



Northern Ireland
Assembly

COMMITTEE FOR
HEALTH, SOCIAL SERVICES AND
PUBLIC SAFETY

OFFICIAL REPORT
(Hansard)

Donagh Abuse Case

9 September 2010

NORTHERN IRELAND ASSEMBLY

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HEALTH, SOCIAL SERVICES
AND PUBLIC SAFETY**

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Members present for all or part of the proceedings:

Mr Jim Wells (Chairperson)
Mrs Michelle O'Neill (Deputy Chairperson)
Mr Alex Easton
Mr Tommy Gallagher
Mr Sam Gardiner
Ms Sue Ramsey

Witnesses:

Dr Maura Briscoe)	
Mr Sean Holland)	Department for Health, Social Services and Public Safety
Mr Patrick McConville)	
Ms Elaine Way)	Western Health and Social Care Trust

The Chairperson (Mr Wells):

We shall now take evidence from departmental officials on actions involving the two brothers in the Donagh case. I refer members to the briefing paper from the Department, which should have been e-mailed to you on Tuesday. There is also a briefing from the Committee Clerk. Members will recall that, on Thursday 2 September, officials from the Health Department and the Justice Department briefed the Committee for Justice on the situation. The Hansard report of that

meeting and a memo from the Clerk were e-mailed to members on Tuesday. The memo highlights issues of concern that are under the remit of this Committee, namely those concerning the Western Health and Social Care Trust. I refer members to the paper tabled by the Royal College of Psychiatrists that was sent to the Minister in response to the press release on the equality impact assessment consultation for the proposed mental capacity Bill. I am conscious that a great deal of information has been dumped on members' tables at a very late stage, but that is the nature of a first meeting. We shall deal with one or two core issues.

I welcome the witnesses, most of whom are well known to members. Dr Maura Briscoe is the director of mental health and disability policy; Mr Sean Holland, who has been here all afternoon, is the Acting Chief Social Services Officer; Ms Elaine Way is the chief executive of the Western Health and Social Care Trust and has appeared before us before; and Mr Patrick McConville is the principal of the mental health legislation unit. I am sure that the witnesses are aware of what happened at the Committee for Justice's hearing. As usual, witnesses will have 10 minutes, if required, after which I will open the floor for members to ask questions. On this occasion, I will give priority to Tommy Gallagher, because Tommy represents Fermanagh, where the issue arose.

Dr Maura Briscoe (Department of Health, Social Services and Public Safety):

All of us on the panel and Minister McGimpsey recognise the hurt and anguish that this disturbing and exceptional case has brought to bear on the survivors of the Donagh abuse and the wider Donagh community.

The purpose of our presentation is to say a few words on the background to the McDermott case; to outline the actions that have been taken since the court judgement and the key legislative issues arising from that court judgement; and to set out what we propose as the way forward in the short term, the medium term and the longer term. At the outset, I stress that we will not talk about the specific detail of the clinical report on, or the care plan for, the McDermott brothers. That is a matter for the courts and the health and social care professionals who are engaged in treating the two McDermott brothers.

However, there is much evidence that we want to give you today, and I will start by taking you through the circumstances of the case. In 2008, the four McDermott brothers were arrested and accused of sexual offences. In August 2009, the two brothers who are under discussion were found by a jury to be unfit to plead. In November 2009, the court found that those two

individuals had committed the offences, so they were found guilty of the facts. In June 2010, the judgement was made. Throughout the court hearing, and between 2008 and 2010, the two brothers remained on bail with certain conditions and resided in the family home in Donagh.

Given that the individuals were found unfit to plead, under the Mental Health Order 1986, the judge was presented with four disposals or options: absolute discharge; a hospital order; a guardianship order; a supervision and treatment order (STO). After the judge dismissed the option of absolute discharge, and bearing in mind the medical and clinical evidence that was submitted to the courts, it was deemed that the criteria for imposing either a hospital order or a guardianship order were not met. Therefore, a supervision and treatment order was put in place, and a nominated social worker was the key supervising officer. The supervision and treatment order, therefore, had a supervising officer, and the individuals were required to undergo treatment to improve a condition.

Importantly in the context of this discussion, the judge explained that the supervision and treatment order would last a maximum of two years, but stated:

“I would have preferred to make the order for longer but the legislation does not allow for any longer period”.

When we come to talk about some of the actions that are proposed now, that quote will become important.

Separately from the supervision and treatment order, the judge also imposed a sexual offences prevention order (SOPO), which is the public protection element. It is equally important, because it prohibited the brothers from unsupervised access to children and restricted the areas in the local Donagh community to which they could have access.

Thus, two orders were placed. In addition, the individuals were required to sign the sex offenders register for five years. That required them to notify the police of their whereabouts and of any other personal details. That is a snapshot of the court and the orders that arose from its judgement.

I will outline the actions that have been taken since June 2010. The Department has been in constant contact with colleagues in the Department of Justice, the Health and Social Care Board and the Western Trust. The trust has put in place a comprehensive, multifaceted plan, which includes risk assessment, child protection, safeguarding issues and, importantly, survivors’

support needs. It is very much an inter-agency plan to deal with the total needs that have arisen from the case.

In addition, there is a local strategic group in the Western Trust area, which is chaired by Elaine. There is also a core group that facilitates inter-agency working and promotes the effective delivery of supervision and treatment, risk assessment, health and social care interventions and, importantly, public protection.

Departmental staff, including Sean and I, met survivors of the Donagh abuse and listened to their concerns. The Department has completed its response to questions that were submitted by the survivors. I understand that we have shared that response with the Department of Justice and that it has been issued to relevant individuals.

I will divide the interim changes to the Mental Health Order 1986 that we propose into three areas. The first area relates to concerns that were expressed by the judge and echoed by others about the maximum period for supervision and treatment. It should be pointed out that, although that is incorporated into the 1986 Order, the responsibility for that legislation rests with the Department of Justice. I am happy to explain why that is the case later. Department of Justice officials and both Ministers have confirmed their intention to amend the maximum period from two to three years. Such an amendment could be introduced during the current calendar year by subordinate legislation.

The second area relates to the relative merits of determining whether a supervision and treatment order could be made renewable. That means that, when an initial supervision period is in place, it could be reviewed periodically and reassessed by the court. In such circumstances, that would give the court greater flexibility and could be tailored to the individual case. There are strengths and weakness in doing that. The matter is under further discussion by both Departments. We would need to guarantee the rights of the supervised person and ensure that protections were in place, because, in theory, something that is renewable could last for an indefinite period.

We are still examining those proposals. We have already spoken to the Royal College of Psychiatrists and have a further meeting with them next week. We also spoke to some voluntary organisations. We need to weigh up the risks and benefits of a renewable supervision and

treatment order, which would require primary legislation and would be something for a longer time frame. Neither the extension of the supervision and treatment order nor the renewable option would be retrospective.

The third area of work relates to reviewing unfitness to plead. The Law Commission in England is working on that, and it would be helpful for us to consider that issue now, building on the fact that we are moving forward with new mental capacity legislation and taking account of the Law Commission's work. It is proposed and accepted by Minister McGimpsey and Minister Ford that a short-life working group be convened imminently to examine the issue of unfitness to plead. The outworkings of that group would be incorporated into the new mental capacity legislation. The equality impact assessment element of the new mental capacity legislation is, as you said, out for consultation. Subject to approval, it is intended to introduce that into the Assembly in 2011-12.

I have outlined the circumstances of the McDermott case, issues relating to the court and the judgement, the next steps in how we proceed, potentially, both legislatively and in relation to the comprehensive plan, and I mentioned the working group with regard to unfitness to plead. The two Ministers met on 7 September 2010, and the direction of the legislative implications has been agreed. I am happy to take any questions.

The Chairperson:

Thank you, Mrs Briscoe. I am sure that the Committee welcomes the proposed changes. That is all well and good, but the Western Trust had the power, albeit for only two years, to deal with that situation in a way that would have calmed the concerns of the residents of Donagh. The social worker could have recommended in the STO that the brothers live a long way from Donagh. I, for my sins when wearing a totally different hat, know Donagh quite well, which may be a bit strange for someone living in south Down. Donagh consists of a school, a church, a shop and about 12 houses. It is a tiny place. It is not even a village; it is a hamlet.

I cannot understand why, when the social worker had the power to recommend that those brothers lived anywhere but Donagh, she or he chose — I do not know who the individual was — that they remain in that community. Therefore, you did have the powers to redress the situation, and two years would have given the community some respite from what was a very difficult situation. Why did that not happen?

Dr Briscoe:

OK, I will start and then hand over to Elaine. I emphasise again that the brothers, even after November 2009, remained in the family home in Donagh, right up until the judgement in June 2010. Therefore, after they were found guilty of the facts in November 2009, they still remained in the family home within the community.

The level of risk, which was known to the courts, was category 1 or low risk. Medical evidence was given to the courts, including social worker reports and medical evidence on the assessment of the individuals.

Independently, it must be said that, on rereading the judgement, it is clear that the intention was that the brothers would return home after the judgement. That is evident from the sexual offences prevention order (SOPO), which drew a map of the designated areas within Donagh to which the brothers were prohibited from going. In the interest of public protection, certain other restrictions were included in relation to the access of the brothers to people under the age of 16.

It is clear that the intention was that they were going home. That is why the medical evidence was taken into account, along with the level of risk and the supervision through the sexual offences prevention order, which was intended to highlight the public protection issues, as it was known that the brothers were going to return home.

I will hand over to Elaine, who will talk about the responsibilities of the Western Trust.

Ms Elaine Way (Western Health and Social Care Trust):

Thank you very much, Chairman, for the opportunity to clarify the situation. I have felt, since last week's Justice Committee meeting, that it was important that the trust explain its actions since 18 June 2010. I maintained a media silence, because I wanted to come to the Health Committee first to explain what happened. I can confirm to the Committee that the trust, along with others, will attend a further meeting with the Donagh community next Tuesday night, at which the issue will again be discussed.

In making my statement to the Committee today, or in responding to members' questions, I am conscious that the entire Donagh community is watching. I, having attended the public

meeting on 19 July 2010, am conscious of the hurt and distress in that community. I hope that anything that I say today does not add in any way to that distress.

As stated at the Justice Committee last week, the Western Trust absolutely accepts that a clerical office error was made in relation to the supervision and treatment order (STO). The Court Service made a clerical office error. However, I agree with Minister Ford that the error in the STO had no impact on any of the decisions that we took as a trust. The part of the supervision and treatment order that was left out, but did not make a difference to our decisions, stated that the defendant should reside at “an address approved” by his “supervising officer.”

The trust carefully considered the operation and the potential to vary the supervision and treatment order and has taken advice on this issue throughout from senior counsel. The legal advice that we received was that, although the supervising officer, who is a woman, can approve or disapprove an address, she does not have the power to determine where the defendants should live. Nor, and this is very important, can the address power be used to bring about a result the opposite of that which the court intended. As Dr Briscoe said, the court intended that the brothers would return to the Donagh community. It is clear, beyond any doubt, that the judge intended that the brothers could and should return home following their disposal at court on 18 June 2010. The SOPO, which is monitored by the police, and the supervision and treatment order, which is ours, were made to that end. The brothers left their home on 18 June 2010 and returned to their home on that evening. That was on the basis of the detailed medical advice that was presented.

The advice to the trust was that, if the supervising officer had, on 18 June, the day that the men left court, decided that, instead of allowing the men to return home, the only address at which she would allow them to live was a hospital, she would, in effect, have been challenging and undermining the decision of the Crown Court.

Community disquiet grew when the men returned home, and an allegation was made by the family that there had been a stone-throwing incident at their home. The trust then required the men to move, first to Lakeview, a hospital in Derry for people with learning disabilities, and then to Muckamore. Again, we received clear legal advice that that was not within our powers. We cannot require people to move.

At the public meeting in Donagh on 19 July 2010, at which there was an awful lot of pain and

heat, people wanted the trust physically to remove the individuals from the village. We made clear to them the restrictions on our powers. We did not have that legal authority, and, therefore, to try to do so would have been unlawful. Members of the McDermott family were also present at that meeting. There was a great deal of anger in the room. Many members of the community shouted at the family and so on. Political representatives, in particular, argued that the community needed some space.

Following that public meeting, trust officers, including the supervising officer, worked very closely with the McDermott family. After the process of discussion with them and their solicitors, the brothers voluntarily admitted themselves to Lakeview Hospital on 22 July 2010.

The Chairperson:

So, that was not at the instigation of the trust. The trust did not instruct or force them to move.

Ms Way:

We have no authority to determine where they live. That was the legal advice that I received.

The Chairperson:

In that case, why did the brothers move from Gransha to Muckamore?

Ms Way:

They have not moved. We had originally said that we thought that they should go to Lakeview and then move on to Muckamore. That was at the start of July, but that situation has changed. They have voluntarily gone to Lakeview Hospital, where they are receiving treatment, and there are no proposals that they move to Muckamore.

Mr Gallagher:

Thank you all for providing clarification on some points. From what you have told us, there are three elements to this case: the justice system, the Western Trust and the police. You said that the police worked jointly with the trust on arrangements closer to the ground. However, I want to concentrate on what is at the heart of the issue, not only in Donagh but in any setting: the rights of victims in abuse cases and the rights of local communities.

Maura, you described proposals for improved legislation that might now be put in place. You

spoke about the rights of the supervised person, but there was no discussion of the rights of those to whom I referred — the victims and the communities.

Let us step back to Donagh. The Western Trust and the police managed a situation whereby the brothers were back living at home. Will you tell me why there was no communication with the local people in Donagh before decisions were taken? In particular, was that because it is not the usual practice, or because there is no such requirement?

The court described the brothers as low risk. That seems to have been a factor in the court's decision. There is something wrong with the system. When people are convicted and placed in that category, there is an assumption from a justice perspective and from a trust perspective that there is no need to explore the full picture. That picture includes the setting into which such people will go and all the people on whom they are likely to have an effect. As the Chairperson said, a place such as Donagh, which is a hamlet, may not appear as such to the court that issues decisions. The harsh reality is that, in such places, offenders come face to face with the victims of their sexual offences. That is an awful situation.

Dr Briscoe:

Quite rightly, you mention everyone's rights. It was in that specific context that I mentioned the potentially renewable nature of the supervision and treatment order. If such an order did not incorporate protections for the individual, it might, potentially, be applied for an indefinite, and, perhaps, very long, period. However, a hospital order includes protections, because it is subject to review by the Mental Health Review Tribunal. It is a question of balancing the review mechanisms of a change in the context of the three remaining disposals that were available to the judge. More importantly, however, we did not really discuss the mental capacity legislation. That legislation focuses on the rights of all individuals across society in relation to their capacity to make decisions and is, in that respect, groundbreaking.

Concerns were raised by victims about the return of the individuals in question and the resultant distress to the community. The clinical assessments relate to the assessments of the individuals. However, other reports were provided to the court that clearly identified the environment in which the brothers resided in Donagh. You mentioned the sexual offences prevention orders and the police in that context. Well-established risk assessment tools are available as part of the provision of public protection arrangements for individuals and

communities.

Through those multidisciplinary arrangements, it was known to the court that the individuals had been determined to be low risk. To the best of my knowledge, the brothers' last established offence was in the 1980s. The information was available to the court, and the assessments were made. The court knew about the risk and made its determination.

Ms Way:

I will answer the question about how we connect with the community when such a situation arises. This has been said before, but I want to clarify that the brothers were not returned to the Donagh community on 18 June 2010. The police first visited them with the charges in July 2008, and they had never left their home. They returned to their home on that day, 18 June. Therefore, given that they had lived at home, some of the community reaction may not have been anticipated. However, I visited the community, and some members of the community told me that the expectation had been that the brothers would go to court and, subsequently, to prison. The shock that they had been discharged into the community hit the community hard.

To my knowledge, in health and social care, the award of a supervision and treatment order to social services is very rare. In fact, last week I started year 34 in Health Service management, and I have never experienced a supervision and treatment order being applied before. We, as a health and social care organisation, rarely use it. However, I assure the Committee that, as soon as we were contacted by local councillors in the community to ask what we were going to do, we immediately met the community. Officers of the trust met the community forum on 5 July 2010, and, when I returned from leave on 13 July 2010, I met the community on the following Monday. We met to determine what we could do.

At that meeting, I said that, as a health and social care organisation, we have three major responsibilities. One of our first overarching responsibilities is child protection. I am sure that Mr Gallagher will have seen some of the media coverage. I was taken to the McDermott home to be shown the site, and I absolutely appreciated the strength of feeling of the people in that community. Child protection is a big issue for the trust. It is a statutory responsibility that we take seriously. Mr Holland may comment on that later. We also made it clear that we wanted to provide whatever help and support we could to survivors and to the wider community, and we made public all sorts of information about how we could be contacted for help and support. Our

third responsibility is to ensure that the McDermott brothers receive treatment. We are also fulfilling that responsibility.

Mr Gallagher:

Many people appreciated your visiting Donagh and having conversations with many in the community. However, it appears that the trust did not consult anybody in the community. If it did, whom did it consult? Do you know whether the police consulted anybody in the community immediately after the arrangement that flowed from the sentencing? Even though the brothers had been living in Donagh, was the decision to send them back there discussed with the community? There should have been discussions with the community at that time, and I would like clarity on whether or not there were.

Ms Way:

The Western Trust was not party to the court proceedings, which took place in a criminal court. It was the Crown versus the McDermott brothers, and the judge handed down the decisions. It was the trust's role to ensure that those decisions were implemented. I am not aware — I am being very careful, because I do not have a legal background — of the trust having any consultative role. Those men were not convicted. The finding was that the offences took place, but I am not aware of the trust having a formal consultative role in relation to the return of sex offenders to the community. The Probation Board might have such a role.

Mr Gallagher, you make an important point about the multi-agency assessment of those two men. They were category 1 — lowest risk — offenders. I believe that the process that was put in place for them to return home was followed. However, as soon as the trust became aware that there was distress in the community, it responded to that.

Mr Gallagher:

Are you aware of any police consultation?

Ms Way:

I cannot speak for the police, other than to say that at a public meeting of the Donagh community forum on 19 July, I and two other senior officers of the trust, both of whom are here today, sat at one side of the forum's chairman, and two senior police officers sat on the other. We spent quite a bit of time discussing the supervision and treatment order, which was our responsibility, and the

sexual offences prevention order, which was the police's responsibility. The police made it absolutely clear to the community that, if the McDermott brothers failed to follow the requirements of the SOPO, they would, in effect, be committing a crime that should be reported to police. I am not sure what the police did before that, Mr Gallagher.

The Chairperson:

For obvious reasons, I gave Tommy an extended say, because the issue involves his patch.

Mrs O'Neill:

Thank you for your presentation and for bringing us up to date. I will be frank: the residents in Donagh are not happy with the response from the Western Trust, and they feel let down. I welcome the fact that you said that today that the questions that the community forum submitted on 14 July 2010 have now been answered. I hope, therefore, that the community will receive those responses as soon as possible. The lack of information feeds into many misconceptions, and people want to get to the bottom of the queries that they have. The sooner the information gets into the community, the better.

On a more general issue, how does the Western Trust provide support and counselling for victims of sexual abuse? Elaine, perhaps you will tell me what provision the Western Trust makes for sexual abuse victims and what support is given to them? I am led to believe that there are long waiting lists for counselling and that there is not enough support on the ground. I am also led to believe by the community forum that it took the Western Trust at least 12 days to make any contact with the community. The community forum said that it was 12 days before it was in receipt of a leaflet that provided information about whom to ring for support. Was that leaflet the trust's publication?

Ms Way:

I can explain that.

Mrs O'Neill:

The forum feels that that leaflet came about purely as a result of its issuing a press release on which the media picked up and asked the trust for a response. Will you give us some detail on that?

Ms Way:

I was interested in your opening comment about the community feeling let down by the Western Trust, because that has not been my experience since I have been directly involved with the Donagh community forum.

I go back to that night of 19 July 2010, when we made it clear that we did not have the authority to move the two McDermott brothers. We worked very well with the family, the brothers and their solicitors and, on the following Thursday, a couple of days later, they voluntarily admitted themselves to Lakeview Hospital. The feedback that we received on that was that there was a huge sense of relief in the community and that it greatly appreciated what the trust had done. I think that, as a result of last week's Justice Committee, there is a perception that the trust had the authority to make them go to hospital on the day on which they were released back into the community. I hope that, through what I said earlier, I explained that our legal advice states that that is not the case.

The Chairperson:

Has that changed, Dr Briscoe, since you gave evidence to the Justice Committee? I am sorry to interrupt, but I think that it is important. At the meeting of the Justice Committee on 2 September 2010, the following exchange took place:

“Mr O’Dowd:

Under the revised supervision order, the supervising officer can designate where the brothers live. Is that correct?

Dr Briscoe:

The supervising officer is required to approve the residency of the individuals.

Mr O’Dowd:

Technically, the supervising officer could state that if the McDermott brothers choose to leave hospital, they cannot return to Donagh. If they have the option to approve residency, they also have the option not to approve it.

Mr Johnston:

They can decline to approve that.”

That suggests to me that you had the power of veto to say that the Western Health and Social Care Trust did not approve of the McDermott brothers' option of living in Donagh.

Dr Briscoe:

We have all reread the judgement.

The Chairperson:

Did that happen since you gave evidence to the Justice Committee?

Dr Briscoe:

In the context of the question you are now asking me, we read the judgement before we went to the Justice Committee and have reread it since. I reiterate that the questioning was in the context of the clerical error. I have an opportunity to emphasise that, although it is acknowledged that there was a clerical error, we said at the Justice Committee that we did not think that that clerical error impacted on the subsequent arrangements that were put in place. I, too, have read the Hansard transcript, in which Mr Johnston states:

“A clerical error seems to have affected the first version of the order. But, I cannot say that, if that error had not been made, it would have fundamentally changed the decisions, which were based on the best professional evidence and of people who were involved in the case.”

I said that I thought that that was right. Following questioning by Mr McDevitt, I then said:

“All I can say on that is that the understanding was, based on the evidence given to the court, that the individuals could be managed in the community. That is my understanding.”

Therefore, it was clear that, although supervising officers can approve a circumstance, they do not have the authority to determine where the individuals live. If it was the case that the individuals chose to live in another town, for example, it could be that in the context of the trust’s responsibility under the supervision and treatment order, we could say that, for the purposes of supervision and treatment, we did not approve of where the individuals chose to live, wherever that might be.

The Chairperson:

So, you could have chosen the option that they did not live in Donagh.

Dr Briscoe:

No, not initially. It was clear from the court that the intention was that the brothers would return to the family home in Donagh. That was based on the evidence given to the court, so the trust acted in accordance with the supervision and treatment order. The court was very clear in its judgement that it intended the brothers to return to the family home.

The Chairperson:

I am missing something here. I accept your point about the intention of the court; however, in response to Mr O’Dowd last week in the Committee for Justice, you seemed to indicate that you could have opted not to accept that advice from the court.

Dr Briscoe:

No; not at all.

The Chairperson:

Has your position changed between last week's hearing of the Committee for Justice and today?

Dr Briscoe:

No, it has not. I tried to make it clear to the Committee for Justice last week — I quoted from the Hansard report of that meeting — that the trust must comply with the supervision and treatment order, and it is clear that the intention of the court was for the brothers to return to Donagh. Last week, the Committee for Justice concentrated on the supervision and treatment order, whereas today we have tried to outline the importance of the sexual offences prevention order. The evidence that the brothers would return to Donagh is contained in the sexual offences prevention order, and that they would be prohibited from entering certain areas in the Donagh community.

The Chairperson:

Donagh is so small that that is academic.

Dr Briscoe:

One must comply with the judgement of the court. That judgement was contained in the sexual offences prevention order, which also designated the areas from which the brothers were prohibited.

Mr Gallagher:

I can understand the questions that the Chairperson has asked and the answers that the witnesses have given. It goes back to my earlier point that, out of all of this, we hope that better systems will be established on both the social care and judicial sides. As I said earlier, the judiciary must see the impact that its decisions have on victims and local communities. Those groups have entitlements that are not being recognised by the judicial system.

Dr Briscoe:

Inter-agency working on the case was very good. Elaine mentioned inter-agency working at a local level with the police, who participated in public meetings and played a part in providing the risk assessment for the category 1 assessment of the brothers. There was also an interface with

the Probation Board because of its experience with probation orders. I want to assure the Committee that inter-agency working was good.

Ms Way:

The trust considered what it could do within the law throughout the period when it became aware of the situation in Donagh. I have received legal advice that, even if I sought to act in the best interests of either the McDermott brothers or the Donagh community, I could still be acting unlawfully, as I would be seeking to undermine the court's decision for the brothers to return home.

The Deputy Chairperson referred to the 26 questions shared by the community in Donagh, and clearly I have seen them. The last one referred to the fact that it took 12 days for the trust to respond, which the community felt was too long. The community also felt very strongly that the trust was taking what it described as a "legalistic approach" because the trust made it clear that it did not have the power to remove the brothers from the community. Those who were there on the evening of the public meeting will know that there was a lot of heat in the room. I said to one very upset and angry woman that, no matter how angry she was, I could not remove the brothers from the community. That was described as a "legalistic approach", and I hope that the Committee will appreciate that, as a public servant, I must act within the law.

The McDermott brothers were not known to the Western Health and Social Care Trust until 2008. The police went to their home with the allegations. Following that, they were referred by their GP to our learning disability services. They have not been known to us before that. In conversation with some people following that, I was asked why they would not have been known to us if they were designated as having learning disabilities. The response of the consultant psychiatrist was that, in small rural communities, people can have mild learning disabilities and still function effectively in the community. Therefore, the brothers were not known to us until 2008.

When the court made its findings known to us and the men returned home, we developed a comprehensive response package that was put in place in Donagh. It included the establishment of a mental health response team; input from a suicide prevention co-ordinator; an offer of training in child protection; information posters, leaflets and an offer of help and support to local community groups; and we also attended the public meeting.

As for waiting lists for sexual advice services, because of the level and extent of abuse that became apparent through the court hearing, we made sure that the community had access to sexual advice. People could either go independently to the Nexus Institute, an independent voluntary organisation that is expert in this area, or to us. We offered, through our gateway team, access to services via a single phone number as a point of contact. The Nexus Institute has recently confirmed to me that its waiting time for assessment is four weeks and for treatment is four months. In the trust, the waiting time for treatment is three months, which is in line with the Government's targets. However, we recognised the fact that there might be significant distress in the community and said that we would allow extra money to deal with any victims who came forward from Donagh. I have been advised by the Nexus Institute that it has supported 15 people from the Donagh community, most of whom had gone to it before the judgement was made. Since the public meeting on 19 July at which we emphasised the availability of our services, the trust has not had a single contact through its gateway service.

Ms S Ramsey:

Thank you for your presentation. I will ask a number of questions by way of seeking clarification. Elaine, are you saying that the PSNI went to the brothers in November 2008?

Ms Way:

It was July 2008.

Ms S Ramsey:

Were they charged?

Ms Way:

The brothers were arrested and released home on police bail with certain conditions that Dr Briscoe outlined.

Ms S Ramsey:

Therefore, this case first came to your attention in November 2008?

Ms Way:

28 August.

Ms S Ramsey:

I thought that you said a minute ago that it was November 2008?

Ms Way:

No; the formal referral to our learning disability services by the GP was on 28 August.

Ms S Ramsey:

Why did the PSNI not tell you that they had arrested four people?

Mr Sean Holland (Department of Health, Social Services and Public Safety):

The PSNI did contact the trust's gateway team in August.

Ms S Ramsey:

Therefore, the PSNI told the trust that four brothers were arrested in Donagh a month later?

Ms Way:

I am not aware of the date on which the PSNI informed the trust. I have not got that, and I would not wish to mislead. The first time that they were made known to the trust via our learning disability services was on 28 August.

Ms S Ramsey:

We need to know when the PSNI made the trust aware. If there are failures in the system, we must find out about them.

The Chairperson:

We need to be careful. We cannot trespass on Department of Justice territory.

Ms S Ramsey:

I ask the question only because I thought that there was an automatic procedure for informing the trust when someone is arrested.

Mr Holland:

My understanding is that the PSNI told the trust in August. I do not have the exact date in

August, but, in accordance with joint protocol, the PSNI contacted the trust's gateway team to say that a number of individuals had been arrested in relation to sexual offences including sexual offences against children, and the trust immediately instigated its process for those circumstances to look at what steps needed to be taken to safeguard children in the community at that time.

Ms S Ramsey:

The point that I am trying to make, Sean, is that we should find out the date when that was done. Four people were arrested in July, and the earliest that the trust became aware of those four brothers was on 28 August, and that was only because they were referred by the GP because of learning disabilities.

Mr Holland:

I do not have the date when the referral was made to the gateway team. I just know that it happened —

Ms S Ramsey:

The chief executive told us that the trust became aware of four people —

Ms Way:

—the learning disability services —

Ms S Ramsey:

—because of a referral from a GP. Therefore, there is a timeline between four people being arrested, whether on police bail or not, and the trust formally becoming aware of the allegations of sexual abuse.

Dr Briscoe:

To clarify: the referral from the GP was to the learning disability services.

Ms S Ramsey:

Unless that referral had taken place, how long would it have been before the trust was formally told that four people had been arrested on allegations of child abuse and allowed out on police bail? That is what I want to clear up.

Mr Holland:

The police contacted the gateway team on 31 July, which would be in accordance with the joint protocol.

Ms S Ramsey:

Technically, therefore, the trust was aware of the brothers —

Mr Holland:

As soon as the trust was aware —

Ms S Ramsey:

Please let me finish this line. You are saying to us that the four brothers were arrested in July and released on police bail. You are also saying that the trust first became aware of the four brothers on 28 August.

Mr Holland:

No; the gateway team is part of the trust. If the police call the gateway team, they call the trust, and the gateway team responded to the call from the trust by addressing child protection issues —

Ms S Ramsey:

I am not going to get into an argument with you now, but the Hansard report will show, because I took good notes, that the chief executive said that the first that the trust became aware of the brothers was on 28 August, when a referral was made to the learning disability services.

Ms Way:

Sorry, I really do not want to argue. Those gentlemen were about 50 and 60 years old at the time of the first referral. They had never been known to the trust's learning disability services until they were referred into learning disability by the GP.

Ms S Ramsey:

There is information that we need, which needs to come out. I will come back to that issue, because it is in the Hansard report. That takes us to the judgement being made on 18 June 2010, which is approximately two years later. Was the issue of their being unfit to plead raised that day, or prior to that?

Dr Briscoe:

The fitness-to-plead issue was raised in approximately August —

Ms Way:

The brothers were found unfit to plead in the criminal trial on 6 October 2009.

Ms S Ramsey:

Therefore, the judgement was made eight months later. Between July 2008, when they were arrested, and October 2009, and from October 2009 to June 2010, was the trust involved in any work, or did it give any reports to the judge, on their being deemed unfit to plead?

Dr Briscoe:

A number of reports on evidence on unfitness to plead were submitted to the courts.

Ms S Ramsey:

By the trust?

Dr Briscoe:

By the trust and others.

Ms Way:

Yes, and others.

Dr Briscoe:

Further reports were then conducted on the assessment of the individuals. There were also forensic psychiatry reports on the options of disposal for the courts and opinion on the brothers in that context.

Ms S Ramsey:

I am trying to tease out some of that information —

Mr Holland:

Sorry, Sue, if I could just add to that. Obviously, you will appreciate that I would not discuss the

case in any detail in this forum. Simultaneously, the trust took steps to ensure that children in that community were protected.

Ms S Ramsey:

As I consider the facts and some of the information, it seems as though the trust heard about those guys and did nothing. If there is an issue about the judicial aspect — I appreciate that that is for another Committee — we need that information. Therefore, reports were carried out for the court before the not-fit-to-plead judgement. Was anything done by the trust or the Department when the judgment was made on 18 June?

Ms Way:

I want to clarify again for the Hansard report that the judge would have received evidence from the prosecution and the defence. It was a criminal court case, and the trust was not party to it. The court would have received evidence from a range of people. When the decision was made, our social worker was the supervising officer, and she very quickly went to the family home and began discussions. For confidentiality reasons, it would not be appropriate for me to go into details. However, I can assure the Committee that the social worker immediately commenced those discussions with the family in her role as supervising officer as laid down under the supervision and treatment order.

Dr Briscoe:

The Department was in discussion with the trust and the board. An immediate action plan was put in place, after which a more comprehensive plan was put in place that dealt with the wider issues. We sought an assurance in respect of the detail of the board's comprehensive plan, and the assurance was given that it was comprehensive and appropriate to the circumstances.

Ms S Ramsey:

Is this the first case in which those issues have arisen, or are there others?

Dr Briscoe:

It is a very, very complex case. It is uncommon.

Ms S Ramsey:

Is that the first case, not just in the Western Health and Social Care Trust; across the North —

Dr Briscoe:

Of what?

Ms S Ramsey:

—in which a judgement is made, and there seems to be a lack of discussion or forward planning among the trust, the relevant agencies and the judicial system.

Dr Briscoe:

First and foremost, I disagree strongly that there was a lack of planning. I do not see any evidence of that. Secondly —

Ms S Ramsey:

Two people were released back into the community in which they were charged with abuse.

Mr Holland:

It is a really complicated case. To clarify: two legal vehicles applied to those two gentlemen — the STO and the SOPO — neither of which was issued by the trust. They were issued by the court. The most effective vehicle that was issued by the court for controlling where they could and could not go was the SOPO, which specified areas to which the two men could not go. If it were the intention of the court to specify where the two men could not go, the SOPO is a vehicle for doing that. The SOPO did not exclude them from Donagh. I understand fully the feelings of victims and the concerns of anyone in the community about people living in their midst who have committed sexual offences. However, the court issued the SOPO; social services did not. It placed some restrictions on where they could and could not go, but it did not exclude them from Donagh.

Ms S Ramsey:

Social services could have approved or disapproved of addresses.

Ms Way:

They could not approve or disapprove of the initial address. The legal advice —

Mr Holland:

The court issued the SOPO, which clearly could have specified, and did specify, where these men could and could not go. If social services, in their implementation or discharge of the supervision and treatment order, then tried to place restrictions that were contrary to what the court had chosen to do, they would have been struck down. It would have been unlawful.

Ms Way:

It would have been unlawful.

Ms S Ramsey:

Has there ever been a similar case, in which social services are frustrated because a judgement has an impact on their carrying out their job?

Mr Holland:

When you say a case like that, there are so many different aspects to it, such as the fact that it involved historical abuse going on over many years, the fact that it involved two brothers, the fact that it happened in such a close-knit rural community and the fact that it involved people with a learning disability. Those factors have come together to create a unique set of circumstances. It is worth bearing in mind —

Ms S Ramsey:

Let me ask you two specific questions.

Mr Holland:

Let me finish one point, Sue. We are focusing on two people. It is worth bearing in mind that, as of March 2009, there were over 800 category 1 offenders living in the community in Northern Ireland who were known to public protection arrangements. That includes only the people who have been covered by the arrangements since they came into play. I have to say that those arrangements are recognised as being among the best in the world.

Ms S Ramsey:

I do not dispute that. However, the reality is that we are dealing with —

Mr Holland:

In addition, there are 121 higher risk category 2 offenders. I do not have the number of category 1 offenders to hand —

Ms S Ramsey:

Sean, I am well aware of the good work that is done daily. I know that that work happens. I am also well aware that some of that work cannot come into the public domain. However, the reality is that this has happened. Let me ask you a question about further down the road, because one brother could be released in the next year or two. What plans are in place if the two brothers decide to leave Lakeview? They can walk out of there tonight and go back and live where they are supposed to. What is the trust doing?

Finally, Maura, in your evidence to the Committee for Justice, you said:

“Very early on, after the court pronouncement, the Department met ... and ... set up ... a core multi-disciplinary group.”

Why was that group set up?

Dr Briscoe:

It goes back to the complexity of the case. This case is very, very, very complex. It is not just about the needs of the individuals in the community, the importance of care for the survivors or the management of the McDermott brothers. We also needed to discuss and think about the legislative implications of what the judge said. I endeavoured to emphasise that the judge would have liked the supervision and treatment order to be longer.

Ms S Ramsey:

I am conscious of the time. I have one final question: I would appreciate your answering my question about what would happen if the two brothers leave Lakeview tomorrow. Part of the outcome of the McElhill case was for joint protocols and work between the police, the health sector, social workers, GPs and the local community, and for the sharing of information and interface working. Did we not agree that after the McElhill case?

Dr Briscoe:

There is a joint protocol in place, and it works very well.

Mr Holland:

Perhaps I could respond to some of those points. The first question that you asked Maura concerned the huge case management process, and the implication — forgive me if I am misreading your intentions, Sue — that something possibly had been done wrong.

Ms S Ramsey:

You know me so well, Sean.

Mr Holland:

We spend so much time together.

The Chairperson:

Tell us more. *[Laughter.]*

Mr Holland:

The reality is that social services are very rarely in the position of supervising people such as these in the community. The agencies that would normally take the lead in supervising those people — including the 800 category 1 offenders and 121 category 2 offenders that I mentioned earlier — are the Police Service of Northern Ireland and the Probation Board. Given the particular complexities of this case and the learning disabilities that are involved, unusually, the trust found itself in the position of being the lead supervising agency. That was unusual, and because of the very serious nature of the offences, the trust went into overdrive to make sure that it was putting in place the most comprehensive arrangements.

To be honest with you, Sue, we are not going to discuss the case plan. Maura has already said that. I have a copy of the case plan here, and it is one of the weightiest case plans that I have ever seen, be that in child protection work, learning disability work or whatever. The trust really has tried to consider every aspect of the case and is actively managing it. It is not something that the trust normally does. Normally, it would be the Probation Board and the Police Service.

In response to your point about the McElhill case, you are absolutely right. Communication between social services and police in relation to the management of people who could be dangerous in the community was a feature of the McElhill case. As a result of that, the Department invested heavily in the new public protection arrangements for Northern Ireland. We

allocated two social work posts as part of the regional team that manages category 3 offenders, who are deemed to be the most serious offenders. You have challenged me about unallocated cases and resources; we chose to put money into that area. We put a post in each trust to support the work of the local area public protection panels, which are the multi-agency panels that conduct risk assessments using evidence-based methodology. If someone has been the victim of a sexual offence, it must be almost impossible to accept the fact that the perpetrator could be categorised as anything other than high risk.

However, the reality is that the likelihood of reoffending varies from offender to offender. Therefore, we invested in risk assessment and worked alongside our colleagues in the police. We have also put five posts into the public protection units. We now have social workers who have the same intelligence about all their clients as social services in the communities. They work alongside the police to investigate all violent and sexual crimes, including those against children. That development resulted from the McElhill case.

This is a very unusual circumstance, but I would not want anyone to leave today's session thinking that nothing changed after McElhill. An awful lot changed after McElhill, and the Western Trust has been at the forefront of many of those changes to improve practice in its area.

Ms Way:

I mentioned earlier that my officers and I are going back to Donagh next Tuesday night to meet the community forum. I promise you that we have done all that we can to try to support people in what is an exceptional circumstance. We want to be able to work with the community further. My intelligence from the community is that people felt that they had been given some space and time to breathe when we secured agreement that the brothers would go to Lakeview. We will continue to work with them. We have tried really hard to get this right. As Sean said, we have learned, as we have gone along, about some of the things that we have to do in exceptional circumstances.

Ms S Ramsey:

Is it possible for us to get a copy of the answers?

Ms Way:

The answers are not from the Western Trust. The questions were handed to the Department of

Justice and the Department of Health, Social Services and Public Safety.

Ms S Ramsey:

We should get a copy of those.

The Chairperson:

It is 6.00 pm, so we need to keep moving.

I will make two final points. First, there is a world of difference between adopting a supervision and treatment order for, say, Downpatrick, as opposed to Donagh. Did the social workers involved visit Donagh and know the geography and layout of that tiny hamlet before the court case?

Mr Holland:

The court clearly knew the layout of Donagh. Maps were included.

Ms Way:

Chairperson, your question suggests that the social worker would have had the authority to say that the brothers must not be placed in Donagh. The social worker would not have had that authority.

The Chairperson:

Did the social worker go to Donagh and see the size of that community while the case was ongoing?

Ms Way:

It was the same social worker who worked with the family from August 2008. She was in court because she was identified as the supervising officer.

Mr Holland:

It was not social services who made the order; it was the court. The court was aware of the geography of Donagh, and it looked at maps. The court said explicitly, not under a supervision and treatment order but under a sexual offences prevention order, which is the real vehicle for controlling where someone can and cannot go, that they can go there but they cannot go there.

The Chairperson:

Secondly, we are aware of the pressures facing social work. Without revealing the identity of anyone involved, at what level was the social worker who was involved in this case? Was it a junior member of staff who was just out of university?

Ms Way:

No; that person was not just out of university. She is the lowest level of social worker, because she is the social worker in learning disability. She is a fully qualified social worker.

Mr Holland:

Rather than “lowest level”, I prefer to say that she is a front-line social worker with significant experience.

Ms Way:

She has very significant experience. I wish to place on record my profound thanks to her. Anyone who looks back over the actions that she took and how she supported the family will see that she has done a tremendous job on behalf of the community.

Mr Holland:

These were not care proceedings in which the social worker presented a proposal for the court to make a disposal as to how a case was to be managed. It was a criminal case. The role of the social worker in that case was simply to provide evidence, along with other professionals, and then respond to the judgement that was handed down. Duties were placed on the Western Trust, and it has immediately tried to do its best to discharge those duties responsibly.

Dr Briscoe:

To support what Sean has said: social workers work as part of a multidisciplinary team. They do not work in isolation. That social worker is, and would have been from 2008, part of a multidisciplinary team.

Mr Holland:

We have just received clarification that she was an approved social worker. That means that she is a social worker who is accredited to work with a particular level of experience and expertise in

the areas of mental health and learning disability, particularly in relation to capacity issues.

The Chairperson:

Thank you. I must emphasise that the matter clearly crosses two Departments. If the Committee decides to take it further, we will have to liaise very closely with our colleagues in the Committee for Justice and its Chairperson, Lord Morrow. On occasion, we have drifted into territory that was not within our bailiwick. I have tried to pull people back, but you can understand why that has happened. I am sure that the Committee for Justice has drifted into our areas as well.

Thank you very much for that evidence. I know that it was not a pleasant experience to have to give evidence on this very tragic case. No doubt, we will come back to you with further questions.

Dr Briscoe:

I thank all of you. We welcome the opportunity to clarify issues and acknowledge, once again, that this case has caused significant anguish in the community of Donagh.