



Northern Ireland
Assembly

**ASSEMBLY AND EXECUTIVE
REVIEW COMMITTEE**

**OFFICIAL REPORT
(Hansard)**

**Devolution of Policing and Justice
Matters: Financial Implications**

9 November 2009

NORTHERN IRELAND ASSEMBLY

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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 Alan McFarland
Mr John O'Dowd
Mr Ian Paisley Jnr

Witnesses:

Mr Anthony Harbinson)	Northern Ireland Office
Mr Peter May)	
Mr Richard Pengelly)	Department of Finance and Personnel
Mr Victor Hewitt)	Specialist adviser

The Chairperson (Mr Spratt):

I welcome Anthony Harbinson and Peter May from the Northern Ireland Office (NIO), and Richard Pengelly from the Department of Finance and Personnel (DFP). I also welcome the Committee's specialist adviser, Victor Hewitt. You have been invited to provide a short briefing on the Department's understanding of the Prime Minister's letter of 21 October to the First Minister and the deputy First Minister. On completion of the evidence session, I assume that you

will be happy to answer some questions. Thereafter, I will ask you to leave the meeting to allow the Committee to discuss your comments with the special adviser.

Gentlemen, you are very welcome. I ask that all mobile phones be turned off, because the evidence session is being recorded. The Hansard report may be published at a later stage if the Committee decides to make a report, but, at present, the record will be used only to inform tomorrow's and subsequent meetings. Be assured that it will not find its way into other domains.

I declare that I am member of the Northern Ireland Policing Board. Mr Attwood?

Mr Attwood:

I am also a member of the Policing Board.

The Chairperson:

I do not think there are any other declarations of interest to be made, unless Mr Alex Maskey returns to the meeting. He is also a member of the Policing Board.

I will now hand over to you gentlemen from the NIO, and if Mr Pengelly from DFP wants to add anything, that is fine.

Mr Peter May (Northern Ireland Office):

Thank you for the opportunity to appear before the Committee. We have not prepared a formal opening statement, because the letter from the Prime Minister to the First Minister and the deputy First Minister sets out the terms of the settlement clearly. We are here to answer any questions you may have as a Committee and to provide any necessary clarification.

The Chairperson:

Do you wish to add anything, Mr Pengelly?

Mr Richard Pengelly (Department of Finance and Personnel):

We are also here to provide any clarification that is needed. It may be useful for me to explain the role of DFP in the dialogue. We offered support, and we worked closely with Anthony Harbinson and colleagues in the Northern Ireland Office to understand and analyse the pressures that have been identified, and to provide some analysis and advice to our Ministers, who were

involved in negotiating the Prime Minister's letter of 21 October. We worked on the detail of the financial aspects.

The Chairperson:

The Committee members asked to see officials, so here you are. By the way, the specialist adviser has submitted an amended analysis of the Prime Minister's proposals for a financial settlement on Northern Ireland policing and justice. You will have already received a copy of the original paper, but an amended copy is before you now.

Questions to the officials should seek clarity on the Prime Minister's paper. Members should ask only a couple of questions at a time. If we have time, will I will take a second round of questions.

Mr McFarland:

It would be helpful were our witnesses to go through the Prime Minister's letter paragraph by paragraph. Several issues are not necessarily clear. I understand that at least two other letters, to which we have not been privy, go along with this letter. Please explain what is in the other letters and how it all works. Can we deal with the material paragraph by paragraph? That may help to focus discussion a little better.

The Chairperson:

I am happy to go through the Prime Minister's letter paragraph by paragraph. All members have a copy before them. We will deal with the key elements onwards, so as not to waste time. The first paragraph is on the Northern Ireland Executive's access to the reserve to meet any exceptional security pressures. Have you any comment to make on that?

Mr May:

First, the letter sets out the arrangement between the British Government and the Northern Ireland Executive. Its does not seek to set a specific budget for policing. It rehearses the fact that, for exceptional security pressures that relate to policing and justice, the Treasury is prepared to make available £37.4 million in 2010-11. It also makes clear that, beyond that, there will be access to the reserve for any exceptional pressures that might exist.

The Chairperson:

Is there any definition of “exceptional pressures”?

Mr Anthony Harbinson (Northern Ireland Office):

What that means has not been set out. It is an assessment of the factors as they exist. We are currently working on the assumption that unless there is material improvement in the security situation, those moneys will continue to flow directly from the reserve.

The Chairperson:

Obviously, nobody can predict the future security situation, but will money still be available should the need arise?

Mr May:

Additional money was made available from the reserve this year in response to the exceptional security pressures. Given the current situation, we envisage that that will also be needed next year. Beyond that, it will be a case of the Executive making the case to the Treasury, explaining the circumstances and working from there.

Mr McFarland:

Is it the responsibility of the Chief Constable, the Chief Secretary to the Treasury or the Prime Minister to say that the situation is dreadful? Who will make the call? In future, a situation could arise in which dissident activity continues and suddenly there is a bad marching season. If that were to happen, we could be facing £70 million or £80 million of extra expenditure. Who will make the call about whether it is acceptable to release money to deal with, for example, dissident activity? Whoever is responsible could say that parading costs will not be met because it is our fault that problems have not been sorted out. Is it the Chief Constable’s call? Clearly, he is the operational police officer. Is it the First Minister and the deputy First Minister? Is it the Chief Secretary to the Treasury?

Mr May:

The Executive would make a case to the Treasury. That case would be informed by the Chief Constable’s position on the policing budget, and potentially others’ position, depending on the budgets that are under pressure. There would then be a dialogue, but, ultimately, as with all

funding decisions, the Treasury has the ultimate decision about the amount of money that will be made available.

Mr Harbinson:

The letter about the 2007 comprehensive spending review (CSR), which, for the first time, stated that we would have a call on the reserve, is not written as strongly as it is in this letter. However, we were still able to make a call on it then and secure £29 million this year and £37 million next year. The Treasury will respond when a case is put to it.

Mr McFarland:

The economic situation could continue to get worse — according to current predictions, that is quite possible — and the Treasury might say no to us. The settlement is being sold as our having access to the fund, which will solve all future finance problems to deal with dissident and general terrorist activity. It is being sold as having been solved, because we have access to the fund. However, that may not be the way in which the situation turns out. Is there another letter that guarantees that that is the case? That is not stated at all in this letter.

Mr Harbinson:

It states that we are entitled to make a call on the reserve for as long as the security situation warrants it.

Mr McFarland:

Yes, but there is absolutely nothing to say that the Treasury will agree to whatever call is made. However, the settlement is being sold as having solved the issue, and that we do not have to worry about terrorist activity —

The Chairperson:

In fairness, that has always been the case up until now. What I took from my question to the officials was that that had been the case up until now and that that would continue. We are really doing a bit of crystal ball gazing.

Mr McFarland:

The settlement is about to be sold to the broad Northern Ireland society as having solved a number of troubling issues in respect of whether enough money would be available to administer

policing and justice. The spin that is being put on the settlement is that we do not have to worry about being able to afford to deal with terrorism in future because the Treasury has agreed to continue to cover funding.

It is one thing to cover the costs for the NIO, where the man in charge is a member of the UK Government. It is entirely another for a First Minister and a deputy First Minister in a devolved Government to appeal to the Treasury in London to bail them out. I understood that assurances and guarantees were attached to the settlement, but there is nothing in here to say that, unless there is another letter somewhere that explains that that is the case.

Mr Pengelly:

The nature of reserve claims is that the Treasury will never give a guarantee about access to the reserve. One of the most significant points — I think that Victor teased it out — is that the exceptional security pressures relate to policing and justice as opposed to exceptional pressures that face the Executive with their bigger funding block.

That form of words is very positive, because it provides comfort about access to the reserve. However, being the organisation that it is, the Treasury will not give guarantees that it will grant money simply because the Executive ask for it. However, in the context of policing and justice, the wording of that paragraph gives a strong commitment to that dialogue.

Mr Attwood:

To pick up on your last point, you rely on Victor Hewitt's paper, and I just want to confirm that his understanding is correct. Mr Hewitt wrote:

“The promise of access to the reserve during the period of the next Spending Review (thought to be 2011/12 to 2013/14) would imply that the law and order budget though devolved ... would in practice be regarded as ring fenced.”

In your opening remarks, Peter, you indicated that it will be up to the Executive to decide how they spend the budget when that is devolved. Is it the case that the budget is ring-fenced and that the Executive will not be able to interfere with those figures, or that the Executive can make their own judgement about how they spend that money?

Mr Pengelly:

There are two dimensions to that. On the one hand, at the point of devolution, the budget will be under the control of the Executive. Clearly, it will be for Executive to decide how any and all of that money is deployed into wider public service provision in Northern Ireland.

On the other hand, one of our major concerns had been the pressures on the Executive, because a range of public services is under financial pressure in the current climate, and policing and justice will bring further financial pressures. At official level, the Treasury understands that the Executive have a bigger quantum of money to manage. That form of words is certainly not imposing a ring fence on the budget for the Executive; rather, it is saying that if there are exceptional pressures in the policing and justice budget, the Treasury will recognise that fact and allow there to be a debate about access to the reserve. The Treasury will tell the Executive to sort out their own problems using money from one of its big budgets elsewhere. The wording certainly does not impose anything on the Executive; rather, it offers dotted line ring-fencing that enhances the Executive's capacity to engage with the Treasury.

Mr Attwood:

Ring-fencing is ring-fencing, and I do grasp the concept of dotted line ring-fencing. Let us try to bore into the issue a bit further. If the Executive told the British Government that they want access to the reserve because of additional security pressures, are you saying that the British Government would not say to the Executive that they have spent hardly any of the policing and justice budget? Is that the basis on which you are interpreting the document?

Mr Pengelly:

The paragraph clearly states:

“exceptional security pressures relating to policing and justice.”

Mr Attwood:

Yes.

Mr Pengelly:

Therefore, the answer to your question is yes.

Mr Attwood:

That is not a dotted line but ring-fencing.

Mr Pengelly:

It is not. I think that the long form of words would read: if pressures arise after the Treasury has devolved the budget and function to the Executive, it will have another debate with the Executive about additional money for that. However, the Executive will certainly be able to get additional funding, because there will be no ring fence imposed on them. The Treasury is saying that there will be no ring fence but that if pressures arise in the area for which it has given the Executive responsibility, it will have a debate about finance for that, but not about other money that may be at the Executive's disposal. I see that as a very positive form of words in that sense.

The Chairperson:

No other members have indicated that they wish to raise a question about the first paragraph, so we will move on to the second paragraph, which deals with the issue of capital budgets in the next CSR period. Are there any questions about that?

Mr McFarland:

First, what does "sufficient" mean in the context of that paragraph? Does it relate to current baselines? It seems that there will not now be a new prison, despite the fact that during the legislative stages of the Department of Justice Bill we heard that pressure on the Prison Service is getting worse and that the whole system, including the courts, will fall apart.

The Chairperson:

Did you say that there will be no new prison?

Mr McFarland:

Yes. The settlement will not provide funding for Magilligan or a new prison. There will be funding for the new police college; however, funding for a new prison has simply disappeared into the Ulu.

Mr Harbinson:

I think that it is saying that they will give us certainty on the police element of the public service

training college and ensure that that money is available, carried forward and protected. It does not try to set our post CSR 2007 capital budget, because no Department has that certainty or surety at this time, and it would be impossible to get that, short of the CSR process. They are also saying that the CSR process should give us enough capital to ensure that our ongoing maintenance is taken care of and that the moneys that are needed for the public service college will be provided.

The Chairperson:

There are no other indications that members wish to ask questions on that issue.

Mr Attwood:

I have a couple of questions.

The Chairperson:

I asked members to indicate whether they had questions.

Mr Attwood:

You can presume that I have questions on all matters, unless otherwise indicated.

The Chairperson:

Go ahead.

Mr Attwood:

In the event that the Executive decide to go ahead with the police college or the emergency services college, will the money that is guaranteed under this offer be retained by the Executive for other capital projects?

Mr Pengelly:

The NIO will transfer the capital baseline across to the Executive. This is saying that the Treasury views that as sufficient, but it is not applying any conditions the other way. That money will come across, and it will be for the Executive.

Mr Attwood:

Therefore, as you understand it, in the event that the police college does not proceed, the millions

of pounds that have been ring-fenced for that purpose year on year will be retained by the Executive.

The letter from the Prime Minister states that:

“Capital budgets in the next CSR period will be sufficient to enable the Executive to take forward routine, but necessary work, to maintain the operational capacity of existing assets”.

What does that mean? Does it mean that there is an implicit recognition that the baseline has to be enhanced in the next CSR in order to fulfil the standard that the Prime Minister outlines in his letter? Mr Hewitt says that the paragraph is ambiguous. It could mean that the Prime Minister believes that the capital budget is sufficient or that the capital baseline will be enhanced. Mr Hewitt makes the latter analysis and says that an overall uplift of £150 million on the top baseline would be compatible with what he would be putting forward.

Mr Harbinson:

I cannot justify the figure of £150 million, because we have not negotiated any budgets — not the CSR with Treasury on capital. No Department has done so. We have an undertaking and a commitment to meet the balance of the money that we need to complete the public service college and recognition that we will have sufficient funds to run our normal day-to-day elements of business. At the NIO, approximately half of our capital baseline goes on day-to-day maintenance and the other half goes on large capital projects.

Mr Attwood:

When you decode that paragraph of the Prime Minister’s letter, do you think that there is any hard commitment to increase the baselines in the next CSR? It is not possible to have had that negotiation to date, because the consultation on the CSR, never mind the negotiation, has not started yet.

Mr May:

There is no quantum of money set out in the paragraph, and that reflects the fact that there will have to be a negotiation in the context of the next CSR. That paragraph provides a level of assurance or comfort that there will be sufficient money in the capital budget to enable the completion of the projects that are set out.

Mr Attwood:

There is a checklist, and those things have to be quantified. In the absence of their being quantified, and given that the Exchequer will not give out blank cheques, such a form of words as:

“will be sufficient to enable the Executive to take forward”

— are intangible; there are no figures around them. Victor Hewitt says that, for that to mean anything, the baseline will have to be increased, but you are saying that there is no guarantee and that you hope that the baseline will be increased. What is the proper way to read that paragraph? There are warm words, but there are no hard figures, and the negotiations have not even begun. Therefore, Victor Hewitt is right: the paragraph is ambiguous.

Mr Harbinson:

There are some hard figures in respect of a guarantee to complete the public service college, but there cannot be any more than that at this point.

Mr Pengelly:

There is another contextual point. As you have said, the Treasury is very reluctant to give firm commitments going into a spending review when it has not yet crunched all the numbers. However, the messages that came out in last year’s pre-Budget report and the Chancellor’s Budget and, I suspect, will come out again next month in the pre-Budget report, are that the capital funding at UK level will be the area under the most severe pressure. There are expectations that per annum decreases in capital investment could reach a double-digit percentage figure.

The paragraph is saying that, at the moment, the funding is in place to do the operational work and to finish the college, and it is providing an assurance that that will continue to be the case. However, it should be read in that wider context.

Mr Attwood:

I agree that the information about the police training college, subject to what I said, is good, and it is building on what had been established. That precedent of holding money over on a year-to-year basis has already been established. However, the rest of the paragraph could mean one of a number of things. Therefore, in the absence of it being quantified, it should be treated as a zero benefit. Do you not agree?

Mr May:

No, I do not agree. It provides a more forward form of words than that of any other Whitehall Department with regard to the way in which capital funding will be dealt with in the next CSR period. I accept that it does not quantify the precise amount, but it is still a positive.

The Chairperson:

Thank you. We move on to the third paragraph, which refers to the legal aid allocation. Mr Harbinson, do you want to make a quick point about that paragraph, as you may well be asked about it?

Mr Harbinson:

Yes, I will address that paragraph. I am not representing the Northern Ireland Court Service, so I cannot be explicit about the numbers, etc. However, during the negotiations with Heywood, the Court Service made the point strongly that it is suffering a shortfall in resources to meet the legal aid bill in Northern Ireland. The figures that the Court Service identified are shown in the paper, and my understanding is that it has exactly what it needs to fill that gap. The Court Service also has a commitment that stretches beyond five years with regard to baseline moneys that are there and one-off moneys of up to £39 million.

The Chairperson:

There being no questions, we move on to the fourth paragraph, which relates to HM Government and the four agreed former military bases. Do any of the witnesses want to say anything about that before I open the matter for questions?

Mr Pengelly:

We do not have a quantification of that, and it is speculative with regard to the valuation that we would receive for their disposal. However, there is nothing in Victor's paper that we disagree with, and he estimated the current market position at around £60 million, which is about half of the previous valuation. The important point to elaborate on is the final sentence of the fourth paragraph, which recognises that although there may be four properties that we can dispose of, it may not be possible to dispose of them quickly in the current climate, and a quick sale would, inevitably, depress receipts. The paragraph acknowledges that the Treasury has recognised that point and it will work with the Executive as necessary to provide funding up front, with the view

that the disposal can take place when market conditions are right to make good on that.

Mr McFarland:

Clearly, this will go across into the next CSR period. How long do you think that the Treasury's nerve will hold? If the housing market continues to be depressed, particularly in Northern Ireland — and there is little sense that it will pick up in the short term — how long will the Treasury be happy to keep giving away what amounts to a mortgage on those bases?

Mr Pengelly:

I cannot give a definitive time limit. However, I am confident that the Treasury's commitment will long outlast the current market position, and that we will see the market condition recover before we see any nervousness on the part of the Treasury.

The Chairperson:

Thank you. Do members have anything further to say about that?

Mr Attwood:

I wish to go through one or two of the points that Victor Hewitt raised. Are there any indications of the costs that might arise from decontamination?

Mr Pengelly:

There are no indications of that.

Mr Attwood:

I assume that military sites have been disposed of previously and decontamination costs were involved. Is there any verification of what those costs were?

Mr Pengelly:

I do not think that that has been verified completely, but some of the sites extend to many hundreds of acres, so, although there may be contamination issues, they may be specific to certain elements of the site. It is difficult to say that what happened at one site in a different geographical location has any implications for contamination at another site.

Mr Attwood:

Before accepting an offer, surely some scoping would be done on what the decontamination costs might be, given that those costs would be borne by the Northern Ireland Executive. Otherwise, it might open a door that would be closed again by those costs. Has no scoping been done on what the potential contamination costs might be at any of the sites?

Mr Pengelly:

No detailed work has been carried out, but any contamination issues would, at worst, reduce the value of a site. They would not turn a site into a poisoned chalice. The Executive will be able to dispose of the properties and do whatever they want with the proceeds. Any contamination may marginally depress, rather than eradicate, their value.

Mr Attwood:

Although you have not done any detailed work and have no hard costings, you anticipate that any costs of decontamination will be marginal and that the full value of market conditions will be realised.

Mr Pengelly:

We do have some knowledge about the sites. Ballykinler, for example, is a clean site. The contamination is a manifestation of the activity that has taken place. Large elements of the sites contain military housing, so contamination issues will not arise at those parts of the site. Other parts of the sites are essentially greenfield sites. I take the point that detailed work has not been carried out to substantiate that. That is based on what previous surveys have shown.

The Chairperson:

There may be issues to do with firearms ranges, but I do not imagine that those would be difficult to deal with. I cannot think of other major issues to do with decontamination.

Mr Harbinson:

The MOD had planned to sell the sites commercially, and it would not have undertaken that unless it thought that the commercial world would have been willing to buy.

Mr Attwood:

Did the MOD not work out what the decontamination costs might be?

The Chairperson:

We have teased that issue out far enough. It is clear that you have received your answer, and this is not meant to be an interrogation of the officials.

Mr Attwood:

It is envisaged that the sites in Omagh that are to be relocated will be for the Executive to dispose of as they choose.

Mr Pengelly:

That is correct.

Mr Attwood:

Given that market conditions might make sales attractive at various sites, is there any indication of what the terms of the drawdown of the reserve might be?

Mr Pengelly:

There is no indication of that. Normal access to the reserve is on the basis that anything from the reserve is repayable in the future. There is not normally a mechanism for the Treasury to charge interest to a Department for access to the reserve, and I have no knowledge of that having happened. It is, basically, "cash in and cash out".

Mr Attwood:

Is that your presumption?

Mr Pengelly:

It is our presumption, because the Treasury has not stated anything to the contrary. That is what happens daily in practice when Departments across Whitehall get access to the reserve.

The Chairperson:

The next issue is that of police pensions, and their reclassification from departmental expenditure limits to annually managed expenditure.

Mr May:

Two aspects go towards making up the pressure of £101 million. The first aspect is to do with pension computation factors. There is a pressure, past and present, in relation to the amount of payments to be made to police officers as a result of the change in the calculation in the basis of the computation. That accounts for around £37 million of the £101 million.

The additional sum of £64 million recognises the fact that, as part of the reclassification project, which would remove the risk from the PSNI budget, the PSNI agreed to make higher annual pension contributions, amounting to an estimated £32 million a year. That makes £101 million over two years.

Mr Harbinson:

If that change were to happen without that guarantee, there would be an ongoing baseline increase.

The Chairperson:

I am always pleased to hear that police pensions are increasing. *[Laughter.]*

I have already declared myself to be a member of the Policing Board, and I that am a pensioner. Do members have any questions?

Mr Attwood:

The pressure of £101 million can be addressed through tactical changes. However, more money is going to the police.

Mr Harbinson:

There are a couple of elements to that. First, as Peter mentioned, there is £37 million that relates to commutational payments. Secondly, there are the ongoing costs of pensions. If the Police Service were to change its pension scheme from a schedule C pension to a schedule D pension, that would mean that it would not suffer any actuarial fluctuations in pensions, and that that would go through its annually managed expenditure, and not its departmental expenditure limit. That is a technical point.

The police are saving a charge on their baseline of £32 million a year. However, they are also saving any actuarial swing that may subsequently arise. For example, if there was a £10 million, £20 million or £30 million swing in the pension valuation, the Police Service would save on that too, as that would go through its annually managed expenditure and add a charge to its departmental expenditure limit.

Mr May:

It is a good deal for the public exchequer because it removes the risk of pension calculations leading to a deficit which it would then fall to the public expenditure system to meet.

The Chairperson:

There was an issue around an anomaly that affected the whole Police Service — it had something to do with pensions for females and males, and the Home Secretary made an announcement on that around eight or nine months ago. That had been sorted out at a national level, but not in Northern Ireland. Is that pressure included in the £101 million?

My recollection is that, at the Policing Board, an additional figure of around £21 million was mentioned as a result of that pressure.

Mr Harbinson:

That anomaly was around a backdating of commutational payments, and, in the end, was an additional figure of £15 million, and not £21 million. That figure is part of the £37 million and is part of the UK-wide arrangements.

Mr McFarland:

It is all a bit technical. However, we have not seen a rebellion by the Police Federation against changing from a schedule C pension to a schedule D pension. Is a schedule D pension more beneficial to officers?

Mr May:

The change would not affect the amount of money that a pensioner receives.

Mr Harbinson:

It is a change to the employer's cost; therefore, it is a cost to the PSNI, as opposed to the

pensioners.

Mr Attwood:

On a year to year basis, over the CSR period, how much new money is arising from that?

Mr Harbinson:

The £64 million is made up of an increase in employer contributions of £32 million this year and £32 million next year. The commutational payments are made in three lots of 12 and are backdated to include last year, this year and next year.

Mr Attwood:

Are all those payments new money?

Mr Harbinson:

If we were to make a change without that guarantee, it is money that will be pared from the PSNI's current baseline resource. It would be a charge on the PSNI.

Mr Pengelly:

Allowing the Treasury to cover that with other additional funds takes a pressure away from the PSNI, which, otherwise, it would have to cover from its budget. It is not giving the PSNI additional money; it is removing a pressure.

Mr Attwood:

In 2014-15, will the PSNI have to fall back on its own resources?

Mr Harbinson:

No; it would be a permanent change.

Mr Pengelly:

The conditions are similar to those of the social security budget in that it does not impact on other available money.

The Chairperson:

As there are no other questions, we will move on. The next issue is the "long list" of potential

pressures in the period 2010-11 — around £15 million — on resources relating to policing, prisons and probation.

Mr Harbinson:

That is part of the Committee's work, DFP's due diligence and other research. Many organisations have made bids for money to relieve pressures, some of which real, some of which are speculative and some of which are very much in the wish list category. We put those bids into a long list and arrived at the assessment that, as set out in the Prime Minister's letter, there is about £15 million to spend next year and £10 million a year thereafter. The letter outlines that an additional £30 million will be available to cope with those pressures.

Mr McFarland:

Do we have a definitive copy of the long list? The Committee was given a document — I presume that you have seen it — that outlined issues that were considered inescapable and potentially inescapable in 2007. It mentions other issues such as the Police Retraining and Rehabilitation Trust.

Mr Harbinson:

It is a dynamic list. Some items have been removed, some have increased and some have decreased. New items arise; it is an ongoing list.

Mr Pengelly:

Anthony and colleagues identified pressures, which we considered to ensure that Victor's work was aligned with ours. We tended to break that list into two categories: the big-ticket items and long-list items. The latter were other items that did not fall into the category of big-ticket items.

Mr McFarland:

Except for matters such as legal aid, will all other items on the long list be covered by a sufficient sum? Or will those items be left out? For example, I presume that the historical enquiries are included. Forensic science was considered as £1.3 million of inescapable capital in 2007. Where are we with that now?

Mr May:

This is an overall assessment of the quantum of pressures that could result. The arrangements

provide for unallocated end-year flexibility of £30 million to be used meet those pressures. The justice Ministry and the Executive should decide which pressures the moneys go towards.

Mr Harbinson:

As we said, it is a package for devolution, rather than a budget allocation.

Mr McFarland:

It does not meet the current list of requirements. In this case, £372 million was subject to inescapable pressure in 2007. I presume that legal aid, and money for pensions and hearing-loss claims will come off that figure. If that happens, will the £30 million meet the rest of the categories?

Mr Pengelly:

No, it will not.

Mr McFarland:

How much is the shortfall?

Mr Pengelly:

I am not sure of the figure. That list was started by asking business areas whether they have enough money. That scenario is similar to asking a retired policeman whether his or her pension is big enough. The answer will always be no.

Mr McFarland:

That is unfair. We specifically divided the items into those that were legally inescapable and those that were potentially inescapable; that is, those that could turn out to be a problem. We understood that the legally inescapable costs, including the pensions, amounted to £372 million. Are you saying that some of those issues are not legally inescapable?

Mr Pengelly:

We need to differentiate between the micro-level items and individual expenditure items that are inescapable. We must consider small inescapable issues in the context of the overall funding that is available to the relevant organisations. It is about creating the capacity to manage a pressure, rather than managing individual pressures line by line. The assessment of the long list with the

quantum that is set out amounted to the funding deficit. However, in the context of the available budget, operational issues and inescapability, that is how it ties up.

Mr Attwood:

You will be aware that the police have flagged up concerns about that area. In that regard, I have several questions. The Prime Minister says that baselines will need to be sufficient to meet pressures; what do you understand that to mean? Does it mean that baselines are sufficient or that baselines can be adjusted with the £30 million?

Mr Harbinson:

Several of those pressures were recognised as normal business pressures that any Department is expected to face, take on board and manage with existing resources. To that end, the existing baseline should be partly capable of addressing a number of those pressures. There are then those pressures that are over and above that, for which we have been given an additional £30 million of end-year flexibility to deal with. In truth, it is a bit of both.

Mr Attwood:

Given that £30 million is only £30 million; you are basically saying that the baselines are sufficient. That claim may be right, and I share some of those views about various bids and withdrawals, but what is being said is that the baselines are sufficient, subject to this £30 million and underspend money. How will that money help the Police Ombudsman's office to deal with its requirements to fund of investigations of past cases that it is in the public interest for it to pursue? Will the Police Ombudsman have access to that money?

Mr Harbinson:

We have tried not to allocate the £30 million to any budget line. It will be up to the justice Minister, when appointed, to make those decisions on a prioritised basis. Money to pursue HET cases, either from the PSNI or from the Ombudsman, would be made available through a bid or pressure that would be considered.

Mr May:

The Executive would be getting £30 million that would not otherwise be available to policing and justice in order to meet the pressures that exist at the moment.

Mr Attwood:

For a long time, the Police Ombudsman has had pressures in dealing with those past cases that he considers necessary to pursue. Financial restrictions mean that he cannot get into a lot of those cases, including very serious cases such as that of Stakeknife. Given that he has been flagging up the fact that he needs extra money to deal with those for a long period, and that he is not able to process them in any significant way, you are saying that this arrangement would mean that he would have to take his chances with the justice Minister like everybody else.

Mr May:

This is an enabling arrangement, as nearly all of these arrangements are. They will enable the Executive to deal with the pressures facing justice and policing in the future by providing additional resources, in a range of different ways, which would not otherwise be available. It does not stipulate how that money has to be spent.

Mr Attwood:

So you are saying very clearly that, even though there are pressures in that office around those matters, there is currently no budget allocation, and that the Ombudsman would have to wait until after the devolution of justice before he might get a budget allocation, which even then may not be much, if anything?

Mr May:

Those are the sort of pressures that were recognised in making this arrangement. It is a positive in overall terms.

Mr Attwood:

It is not very positive for families who are waiting —

The Chairperson:

Hold on a minute. The officials are not here to get into individual cases. We are specifically talking about the letter. I think that they have adequately answered the questions that you have asked, so we will move on —

Mr Attwood:

I have not finished asking questions —

The Chairperson:

With all due respect, Alex, you have been allowed to ask quite a lot questions.

Mr Attwood:

I presumed that I would be allowed to questions. The point is that there are other questions, separate from those on the Police Ombudsman's office, that have to be asked about the £30 million.

The Chairperson:

If those questions are about other Departments, tell me what they are. We are not getting into a whole list of individual cases. I think it has been adequately explained how the £30 million will be allocated; that people will have to make their bids for it. I think that that has been made very clear, and I assume that it is clear to everyone else on the Committee; it is certainly clear to me. However, if you have another specific question, I will allow it, and then we will move on.

Mr Attwood:

Let us deal with what the Police Chief Constable says about the Historical Enquiries Team. He is saying that there is a very slow pace on the HET cases, because he has concerns that that sort of money to deal with all the long-list pressures will ultimately mean that there will not be much money going to the HET to expedite their investigations. That £30 million does not provide any catalyst to how quickly the HET can work through its cases. That is essentially what he said in a meeting in public session of the Policing Board last week.

The Chairperson:

You have your own interpretation of what the Chief Constable said. My interpretation is that the Chief Constable clearly said that he was pleased that there had been an addition to the budget that he had been allocated initially but that it would not pay for everything in one year and that he would have to prioritise, and deal with, cases as they came along. I do not know how the officials can make that any clearer.

Mr May:

The BBC reported the Chief Constable as having said that the financial package on offer for the devolution of policing and justice powers is sufficient for operational needs.

Mr Attwood:

In public session, the Chief Constable was explicit in what he said about dealing with legacy issues. That is on the public record, which I can send to you.

The Chairperson:

Yes; he said that it may take longer.

Mr Attwood:

We should listen to everything that the Chief Constable said. That is usually a better way of understanding what he is saying.

The Chairperson:

The Chief Constable was asked specific questions about some of the high-profile inquest cases. He was quite clear in what he said, and I would not have expected to him to say anything different. The officials are unable to provide further clarity today, and it is unfair to ask them about that.

Do members have any comment to make on the next paragraph? It reads:

“Prior to devolution the Secretary of State for Northern Ireland and the head of the PSNI will agree on how front-line policing is protected while ensuring the greatest efficiency.”

Mr May:

That paragraph describes the tripartite process that is being conducted among the Policing Board, the PSNI and the Northern Ireland Office on what level of efficiency the PSNI should be asked to achieve over what period. There has been a number of meetings between the chairman of the Policing Board, the Chief Constable and Paul Goggins, and that work is ongoing. The commitment that is being made on all sides is that, although efficiencies will be sought as part of the wider government attempt to secure greater efficiency, front line policing should be protected.

The Chairperson:

We move on to the paragraph that deals with hearing loss. The Prime Minister’s statement on hearing loss claims is reasonably clear, and the Chief Constable has indicated that he is pleased with that package.

Mr McFarland:

Our assessment projected the total cost of the hearing loss claims to be £148 million in the current CSR period. The £60 million allocation — £12 million a year for five years — is somewhat short of £148 million. How do we square that circle? Legal cases cannot be —

Mr Harbinson:

The paragraph on hearing loss makes it clear that the Department of justice and the police will pay the first £12 million of claims in any one year but that everything above that will be paid for via a call on the reserve.

Mr Pengelly:

From the Executive's point of view that is one of the most important paragraphs of the letter. It puts forward figures for the hearing loss claims, which are high, three-figure sums in a volatile area. Anthony knows better than me the difficulty of predicting such figures on a day-to-day basis. One of the most damaging factors of financial management is costs changing on a daily basis. The paragraph on hearing loss sets in stone that the Executive will have to manage no more than £12 million a year over the next five years. The costs of claims above that will be borne by a reserve claim from the Treasury. The paragraph also helpfully provides a mechanism for how the Executive can generate the £12 million through the disposal of capital assets to the Treasury. Therefore, the paragraph is helpful from two perspectives.

Mr McFarland:

Given that the Executive cannot sell the sites at present, will they just ratchet up a mortgage of £12 million a year for however long is necessary?

Mr Pengelly:

It is not a mortgage, because there is recognition of the separate work that the Executive have done. We commissioned a Capital Realisation Task Force report, which was published more than a year ago. It showed that the public sector estate in Northern Ireland has a significant surplus of assets that are not needed for the provision of public services and, as such, can be disposed of. The paragraph on hearing loss recognises that we have those assets. If we were to dispose of those assets in the normal run of events, the money would be available only for capital investment, not to help with the pressure. We are being allowed greater flexibility to move assets

from capital to current. In the absence of a buyer's being found, the Treasury will step in and take the surplus assets, which are not needed for the provision of public services.

Mr Hamilton:

That would represent a very good deal in that it is a liability in excess of £12 million. Will that incentivise a settlement of that claim, or those claims, as quickly as possible, or could the claim run for ever and a day? Will it be in existence for the next 10 years or so, as long as people are coming forward, or could it be settled inside a year or two, thereby minimising the cost to the Executive?

Mr Harbinson:

Those people who have hearing loss at this point in time will make a claim, and hopefully that claim will be settled, but that is not to say that, 10 years down the line, someone may not develop a hearing loss impairment that he or she would try to relate back to now. I cannot say that all hearing loss claims will be dealt with for ever, but the police have sufficient records from around 1996 or 1998 to prove that they had given out hearing protection equipment to everyone who was using firearms.

Mr Pengelly:

Your point is essentially that if we do it in one year it will cost us £12 million, whereas if we do it over three years it will cost us £24 million, so there is an incentive. There is an incentive at the moment, because there is a number of people who are entitled to the compensation, and we want to process those claims.

Mr Hamilton:

I am thinking of the public purse.

Mr McFarland:

I want to ask some supplementary questions about matters that are not in the letter. I am not sure where they have gone, because they were on our list, but they have not appeared in the letter.

The Chairperson:

They may have been on our list, but we are discussing the letter that was sent to the NIO. Is any issue missing that you want to tell us about?

Mr McFarland:

There must have been discussions about, for example, the proposals from the Eames/Bradley Consultative Group on the Past. You cannot have had an entire series of discussions and not had some thought about those proposals and how they will be paid for. I understand that, although inquiries are being held by the NIO —

The Chairperson:

I do not think that there was anything about the Eames/Bradley proposals in any papers that we sent. There was absolutely nothing.

Mr McFarland:

We have talked endlessly —

The Chairperson:

No, there was no mention of the Eames/Bradley proposals in the papers that we sent or in the evidence that we took in Committee.

Mr McFarland:

At every single meeting we have had, I have raised —

The Chairperson:

Perhaps you did not hear what I said, so I will repeat it. I said that, in the evidence that we took during our inquiry, and in the papers that the specialist adviser provided, no financial issues were raised that pertained to the Eames/Bradley proposals.

Mr McFarland:

I remind you that when the Secretary of State was here, the question was asked of him, and he said that it was too early to identify the eventual costs of the Eames/Bradley proposals, because no final decisions had been made. What discussions, if any, were held on how we deal with what is likely to be a fairly major financial commitment for the Department of justice if the issue is passed to whoever the justice Minister is, as I understand the NIO intends to do? It is holding inquiries. I am asking whether there have been discussions about how the Eames/Bradley proposals will be paid for if they are accepted. There is nothing about that in the letter or

anywhere else. It was asked of the Secretary of State, and he replied. It is in our evidence; it is not correct to say that it is not.

The Chairperson:

My understanding is that there were indications that the British Government would deal with those issues of the past.

Mr McFarland:

No, only inquiries. The Eames/Bradley proposals to deal with the past are, as I understand it, a part of the devolution of justice powers.

What discussions have you had? Presumably there have been some discussions with the First Minister and the deputy First Minister.

Mr Pengelly:

The starting point of the process that we have been involved in was the list of financial pressures identified to us by organisations. We have had that engagement. Where a number has been articulated, we had a dialogue with the Treasury about that number. Issues that have been mentioned, but to which no number has been attached, are part of a separate process, in which we, as officials, have not been engaged at all.

Mr McFarland:

Finally, have there been any discussions about the museum? I understand that a number of Secretaries of State promised funding for that. Do we have any funding for the police museum, which was originally an issue?

The Chairperson:

I understand that that is one of the issues that have been sorted out. That assurance was given in evidence to the Committee.

Mr May:

We are aware that a case has been made for financing for a police museum, but the letter sets out the settlement arrangements that the Prime Minister has made to date.

Mr Attwood:

I return to the issue of hearing loss. I find this the most curious aspect. On the face of it, as Simon Hamilton said, this is a very good offer. The British Government say that we can pay a fifth and it will pay four fifths of a potential liability of £400 million. It seems to be a disproportionate offer.

What was the British Government's assessment of the true value of those claims? Some of the top lines on which the Policing Board has been advised stated the British Government were offering up to £340 million.

Mr Pengelly:

In the dialogue, not a great deal of time was spent on trying to articulate properly the full value of the claims. There was acceptance and recognition by all that, whatever the number, it was so large that it would fundamentally undermine the operational capacity of the Police Service. Essentially, this says that that exposure will be limited to £12 million.

Everyone on our side recognises that that is an extraordinarily good settlement of what was the most difficult issue, because of its sheer size. The Treasury has not sought to take a view on its maximum exposure, but that exposure sits with them, and as a result of the agreement, we do not have to worry about it.

Mr Attwood:

On the political side, there were indications that the Treasury took a different view as to the scale of the final bill might be, contrary to what you say. That may not have been evident from conversations that you have had, but we on the political side have been advised by the relevant people that the Treasury considered the £400 million figure to be extravagant.

Mr May:

What the deal does is remove the risk from the Northern Ireland Executive. It makes clear that there must be an annual agreement between the Executive and the Treasury on the litigation strategy, which is designed to ensure that claims are not settled at an unduly high level and that a proper approach is taken to, and proper care is taken of, public finance. It is a positive deal. However, it is not on the table if there is no devolution.

Mr Attwood:

This may be premature, but the Northern Ireland contribution of £12 million in any one year comes from sale of assets. Does the British side say that we must afford £12 million in year one or else it will have £12 million of assets, or does it say that the Northern Ireland Executive can wait until the market improves?

Mr Pengelly:

In a steady state, we sell more than £12 million of assets in any one year. We will use that money. A sum of £12 million is not a particularly big increase, and we currently realise £200 million a year. Victor Hewitt can tell you more about that than I can. As to our market assessment, if we have not reached the bottom, we are very near it. By the time that we move forward on that, the disposal of £12 million of assets each year does not cause us any concern.

Mr Attwood:

It may cause a Minister concern if the £12 million a year that he or she relies on is not there because it has gone off to London.

Are you saying that, whatever the sales are in any one year, £12 million will be top-sliced from that in the event that it is required to settle those claims?

Mr Pengelly:

We will endeavour to sell additional assets. We will accelerate the disposal of assets to deal with the situation. It is a fail-safe mechanism. If we are unable to do that, we could still use £12 million from existing assets. We will not have to cut public services to find that £12 million.

Mr Attwood:

The bottom line is, whatever happens, if £12 million is required, London will get that in any one year.

Mr Pengelly:

It is not London that gets it.

Mr Attwood:

Sorry. It is for hearing loss compensation.

Mr May:

With £12 million worth of assets realised, that will then be used to pay compensation for hearing loss. The only way in which London might get involved is if the Treasury acquires from the Executive saleable assets up to a total of £12 million a year.

The Chairperson:

That must have been made clear on a number of occasions.

In the paragraph on the hearing loss claim, what is the “mitigation strategy” that is referred to?

Mr May:

That is about ensuring that an appropriate approach is taken to ensure that settlement of claims is kept to the minimum that is valid as it relates to the nature of the claim that is being made.

The Chairperson:

I thank the witnesses for attending the Committee and for taking the time to answer questions and to clarify some points before tomorrow’s meeting. You may leave now.

I invite Victor Hewitt to take a seat at the Committee table. Victor, you heard what the officials had to say on the paper that you presented. Have you any further comments to make?

Mr Victor Hewitt (Specialist adviser):

Not really. It is perfectly clear that this is very much a political settlement. The letter is couched in a way that makes agreement doable. The witnesses were obviously a bit vague about some of the details, and, yes, there is vagueness to some of the details. There is a great deal of self-help in the package, such as selling assets and essentially borrowing money against assets.

Nonetheless, compared with where we might have been with the Treasury, on the face of it this looks to be quite a good overall deal. There could be arguments made about the overall value of the package, but it is potentially a significant amount of money.

Mr Attwood:

Do you think, Victor, that your paper needs any further updating? Can the Committee go ahead

and publish?

Mr Hewitt:

Some of the numbers could be fitted in. Obviously, the £101 million figure for pensions was mentioned. However, I am not sure that there is an awful lot more to be added.

The Chairperson:

I think the reference to publishing the report was made in some jest. That is certainly not what the Committee intends to do at this point.

Mr McFarland:

Can the Committee have Mr Hewitt amend his report in the light of what we have learnt? In particular, it would be useful to separate what the officials called “the long list” into columns, with the pension figures and other details taken out. That would provide the Committee with an easy reference.

Something that was missing from the officials’ paper was a chart similar to the one at the back of Mr Hewitt’s paper. That chart makes it easy to work out what has gone where. Mr Hewitt’s original document was excellent. It would be useful to have an update on that. Is it easy to insert the latest figures into that to create a sort of ready reckoner?

The Chairperson:

Any additional work must be discussed and agreed by the Committee after Mr Hewitt leaves the meeting.

Mr McFarland:

I was asking rather than suggesting, but OK.

Mr Hewitt:

My lists differ somewhat from those that would have been held by the Department of Finance and Personnel, because I took the further step of trying to sort out the absolutely inescapable costs and the potentially inescapable costs. Therefore, the two would not necessarily entirely align. I am not sure that the “long lists” referred to by the officials would be as comprehensive as the lists that we prepared. Hence, I am in a bit of a quandary about whether I could do what Mr

McFarland suggests.

The Chairperson:

The Committee will come back to you on that after it has had a discussion. Do members have any other questions? Mr Hewitt, are you available to sit in on tomorrow's meeting?

Mr Hewitt:

Will it be tomorrow morning?

The Chairperson:

Yes.

Mr Hewitt:

Yes, I am available.

The Chairperson:

Thank you for that.