above.

Should you require any further information please let me know.

Yours sincerely

BRIAN McCAUGHEY  
Director of Probation

# Financial Implications of Devolving Policing and Justice Powers Probation Board for Northern Ireland

## Overview

PBNI employs 360 staff whose main areas of work are with offenders and cover community supervision, community service, prisons and corporate services.

PBNI's mission is to make the community safer through its work in managing the risk posed by offenders and its aim is to reduce crime and the harm it does by challenging and changing offender behaviour.

PBNI is, in financial terms, one of the smaller organisations of the criminal justice family, but it is the principal body working with adjudicated offenders in Northern Ireland. It provides around 9,500 reports per year to decision makers (Judges and Parole Commissioners), including 6,000 Pre Sentence Reports to assist Judges in determining sentences. On any given day, PBNI supervises around 4,000 offenders, subject to a range of Court Orders. Its record, as measured by reconviction rates is the best in the UK.

The CSR07 settlement provides PBNI with additional resources to assist in the implementation of new legislation on sentencing, but falls short of what PBNI sought. In addition, Northern Ireland has not enjoyed the significant increases in spending on probation services that has taken place in England and Wales over the last decade. The most significant gaps are in respect of:

- best practice in terms of the ratio of probation officer to offenders, and
- the resources available to work with the voluntary and community sectors to reduce levels of offending.

In round terms, PBNI's budget is £18m per year below what it believes is required.

PBNI aspires to be at the forefront of Criminal Justice, in a position where the public has a thorough understanding of, involvement with and confidence in PBNI's services and effectiveness. The current effectiveness of PBNI services cannot be sustained without a significant increase in resources.

## Budgetary Estimates and Future Requirements

This section provides answers to the 4 questions framed in the letter from the Committee Clerk to PBNI dated 20 January 2009.

Do you consider that the budgetary estimates for your organisation, details of which were provided to the Committee by the Northern Ireland Office (restated below), are adequate, and, if not, why not?

Body	Current Status	Current Sponsor	2008/09 Resource Baseline £k	Future Status	Future Sponsor
Probation Board	Executive NDPB	Criminal Justice Directorate	16,778	Executive NDPB	Department of Justice

## Probation Board for Northern Ireland Response

The budgetary estimates for PBNI are not adequate as the baseline requested per the zero based review for the CSR07 period has not been fully met.

The unmet resource requests over the CSR07 period amount to £4,102K made up as follows:

Period	£'000
2008 – 09	£1,024
2009 – 10	£1,535
2010 – 11	£1,543

The consequences of the shortfall are a reduced organisational capability for PBNI, leading to:

- delays in the implementation of the Criminal Justice (Northern Ireland) Order 2008
- reduced supervision levels for offenders in the Community
- a reduction in funding to voluntary and community sector organisations

thereby reducing public confidence in the Criminal Justice System

In addition PBNI believes that its current levels of funding do not:

- provide for a ratio of offenders to Probation Officers that matches best practice and this means supervision levels for offenders can fall below the desired levels
- provide adequate funding for PBNI to work in partnership with the voluntary and community sector to reduce levels of offending and re-offending

Research carried out by PBNI in 2007 demonstrated that probation services in Northern Ireland had not enjoyed the significant increases in spending that occurred in England and Wales over the past decade. (Appendix 4)

*What significant, additional, requirements do you envisage, in future years, and could any of these be dealt with through an adjustment to your organisation's existing plans/priorities?*

## PBNI Response

PBNI considers that there are four areas that require additional resources as detailed below:

- **Criminal Justice (Northern Ireland) Order 2008 Implementation beyond 31 March 2011 - £4,840k per annum** – Criminal Justice Agencies (NIO/NIPS/PBNI) estimate that there will continue to be growth in the number of offenders under PBNI supervision each year until 2021 and this will require increasing levels of resources each year. The estimated total additional resource requirement for the period 2011-12 to 2013-14 is £14,520k and covers the following areas of work:

	£'000
Indeterminate Public Protection Sentences	222
Extended Public Protection Sentences	1,893
Determinate Custodial Sentences	2,317
Drug Treatment Testing Orders	165
Supervised Activity Orders	243
	4,840



### ■ Revision of Offender Supervision Ratios - £11,071k per annum

Following a revision of Northern Ireland Standards in preparation for the implementation of the Criminal Justice (Northern Ireland) Order 2008 it is proposed that the supervision ratios for offenders in the community should be revised as follows:

Risk Profile of Offender	Current Probation Officers: Offenders	Revised Probation Officers: Offender
Risk of Serious Harm <sup>1</sup>	1 1:10	1:8
High likelihood of re-offending	1:15	1:10
Medium likelihood of re-offending	1:20	1:15
Low likelihood of re-offending	1:25	1:20

Note 1 Refers to sexual and violent offenders

The change in supervision ratios will result in an increased demand for staff and the effect on the budget is set out in the table below:

Risk Profile of Offender	Current No. £'000	Current Unit Cost £	Total £'000	Revised Unit Cost £	Total
Risk of Serious Harm	80	8,439	675	11,759	941
High Risk	682	5,568	3,797	9,407	6,416
Medium Risk	1,397	4,219	5,894	6,269	8,758
Low Risk	1,133	3,367	3,815	4,708	5,334
Reports Written	9,581	271	2,597	668	6,400
			16,778		27,849

**Integration of Case Management System with Causeway - £1,285k Capital** – PBNI has been advised that due to budgetary pressures within the Causeway IT programme there is no longer sufficient capital resource within the programme to facilitate the integration of PBNI's case management system with Causeway. The programme has advised prospective participants to source the necessary capital funding themselves. This is estimated at £1,285K.

■ **Community Development Funding - £2,600k per annum** – PBNI has a long history of strong engagement at local level with the voluntary and community sector, providing funding to organisations who work with offenders and those at risk of offending. In previous years the budget for community funding was 20% of the overall PBNI funding. This has decreased to 7.5% in recent years due to budget pressures in other areas. Funding for projects is now only targeted at voluntary and community sector organisations that work with adjudicated offenders. All funding for preventative and diversionary work has been withdrawn.

In the Republic of Ireland the Probation Service makes 36% (€ 19m) of its annual budget of €52,8m available for funding voluntary and community sector work in support of service delivery to offenders.

The reinstatement of the PBNI Community Development budget requires an increase of £2,600k per annum.

*In the present Comprehensive Spending Review, please provide details of any unsuccessful bids and how you expect to deal with these in the future.*

## Probation Board for Northern Ireland Response

### CSR07

		2008-09 £'000	2009-10 £'000	2010-11 £'000
Baseline requested as per zero based review		17,127	17,544	18,150
Criminal Justice (Northern Ireland) Order				
2008 Implementation requested		675	2,588	3,390
		<b>17,802</b>	<b>20,132</b>	<b>21,540</b>
Amounts granted for baseline CSR07		16,265	16,431	16,625
Amounts granted for Criminal Justice (Northern Ireland) Order 2008				
Implementation		513	2,166	3,372
		<b>16,778</b>	<b>18,597</b>	<b>19,997</b>
<b>Total Deficit</b>		<b>1,024</b>	<b>1,535</b>	<b>1,543</b>
<b>Made up of:</b>	<b>Notes</b>			
Transfer of baseline to NIPS				
Re Prison Visitor Centres	1	175	175	175
Community Development Funding	2	310	61	-50
Accredited and Approved Offending				
Behaviour Programmes	3	15	15	15
Partnership Working	4	180	180	180
Public Protection Arrangements				
Northern Ireland (existing work)	5	15	15	15
Supervision of Offenders				
(Basic work savings)	6	167	167	167
Further savings required	7	0	500	1,000
Timing of Criminal Justice (Northern Ireland) Order 2008 Implementation	8	162	422	41
<b>Total Deficits</b>		<b>1,024</b>	<b>1,535</b>	<b>1,543</b>

### Notes

1. NIPS has assumed responsibilities for funding Prison Visitor Centres.
2. Funding to Community Groups will be reduced.
3. Development work on Accredited Offending Behaviour Programmes will proceed at a slower rate.

4. Work with Community Safety Partnerships will be scaled back.
5. Development work in PPANI will proceed at a slower rate.
6. Frontline service delivery will be reduced.
7. Frontline service delivery will be reduced.
8. Implementation will be reduced or delayed until funding is in place.

**Can you please provide, for each main spending area, the breakdown between Resource and Capital DEL, Annually Managed Expenditure and administration costs for each of the years 2005/06 to 2010/11, that is the outturns for the three years prior to Spending Review 07 and the plans for the three years of the Review?**

### Probation Board for Northern Ireland Response

Outturn from 2005-06 to 2007-08

<b>Year</b>	<b>Resource £'000</b>	<b>Capital £'000</b>
2005-06	14,409	1,058
2006-07	15,654	458
2007-08	15,544	278

Budget Allocations for CSR07 Period

<b>Year</b>	<b>Resource £'000</b>	<b>Capital £'000</b>
2008-09	16,778	500
2009-10	18,597	1,923
2010-11	19,997	2,628

As an NDPB that is responsible for frontline service delivery, all expenditure in Departmental estimates is allocated to Programme Costs. The categories Annually Managed Expenditure and Administration costs are only relevant to the Sponsor Department.

## Organisational Structure

PBNI currently employs approximately 360 staff whose main areas of work are community supervision, community service, prisons and corporate services

The Board is a Non-Departmental Public Body established by the Probation Board (Northern Ireland) Order 1982. Members are appointed by the Secretary of State for Northern Ireland, following an open competition governed by the Nolan Principles, for a three year term which may be renewed for a further term.

The Chairman is Ronnie Spence and Gillian Shaw is the Deputy Chairman. There are currently 13 Members. The Board meets monthly and carries out much of its work through three Committees: Corporate Services, Policy and Practice and Audit

In addition to its Headquarters, PBNI has service delivery centres, including specialised units, around Northern Ireland with three teams in prison institutions and reporting centres in a number of locations where there is no permanent presence (see Appendix 5).

In its most recent submission to the Equality Commission PBNI staffing was:

- 45.6% Protestant
- 46.2% Roman Catholic
- 8.2% Not determined

In terms of gender:

- 67% were female
- 33% male

Brian McCaughey was appointed to the new post of Director of Probation in August 2008. The Senior Management Structure is being reviewed at present and a new structure will be introduced in 2009. The current membership of the Board and the Senior Management Team is given below:

## Board Structure

### Board Members:

- Mr Ronnie Spence, CB (Chairman)
- Mrs Gillian Shaw, CBE (Deputy Chair)
- Mrs Jo Daykin-Goodall
- Mr Terry Flanagan
- Mr Alasdair MacLaughlin
- Mr Patrick McAteer
- Mrs Hilary McCartan
- Mr Joseph McKeever
- Dr Robin McKee
- Mr Robert McNeill
- Mr William Osborne
- Mr James Quinn
- Ms Koulla Yiasouma

---

## Senior Management

Mr Brian McCaughey  
Mr David Van Der Merwe  
Mr Paul Doran Deputy  
Ms Cheryl Lamont Deputy  
Mr Peter Moss

Director of Probation  
Chief Management Officer  
Chief Probation Officer  
Chief Probation Officer  
Board Secretary

## Operations

Mr Hugh Hamill  
Mr Graham Kelly  
Mr Jimmy Moore  
Ms Roisin Muldoon  
Mr Terry Doherty  
Ms Geraldine O'Hare  
Ms Louise Cooper

Assistant Chief Officer  
Assistant Chief Officer  
Assistant Chief Officer (Acting)  
Assistant Chief Officer  
Assistant Chief Officer (Acting)  
Head of Psychology  
SFI Programme Manager & Information and Research  
Manager

## Corporate Services

Mrs Maura Canavan  
Ms Gillian Faulkner  
Mr Brian McCutcheon  
Ms Gayle McGurnaghan  
Mrs Lisa Maginnis

Finance & Accommodation Manager  
Human Resources Manager  
Information Technology Manager  
Learning & Development Manager  
PR & Communications Officer

# Strategic Priorities and Associated Business Objectives

## Mission, Aim and Vision

In our work, we help to prevent re-offending by assessing offenders, challenging their offending behaviour, changing their attitudes and behaviour and thereby protecting the public.

For its Corporate Plan 2008-2011 the Board has identified five strategic priorities:

- Alliances and partnerships
- Assessing the risk posed by offenders
- Changing offenders' attitudes and behaviour
- Public Understanding and confidence
- Organisational excellence

The Corporate Plan is available on the PBNI website – [www.pbni.org.uk](http://www.pbni.org.uk)



## Appendix 3

### Key Operational Issues

Over the period 2008-11 the Probation Board will be responding to the increased demands for its services and moving ahead to fulfil its new range of responsibilities under the Criminal Justice (Northern Ireland) Order 2008. This section gives a brief statement about our current and ongoing work, partnership in our work and our responsibilities.

#### What we do

Our main strands of work are to:

- assess convicted offenders and prepare 6,000 pre-sentence reports annually to assist the courts in sentencing
- 3,500 other reports to support key decision makers including Parole Commissioners
- supervise 3,200 offenders in the community on a daily basis
- provide a range of services to 800 offenders in prisons who will be supervised on their release
- provide behavioural change programmes covering areas such as sex offending, domestic violence, drug/alcohol-related offending, anger management and violence.
- offer a Victim Information Scheme to any person who has been the direct victim of a criminal offence where the offender has been put under Probation supervision
- fulfil legal responsibilities within PPANI for sexual and violent offenders

#### Community Sentencing

If an offender does not pose a risk of serious harm to the public, a community sentence is the most effective way to reduce re-offending.

Community sentencing combines restrictions on the individual and interventions to challenge and change their behaviour. It requires offenders to make amends for their crime through compulsory unpaid work in and on behalf of communities.

PBNI currently manages the following community sentences:

**Probation Order** - is an agreement between the offender and the Court regarding their future conduct and it can be made for between six months and three years. The Probation Board supervises the implementation of the order in the community and enforces offender compliance.

**Community Service Order** - can be made by the court when an Offender is found guilty or pleads guilty to an offence punishable by imprisonment. If the offender consents they will be required to carry out unpaid work in the community. An Order can be made for at least 40 hours and not more than 240 hours

**Custody Probation Order** - is a sentence of the Court requiring an offender to serve a period of imprisonment (offence must justify 12 months or more) followed by supervision by

a Probation Officer in the community (the period of supervision will be 1 to 3 years commencing on date of release)

**Combination Order** - Is a sentence of the Court which combines a Probation Order and a Community Service Order

The Criminal Justice (Northern Ireland) Order 2008 introduces a range of new sentences:

- indeterminate and extended sentences for dangerous sexual and violent offenders. Individuals posing a risk of serious harm to be detained indefinitely or to the end of their extended sentence.
- a new determinate custodial sentence for all other offenders with a custodial period, set by the court, to be served in full. Half the sentence is served in custody, the remainder under licence in the community.
- electronic monitoring to allow for more effective monitoring of curfews on supervised offenders in the community.
- Parole Commissioners to assess the suitability of dangerous offenders for release and to review decisions on recall of licensed prisoners to custody.
- statutory arrangements creating a duty on criminal justice agencies and others to share information to more effectively assess and manage the risk posed by certain sexual and violent offenders (Public Protection Arrangements NI – PPANI)
- a conditioned early release scheme allowing prisoners to be released, subject to curfew, towards the end of their sentence
- supervised activity orders as an alternative to committal to custody for fine default.

If the Offender breaks the rules and requirements of the community order, they will be returned to court and will be given an additional penalty. In some cases offenders may be re-sentenced and sent to prison.

## Effectiveness of Supervision

About 4,000 offenders are under supervision at any given time (6,500 in total annually). Of these, 32% present a low likelihood of reoffending, 43% a medium likelihood and 25% a high likelihood. Independent research on adult reconviction rates has shown that supervision is more effective in Northern Ireland than in England & Wales or Scotland.

### Adult Reconviction Rates

	<b>N. Ireland</b> %	<b>England &amp; Wales</b> %	<b>Scotland</b> %
Community Supervision (all sentences)	31	51	51
Custody	48	65	62
Community Service	25	38	39

(Figures released in April 2008 for prison releases/ community disposals in 2004. Source: NIO/ Home Office/ Scottish Executive. No figures are available for the Republic of Ireland.)

## PBNI’s New Responsibilities

The Criminal Justice (Northern Ireland) Order 2008 which received Royal Assent in May 2008 introduced a range of new sentencing options. These changes mean that PBNI will have additional responsibilities, including:

- Assessment of risk, including risk of serious harm posed by violent and sexual offenders
- Community supervision of offenders subject to indeterminate and extended custodial sentences

- Supervision of all other prisoners on release
- Offending Behaviour Programmes in custody and community
- Assessment and reports to the Parole Commissioners to inform decisions about release and recall
- Reports to the Executive Recall Unit when offenders fail to comply
- Strengthened community supervision of curfews through the use of electronic monitoring
- Continued supervision of offenders subject to the community sentences of Probation Order, Community Service Order and Combination Order.

## Working in Partnership

Probation work involves close engagement with local communities and PBNI has always worked in partnership with the voluntary and community sector. The Board continues to work closely with statutory, community and voluntary organisations to protect the public by working with the courts, other agencies and partners to reduce offending and integrate offenders successfully back into the community.

An important facet of partnership working is PBNI's Community Development funding programme, under which grants of over £1 million per annum are allocated to support more than 50 community and voluntary partners across Northern Ireland.

The Board is currently reviewing its partnership arrangements with a view to introducing a new approach in 2010.

As part of the Criminal Justice System Northern Ireland (CJSNI), PBNI works with the Northern Ireland Office, the Northern Ireland Court Service, the Northern Ireland Prison Service, the Police Service of Northern Ireland, the Public Prosecution Service Northern Ireland and the Youth Justice Agency of Northern Ireland

## Equality and Diversity

The Board has developed procedures and internal working groups to meet the requirements of Section 75 including Good Relations and a Disability Action Plan. All new and revised policies are screened (and proofed for human rights) and are put out to public consultation. The Board places periodic advertisements in the press to announce forthcoming public consultations and invite responses from parties wishing to participate in them. Detailed procedures are in place for all public consultations. The board conducts extensive consultation in preparing its Corporate Plan; it also consults partner organisations and those involved in a particular field prior to drafting or amending policies and procedures for its operational work.

A Disability Action Plan is in place and staff groups have been active in the field of Good Relations, including our approach to foreign national offenders.

The Board will cooperate with the Criminal Justice System as a whole in promoting equity monitoring.

The Board's commitment will be enshrined in the new Equality Scheme required by the Equality Commission in 2009.

## Conclusion

The main operational issues for the Probation Board in 2008-11 are:

- Risk Assessment and Management of offenders across the continuum of risk
- Revising Northern Ireland Standards in light of best practice
- Sentencing Framework Implementation, in particular the assessment and management of high risk sexual and violent offenders
- Preparing for Devolution
- Partnership and Commissioning of Services
- Priority Youth Offending Team (with the Youth Justice Agency)
- Women's Strategy/Centre
- PBNI/NIPS Integrated Offender Management Model
- Cross-Jurisdictional co-operation
- Modernising the Probation Estate
- Victims Information and Effective Restorative Interventions

## Appendix 4

## Funding of Probation in Northern Ireland Compared with England and Wales

The tables below were compiled by PBNI from its own data and from data contained in the report "Ten Years of Criminal Justice under Labour – An independent audit" by Enver Solomon, Chris Eades, Richard Garside and Max Rutherford.

	Northern Ireland	England & Wales
Population (100,000)	17.42	537.29
No. of staff	355.50	21,370.98
No. staff per 100,000 population	20.41	39.78
PBNI Staff as a % England & Wales	51.31%	..
Resources 2007/08 (£)	17,384,000	728,119,000
Resources per 100,000 population	997,933	1,355,169
PBNI resources as a % England & Wales	73.64%	..

### Population and Staffing is as at December 2006

	Northern Ireland	England and Wales
<b>1998/99 Expenditure</b>	£11.5 million	£300 million
2004/05	£14.2 million	£900 million
<b>Increase in real terms</b>	<b>13%</b>	<b>160%</b>
<b>1998/99 Staff</b>	307	14,000
2004/05	323	21,100
<b>Increase</b>	<b>5.4%</b>	<b>50%</b>

### Locations

#### **Headquarters**

80/90 North Street, Belfast, BT1 1LD 028 9026 2400  
info@pbni.org.uk

#### **Service Delivery Centres**

Antrim

Armagh

Ballymena

Belfast

- Assessment Unit
- Integrated Supervision Unit
- Programme Delivery Unit
- Victim Information Scheme
- Youth Justice Unit
- East
- North
- South
- West

Coleraine

Dungannon

Enniskillen

Larne

Lisburn

Londonderry

- Waterside
- Cityside

Magherafelt

Newry

Newtownards

Omagh

Portadown



**Prison Teams**

H M P Maghaberry

H M P Magilligan

H M YOC & P Hydebankwood

**Reporting Centres**

Belfast, Shankill

Cookstown

Downpatrick

Glengormley

Limavady

Lurgan

Strabane

# Final Request Probation Board Northern Ireland

## 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

12th May 2009

Mr Brian McCaughey  
Probation Board Northern Ireland  
80-90 North Street  
Belfast  
BT1 1LD

Dear Mr McCaughey,

### **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission and for appearing before the Assembly and Executive Review Committee to give oral evidence, recently.

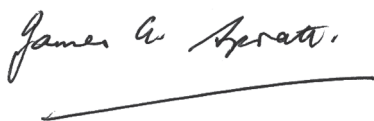
The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month. However, you will recall that, during the oral evidence session, you were asked to indicate if there were any additional financial pressures you wished to identify to the Committee.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of any easements, or new pressures, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details, electronically, to the Committee Clerk by midday, 18 May 2009 at the following address

[stephen.graham@niassembly.gov.uk](mailto:stephen.graham@niassembly.gov.uk)

Yours sincerely



**Jimmy Spratt**  
Chairman

# Response from Probation Board Northern Ireland

## 18th May 2009

**Emailed to: [stephen.graham@niassembly.gov.uk](mailto:stephen.graham@niassembly.gov.uk)**

Our Ref: DvdM/lc

18 May 2009

Mr J Spratt MLA  
Chairman to Assembly and Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
BELFAST  
BT4 3XX

Dear Mr Spratt,

### The Financial Implications Relating to the Devolution of Policing and Justice Matters

Thank you for your letter of 12 May 2009 giving PBNI a further opportunity to confirm that the position we declared in our written and oral evidence remains accurate and up to date.

We have reviewed our submission to the Committee and taken advice on our preparations for devolution and have been advised that we should establish a Secretariat Service to enable PBNI to respond to the Assembly following devolution. We estimate the annual costs to be £96k.

I can confirm that, with the addition of £96k per annum for Assembly Secretariat Services, the £18,511k per annum in revenue costs and the one off capital cost of £1,285k declared in our written and oral evidence remains accurate and up to date. The pressures totalling £18,607k per annum for revenue costs and a one-off capital cost of £1,285k are summarised below:

#### Revenue Costs

■ Criminal Justice (Northern Ireland) Order 2008 Implementation beyond 31 March 2011	£ 4,840k per annum
■ Revision of Offender Supervision Ratios	£11,071k per annum
■ Community Development Funding	£ 2,600k per annum £18,511k per annum
■ Assembly Secretariat Services	£96 k per annum £18,607k per annum

#### Capital Costs

■ Integration of Case Management System with Causeway	£ 1,285k one-off cost
---	-----------------------

If you have any queries please contact me on 028 9026 2437.

Yours sincerely

BRIAN McCAUGHEY  
Director of Probation

# Written Submission from the Police Ombudsman for Northern Ireland 6th February 2009

Our Ref AL/MQ  
6 February 2009

Mr Stephen J Graham  
Clerk to the Assembly and  
Executive Review Committee  
Room 428  
Parliament Buildings  
Stormont  
BT4 3XX

Dear Mr Graham

I write further to your letter of 20 January in which you requested on behalf of the Executive Review Committee certain information with regard to my Office. The information which you requested is detailed below.

Do you consider that the budgetary estimates for your organisation, details of which were provided to the Committee by the NIO, are adequate, and, if not, why not?

The overall estimate that is provided for the running of the Office is considered to be adequate.

There are however a number of matters that I consider it appropriate to draw to your attention with regard to resourcing. The Office currently has a role in relation to the investigation of matters that resulted in a death during the period 1969 to 1998, in which a police officer was involved in the circumstances of such a death. I have formally advised the NIO that the level of resourcing currently allocated to the Office in respect of this work is insufficient to achieve the outcomes that are required by reference to the volume of work that is required and have submitted a business case to the NIO with regard to this. A decision with regard to the future of these matters is awaited pending the recent report issued by the Consultative Group on the Past, co chaired by Lord Eames and Denis Bradley. Any ongoing requirement on the Office to continue with this work would require additional funding in accordance with the levels stated in that business case.

The information that was provided in Annex 1 of your letter contained a figure for DEL resource which reflected the position prior to conclusion of the November monitoring round with the NIO. I have attached at Appendix 1 to this letter additional clarification in respect of the level of DEL resource provided to the Office in 2008/09. I trust that this is clear, however should you require any additional information with regard to this matter, please contact Mrs Olwen Laird, Director of Corporate Services in the Office.

What significant, additional, requirements do you envisage, in future years, and could any of these be dealt with through an adjustment to your organisation's existing priorities.

Apart from the needs of HET related investigations, the Office does not currently envisage any significant additional requirement for DEL resource.

In the present Comprehensive Spending Review, please provide details of any unsuccessful bids and how you expect to deal with these in the future.

There were no unsuccessful bids with regard to CSR07.

Can you please provide, for each main spending area, the breakdown between Resource and Capital DEL. Annually Managed Expenditure and administration costs for each of the years 2005/06 to 2010/11, that is the outturns for the three years prior to the Spending Review 07 and the plans for the three years of the Review.

	Extracts from Annual Report and Accounts			CSR07		
	2005/06	2006/07	2007/08	2008/09**	2009/10	2010/11
Programme Staff	5,353	5,680	5,885	5,134	5,468	5,627
Programme Non Staff	2,328	2,443	2,364	2,480	2,660	2,720
Non Cash	327	392	368	855	879	902
HET				913	931	950
Total	8,008	8,515	8,617	9,382	9,938	10,199
HET	93*	497*	895*			
Capital	425	764	300	355	260	185

\* Programme costs reported in Annual Report and Accounts includes HET related expenditure of £93k, 497k and 895k respectively for 2005/06 to 2007/08

\*\* CSR07 figures as adjusted by in year easement refer Appendix 1.

If I can assist further, please advise me.

Yours sincerely

**Al Hutchinson**  
**Police Ombudsman for Northern Ireland**

cc Anthony Harbinson, Director of Resources, NIO

## Appendix 1

**CSR07 Allocation for 2008/09**

	<b>DEL Resource</b>	<b>Capital</b>
		295
Staff Costs	5,314	
Non Staff	2,600	
Non Cash	855	
HET	913	
<b>Total</b>	<b>9,682</b>	
Resource Easement August Monitoring	200	
<b>Information as per your Annex A</b>	<b>9,482</b>	
Resource Easement November Monitoring	100	
Capital Pressure November Monitoring		60
<b>Revised in year Allocation</b>	<b>9,382</b>	<b>355</b>

The Office eased resources back to the NIO during the financial year as a result of a number of specific matters. The factors which resulted in the easements back to the NIO are not expected to be recurring matters and therefore the original level of the CSR07 allocation for the Office is considered to be the appropriate baseline against which to assess the future requirements for funding. The factors that resulted in financial easement during 2008/09 included significant delays to security clearance processes which delayed the appointment of new staff; the delay in being charged for maintenance costs of a new case handling system whose implementation date was deferred but which is now in place and delays in the award of accredited investigation training which resulted in the associated costs being deferred.



# Final Request to the Police Ombudsman for Northern Ireland 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast BT4 3XX

12th May 2009

Mr Al Hutchinson  
Office of the Police Ombudsman  
New Cathedral Buildings  
St. Anne's Square  
11 Church Street  
Belfast BT1 1PG

Dear Mr Hutchinson,

## **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission to the Assembly and Executive Review Committee, recently.

As you will know, the Committee also conducted some oral evidence sessions in which witnesses were asked to indicate if there were any additional financial pressures they wished to identify to the Committee.

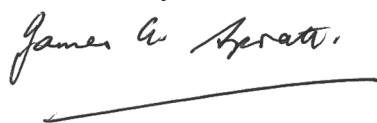
The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of new pressures, or easements, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details to the Committee Clerk by midday, 18 May 2009 to the following address

stephen.graham@niassembly.gov.uk

Yours sincerely



**Jimmy Spratt**  
Chairman

# Response from the Police Ombudsman for Northern Ireland 14th May 2009



Our Ref AL/MQ

14 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stromont Estate  
Belfast BT4 3XX

Dear Mr Spratt

**Re: The Financial Implications relating to the Devolution of Policing and Justice Matters.**

Thank you for your letter of 12 May 2009, providing an opportunity to add any additional information to my response of 6 February 2009.

I have reviewed your request with key staff and we have no further information to add.

Yours sincerely

  
**AL HUTCHINSON**  
*Police Ombudsman for Northern Ireland*



**Al Hutchinson - Police Ombudsman for Northern Ireland**  
New Cathedral Buildings, St. Anne's Square, 11 Church Street, Belfast BT1 1PG Tel: 028 9082 8727  
Fax: 028 9082 8615 Email: al.hutchinson@policeombudsman.org Web: www.policeombudsman.org  
Telephone calls to this office may be recorded and monitored for training, quality assurance and other lawful purposes

# Written Submission from Police Rehabilitation and Retraining Trust 3rd February 2009



## Rehabilitation and Retraining Trust

Helping to build new futures

The Committee Clerk  
Stephen J Graham  
Room 428  
Parliament Buildings  
Stormont  
Belfast BT4 3XX

03 February 2009

Dear Stephen

### **RE: NORTHERN IRELAND ASSEMBLY QUESTIONS**

Thank you for your letter of 20 January 2009 in relation to the financial information provided to the Assembly by the NIO. The replies pertaining to The Police Rehabilitation and Retraining Trust (PRRT) are set out below in the order in which asked.

1. The Trust is given a funding allocation (for 08/09 £2,234K) from which both the funding of our services and capital expenditure is drawn. Historically the Trust has always kept within its allocation albeit having to juggle services against capital outlay.

As client need has risen and demand on services increased in parallel the difficulty of finding funding for capital expenditure, often to meet legislative or necessary refurbishment needs, from within the current budget allocation has become more difficult.

2. Significant additional requirements in future years would be around capital expenditure if the Trust remains on the current site. The buildings are at a stage where considerable repair and upgrade is needed. Capacity has also been reached and additional accommodation is required.

The above could not be met by adjusting existing plans/priorities. Further into the future – 2010/2011 – is the prospect of relocation. The Trust has been informed it must leave the current site by 2011. Some provisional costings in relation to this have been completed and come in around £5m.

3. As previously stated, the Trust has historically 'cut its cloth' in line with its funding allocation, consequently we have not in the past made bids for additional funding. Should the Trust find itself having insufficient funding to meet capital needs the consequences are:



PRRT Maryfield Complex 100 Belfast Road Hollywood Co Down BT18 9QY Northern Ireland  
Tel: +44 (0)28 9042 7788 Fax: +44 (0)28 9042 3566 [www.prrt.org](http://www.prrt.org)

The Police Rehabilitation and Retraining Trust is a company limited by guarantee. Registration No. NI35737  
Registered Office: Maryfield Complex 100 Belfast Road Hollywood Co Down BT18 9QY Northern Ireland



## Rehabilitation and Retraining Trust

Helping to build new futures

- a. Reduced Service Delivery. The services provided by PRRT would be reassessed and ultimately reduced, resulting in longer waiting lists.
- b. Staff Redundancies. A reduced service delivery would reflect in reduced staffing levels with redundancies of clinical and / or careers and training professionals with associated administrators.
- c. Legislative Compliance. The choice between service delivery and legislative compliance would become even more stark. But it would make uncomfortable reading for a Government funded rehabilitation organisation to be found wanting under DDA or Health and Safety Legislation.

4. PRRT receives programme costs from NIO. The table below shows the total programme costs received, including two extra lines for administration (salary costs only) and capital spent. As previously explained, PRRT are forced to reduce the programme costs total for any capital spend.

Costs	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11
Programme costs	£2,114K	£2,120K	£2,175K	£2,234K	£2,294K	£2,356K
Admin (inc. above)	£835K (40%)	£959K (45%)	£1,001K (46%)	£1,077K (48%)	£1,302K (57%)	£1,367 (58%)
Capital	£64K	£13K	£41K	£90K	£65K*	£65K*

PRRT run a number of projects which are funded separately from core business; one being the Full Time Reserve severance programme. The programme costs shown above is the funding provided for core PRRT services only. The salary figures in PRRT statutory accounts however, show all salaries for the company and do not differentiate between project staff and core staff. PRRT has endeavoured to split the figures from records kept, and thus we add the proviso that given the time limits to produce this information the above totals for salary costs are very close approximates.

\* The above does not take account of a major building upgrade and extended accommodation. Such would require a business case and a very broad estimate at this stage would be in the region of £1m.

*Yours sincerely*

**Sheamus Hamill QPM MA**  
 Chairman of the Board of Directors

# Letter from Chief Executive of Police Rehabilitation and Retraining Trust 27 March 2009

The Committee Clerk  
Stephen J Graham  
Room 428  
Parliament Buildings  
Stormont

Belfast BT4 3XX

27 March 2009

Dear Stephen

Re: Invitation to The Assembly and Executive Review Committee to Visit Prrt

I appreciate your recent invitation to appear before the Assembly and Executive Review Committee to provide oral evidence in relation to the Police Rehabilitation and Retraining Trust. I hope your Committee found it a worthwhile and productive exercise in discussing a number of important issues in relation to the Trust with Mr Hamill and myself.

Although I am aware this is an extremely demanding period for the Committee, I would like to extend an invite to the members of the Committee to visit PRRT in order to further explore the work we carry out, discuss our vision for the future and meet the staff. I am, of course, happy to extend this invite to members on an individual basis, though I feel it would be more beneficial (and less resource demanding on our behalf) if the Committee came to PRRT as a group.

If there is any further information you or any of the Committee require in respect of this organisation, please do not hesitate to contact me.

Yours sincerely

**Eddie Gaw**  
Chief Executive  
C.c. Oliver Bellew

# Letter to Police Rehabilitation and Retraining Trust

## 27 March 2009

Mr Jimmy Spratt  
Chairman of the Assembly and Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

Tel: (0)28 9052 1784  
Fax: (0)28 9052 5917

27 March 2009


Mr Sheamus Hamill QPM MA  
Police Rehabilitation and Retraining Trust  
Maryfield Complex  
100 Belfast Road  
Holywood  
BT18 9QY

Dear Mr Hamill

On behalf of the Assembly and Executive Review Committee, I would like to convey my thanks to you and your colleagues, for your attendance at the Committee meeting on 24 March 2009.

The information you were able to provide will inform the Committee's deliberations on the financial implications of devolving a range of policing and justice matters.

Yours sincerely



**Jimmy Spratt**

Chairman



---

# Final Request To Police Rehabilitation and Retraining Trust 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

12th May 2009

Mr Eddie Gaw  
Police Rehabilitation and Retraining Trust  
Maryfield Complex  
100 Belfast Road  
Holywood  
BT18 9QY

Dear Mr Gaw,

## **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission and for appearing before the Assembly and Executive Review Committee to give oral evidence, recently.

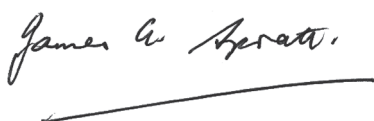
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My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of any easements, or new pressures, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details, electronically, to the Committee Clerk by midday, 18 May 2009 at the following address

[stephen.graham@niassembly.gov.uk](mailto:stephen.graham@niassembly.gov.uk)

Yours sincerely



**Jimmy Spratt**  
Chairman

# Response from Police Rehabilitation and Retraining Trust 15th May 2009

The Committee Clerk  
Stephen J Graham  
Room 428  
Parliament Buildings  
Stormont  
Belfast  
BT4 3XX

15 May 2009

Dear Stephen

## Re: The Financial Implications Relating to the Devolution of Policing and Justice Matters

With reference to your letter of 12 May 09 requesting the current financial information in respect of additional resources that will be required in the future by PRRT, I can confirm the position remains as set out by myself and the Chairman in the oral evidence from the 24 March 09 hearing. However, it would be useful to clarify the position on the additional resourcing requests:

(i) Relocation Costs

If PRRT is required to relocate due to another Government Agency locating to Maryfield we would require a significant amount of resources. We have done some initial costing exercises on 2 options:

- Refurbishment of an existing government property - £5m;
- Development of new building on Greenfield site - £8.5m

(ii) Ongoing Operational / Business Development Costs

As discussed at the Hearing, we would estimate that an additional £500k resource costs would allow us to improve and develop the current level and quality of services PRRT offer.

(iii) Maryfield Capital Costs

If PRRT are to remain at Maryfield, then there needs to be a significant amount of work carried out to the building, which has not yet been addressed due to the ongoing uncertainty around the lease and permanency of residence for PRRT. An estimate of these costs is extremely difficult, however we feel that a “one off” additional capital injection in the region of £300k- £500k would address a number of urgent issues.

If you require any further information please contact me.

Yours sincerely

**EDDIE GAW**  
**CHIEF EXECUTIVE**

C.c. Anthony Harbinson, NIO  
Darren Smyth, NIO

---

# Written Submission from Independent Assessor for Police Service for Northern Ireland Recruitment 3 February 2009

THE ORCHARD,  
158 BANGOR ROAD, HOLYWOOD,  
CO. DOWN, BT18 0EY  
TELEPHONE: 028 90422221

3 February 2009

Dear Mr Graham,

Independent Assessor for PSNI Recruitment Vetting.

Thank you for your letter of 2 February and for the copy of the letter of 20 January 2009 which I had not seen.

The Independent Assessor is a person appointed by the Secretary of State under the Police (Recruitment) (Northern Ireland) Regulations 2001 to report to the Chief Constable where there has been a request for a review of a decision of a vetting panel that a candidate is unsuitable for appointment as a police trainee.

The resource budget for this consists of an annual retainer fee of £11,000 plus per diem fees in accordance with days worked. I am advised that the budgetary estimates are adequate based on the expenditure of the previous post-holder.

It is not envisaged that there will be any significant additional requirements in future years.

Yours sincerely



Sir Anthony Campbell

Stephen J Graham Esq.  
Clerk to Assembly and Executive Review Committee,  
Room 428  
Parliament Buildings,  
Stormont Estate,  
Belfast BT4 3XX

# Final Request to Independent Assessor for Police Service for Northern Ireland Recruitment

## 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast BT4 3XX

12th May 2009

Mr Richard Chambers QC  
PSNI Independent Assessor  
The Consensia Partnership  
PO. Box 268  
Belfast BT1 5PH

Dear Mr Chambers,

### **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission to the Assembly and Executive Review Committee, recently.

As you will know, the Committee also conducted some oral evidence sessions in which witnesses were asked to indicate if there were any additional financial pressures they wished to identify to the Committee.

The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month.

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[stephen.graham@niassembly.gov.uk](mailto:stephen.graham@niassembly.gov.uk)

Yours sincerely



**Jimmy Spratt**  
Chairman

Letter to  
Chief Constable of Police Service for Northern Ireland  
28 January 2009

Stephen J Graham  
Clerk to the Assembly and Executive Review Committee  
Room 428  
Northern Ireland Assembly  
Parliament Buildings  
Stormont Estate  
Belfast

28 January 2009

Sir Hugh Orde  
Chief Constable  
Brooklyn PSNI HQ  
65 Knock Road  
Belfast  
BT5 6LE

Dear Chief Constable

**ASSEMBLY AND EXECUTIVE REVIEW COMMITTEE – DEVOLUTION OF POLICING AND JUSTICE MATTERS**

I wrote to you on 20 January 2009 to invite you to respond to four general questions relating to the financial implications of devolving policing and justice matters. However, when the Committee met today to begin its consideration of the Category Two List of Issues, Members touched on the costs of ‘policing’ parading.

The Committee would be grateful if you were to supply the figures for the costs of ‘policing’ parading for the past five years, up to 2007/2008.

May I take this opportunity to thank you again for giving up your time to assist the Committee.

Yours sincerely

**Stephen J Graham**  
Committee Clerk

# Written Submission from Chief Constable of Police Service for Northern Ireland 6th February 2009



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

**SIR HUGH ORDE OBE  
CHIEF CONSTABLE**

Our Ref: Com Sec 09\391

6 February 2009

A handwritten signature in black ink, appearing to read 'Dea Stepha', written over a horizontal line.

## **DEVOLUTION OF POLICING AND JUSTICE MATTERS**

Thank you for your letters dated 20 and 28 January 2009. I will address your requests as you have presented them and as they were received.

### **Budgetary estimates**

The total available Resource DEL budget for the PSNI in 2008/09 (included in Annex A of your letter) was correct at a point in time. The current agreed budget allocation is £933,413,000.

PSNI has experienced significant financial pressures in the current year, primarily due to a sudden increase in historic Hearing Loss claims and an announcement by the Home Secretary, impacting the size of pension commutation payments. As a result we identified a £24.4m funding gap in 2008/09. To achieve a breakeven plan in the current financial year, it was necessary for the PSNI to implement budget cuts totalling £15.3m in the last 3 months of the year, and for NIO to transfer £9.1m from the budget allocation in future years. This is clearly not a sustainable solution.

### **Additional requirements in future years**

PSNI has recently produced initial estimates for the next 2 financial years. The estimates indicate a resource funding gap of £101.3m in 2009/10 and £74.8m in 2010/11, together with a capital funding gap of £14.7m in 2009/10 and £14.4m in 2010/11. Clearly, these estimates include a number of significant pressures, which could not be dealt with in existing plans. In particular, discussions are ongoing with the Northern Ireland Policing Board and the Northern Ireland Office about how to fund the pressures arising from historic Hearing Loss and NICS Equal Pay claims, which alone total £64.3m in 2009/10. Should these two specific pressures not score against existing budgets, then the residual resource funding gap would be £37.0m in 2009/10 and £27.7m in 2010/11.

Private Office, Brooklyn, 65 Knock Road, Belfast, Northern Ireland BT5 6LE  
Telephone: 028 90 561613 Fax: 028 90 561645 Email: comsec1@psni.pnn.police.uk



*Calls within Police Service of Northern Ireland telephone system may be monitored or recorded*



### Details of unsuccessful bids

Following the most recent Comprehensive Spending Review settlement, the PSNI faced a significant funding gap of £161.8m as set out in the table below.

Funding Gap across CSR 2007 period				Table 1
	2008/09 £m	2009/10 £m	2010/11 £m	Total £m
<b>Resource</b>				
Shortfall on CSR bid	24.9	33.7	30.2	88.8
Additional pressures, arising from normalisation and historical inquiries	12.0	11.0	11.5	34.5
<b>Resource funding gap</b>	<b>36.9</b>	<b>44.7</b>	<b>41.7</b>	<b>123.3</b>
<b>Capital</b>				
Shortfall on CSR bid	19.1	15.7	3.7	38.5
<b>Capital funding gap</b>	<b>19.1</b>	<b>15.7</b>	<b>3.7</b>	<b>38.5</b>
<b>Total funding gap</b>	<b>56.0</b>	<b>60.4</b>	<b>45.4</b>	<b>161.8</b>

Considerable work was undertaken to address this funding shortfall. Options for reductions were presented and agreed by our Senior Management Team and ratified by the Policing Board.

These reductions are summarised in the following table.

Reductions to meet CSR Funding Gap - Resource				Table 2
	2008/09 £m	2009/10 £m	2010/11 £m	Total £m
Overtime, Travel & Subsistence	7.0	13.7	19.4	40.1
Human Resource costs (including PCSOs)	12.7	16.2	13.0	41.9
Incidentals	4.5	7.1	5.5	17.1
Transport	2.0	1.0	1.0	4.0
Telecoms & Technology (including Patten)	7.0	4.2	-	11.2
Accommodation Services	2.7	1.2	-	3.9
Supplies, Catering & Publications	1.0	1.0	0.8	2.8
<b>Total reductions identified</b>	<b>36.9</b>	<b>44.4</b>	<b>39.7</b>	<b>121.0</b>

*Residual deficit of £2.3m was to be addressed over the period.*

To achieve the shortfall of £38.5m in capital budgets, a number of planned developments were delayed, including Cookstown, Ballymoney, Downpatrick, Armagh, Castlereagh, and the purpose built Call Management facilities and new facilities to store forensic exhibits.

It is worth noting that cost projections across the CSR period are already based on the assumption that all remaining Full Time Reserve Officers will leave the Service by 31 March 2011. This assumption is of course contingent on a security review, which is yet to be carried out. Should any Full Time Reserve Officers be retained, further pressures would result.

**Breakdown of costs 2005/06 – 2010/11**

The breakdown of total Resource DEL, Capital DEL and AME is shown in table below:

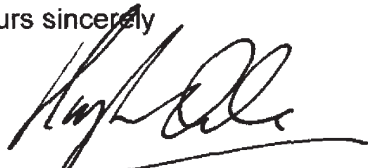
Costs/Budgets	Table 3					
	2005/06 £m <sup>1.</sup>	2006/07 £m <sup>1.</sup>	2007/08 £m <sup>1 &amp; 3.</sup>	2008/09 £m <sup>2.</sup>	2009/10 £m <sup>2.</sup>	2010/11 £m <sup>2.</sup>
Resource DEL	855.6	885.6	945.3	933.4	906.5	868.6
Capital DEL	32.1	35.6	40.2	41.1	48.4	63.2
AME	-	-	236.1	265.2	277.6	290.5
<b>Total</b>	<b>887.7</b>	<b>921.2</b>	<b>1,221.6</b>	<b>1,239.7</b>	<b>1,232.5</b>	<b>1,222.3</b>

- 1. - Outturn
- 2. - Budget
- 3. - Reflects change in accounting for pension costs
- 4. - Capital DEL 2010/11 £63.2m includes earmarked funding for New Training College.

Referring to your most recent letter dated 28 January 2009, I am happy to provide the attached document, which breaks down the costs incurred by PSNI in policing the marching season for the years 2004 to 2008 inclusive.

I trust that this information will help to assist the work of the Committee.

Yours sincerely



**HUGH ORDE**

Stephen Graham  
 Room 428  
 Parliament Buildings  
 Stormont Estate  
 BELFAST  
 BT4 3XX

Private Office, Brooklyn, 65 Knock Road, Belfast, Northern Ireland BT5 6LE  
 Telephone: 028 90 561613 Fax: 028 90 561645 Email: comsec1@psni.pnn.police.uk

Com Sec 09/391  
440380

PSNI – Cost of Policing Parades

In 2004 the PSNI spent £5,552k on policing and deploying resources for parades.

<b>1 April 2004 to 14 August 2004</b>	<b>Total £k</b>
Rural Region	3,751
Urban Region	1,801
<b>Total</b>	<b>5,552</b>

*2004 Figures<sup>1</sup>*

In 2005 the PSNI spent £9,243k on policing and deploying resources for parades.

<b>1 April 2005 to 30 September 2005</b>	<b>Total £k</b>
Rural Region	4,434
Urban Region	3,146
Crime Ops <sup>2</sup>	67
Transport <sup>3</sup>	938
Procurement & Logistic Services	658
<b>Total</b>	<b>9,243</b>

*2005 Figures*

In 2006 the PSNI spent £7,217k on policing and deploying resources for parades.

<b>1 April 2006 to 30 September 2006</b>	<b>Total £k</b>
Rural Region	4,228
Urban Region	2,674
Crime Ops <sup>2</sup>	303
Transport <sup>3</sup>	0
Procurement & Logistic Services	12
<b>Total</b>	<b>7,217</b>

*2006 Figures*

Com Sec 09\391  
440380

## PSNI – Cost of Policing Parades

In 2007 the PSNI spent **£5,529k** on policing and deploying resources for parades.

<b>1 April 2007 to 30 September 2007</b>	<b>Total £k</b>
Rural Region	2,882
Urban Region	2,460
Crime Ops <sup>2</sup>	113
Headquarters	61
Transport <sup>3</sup>	13
Procurement & Logistic Services	0
<b>Total</b>	<b>5,529</b>

**2007 Figures**

In 2008 the PSNI spent **£4,369k** on policing and deploying resources for parades.

<b>1 April 2008 to 30 September 2008</b>	<b>Total £k</b>
Rural Region	2,554
Urban Region	1,727
Crime Ops <sup>2</sup>	66
Headquarter Departments	0
Transport <sup>3</sup>	5
Supplies	17
<b>Total</b>	<b>4,369</b>

**2008 Figures**

- 1 - Amended Costing Process Introduced in 2005  
 2 - Air Support (Staff and Running Costs)  
 3 - Estimated Figure for Damage to Police Vehicles

# Futher Questions to Chief Constable of Police Service for Northern Ireland 24th March 2009



Mr Jimmy Spratt MLA  
Chairman of the Assembly and  
Executive Review Committee  
C/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

Tel: (0)28 9052 1784  
Fax: (0)28 9052 5917

24 March 2009

Chief Constable PSNI  
Private Office  
Brooklyn  
65 Knock Road  
Belfast  
BT5 6LE

Dear Sir Hugh

On behalf of the Assembly and Executive Review Committee, I would like to convey my thanks to you, and your colleagues, for your attendance at the Committee meeting today.

As you will recall, the Committee agreed to forward any further questions to you in writing. Following consultation with the Specialist Adviser, a number of outstanding issues have been identified and are attached at Annex A.

I would be grateful if you would provide a written response to the questions to assist the Committee in its consideration of the financial implications of devolving policing and justice matters.

An electronic reply by 2.00pm on Friday 27 March 2009 would be most valuable and would allow the Committee to raise these issues with the Secretary of State on Tuesday 31 March 2009.

Yours sincerely



**Jimmy Spratt**  
Chairman

- In relation to legacy costs, can you list the latest estimates for legacy, and other, costs over the next two years for

1. Hearing loss claims;
2. Historical enquiries;
3. Pensions and commutation;
4. NI Civil Service Equal Pay Claims; and
5. Normalisation.

- Capital Receipts

Your budget contains a line for planned receipts from sales of land and buildings (police stations). If this money does not come in, you have a pressure on capital spending. How is it possible for these arrangements not to influence your policy of closing stations?

- What will be the impact, on future budgets, of transferring £9.1m from the budget allocations of those years? Are there any efficiency saving measures which may be undertaken to allay these pressure? (Bearing in mind the PSNI was able to implement budget cuts of £15.3m in the last three months of the year.)
- In your submission you identified a number of cost saving measures which resulted in a reduction of £121m. Can these measures be managed and maintained to ease future budgetary pressures?
- By delaying planned developments in Cookstown, Ballymoney, Downpatrick, Armagh, Castlereagh and the purpose built Call Management facilities and new facilities to store forensic exhibits, you achieved a saving of £38.5m. When do you anticipate that these projects will go ahead? Will these new developments lead to efficiency savings across the board?
- Do your estimates take any account of the further efficiency savings we understand the Treasury is seeking from UK departments?
- In what is a demand led environment, what are the developments in the criminal justice system which might present additional financial pressures?
- Is there, presently, duplication of effort, and spending between the PSNI and any other agency, and what steps are being taken to eradicate that duplication?
- In many areas of law and order we are finding that expenditure is proportionately twice that of England & Wales. Is this the case for the PSNI? If so, how are you going to prevent the police budget from consuming a disproportionate part of the overall Northern Ireland budget as time goes on?
- We understand that you are seeking a second helicopter. How would you find the resources to sustain this in future years?
- Your Budget projections are based on the assumption that remaining full time reserve officers will leave by 31 March 2011 but this is contingent on a security review yet to be carried out. What is the position now and what would be the resource gap if they do not leave by 31 March 2011?
  - With the recent upsurge in terrorist activity there has been much debate about the need for suitable protection including, for example, body armour for security services personnel. What are the main areas of protection which need to be addressed, and what budgetary pressures do you think this will bring?



# Supplementary Response from Chief Constable of Police Service for Northern Ireland 27th March 2009



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

**SIR HUGH ORDE OBE  
CHIEF CONSTABLE**

Our Ref: Com Sec 091330

27 March 2009

A handwritten signature in black ink, appearing to read 'Sir Hugh Orde'.

## **DEVOLUTION OF POLICING AND JUSTICE MATTERS**

Thank you for your letter of 24 March 2009 and for the opportunity to meet with the Assembly and Executive Review Committee earlier this week.

As requested, please find attached at Annex A, a prompt response to the supplementary questions raised by the Committee.

Also, I indicated that I would provide further clarification to the Committee on the point raised about the storage of forensic exhibits. Plans had been developed to create Regional Property stores for the storage of documents and exhibits not related to Murders or Serious Crime however, these plans have been delayed due to limitations on capital funding and are not likely to progress in the current CSR period.

I hope this information will be helpful.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Hugh Orde'.

**HUGH ORDE**

Jimmy Spratt  
Chairman of the Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
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*Calls within Police Service of Northern Ireland telephone system may be monitored or recorded*

## ANNEX A

**Q1. In relation to legacy costs, can you list the latest estimates for legacy, and other, costs over the next two years for**

- 1. Hearing loss claims;**
- 2. Historical enquiries;**
- 3. Pensions and commutation;**
- 4. NI Civil Service Equal Pay Claims; and**
- 5. Normalisation.**

<b>Legacy costs</b>	<b>2009/10 £m</b>	<b>2010/11 £m</b>
Hearing loss claims	69.5	61.8
HET	6.4	5.9
Pension contributions	32.0	32.0
Commutation	11.0	11.0
NICS Equal Pay claim	45.4	4.9
Normalisation	4.0	1.5
Legacy issues	15.0	15.0
Impairment on disposal of stations*	3.0	3.0
<b>Total</b>	<b>186.3</b>	<b>135.1</b>

\*Subject to review & under discussion with NIO/HMT

**Q2. Your budget contains a line for planned receipts from sales of land and buildings (police stations). If this money does not come in, you have a pressure on capital spending. How is it possible for these arrangements not to influence your policy of closing stations?**

The decision to close a police station is primarily based on operational requirements. However, the financial implications must also be considered. Declaring a station surplus and proceeding to sale will bring in disposal proceeds but may also incur additional costs such as demolition or impairment cost, which can be significant for fortified stations. In certain circumstances within the existing funding framework, the costs can outweigh the financial benefits.

**Q3. What will be the impact, on future budgets, of transferring £9.1m from the budget allocations of those years? Are there any efficiency saving measures which may be undertaken to allay these pressure? (Bearing in mind the PSNI was able to implement budget cuts of £15.3m in the last three months of the year.)**

Transferring budget from future years only serves to defer difficult decisions and is unsustainable. The NIO have since reinstated £7.7m to the budget in 2009/10 and are including this amount in the total bid to HMT for Hearing Loss and Equal Pay claims.

As part of the CSR07 settlement, the Police Service has a target to deliver significant value for money savings across the 3 year period. In total, the Service plans to deliver £156.7m in savings by 31 March 2011.

The majority of the cuts making up the £15.3m in 2008/09 were not efficiency measures but direct cuts to cost and service. These measures included deferring investment in core infrastructure, delaying costs and curtailing activity.

- Q4. In your submission you identified a number of cost saving measures which resulted in a reduction of £121m. Can these measures be managed and maintained to ease future budgetary pressures?**

These agreed measures are being managed and delivered. In large part, the financial pressures are due to emerging and external factors such as Hearing loss, Equal pay claims, pension costs and the changing environment. That said, some of the measures e.g. not recruiting PCSOs, can only be delivered in the future if funding is available.

- Q5. By delaying planned developments in Cookstown, Ballymoney, Downpatrick, Armagh, Castlereagh and the purpose built Call Management facilities and new facilities to store forensic exhibits, you achieved a saving of £38.5m. When do you anticipate that these projects will go ahead? Will these new developments lead to efficiency savings across the board?**

It is intended to review and potentially downscope the new Area Command Unit projects at Downpatrick and Cookstown. At this point in time, it is anticipated that the Downpatrick project will commence during 2010/11 and Cookstown during 2011/12, subject to available capital funding.

The new Ballymoney sector station is now planned to commence during the last quarter of 2009/10. Funding has been provided within the balanced budget.

The Castlereagh/Armagh extensions, new Call Centre and Regional Property Stores (capable of holding forensic exhibits and other items not related to Murder or Serious Crime) are on hold pending availability of funding. It is very unlikely that any funding will be available for these projects during the next two financial years and therefore anticipated start dates will be 2011/12 or later.

The development of new Area Command Units at Downpatrick and Cookstown will allow improved delivery of operational policing and consolidation of policing functions from a number of rural stations into these Command Units. The new sector station at Ballymoney is required to replace a current facility which is no longer fit-for-purpose. The Call Centre and Regional Property Stores are predicated on strategies which are based on improving call management services and ensuring storage facilities which are compliant with best practice standards.

It is also worth noting that £38m is required post CSR07 to complete the £90m funding for the training college. If this is not additional ring-fenced funding, then the capital baseline will be under pressure. This is an area that might be clarified with NIO and HMT.

**Q6. Do your estimates take any account of the further efficiency savings we understand the Treasury is seeking from UK departments?**

No. The Police Service has not been notified of any further efficiency savings.

**Q7. In what is a demand led environment, what are the developments in the criminal justice system which might present additional financial pressures?**

Some such developments include:

- Recruitment, training & rollout of PCSOs (£6m pa)
- DNA/Fingerprint records deletion – EU directive (£3m)
- Extension of Policing With the Community Fund (£0.8m pa)
- Development of Police National Database (£0.4m)
- Development of Sexual Assault Referral Centres (£0.5m start up & £0.3m pa)

**Q8. Is there, presently, duplication of effort, and spending between the PSNI and any other agency, and what steps are being taken to eradicate that duplication?**

The Police Service has identified significant areas of work in the criminal justice field that could be completed in a much more efficient manner. Changes sought by PSNI will lead to savings in terms of police resources, will free up Officer time for front-line policing, and will also, and importantly, deliver a more efficient justice system.

These areas of work relate to the constraints that are currently placed upon PSNI by the PPS. These constraints increase bureaucracy, and add in significant delay and complication to the process whereby files are transferred from PSNI to PPS. These are summarised as follows:

### **No Prosecution cases**

In a 12 month period, PSNI forwarded approximately 11,500 prosecution files to PPS where the recommendation was 'No Prosecution'. In approximately 83% of these cases, PPS endorsed the recommendation. Further analysis of these cases by PSNI is ongoing.

PSNI must be able to make prosecutorial decisions in minor cases in *line with their colleagues on the mainland.*

### **Cautions**

PPS are the sole decision makers in respect of whether an offender should receive a formal Caution. PSNI have access to prosecutors on a Monday to Friday, 9am to 5pm basis. Offenders who would be appropriate for a Caution outside of these times are unable to receive one and a prosecution file is required.

### **Penalty Notices for Disorder (PNDs)**

PSNI have requested that Officers be given the legislative power to issue PNDs for minor offences as an alternative to prosecution. This will free up Officer time in respect of processing persons detained in custody offices and will allow for speedier delivery of justice and disposing of cases. PPS, however, wish to retain sole prosecutorial decision-making power, which will mean that PSNI Officers will not have access to PNDs that their mainland colleagues have. The CPS supports mainland Police Services in their use of PNDs. Work is ongoing with NIO and others, including the PPS, to secure PNDs for PSNI Officers.

### **Streamlined Process**

PSNI wish to develop a streamlined process to reduce down the amount of information that is required on a prosecution file in advance of the case going to Court for the offender to be put on their plea. Cases where there is a plea would not require any further information to be provided thereby reducing unnecessary paperwork completion and bureaucracy.

### **Tape Transcripts**

There are a significant number of cases where PSNI are asked to complete a full typed transcript of an interview. Often, these interviews can be lengthy and numerous tapes are required to be transcribed. This process is lengthy and expensive and should only be completed in the extreme exceptional of cases. PSNI contend that a properly completed tape summary should be sufficient for PPS and Courts purposes, thereby saving Officer and administrative time.

### **Charge v Summary**

PSNI believe that the majority of cases should be dealt with by way of charge, thereby reducing the amount of time that is spent in the criminal justice system in processing and serving summonses. A significant level of police resources is spent every year in serving summonses and if this were reduced, additional Officer time would be freed up for the front line.

- Q9. In many areas of law and order we are finding that expenditure is proportionately twice that of England & Wales. Is this the case for the PSNI? If so, how are you going to prevent the police budget from consuming a disproportionate part of the overall Northern Ireland budget as time goes on?**

*Yes – the cost of policing in Northern Ireland is proportionately higher than in England & Wales. The operating environment, structures and culture are of course very different.*

However, the Police Service has delivered significant savings over the last number of years, including reduction in officer numbers, overtime and support costs. As highlighted above, further savings are planned for the current CSR period. In a peaceful environment, there may be potential to reduce police numbers to the level recommended by HMIC (6028 officers), but these conditions do not exist at present.

- Q10. We understand that you are seeking a second helicopter. How would you find the resources to sustain this in future years?**

The requirement for a second helicopter was a direct result of normalisation and the scaling back of military support. Unless new funding is provided, the ongoing revenue costs (approximately £2.0m) will need to be found from within existing resources. Any decision to replace this helicopter at the end of its useful life would depend on the prevailing operational requirement.

- Q11. Your Budget projections are based on the assumption that remaining full time reserve officers will leave by 31 March 2011 but this is contingent on a security review yet to be carried out. What is the position now and what would be the resource gap if they do not leave by 31 March 2011?**

The security review is now ongoing. For example, a decision to delay the departure of all FTR officers would cost approximately £20m pa in salary costs. The severance arrangements would simply be delayed and these costs would materialise after 31 March 2011.



**Q12. With the recent upsurge in terrorist activity there has been much debate about the need for suitable protection including, for example, body armour for security services personnel. What are the main areas of protection which need to be addressed, and what budgetary pressures do you think this will bring?**

The areas to be addressed are listed in the additional bid made to NIO earlier this month. These include:

- Improved station security;
- Refreshed armoured fleet;
- Additional air support; and
- Additional overtime to provide more support.

In particular, all the main areas of body armour protection have been or are being addressed within existing budgets.

Dual Purpose Body Armour, which provides both spike and ballistic protection, has been issued to all Officers identified by Districts. 8,000 Officers are in possession of this Personal Issue armour.

Station Issue Hard Overt Body Armour, which provides protection against high level ballistic threats, is available throughout the Districts. This is not personal issue but pooled by each District for issue to Officers based on requirements of their operational command.

9,000 sets of hard armour has been issued to Districts, including 880 mainly small sized armour in 2008.

In addition, New Station Issue Hard Overt Body Armour has been purchased in 2008/09. 2,500 sets of armour as identified by Districts will be available for issue by May 2009.

The sizing of this armour is different from the current issue armour. Five sizes are available, including extra small.

The sizing has been determined by the comprehensive data compiled through measuring 8,000 Officers for Dual Purpose

# Written Submission from Director of Finance and Support Services of Police Service for Northern Ireland 7th April 2009



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

7 April 2009

*Dear Stephen,*

## **PSNI PROJECTED SEVERANCE COSTS 2009/10 AND 2010/11**

I received a phone call from Jimmy Spratt this morning, who asked me to provide information regarding Severance costs for PSNI in the years 2009/10 and 2010/11.

The Budget Plan for PSNI for 2009/10 and 2010/11 submitted to the Policing Board and agreed in advance of the financial year beginning April 2009 contained the following projected information on Severance numbers and costs:-

Planned Patten Severance Leavers - Regular Officers 2009/10 - 350 and 2010/11 - 350, with an average Severance cost of £44m in each of the two years.

Planned Patten Severance Leavers – Full-Time Reserve 2009/10 - 205 and 2010/11 - 204, with an average Severance cost of £22m in each of the two years.

Please come back to me if any further information is required.

*David*

**DAVID BEST**  
Director of Finance and Support Services  
PSNI

Mr Stephen Graham  
Clerk to Assembly and Executive Review Committee  
Room 428 Parliament Buildings  
Stormont Estates  
Belfast  
BT4 3XX

Copy to:- Mr Jimmy Spratt, MLA



*Calls within Police Service of Northern Ireland telephone system may be monitored or recorded*

# Final Request Chief Constable of Police Service for Northern Ireland 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast BT4 3XX

12th May 2009

Sir Hugh Orde OBE  
Chief Constable PSNI  
Private Office  
Brooklyn  
65 Knock Road  
Belfast BT5 6LE

Dear Sir Hugh,

## **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission and for appearing before the Assembly and Executive Review Committee to give oral evidence, recently.

The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month. However, you will recall that, during the oral evidence session, you were asked to indicate if there were any additional financial pressures you wished to identify to the Committee.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence (as amended by the recent letter from your office) remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of any easements, or new pressures, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details, electronically, to the Committee Clerk by midday, 18 May 2009 at the following address

[stephen.graham@niassembly.gov.uk](mailto:stephen.graham@niassembly.gov.uk)

Yours sincerely



**Jimmy Spratt**  
Chairman

# Response from Chief Constable of Police Service for Northern Ireland 18th May 2009

Our Ref: Com Sec 09\330

18 May 2009

Dear Jimmy

## The Financial Implications Relating to the Devolution of Policing and Justice Matters

Thank you for your letter dated 12 May 2009.

Over the past few weeks, there have been a number of relevant financial developments and these are highlighted below for your information.

### **Hearing Loss claims**

In the written submission dated 24 March 2009, the pressure arising from Hearing Loss claims was estimated at £69.5m in 2009/10 and £61.8m in 2010/11. This was based on 200 new cases each month.

Since then, the number of cases received has continued to rise and the projection of new cases each month has been increased to 275 cases. As a result, the estimated cost for Hearing Loss claims has increased to £93.9m in 2009/10 and £84.2m in 2010/11.

### **Impairments**

In the written submission dated 24 March 2009, it was highlighted that financial pressures might arise as a result of declaring police stations surplus to requirements. It was also noted that the treatment of this issue was under discussion with NIO and HMT.

I am pleased to report that NIO have now confirmed that police stations can be treated as specialised assets and that impairment charges will be treated under AME rather than DEL. Further work is required to establish budgets and NIO have indicated that this will be confirmed at the next monitoring round.

### **Treatment of budget transfer**

The written submission dated 24 March 2009 stated that NIO had reinstated £7.7m to the police budget in 2009/10 (previously transferred to 2008/09), which was based on written communications from the NIO.

However, recent discussions with NIO have indicated that this funding has not been added back to the budget in 2009/10 but rather is the subject of a bid to HMT. The balanced budget for 2009/10 was based on the assumption that this funding was in the baseline. If the funding is not provided, this will create a further pressure of £7.7m during the 2009/10 year.

### **Security bid**

The written submission dated 24 March 2009 referred to a bid to NIO for additional resources in response to a deteriorating security environment.

I am pleased to inform you that the Secretary of State has confirmed that HMT have agreed to provide the Police Service with the resources requested in 2009/10. HMT have also agreed to consider the request for resources for 2010/11 closer to the time.

**Widows lump sum**

The Home Secretary recently announced an agreement with the PNB to provide additional benefits to certain widows retrospectively. The estimated maximum cost of this development is in the region of £700k plus interest.

I hope this information will be helpful.

Yours sincerely



**HUGH ORDE**

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

Copy to: Anthony Harbinson  
Sir Desmond Rea, NIPB

# Written Submission from Public Prosecution Service 6 February 2009

Stephen J Graham  
Committee Clerk  
Room 428  
Parliament Buildings  
Stormont  
BELFAST  
BT4 3XX

6 February 2009

I refer to your letter and enclosure dated 20 January.

I enclose a Memorandum setting out the response of the Public Prosecution Service to the four questions posed in your letter.

I hope this is of assistance to the Assembly and Executive Review Committee.

I note that as part of its consideration of the financial implications of devolving policing and justice, the Committee is likely to invite a number of organisations to give oral evidence, beginning in the week commencing 23 February. While my Acting Deputy Director, James Scholes and others will be available, I presently intend to be out of the office from that date on a long standing business arrangement in connection with the International Association of Prosecutors followed by a short holiday. I intend to return to the office on 9 March.

I do not wish to inconvenience the work of the Committee. I should be grateful if you would let me know whether you have any concerns about these arrangements.

I am copying these papers to Kevin McGinty, Attorney General's Office, for the information of the Attorney General.

# Public Prosecution Service

## Submission by the Public Prosecution Service

- (A) Do you consider that the budgetary estimates for your organisation, details of which were provided to the Committee by the Northern Ireland Office are adequate and if not why not?**
1. It is considered that the budgetary estimate for the Public Prosecution Service (PPS) for 2008/09 is adequate. This is due to a number of management actions taken in year, such as a moratorium on filling vacancies, the early closure of satellite offices and the careful management of fees paid to prosecution counsel. Indeed the PPS may report a small surplus in the order of £500k at 31 March 2009, representing 1.5% of our baseline resource budget. This projected surplus is substantially attributable to two factors in relation to counsels' fees, namely the release of prior year over accruals and the slippage in timing of some "very high cost cases" brought about by the adjournment of those cases due to unresolved issues between the Bar Council and the Legal Services Commission with regard to the payment of fees to defence counsel.
  2. Approximately one quarter of the PPS budget is committed to the instruction of prosecuting counsel. Historically this expenditure has been classified as being within our Departmental Expenditure Limit (DEL). However, it is demand led in nature and shares the characteristics of Annually Managed Expenditure (AME). This makes it difficult to accurately estimate expenditure in respect of counsels' fees. There is a risk that the spend on this portion of the budget will exceed the apportioned allocation in any year.
  3. On a monthly basis the PPS prepares the projected expenditure on counsels fees so as to produce an estimate of the total annual expenditure against budget. The fees payable to counsel are determined by the work actually done and hence are only fully quantifiable upon the conclusion of a case. There are a number of variables which may occur and which have the capacity to affect the estimate of expenditure. A defendant may enter a plea in a case which was expected to be a lengthy trial. A case may be taken out of the court list during the course of a year because of a change of defence counsel. Vital witnesses may not be available. All of these factors may result in an over estimate or under estimate of expenditure.
  4. As a result of concerns that the budget for 2008/09 was not sufficient to meet the estimated payments to counsel, it was decided by the Board of Management to impose a moratorium on filling any vacancies which arose during the course of the year in respect of the non-legally qualified support staff. This has resulted in 40 unfilled vacancies and has made available approximately £1m to fund counsels' fees.
  5. While this action has permitted the PPS to live within budget for 2008/09 it leaves the PPS understaffed. Important work is taken forward by the support staff including the preparation of trial papers, keeping victims and witnesses fully informed and attending on prosecuting counsel in court. The Board of Management has recognised that this is a short term measure which cannot be maintained unless the services which the PPS delivers are reduced.
- (B) What significant, additional, requirements do you envisage, in future years, and could any of these be dealt with through an adjustment to your organisations existing plans/priorities?**
1. The PPS has submitted information to the Northern Ireland Office (NIO) and the Department of Finance in December 2008 in relation to the additional funding it considered was necessary to function as a Non-Ministerial Department (NMD) (as currently proposed after devolution), and information in relation to an additional bid in respect of counsel fees and a bid in relation to orders for the costs of the defence to be borne by the prosecution.



2. This funding fell into three categories as follows:

<b>Devolution Funding Bid</b>	<b>2009/10 £</b>	<b>2010/11 £</b>
Counsel Fees	1,150,000	1,150,000
Costs Awarded	300000	310,500
Resource implications of NMD status	150,000	155,250
<b>Total</b>	<b>1,600,000</b>	<b>1,615,750</b>

It is proposed to comment upon each category of expenditure in turn.

## Counsel Fees

3. As is indicated at paragraph A(2) above, although classified as DEL, the expenditure on counsels' fees is demand led and does not lend itself to the usual means of budget management, such as, for example, the prioritisation or discontinuance of activities. The PPS has managed expenditure on counsels' fees for 2008/09 in a number of ways including through a moratorium on filling vacancies thereby releasing £1m to be reallocated to counsels' fees.
4. The NIO have indicated there will be no further funding available over the CSR period. If this remains the position, the moratorium will have to remain in place.
5. If the PPS becomes a Non Ministerial Department upon devolution the adverse impact of the continuing vacancies will be exacerbated.
6. The moratorium on filling vacancies is a blunt means of 'staying within budget'. The Service is adversely affected in a number of ways. The vacancies, which have occurred at various grades and geographical venues, were largely unpredictable. While efforts were made to ensure that the reduction of 40 posts was as evenly spread as possible, this did not always occur as the necessary skills were not on occasions available. In an effort to ensure that the core legal business of the Service was maintained, the vacancies were limited to administrative grades. This approach has inevitably adversely affected the efficiency and effectiveness of a number of important areas of work such as the provision of information and support to victims and witnesses by the Community Liaison Teams. This has drawn criticism from the Criminal Justice Inspectorate and is liable to undermine public confidence in the prosecution of offences. The Board of Management view these arrangements as temporary in nature and would wish to begin filling these vacancies during 2009/10. A reduction of 10% of the support staff raises significant issues about the level and quality of service which the PPS can provide.
7. The Board of Management is committed to the development of senior prosecutors as Higher Court Advocates in the Crown Court where independent counsel are presently instructed. This will produce the following benefits:
- Reductions in the costs arising from the instruction of counsel;
  - The development of new expertise within the PPS; and
  - Providing opportunities for career development for PPS staff.

To carry forward this strategic development additional funding will be required to train in-house lawyers whilst at the same time maintaining the capacity of the Service to take prosecutorial decisions within Ministerial time limits. When operative, Higher Court Advocates will reduce reliance on the use of independent counsel and have a corresponding impact in reducing expenditure.

## Costs awarded against the Prosecutor

8. The PPS recognises the important public interest in reducing the harm caused by serious organised crime to the community and acknowledges the increased role given to the Service in relation to, for example, restraint and confiscation. The greater focus on targeting the assets of criminals has resulted in investigators devoting more resources to carrying out financial investigations with a corresponding increase in the number of applications made to the court.
9. The total costs for 2008/09 are currently projected at £283k. The actual costs for 2004/05 were £25k. The continued increase in activity in this area exposes the PPS to the risk of escalating annual costs. Such costs are particularly likely to arise in relation to proceedings for the recovery of the proceeds of crime, and through criminal restraint and confiscation and through enforcement proceedings.
10. The prosecuting authority for England and Wales, the Crown Prosecution Service (CPS), is not subject to the same exposure as the PPS as costs awarded against the CPS are paid from central funds held by the Ministry of Justice.

## Resource Implications of Non Ministerial Department Status

11. If the PPS becomes a Non-Ministerial Department additional costs will arise in order that the Service can provide the necessary assurances to the Assembly that the Director's responsibilities and duties in regard to finance and administration are being properly met.
12. The matters referred to above relate to the proposed status of the PPS as a non-ministerial Department after devolution. Additional operational pressures which are not contingent upon devolution are likely to arise post devolution within the present CSR period and are dealt with below.

## Civil Recovery

13. Following the enactment of the Serious Crime Act 2007 powers in relation to the civil recovery of assets have transferred to the Serious Organised Crime Agency (SOCA) [which replaced ARA] and to the PPS.
14. The PPS does not presently have the capacity or expertise to pursue civil recovery. To take on this work will require the recruitment of additional professionally qualified staff with the requisite experience, together with support staff.
15. The costs to the PPS of fully implementing the powers under the Serious Crime Act, including those in relation to Serious Crime Prevention Orders, are estimated to be £840k in the first year per annum. This figure is reached on the basis that SOCO continue to carry out civil recovery work in relation to the existing ARA caseload. This figure may increase should SOCA carry out their express intention to focus in subsequent years on case work generated by their own investigations.

## Serious Crime Prevention Orders

16. The PPS has been given new powers to apply for Serious Crime Prevention Orders which can be either free standing as a civil application in the High Court or post conviction in the Crown Court and which impose conditions on the conduct of individuals over a period of up to 5 years. Under the Serious Crime Act 2007 the Director is the principal party authorised to bring such applications.

## Bloody Sunday Inquiry

17. Subsequent to the publication of the report of the Bloody Sunday Inquiry (now expected during 2009), it is anticipated that the PPS will have to consider the report and associated materials, in order to determine whether there is a basis for further investigation by police and in that event whether the test for prosecution is met in respect of identifiable individuals. The PPS has estimated that a total of 3 full time staff may be required for a period of 2 years to complete this work and total costs of between £400–450k may accrue. It is likely that this work will begin in 2010/11 and accordingly 50% of the costs for this work will need to be funded within the CSR period.
18. In summary the possible pressures outlined are as follows:

<b>Total Anticipated Pressures</b>	<b>2009/10 £</b>	<b>2010/11 £</b>
Devolution Driven as above	1,600,000	1,615,750
Bloody Sunday Report		225,000
Serious Crime Act (2007)		837,000
<b>Total</b>	<b>1,600,000</b>	<b>2,677,750</b>

Whilst not arising as a pressure the following matters should also be noted.

## Newry Office

19. The PPS has been granted the capital funding for the fit out of a regional office. This funding is allocated to the 2009/10 budget but it is now unlikely that premises can be secured within this period. The PPS may be required to surrender the funds and re-bid in 2010/11.

## Historic Enquiries Team

20. The NIO holds ring-fenced funds in respect of Historic Enquiries of which £1.4m has been earmarked for the PPS. This will be kept under review.

## Incentivisation Funds

21. The PPS is an authorised recipient of Incentivisation monies under the Home Office Asset Recovery Incentive Scheme (ARIS) and is entitled to 22.5% of funds successfully realised from confiscation orders granted under Proceeds of Crime legislation.
22. These receipts are eligible for End of Year Flexibility (EYF) for three years and the PPS is obliged to determine the most appropriate use of these funds within the area of asset recovery. The only provision stipulated by the Home Office is that at least a portion of incentive payments should be used to further drive up performance on asset recovery and, where appropriate, to fund local crime fighting priorities for the benefit of the community.
23. Receipts under ARIS are unpredictable. Actual receipts to the PPS have been as follows:

<b>2007/08</b>	<b>2008/09</b>
£1,140k	£30k as at 31 December 2008

24. In the current economic climate the ability to recover incentivisation monies has become difficult and the costs of enforcement which fall to the PPS continue to rise.

25. In accordance with Home Office guidance, approximately half of the receipts to date have been earmarked for the additional staff required in order to take forward criminal confiscation work. The provision of an IT system to support and manage these functions has also been highlighted as a priority, enabling improved performance. In addition the PPS considers it may be appropriate to use these funds to offset current costs awarded against the PPS.

## Revenue and Customs Prosecutions

26. The PPS is presently in discussion with the Attorney General's Office in relation to prosecutions arising from investigations carried out by HM Revenue and Customs. An issue is liable to arise as to the funding of such prosecutions after devolution.

**(C) In the present Comprehensive Spending Review, please provide details of any unsuccessful bids and how you expect to deal with these in future years.**

1. The PPS was not successful in its bid for counsel fees, as is shown below:

	<b>2008/09</b> <b>£</b>	<b>2009/10</b> <b>£</b>	<b>2010/11</b> <b>£</b>
CSR Bid	9,183,000	9,000,000	9,339,000
CSR Budget Granted	6,789,000	6,633,000	6,773,000
Difference	2,394,000	2,367,000	2,566,000

2. As is discussed at paragraphs A(2) and (3), it is difficult to make completely accurate estimates of expenditure in respect of counsels' fees. A number of additional factors have exacerbated the process of estimation. They include the following:
- (i) In 2007/08 accounting for counsel fees moved to a full resource basis and there was accordingly an increased charge in this period as both prior period payments and current year accruals were incurred.
  - (ii) The introduction in 2006 of the Legal Aid 2005 Rules for the payment of defence fees appear to have exerted an inflationary influence on the fees marked by prosecuting counsel.
  - (iii) The occurrence of a number of high cost cases anticipated during the CSR period.
3. The original CSR bid for 2008/09 of £9.18m was made to ensure the PPS was fully resourced to meet the estimated costs of counsels' fees taking into account the above factors. The Board of Management decided that a number of steps were necessary in order to supplement the budget settlement of £6.7m for 2008/09 including a moratorium on filling vacancies, the early closure of satellite accommodation and the careful management of counsels' fees.
4. The outturn for counsels' fees for the 2008/09 year is now projected to be in the region of £6.7m. In assessing the 'actual cost' in the period consideration needs to be given to two favourable non-recurring variances:
- (i) As has been indicated, a number of high cost cases listed for trial in the last quarter of the year will now be heard during 2009/10. This is due to factors outside the control of the PPS.
  - (ii) Following the introduction of full resource accounting, accrual estimates were made on a case by case basis as at the end of 2007/08. In a number of instances these accruals exceeded the final payments subsequently made to counsel during 2008/09. This risk has been mitigated during the current year through improved review procedures.

5. Adjusting for these exceptional items yields a restated outturn in respect of counsels' fees of £7.9m for the 2008/09 period, which is summarised as follows:

	<b>£m</b>
Projected Outturn	6.7
Estimated Slippage	0.7
Prior Year Release	0.5
Revised Outturn	7.9
CSR Settlement	6.8
In Year Pressure	1.1

6. On the basis of the above, the restated charge in respect of counsels' fees would be £7.9m. Accordingly a bid has been made on this basis for the two remaining years of this CSR. Paragraphs B(1) and (2) refer.

**(D) Can you please provide, for each main spending area, the breakdown between Resource and Capital DEL. Annually Managed Expenditure and administration costs for each of the years 2005/06 to 2010/11, that is the outturns for the three years prior to the Spending Review 07 and the plans for the three years of the review?**

1. The PPS does not include any Annually Managed Expenditure within its budget.
2. The outturn and baseline budget figures requested are tabulated as follows:

	<b>2005/06 Outturn £k</b>	<b>2006/07 Outturn £k</b>	<b>2007/08 Outturn £k</b>	<b>2008/09 Budget £k</b>	<b>2009/10 Budget £k</b>	<b>2010/11 Budget £k</b>
<b>Resource</b>						
DEL Admin	1,715	1,889	1,999	2,442	2,520	2,592
DEL Programme	23,229	32,806	34,774	33,074	32,810	33,704
Resource Subtotal	24,944	34,695	36,773	35,516	35,330	36,296
<b>Capital</b>						
DEL Admin				0	0	0
DEL Programme	731	744	1,242	1,780	1,935	270
Capital Subtotal	731	744	1,242	1,780	1,935	270
<b>Total</b>	<b>25,675</b>	<b>35,439</b>	<b>38,015</b>	<b>37,296</b>	<b>37,265</b>	<b>36,566</b>

3. For clarity, the baseline budget for 2008/09 has been quoted above as £35,516k. The figure quoted within Annex A of the AERC papers, £36,548k, was post August monitoring and has since been revised in the light of the November monitoring round.
4. £988k of the difference between the figures referred to at paragraph 3 above is in relation to ring fenced Incentivisation receipts recovered under Proceeds of Crime legislation. This does not relate to 2008/09 expenditure but is subject to EYF over the full CSR period.

# Further Questions to Public Prosecution Service 13th March 2009



Mr Jimmy Spratt MLA  
Chairman of the Assembly and  
Executive Review Committee  
C/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

Tel: (0)28 9052 1784

Fax: (0)28 9052 5917

13 March 2009

Sir Alasdair Fraser  
Public Prosecution Service  
Belfast Chambers  
93 Chichester Street  
Belfast  
BT1 3JR


Dear Sir Alasdair

On behalf of the Assembly and Executive Review Committee, I would like to convey my thanks to you, and your colleagues, for your attendance at the Committee meeting on 10 March 2009.

As you will recall, the Committee agreed to forward any further questions to you in writing. Following consultation with the Specialist Adviser, a number of outstanding issues have been identified and are attached at Annex A.

I would be grateful if you would provide a written response to the questions to assist the Committee in its consideration of the financial implications of devolving policing and justice matters.

Yours sincerely



**Jimmy Spratt**  
Chairman

## Annex A

- Are the levels of fees paid in legal aid cases putting pressure on your fee levels? What has been the rate of increase in your fees in recent years?
- In evidence you suggested that the PPS felt obliged to match the defence counsel level of representation (usually a senior and junior counsel). What would be the order of savings if the PPS overall level of representation was confined to a single counsel?
- Do your estimates take any account of the further efficiency savings we understand the Treasury is seeking from UK departments?



## Supplementary Response from Public Prosecution Service

Mr Jimmy Spratt  
Chairman of the Assembly and Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX      27 March 2009

I refer to your letter dated 13 March.

You make a number of enquiries arising from my evidence before the Assembly and Executive Review Committee. The questions and my response are listed below.

*Are the levels of fees paid in legal aid cases putting pressure on your fee levels? What has been the rate of increase in your fees in recent years?*

The Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005 were introduced in April 2005. The financial year 2006/07 was the first full year in which the impact of the introduction of these Rules could be measured.

I have set out in tabular form the total fees paid to prosecuting counsel on an annual basis during the period 2004 to 2008. This demonstrates the uplift which occurred in the financial year 2006/07 and the further rise in expenditure during the financial year 2007/08. You will see that I have subtracted scale fees from the total amount of monies paid to prosecuting counsel. I have done so because the pressures from legal aid defence fees principally relate to cases in which prosecuting counsel is paid a special fee.

	<b>2004/05 Outturn £</b>	<b>2005/06 Outturn £</b>	<b>2006/07 Outturn £</b>	<b>2007/08 Outturn £</b>
Total Counsel Fees Charge	6,357,772	6,668,420	9,861,590	10,057,470
Less Scale Fees	1,354,635	1,192,504	1,761,910	1,384,206
Counsel 'Special' Fees Charge	5,003,137	5,475,916	8,099,680	8,673,264
Less Exceptional Case			1,000,050	
'Net Outturn'	5,003,137	5,475,916	7,099,630	8,673,264

This table shows a 29% increase between financial years 2005/06 and 2006/07.

There are a number of factors which have influenced this trend. During the process of negotiation prosecuting counsel have always contended that the level of fees paid by legal aid to defence counsel should be taken into account in the determination of their fees. This has continued with the introduction of the new Rules. An additional point that prosecuting counsel have adopted is that the rate of payment under the new Rules were set by Ministers in Parliament.

Given the precept of fairness that there should be like pay for like work the Public Prosecution Service has had regard to legal aid fees when determining what fees should be paid to prosecuting counsel.

In summary, the level of defence legal aid fees both prior to and after the commencement of the new Rules has had an inflationary effect on the fees paid to prosecuting counsel.

*In evidence you suggested that the PPS felt obliged to match the defence level of representation (usually a senior and junior counsel). What would be the order of savings if the PPS level of representation was confined to a single counsel.*

As you are aware there will always be cases of difficulty, complexity or importance that require the instruction of both senior and junior prosecuting counsel. There will also be cases which may require the instruction of senior counsel without the instruction of junior counsel or in the alternative junior counsel only.

In Northern Ireland the defence apply for a legal aid certificate from a District Judge which may permit the instruction of both senior and junior counsel. When two counsel are instructed by the defence, the prosecution will consider whether it is necessary to instruct senior counsel. One factor which has been weighed is whether the absence of senior counsel in the prosecution team might give an appearance to the jury of an “inequality of arms” in presenting the case at trial.

On average the PPS prosecutes in or about 1700 cases each year in the Crown Court. During the financial year 2008/09, senior counsel were instructed together with junior counsel in approximately 200 cases. If it were decided not to instruct junior counsel in these cases, senior counsel would seek a higher fee because they would be appearing without the valuable support of junior counsel who would be responsible for particular aspects of the case under the supervision of his senior. Any saving would thereby be reduced.

Having regard to the difficulty, complexity or importance of these cases, this is not a course I would wish to follow nor would I consider instructing junior counsel only without a senior. There will always be a limited number of cases where the public interest in ensuring that the prosecution is effectively presented can only be achieved by the instruction of both senior and junior counsel. While it may be possible to provide a financial model for each of the three scenarios I have canvassed, my view is that the instruction of both senior and junior counsel in a limited number of cases best serves the public interest.

During the past year I have given consideration to the instruction of senior counsel. I have examined the wide range of cases in which senior counsel was briefed in Northern Ireland. I have also taken into account the challenging outcomes of the Comprehensive Spending Review. I decided that from 1 February 2008 senior counsel should only be instructed in a limited number of cases including, for example, homicide or serious sexual assault. In each case the instruction of senior counsel must bring added value. I intend to keep this under review.

Do your estimates take any account of the further efficiency savings we understand the Treasury is seeking from UK departments?

The estimates presented by the PPS do not take account of any further efficiency savings that may be requested by Treasury. This is presently a matter for the Northern Ireland Office who will advise PPS of any such requests.

I hope this is of assistance.

# Final Request Public Prosecution Service

## 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

12th May 2009

Sir Alasdair Fraser  
Public Prosecution Service  
Belfast Chambers  
93 Chichester Street  
Belfast  
BT1 3JR

Dear Sir Alasdair,

### **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission and for appearing before the Assembly and Executive Review Committee to give oral evidence, recently.

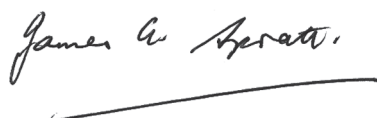
The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month. However, you will recall that, during the oral evidence session, you were asked to indicate if there were any additional financial pressures you wished to identify to the Committee.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of any easements, or new pressures, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details, electronically, to the Committee Clerk by midday, 18 May 2009 at the following address

[stephen.graham@niassembly.gov.uk](mailto:stephen.graham@niassembly.gov.uk)

Yours sincerely



**Jimmy Spratt**  
Chairman

# Response from Public Prosecution Service

## 18th May 2009

Mr Jimmy Spratt MLA  
Chairman to the Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
BELFAST  
BT4 3SX

18 May 2009

Dear Mr Spratt

### The Financial Implications Relating to the Devolution of Policing and Justice Matters

Thank you for your letter dated 12 May.

As you are aware, I provided the Assembly and Executive Review Committee with a written submission and appeared before it to give oral evidence on 10 March.

That submission set out the pressures which we anticipated were liable to arise over the remainder of the CSR period. Two months have now passed since providing my submission. With the exception of two matters to which I subsequently refer, I confirm that the position I declared in my written and oral evidence remains accurate and up to date. While the two matters to which I refer were raised with the Committee as not presenting financial difficulties, I think it prudent to express some caution in that regard.

I reported to the Committee that the Public Prosecution Service had been granted capital funding for the fit out of a regional office in Newry. This will complete the opening of offices by the new Service throughout Northern Ireland. A concern was expressed that the Public Prosecution Service may be required to surrender this funding and re-bid in 2010/11 if suitable premises were not found in this financial year.

However, within the last month, following extensive enquiries made by Land and Property Services, suitable premises have been identified in Newry which would permit the Public Prosecution Service to open an office during the course of the present financial year 2009/10. Unlike other regional offices, this is not a “new build” but rather a conversion and extension of an existing building very close to the Newry Courthouse. The capital costs of this development are likely to be considerably lower than the costs of a “new build”. Initial estimates indicate a cost of approximately £680k. This will create an easement on capital expenditure for 2009/10 of approximately £650k.

We remain hopeful that the NIO will continue to make available the necessary capital expenditure required to complete the roll out of the Public Prosecution Service to the Southern Region, particularly in circumstances where the level of expenditure has been significantly reduced. However, I consider it prudent to draw to the attention of the Committee that if for any reason it is not possible to proceed with this project prior to devolution of policing and justice there remains a possibility that it may be necessary for the Public Prosecution Service to bid for this expenditure before the Assembly.

In addition, I refer to the Historical Enquiries Team.

The Public Prosecution Service has informed the Committee that £1.4m had been ring fenced for the Public Prosecution Service’s involvement in cases generated by the Historical

Enquiries Team. We have recently been informed that funds held by the NIO in respect of the years 2007/08 and 2008/09, which were not drawn down by the Public Prosecution Service because of the small number of files submitted to it, are no longer available. The decision not to draw down these funds was taken because the Public Prosecution Service did not receive the volume of work which the Historical Enquiries Team anticipated it would submit during this period. The Public Prosecution Service now expect to receive a number of cases at a later date. I am informed that a balance of £749k remains ring fenced for the use of the Public Prosecution Service over the period 2009/10 and 2010/11.

Again, out of an abundance of caution, I observe that as the earlier funds are no longer available, the remaining level of funding may be insufficient. This will depend entirely on the number and complexity of cases which are in fact submitted.

I understand that your specialist advisor, Mr Hewitt, is taking forward work on your behalf. If he would like any further information on any of these matters, or, if my office can otherwise assist please let me know.

Yours sincerely

**Alasdair Fraser**

# Letter to Public Prosecution Service

## 17 September 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

Sir Alasdair Fraser  
93 Chichester Street  
Belfast  
BT1 3JR

17 September 2009

Dear Sir Alasdair,

### **Inquiry into the Devolution of Policing and Justice**

As part of its consideration of the devolution of policing and justice matters, the Assembly and Executive Review Committee, of the Northern Ireland Assembly, have been considering which Department the Public Prosecution Service should be attached to for funding purposes.

In your evidence to the Committee on 10 March 2009, you notified the Committee that the Public Prosecution Service had “considered that the best location would be in the Office of the First Minister and deputy First Minister” but also that “In a financial context, it is important that the Public Prosecution Service should not depend on a sponsor Department for its finances”. In our consideration of these matters, the Committee would be grateful if you would confirm that this remains your view.

The information you provide to the Committee will be of great assistance to us in our deliberations.

Yours sincerely



**Jimmy Spratt**

Chairman

# Letter from Public Prosecution Service

## 22 September 2009



Director

PUBLIC PROSECUTION SERVICE  
BELFAST CHAMBERS  
93 CHICHESTER STREET  
BELFAST  
BT1 3JR

Mr Jimmy Spratt MLA  
Chairman to Assembly and Executive  
Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
BELFAST BT4 3XX

22 September 2009

*Dear Mr. Spratt,*

### INQUIRY INTO THE DEVOLUTION OF POLICING AND JUSTICE

Thank you for your letter dated 17 September which I received on 22 September.

I am grateful to you for the opportunity of commenting upon the observations which I made to the Committee on 10 March. I will write further to you when I have revisited the evidence which I gave.

*Yours sincerely,*

*Alan Baird*



# Letter from Public Prosecution Service

## 30 September 2009



**Director**

PUBLIC PROSECUTION SERVICE  
BELFAST CHAMBERS  
93 CHICHESTER STREET  
BELFAST  
BT1 3JR

Mr Jimmy Spratt MLA  
Chairman to Assembly and Executive  
Review Committee  
C/o Room 428  
Parliament Buildings  
Stormont Estate  
BELFAST  
BT4 3SX

30 September 2009

*Dear Mr. Spratt,*

### **INQUIRY INTO THE DEVOLUTION OF POLICING AND JUSTICE**

I refer to your letter dated 17 September and to my acknowledgement dated 22 September.

You enquire in relation to the evidence which I gave to the Assembly and Executive Review Committee on 10 March 2009. In my statement to the Committee I indicated that my preference was to locate the Public Prosecution Service in the Office of the First and deputy First Ministers. This was proposed as an alternative to a linkage to a Department of Justice; it was my view, which I retain, that public confidence will be enhanced by the independence and clear separation of the central functions of the criminal justice system, namely investigation, prosecution and adjudication.

A key argument in support of placing the Service with the First and deputy First Ministers related to the position of the Attorney General. The Attorney General is appointed by and may be removed by the First Minister and deputy First Minister acting jointly. In turn the Attorney General appoints the Director of Public Prosecutions and may remove him from office. In this context there would be symmetry in these arrangements if the Service was placed in the Office of the First and deputy First Ministers. In stating this, I

-2-

recognise that other arrangements may be available, which are also in keeping with the independence of the Service.

As you write, I did observe that it was also important that the PPS, as a non-ministerial government department, should not depend directly on a sponsoring Department for its funding. My position on this point is unchanged; I consider that on devolution of policing and justice, the Service should negotiate directly with the Department of Finance and Personnel, as part of the normal spending review process. This, I believe, is an important measure which will serve to further underline the operational independence of the PPS.

With this in mind, one might take the view that the needs of the PPS may also be served if it were placed with the Department of Finance and Personnel. While my stated preference remains, I would of course be content with such an alternative arrangement.

I appreciate that the status of the Service is a matter for the Assembly. I am determined that on our part we will make every effort to ensure that any new relationships will be as constructive as possible.

I hope this is of assistance.

*Yours sincerely,*

*Colin Donohoe*

# Letter to Public Prosecution Service

## 7 October 2009

Mr Jimmy Spratt  
Chairperson of the Assembly and  
Executive Review Committee  
c/o Room 428  
Northern Ireland Assembly  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

7 October 2009

Sir Alasdair Fraser  
Public Prosecution Service  
Belfast Chambers  
93 Chichester Street  
Belfast  
BT1 3JR

Dear Sir Alasdair,

### **Financial Implications of the Devolution of Policing and Justice Matters**

The Assembly and Executive Review Committee met yesterday and noted the terms of your letter of the 30 September 2009 in response to a request for information from the Committee.

Yours sincerely

**Jimmy Spratt**  
Chairman

# Written Submission from Prisoner Ombudsman for Northern Ireland 5th February 2009

22nd Floor, Windsor House, Bedford Street, Belfast BT2 7FT  
Tel: 028 90443982 Fax: 028 90443993  
Mr Stephen Graham  
Clerk to the Assembly and  
Executive Review Committee  
Room 428, Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

5th February 2009

Dear Stephen,

I write in response to your letter of 20 January where you asked me to consider four questions relating to financial information provided by the NIO in the context of potential devolution. I can now provide a response for the Office of the Prisoner Ombudsman for Northern Ireland. As you are aware, I took over the role of Prisoner Ombudsman on 1st September 2008.

1. I consider that the budgetary estimates for my Office as detailed in Annex A are not adequate for a number of reasons.
  - When the Office of the Prisoner Ombudsman was established the budget did not take account of investigations into Deaths in Custody. The remit of the Ombudsman was extended by the Secretary of State to investigate such incidents with effect from September 2005. Between Sept 2005 and January 2009 there have been 17 deaths in custody. Investigation of deaths in custody are resource intensive and my department has never been properly staffed to investigate deaths in custody. As a result, I inherited, at the time of my appointment a backlog of 6 deaths. 4 more deaths have occurred since 1st September 2008. I am currently implementing a plan to clear the backlog and set a target of 6 months for the completion of all new cases. I am in discussion with the NIO about the headcount and financial implications of this.
  - Furthermore it is necessary to seek legal advice and commission clinical reviews in most death in custody cases, which generate additional funding requirements.
  - It is very possible that, during 2009, my remit will be extended to include the investigation of near deaths. This will also have headcount and financial implications
  - It has been agreed that, subject to an amendment of prison rules, my remit will be extended to accept complaints directly from visitors. Currently visitors have to ask prisoners to process a complaint through the NIPS internal complaints process
  - In addition to the above, my Office has an agreement with the Probation Board for Northern Ireland to commence a pilot to investigate all complaints made against the Probation Service acting within a prison environment.
  - Since taking up post as Prisoner Ombudsman I have introduced a new system whereby prisoners can make an eligible complaint to my office using a Freephone from the prisons. It is anticipated that complaints will rise as a result of this new service, thus impacting upon staffing requirements. I have also implemented a tracking process to audit the implementation of recommendations. Failure to implement recommendations in the past has had a significant impact on prisoner confidence in my Office.

- The lease on my accommodation is now due for renewal. Current accommodation, it has been recognised by the NIO, is not to an acceptable standard and has no capacity to facilitate additional staff. Cost effective alternatives are now being identified but the budgetary provision is insufficient to support even the least expensive of these.
  - I have established that no rates have ever been paid in respect of my current accommodation and there is no provision in my budget for the payment of rates in the future.
2. In light of the developments explained above I do envisage significant additional requirements over the coming years.
- I require 1 additional Senior Investigator post and 1 secondment from the Police Ombudsman to meet immediate shortfalls. I am, through efficiency savings, funding the secondment from my current budget. I estimate that I will require 2 additional posts in the future to support the business development areas detailed. The requirement for only 2 posts reflects significant improvements in productivity and efficiency that I expect to achieve through re-structuring of my office and more effective performance management.
  - I will need to supplement my existing accommodation budget and make provision for the payment of rates
  - I will need additional funding for legal services, clinical reviews and costs relating to the need for a more comprehensive and professional prisoner and other stakeholder communication strategy. I believe that I may be able to meet some of this cost through adjustments to my budget.
3. My Office has not as yet made any unsuccessful bids for additional funds under the Comprehensive Spending Review. A non recurring sum of £73k was secured November monitoring review for 08/09.
4. In relation to your fourth question, Paul Bullick was able to confirm with you and Victor Hewitt that a response detailing the agreed settlement for the annual budget for each of the years up until 2010/11 would meet your needs. The Office of the Prisoner Ombudsman only transferred across from NIPS to CJSD in January 2007, therefore I can only advise you what the final budget figure was, taking into account any changes in August/November monitoring rounds, from 06/07 onwards. They are as follows:

06/07 - £770k

07/08 - £770k

08/09 - £802k

09/10 - £793k

10/11 - £809k

I trust that this response is suitably comprehensive for you.

I have a new Chief Executive, Sinead Simpson, starting on 9th February and will be working with her at an early stage to produce a business plan and carry out a very detailed analysis of my budget in connection with this. I would be happy to provide an update, at a later date, if this would be helpful.

Yours sincerely

(Signed)

**Pauline McCabe**  
**Prisoner Ombudsman for Northern Ireland**

# Final Request to Prisoner Ombudsman for Northern Ireland 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast BT4 3XX

12th May 2009

Ms Pauline McCabe  
Prisoner Ombudsman  
22nd Floor  
Windsor House  
Bedford Street  
Belfast BT2 7FT

Dear Ms McCabe,

## **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission to the Assembly and Executive Review Committee, recently.

As you will know, the Committee also conducted some oral evidence sessions in which witnesses were asked to indicate if there were any additional financial pressures they wished to identify to the Committee.

The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of new pressures, or easements, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details to the Committee Clerk by midday, 18 May 2009 to the following address

stephen.graham@niassembly.gov.uk

Yours sincerely



**Jimmy Spratt**  
Chairman

# Response from Prisoner Ombudsman for Northern Ireland 18th May 2009



**22nd Floor, Windsor House, Bedford Street, Belfast BT2 7FT  
Tel: 028 90443982 Fax: 028 90443993**

Mr Jimmy Spratt MLA  
Chairman to Assembly and Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

18 May 2009

Dear Mr Spratt

## The Financial Implications Relating to the Devolution of Policing and Justice Matters

Thank you for your letter of 12 May providing this office with the opportunity to update our submission to you dated 5 February 2009.

I can advise that our financial situation has changed since then, given my ongoing review [along with my new Director of Operations, who only took up post on 5 February 2009] of the exact business requirements of the office and the financial implications of those. A revised business case setting out our requirements was submitted to our sponsor body, Criminal Justice Services Division of the NIO, on 26 March and this has also since then been further revised on 12 May.

The current position is as follows:

	<b>2009/10</b>	<b>2010/11</b>
Existing Provision	793	809
Additional Requirement	115	124
Total Provision Needed	908	933

It should be noted that the financial provision detailed above includes the costs for the Independent Monitoring Boards within prisons, which amounts to just under £200k. These Boards are completely independent of my office but for management and other administrative reasons their budget had been amalgamated with mine. This has now been changed and, in future years, their budget allocation will be shown separately.

A Business Case detailing the requirement for the additional funds in the table above has now been submitted. I would be happy to provide this for you, should you feel that this would be helpful.



I would highlight that the business case does not cover the funding that would be required should the office be given any significant additional responsibilities. For example there is a House of Lords judgment which requires that “near deaths” in custody should be independently investigated. As this office investigates deaths in custody there is logic to the office taking on “near death” investigations and I would welcome that. There would however then need to be a review of the work, and resources, this would entail.

On a separate but related matter, I am in the process of meeting with all the main political parties, including some of their representatives on your Committee, and it has been suggested to me that it might be helpful if I were to meet with your Committee before the summer recess. I am sure the coming weeks will be very busy for you, not least with the forthcoming European elections, but perhaps after those elections there might be a window of opportunity for such a meeting?

I would welcome the opportunity to explain to Committee members the role of this office, the contribution we can make to ensuring that the best outcomes are achieved from the investment that is being made in the prison system and to also update your members on some national issues which will have implications for the Northern Ireland Prison Service.

I hope the updated financial position detailed above is helpful and I look forward to hearing from you in due course.

If you require any further information or clarification, please do not hesitate to contact me or my Director of Operations, Sinead Simpson.

Best regards,

**Pauline McCabe**  
**Prisoner Ombudsman for Northern Ireland**

# Letter from Prisoner Ombudsman for Northern Ireland 28 September 2009



Mr Jimmy Spratt MLA  
Chairman to Assembly and Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

28 September 2009

Dear Mr Spratt

## **Briefing by the Prisoner Ombudsman for Northern Ireland**

My letter of 18 May 2009 refers and I have attached a further copy for your ease of reference.

In May/June of this year I completed a series of meetings with representatives from all the main political parties in Northern Ireland, and gave them an overview of the work of the Office of Prisoner Ombudsman.

Some political representatives, including some who sit on your Committee, were particularly interested in the role that the Prisoner Ombudsman can make to ensuring that the best outcomes are achieved from the investment that is being made in the prison system. They also welcomed the briefing on some national issues which have implications for the Northern Ireland Prison Service, including the requirement to conduct an independent investigation of “near deaths”.

Some of those I met with suggested that the entire Assembly Executive Review Committee might welcome a briefing on all of these issues and it was for that reason that I wrote in May in the hope that your timetable might allow me to provide that briefing before the summer recess.

I remain willing and indeed would welcome the opportunity to provide this briefing to the Committee and I would be grateful if you could advise me whether you think that would be helpful and when it would be convenient for the briefing to take place.

Best regards,

(Signed)

**Pauline McCabe**

Prisoner Ombudsman for Northern Ireland

# Letter to Prisoner Ombudsman for Northern Ireland 7 October 2009

Mr Jimmy Spratt  
Chairperson of the Assembly and  
Executive Review Committee  
c/o Room 428  
Northern Ireland Assembly  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

Ms Pauline McCabe  
Prisoner Ombudsman for Northern Ireland  
22nd Floor  
Windsor House  
Bedford Street  
Belfast  
BT2 7FT

7 October 2009

Dear Ms McCabe,

The Assembly and Executive Review Committee met yesterday, 6 October 2009, and considered your letter of 25 September 2009.

The Committee has a specific remit to report to the Assembly on the arrangements for the devolution of policing and justice matters and considered that your proposed briefing would fall outside that remit and that it would be inappropriate for you to brief the Committee at this time.

Yours sincerely

**Jimmy Spratt**  
Chairman

Letter from  
Prisoner Ombudsman for Northern Ireland  
14 October 2009



A & ERC  
15 OCT 2009  
RECEIVED

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont  
BELFAST  
BT4 3XX

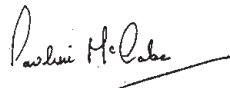
14 October 2009

Dear Mr Spratt

Thank you for your letter of 7 October.

I fully understand that the Assembly Executive Committee is focussed on arrangements for the devolution of policing and justice matters. I remain happy to brief the relevant Committee of the Assembly about the role and work of Prisoner Ombudsman at an appropriate point in the future.

Yours sincerely



**PAULINE McCABE**  
Prisoner Ombudsman for Northern Ireland

# Written Submission from Royal Ulster Constabulary George Cross Foundation 5th February 2009

From: RUC George Cross Foundation [rucgcfoundation@nics.gov.uk]

Sent: 05 February 2009 12:47

To: +Comm. Assembly & Executive Review Public Email

Attachments: Costs1.jpg; Costs3.jpg; Costs2.jpg

Dear Mr Graham

Thank you for your letter of 20th January 2009.

The answers to your questions are as follows :-

1. The budgeting estimates are adequate with the exception of a major item of capital expenditure viz a new Police Museum which is the subject of ongoing negotiations. This will of course attract venue expenditure which will also impact on the budget. I attach three files

(costs1,costs2,costs3) showing the Monetary Costs Analysis from the Business Case submitted to the NIO.

<b>Year</b>	<b>Admin Costs</b>	<b>Charitable Costs</b>	<b>Total</b>
2005/06	62930	61497	124427
2006/07	83193	59667	142860
2007/08	75293	122454	197747
2008/09	63000	67250	150250
2009/10	87150	70612	157762
2010/11	91507	74143	165650

If you have any queries please ring me and I will be glad to explain for you

# Royal Ulster Constabulary George Cross Foundation Foundation Costs

## 6.1 Introduction

This section of the business case examines the potential monetary costs and benefits associated with the options identified. The options are:

- Option 1 – Status Quo (Do Nothing); and
- Option 2 – provide a new, purpose-built Police Museum

The costings for each option span a five-year period, the estimated time period of the useful economic life of the proposed system.

## 6.2 Costing Assumptions

In order to calculate the discounted costs and benefits of each of the options, estimates have been based on a number of assumptions. The assumptions detailed in Appendix I have been applied to the “does something” option. Assumptions used in costing specific options will be detailed in the examination of that option.

There are a number of general “business-based” assumptions which have been applied to all short-listed options. These are as follows:

- year 0 runs from August 2008 to March 2009;
- all costs are stated at July 2008 levels;
- all costs exclude VAT;

## 6.3 Costs to be examined

The costs to be examined for each of the short-listed “do something” options have been categorised under a number of separate headings in accordance with HMT guidance:

- Capital Costs – Building/ Fitting-out/Hardware/ Software/Services;  
Revenue Costs - Hardware Maintenance/Software Maintenance/Project Staffing/Service Management.

A detailed breakdown of the costs associated with Option 2 has been included in Appendix

## 6.4 Summary of Capital Costs

For summary purposes the total annual costs over the 5 year period (2008/09 to 2012/13) of Option 1 Status Quo and the “do something” Option 2 are provided in the table below:

Table 6.1

Total summary of Capital Costs for the period of the project

Capital Costs type	Option 1 Status Quo	Option 2 New Build
Building	0	£3,445,000
Fitting-out	0	£2,095,000
<b>Total</b>	<b>0</b>	<b>£5,540,000</b>

Source: G A Tulloch FRICS Chartered Quantity Surveyor

### 6.5 Summary of Revenue Costs

For summary purposes the total annual costs over the 5 year period (2008/09 to 2012/13) of Option 1 Status Quo and the "do something" Option 2 are provided in the table below:

Table 6.2

Total summary of Revenue Costs for a five-year period.

Expenditure	Option 1 Status Quo	Option 2 New Museum
Staffing	£185,000	£802,764
Premises	0	£165,769
Office Equipment	£5000	£19,340
Displays and Collections	£5000	£138,141
Education/Outreach (non-staff costs)	0	£19,340
Utilities	0	£69,070
Marketing	0	£55,256
Professional Costs	0	£30,391
<b>Total</b>	<b>£195,000</b>	<b>£1,300,071</b>

Source: G A Tulloch FRICS Chartered Quantity Surveyor



## **6.6 Potential Monetary Benefits**

It is not anticipated that there will be significant direct monetary benefit if a new Police Museum is built, due to the nature of heritage and in particular, museum projects. Museums by their nature are unlikely to make financial profits, the benefits being more akin to the preservation of heritage which, of course, has a cost.

It could, however be speculated that investment in projects which facilitate mutual understanding and contribute to reconciliation and conflict resolution could achieve significant monetary savings in terms of spending on policing, security, courts and compensation. If that benefit could be translated into more effective policing then, once again significant savings could be made. By way of example, it has been estimated that the cost of a serious assault in terms of police time, court, time, hospital costs, compensation etc could run to over £750,000. Similarly, compensation for criminal damage to property ran into many hundreds of millions over the periods of the 'troubles'.

## **Conclusion**

It is unlikely that direct monetary benefits will be achievable from the project. The non-benefits are likely to be very significant and these are detailed in section 8.

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# Final Request to Royal Ulster Constabulary George Cross Foundation 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast BT4 3XX

12th May 2009

Mr Jim McDonald  
RUC GC Foundation  
Brooklyn  
65 Knock Road  
Belfast BT5 6LE

Dear Mr McDonald,

## **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission to the Assembly and Executive Review Committee, recently.

As you will know, the Committee also conducted some oral evidence sessions in which witnesses were asked to indicate if there were any additional financial pressures they wished to identify to the Committee.

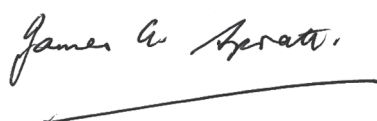
The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of new pressures, or easements, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details to the Committee Clerk by midday, 18 May 2009 to the following address

[stephen.graham@niassembly.gov.uk](mailto:stephen.graham@niassembly.gov.uk)

Yours sincerely



**Jimmy Spratt**  
Chairman

# Response from Royal Ulster Constabulary George Cross Foundation 18th May 2009

From: RUC George Cross Foundation [mailto:rucgcfoundation@nics.gov.uk]  
Sent: Monday, May 18, 2009 04:09  
To: Graham, Stephen  
Subject:

The Foundation is content with the figures already supplied to you viz.

2009/2010 £158,000 annual budget. The only additional requirement is a sum sufficient for a new Museum as debated in the Assembly on Monday 11th May 2009.

Jim McDonald  
Chairman  
RUC GC Foundation

# Letter to State Pathologist 10 February 2009

Stephen J Graham  
Clerk to the Assembly and  
Executive Review Committee  
c/o Room 428  
Northern Ireland Assembly  
Parliament Buildings  
Stormont  
Belfast  
  
BT4 3XX

10 February 2009

Professor Jack Crane  
State Pathologist  
Institute of Forensic Medicine  
Grosvenor Road  
Belfast

BT12 6BS

Dear Professor Crane,

### **Devolution of Policing and Justice Matters**

Further to my letters of 20 January and 30 January 2009 requesting financial information in relation to your organisation, I was asked by the Committee, when it met this morning, to impress on you the importance of responding as a matter of the utmost urgency.

The Committee is working to a specific timetable and is due to assess all the responses on 17 February, 2009 after these have been examined by the appointed Specialist Adviser. In fairness to him, he needs time to consider more than 20 responses, of which yours is the only significant one outstanding.

I have copied this letter to the Permanent Under Secretary in the Northern Ireland Office.

Yours sincerely

**Stephen J Graham**  
Committee Clerk

# Written Submission from State Pathologist's Department 13th February 2009

13 February 2009  
Mr Stephen Graham  
Clerk to Assembly and Executive  
Review Committee  
Room 428  
Parliament Buildings  
Stormont Estate  
Belfast BT4 3XX

Dear Mr Graham

I refer to your letter on behalf of the Assembly and Executive Committee requesting financial information about the State Pathologist's Department.

I apologise for the delay in replying to you but I am now enclosing my response to the questions which you posed.

Please do not hesitate to contact me should you require any further information.

Yours sincerely



**J Crane**  
State Pathologist &  
Professor of Forensic Medicine

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# The State Pathologist's Department

## **Responses to Questions Posed by the Assembly and Executive Review Committee (letter of 20 January 2009)**

### **Question 1: Do you consider the budgetary estimates for your organisation are adequate and, if not, why not?**

**Response:** No. The estimates for 08/09 did not prove to be adequate. This was due to a combination of factors including the effects of the "read across" of the Health Service Agenda for Change initiative to those members of SPD staff whose conditions of employment (including pay) are linked to those of staff employed in the Health and Social Care sector, and the running costs for the new Northern Ireland Regional Forensic Mortuary which became operational on 1 August 2008. The Department (NIO) is aware of these additional pressures.

### **Question 2: What significant, additional requirements do you envisage, in future years, and could any of these be dealt with through an adjustment to your organisation's existing plans/priorities?**

**Response:** Additional requirements are set out in the table at Annex A and cannot be dealt with through an adjustment to the organisation's plans or priorities. They are demand led (staff and operational costs) and the Department (NIO) is aware of them.

### **Question 3: In the present Comprehensive Spending Review, please provide details of any unsuccessful bids and how you expect to deal with them.**

**Response:** The State Pathologist's Department had had no unsuccessful bids in the present Comprehensive Spending Review.

### **Question 4: Can you please provide for each main spending area, the breakdown between Resource and Capital DEL, Annually Managed Expenditure and administration costs for each of the years 2005/06 to 2010/11, that is the outturns of the three years prior to spending review 07 and the plans for the three years of the Review?**

**Response:** The State Pathologist's Department's expenditure falls under Resource (Programme Expenditure only) or Capital DEL. A breakdown of this expenditure is attached at Annex A.

# Final Request to State Pathologists Department

## 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

12th May 2009

Professor Jack Crane  
State Pathologists Department  
Institute of Forensic Medicine  
Grosvenor Road  
Belfast  
BT12 6BS

Dear Professor Crane,

### **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission to the Assembly and Executive Review Committee, recently.

As you will know, the Committee also conducted some oral evidence sessions in which witnesses were asked to indicate if there were any additional financial pressures they wished to identify to the Committee.

The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of new pressures, or easements, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details to the Committee Clerk by midday, 18 May 2009 to the following address

[stephen.graham@niassembly.gov.uk](mailto:stephen.graham@niassembly.gov.uk)

Yours sincerely



**Jimmy Spratt**  
Chairman



Written Submission from  
Youth Justice Agency  
20th January 2009

Mr Stephen Graham  
Clerk to Assembly and Executive  
Review Committee  
Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT43XX

4 February 2009

cc Anthony Harbison  
Janet Henry  
Anne McConkey  
Martin Gunning  
Gareth Bell

Dear Stephen

Thank you for your letter of 20 January in which you sought my response to a number of questions relevant to the Assembly and Executive Review Committee's on-going consideration of issues relating to the devolution of policing and justice matters.

My responses to your first three questions are set out in Annex 1 to this letter and the financial information sought in your final question is set out in Annex 2.

I trust that the responses are sufficient for your purpose and I will be happy to discuss the issues in more detail should that be necessary.

Yours sincerely

Bill Lockhart

Chief Executive

## YJA Responses to Questions 1 to 3 of Aerc Letter Dated 20 January 2009

**Question 1** – Do you consider the budgetary estimates for your organisation are adequate, and if not why not?

### Chief Executive's Response

Yes, although the Agency's 2008-09 CSR07 settlement was a tight financial settlement, I believe that, in general, through prioritisation of its work and good financial management the Agency is capable of delivering its services to meet its objectives over the period.

**Question 2** – What significant, additional requirements do you envisage, in future years, and could any of these be dealt with through an adjustment to your organisation's existing plans / priorities?

### Chief Executive's Response

On the Capital expenditure side we do not see the need to raise any significant requirements for additional funding within or beyond the CSR07 allocation. Accurate costs and timescales have still to be determined for implementing the "Review Report on the Use of Physical Restraint in Secure Settings in E&W" (Smallridge & Williamson) and we are identifying how this can be prioritised within current funding.

**Question 3** – In the present Comprehensive Spending Review, please provide details of any unsuccessful bids and how you expect to deal with them.

### Chief Executive's Response

The Youth Justice Agency has had no unsuccessful bids in the present Spending Review.

**Question 4** – Can you please provide for each main spending area, the breakdown between Resource and Capital DEL, Annually Managed Expenditure and administration costs for each of the years 2005/06 to 2010/11, that is the outturns for the three years prior to spending review 07 and the plans for the three years of the Review?

### Chief Executive's Response

The Youth Justice Agency's expenditure falls under Resource (Programme expenditure only) or Capital DEL. A breakdown of this expenditure for the period requested is provided in Annex 2.

**Annex 2 - YJA Resource & Capital Del By Spending Area 2005-06 To 2010-11**

	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
	Actual Spend			Forecast spend		
	£'000	£'000	£'000	£'000	£'000	£'000
<b>Resource DEL</b>						
Salary Costs <sup>1</sup>	11,412	13,038	13,079	13,619	13,664	14,101
Agency Running Costs	3,646	4,466	3,660	3,992	5,097	5,211
Agency Programme Expenditure - External Funding	758	1,559	1,573	885		
Agency Programme Expenditure - Other	631	534	533	432		
Receipts	(106)	(64)	(143)	(74)		
	16,341	19,533	18,702	18,854	18,761	19,312
Non-Cash Costs <sup>2</sup>	3,172	6,270	3,028	2,688	3,010	3,145
	19,513	25,803	21,730	21,542	21,771	22,457
<b>Capital DEL</b>						
New JJC, Woodlands	6,560	11,738	-	-	-	-
Other Expenditure	411	334	347	260	690	200
Capital Receipts						(1,000)
	6,971	12,072	347	260	690	(800)

<sup>1</sup> Excludes Non-Cash Staff costs relating to the NILGOSC pension scheme

<sup>2</sup> Includes Non-Cash Staff Costs relating to the NILGOSC pension scheme

# Final Request Youth Justice Agency

## 12 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

12th May 2009

Mr Bill Lockhart OBE  
Youth Justice Agency  
Corporate Headquarters  
41-43 Waring Street  
Belfast  
BT1 2DY

Dear Mr Lockhart,

### **The Financial Implications Relating to The Devolution of Policing and Justice Matters**

Thank you for providing a written submission and for appearing before the Assembly and Executive Review Committee to give oral evidence, recently.

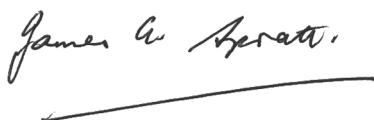
The Committee has asked its Specialist Adviser, Victor Hewitt, to do some more work on the information which has been supplied and to present his findings in the form of a paper. In anticipation of this paper, I have written to the First Minister and the deputy First Minister, and the Minister for Finance and Personnel to offer them the opportunity of meeting with the Committee to consider the paper, in closed session, later this month. However, you will recall that, during the oral evidence session, you were asked to indicate if there were any additional financial pressures you wished to identify to the Committee.

My purpose in writing to you again is to give you **a further opportunity to confirm that the position you declared in your written, and oral, evidence remains accurate and up to date.** You should direct any such confirmation to the e-mail address below by midday, 18 May 2009.

However, if you are unable to provide that confirmation because, for example, you are now aware of any easements, or new pressures, in the current CSR period, or if your spending plans have been re-profiled in any way, including deferrals beyond the current CSR period, you should provide details, electronically, to the Committee Clerk by midday, 18 May 2009 at the following address

[stephen.graham@niassembly.gov.uk](mailto:stephen.graham@niassembly.gov.uk)

Yours sincerely



**Jimmy Spratt**  
Chairman

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# Response from Youth Justice Agency

## 18th May 2009

14 May 2009

Mr Jimmy Spratt MLA  
Chairman to Assembly and  
Executive Review Committee  
c/o Room 428  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

Dear Mr Spratt

### The Financial Implications Relating to the Devolution of Policing and Justice Matters

I write in response to your letter of 12 May in which you asked me confirm the Youth Justice Agency's position on the above matter.

I can confirm that there has been no change to the position as declared in our previous written and oral evidence to the Committee. That is that we anticipate no significant pressures or easements on the Agency's budget in the current CSR period but potentially have two relatively minor matters which could impact on our capital budget. Both of these were discussed with Committee members on 24 February and for clarity, an outline of both issues is set out in the Annex attached to this letter.

Departmental finance colleagues have indicated that, should these issues materialise, they will be addressed within the NIO's existing resources.

Yours sincerely

**[Signed]**

**Bill Lockhart**  
**Chief Executive**

## The Financial Implications Relating to the Devolution of Policing and Justice Matters

### **Youth Justice Agency**

*Minor Pressures on Capital Budget Discussed with AERC Committee on 24 February 2009.*

#### **(i) Potential capital expenditure of £200k – £250k on CCTV equipment**

This pressure arises from the recommendations of the “The Review Report on the Use of Physical Restraint in Secure Settings in E&W” (Smallridge & Williamson) which if the Agency was directed to implement its recommendations, would, for the purposes of staff safety and to prove / disprove allegations of assaults on young persons, necessitate the installation of CCTV cameras in all common areas e.g. lounges, corridors, classrooms in the Woodlands Juvenile Justice Centre. An initial ball-park estimate of the likely cost of the equipment is in the range of £200k - £250k. This level of expenditure would utilise the Agency’s entire capital budget for one year, which is £200k per annum over the CSR period.

#### **(ii) Potential shortfall in the proceeds from the sale disposal of Whitefield House**

Whitefield House was earmarked for disposal as part of the departmental capital expenditure plans for the CSR period. Its disposal is being taken forward along with two other NIO properties as part of a departmental disposal project. Estimated disposal receipts of £1m were budgeted for during the CSR planning period and are included in the Agency’s capital expenditure budget in the final year of the CSR period i.e. 20010-11.

Given the subsequent fall in the property market, it is now likely that the sale of the property will not fully realise the original estimated disposal proceeds of £1m. A recent valuation by Land & Property Services at 31 March 2009, for the Agency’s annual accounts, valued the property at £800k.

Sales proceeds of £800k would create a pressure on the Agency’s capital expenditure budget of £200k and would prevent the Agency from incurring any capital expenditure in the final year of CSR in order to balance its budget. Further falls in the value of the property would result in the Agency exceeding its capital budget for that year without incurring any capital expenditure.



Northern Ireland  
Assembly

Appendix 13

# Research Papers





## Research Papers

Northern Ireland  
Assembly

Research Paper

30 April 2009

## The Attorney General for Northern Ireland

The paper has been prepared to assist the Assembly and Executive Review Committee consider the role of the Attorney General for Northern Ireland. At present one person, the Attorney General, holds two posts: Attorney General for England & Wales and Attorney General for Northern Ireland. Provision for a new Attorney General for Northern Ireland (Attorney General NI) after the devolution of justice functions is contained in the Part 2 of the Justice (Northern Ireland) Act 2002. This paper details the background to the creation of the post and sets out the provisions contained in the 2002 Act. The position of the Attorney General for Northern Ireland mirrors (albeit with some important differences) that of the Lord Advocate in Scotland. The paper, therefore, contains information prepared by the Scottish Government Legal Directorate on the role and functions of the Lord Advocate and the Solicitor General for Scotland (the Scottish Law Officers).

Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

## Summary

At present one person, the Attorney General, holds two posts: Attorney General for England & Wales and Attorney General for Northern Ireland. Provisions contained in Part 2 of the Justice (Northern Ireland) Act 2002 mean that after the devolution of justice functions the Attorney General for England and Wales shall no longer be Attorney General for Northern Ireland and that the First Minister and deputy First Minister must appoint a person to be Attorney General for Northern Ireland. In a letter to the Assembly and Executive Review Committee, dated 18 November 2008, the FM and dFM stated that they were minded that John Larkin QC be invited to become Attorney General for Northern Ireland.

The creation of the new post, which has its origins in the Criminal Justice Review, has provided an opportunity to address the tensions which have resulted from the current situation in which the Attorney General for England and Wales is a politician and a member of the Government, but one who also acts as an independent legal adviser and guardian of the public interest. Debate about the Attorney General's role has focussed on two areas:

- tension between the various functions of the Attorney General - being a Minister and a member of the Government, and being an independent guardian of the public interest and performing superintendence functions (e.g. on decisions relating to sensitive prosecutions);
- tension between being a party politician and a member of the Government, and the giving of independent and impartial legal advice
- In this context, it is worth noting that under the provisions of the Justice (Northern Ireland) Act 2002:
  - the Attorney general is disqualified from being a member of the House of Commons, the Northern Ireland Assembly or a local authority in Northern Ireland;
  - the Attorney General is also required to exercise his functions independently; and
  - whilst a duty is placed on the First Minister and deputy First Minister to appoint a person to be Attorney General for Northern Ireland, after consulting the Advocate General for Northern Ireland, the First Minister and deputy First Minister can only remove or suspend the Attorney General from office on the recommendation of a tribunal. The members of the tribunal will be judges in England, Wales or Scotland. The tribunal will be convened by the First Minister and deputy First Minister and its members will be appointed by the Lord Chancellor

As regards appointment and removal, it is worth noting the significant role that the Scottish Parliament has in the appointment and removal of the Lord Advocate. The Scotland Act 1998 states that:

It is for the First Minister to recommend to Her Majesty the appointment or removal of a person as Lord Advocate or Solicitor General for Scotland; but he shall not do so without the agreement of the Parliament.

The Lord Advocate and the Solicitor General for Scotland may at any time resign and shall do so if the Parliament resolves that the Scottish Executive no longer enjoys the confidence of the Parliament.

Further comparison with the functions of the Lord Advocate in Scotland may provide a useful framework for consideration of the remit of the new 'Attorney General for Northern Ireland'.

## Legal Advice to Executive

The Scotland Act 1998 provides that the Lord Advocate and the Solicitor General for Scotland are members of the Scottish Executive. There is no concept of a Scottish “Cabinet” in the Scotland Act and the Ministers who are members of it are matters for the First Minister. Since May 2007 the position has been that the Lord Advocate will not be a member of the Cabinet and will not normally attend meetings; she will however continue to receive all papers. In addition, the Lord Advocate retains the right to address the Cabinet and she will attend where discussion of a particular matter requires her to do so.

The Scottish Ministerial Code sets out rules and guidance in relation to the roles of the Scottish Law Officers and excepts from collective responsibility the Lord Advocate’s functions as head of the systems of prosecution and investigation of deaths. As Law Officers, both the Lord Advocate and the Solicitor General for Scotland have the ultimate responsibility for advising the Scottish Ministers on all matters relating to the law of Scotland and the Code sets out guidance as to the circumstances in which the Law Officers should be consulted.

The Attorney General is not a member of the Executive Committee, which consists of the First Minister, the deputy First Minister and the Northern Ireland Ministers. The Northern Ireland Executive Ministerial Code makes no reference to the Attorney General.

## Relation to Prosecution Service

In Scotland, the Lord Advocate’s dual role as legal adviser to government and head of the prosecution service has been perceived to contain tensions. In Northern Ireland, however, the Justice NI Act 2002 provides for a prosecuting service for Northern Ireland known as the Public Prosecution Service for Northern Ireland which is to be headed by the Director of Public Prosecutions for Northern Ireland. On devolution a number of functions of the Attorney General will transfer to the Director of Public Prosecutions and the Attorney General for Northern Ireland will no longer have superintendence functions in relation to prosecutions. The Director must exercise functions independently of any other person. However, he/she must consult the Attorney General for Northern Ireland and the Advocate General for Northern Ireland (a) before issuing or making alterations to a code of practice for prosecutors<sup>1</sup>, and (b) before preparing his annual report. The Attorney General for Northern Ireland must arrange for each annual report of the Director to be published. He may though exclude a part of an annual report from the copy to be published if, in his opinion, the publication of the part (a) would be against the public interest, or (b) might jeopardise the safety of any person.

Section 25 of the Justice (Northern Ireland) Act 2002 provides that the Attorney General for Northern Ireland may participate in the proceedings of the Assembly. The Explanatory Note which accompanies the Act states that *‘The effect of this section is to make the Attorney General accountable before the Northern Ireland Assembly for the operation of the Prosecution Service’*. The note adds that *‘the Attorney General will be allowed to answer questions and make statements pursuant to standing orders, but without the right to vote’*. He will also have the right to refuse to answer questions or produce documents on public interest grounds or where that might prejudice criminal proceedings. The Attorney General will also be required to declare any interests in the register maintained by the Assembly before taking part in any relevant proceedings of the Assembly.

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1 Amongst other things, the code must give guidance on general principles to be applied— (a) in determining, in any case, whether criminal proceedings should be instituted or, where criminal proceedings have been instituted, whether they should be discontinued, and (b) in determining, in any case, what charges should be preferred

## Executive legal services and legislative draughtspersons

As Lord Advocate, Eilish Angiolini, has Ministerial responsibility for Scottish Government Legal Directorate (SGLD), which provides legal advice to the directorates of the Scottish Government and for the Office of the Scottish Parliamentary Counsel (“OSPC”), which drafts Bills for the Government’s legislative programme. Responsibilities of the Advocate General for Northern Ireland in relation to government legal services and the Office of Legislative Council are unclear.

## Legislative competence

A major focus of SGLD’s advisory and legislation work is in ensuring that Ministers act always within the powers conferred on them by the devolution settlement and that Government Bills presented to the Scottish Parliament are within the legislative competence of the Parliament. This aspect of the office’s work invariably involves consideration of human rights issues. Before a bill can be introduced in the Scottish Parliament, the Minister responsible must state that it is in his or her view within the legislative competence of the Parliament. This view is reached on the advice of the Law Officers.

Section 10(1) of the Northern Ireland Act 1998 provides that the Assembly’s standing orders shall ensure that a Bill is not introduced in the Assembly if the Presiding Officer decides that any provision of it would not be within the legislative competence of the Assembly. It has been noted, however, that, unlike its Scottish equivalent, this provision does not impose a duty on the Presiding Officer to decide in every case whether a Bill is within that legislative competence

The Northern Ireland Human Rights Commission has s69(4) has a statutory duty to advise the Assembly whether a Bill is compatible with human rights (a) as soon as reasonably practicable after receipt of a request for advice; and (b) on such other occasions as the Commission thinks appropriate

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## Introduction

The Attorney General and the Solicitor General (the Law Officers of the Crown, together with the Advocate General for Scotland), are the UK Government's chief legal advisers, advising on domestic and international law. They also have public interest roles, for example in relation to criminal cases and contempt of court proceedings. In England and Wales, they superintend the work of the Crown Prosecution Service and the Serious Fraud Office and in Northern Ireland they superintend the functions of the Director of Public Prosecutions.

At present one person, the Attorney General, holds two posts: Attorney General for England & Wales and Attorney General for Northern Ireland. Under devolution a new Attorney General for Northern Ireland (Attorney General NI) will be created. Provision for this is contained in Part 2 of the Justice (Northern Ireland) Act 2002.

This paper provides information on the background to the proposal for a 'local' Attorney General for Northern Ireland and sets out the extent to which the role of this post has been defined in legislation.

As the position of Attorney General for Northern Ireland broadly mirrors that of the Lord Advocate in Scotland (albeit with important differences) the second part of the paper provides detail on that position.

## The Attorney General for Northern Ireland

The current position is that one person, the Attorney General, holds two posts: Attorney General for England & Wales and Attorney General for Northern Ireland. Under devolution a new Attorney General for Northern Ireland (Attorney General NI) will be created. The Justice (Northern Ireland) Act 2002<sup>2</sup> provides the legislative authority for the role of Attorney-General following the devolution of policing and justice powers to Northern Ireland.

The role of the Attorney General for Northern Ireland has been considered within a number of key consultations and pieces of legislation:

- The Criminal Justice Review 2000;
- Ad-hoc Committee on Justice (Northern Ireland) Bill
- Justice (Northern Ireland) Act 2002;
- NIO Discussion Document – 'Devolving Policing & Justice in NI'; and
- The Assembly and Executive Review Committee.

The remainder of this section of the paper will deal with each of the above and the information which they have provided in relation to the role and functions of the Attorney General for Northern Ireland.

### (2.1) The Criminal Justice Review 2000<sup>3</sup>

The Review of the Criminal Justice System in Northern Ireland was published by the Northern Ireland Office in March 2000. The review addressed 10 key areas of the Criminal Justice System and made recommendations as to how they could be reformed. The Review addressed the area of the Attorney General for Northern Ireland and the role and functions that he/she would have upon the devolution of policing and justice powers to Northern Ireland.

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2 The Justice (Northern Ireland) Act 2002: [http://www.opsi.gov.uk/acts/acts2002/ukpga\\_20020026\\_en\\_1](http://www.opsi.gov.uk/acts/acts2002/ukpga_20020026_en_1)

3 Review of the Criminal Justice system in Northern Ireland: [http://www.nio.gov.uk/review\\_of\\_the\\_criminal\\_justice\\_system\\_in\\_northern\\_ireland.pdf](http://www.nio.gov.uk/review_of_the_criminal_justice_system_in_northern_ireland.pdf)



The origins of a 'local' Attorney general can be found in the Criminal Justice Review, which stated that:

*'We recommend that consideration be given to establishing a locally sponsored post of Attorney General who, inter alia, would have oversight of the prosecution service. We see the Attorney General as a non-political figure drawn from the ranks of senior lawyers and appointed by the First Minister and deputy First minister. We would suggest a fixed term appointment, with security of tenure, say for five years, which would not be affected by the timing of Assembly terms.'*

The review went on to state that *'...the appointment process should be transparent, enabling people to declare themselves as candidates. We would see such a position as carrying significant status, equivalent to that of a High Court judge, and attracting candidates of the highest possible calibre'*.

Addressing the issue of political accountability that would arise given the appointment of a 'non-political figure' the Review recommended that: <sup>4</sup>

...the formulation in section 27 of the Scotland Act 1998 be adopted in that, although not a member of the Assembly, the Attorney should be enabled by Standing Orders to participate in Assembly business, for example through answering questions or making statements, but without voting rights.

An Attorney General appointed along the lines envisaged above would, the Review suggested, be less "political" than almost all counterparts in other common law jurisdictions, where the post holder is a member of the Government or at the very least an appointee of the governing party. Whilst it was argued that this would, in itself, help insulate the prosecution process from political pressure, the Review went on to state that.

...in the particular circumstances of Northern Ireland, this independence should be further strengthened, by ensuring that the relationship between the Attorney General and the head of the prosecution service, while containing elements of oversight, is consultative and not supervisory. In other words, there should be no power for the Attorney General to direct the prosecutor, whether in individual cases or on policy matters. The impression is that in some other common law jurisdictions the relationship between Attorney and prosecutor works well in practice and that the independence of the prosecutor in decision making is respected; but ultimately, if there were disagreement between the Attorney and the prosecutor on an individual case, then in law the Attorney's will would probably prevail. The Criminal Justice Review states that they do not believe that such an arrangement would be suitable in the Northern Ireland context.

Stating that they had been attracted to aspects of the model in the Republic of Ireland the Review stated:

We recommend that legislation should: confirm the independence of the prosecutor; make it an offence for anyone without a legitimate interest in a case to seek to influence the prosecutor not to pursue it; but make provision for statutory consultation between the head of the prosecution service and the Attorney General, at the request of either.

Whilst The Review concluded that the Attorney General should be answerable to the Assembly for the work of the prosecution service in general terms it went on to say:

We recommend that it be made clear on the face of legislation, as in section 27 of the Scotland Act 1998, that the Attorney could decline to answer questions on individual cases where to do so might prejudice criminal proceedings or would be contrary to the public interest.

*“It may be that the prosecutor and Attorney General would conclude that in no circumstances should they be expected to answer such questions. Nevertheless we do not think that this should be ruled out for all time, as will be apparent from our views on the giving of reasons for decisions:”*

We recommend that the head of the prosecution service should be accountable to the appropriate Assembly Committee for financial and administrative matters relating to the running of service. In this event it would be important that Standing Orders made clear the limitations on questioning which might impinge on individual cases

## (2.2) The Assembly Ad-hoc Committee on Justice (Northern Ireland) Bill<sup>5</sup>

In January 2002, the Northern Ireland Assembly Ad-hoc Committee on Justice (Northern Ireland) Act published a report on the draft Justice (Northern Ireland) Bill and the Criminal Justice Review Implementation plan in 2001. They considered the role and functions of the Attorney General under the Bill and completed recommendations:

The Committee considered the role and functions of an Attorney General where the affect the proceedings of the Assembly and acknowledged that provision must be made for his/her participation in the proceedings of the Assembly. The Committee determined that a clear set of procedures, in respect of the following areas of business, will need to be resolved – questions, statements, voting, quorum; and register of interests. The Committee agreed that the Committee on Procedures might be the most appropriate Committee to resolve these issues.<sup>6</sup>

**Recommendation 7:** That the Committee on Procedures examine and make recommendations to the Assembly on the extent to which the Attorney General may participate in the proceedings of the Assembly having due regard to best practice in other jurisdictions.

The Committee also determined that consideration needed to be given to the additional functions, proposed in the Review, which may be given to the Attorney General. Those functions<sup>7</sup> were:

- Senior legal adviser to the Northern Ireland Executive;
- Responsibility for legislative draftsmen;
- The Executive’s link with the Law Commission; and
- Responsibility for human rights-proofing legislation.

**Recommendation 8:** That, post devolution, the appropriate steps are taken to define the future role and extent of the Attorney General’s responsibilities.

The Committee noted<sup>8</sup> that the First Minister and deputy First Minister had the power to convene a tribunal to remove the Attorney General from office. The Committee agreed that this unilateral power would not reflect the primacy that the Assembly will have, following the devolution of justice matters, and that the draft Bill should be amended to provide scope for the Assembly to have an input in this area. The Committee agreed that the power to convene a tribunal to consider removing the Attorney General from office should be given to the Assembly.

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5 [http://www.niassembly.gov.uk/adhocs/flags/reports/adhoc1-01\\_reform.htm](http://www.niassembly.gov.uk/adhocs/flags/reports/adhoc1-01_reform.htm)

6 Section 63 of the Ad-hoc Committee report on Justice (Northern Ireland) Bill 2001: [http://www.niassembly.gov.uk/adhocs/flags/reports/adhoc1-01\\_reform.htm](http://www.niassembly.gov.uk/adhocs/flags/reports/adhoc1-01_reform.htm)

7 Section 64 of the Ad-hoc Committee report on Justice (Northern Ireland) Bill 2001

8 Section 71 of the Ad-hoc Committee report on Justice (Northern Ireland) Bill 2001

**Recommendation 12:** That clause 21(3) of the draft Bill be amended to provide authority for the Assembly to convene a tribunal following a resolution of the Assembly that is passed with the support of a number of members of the Assembly which equals or exceeds two thirds of the total number of seats in the Assembly.

### (2.3) Justice (Northern Ireland) Act 2002<sup>9</sup>

Part 2 of the Justice (Northern Ireland) Act 2002 contains provisions regarding law officers and the Public Prosecution Service. Commenting on the provisions, the then Secretary of State for Northern Ireland, Dr John Reid, stated that:

*'Part 2 covers Law Officers and the new Public Prosecution Service. It provides for the appointment of a local Attorney-General for Northern Ireland and the creation of a Westminster-based Advocate-General for Northern Ireland. Both posts are to be commenced on or after the devolution of justice functions to the Northern Ireland Assembly. The Attorney-General for Northern Ireland will become a figure responsible to the Northern Ireland Assembly and will carry out many of the existing functions of the post and some new ones, but not all the functions of the current Attorney-General fall within the devolved field. That is why we will create the new post of Advocate-General for Northern Ireland, mirroring arrangements in Scotland. The Advocate-General will be responsible to Parliament for those of the Attorney-General's current functions that are within the reserved and excepted fields in Northern Ireland.'*<sup>10</sup>

Paragraph 43<sup>11</sup> of the Explanatory Note which accompanies the Justice (Northern Ireland) 2002, states that part 2 of the act:

implements the recommendations in Chapter 4 of the Review, establishing a Public Prosecution Service for Northern Ireland and providing for the appointment of the Attorney General for Northern Ireland after the devolution of justice functions. After devolution, the Attorney General for England and Wales will hold the new post of Advocate General for Northern Ireland. This Westminster figure will be responsible for matters relating to prosecutions that are not within the competence of the devolved administration, for example matters relating to national security and international relations.

The Explanatory Note goes on to explain the various provisions relating to the Attorney General and related matters within the Justice (Northern Ireland) Act 2002 in the following terms:

### Section 22: Attorney General<sup>12</sup>

44. It is planned to commence the provisions in sections 22 to 28 and sections 41 to 43 on the devolution of justice functions to the Northern Ireland Assembly. *Subsection (1)* of section 22 will remove the linkage, established by section 10 of the Northern Ireland Constitution Act 1973, between the Attorney General for England and Wales and the Attorney General for Northern Ireland.
45. *Subsection (2)* of this section gives the First Minister and deputy First Minister the duty to appoint a person to be Attorney General for Northern Ireland, after consulting the Advocate General for Northern Ireland (see *paragraph 13* of Schedule 7). *Subsections (3) and (4)* make it clear how the new, local Attorney General for Northern Ireland is to be funded and that he

9 [http://www.opsi.gov.uk/acts/acts2002/ukpga\\_20020026\\_en\\_1](http://www.opsi.gov.uk/acts/acts2002/ukpga_20020026_en_1)

10 Orders of the Day, Justice (Northern Ireland) Bill, 21st January 2001: <http://www.parliament.the-stationery-office.com/pa/cm200102/cmhansrd/vo020121/debtext/20121-13.htm>

11 Paragraph 43 of the explanatory note; Justice (Northern Ireland) Act 2002: <http://www.opsi.gov.uk/ACTS/acts2002/en/02en26-a.htm>

12 Explanatory note, Justice (Northern Ireland) Act 2002: <http://www.opsi.gov.uk/ACTS/acts2002/en/02en26-a.htm>

may appoint new staff. *Subsection (5)* requires the Attorney General to exercise his functions independently. *Subsection (6)* sets out the legal qualifications for the post. These are equivalent to those of a judge of the High Court in Northern Ireland (see section 18). Under *subsection (7)* the First Minister and deputy First Minister may make arrangements to fill the post of Attorney General temporarily during a vacancy. Before doing so they must consult the Advocate General for Northern Ireland (see *paragraph 12* of Schedule 7).

### Section 23: Terms of appointment of Attorney General<sup>13</sup>

46. Subsection (2) of this section provides that the local Attorney General cannot be appointed for a period of longer than five years at a time. It would be possible for the First Minister and deputy First Minister to reappoint an individual to the post of Attorney General for Northern Ireland after such a period of five years has come to an end.
47. The effect of subsections (6) to (8) is to disqualify the holder of the post of Attorney General for Northern Ireland from being a member of the House of Commons, the Northern Ireland Assembly or a local authority in Northern Ireland.
48. Subsection (9) makes the local Attorney General subject to the provisions of the Freedom of Information Act 2000. This is equivalent to the position of the Attorney General in England and Wales.

### Section 24: Removal of Attorney General<sup>14</sup>

49. Subsection (1) provides that the First Minister and deputy First Minister can only remove or suspend the Attorney General for Northern Ireland from office on the recommendation of a tribunal. The members of the tribunal will be judges in England, Wales or Scotland (*subsection (4)*). The tribunal will be convened by the First Minister and deputy First Minister and its members will be appointed by the Lord Chancellor.

### Section 25: Participation by Attorney General in Assembly proceedings<sup>15</sup>

50. The effect of this section is to make the Attorney General accountable before the Northern Ireland Assembly for the operation of the Prosecution Service. He will be allowed to answer questions and make statements pursuant to standing orders, but without the right to vote. Subsection (3) will give him the right to refuse to answer questions or produce documents on public interest grounds or where that might prejudice criminal proceedings. Subsection (4) makes the Attorney subject to the provisions of section 43 of the Northern Ireland Act 1998 (members' interests), under which he will be required to declare any interests in the register maintained by the Assembly before taking part in any relevant proceedings of the Assembly.

### Section 26: Annual report by Attorney General<sup>16</sup>

51. This section sets out arrangements whereby the Attorney General for Northern Ireland is required to write an annual report for each financial year on how he has exercised his functions. This report will be laid before the Northern Ireland Assembly by the First Minister and deputy First Minister, who will also arrange for it to be published.

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13 Ibid

14 Ibid

15 Ibid

16 Ibid

## (2.4) Northern Ireland Office Discussion Document- 'Devolving Policing and Justice in Northern Ireland.'<sup>17</sup>

In February 2006, the Northern Ireland Office published the discussion paper 'Devolving Policing and Justice in Northern Ireland'. The paper contained a detailed analysis by the Northern Ireland Office into the all the powers that will be devolved to the Northern Ireland Assembly regarding policing and justice. Under chapter seven, the paper discusses the role of the new Prosecution Service upon devolution and the role of the Attorney General in relation to this:

### The Public Prosecution Service

- 7.1 The single most significant element of reform proposed by the Criminal Justice Review 2000 was the transformation of the existing Department of Public Prosecutions (DPPNI) into a new Public Prosecution Service for Northern Ireland (PPSNI). The PPSNI was formally established on 13 June 2005 using provisions set out in the Justice (Northern Ireland) Act 2002 and the Justice (Northern Ireland) Act 2004.
- 7.2 The PPSNI when fully rolled out will be responsible for all prosecutions. Previously conducted by the DPPNI and those previously brought by the police. It will operate regionally, establishing local offices in Belfast, Londonderry, Ballymena, Omagh, Newry and Lisburn. In order to be able to take on this role fully, the new Service is being greatly increased in size. Full roll-out of the new PPSNI is planned for 2007.
- 7.3 The head of the PPSNI is the Director of Public Prosecutions for Northern Ireland. The PPSNI is an independent prosecuting authority subject, currently, to the superintendence and direction of the Attorney General, and is accountable to the Attorney for the performance of his functions. The Attorney is in turn answerable to Parliament for the PPSNI. The Attorney is not engaged in the day to day running of the Service but may be consulted in respect of certain prosecutorial decisions. Even when consulted, the prosecutorial decision rests with the Director unless it requires the consent of the Attorney or the Attorney exercises his power to direct. The power of direction has not been used since the early 1970s.
- 7.4 As well as looking at existing arrangements, the Criminal Justice Review was tasked specifically to look at how prosecutions, and the Attorney General's other functions in relation to Northern Ireland, should operate once they were devolved.
- Flowing from the Review recommendations, the Justice (Northern Ireland) Act 2002 sets out the arrangements for a post-devolution environment.
- 7.5 The current position is that one person, the Attorney General, holds two posts: Attorney General for England & Wales and Attorney General for Northern Ireland. Under devolution a new Attorney General for Northern Ireland (Attorney General NI) will be created. The Attorney General for Northern Ireland will be appointed by the First Minister and deputy First Minister, after consulting the Advocate General for Northern Ireland (see below).
- 7.6 Following devolution and the end of Ministerial responsibility for the prosecution service, the Director's relationship with the Attorney General for Northern Ireland will be one of consultation. The Attorney General NI will have no power of direction or superintendence over the PPSNI, whether in individual cases or on matters of policy. This underpins the independence which was a key recommendation of the Criminal Justice Review.
- 7.7 The Attorney General NI will be responsible for appointing the Director and Deputy Director of Public Prosecutions. He will also require the Director to prepare an annual report on how he has exercised his functions, and will arrange for that report to be published and to be laid before the Assembly. The Director will not be required to answer to the Assembly except

17 [http://www.nio.gov.uk/devolving\\_police\\_and\\_justice\\_in\\_northern\\_ireland\\_a\\_discussion\\_paper.pdf](http://www.nio.gov.uk/devolving_police_and_justice_in_northern_ireland_a_discussion_paper.pdf)

in relation to finance and administration and will consult the Attorney General NI where appropriate.

- 7.8 The independence and impartiality of the prosecution system are fundamental principles of the UK justice system. The Government will put forward a Concordat setting out the core principles of the independence and impartiality of the Public Prosecution Service in Northern Ireland.

## (2.5) The Assembly and Executive Review Committee

Throughout the inquiry into the devolution of policing and justice, the Assembly and Executive Review Committee heard evidence from a range of different sources within the Criminal Justice system. The Assembly and Executive Review Committee heard evidence, on 22<sup>nd</sup> January 2008, from the Head of the Northern Ireland Civil Service and his officials. When questioned on the role and functions of the Attorney General, an official stated that:<sup>18</sup>

*A number of details about the functions of the Attorney General for Northern Ireland are contained in statute. They are set out primarily in the Justice (Northern Ireland) Act 2002, and they relate mostly to the relationship with the Director of Public Prosecutions (DPP). They outline the changes to the current relationship of superintendence that the Attorney General based in London has over the Director of Public Prosecutions, and the new, slightly more arm's-length relationship that will exist with an Attorney General for Northern Ireland.*

*The legislation also gives the power of appointment of the DPP and the deputy DPP to the Attorney General. It refers to a number of functional aspects of the relationship, including consultation on the code for prosecutors, consultation with DPP on matters for which the Attorney General will be accountable to the Assembly, and consultations on responsibilities relating to the annual report of the DPP.*

*Other statutory functions are set out in legislation: the Northern Ireland Act 1998 contains provisions relating to devolution matters and cases relating to the boundaries of devolution, involving the Judicial Committee of the Privy Council; the Justice (Northern Ireland) Act 2004 contains a responsibility to issue guidance for criminal justice organisations on human rights standards; and the Justice (Northern Ireland) Act 2002 contains a requirement that the Attorney General will be consulted by the Chief Inspector of Criminal Justice on his programme of inspections.*

*On relating those functions to comparable legislation on the appointment of the Lord Advocate in Scotland under the Scotland Act 1998, one will find that much has been left unsaid about the role of the Assembly and in contrast to the Scottish Parliament. There are, therefore, aspects that are not stated clearly.*

*A raft of functions relating to the Attorney General's non-statutory role in defending the public interest in matters relating to civil law will pass across, because they are carried out currently by the Attorney General for England and Wales. In Northern Ireland, such roles will be carried out by the new Attorney General. However, that is not set in statute though custom and precedent have established that the Attorney General has a role with regard to vexatious litigants on contempt of court proceedings and the appointment of amici curiae in courts, and will continue to have that.*

*The Attorney General might also be given a range of functions by extrapolation from the work that is done by the Attorney Generals in London and Dublin and the Lord Advocate in Scotland — providing legal advice to the Executive, for instance. However, that is not laid down in statute, so it would be for the First Minister and deputy First Minister to decide.*

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18 Assembly and Executive Review Committee, Official Report, 22 January 2008: <http://www.niassembly.gov.uk/assembly-exec/2007mandate/moe/080122.htm>



*The Justice (Northern Ireland) Act 2002 contains provisions relating to the appointment by First Minister and the deputy First Minister, but it does not contain anything about the appointment process. The Criminal Justice Review 2000 first raised the possibility of Northern Ireland having an Attorney General separate from England and Wales, and the review stated that it should be a non-political appointment. There were also references to the non-political nature of the appointment in the debates in Parliament on the Justice (Northern Ireland) Act 2002. There is, therefore, that collateral for the view that the appointment of the Attorney General should be non-political. However, it is up to the First Minister and the deputy First Minister to consider further details on the appointment and laid terms.*

*The Justice (Northern Ireland) Act 2002 also contains provisions relating to the required qualifications of any Attorney General; for example, being a member of the Bar of Northern Ireland or a Northern Ireland solicitor for 10 years. Therefore, there is some statutory provision for what the Attorney General will do and what his or her qualifications will be. It has been said that an MLA can become the Attorney General. That would not be permitted, and that is stated in the Justice (Northern Ireland) Act 2002.<sup>19</sup>*

### (3) The Scottish Law Officers

This section provides information on the appointment and function of the Scottish Lord Advocate and the Solicitor General for Scotland (the Scottish Law Officers). The material is contained in a paper prepared by the The Scottish Government Legal Directorate (SGLD) on the Role and Functions of the Lord Advocate.

The Scotland Act 1998 ('the 1998 Act') and the Scottish Ministerial code provide the remit for the role of Lord Advocate in Scotland. The Lord Advocate has four roles:

- head of the systems of prosecution and investigations of deaths
- principal legal adviser to the Scottish Government;
- representing the Scottish Government in civil proceedings;
- Representing the public interest in a range of statutory and common law civil functions<sup>20</sup>

In relation to criminal prosecutions and investigation of deaths the Law Officers have always acted independently of other Ministers and, indeed, of any other person. That duty is now expressly set out in s.48(5) of the Scotland Act 1998:

48 *(5) Any decision of the Lord Advocate in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland shall continue to be taken by him independently of any other person.<sup>21</sup>*

The Solicitor General is the Lord Advocate's deputy. He may discharge any of the Lord Advocate's functions where the office of Lord Advocate is vacant, the Lord Advocate is unable to act owing to absence or illness, or the Lord Advocate authorises the Solicitor General to act in any particular case (Law Officers Act 1944, s2).

The Scotland Act makes important special provision for the role of the Lord Advocate. Her decisions as head of the systems of criminal prosecution and investigation of deaths are to continue to be taken independently of any other person. It is outside the legislative competence of the Parliament to remove the Lord Advocate from her position as head of the systems of criminal prosecution and investigation of deaths (SA s.29(2)(e)):

19 Evidence from Mr Tony Canavan, Assembly and Executive Review Committee, Official Report, 22 January 2008: <http://www.niassembly.gov.uk/assem-exec/2007mandate/moe/080122.htm>

20 Ibid

21 The Scotland Act 1998: [http://www.opsi.gov.uk/Acts/acts1998/ukpga\\_19980046\\_en\\_1](http://www.opsi.gov.uk/Acts/acts1998/ukpga_19980046_en_1)



Further, like the other UK Law Officers, the Lord Advocate is given a particular role in relation to ensuring that legislation passed by the Scottish Parliament is within the legislative competence of the Parliament, and has particular powers under the Scotland Act in relation to the resolution of legal questions about the devolved powers of Ministers and the Parliament.

### **Appointment**

The Law Officers are appointed by the Queen on the recommendation of the First Minister, with the agreement of the Parliament, s. 48 (1) of the Scotland Act 1998 ('SA Act'):

- 48 *(1) It is for the First Minister to recommend to Her Majesty the appointment or removal of a person as Lord Advocate or Solicitor General for Scotland; but he shall not do so without the agreement of the Parliament.*

Unlike other Ministers, however, they cannot be removed from office by the First Minister without the approval of the Parliament (SA s. 48(1)). They are members of the Scottish Government (SA s.44(1)(c)):

- 44 *(1) There shall be a Scottish Executive, whose member shall*  
*(c) the Lord Advocate and the Solicitor General for Scotland.*

As such they may exercise any of the functions of the Scottish Ministers; acts of Ministers bind them and vice versa (SA s.52(3) and (4)):

- 52 *(3) Statutory functions of the Scottish Ministers shall be exercisable by any member of the Scottish Executive.*  
*(4) Any act or omission of, or in relation to, any member of the Scottish Executive shall be treated as an act or omission of, or in relation to, each of them; and any property acquired, or liability incurred, by any member of the Scottish Executive shall be treated accordingly.*

This does not apply to the retained functions of the Lord Advocate - in effect her functions in relation to prosecution and investigation of deaths, and any other functions conferred upon the Lord Advocate by name (SA s.52(5)(b) and (6)). (Nor does it apply to functions conferred on the First Minister alone.)

There is no concept of a Scottish "Cabinet" in the Scotland Act. The fact of a Cabinet, and the Ministers who are members of it, are matters for the First Minister. Since 23 May 2007 the position has been that the Lord Advocate will not be a member of the Cabinet and will not normally attend meetings; she will however continue to receive all papers. As the First Minister explained in his statement to the Parliament on 24 May 2007, the Lord Advocate retains the right to address the Cabinet and she will attend where discussion of a particular matter requires her to do so.

If a Law Officer is not an MSP s/he is empowered to participate in the proceedings of the Parliament but may not vote (SA s.27):

- 27 *(1) If the Lord Advocate or the Solicitor General for Scotland is not a member of the Parliament—*  
*(a) he may participate in the proceedings of the Parliament to the extent permitted by standing orders, but may not vote, and*  
*(b) standing orders may in other respects provide that they are to apply to him as if he were such a member.*

S/he can therefore be questioned by MSPs about the exercise of his or her functions, although s/he may not be required to answer questions or produce documents relating to the operation of the system of criminal prosecution in any particular case if s/he considers that it

might prejudice criminal proceedings or would otherwise be contrary to the public interest (SA s.27(3)):

27 (3) *The Lord Advocate or the Solicitor General for Scotland may, in any proceedings of the Parliament, decline to answer any question or produce any document relating to the operation of the system of criminal prosecution in any particular case if he considers that answering the question or producing the document—*

(a) *might prejudice criminal proceedings in that case, or*

(b) *would otherwise be contrary to the public interest.*

Under the Parliament's Standing Orders, written questions about the operation of the systems of criminal prosecution and investigation of deaths are answerable only by the Law Officers, as are oral questions on those matters in all but exceptional circumstances, which are documented in Standing Order of the Scottish Parliament: Rules 13.5.1, 13.7.1 and 13.8.3 (which can be found at the annex of this paper).

A Law Officer may resign at any time and must do so if the Parliament resolves that the Government no longer enjoys the confidence of the Parliament (SA s.48(2)):

48 (2) *The Lord Advocate and the Solicitor General for Scotland may at any time resign and shall do so if the Parliament resolves that the Scottish Executive no longer enjoys the confidence of the Parliament.*

Statutory provisions ensure that there is no interruption in the conduct of prosecutions where there is a change of incumbent (Criminal Procedure (Sc) Act 1995 s.287; SA s.48(3)).

As noted above, the Lord Advocate's position as head of the prosecution system and member of the Scottish Government, and her role in relation to devolution issues and the competence of legislation, are enshrined in the Scotland Act. Neither the Scottish Government nor the Parliament can change that - it would require legislation at Westminster.

## The Scottish Ministerial Code

The Scottish Ministerial Code (June 2008)<sup>22</sup> sets out rules and guidance in relation to the roles of the Scottish Law Officers.

The Code specifically sets out that in criminal proceedings the Law Officers act wholly independently of the Government (para 2.32). Paragraph 2.7 excepts from collective responsibility the Lord Advocate's functions as head of the systems of prosecution and investigation of deaths.

As Law Officers, both the Lord Advocate and the Solicitor General for Scotland have the ultimate responsibility for advising the Scottish Ministers on all matters relating to the law of Scotland. As the senior Law Officer to the Scottish Government the Lord Advocate provides legal advice on the full range of the Government's responsibilities, policies and legislation, including advice on the legal implications of any Government proposals. However, they cannot and do not advise on every legal issue which may arise. The primary source of legal advice for the Scottish Government is the Scottish Government Legal Directorate (SGLD).

The Code sets out guidance as to the circumstances in which the Law Officers should be consulted. The Law Officers must be consulted in good time before the Government is committed to critical decisions involving legal considerations. The process of obtaining an opinion of the Law Officers, if advice is expressly sought, will normally be a request on a reference from SGLD. Submissions to Cabinet Secretaries and Ministers are often copied to the Law Officers for information or awareness. Sometimes the Law Officers will comment on

22 Code of Conduct for Scottish Ministers 2008: <http://www.scotland.gov.uk/Publications/2008/06/18120242/0/>

such submissions but often they will simply note them. Either way, the Law Officers are not to be taken as offering a legal view on the contents of such a submission.

It will normally be appropriate to consult the Law Officers in cases where:

(a) the legal consequences of action by the Government might have important repercussions in the foreign, European Union or domestic fields;

(b) a legal adviser in the Scottish Government has doubts about the legality or constitutional propriety of proposed legislation or executive action, particularly where it concerns any devolution issue within the meaning of paragraph 1 of Schedule 6 to the Scotland Act 1998;

(c) ministers, or their officials, wish to have the advice of the Law Officers on questions involving legal considerations which are likely to come before the Cabinet or any other collective Ministerial meeting; or

(d) there is a particular legal difficulty that may raise political aspects of policy.

The Code also refers to the role of Law Officers in relation to civil proceedings. In particular it sets out a distinction to be drawn between proceedings in which the Law Officers are involved in a representative capacity on behalf of the Government, and action undertaken by them on behalf of the general community to enforce the law as an end in itself.

Paragraph 2.30 states that the fact that legal advice has been given to the Scottish Government (by the Law Officers or anyone else), and the content of any such advice, is not revealed outwith the Scottish Government without the Law Officers' prior consent.

Paragraph 2.31 requires Ministers to consult the Lord Advocate before they engage in civil proceedings in a personal capacity.

Paragraph 5.15 provides that the Lord Advocate must be consulted, or take the lead, where it is proposed to appoint a judge or legal officer to a Royal Commission or Committee of Inquiry.

## Civil Functions of the Scottish Law Officers

The Lord Advocate is the principal legal adviser to the Scottish Government. Apart from the fact that she has specific responsibilities in relation to the legislative competence of Scottish legislation, she also advises on general legal issues and has general responsibility for the provision of legal advice to the Scottish Government. She has Ministerial responsibility for SGLD, which (as above) provides legal advice to the directorates of the Scottish Government on a daily basis, and for the Office of the Scottish Parliamentary Counsel ("OSPC"), which drafts Bills for the Government's legislative programme.

## Legislation

The Lord Advocate is a member of the Cabinet Sub-Committee on Legislation and contributes in that and other ways to the planning, management and delivery of the Scottish Government's legislative programme. She oversees the drafting of Government Bills by Scottish parliamentary counsel in OSPC. She maintains an interest in the development of the devolved Scottish statute book, including matters such as the accessibility of legislation.

Before a Bill can be introduced in the Parliament by the Government, the Minister responsible must state that it is in his or her view within the legislative competence of the Parliament (SA s.31(1)):

- 31 (1) A member of the Scottish Executive in charge of a Bill shall, on or before introduction of the Bill in the Parliament, state that in his view the provisions of the Bill would be within the legislative competence of the Parliament<sup>23</sup>

This view is reached on the advice of the Law Officers. This is the only case in which the convention against revealing the Law Officers' involvement in legal advice is routinely departed from. (The Presiding Officer is also required to take a view, which may be that some or all of the provisions of a Bill are outwith competence - s.31 (2)):

- 31 (2) The Presiding Officer shall, on or before the introduction of a Bill in the Parliament, decide whether or not in his view the provisions of the Bill would be within the legislative competence of the Parliament and state his decision

The Lord Advocate also has the power to refer a Bill to the Judicial Committee of the Privy Council within the four week period after it is passed by the Parliament, for a decision whether the Bill or any of its provisions are outwith legislative competence (SA s.33):

- 33 (1) The Advocate General, the Lord Advocate or the Attorney General may refer the question of whether a Bill or any provision of a Bill would be within the legislative competence of the Parliament to the Judicial Committee for decision.

**(2) Subject to subsection (3), he may make a reference in relation to a Bill at any time during—**

*(a) the period of four weeks beginning with the passing of the Bill, and*

*(b) any period of four weeks beginning with any subsequent approval of the Bill in accordance with standing orders made by virtue of section 36(5).*

*(3) He shall not make a reference in relation to a Bill if he has notified the Presiding Officer that he does not intend to make a reference in relation to the Bill, unless the Bill has been approved as mentioned in subsection (2)(b) since the notification.*

## Litigation

Most civil litigation involving the Scottish Ministers is conducted on behalf of Ministers by Scottish Government Legal Directorate (although in some areas, such as reparation actions, outside firms are used). SGLD remains responsible to the Lord Advocate for the conduct of all such litigation. Counsel are instructed by SGLD for all litigation in the Court of Session.

The selection of counsel is a matter for the Lord Advocate. She approves a list of junior counsel known as Standing Junior Counsel who may be instructed by SGLD in litigation involving the Scottish Government. In cases where that is considered appropriate senior counsel will also be instructed. The approval of the Lord Advocate is sought in relation to the appointment of senior counsel for a particular piece of litigation. On occasion one of the Law Officers will appear in court in person to represent the Scottish Ministers.

In conducting civil litigation SGLD proceeds on the instructions of individual Directorates subject to the overall supervision of the Law Officers. Any decisions as to the handling of a civil case are at the end of the day for the Scottish Ministers collectively: if a Law Officer is appearing for the Scottish Ministers in a civil case then, like any other counsel, s/he acts on instructions from them.

By statute, a party raising an action against the Scottish Government may do so against the Lord Advocate as representing it; and an action by the Scottish Ministers may run in the name of the Lord Advocate (Crown Suits (Scotland) Act 1857 s.1).

23 The Scotland Act 1998: [http://www.opsi.gov.uk/Acts/acts1998/ukpga\\_19980046\\_en\\_1](http://www.opsi.gov.uk/Acts/acts1998/ukpga_19980046_en_1)

The Scotland Act makes provision for the determination of devolution issues which arise in litigation anywhere in the UK must be intimated to the Lord Advocate (as well as to the Advocate General). The Lord Advocate (or the Advocate General) may also initiate proceedings for determination of a devolution issue (SA Schedule 6, paragraph 4(1)):

- 4 (1) Proceedings for the determination of a devolution issue may be instituted by the Advocate General or the Lord Advocate.<sup>24</sup>

The Lord Advocate also has a specific statutory or common law role in relation to a number of types of action. Commonly these will include matters such as actions for declarator of death or actions for proving the tenor of a will. The Lord Advocate's role in actions for declarator of nullity of marriage or of divorce has recently been abolished, but actions for declarator of marriage by cohabitation with habit and repute continue to be served on her. It is very unusual for the Lord Advocate to enter appearance in such cases, although it may happen for example where an action for declarator of death has implications for any criminal investigation. (Sometimes actions are served on or intimated to the Lord Advocate when they clearly should not be: in particular under section 11 of the Children (Scotland) Act 1995 - the court rules providing for this were revoked in 2000.) It is for the Lord Advocate to ask the Court of Session to declare a person a "vexatious litigant" so that actions raised by that person are subject to special controls by the court. She has specific duties under the Extradition Act 2003.

The Lord Advocate also has a general "public interest" role in litigation. For example, she is entitled to intervene in litigation in the public interest where a proprietary interest of the Crown or the interest of a public trust is involved. Courts will sometimes require matters to be intimated to the Lord Advocate because they consider that there may be an element of public interest or public importance. It is unusual for the Lord Advocate to become involved in such cases, although the *Law Hospital* case (involving withdrawal of nutrition from a patient who was in a persistent vegetative state) is one example. The courts have also recognised the Lord Advocate as the appropriate respondent where the competence of an Act of the Scottish Parliament is challenged "as befits his role as a Scottish Law Officer acting in the public interest" - *Adams v Advocate General* 2003 SC 171.

The Lord Advocate also has a role in relation to the reorganisation of public (non-charitable) trusts under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. Again these are fairly unusual.

The Lord Advocate is also responsible for the appointment of an *amicus curiae* in a case where the Court of Session has requested it. The arrangements are set out in a Memorandum of Understanding with the Lord President dated 23 July 1999.

## Other appointments

The Law Officers have a range of other functions. For example, they are *ex officio* Commissioners of Northern Lighthouses. They are both members of the Bible Board. The Lord Advocate is a member of the Board of Trustees of the National Library of Scotland, and one of the Commissioners for the Keeping of the Regalia of Scotland. She provides advice to the Privy Council in relation to certain charters. The Solicitor General has certain ceremonial duties in relation to the General Assembly of the Church of Scotland.

**April 2009**

<sup>24</sup> Schedule 6(4)(1) of the Scotland Act 1998: [http://www.opsi.gov.uk/Acts/acts1998/ukpga\\_19980046\\_en\\_1](http://www.opsi.gov.uk/Acts/acts1998/ukpga_19980046_en_1)

## Research Papers



Northern Ireland  
Assembly

Research Paper

24 May 2009

# The Attorney General for Northern Ireland, Director of Public Prosecutions and Accountability to the Assembly

- (1) To provide a description of the statutory relationships which, following the devolution of justice powers, will exist between the Attorney General for Northern Ireland and the Director of Public Prosecutions.
- (2) To describe the ways in which the Attorney General for Northern Ireland and the Director of Public Prosecutions will be accountable to the Northern Ireland Assembly.
- (3) Based on practice elsewhere in the UK or Ireland, to comment on the accountability arrangements relating to (1) and (2) above.

Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

# Summary

This research paper:

- (1) Provides a description of the statutory relationships which, following the devolution of justice powers, will exist between the Attorney General for Northern Ireland and the Director of Public Prosecutions.
- (2) Describes the ways in which the Attorney General for Northern Ireland and the Director of Public Prosecutions will be accountable to the Northern Ireland Assembly.
- (3) Comments on the accountability arrangements relating to (1) and (2) above, referring to comparative experience in England and Wales, and Ireland.



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## Introduction

This report examines the Attorney General for Northern Ireland and the Director of Public Prosecutions. The Report first discusses the Criminal Justice Review 2000 which made recommendations about these offices (section 2); it then examines the relationship between that will exist, post Devolution of policing and justice, between the Attorney General for Northern Ireland and the Director of Public Prosecutions (section 3). The following section examines their accountability to the Assembly (section 4). The final section of the Report comments on these relationships and accountability mechanisms, referring to comparative examples from England and Wales, and Ireland (Section 5).

## (2) Criminal Justice Review

The 1998 Belfast or Good Friday Agreement proposed a review of the criminal justice system. In 2000, the Criminal Justice Review Group reported.<sup>1</sup> Its report is important: the Secretary of State for Northern Ireland described it as “the document on which much of the present and future judicial system in Northern Ireland is based.”<sup>2</sup> The Review Group referred to international law and best practice,<sup>3</sup> analysed the existing situation,<sup>4</sup> consulted interested parties<sup>5</sup> and investigated arrangements in other jurisdictions.<sup>6</sup>

The Review Group recognised the need to balance the principle of independence with the principles of accountability and transparency.<sup>7</sup> The Review Group noted that Irish legislation provided the “most clearly defined statutory safeguards for the independence of the prosecutor”.<sup>8</sup>

The Review Group recommended the creation of a local “non-political” Attorney General, with “oversight of the prosecution service”, appointed for a fix term of perhaps five years, and having a status similar to a High Court judge.<sup>9</sup> If the Attorney General was not a member of the Assembly then there should be a possibility to speak in the Assembly.<sup>10</sup>

The Review Group recommended that, following an open competition, the Attorney General appoint the head of the prosecution service, either for a fixed term or until a retirement age.<sup>11</sup> The Group recommended that the head of the service should only be removed from office for misconduct or incapacity, and only upon the recommendation of an independent tribunal.<sup>12</sup>

The Review Group recommended that the Attorney General's relationship with the Director should be consultative and the Attorney General should have no power to issue directions.<sup>13</sup> Referring to the Irish legislation, the Review Group recommended that legislation should confirm the independence of the Director, should protect the Director from inappropriate

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- 1 Criminal Justice Review Group, *Review of the Criminal Justice System in Northern Ireland* (Belfast / Norwich: HMSO, 2000) available at [http://www.nio.gov.uk/review\\_of\\_the\\_criminal\\_justice\\_system\\_in\\_northern\\_ireland.pdf](http://www.nio.gov.uk/review_of_the_criminal_justice_system_in_northern_ireland.pdf)
  - 2 Mr. Shaun Woodward, Hansard, Debate on the Northern Ireland Bill 2009, 4 Mar 2009 : Column 950, available at <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090304/debtext/90304-0020.htm>
  - 3 See Paragraph 4.7 referring to the UN Guidelines on the Role of Prosecutors 1990, available at [http://www.unhchr.ch/html/menu3/b/h\\_comp45.htm](http://www.unhchr.ch/html/menu3/b/h_comp45.htm) and to the International Association of Prosecutors Standards and Statement of Essential Duties and Rights of Prosecutors.
  - 4 Paragraphs 4.15 - 4.56.
  - 5 Paragraph 4.56 - 4.72.
  - 6 Paragraphs 4.73 – 4.83.
  - 7 Paragraph 4.102.
  - 8 Paragraph 4.110.
  - 9 Paragraph 4.160.
  - 10 Paragraph 4.161.
  - 11 Paragraph 4.176.
  - 12 Paragraph 4.176.
  - 13 Paragraph 4.162.
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influence, and should allow for consultation between the Director and the Attorney General.<sup>14</sup> The Group further recommended that the Attorney General should be “answerable to the Assembly for the work of the prosecution service in general terms”, but should not be required to answer questions on individual cases (though in appropriate circumstances the Attorney General might choose to talk about individual cases).<sup>15</sup> The Review Group also recommended the head of the prosecution service should be accountable to an Assembly Committee for finance and administration; standing orders should limit the type of questions that might be asked so as not to affect individual cases.<sup>16</sup>

### (3) Statutory relationships between the Attorney General for Northern Ireland and the Director of Public Prosecutions

The Justice (Northern Ireland) Act 2002 sets out the most important rules on the appointment and removal of the Attorney General and the Director of Public Prosecutions, on their powers, and on the relationship between them.<sup>17</sup> The legislation provides strong guarantees to ensure these officers act independently of political or other pressures. This section first discusses the office of the Attorney General and then the office of the Director of Public Prosecutions before considering the relationship between them.

#### The Attorney General

Prior to the devolution of policing and justice, the Attorney General for England and Wales acts as the Attorney General for Northern Ireland. Following devolution the Attorney General for England and Wales will lose most of the responsibilities relating to Northern Ireland. The Attorney General for England and Wales will however continue to have a role to play in relation to security matters in Northern Ireland, and when acting in this capacity will be known as the Advocate General for Northern Ireland.<sup>18</sup>

The First Minister and deputy First Minister, acting jointly, appoint the Attorney General for Northern Ireland.<sup>19</sup> They must first consult the Advocate General for Northern Ireland.<sup>20</sup> The Attorney General must be a barrister or solicitor of at least ten years' standing.<sup>21</sup> The Attorney General is disqualified from being a member of the House of Commons, a member of the Assembly or a member of a Northern Ireland district council.<sup>22</sup> There is a process for removing the Attorney General but it is a rigorous one. The First Minister and deputy First Minister, acting jointly, may remove the Attorney General but only if a specially convened tribunal so recommends. The tribunal may only recommend removal because of “ground of misbehaviour or inability to perform the functions of the office”. The tribunal consists of two senior judges from Britain chosen by the Lord Chancellor.<sup>23</sup>

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14 Paragraph 4.163.

15 Paragraph 4.163.

16 Paragraph 4.163.

17 The Justice (Northern Ireland) Act 2002 is available at [http://www.opsi.gov.uk/acts/acts2002/ukpga\\_20020026\\_en\\_1](http://www.opsi.gov.uk/acts/acts2002/ukpga_20020026_en_1).

18 Justice (Northern Ireland) Act 2002 s 27, s 28 and schedule 7.

19 Justice (Northern Ireland) Act 2002 s 22(2).

20 Justice (Northern Ireland) Act 2002 schedule 7, paragraph 13.

21 Justice (Northern Ireland) Act 2002 s 22(6).

22 Justice (Northern Ireland) Act 2002 s 23(6-8).

23 Justice (Northern Ireland) Act 2002 s 24.

It should be clear from the procedure for removing the Attorney General that the role of the office should be exercised in an independent manner. The Justice (Northern Ireland) Act specifies this unambiguously in section 22(5).

The Justice (Northern Ireland) Act 2002 does not set out what powers of the pre-Devolution Attorney General will be transferred to the post-Devolution Attorney General, and does not set out the functions of the Attorney General.<sup>24</sup>

The Attorney General for Northern Ireland has several important statutory powers. These include the power to refer an Assembly bill to the Judicial Committee of the Privy Council (later the Supreme Court of the United Kingdom) for that court to determine whether the Bill is within the legislative competence of the Assembly.<sup>25</sup> A bill for instance is outside the legislative competence of the Assembly if it violates a right in the European Convention on Human Rights. Apart from this possibility of a reference, the Attorney General for Northern Ireland must be notified whenever any court is making a decision as to whether an Act of the Assembly is within its legislative competence.<sup>26</sup> The Attorney General may initiate legal action to determine if an Act of the Assembly or an action (or failure to act) by a Northern Ireland Minister or Department is unlawful having regard to the limitations in the Northern Ireland Act 1998.<sup>27</sup>

Pre-devolution the Attorney General for England and Wales has considerable powers in relation to prosecution matters in Northern Ireland, extending even to the power to remove the Director of Public Prosecutions.<sup>28</sup> Post devolution these powers will not be transferred to the Attorney General for Northern Ireland.

## Director of Public Prosecutions

Post devolution, the Attorney General for Northern Ireland will appoint the Director of Public Prosecutions and the Deputy Director. To be appointed as the Director one must have been a barrister or solicitor of ten years' standing. The Attorney General must consult the Advocate General before appointing someone as Director.<sup>29</sup>

The Director (and the Deputy Director) are appointed until at least the retirement age of 65<sup>30</sup> - this is a strong guarantee of independence. This guarantee of independence is reinforced by the procedure for removing the Director, which is similar to the procedure for removing the Attorney General. The Attorney General may remove the Director. To do this the Attorney General first convenes a special tribunal of two senior judges from Britain. The Attorney General may only remove the Director if the tribunal recommends the removal on grounds of misbehavior or inability to perform the functions of the office; the Lord Chancellor selects the tribunal members.<sup>31</sup>

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24 During the Parliamentary Debate on the Justice Northern Ireland Bill, Lord Goldsmith noted that the Attorney General had many public interest roles to perform; Lord Goldsmith also commented that it would be for the Assembly and Executive to decide whether the Attorney General would act as legal adviser to the Executive: 13 Jun 2002: Column CWH92.

25 Northern Ireland Act 1998 s 11. The Northern Ireland Act 1998 is available at [http://www.opsi.gov.uk/Acts/acts1998/ukpga\\_19980047\\_en\\_1](http://www.opsi.gov.uk/Acts/acts1998/ukpga_19980047_en_1).

26 Northern Ireland Act 1998 s 81.

27 Northern Ireland Act 1998 schedule 10.

28 Justice (Northern Ireland) Act 2002 s 40.

29 Justice (Northern Ireland) Act 2002 s 43(1).

30 Justice (Northern Ireland) Act 2002 s 43(5).

31 Justice (Northern Ireland) Act 2002 s 43.

The Justice (Northern Ireland) Act 2002 accords the Director considerable powers in relation to initiating, taking over and ending prosecutions. In exercising these powers, the Director must act “independently of any other person.”<sup>32</sup>

## Relationship between the Attorney General for Northern Ireland and the Director of Public Prosecutions.

Pre Devolution, the Attorney General for England and Wales, acting as Attorney General for Northern Ireland, has considerable powers in prosecution matters and in relation to the Director. Pre-Devolution, the Attorney General has a power of “superintendence”<sup>33</sup> over the Director; the Attorney General may also remove the Director because of misbehavior or inability to perform the functions of the office.<sup>34</sup> The relationship between the Attorney General for Northern Ireland and the Director will be very different post-Devolution.

Post-Devolution, the Director is required to act “independently of any other person”.<sup>35</sup> Any pre-Devolution role of the Attorney General in relation to initiating, conducting or terminating prosecutions is transferred to the Director, not to the Attorney General.<sup>36</sup> The Advocate General for Northern Ireland retains some role in relation to prosecutions.<sup>37</sup>

The relationship between the post-Devolution Attorney General (and the Advocate General) and the Director will cease to be one of superintendence and will be one of consultation. The Director must consult the Attorney General and the Advocate General before issuing any code for prosecutors and before preparing an Annual Report.<sup>38</sup> The Director must send a copy of the annual report of the Prosecution Service to the Attorney General and the Advocate General.<sup>39</sup> Apart from these obligations, the Director may consult with either the Attorney General or the Advocate General from time to time.<sup>40</sup>

## (4) Accountability to the Northern Ireland Assembly

A Cabinet Secretary once explained the difference between “accountability” and “responsibility”.<sup>41</sup> Accountability is the duty to answer questions, explain mistakes and put right any errors. The more specific concept of responsibility implies that an assembly may dismiss an office holder who no longer has its confidence. In this sense, neither the Attorney General nor the Director is responsible to the Assembly. The Assembly has no role to play in the removal process of either officer.

Neither the Attorney General<sup>42</sup> nor the Director may be a member of the Assembly.<sup>43</sup> As regards the Attorney General, this is different from the Attorney General for England and Wales who must be a member of the UK Parliament. It is also different from the Attorney

32 Justice (Northern Ireland) Act 2002 s 22.

33 The classic statement on “superintendence” is repeated at paragraph 4.45 of the Criminal Justice Review Group, *Review of the Criminal Justice System in Northern Ireland* (Belfast / Norwich: HMSO, 2000).

34 Justice (Northern Ireland) Act 2002 s 40. Under the earlier Prosecution of Offences (NI) Order 1972, Article 3, the Director was subject to the superintendence and direction of the Attorney General. The Attorney General rarely exercised any power direction: Criminal Justice Review Group Report at paragraph 4.103.

35 Justice (Northern Ireland) Act 2002 s 42(1).

36 Justice (Northern Ireland) Act 2002 s 41.

37 Justice (Northern Ireland) Act 2002 schedule 7.

38 Justice (Northern Ireland) Act 2002 s 42(2).

39 Justice (Northern Ireland) Act 2002 s 42(5).

40 Justice (Northern Ireland) Act 2002 s 42(3-4).

41 Adam Tomkins, *Public Law* (Oxford: Oxford University Press, 2003) at 150.

42 Justice (Northern Ireland) Act 2002 s 23(6-8).

43 Northern Ireland Act 1998 s 36.

General of Ireland, who may be a member of the Parliament. The Assembly has the power to require persons to present themselves and to produce documents.<sup>44</sup>

There are mechanisms for the Attorney General to be accountable to the Assembly. The Attorney General is accountable only in the sense of answering questions in the Assembly. The Justice (Northern Ireland) Act 2002 allows the Assembly to make standing orders which allow the Attorney General to speak in the Assembly; the Assembly may not confer any right on the Attorney General to vote in the Assembly.<sup>45</sup> To ensure the independence of the prosecution function the Attorney General cannot be required to answer any questions or produce any documents concerning prosecution matters if it would “prejudice criminal proceedings” or “be otherwise against the public interest”.<sup>46</sup> The Attorney General must prepare an Annual Report, to be delivered to the Office of the First Minister and deputy First Minister; this report must be laid before the Assembly.<sup>47</sup>

There is no provision in the Justice (Northern Ireland) Act 2002 for the Director to be given speaking rights in the Assembly, but the Director (or Prosecution staff) may appear before committees. The Director, Deputy Director and members of the Prosecution Service cannot be required to answer any questions or to produce any documents that is not relating to “finances” and “administration”.<sup>48</sup> The Director is obliged to prepare an Annual Report and the Attorney General is obliged to arrange for its publication.<sup>49</sup> There is no specific requirement to lay this report before the Assembly.

## (5) Comment on the accountability arrangements

### Introduction

According to the Explanatory Memorandum for the Justice (Northern Ireland) Act 2002, these arrangements “make the Attorney General accountable before the Northern Ireland Assembly for the operation of the Prosecution Service. He will be allowed to answer questions and make statements pursuant to standing orders, but without the right to vote.”<sup>50</sup> The Explanatory Memorandum adds that the Attorney General will have the “right to refuse to answer questions or produce documents on public interest grounds or where that might prejudice criminal proceedings.”<sup>51</sup> In relation to the Director, the explanatory Memorandum notes “that the Director cannot be required by the Assembly to answer questions or produce documents other than in relation to the finances and administration of the prosecution service. As the Director is meant to have complete independence in the exercise of his functions (subject to the accountability measures and limits set out in this legislation) it would not be appropriate for the Assembly to question him on individual cases.”<sup>52</sup>

The 2006 NIO consultation paper on the devolution of policing and justice summarises the effect of the Justice (Northern Ireland) Act 2002 as follows:

7.6 Following devolution and the end of Ministerial responsibility for the prosecution service, the Director’s relationship with the Attorney General for Northern Ireland will be one of consultation. The Attorney General NI will have no power of direction or superintendence over the PPSNI, whether in individual cases or on matters of policy.

44 Northern Ireland Act 1998 s 44.

45 Justice (Northern Ireland) Act 2002 s 25.

46 Justice (Northern Ireland) Act 2002 s 25(3).

47 Justice (Northern Ireland) Act 2002 s 26.

48 Justice (Northern Ireland) Act 2002 s 30(11).

49 Justice (Northern Ireland) Act 2002 s 39.

50 Explanatory Memorandum for the Justice (Northern Ireland) Act 2002 at paragraph 50.

51 Explanatory Memorandum for the Justice (Northern Ireland) Act 2002 at paragraph 50.

52 Explanatory Memorandum for the Justice (Northern Ireland) Act 2002 at paragraph 59.

This underpins the independence which was a key recommendation of the Criminal Justice Review.

7.7 The Attorney General NI will be responsible for appointing the Director and Deputy Director of Public Prosecutions. He will also require the Director to prepare an annual report on how he has exercised his functions, and will arrange for that report to be published and to be laid before the Assembly. The Director will not be required to answer to the Assembly except in relation to finance and administration and will consult the Attorney General NI where appropriate.<sup>53</sup>

The terms of the Justice (Northern Ireland) Act 2002 suggest a little more detail than these summaries provide. The next sections provide some more detail, and discuss the Northern Ireland provisions in a comparative context. The sections address the Relationship between the Attorney General and the Director; Accountability to the Assembly; Removal and Completing or Changing the System under the Justice (Northern Ireland) Act.

## Relationship between the Attorney General and the Director

### England and Wales

As noted above the relationship in the post-Devolution period will be very different from the one in the pre-Devolution period; it is also very different from the relationship between the Attorney General for England and Wales and the Crown Prosecution Service in England and Wales.

In England and Wales, the Attorney General is a Minister and a member of the Government, though not usually of the Cabinet.<sup>54</sup> The Director of Public Prosecutions acts under the “superintendence”<sup>55</sup> of the Attorney General for England and Wales.<sup>56</sup> Further, the Attorney General for England and Wales retains a role in consenting to specific prosecution decisions in specified areas.<sup>57</sup>

The Attorney General for England and Wales exercises a variety of roles outside of the prosecution function: the Attorney General is also the chief legal adviser to the Government, a Minister with responsibility for some justice matters.<sup>58</sup> The Attorney General has a large number of public interest roles. In exercising prosecutorial functions, the Attorney General is expected to act independently of Government, though the Attorney General may consult with Government ministers.<sup>59</sup>

53 Northern Ireland Office, *Devolving Policing and Justice in Northern Ireland: A Discussion Paper* (Belfast: NIO, 2006) at paragraphs 7.6 and 7.7.

54 Anthony Bradley and K.D. Ewing, *Constitutional and Administrative Law* (Harlow: Longman, 2006) at 407-8.

55 The Attorney General says that “superintendence” includes “setting the strategy for the organisation; responsibility for the overall policies of the prosecuting authorities, including prosecution policy in general; responsibility for the overall ‘effective and efficient administration’ of those authorities, a right for the Attorney General to be consulted and informed about difficult, sensitive and high profile cases; but not, in practice, responsibility for every individual prosecution decision, or for the day to day running of the organisation”, *Constitutional Affairs Committee, Fifth Report: Constitutional Role of the Attorney General* (London: Parliament, 2006-7) HC 306 at paragraph 14.

56 *Prosecution of Offences Act 1985* s 3(1).

57 Attorney General’s Office, *Functions of the Attorney General*; Paper prepared for the Constitutional Affairs Committee Inquiry into Constitutional Role of the Attorney General 2007) at <http://www.attorneygeneral.gov.uk/attachments/Constitutional%20Affairs%20Committee%20-%20Functions%20of%20the%20Attorney%20General.pdf>

58 Justice Committee, *Fourth Report: Draft Constitutional Renewal Bill* (provisions relating to the Attorney General) (UK: Parliament, 2007-2008) HC 608 at paragraphs 17 and 27.

59 Anthony Bradley and K.D. Ewing, *Constitutional and Administrative Law* (Harlow: Longman, 2006) at 412; Rodney Brazier, *Ministers of the Crown* (Oxford: Clarendon, 1997) at 153.



There have been occasions where the Attorney General for England and Wales has been drawn into controversy, often because of a perceived tension between these “bewildering range of roles”.<sup>60</sup> Constitutional scholar Rodney Brazier mentions the following examples:<sup>61</sup>

- Ending the Prosecution of an editor of the Workers’ Weekly for sedition in 1924<sup>62</sup>
- Prosecution of Clive Ponting under the Official Secrets Act
- Advising the DPP for Northern Ireland that prosecutions relating to allegations of a shoot to kill policy in Northern Ireland would be against the public interest.
- The Lords Constitution Committee identified three recent controversies which led to calls for reform:<sup>63</sup>
- The Attorney General’s Legal advice on the Iraq invasion 2003
- The Attorney General’s involvement in the decision of the Director of the Serious Fraud Office to end an investigation in to BAE.
- Speculation about the Attorney General’s possible role in prosecutions during the “Cash for Honours” investigations.

As part of the Government’s Governance of Britain reform package, Government proposed reforming the office of the Attorney General.<sup>64</sup> The Government published a Draft Constitutional Renewal Bill, which proposed minor amendments.<sup>65</sup> The Attorney General would retain a power of superintendence but would not be permitted to issue directions in individual prosecution decisions.<sup>66</sup> The Attorney General would still need to consent to any prosecutions for which such consent is required by a statute or statutory instrument;<sup>67</sup> the Attorney would be able to transfer any such consent function to the Director.<sup>68</sup> The Attorney General would appoint the Director for a five year term, and would be able to remove the Director if the Director was unable, unfit or unwilling to perform the functions of the office.<sup>69</sup> The Attorney General’s power to issue a *nolle prosequi* to end a prosecution would be ended.<sup>70</sup> The Draft Constitutional Renewal Bill would allow the Attorney General to end any individual prosecution on grounds of national security.<sup>71</sup>

Several Parliamentary committees produced reports that were critical of these proposals.<sup>72</sup> The Justice Committee notes that the Draft Bill transferred many prosecutorial functions to independent prosecutors but maintained the position that the Attorney General was supposed to be a Minister and the Chief Legal Adviser to the Government.<sup>73</sup> The Justice Committee also signalled concern over the provisions for the Attorney General to remove the Director, as

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60 Terence Daintith and Alan Page, *The Executive in the Constitution* (Oxford: Oxford University Press, 1999) at 232.

61 Rodney Brazier, *Ministers of the Crown* (Oxford: Clarendon, 1997) at 170.

62 Rodney Brazier, *Ministers of the Crown* (Oxford: Clarendon, 1997) at 153.

63 Constitution Committee, *Reform of the Office of Attorney General* (UK: Parliament, 2007-2008) HL 93, at paragraphs 11-19.

64 UK Government, *The governance of Britain: a consultation on the role of the Attorney General* (London: TSO, 2007) Cm 7192.

65 The Draft bill is at <http://www.justice.gov.uk/publications/constitutional-renewal.htm>.

66 Section 2.

67 Section 2.

68 Section 8.

69 Section 4.

70 Section 11.

71 Section 12.

72 Joint Committee on the Draft Constitutional Renewal Bill, *Draft Constitutional Renewal Bill* (UK: Parliament, 2007-2008) HL 166/ HC 551; Justice Committee, *Fourth Report: Draft Constitutional Renewal Bill (provisions relating to the Attorney General)* (UK: Parliament, 2007-2008) HC 608.

73 Justice Committee, *Fourth Report: Draft Constitutional Renewal Bill (provisions relating to the Attorney General)* (UK: Parliament, 2007-2008) HC 608 at paragraph 36.

they would appear to include the possibility to dismiss a Director for failing to head a Protocol which had not yet been drafted.<sup>74</sup>

The Queen's Speech in 2008 referred to "constitutional renewal" but did not specifically refer to the Draft Constitutional Renewal Bill, and it is not clear that the Government intends to introduce this bill.<sup>75</sup>

In March 2009, Lord Tyler introduced a Private Member's Bill, the Constitutional Renewal Bill 2009, which proposes reform of the Attorney General for England and Wales.<sup>76</sup> This Bill is modelled on the Government's Draft Constitutional Renewal Bill but includes reforms that are more radical. The Bill would disqualify the Attorney General from being a member of either house of Parliament<sup>77</sup> and would require the Attorney General to act independently and in the public interest.<sup>78</sup> While the Attorney General's consent would still be required for some prosecutions, the Attorney General would not be allowed to issue directions to the Director in individual cases.<sup>79</sup> The Attorney General's power to terminate a prosecution by a *nolle prosequi* order would be abolished and a new statutory power to order an end to an investigation when required in the national interest created.<sup>80</sup> In certain circumstances, a Minister would be obliged to publish any legal advice received from the Attorney General.<sup>81</sup> As noted above, this is a Private Member's Bill and should not be confused with the earlier Draft Constitutional Renewal Bill.

### Ireland

The Irish Attorney General is a descendent of the UK model. It is now regarded as a new office created by the 1937 Irish Constitution.<sup>82</sup> Originally, the Irish Attorney General had similar roles to the English one: legal adviser to Government, control of prosecutions and miscellaneous public interest roles. The Prosecution of Offences Act 1974 transferred most prosecution functions to an independent Director of Public Prosecutions.<sup>83</sup>

Section 3 of the 1974 Act provided some exceptions to the transfer of prosecutorial powers to the Director. The Attorney General may refer a decision of the Court of Criminal Appeal to the Supreme Court if there is an important point of law to be decided; following an acquittal in a criminal case on a point of law, the Attorney General may refer the point of law to the Supreme Court; the Attorney General's consent is still required for specified prosecutions under the Geneva Conventions Act 1962, the Official Secrets Act 1963 and the Genocide Act 1973. Section 6 of the Criminal Justice (Terrorist Offences) Act 2005 also requires the Attorney General's consent for prosecutions for acts of terrorism directed at non-EU states. Further, if there is a national security reason, then the Government may transfer prosecutorial powers back to the Attorney General.<sup>84</sup>

74 Justice Committee, Fourth Report: Draft Constitutional Renewal Bill (provisions relating to the Attorney General) (UK: Parliament, 2007-2008) HC 608 at paragraph 63.

75 The Queen's Speech is available at <http://www.number10.gov.uk/Page17665>.

76 The Bill is available at <http://services.parliament.uk/bills/2008-09/constitutionalrenewal.html>.

77 Constitutional Renewal Bill 2009 s 2.

78 Constitutional Renewal Bill 2009 s 3.

79 Constitutional Renewal Bill 2009 s 5.

80 Constitutional Renewal Bill 2009 s 14-15.

81 Constitutional Renewal Bill 2009 s 4.

82 Gerard Hogan and Gerry Whyte, JM Kelly: *The Irish Constitution* (Dublin: Butterworths, 1994) at 304.

83 Prosecutions of Offences Act 1974 is available at <http://www.irishstatutebook.ie/1974/en/act/pub/0022/index.html>. Section 3 of the Act effects the transfer of most prosecutorial functions to the Director. Section 5 contains an exception for national security situations. See also Gerard Hogan and Gerry Whyte, JM Kelly: *The Irish Constitution* (Dublin: Butterworths, 1994) at 307.

84 Prosecutions of Offences Act 1974 s 5.

As in England, the fact that the Irish Attorney General is an advisor to the Government but is also expected to act independently<sup>85</sup> has occasionally caused controversy. The following incidents have been especially controversial:<sup>86</sup>

- The Attorney General sought an injunction to prevent the offering of advice about abortion services available abroad.
- The Attorney General sought an injunction to prevent a 14 year old rape victim going to England for an abortion.
- The Attorney General went to court to prevent an independent Tribunal discovering details of confidential Cabinet discussions.
- The “Brendan Smyth Affair”: a delay in processing an RUC warrant led to the fall of a government and the resignation of the Attorney General from his new post as President of the High Court.

One academic has called for the public interest roles to be transferred to a specially created post of “Guardian of the Community Interest”.<sup>87</sup>

As noted above the Irish Director is independent, and has a consultative relationship with the Attorney General.<sup>88</sup> The government appoints the Director, who must have been recommended by a Committee comprising senior judges, lawyers and public servants.<sup>89</sup> Section 6 of the Act prohibits any attempt to influence the Director or Attorney General inappropriately in relation to prosecution matters.

### **Northern Ireland**

The Attorney General for Northern Ireland is not a member of the NI Executive.<sup>90</sup>

Under the Justice (Northern Ireland) Act 2002, the Attorney General for Northern Ireland will have only a relationship of consultation with the Attorney General, not superintendence or direction. The Attorney General for Northern Ireland will have no role in consenting to prosecutions.<sup>91</sup> This is a more radical position than exists in either England and Wales or even in Ireland. During the debate on the Justice (Northern Ireland) Bill, a former Attorney General, summed up the reasons for this position:

Given the highly charged atmosphere of Northern Ireland ... it is important that this enormously invasive prosecution arm of the state should be exercised in Northern Ireland by an official who is entirely independent. That is a departure from the current system in England and Wales and in Northern Ireland.<sup>92</sup>

While the Attorney General will not have a role in Northern Irish prosecutions, the Justice (Northern Ireland) Act 2002 retains a role for the Advocate General for Northern Ireland (who will be the Attorney General for England and Wales) in some prosecution matters concerning national security.

85 Gerard Hogan and Gerry Whyte, JM Kelly: The Irish Constitution (Dublin: Butterworths, 1994) at 304.

86 Geraldine Kennedy “Whelehan presents Coalition with dilemma as he chases the job he once turned down” (5 March 1998) Irish Times 7.

87 David Gwynn Morgan “Attorney General’s juggling act must be ended” (15 March 1993) Irish Times 12; David Gwynn Morgan “No major problem in separating AG’s roles” (16 March 1993) Irish Times 10.

88 Prosecutions of Offences Act 1974 s 2(5-6).

89 Prosecutions of Offences Act 1974 s 7.

90 Northern Ireland Act 1998 s 20.

91 Justice (Northern Ireland) Act 2002 s 41.

92 Lord Mayhew, House of Lords, 13 June 2002; Vol. 636, CWH 93.

## Accountability to the Assembly

### England and Wales

The accountability to Parliament of the Attorney General and the Director is not set out in legislation. The Attorney General for England and Wales is a member of one of the Houses of Parliament, a Minister (though not usually a Cabinet member) and so is bound by the convention of ministerial responsibility to Parliament. The Attorney General is accountable to Parliament for prosecution matters, and has the power of superintendence over the Director.<sup>93</sup> As a minister, the Attorney General represents the Prosecution Service on matters of administration and finance.<sup>94</sup> The Attorney General can answer questions on individual prosecution decisions in Parliament,<sup>95</sup> though Parliament is diffident when it comes to interfering in prosecutorial matters.<sup>96</sup> Standing orders provide that the remit of Committees considering justice matters do not consider “individual cases and appointments and advice given within government by Law Officers).”<sup>97</sup>

### Ireland

The Attorney General may be a member of the Irish Parliament, or not. The Attorney General is not a member of the Government.<sup>98</sup>

The Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997 makes provision for accountability before the Irish Parliament.<sup>99</sup> Section 3 of this Act provides for the power of committees to call for evidence or documents. There are exceptions to this general principle for the Attorney General and the Director of Public Prosecutions. Only the Committee of Public Accounts may question the Attorney General and only in relation to “general administration”.<sup>100</sup> Concerning the Director for Public Prosecutions, only the Committee of Public Accounts may question the Director or require documents, and then only in relation to “general administration” or statistics.<sup>101</sup> The Act also provides exceptions to the general principle to protect judicial processes and the prosecution of offences.<sup>102</sup>

### Northern Ireland

According to the Explanatory Memorandum to the Justice (Northern Ireland) Act 2002, the Attorney General is accountable to the Assembly for the Prosecution Service. This seems limited to a duty to provide explanations. The Attorney General cannot issue any directions to the Director, and cannot require the Director to provide any explanations. The relationship is one of “consultation” not superintendence.

Further any duty to provide explanations is limited by the right of the Attorney General not to provide answers or documents in relation to prosecution matters if this would jeopardise

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- 93 Prosecution of Offences Act 1985 s 3(1).
- 94 Terence Daintith and Alan Page, *The Executive in the Constitution* (Oxford: Oxford University Press, 1999) at 288.
- 95 UK Government, *The governance of Britain: a consultation on the role of the Attorney General* (London: TSO, 2007) Cm 7192 at paragraph 1.36.
- 96 Anthony Bradley and K.D. Ewing, *Constitutional and Administrative Law* (Harlow: Longman, 2006) at 412.
- 97 House of Commons Standing Order 152 (2), available at <http://www.publications.parliament.uk/pa/cm200809/cmstords/2/2.pdf> page 151.
- 98 Constitution of Ireland 1937 Article 30(4) available at [http://www.taoiseach.gov.ie/attached\\_files/html%20files/Constitution%20of%20Ireland%20\(Eng\)Nov2004.htm](http://www.taoiseach.gov.ie/attached_files/html%20files/Constitution%20of%20Ireland%20(Eng)Nov2004.htm).
- 99 The Act is available at <http://www.irishstatutebook.ie/1997/en/act/pub/0017/index.html>.
- 100 Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997 s 3(5).
- 101 Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997 s 3(6).
- 102 Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997 s 5(1)(c-d).

criminal proceedings or be against the public interest (as determined by the Attorney General). Any possibility to question the Director (or any member of the Prosecution Service) is limited by the restriction that Director cannot be required to provide answers except in relation to finance and administration. Whilst the Assembly may ask questions about prosecutorial decisions or prosecutorial policy, the Director is not obliged to answer. This implies that on finance and administration matters, the Director is obliged to answer. Under the Justice Northern Ireland Act 2002, the Attorney General or the Director may chose to answer questions which they are not required to answer. Whilst the Assembly may ask questions about prosecutorial policy and individual prosecutorial decisions, it might also choose to adopt standing orders precluding such questions.

During the debate on the Northern Ireland Bill 2009 (now the Northern Ireland Act 2009), the Conservative spokesperson for Northern Ireland proposed an amendment to provide that the Attorney General for Northern Ireland would have a power of superintendence over the Director of Public Prosecutions.<sup>103</sup> The Conservative spokesperson argued that the system established in the Justice (Northern Ireland) Act 2002 meant the Director was “answerable to no one”.<sup>104</sup> The Conservative spokesperson did not press this amendment to a vote.

Minister of State at the Northern Ireland Office, Paul Goggins, summarised the current position, speaking in the House of Commons on the Northern Ireland Bill (now Act) 2009:

The DPP will be answerable to the Assembly for the use of resources and the administration of its office—that is very clear—but not for individual prosecution decisions, which are entirely for the independent DPP. It is important at the point of devolution that that is made absolutely clear and enshrined in the institutions. ...

If a Committee, particularly the Justice Committee, wished to take evidence from the DPP, the DPP could be invited to attend and such evidence could be given. ...

It is not only the DPP who may be invited to give evidence and have to produce an annual report—the Attorney-General, too, may be so invited. Indeed, both will have speaking rights in the Assembly [sic] and be able to speak to and respond to Assembly Members, whether in the Assembly or in Committee.<sup>105</sup>

Despite this comment, it is not clear on what basis the Director would have speaking rights in the Assembly, other than in the sense of giving evidence to Committees. The Director has appeared before Committees to discuss finance and administration.<sup>106</sup>

## Removal

The provisions on removal of the Northern Irish officers are much more robust than elsewhere in the UK and Ireland.

### England and Wales

The Prime Minister appoints and may remove the Attorney General for England and Wales. The Attorney General for England and Wales must be a member of a House of Parliament and may be required to resign ministerial office under the convention of ministerial responsibility.

103 Mr. Laurence Robertson, Hansard 4 Mar 2009: Column 947, available at <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090304/debtext/90304-0019.htm>

104 Mr. Laurence Robertson, Hansard 4 Mar 2009: Column 948, available at <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090304/debtext/90304-0019.htm>.

105 Hansard, 4 Mar 2009: Column 953, available at <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090304/debtext/90304-0020.htm>.

106 See for instance the Meeting of the Assembly and Executive Review Committee meeting of March 10 2009, available at [http://www.niassembly.gov.uk/assem\\_exec/2007mandate/moe/2008/090310\\_Public%20Prosecution%20Service%20for%20Northern%20Ireland.htm](http://www.niassembly.gov.uk/assem_exec/2007mandate/moe/2008/090310_Public%20Prosecution%20Service%20for%20Northern%20Ireland.htm).

Under the Prosecution of Offences Act 1985, the Attorney General appoints the Director of Public Prosecutions who must act under the superintendence and direction of the Attorney.<sup>107</sup> The Prosecution of Offences Act 1985 does not specify the period of appointment of the Director, nor the procedure for removing the Director from office. The Government's Draft Constitutional Renewal Bill would have provided statutory rules on these matters: it specified a five year period of office for the Director; it also specified that the Attorney General could remove the Director if the latter was "unable, unfit or unwilling to carry out the functions of the office."<sup>108</sup>

### **Ireland**

In Ireland, the Prime Minister (Taoiseach) effectively appoints and may remove the Attorney General, though formally the decision is made by the President.<sup>109</sup>

In Ireland, the Government may remove the Director, but only after considering a report from a committee composed of the Attorney General and the two most senior judges in Ireland.<sup>110</sup>

### **Northern Ireland**

The provisions of the Justice (Northern Ireland) Act 2002 make it very difficult to remove either the Attorney General or the Director. There must be a specially convened tribunal consisting of two senior judges from Britain (there is no possibility for the Assembly to convene the tribunal in either case). Removal may only be recommended for reasons of misconduct or inability to perform functions. These terms would include actual corruption or a serious accident or illness, but do not allow for removal because of a disagreement over policy or indeed because the officer holder might be incompetent. To remove the Attorney General, the First Minister and deputy First Minister must act jointly.

Taken together these provisions in the Justice (Northern Ireland) Act 2002 provide strong protection for the principle that the Attorney General and the Director must act "independent of any other person".

## **Completing or Changing the system under the Justice (Northern Ireland) Act 2002**

The statutory rules do not regulate every matter relating to the Attorney General for Northern Ireland or the Director of Public Prosecutions. This is especially true for the Attorney General. The Assembly established an Ad Hoc Committee to consider the Draft Justice (Northern Ireland) Bill.<sup>111</sup> This Ad Hoc Committee noted that there were many questions relating to the Attorney General that would have to be resolved post Devolution. These included questions about the Attorney General's participation in the Assembly<sup>112</sup> and questions about possible roles that the Attorney General might discharge.<sup>113</sup>

It is possible that Assembly standing orders may provide for matters relating to the participation of the Attorney General in the Assembly or for the questioning by committees of the Attorney General or Director.<sup>114</sup> The Attorney General and Director may come to some

107 Section 2.

108 Draft Constitutional Renewal Bill, Section 4.

109 Constitution of Ireland, 1937, Article 30, available at [http://www.taoiseach.gov.ie/attached\\_files/html%20files/Constitution%20of%20Ireland%20\(Eng\)Nov2004.htm](http://www.taoiseach.gov.ie/attached_files/html%20files/Constitution%20of%20Ireland%20(Eng)Nov2004.htm)

110 Prosecutions of Offences Act 1974 s 9.

111 Ad Hoc Assembly Committee on the Draft Justice (Northern Ireland) Bill, Report (Belfast: NI Assembly, 2001-2002) Report available at [http://www.niassembly.gov.uk/adhocs/flags/reports/adhoc1-01\\_reform.htm](http://www.niassembly.gov.uk/adhocs/flags/reports/adhoc1-01_reform.htm).

112 Paragraph 57 of the Report.

113 Paragraph 58 of the Report.

114 Justice (Northern Ireland) Act 2002 s 25.

understanding or protocols as to how to work the consultative relationship between them. The current Northern Ireland Executive Ministerial Code<sup>115</sup> does not address the position of the Attorney General but it is possible it may depending on how the role of the Attorney General is defined. Care should be taken in filling out such details that statutory requirements are complied with.

Following devolution of policing and justice it would also be possible to fill out details in relation to these offices by means of an Act of the Assembly. An Act of the Assembly might also change some of the statutory rules in the Justice (Northern Ireland) Act 2002. If the Assembly were to consider an Act on these matters, then these restrictions need to be remembered:

- The Assembly cannot modify section 1 (independence of the judiciary) or section 84 of the Justice (Northern Ireland) Act as these are entrenched.<sup>116</sup>
- To modify any element of Part Two of the Justice (Northern Ireland) Act 2002, the Assembly must have cross community support.<sup>117</sup> Part Two covers the Law Officers and Prosecution Service.
- The Assembly cannot pass an Act outside of its legislative competence.<sup>118</sup> In particular, this would preclude any legislation that might violate the European Convention on Human Rights (ECHR). The ECHR includes the right to a fair trial which should always be born in mind when considering any legislation in this area.<sup>119</sup>

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115 The Ministerial Code is available at <http://www.northernireland.gov.uk/ministerial-code.pdf>.

116 Justice (Northern Ireland) Act 2002 s 84 amending s 7 of the Northern Ireland Act 1998.

117 Justice (Northern Ireland) Act 2002 s 84(2).

118 Northern Ireland Act 1998 s 6.

119 Article 6 ECHR.



## Research Papers



Northern Ireland  
Assembly

Research Paper

May 2009

# The Attorney General for Ireland

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**Research officer**

This paper has been prepared to assist the Assembly and Executive Review Committee to consider the role of the Attorney General and the functions of the Office of the Attorney General in Ireland.

The paper details the background to the creation of the post as well as subsequent developments in the role of the Attorney General for Ireland and the relationship he/she has with the Office of the Director for Public Prosecutions.

The paper contains information prepared by the Office of the Attorney General and the Office of the Director of Public Prosecutions.

Library Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

## Summary of key points

Article 30 of the Constitution of Ireland 1937 makes provision for the Attorney General for Ireland and states that he/she will be appointed by the President on the nomination of the Taoiseach. Article 30(5)(1)&(2) of the Constitution states that the Taoiseach may, for reasons which seem sufficient, request the resignation of the Attorney General. The functions, powers and duties of the Attorney General are found in both in the Constitution and legislation (primarily section 6 of the Ministers and Secretaries Act 1924).

The Attorney General is part of the overarching Office of the Attorney General, which is made up of a number of different offices and has four legal functions. There are four principal legal functions<sup>1</sup> are carried out by the Office as a whole:

- are the provision of legal advice (Advisory Counsel);
- legislative drafting (Parliamentary Counsel);
- the provision of litigation, conveyancing and other transactional services (Chief Solicitor's Office); and
- Statute Law Revision and Consolidation (Statute Law Revision Unit)

The independence of the Attorney General is evident under article 30(4) of the Constitution which prohibits the Attorney General from being a member of Government. Although in order to ensure that he/she is visible within Government it has been modern practice for him/her to attend cabinet meetings. This conveys the determination to ensure that the Attorney General remains independence and objective in his role as chief legal adviser.

## Legal advice to the Government

The primary role of the Attorney General is enshrined in Article 30 of the Constitution as chief legal adviser to the Government. The Attorney General is also adviser to each Government department, certain public bodies and is representative of the public in all legal proceedings for the enforcement of law and the assertion or protection of public rights. The range of advisory work undertaken by the Office of the Attorney General is very broad, any legal issue on which the Government or a Department may require legal advice.

The Attorney General advises the government on the constitutional and legal issues which arise prior to or at Government meetings, including whether proposed legislation complies with the provisions of the Constitution, acts and treaties of the European Union or other international treaties to which Ireland has acceded.

## Legislative Draughtpersons

The Office of the Attorney General is divided into different divisions and The Office of the Parliamentary Counsel (OPC) to the Government is responsible for drafting legislation comprising a team of specialist lawyers trained to a high level in the discipline of drafting legislation and is headed by the Chief Parliamentary Counsel. The OPC work closely with the Government Legislation Committee in ensuring that the Government Legislation Programme and its legislative priorities are implemented.

## Criminal Justice policy

The Attorney General has no direct role in relation to criminal justice policy however the overarching Office of the Attorney General has responsibilities within the area of criminal justice and formulating government legislation. The responsibility of the criminal justice

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1 Office of the Attorney General- functions, powers and duties: <http://www.attorneygeneral.ie/ac/ac.html>

policy lies primarily with the Minister for Justice, Equality and Law Reform in a partnership with the Department. This differs from the tripartite arrangement in England and Wales where responsibility for criminal justice policy lies between: Attorney General, Home Secretary and The Secretary of State for Justice.

## Attorney General's Relation to prosecutions

The Constitution of Ireland 1937 originally provided for the prosecution of all indictable crime to be exercised by the Attorney general. However, the Prosecutions Offences Act 1974 ('the 1974 Act')<sup>2</sup> established the Office of the Director of Public Prosecutions and transferred the powers from the Attorney General to the Director of Public Prosecutions. The 1974 Act did not create a reporting relationship between the Attorney General and the Director however section 2(6) of the 1974 Act states they can consult together from time to time in relation to matters pertaining to the functions of the Director.

The Attorney General has few prosecution duties; these are limited to functions under the various Fisheries Acts and Extradition Acts. The Attorney General has limited role under the following Acts:

- Section 29 of the Courts of Justice Act 1924;
- Section 34(1) & (2) of the Criminal Procedures Acts 1967;
- Section 3 of Geneva Conventions Act 1962;
- Section 14 of the Official Secrets Act 1963; and
- Section 2(3) of the Genocide Act 1973.

## Accountability of Director of Public Prosecutions

The Director of Public Prosecutions is made accountable for the expenditure of public monies through the Public Accounts Committee. The Director has showed his commitment that to ensuring that the Prosecution Service remains accountable to the public and have showed this by appearing voluntarily before Oireachtas Committees to discuss matters of policy.

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## (1) Introduction

This paper provides information on the role of the Attorney General for Ireland and the various agencies that are part of the overarching Office of the Attorney General for Ireland. The paper will also examine its relationship with Government and the Office of the Director of Public Prosecutions.

The Constitution of Ireland 1937 established the Constitutional Office of the Attorney General. The role of the Attorney General for Ireland was established under Article 30 of the Constitution for Ireland providing a dual role between legal adviser to the Government and a superintendence function in relation to public prosecutions.

However, the role of the Attorney General in relation to the prosecution of indictable offences was altered by The Prosecution Offences Act 1974 which transferred 'all the functions capable of being performed in relation to criminal matters and in relation to election petitions and referendum petitions by the Attorney General' to the new Director of Public Prosecutions.

## (2) The functions of the Attorney General

The role of the Attorney was established under Article 30 of the Constitution describes the Attorney General as 'the adviser of the Government in matters of law and legal opinion.'<sup>3</sup>

### (2.1) Legal adviser

Article 30 of the Constitution makes provision for the Attorney General as chief legal adviser to each Government department and certain public bodies and is representative of the public in all legal proceedings for the enforcement of law and the assertion or protection of public rights.<sup>4</sup>

### (2.2) Legislative competence

The Attorney General advises the government on the constitutional and legal issues which arise prior to or at Government meetings, including whether proposed legislation complies with the provisions of the Constitution, acts and treaties of the European Union or other international treaties to which Ireland has acceded. The Attorney General also advises as to whether the State can ratify international treaties and convention and represents the State in all legal proceedings involving the State and defends the constitutionality of Bill referred to the Supreme Court under Article 26<sup>5</sup> of the Constitution.<sup>6</sup>

### (2.3) Appointment and removal of the Attorney General

Article 30(2) of the Constitution<sup>7</sup> makes provision for the appointment of the Attorney General and states that he/she will be appointed by the President on the nomination of the Taoiseach.

Article 30(5)(1)&(2) of the Constitution states that the Taoiseach may, for reasons which seem sufficient, request the resignation of the Attorney General. If the Attorney General fails

3 Article 30 of the Constitution of Ireland: [http://taoiseach.gov.ie/attached\\_files/Pdf%20files/Constitution%20of%IrelandNov2004.pdf](http://taoiseach.gov.ie/attached_files/Pdf%20files/Constitution%20of%IrelandNov2004.pdf)

4 Role of the Attorney General: <http://www.attorneygeneral.ie/ac/ac.html>

5 Article 26 of the Constitution of Ireland: [http://taoiseach.gov.ie/attached\\_files/Pdf%20files/Constitution%20of%IrelandNov2004.pdf](http://taoiseach.gov.ie/attached_files/Pdf%20files/Constitution%20of%IrelandNov2004.pdf)

6 Role of the Attorney General: <http://www.attorneygeneral.ie/ac/ac.html>

7 [http://taoiseach.gov.ie/attached\\_files/Pdf%20files/Constitution%20of%IrelandNov2004.pdf](http://taoiseach.gov.ie/attached_files/Pdf%20files/Constitution%20of%IrelandNov2004.pdf)

to comply with the request, his/her appointment will be terminated by the President if the Taoiseach so advises.

## (2.4) Member of Government<sup>8</sup>

Article 30(4) of the Constitution prohibits the Attorney General from being a member of Government; however it is modern practice for him/her to attend cabinet meetings. The Attorney General has no executive responsibilities other than for the management of his or her own office which is responsible for handling the State's litigation and the drafting of Parliamentary legislation as well as giving advice to the Government. The Minister for Justice, Equality and Law Reform is responsible for prisons, policing, the courts and law reform.

## (3) The Attorney General and the Office of the Director of Public Prosecutions

The Constitution of Ireland 1937 originally provided for the prosecution of all indictable crime to exercised by the Attorney general, which was the case from 1937- 1974. However, the Prosecutions Offences Act 1974 ('the 1974 Act')<sup>9</sup> established the Office of the Director of Public Prosecutions and transferred to the Director, all functions previously performed by the Attorney General in relation to criminal matters, election and referendum petitions. The 1974 Act specifically stated that the Director is independent in the performance of his functions.<sup>10</sup> The Director is accountable to Parliament through the Public Accounts Committee.

### (3.1) Independence of the Director of Public Prosecutions

The Prosecution of Offences Act 1974 creates a number of substantial guarantees for the independence of the Director of Public Prosecutions:<sup>11</sup>

Firstly, the Act expressly states that the Director shall be independent in the performance of his functions;

Secondly, although the Director is appointed by the Government, the appointment may be made only from among those persons who are considered suitable for appointment by a committee consisting of the Chief Justice, the heads of the barristers and solicitors professions in Ireland, the permanent secretary to the Government and the permanent head of the Attorney General's Office;

Thirdly, the Director can be removed from office by the Government only following consideration by them of a report of an inquiry into the physical or mental health or conduct of the Director carried out by a committee consisting of the Chief Justice, a High Court judge nominated by the Chief Justice and the Attorney General.

The Act also makes it unlawful to communicate with the Director or his officers for the purposes of influencing the making of a decision to withdraw or not to initiate criminal proceedings or any particular charge in criminal proceedings unless the person making the communication is a defendant or complainant in criminal proceedings or believes that he is likely to be a defendant.

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8 The role of the Attorney General in other jurisdictions: <http://www.parliament.the-stationary-office.com/pa/cm200607/cmselect/cmconst/306/30607.htm>

9 Prosecution Offences Act 1974: <http://acts2.oireachtas.ie/zza22y1974.1.html>

10 The Office of the Director of Public Prosecutions: [http://www.dppireland.ie/about\\_us/](http://www.dppireland.ie/about_us/)

11 James Hamilton, Director of Public Prosecution, Seminar on Accountability in the Public Sector, 2008- [http://dppireland.ie/filestore/documents/Seminar\\_on\\_accountability\\_in\\_the\\_public\\_sector\\_organised\\_by\\_Mason\\_Hayes\\_&\\_Curran\\_141108.pdf](http://dppireland.ie/filestore/documents/Seminar_on_accountability_in_the_public_sector_organised_by_Mason_Hayes_&_Curran_141108.pdf)

The 1974 Act did not create a reporting relationship between the Attorney General and the Director. However, section 2(6) of the Act provides that ‘the Attorney General and the Director shall consult together from time to time in relation to matters pertaining to the functions of the Director.’

### (3.2) Accountability of the Director of Public Prosecutions<sup>12</sup>

The Director of Public Prosecutions is accountable in a number of ways for the performance of his functions, apart from the mechanism of consultation with the Attorney General. The Office is accountable for the expenditure of public money through the normal governmental accounting procedures of the Dail Committee of Public Accounts and the Comptroller and Auditor General.

The Committees of the House of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997 governs the compellability of witnesses before parliamentary committees and empowers such committees to summon witnesses to give evidence and to produce or make discovery documents. However, this Act does not apply to the Director of Public Prosecutions except where the committee is the Committee of Public Accounts. Evidence or the production of documents can be compelled only in relation to the general administration of the Office or in relation to statistics relevant to a matter referred to in a report of and published by the Director of Public Prosecutions in relation to the activities generally of the Office.<sup>13</sup>

Despite the fact that the Oireachtas is not entitled to compel the Director or his officers to attend, the Director has voluntarily appeared before Oireachtas Committees on a number of occasions to discuss matters of legal policy on which it was felt that the practical experience of his Office might be of assistance to members of the Oireachtas. Such appearances have always been on the strict understanding that individual cases would not be discussed.

### (3.3) The role of the Attorney General in Public Prosecutions

The Attorney General has few prosecution duties; these are limited to functions under the various Fisheries Acts and Extradition Acts. Under the 1974 Act, the Attorney General is given the power to exercise several functions in addition to the Director of Public Prosecutions. Section 3(4) & (5) of the 1974 Act<sup>14</sup> state:

3 (4) Notwithstanding anything in this section, the Attorney General may, in addition to the Director, exercise the functions conferred on the Attorney General by section 29 of the Courts of Justice Act 1924, and section 34 of the Criminal Procedure Act 1967.

(5) Notwithstanding anything in this section, where a person is charged with an offence under section 3 of the Geneva Conventions Act 1962, the Official Secrets Act 1963, or the Genocide Act 1973, no further proceedings in the matter except such remand or remands in custody or on bail as the court may think necessary shall be taken without the consent of the Attorney General.

The various different legislative provisions give the Attorney General limited powers to intervene:

12 James Hamilton, Director of Public Prosecution, Seminar on Accountability in the Public Sector, 2008- [http://dppireland.ie/filestore/documents/Seminar\\_on\\_accountability\\_in\\_the\\_public\\_sector\\_organised\\_by\\_Mason\\_Hayes\\_&\\_Curran\\_141108.pdf](http://dppireland.ie/filestore/documents/Seminar_on_accountability_in_the_public_sector_organised_by_Mason_Hayes_&_Curran_141108.pdf)

13 House of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997, section 3(6)

14 Prosecution Offences Act 1974: <http://acts2.oireachtas.ie/zza22y1974.1.html>



- Section 29 of the Courts of Justice Act 1924<sup>15</sup> concerns the decisions of the Court of Appeal and states that no appeal shall be considered unless that Court or the Attorney General believe the point of law involves ‘exceptional public importance.’<sup>16</sup>
- 29.- The determination by the Court of Criminal Appeal of any appeal or other matter which has power to determine shall be final, and no appeal shall lie from that court to the Supreme Court, unless that court or the Attorney-General shall certify that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court, in which case an appeal may be brought to the Supreme Court, the decision of which shall be final and conclusive.
- Section 34(1) & (2) of the Criminal Procedures Act 1967<sup>17</sup> concerns the power that the Attorney General has in relation to reference of a question of law to the Supreme Court:
- 34.- (1) Where, on a question of law, a verdict in favour of an accused person is found by direction of the trial judge, the Attorney General may, without prejudice to the verdict in favour of the accused, refer the question of law to the Supreme Court for determination.  
  
(2) The statement of the question to be referred to the Supreme Court shall be settled by the Attorney General after consultation with the judge by whom the direction was given and shall include any observations which the judge may wish to add.
- Section 3 of Geneva Conventions Act 1962<sup>18</sup> makes provision for the role of the Attorney General in relation to grave breaches of scheduled conventions:
- 3.- (1) Any person, whatever his nationality, who, whether in or outside the State, commits, or aids, abets or procures the commission by any person of, any such grave breach of any of the Scheduled Conventions as is referred to in the following Articles respectively of those Conventions.  
  
(3) Proceedings for an offence under this section shall not be instituted except, or on behalf of, or with the consent of the Attorney General.
- Section 14 of the Official Secrets Act 1963<sup>19</sup> provides a restriction on prosecution in that any offence under this Act will not be instituted without the consent of the Attorney general:
- 14.- (1) Proceedings for any offence under this Act shall not be instituted except by or with the consent of the Attorney General  
  
(2) before such consent is obtained a person charged with an offence under section 9 may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, but not in any case to a date later than eight days after he had been first remanded, and no further proceedings shall be taken until such consent is obtained.
- Section 2(3) of the Genocide Act 1973<sup>20</sup> states that an offence under the Genocide Act can not be brought without the consent of the Attorney General:

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15 The Courts of Justice Act 1924: <http://www.irishstatutebook.ie/1924/en/act/pub/0010/index.html>

16 Section 29, The Courts of Justice Act 1924: <http://www.irishstatutebook.ie/1924/en/act/pub/0010/index.html>

17 Section 34(1)&(2) of The Criminal Procedures Act 1967: <http://www.irishstatutebook.ie/1967/en/act/pub/0012/sec0034.html#zza12y1967s34>

18 Section 3 of the Geneva Conventions Act 1962: <http://www.irishstatutebook.ie/1962/en/act/pub/0011/sec0003.html#zz11y1962s3>

19 Section 14 of the Official Secrets Act 1963: <http://www.irishstatutebook.ie/1963/en/act/pub/0001/sec0014.html#zza1y1963s14>

20 Section 2(3) of the Genocide Act 1973: <http://www.irishstatutebook.ie/1973/en/act/pub/0028/sec0002.html#zza28y1973s2>

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- 2.- (3) Proceedings for an offence of genocide shall not be instituted except by or with the consent of the Attorney General.

### (3.4) Accountability and independence of the Attorney General

Although the Attorney General is the principal law officer of the state and legal adviser to the Government, his independence is protected through the fact he is not a member of Government. Although he attends cabinet meetings in his capacity as adviser to the Government on matters of law and legal opinion which ensures that, whilst ensuring his independence, he also remains accountable to Government.

## (4) The Office of the Attorney General for Ireland<sup>21</sup>

The Office of the Attorney General is made up of a number of different offices:

- The Attorney General's Office contains the Advisory Counsel to the Attorney General
- The Office of Parliamentary Counsel to the Government comprises the Parliamentary Counsel who draft legislation and have responsibilities in the area of statute law revision
- The Chief State Solicitor's Office (CSSO) comprise the solicitors representing the Attorney and the State

Since the enactment of the Prosecution of Offences Act 1974 the responsibility for the prosecution of indictable criminal offences is mostly in the hands of the Director of Public Prosecutions who is by law independent of the Attorney General and the State.

There are four principal legal functions<sup>22</sup> are carried out by the Office as a whole:

- the provision of legal advice (Advisory Counsel);
- legislative drafting (Parliamentary Counsel);
- the provision of litigation, conveyancing and other transactional services (Chief Solicitor's Office); and
- Statute Law Revision and Consolidation (Statute Law Revision Unit)

### (4.1) Advisory Counsel<sup>23</sup>

The Director General of the Office of the Attorney General, who is also the most senior Advisory Counsel, is head of the Office of the Attorney General. The Advisory side of the Attorney General's office comprises of lawyers who specialise in specific areas of law. Currently, the Advisory section of the Attorney General's Office is divided into five functional groups.

The principal duty of the Advisory Counsel in the Office is to assist the Attorney General in performing his functions, powers and duties. The range of subjects covered is broad, but the activities themselves fall broadly into three categories:<sup>24</sup>

#### (1) The provision of advice

The range of advisory work undertaken by the Office is very broad, any legal issue on which the Government or a Department may require legal advice. Requests from Government or

21 Office of the Attorney General- functions, powers and duties: <http://www.attorneygeneral.ie/ac/ac.html>

22 Office of the Attorney General- Advisory Counsel: <http://www.attorneygeneral.ie/ac/ac.html>

23 Office of the Attorney General, 'The role of the Attorney General:' <http://www.attorneygeneral.ie/ac/ac.html>

24 Office of the Attorney General- Office of the Parliamentary Counsel to the Government: <http://www.attorneygeneral.ie/pco/pco.html>

Ministers are usually made directly to the Attorney General and an Advisory Counsel is usually assigned to assist the Attorney General in dealing with such a request. Most requests for advice come from civil servants in Departments or Offices and either come directly to the Office, or via the Chief State Solicitor's Office. Currently, the Advisory section of the Attorney General's Office is divided into five functional groups each co-ordinated by an Advisory Counsel.

**(2) The direction of litigation**

The Office of the Attorney General (including the Chief State Solicitor's Office) is responsible for handling virtually all civil litigation engaged in by the State. This involves actions in all Courts in the State, in the Court of Justice of the European Communities and the Court of First Instance in Luxembourg, and before the Commission and Court of Human Rights in Strasbourg.

The involvement of Advisory Counsel and the Attorney General is determined by the difficulty and the importance of the case. The mechanism of this involvement is that the solicitor handling the case seeks directions from the Attorney general or his staff. Generally the Attorney General's Office is not involved in criminal matters which are dealt with the Director of Public Prosecutions. There are some exceptions to this, notably arising from the Attorney General's role as prosecutor in fisheries cases and in dealing with applications to extradite person for Ireland to other jurisdictions.

**(3) Involvement in the provision of a drafting service to Government departments**

The function of Parliamentary Counsel is to transpose the policy of the Department into a draft Bill which is expressed in clear and precise terms. During the drafting process legal issues can arise which may involve Parliamentary Counsel seeking the advice of another lawyer (known as an Advisory Counsel) in the Office of the Attorney General whose specific function it is to give legal advice to Government Departments.

Parliamentary Counsel may also have to consult with the Attorney General from time to time during the drafting process. When the Department and the Office are satisfied with the draft Bill, and all legal and outstanding policy issues have been resolved, the Parliamentary Counsel assigned to draft the Bill will transmit the final draft to the Department.

## **(4.2) Office of the Parliamentary Counsel to the Government<sup>25</sup>**

The Office of the Parliamentary Counsel to the Government comprises a team of specialist lawyers trained to a high level in the discipline of drafting legislation and is headed by the Chief Parliamentary Counsel. The Office is a constituent part of the Office of the Attorney General.

A Minister of the Government who wishes to bring forward legislation must, in accordance with requirements set out in the Cabinet Handbook, obtain a Government decision authorising the drafting of that legislation. When a decision is obtained the Minister concerned will request the Attorney General to arrange for the drafting of a Bill. The request will then be sent to the Group Manager in the OPC whose group deals with requests from the Department for which the Minister has responsibility. The Group Manager will then assign a Parliamentary Counsel to draft the Bill.<sup>26</sup>

The Functions of the Office of the Parliamentary Counsel to the Government (OPC) are to:<sup>27</sup>

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25 Office of the Attorney General- Office of the Parliamentary Counsel to the Government: <http://www.attorneygeneral.ie/pco/pco.html>

26 Ibid

27 Ibid

- draft Government Bills;
- draft Government amendments to Bills during the Parliamentary process;
- draft, or settle the drafts of, statutory instruments to be made by Government;
- draft, or settle the drafts of, statutory instruments to be made by a Minister of the Government, a Minister of State or the Revenue Commissioners;
- draft, or settle the drafts of, statutory instruments to be made by a person (other than a Minister of the Government) or body authorised in that behalf by statute, if requested to do so by a Minister of the Government or a Minister of State where the Minister has the statutory function of approving the draft concerned
- provide information to the Government Legislation Committee on the progress of the drafting of Bills
- provide information to the European Union Division, Department of Taoiseach, on the progress of the drafting of European Union statutory instruments
- provide drafting advice to client Departments on achieving their aims in proposed legislation
- liaise with client Departments during the drafting process

### (4.3) Government Legislation Committee<sup>28</sup>

The Government Legislation Committee (GLC) is chaired by the Government Chief Whip and its members include: the Attorney General, the Chief Parliamentary Counsel, the Programme Managers of the main parties in Government, the Leader of Seanad Éireann (Upper House of the Irish Parliament) and representatives of the Department of the Taoiseach and the OPC.

The OPC works closely with the GLC in ensuring that the Government Legislation Programme is implemented. The function of the GLC is to assist the Government in setting legislative priorities for the forthcoming Parliamentary session and oversee its implementation.

## (5) The Attorney General and Criminal Justice Policy

### (5.1) Responsibility for Criminal Justice policy

The Attorney General has no direct role in relation to criminal justice policy. However the overarching Office of the Attorney General has responsibilities within the area of criminal justice and formulating government legislation which was discussed in section 4 above.

The responsibility for criminal justice policy lies primarily with the Minister for Justice, Equality and Law Reform, with his department, who assumes general responsibility for the criminal justice system, including policing. The minister exercises policy and financial controls over the Garda Síochána and is accountable to the Dáil for their performance. The minister is not involved in operational police matters and has no role in the prosecution of criminal offences.

The Minister for Justice, Equality and Law Reform is assisted by 3 further ministers, who collectively head the Department for Justice, Equality and Law Reform: the Minister of State for children and youth Justice; the Minister of State for integration policy; and the Minister of State for equality, disability issues and mental health. The Minister's and the Department's main areas of responsibility include:<sup>29</sup>

- Implementing government policy on crime and protecting the security of the State;

28      Ibid

29      Ibid

- Providing policy advice in relation to the criminal justice system;
- Continuing reform of the criminal law and updating areas of the civil law;
- Implementation of core elements of the Good Friday Agreement;
- Implementation of the government's asylum strategy and development of the national immigration policy; and
- Implementation of policy in relation to equal treatment, anti-racism, disability equality and human rights.

This system differs in structure from that in England and Wales, where a tripartite arrangement exists in relation to criminal justice policy. This tripartite arrangement contains: the Attorney General, Home Secretary and the Secretary of State for Justice who all have a part to play in formulating criminal justice policy. In Ireland, criminal justice policy is primarily dealt with within one Department, in England and Wales, 3 distinct offices assume responsibility for various areas of criminal justice.

## Appendix I

### Attorney General for Ireland's Responsibilities

As legal adviser to the Government the Attorney General attends Government meetings. The Attorney General advises the Government on all the constitutional and legal issues which arise in connection with or at Government meetings, including whether proposed legislation complies with the provisions of the Constitution, Acts and Treaties of the European Union or other international treaties to which Ireland has acceded. This also includes advice by the Attorney General as to whether the State can ratify international treaties and conventions.

The Attorney General is joined in all proceedings in which a challenge is raised to the constitutionality of legislation and defends the constitutionality of all legislation.

The Attorney General defends the constitutionality of Bills referred to the Supreme Court under Article 26 of the Constitution.

The Attorney General represents the State in legal proceedings involving the State.

The Attorney General is representative of the public in legal proceedings for the enforcement of law and the assertion or protection of public rights.

The Attorney General has a function in giving or declining a direction in certain extradition requests under Part III of the Extradition Act, as amended.

The Attorney General advises the Minister for Finance in relation to escheated estates.

The Attorney General has a protective role in relation to charities and in particular in relation to a change in objects of a charity. Under existing law, the Attorney General has a protective role in relation to charities and in particular in relation to a change in objects of a charity. In the period covered by this Statement of Strategy, it is possible that the Charities Bill 2007 may be enacted and an independent regulator of charities appointed to whom the Attorney General's statutory functions will be transferred.

The Attorney General retains certain prosecution functions, for example under the Fisheries (Amendment) Act 1978, pending their transfer to the Office of the Director of Public Prosecutions pursuant to the Sea Fisheries and Maritime Jurisdictions Act 2006.

The Attorney General has a statutory function in deciding whether warrants under the Extradition Acts 1965 to 1994 should be endorsed or not, and advises in extradition cases.

The Attorney General has functions in respect of the Law Reform Commission under the Law Reform Commission Act 1975.

The Attorney General has functions in respect of legislative programming and is a member of the Government Legislation Committee which is chaired by the Government Chief Whip.

The Attorney General has functions under the Attorney General's Scheme. (This is a non-statutory scheme under which the Attorney General funds certain legal proceedings not covered by legal aid.)

The Attorney General is responsible for acting as lawyer for the State in most civil litigation in which the State, or its officers in an official capacity, are parties (except in the majority of personal injuries litigation, the majority of which is delegated to the State Claims Agency under the National Treasury Management Agency (Amendment) Act 2000). Usually the State is the defendant in claims in which the Attorney General is involved.

The Attorney General is involved in litigation in all courts of the State, in the Court of Justice of the European Communities (Luxembourg), in the European Court of First Instance (Luxembourg) and the European Court of Human Rights (Strasbourg). The Attorney General

furnishes legal advice and is involved in the preparation (sometimes with the assistance of outside counsel) of written pleadings in relation to litigation in both courts. The Chief State Solicitor acts as agent for the State in the Luxembourg Court and the legal adviser of the Department of Foreign Affairs acts as agent for the State in the Strasbourg Court.

The Attorney General directs advisory counsel, solicitors and legal executives in connection with litigation involving the State.

Advisory Counsel advise and assist the Attorney General in his functions including advising generally and advising on draft legislation and assisting in the conduct of litigation involving the State.

The role of the Office of the Parliamentary Counsel to the Government derives from section 6 of the Ministers and Secretaries Act 1924, the Cabinet Handbook and established practice and includes:

- drafting Government Bills (including Bills containing proposals to amend the Constitution);
- drafting, or settling drafts, of statutory instruments that are made by the Government;
- drafting or settling statutory instruments to be made by a Minister of the Government, a Minister of State or the Revenue Commissioners;
- drafting or settling any statutory instrument to be made by a person (other than a Minister of the Government) or body authorised in that behalf by statute, if requested to do so by a Minister of the Government or a Minister of State where the Minister has the statutory function of approving the draft concerned;

The Statute Law Revision Project, managed by the First Parliamentary Counsel, involves statute law revision and consolidation of the Better Regulation Agenda and includes the drafting of Bills, revising and reforming legislation;

The functions of the Chief State Solicitor are to act as solicitor to Ireland, the Attorney General and Government Departments and Offices. Other functions include:

- carrying out all conveyancing of State property, including Landlord and Tenant and other land law matters;
- furnishing of legal advice on the various matters that are submitted by Government, Departments and Offices and the drafting of the necessary accompanying legal documents;
- preparing and presenting all prosecutions initiated by Ministers or Government Departments;
- acting as Agent of the Government before the European Court of Justice;
- acting for the State in enquiries under the Tribunals of Inquiry (Evidence) Acts 1921– 1998 and supplying legal staff to act for the Tribunals, the public interest and other relevant State authorities;
- providing a solicitor service in all civil courts and tribunals in which the State, any State Authority or the Attorney General is involved; · discharging functions under the Council Regulation (E.C.) No 1348/2000 of 29 May, 2000 and the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters;
- representing the State and State Authorities in taxation of costs before the Taxing Masters; providing staff to the members of the various Court Rules Committees.





Northern Ireland  
Assembly

Research Paper

May 2009

## The Attorney General for England & Wales

Ruth Barry

Research officer

This paper has been prepared to assist the Assembly and Executive Review Committee to consider the role of the Attorney General and the functions of the Office of the Attorney General in England and Wales.

The paper details the background to the Consultation into the role of the Attorney General, as a result of increasing tension regarding the various roles of the Attorney General and analyses the Government responses in relation to the concerns raised.

This paper contains information from:

- House of Commons Constitutional Affairs Committee, Constitutional Role of the Attorney General, Fifth Report of Session 2006-07,
- The Governance of Britain- Constitutional Renewal, Government Policy Proposals;
- The Government's response to the Constitutional Affairs Select Committee Report on the Constitutional Role of the Attorney General; and
- The Draft Constitutional Renewal Bill (provisions relating to the Attorney General), Fourth Report of Session 2007-08

Library Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

### Summary Of key points

The Attorney General for England and Wales has been the subject of debate and consultation over the past few years due to tensions arising about the various different roles that she occupies. The main areas that the debate has focused on are:

- Tension between the various functions of the Attorney General- being a Minister and a member of the Government, and being an independent guardian of the public interest and performing superintendence functions;
- Tension between being a party political and a member of the Government, and the giving of independent advice.

These tensions led to the Constitutional Affairs Select Committee of the House of Commons issuing a consultation on the Constitutional Role of the Attorney General identifying possible areas of reform.

## Legal adviser

The Attorney General is legal adviser to the Crown and the Crown's representative in the Courts. The Attorney General also oversees the Government's in-house legal advisers and is the Minister responsible for the Treasury Solicitor's Department. This role is combined with the role of a Minister and a politician who follows the party whip.

The Attorney General also has Ministerial oversight of the Government Legal Service, and a role in overseeing the quality of the legal advice being provided to Government and the conduct of Government litigation.

## A 'Guardian of the Rule of Law'?

The House of Commons Constitutional Affairs Committee's, fifth Report of Session 2006-07 stated that in addition to defending the public interest in the exercise of his responsibilities.

Role as Minister with responsibility for superintending prosecuting authorities

The Attorney General has a number of functions in relation to criminal proceedings and is the arbiter of 'public interest' when deciding whether or not to continue with a prosecution. The Attorney General is also responsible by statute for the superintendence of the main prosecuting authorities: the Crown Prosecution Service, Serious Fraud Office, Revenue and Customs Prosecutions office and the Director of Public Prosecutions in Northern Ireland.

## Guardian of public interest

The Attorney General is the guardian of public interest, in particular in certain kinds of legal proceedings. The Attorney General's independent public interest role includes consultation by the prosecuting authorities on individual criminal cases as part of the superintendence role.

## Responsibilities on behalf of Parliament

The Attorney General has additional responsibilities in relation to Parliament covering the Constitution and conduct of proceedings in Parliament, including: questions of parliamentary privilege; the conduct and discipline of Members; and the meaning and effect of proposed legislation.

## Human Rights issues

The Attorney General has an important role in the process of preparing legislation and has a duty under section 19 of the Human Rights Act 1998 to ensure the compatibility of Government Bills with the Convention rights.

## Criminal Justice Policy

The Attorney General has, with the Home Secretary and the Secretary of State for Justice, tripartite responsibility for criminal justice policy. The three Ministers are jointly responsible for the Office of Criminal Justice Reform. The split in the role of the Attorney General in relation to the fact she occupies a ministerial role regarding the formulation of criminal justice policy and also acts as chief legal adviser to the Government.

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## Draft Constitutional Renewal Bill

The principal changes proposed in the Draft Bill are:

- The Attorney General may not give a direction to the prosecuting authorities in relation to an individual case (except in cases of national security);
- The requirement to obtain the consent of the Attorney general to a prosecution in specified cases will, in general, be transferred to the DPP or specified prosecutors;
- The preparation of a statement ('protocol') of how the Attorney General and the Directors of the main prosecuting authorities are to exercise their functions in relation to each other, and the terms under which the Directors hold office;
- The Attorney General's power to halt a trial on indictment by entering a nolle prosequi will be abolished; and
- The Attorney General must submit an annual report to Parliament.

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## 1. Introduction

This paper provides information on the Attorney General for England & Wales and the various agencies that are part of the overarching Attorney General's Office. The paper will examine the various functions of the Attorney General and the relationship that she has with the Crown Prosecution Service. The annex to this paper contains an extract from the Constitutional Affairs Committee- *Inquiry into the Constitutional Role of the Attorney General*, which lists the functions of the Attorney General for England and Wales.

The numerous roles of the Attorney General have created tensions and resulted in a number of commentators calling for changes to the Office of the Attorney General. These tensions have given rise to a debate about the Attorney General's role, which has focused on two areas:<sup>30</sup>

- Tension between the various functions of the Attorney General- being a Minister and a member of the Government, and being an independent guardian of the public interest and performing superintendence functions;
- Tension between being a party political and a member of the Government, and the giving of independent advice.

This has resulted in the Constitutional Affairs Select Committee of the House of Commons issuing a consultation on the Constitutional Role of the Attorney General identifying possible areas of reform. In 'The Governance of Britain', the Prime Minister announced that the Government too, thinks the Attorney General's role must change along with the wider constitutional framework.<sup>31</sup>

The paper will analyse the issues arising within 'The Governance of Britain- a Consultation on the Role of the Attorney General' and the various reports in response to the consultation:

- House of Commons Constitutional Affairs Committee, Constitutional Role of the Attorney General, Fifth Report of Session 2006-07;
- The Governance of Britain- Constitutional Renewal, Government Policy Proposals;
- The Government's response to the Constitutional Affairs Select Committee Report on the Constitutional Role of the Attorney General; and
- Draft Constitutional Renewal Bill (provisions relating to the Attorney General), Fourth Report of Session 2007-08

## 2. The functions of the Attorney General

### (1.1) Legal adviser<sup>32</sup>

The Attorney General is legal adviser to the Crown and the Crown's representative in the Courts. The Attorney General also oversees the Government's in-house legal advisers and is the Minister responsible for the Treasury Solicitor's Department. This role is combined with the role of a Minister and a politician who follows the party whip.

Until comparatively recently, the Attorney General was expected to be able to advise on a wide range of matters based on personal knowledge of the law. In reality, much of this advice is prepared by civil servants who are expert lawyers in a particular field. The Attorney General may also consult specialist counsel when necessary. The advice that the Attorney General gives to the Government is legally privileged and confidential, which has been an issue of concern and was raised within the Consultation on the Constitutional role of the Attorney General.

30 The Governance of Britain; A Consultation on the Role of the Attorney General: <http://www.attorneygeneral.gov.uk/attachments/Consultation%20on%20the%20Role%20of%20the%20AGO.pdf>

31 Ibid

32 Ibid

### **Government Legal Service**

The Attorney General also has Ministerial oversight of the Government Legal Service, and a role in overseeing the quality of the legal advice being provided to Government and the conduct of Government litigation. This includes considering whether proceedings against the UK before the European Court of Justice should be defended; and establishing, by open competition, panels of barristers whom departments can instruct.<sup>33</sup>

#### **(2.2) A ‘Guardian of the Rule of Law’?<sup>34</sup>**

The House of Commons Constitutional Affairs Committee’s, fifth Report of Session 2006-07 stated that in addition to defending the public interest in the exercise of his responsibilities, Lord Goldsmith considered that ‘upholding the Rule of Law’ was one of his key functions.

Lord Goldsmith identified three specific elements in relation to his role in upholding the Rule of Law:

- Firstly he identified compliance with the law, ‘that means domestic and international obligations.’
- The second aspect was the relationship with the courts, which he defined as “partly respect for the courts and their judgements” but also about “*being sure within appropriate boundaries.....we subject ourselves as Government to the scrutiny of the independent courts*”<sup>35</sup>; and
- The third element was identified as “*certain basic values which it is important to stand up for. Quite a number of them are to be found, of course, in the European Convention*”.<sup>36</sup>

#### **(2.3) Role as Minister with responsibility for superintending prosecuting authorities**

The Attorney General has a number of functions in relation to criminal proceedings, which include:

- (a) The requirement for consent to prosecute certain categories of criminal offences, such as those relating to Official Secrets, corruption, explosives, incitement to racial hatred, and certain terrorism offences with overseas connections;
- (b) The power to refer unduly lenient sentences to the Court of Appeal;
- (c) The power to terminate criminal proceedings on indictment by issuing a nolle prosequi; and
- (d) The power to refer points of law in criminal cases to the Court of Appeal.<sup>37</sup>

The Attorney General is the arbiter of ‘public interest’ when deciding whether or not to continue with a prosecution.

The Attorney General is also responsible by statute for the superintendence of the main prosecuting authorities: the Crown Prosecution Service, Serious Fraud Office, Revenue and Customs Prosecutions office and the Director of Public Prosecutions in Northern Ireland. This

33 The Governance of Britain; A Consultation on the Role of the Attorney General: <http://www.attorneygeneral.gov.uk/attachments/Consultation%20on%20the%20Role%20of%20the%20AGO.pdf>

34 House of Commons Constitutional Affairs Committee, Constitutional Role of the Attorney General Fifth Report of Session 2006-07: <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmconst/306/306.pdf>

35 Ibid

36 Ibid

37 House of Commons Justice Committee, Draft Constitutional Renewal Bill (provisions relating to the Attorney General), Fourth Report of Session 2007-08: <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/698.pdf>

is a ministerial position and both the Attorney General and the Solicitor general are held to account in Parliament for the effective management of their services and resources.<sup>38</sup>

The concept of 'superintendence' has never been categorically defined. In broad terms the Attorney General has suggested that 'superintendence' can be said to encompass:

*setting the strategy for the organisation; responsibility for the overall policies of the prosecuting authorities, including prosecution policy in general; responsibility for the overall 'effective and efficient administration' of those authorities, a right for the Attorney General to be consulted and informed about difficult, sensitive and high profile cases; but not, in practice, responsibility for every individual prosecution decision, or for the day to day running of the organisation."*<sup>39</sup>

#### **(4.4) Guardian of the public interest**

The Attorney General is the guardian of public interest, in particular in certain kinds of legal proceedings- such as decisions on the bringing or termination of criminal prosecutions, charity matters, and the appointment of 'advocates to the court' to act as neutral advisers to the court in litigation and 'special advocates' to represent the interests of parties in certain national security cases. The Attorney General's independent public interest role includes consultation by the prosecuting authorities on individual criminal cases as part of the superintendence role.<sup>40</sup>

#### **(4.5) Responsibilities on behalf of Parliament**

The House of Commons Constitutional Affairs Committee's, fifth Report of Session 2006-07 reported that the Attorney General has additional responsibilities in relation to Parliament covering the Constitution and conduct of proceedings in Parliament, including: questions of parliamentary privilege; the conduct and discipline of Members; and the meaning and effect of proposed legislation. The report stated that the Attorney General may intervene in court proceedings to assist the privileges of either House, either of his and her own motion or, more usually, at the request of the House authorities or indeed the trial judge. Arguably, the Attorney General performs the important function of representing the interests of Parliament in the Courts.<sup>41</sup>

#### **(2.6) Human Right issues**

The Attorney General has an important role in the process of preparing legislation and has a duty under section 19 of the Human Rights Act 1998 to ensure the compatibility of Government Bills with the Convention rights:

Section 19 of the Human Rights Act requires that for every Government Bill the Minister in charge in each House make a statement that in his/her view the Bill's provisions are compatible with the Convention rights. Alternatively, if s/he is not able to provide that personal assurance, s/he must state that nevertheless the Government wishes the House to proceed with the Bill.<sup>42</sup>

#### **(7.7) Criminal Justice Policy**

The Attorney General has, with the Home Secretary and the Secretary of State for Justice, tripartite responsibility for criminal justice policy. The three Ministers are jointly responsible

38 House of Commons Justice Committee, Draft Constitutional Renewal Bill (provisions relating to the Attorney General), Fourth Report of Session 2007-08: <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/698.pdf>

39 The Governance of Britain; A Consultation on the Role of the Attorney General: <http://www.attorneygeneral.gov.uk/attachments/Consultation%20on%20the%20Role%20of%20the%20AGO.pdf>

40 Ibid

41 Ibid

42 Cabinet office: [http://www.cabinetoffice.gov.uk/secretariats/economic\\_and\\_domestic/legislative\\_programme/guide\\_html/echr.aspx](http://www.cabinetoffice.gov.uk/secretariats/economic_and_domestic/legislative_programme/guide_html/echr.aspx)



for the Office of Criminal Justice Reform. The Attorney General sits on the National Criminal Justice Board and has joint responsibility for the cross departmental Office for Criminal Justice Reform in the Ministry of Justice.

There have been criticisms raised in relation to the continuation of the split role of the Attorney General as a person with ministerial responsibilities relating to the formulation of criminal justice policy, with the Home Secretary and the Secretary of State for Justice, while at the same time combining this with the role of chief legal adviser to the Government and, in addition, with the function of superintending the Directors responsible for prosecutions.<sup>43</sup>

The justification for giving the Attorney General shared ministerial responsibility for the criminal justice system was expressed by the Government as:

*The Government considers that it would be artificial to divorce Ministerial responsibility for the superintendence of the prosecuting authorities from Ministerial responsibility for ensuring the “front-line” experience of the prosecutors informs the development of criminal justice policy.*<sup>44</sup>

### **3. House of Commons Constitutional Affairs Committee Constitutional Role of the Attorney General, Fifth Report of Session 2006-07, July 2007<sup>45</sup>**

This report identifies inherent tensions in combining ministerial and political functions and states that real and perceived political independence has to be combined with a role of an intrinsically party political nature in one office holder, this is at the heart of the problem. The Report recommended that the current duties of the Attorney General be split into two: the purely legal functions should be carried out by an official who is outside party political life; the ministerial duties should be carried out by a minister in the Ministry of Justice.

The report identified several events that took place prior to this report that called into question the role of the Attorney General:<sup>46</sup>

- The Constitutional Reform Act 2005 changed the status of the Lord Chancellor from being one of a judge, who took the judicial oath of office, to that of a Secretary of State who had a legal duty to protect the independence of the courts. This has left the Attorney General as the only member of the Government who is required to be legally qualified;
- The creation of the Ministry of Justice in May 2007 also raised questions about the Office of the Attorney General, its functions, and the position of the office in the trilateral framework for the formulation and delivery of criminal justice policy in England and Wales;
- The office’s role in three particular controversial matters have highlighted further concerns: advice on the legality of invading Iraq; potential prosecutions in the “cash for honours” case; and the decision to halt the investigations by the Serious Fraud Office into BAE systems. The evidence in relation to the BAE case was instructive in showing the inherent tensions in the dual role of the Attorney General and in particular the sometimes opaque relationships with the prosecution services.

In light of the considerable changes to the constitutional arrangements for the maintenance of the rule of law and the continuing commitment of the Government to modernise the constitution, the Committee stated that the report would inquire into the constitutional role of the Attorney General. The report concentrated on three specific areas:

- How the office of the Attorney General works;

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43 House of Commons Justice Committee, Draft Constitutional Renewal Bill (provisions relating to the Attorney General), Fourth Report of Session 2007-08: <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/698.pdf>

44 Ibid

45 <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmconst/306/306.pdf>

46 House of Commons Constitutional Affairs Committee, Constitutional Role of the Attorney General, Fifth Report of Session 2006-07: <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmconst/306/306.pdf>

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- The impact on the office of recent controversies; and
- What options there are for reform

### **Conclusion<sup>47</sup>**

In evaluating the options for reform, the report focused on addressing the question of what should be the role and function of the Attorney General. In answering this question, Lord Falconer, the then Lord Chancellor, identified three options:

- the status quo;
- somebody who is in either the House of Lord or the House of Commons but is a non-politician; and
- somebody who is not a politician, who is in neither House of Parliament and gives legal advice, the superintendence of the prosecution role in the sense of deciding whether a prosecution will start or finish, and has a propriety and public interest role.

The Committee stated that the status quo is not an option, and on balance, believe that de-politicising the prosecution role should be one of the central purposes of reform, to help restore public confidence in the Attorney General's role. The report concluded that legal decisions in prosecutions and the provision of legal advice should rest with someone who is appointed as a career lawyer, and who is not a politician or a member of Government. The Attorney General's ministerial functions should be exercised by a minister in the Ministry of Justice.

The report stated that reform was needed, and welcomed the fact that both the Prime Minister and the Attorney General indicated a willingness to engage in reform. The Committee believed that in order to have a effective Attorney General, there needed to be a robust and independent prosecution service. They also noted that the provision of legal advice to government needs to have the confidence and respect of politicians and the public alike.

## **4. The Governance of Britain- Analysis of Consultation responses, March 2008<sup>48</sup>**

### **Background: The Governance of Britain Green Paper**

Following the Green paper, in July 2007 the Government issued a consultation paper on the role of the Attorney General, which asked whether:

- The Attorney General should continue to be both the Government's legal adviser and a Government Minister;
- The Attorney General should remain as superintending Minister for the prosecution authorities;
- The legal advice of the Attorney General should be made public;
- The Attorney General should attend Cabinet only where necessary to give legal advice; and
- A parliamentary select committee should be established specifically to scrutinise the Attorney General.<sup>49</sup>

47 House of Commons Constitutional Affairs Committee, Constitutional Role of the Attorney General, Fifth Report of Session 2006-07: <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmconst/306/306.pdf>

48 The Governance of Britain- Constitutional Renewal, Government Policy Proposals: [http://www.official-documents.gov.uk/document/cm73/7342/7342\\_i.pdf](http://www.official-documents.gov.uk/document/cm73/7342/7342_i.pdf)

49 House of Commons Justice Committee, Draft Constitutional Renewal Bill (provisions relating to the Attorney General), Fourth Report of Session 2007-08: <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/698.pdf>

**(4.1) Summary of consultation responses- key points<sup>50</sup>**

- In relation to the Attorney general's role as legal adviser, the majority of respondents (27 out of 38) favoured the Attorney General remaining as the chief legal adviser to the Government and continuing to be a Minister. A significant number of these respondents thought that other changes should be made to the role of the Attorney General;
- Strong support for clarification to the Attorney General's functions, in particular there was support for the proposal to reform the Attorney General's oath of office;
- A significant majority of respondents (21 out of 25) considered that the Attorney General should attend Cabinet only where attendance is necessary to provide legal advice or where there was otherwise a specific reason for the Attorney General to attend;
- The majority of respondents (19 out of 31) favoured retaining the general presumption against the disclosure of legal advice provided by the Attorney General. There was interest in creating limited exceptions to that presumption or ensuring that Parliament was given a proper explanation of the legal basis for key government actions;
- Suggestions of classes of advice which it might be appropriate to disclose on a regular basis included advice which is expressly relied upon by the Government, advice in relation to the use of armed forces and advice on the interpretation of existing legislation;
- There was strong support (26 out of 31) for the Attorney General retaining the function of superintending the main prosecution authorities (the Crown Prosecution Service, the Serious Fraud Office and the Revenue and Customs Prosecutions Office);
- Respondents expressed general support for the proposition that it was legitimate for the Attorney General to have a role in setting the high level policy and objectives of the prosecuting authorities. However, the majority favoured reducing or ending the role that the Attorney General plays in relation to the formulation of criminal justice policy;
- There was strong support for removing or curtailing the Attorney General's role in relation to individual prosecutions. There was support for abolishing or limiting the power of the Attorney general to consent to a prosecution and ending the power to stop a prosecution by way of a nolle prosequi (to stop a trial on indictment);
- Most respondents (14 out of 16) took the view that it was legitimate for the Attorney General to have a role where a prosecution has implications for national security or international relations.

**5. The Government's response to the Constitutional Affairs Select Committee Report on the Constitutional Role of the Attorney General (April 2008)<sup>51</sup>**

The report of the Committee, taken with the responses to the consultation exercise undertaken by the Attorney General as part of the Governance of Britain agenda have informed the Government's proposals for reform in this area.

On 25th march 2008 the Government published a White paper entitled 'The Governance of Britain': Constitutional Renewal.

Within this report, the Government concluded that the Attorney General should remain the Government's chief legal adviser and also should remain a Minister and a member of one of the Houses of Parliament.

The report stated that the Government noted the concerns regarding the perception of a conflict of interest. Within the White Paper, the Government outlined a number of measures

50 Summary of consultation responses: The Governance of Britain- Constitutional Renewal, Government Policy Proposals: [http://www.official-documents.gov.uk/document/cm73/7342/7342\\_i.pdf](http://www.official-documents.gov.uk/document/cm73/7342/7342_i.pdf)

51 The Government's response to the Constitutional Affairs Select Committee Report on the *Constitutional Role of the Attorney General*, April 2008: <http://www.attorneygeneral.gov.uk/attachments/Government%20Response%20to%20Report%20on%20Role%20of%20Attorney%20General.pdf>

to streamline and clarify the role of the Attorney General and the basis on which the Attorney General exercises his/her functions and to make the operation of the office more transparent. Whilst the Government acknowledged the Committee's recommendation that the functions of the Attorney General should be split between a Minister in the Ministry of Justice and a career lawyer who is not a politician or a member of Government, they did not accept this proposal.

#### **Summary of the proposals in the White Paper<sup>52</sup>**

- The Government believes that the Attorney General should remain chief legal adviser however the report stated that it will remain open to the Government, in exceptional cases, to waive privilege and disclose its legal advice as it has done in the past;
- The Attorney General attends Cabinet on the invitation of the Prime Minister, where he considers it appropriate for the Attorney to attend;
- The Government proposes to modernise, by non-statutory means, the oath of the Attorney General to provide for an express duty to respect the rule of law. There are also proposals to bring forward the legislation to require the Attorney General to report to Parliament on the exercise of his or her functions on an annual basis;
- The Government proposes that the Attorney General should continue to superintend the main prosecuting authorities but proposes to legislate to expressly state that the Attorney General has no power to give directions to prosecute or not to prosecute in any individual case.
- The government proposes to establish a protocol which will set out the detail of the superintendence relationship between the Attorney General and the main prosecuting authorities;
- Proposal for legislation to enhance the independent status of the main prosecuting by providing for fixed term appointments for the Directors;
- Government proposes to legislate to provide for the Attorney General to have exceptional power to give a direction to stop a prosecution on the grounds of national security;
- Proposal to legislate to provide that the Attorney General should cease to have the statutory function of giving consent to prosecutions except in relation to a small category of offences which are considered to have a high policy/public interest element;
- Proposal to abolish the Attorney General's power to enter a nolle prosequi (to stop a trial on indictment);
- The Government believes that it is right that the Attorney General continues to play a role, along with the Home Secretary and Justice , in the formulation of criminal justice policy.

#### **Government response to conflict between the different roles of the Attorney General<sup>53</sup>**

- The Report stated that the Government has concluded that the fact that the Attorney General exercises a number of different roles, rather than being a weakness as the Committee suggested, is a strength. The Criminal Bar Association took the view:

*'The dual role of the office (as chief legal adviser and Minister of the Crown) is not a constitutional weaknesses but a fundamental constitutional strength.'*

52 The Government's response to the Constitutional Affairs Select Committee Report on the *Constitutional Role of the Attorney General*, April 2008: <http://www.attorneygeneral.gov.uk/attachments/Government%20Response%20to%20Report%20on%20Role%20of%20Attorney%20General.pdf>

53 Additional points raised by Committee: The Government's response to the Constitutional Affairs Select Committee Report on the *Constitutional Role of the Attorney General*, April 2008: <http://www.attorneygeneral.gov.uk/attachments/Government%20Response%20to%20Report%20on%20Role%20of%20Attorney%20General.pdf>

- The Government states the fact that the Minister who superintended the prosecuting authorities is also a senior practising lawyer means that he/she is able to fully understand the functioning of the prosecuting authorities and be in a position to add value to the function;
- The Government noted that there was little support among respondents for the suggestion made by the Committee regarding the Attorney's Ministerial functions to be transferred to a Minister in the Ministry of Justice. Lord Chief Justice, Lord Phillips of Worth Matravers commented:

*'... if the prosecuting authorities form part of the same ministerial department as the judiciary and the courts the independence of both may be threatened and it will be difficult to maintain the necessary perception that they are truly independent of each other.'*

- The Government believes that the Attorney General should be at the 'heart of government' and a number of respondents stated that there is no *'hard and fast distinction between legal issues and policy issues, when one is considering the provision of legal advice.'*

## **6. House of Commons Justice Committee- Draft Constitutional Renewal Bill (provisions relating to the Attorney General), Fourth Report of Session 2007-08 (June 2008)<sup>54</sup>**

The purpose of this report was to examine the draft Constitutional Renewal Bill to see how far its provisions put into effect the recommendations of the previous Report, completed by the Constitutional Affairs Committee, on the Constitutional Role of the Attorney General and to see how far the Draft Bill is likely to achieve the target of enhancing public confidence in the office of the Attorney General.

On 17 July 2007, the Constitutional Affairs Committee (re-named Justice Committee) reported on The Constitutional Role of the Attorney General. The report concluded that there were *"inherent tensions in combining ministerial and political functions, on the one hand, and the provision of independent legal advice and superintendence of the prosecution services, on the other hand, within one office"*.

The principal changes proposed in the Draft Bill are that:<sup>55</sup>

- The Attorney General may not give a direction to the prosecuting authorities in relation to an individual case (except in cases of national security);
- The requirement to obtain the consent of the Attorney general to a prosecution in specified cases will, in general, be transferred to the DPP or specified prosecutors;
- The preparation of a statement ('protocol') of how the Attorney General and the Directors of the main prosecuting authorities are to exercise their functions in relation to each other, and the terms under which the Directors hold office;
- The Attorney General's power to halt a trial on indictment by entering a nolle prosequi will be abolished; and
- The Attorney General must submit an annual report to Parliament.

The report analyses, in detail, the provisions of the Draft Bill in relation to the duties of the Attorney General and states the opinion of the Committee regarding each clause. The Committee stated that the Draft Bill only partly addresses the major problem identified in

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54 <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/698/698.pdf>

55 House of Commons Justice Committee Draft Constitutional Renewal Bill (provisions relating to the Attorney General), Fourth Report of Session 2007-08: <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/698/698.pdf>

the predecessor Committee's Report on the Constitutional Role of the Attorney General: the difficulty of combining the political and legal duties of the Attorney General.

The Justice Committee stated the Draft Bill does not provide for a clear split in the role to create a non-political legal adviser and does not fully satisfy the concerns previously expressed in the Constitutional Affairs Committee report 2007, about the need to reform the office and restore public confidence in the office of the Attorney General. The Report broke down the various aspects of the Draft Bill and whether or not they approved:<sup>56</sup>

#### **Individual directions**

- The Committee stated their approval that the Draft Bill transfers powers over individual cases to the Directors, except where the Attorney retains specific functions.

#### **National security**

- The Committee felt that there was no reason to give the Attorney General special powers to direct the SFO to discontinue investigations (as opposed to proceedings). The work of the SFO should be placed on the same footing in respect as the other prosecution agencies.

#### **Protocol**

- The Committee stated they could not effectively comment on the protocol, as it had not been prepared yet but voiced their dissent that the Draft Bill had been put before Parliament for consideration before the draft of a protocol.

#### **Tenure of office of directors**

- The Draft Bill gives significant power to the Attorney General to dismiss a Director on the basis of failure to have regard to the duty to obey the, as yet unwritten, protocol. This leaves the position of the Directors unclear and the Committee feel the Directors ought to have clearer security of tenure than apparent in the Draft Bill.

#### **Attorney General's prosecution consent functions**

- The Committee approved the proposed reform to the Attorney's functions in relation to consent of prosecution.

#### **Abolition of nolle prosequi**

- The Committee stated that they were uncertain of the utility of the proposed abolition of the nolle prosequi, given that it is not clear by what it will be replaced. The Committee felt that this reform is of little practical importance, given that it is infrequently used, but will remove some power over prosecution from the Attorney General.

#### **Accountability- annual report/ legal advice**

- The Committee are sceptical in relation to the what the new annual report will add to the existing system and state they need further information to reach a conclusion about whether it will add to the process of accountability of the Attorney General.
- The Committee felt that the question of publishing the Attorney General' legal advice is difficult but noted that the scope for enhancing public confidence if it were practical to publish all or most of the advice where it is referred in support of a political decision.

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Provisions in the Draft Bill, House of Commons Justice Committee Draft Constitutional Renewal Bill (provisions relating to the Attorney General), Fourth Report of Session 2007-08: <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/698/698.pdf>

**Reasons for the Attorney General being a Member of either House**

- The Committee stated that the Report of their predecessor recommended the provision of legal advice and legal decisions on prosecutions should rest with someone who was appointed as a career lawyer and who was not a politician while the Attorney General's ministerial functions should continue to be exercised by a minister. The Committee felt that the Government has not found an alternative model which would offer the same degree of assurance to the public that legal advice and decisions are genuinely independent.

**Continuing ministerial duties of the Attorney General**

- The Committee felt that the ministerial role of the Attorney General in relation to criminal justice policy should be separated from the role of legal adviser.

**Miscellaneous responsibilities**

- The Committee stated that the functions of the Attorney General in relation to safeguarding the public interest in individual cases could be better performed by a non-political office holder.

**Rule of Law**

- The Committee favour a statutory duty being placed on all ministers to observe the Rule of Law. The Attorney General's oath of office should be reformed to cover the duty to uphold the Rule of Law.



## Constitutional Affairs Committee

### Inquiry into Constitutional Role of the Attorney General

#### Functions of the Attorney General

(\*indicates functions which are wholly or partly statutory)

1. \*Superintendence of and Parliamentary accountability for.
  - Crown Prosecution Service
  - Crown Prosecution Service Inspectorate
  - Serious Fraud Office
  - Revenue & Customs Prosecutions Office
2. \*Requirement for Attorney General's consent to certain prosecutions.
3. \*Power to refer unduly lenient sentences to the Court of Appeal.
4. \*Power to refer points of law in criminal cases to the Court of Appeal.
5. \*Power to bring (or consent to) proceedings for contempt of court.
6. Power to terminate criminal proceedings on indictment by issuing a *nolle prosequi*.
7. Superintendence of and Parliamentary accountability for the Army, Navy and Air Force Prosecuting Authorities.
8. General oversight of the other central prosecuting authorities (e.g. DTI, HSE, DWP and DEFRA).
9. Criminal justice policy Minister (with Home Secretary and Lord Chancellor).
10. Legal advisor to the Sovereign (as her Majesty's Attorney General).
11. Legal advice to the Crown on peerage cases.
12. Approval of Royal Charters
13. Chief legal advisor to the Government.
14. Advice to Ministers involved in legal proceedings in their official capacity.
15. Consultation with Ministers in legal proceedings in their personal capacity (in circumstances defined in the Ministerial Code).
16. Advice to Parliament on certain issues, including the conduct and discipline of Members, matters of privilege and procedure, and the meaning and effect of proposed legislation.
17. Receipt of committee papers and advice to the Committee on Standards and Privileges (Solicitor General when AG in Lords).
18. Intervention in legal proceedings to assert the rights of the Parliament.
19. Responsibility and Parliamentary accountability for the Attorney General's Office.
20. Responsibility and Parliamentary accountability for the Treasury Solicitor's Department.
21. Ministerial oversight of the Government Legal Service.

22. Leader of the Bar *ex officio*.
23. Advocate for the Crown in important cases.
24. Appointment of counsel (including Treasury Counsel) to represent the Crown in criminal and civil proceedings
25. Appointments of advocates to the court (independent counsel appointed to assist the court – formerly called ‘*amicus curiae*’).
26. \*Appointment of special advocates (counsel appointed to represent the interests of individuals in certain cases, e.g. immigration appeals, involving sensitive material which cannot be disclosed in the ordinary way).
27. \*Nominal claimant and defendant in civil litigation where there is no appropriate Government department (under Crown Proceedings Act 1947).
28. \*Power to bring proceedings to restrain vexatious litigants
29. \*Power to represent the interests of charities in certain proceedings.
30. Power to give directions under the Royal Sign Manual for the disposal of charitable gifts under Wills.
31. \*Power to take part in, or instruct the Queen’s Proctor to intervene in, certain family law proceedings relating to marriage.
32. \*Power to make or consent to application for an order requiring a new inquest.
33. Power to bring or intervene in legal proceedings in the public interest (e.g. to seek injunctions restraining publication of sensitive material where this is contrary to the public interest).
34. Power to consent to relator actions (civil proceedings brought to enforce a public law right).
35. \*Power to bring certain devolution proceedings under the Scotland Act and Government of Wales Act.
36. Taking decisions under the Freedom of Information Act in relation to papers of a previous administration.
37. \*Attorney General for Northern Ireland
38. \*Appointment and superintendence of, and Parliamentary responsibility for, the DPP for Northern Ireland.
39. \*Appointment of and Parliamentary accountability for the Crown Solicitor, Northern Ireland.
40. \*Power to certify cases for trial by jury in Northern Ireland.
41. \*Provision of guidance on human rights to criminal justice agencies in Northern Ireland.

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