Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT
(Hansard)

Justice Bill: Victims and Witnesses and Live Links

25 November 2010

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Thomas Buchanan
Sir Reg Empey
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt
Mr David McNarry
Mr John O'Dowd

Witnesses:

Mr Tom Haire	)	
Mr Gareth Johnston	)	Department of Justice
Mr Chris Matthews	)	
Ms Janice Smiley	)	
Ms Geraldine Hanna	)	Victim Support Northern Ireland
Ms Susan Reid	)	
Mr Stanley Booth	)	
Ms Anne Doherty	)	MindWise
Mr Bill Halliday	)	
Ms Laura McKay	)	

The Chairperson (Lord Morrow):

Departmental officials will outline the victims and witnesses and live links Parts of the Bill and their intent. Before the Committee are Gareth Johnston, deputy director of the justice strategy division; Tom Haire, the Justice Bill manager; Janice Smiley, head of the criminal policy unit; and Chris Matthews, head of sentencing delivery and the European unit. You are all very welcome.

The officials will have 10 minutes to outline the clauses on the offender levy, and there will be five minutes for Committee members to seek clarification on any points. I remind members that questions and the discussion of issues will come later. The point of this briefing is to set out what the legislation says and its intent. I invite the officials to brief the Committee on the offender levy aspect of the Bill. Will it be you, Mr Johnston?

Mr Gareth Johnston (Department of Justice):

No, I will let someone else to speak this week. Janice Smiley will take this briefing.

Ms Janice Smiley (Department of Justice):

The Committee received a briefing on 3 June as the consultation had concluded, and I received a broad welcome for the proposals. We are now at the stage when those provisions have been included in the Justice Bill, and this is an opportunity to talk a little bit about some of the issues that have been raised and how the proposals have been developed and shaped.

The provision for the offender levy is set out in Part 1, Chapter 1 of the Bill and comprises six clauses. As some of the issues are interrelated, I will take the Committee through them thematically, rather than going through the clauses chronologically.

I will give a summary. The levy will be mandatorily imposed, but the amount can be reduced or omitted in limited circumstances. It will apply to adult offenders only — those aged 18 or over — and it will be imposed across a wide range of specified court disposals and non-court based fixed penalties. It will be applied on an escalating rate of between £5 and £50, increasing in line with the severity of the disposal. It will be collected and enforced by the courts in the same

manner as a court fine, except when a period of custody has been given, in which case the levy will be deducted from prisoner earnings.

Clause 1 sets out the sentences and clause 5 sets out the fixed penalties to which the levy will be applied. As the Committee will see, those include immediate and suspended custody; community sentences; court fines; endorsable fixed penalties for road traffic offences, which are serious but low-level traffic offences that result in a drivers' licence being endorsed with penalty points; conditional offers of fixed penalties for those offences detected by speed cameras; and fixed penalties for low-level disorder type offences, as provided for in Part 6 of the Bill. Clause 5 also makes provision for the attachment of a levy at a future date to fixed penalties that are issued by other Departments for criminal offences. Any attachment to those penalties will follow consultations with the Departments involved and would be subject to affirmative resolution in the Assembly.

The only aspect that attracted attention on the scope of the sentences and the proposed penalties was the fact that the levy will be attached to fixed penalty notices for road traffic offences, which some view as victimless crimes. However, our view is that those offences, which include driving at excess speed, using a mobile phone whilst driving and parking at pedestrian crossing, have the potential to lead to more serious accidents and fatalities, and that no crime of that nature is victimless.

Views were also expressed about the ability of some offenders to pay the levy in addition to other monthly penalties. We recognise that courts have some discretion to reduce the value of a court fine in recognition of an offender's ability to pay, and clause 1 of the Bill makes similar provision for the offender levy in limited circumstances. We propose that those would be situations in which a compensation order has also been awarded by the court, and the court determines that the offender cannot afford to pay the compensation order and the levy. That will ensure that priority is given to the payment of compensation to the direct victim of the offence. Provision has also been made so that the court can reduce a court fine only in situations in which the offender has insufficient means to pay the court fine and the levy.

The levy will be applied at a rate that will increase in line with the severity of the disposal.

The rates are set out in clause 6. When more than one court sentence is imposed at the same time, the levy will be applied to the sentence that attracts the highest rate.

In considering the levy rate, the Committee will remember that it expressed the view that there could be an insufficient differential between £5 for a traffic offence and our proposal for £30 for a custodial offence. Although our purpose is not to place a value judgement on the degree of harm caused in individual cases, clause 6 now provides for a two-tier rate, which will reflect the greater harm caused to victims by those who commit more serious and violent offences. So, £50 will apply to those who are serving sentences of more than two years, and £25 will apply to those who are serving sentences of two years or less.

Clause 2 provides for the levy to be collected by the courts in the same way as a court fine, except when immediate custody has been imposed. That has led to some people raising an issue about the potential for the application of a levy to lead to an increase in people imprisoned for fine default. Our view is that the introduction of the levy will not significantly impact on current fine default levels. Our projection is that 93% of levies imposed in any given year will be on disposals that have an existing monetary element, whether that is a court fine, a compensation award or another non-court based penalty. When an individual defaults on the payment of the relatively small amount of the levy, they will be also defaulting on the other monetary order, which is the trigger for enforcement action. So, in those circumstances, the levy itself will not be the cause of any significant additional burden on enforcement procedures.

The potential for defaulting is further minimised by the arrangements that we have made for collection from prisoners when a levy has been imposed when someone is sentenced. I will give more detail on that in a moment.

We will be carefully considering the timetable for the introduction of the remaining 5% of eligible disposals, but there are improvements to be made on the planned fine and default reform, which seek to improve early payment rates and provide an alternative to custodial default. We will look to time their introduction in conjunction with those coming forward.

As I mentioned, clause 3 provides for the levy to be deducted from a prisoner's earnings. The

rates of deductions will be agreed with the prison authorities, but I suspect that it will be in the region of £1 a week. It is proposed that the deductions will be applied at the same rate across all three prison regime levels to help maintain prisoner motivation to progress to enhanced status. That is something that the Prison Service thought was particularly important in ensuring that any deduction would not diminish the ability to operate the prisoner earning scheme effectively. That will still enable prisoners to pay for phone calls and buy non-essential items in prison without requiring financial help from families. It will mean that they can still pass money to their families or save towards their resettlement.

We propose that the revenue from the levy is ring-fenced through an administrative arrangement with the Department of Finance and Personnel (DFP) and used for the sole purpose of resourcing the dedicated victims of crime fund. DFP is consulting with Treasury officials on the detail of a very similar administrative arrangement that the Ministry of Justice has agreed with HM Treasury on the victim surcharge in England and Wales. We await confirmation of the arrangements and, in the interim, have assured the Finance Minister that implementation of the levy will not commence until DFP has reached agreement on the way forward.

The victims of crime fund, in full operation across all of the planned disposals, will provide up to £500,000 a year. That will be used to meet the needs of victims and witnesses during their engagement with the justice system and to assist local groups in the community that work with victims.

The proportion of funding that is being provided to groups that are working with victims in the community will be routed through the policing and community safety partnerships infrastructure within the existing administrative costs. The remainder will be allocated according to strategic priorities that are agreed with the victim and witness task force, which is a multi-agency group that comprises representatives of all of the criminal justice agencies, Victim Support Northern Ireland and the National Society for the Prevention of Cruelty to Children (NSPCC). That will cover the entire spectrum of victim service policy areas, including general victims' issues, hate crime, sexual violence, domestic violence, families affected by homicide and other vulnerable victims' groups.

The fund will be managed centrally by the Department of Justice (DOJ) within our existing departmental financial management structure and resources. That will be clearly separated from our other funding stream to provide transparency and accountability in the movement of money in and out of the fund. The Department will report regularly to DFP and the Treasury on the fund and its operation, which will include published data on receipts, expenditure and the range of projects that are supported each year.

A number of sources have sought assurance that the levy revenue will not replace existing provision but will provide an additional funding stream. We recognise that there will be obvious pressures on all funding over the next four years, and we cannot rule out that some victims' services may come under pressure in the same way as some other business areas. However, we maintain the principle of using levy revenue exclusively to support victims' needs. The introduction of the levy will require a one-off capital cost of £100,000 for administration, which we will meet by reprioritising our existing baselines.

As I mentioned, 93% of our disposals to which the levy will be attached have an existing financial penalty. The levy will piggyback on those arrangements without additional administrative costs.

For the victims of crime fund, as I outlined, we will utilise existing financial management structures rather than developing stand-alone arrangements, which would incur significant administrative costs in development and maintenance. Therefore, the costs will not outweigh the value to be derived from the levy revenue of up to £500,000 a year that we expect to receive. That should make a significant impact on services to victims in the justice sector and in the community.

The Chairperson:

Thank you very much. We have five minutes if any member wishes to seek clarification on any issue. You mentioned five fines. Is that in one court? What would happen if the same person had five fines in five different courts?

Ms Smiley:

Fines will be taken independently. Therefore, if a fine is imposed in one hearing, and fines are imposed in subsequent hearings, they will each be treated as separate leviable amounts.

The Chairperson:

Is there any possibility that pressure would be put on an innocent person to plead guilty? I am thinking of the incident from just one week ago.

Ms Smiley:

Do you mean for fixed penalties rather than court fines?

The Chairperson:

Yes.

Ms Smiley:

The fixed penalty is an offer that an individual can choose to contest in court. An individual who feels that an offence has not been committed, or that there were extenuating circumstances for the offence, will have the opportunity to contest that in court. The documentation that comes with the fixed penalty sets out clearly the opportunities for them to consider immediately or within 28 days whether they wish to pay the penalty or to proceed to contest it in court.

Mr McDevitt:

These clauses have prompted some debate about the concept of victimless crime. You also brought that up. Is that specified anywhere? Is there a consensus or a widely accepted description of what is a victimless crime?

Ms Smiley:

The road traffic offences that we looked at included those that were endorseable and those that were non-endorseable. Therefore, we looked at offences that attract penalty points, which is the more serious end of the type of road traffic offence that can be dealt with by way of a fixed penalty.

Mr McDevitt:

Is the concept of the victimless crime written down anywhere? Do you have any source of reference for what is a victimless crime?

Ms Smiley:

I do not think that there is anything in statute.

Mr Johnston:

I do not think that it is a concept that we would necessarily want to encourage, because we take the view that all crime has an impact on the community regardless of whether or not you can identify a specific victim.

Mr McCartney:

Have the departmental officials received the submissions that the Committee received, or will they receive them? Will they respond to some of the questions?

The Committee Clerk:

Yes.

Lord Browne:

Can you flesh out the position regarding the deduction from prisoners' earnings, in compliance with rule 26 of the European prison rules?

Ms Smiley:

Rule 26.10 is that dual work will be provided for prisoners, and there should be adequate remuneration for any work that is undertaken. It is a matter for each member state to set the earnings levels. That is something that the Northern Ireland Prison Service has done across the basic, standard and enhanced regime. Therefore, it provides for a prisoner on a basic regime to earn £6 a week, those on a standard regime earn £11 a week and those on an enhanced regime earn £20 a week. We are proposing a standard deduction across all those levels so that there is no disincentive to the individual to not be motivated to comply with the regime. It will increase earnings potential in regard to the ability to purchase items, without impacting on prisoners'

families and enabling them to save money towards their eventual release.

The Chairperson:

The next chapter and Part relates to clauses on special measures for vulnerable and intimidated witnesses and live links. There will be five minutes at the end to allow members to seek clarification on any points. I invite the officials to deal with that aspect of the Bill.

Mr Chris Matthews (Department of Justice):

Thank you and good afternoon. I am going to cover special measures and my colleague Tom will cover live links. Clauses 7 to 13 deal with vulnerable and intimidated witnesses. Specifically, they provide for a series of amendments and enhancements to the framework of special measures created by the Criminal Evidence (Northern Ireland) Order 1999. The clauses seek to expand, enhance and improve the support we provide to vulnerable witnesses by building on what is in place.

Clause 7 will amend the 1999 Order to ensure that more young witnesses are eligible for special measures. The clause will increase the scope of eligibility for special measures by raising the age of entitlement from those under 17 to those under 18. Those changes will bring the age of eligibility into line with the age at which a person is considered to be a young defendant. They reflect the fact that witnesses aged 17 can experience anxiety during court proceedings and they are in line with the definition of a child contained in the UN Convention on the Rights of the Child.

Clause 8 makes provision for the court to take the views of young witnesses into account when applying the primary rule. It also removes a category of young witnesses who are in need of special protection. The primary rule obliges the court to make a special measures direction for all young witnesses to give their evidence by video recording and to give any further evidence by live link. However, the rule is disapplied in circumstances in which special measures would, in the view of the court, be contrary to the interests of justice, or would not maximise the quality of the witness's evidence.

Research has indicated that some young witnesses, especially in the upper age ranges, want to

have a say in how they give evidence. Therefore, clause 8 will require the court to give effect to the young witness's wishes in the application of the primary rule. The witness can ask for the rule to be disapplied in whole or in part, and, when the rule is not being applied, the evidence must be given in court from behind a screen. Safeguards are built into the provision. The court must be content that the quality of the evidence will not be diminished and, further, the requirement does not apply when the court believes that complying would not be likely to maximise the quality of the evidence. In making its decision, the court must have regard to the age and maturity of the witness; their ability to understand the consequences of their decision; the relationship between the witness and the accused; their social, cultural and ethnic background; and the nature of the proceedings.

Clause 8 will also remove a category of young witnesses who require special protection. A young witness in need of special protection is one who is involved in proceedings relating to sexual violence or an offence of violence; for example, assault or false imprisonment. For a witness in that category, the primary rule applies without exception. However, in practice, that may actually cause harm. In some cases, witnesses who are victims of sexual assault can have the assault video recorded by the perpetrator, and then young witnesses may find the process of having their evidence recorded uncomfortable or distressing. The Bill will therefore remove that category of witness and, in so doing, place all young witnesses on the same footing.

Clause 9 will create a rebuttable presumption that, when requested, adult complainants in sexual offence cases can give their evidence in chief by video recording. Under that provision, victims of sexual offences will, if they wish, be able to specify when making an application for special measures that they want to give their evidence by video recording. Subject to certain limitations, the judge will be obliged to give effect to that wish. The limitations are that giving evidence in that way should not, in the opinion of the court, be contrary to the interests of justice or not be likely to maximise the quality of evidence being given.

Clause 10 will place on a statutory footing the power to allow for the presence of a supporter of a witness giving evidence by live links. Currently, the court may do that by virtue of its existing powers; however, following the review that led to the provisions, we feel that it is now better to place the power in legislation. The court will be able to specify who the supporter is

when making a direction. Although the final decision is for the court to make, the witness's wishes must be taken into account.

Clause 11 will provide for greater flexibility in giving additional evidence in chief after the admission of a video-recorded statement. Currently, no further evidence in chief can be heard on matters that, in the view of the court, have been dealt with already in recorded testimony. That amendment will provide the court with greater discretion to admit further evidence once video evidence has been admitted. Under that provision, and with the permission of the court, witnesses may be asked further questions to enhance or expand on issues already dealt with or to examine matters that have come to light since the evidence was given. That will give greater flexibility to improve the quality of information available in the court.

Clause 12 will create a wholly new provision in the 1999 Order that allows for examination of the accused through an intermediary. Under that clause, and on application by the accused, the court will be able to give a direction that any examination must be conducted through an intermediary when it considers that the accused may require assistance to understand the questions being put to them and that the court may require assistance in understanding the answers given. The purpose of that provision is to provide additional support to the accused to ensure that there is a fair trial.

In some cases, the person accused of a crime may not properly be able to understand the proceedings against them. The measure is intended to assist them to participate fully and effectively in the trial. Examination of the accused in this way must take place in the presence of the judge and legal representatives on both sides, and both must be able to communicate with the intermediary. Further, both the jury and any co-accused must be able to see and hear the examination.

If the intermediary makes a statement that they know to be false or do not believe to be true, they will be guilty of perjury and liable for up to seven years in prison. Clause 12 will also provide powers for the court to discharge fully or vary a direction when it appears to the court that that is necessary to ensure a fair trial.

Clause 13 amends the 1999 Order to extend the scope of protection for young complainants and other child witnesses from cross-examination by the accused. In practice, that will mean that for certain sexual offences, the accused is prohibited from cross-examining in person any complainant or witness who is under the age of 18.

Mr Tom Haire (Department of Justice):

Thank you, Chris. Briefly, there are six, at times lengthy, clauses on live links that insert additional provisions into live link laws. Despite their length, most of them are simply mapping equivalent and existing provisions on to some additional types of hearings, some of which, to be honest, are quire rare.

The purpose of the Criminal Justice (Northern Ireland) Order 2008 was to try to consolidate as much of our live links law as possible into one piece of statute. We subsequently identified a number of gaps. The Bill has two purposes: to further consolidate that package —

The Chairperson:

You have two minutes, Tom.

Mr Haire:

At the same time, we want to widen it into a couple of important areas. Clauses 15, 16, 17 and 18 will map in preliminary and sentencing appeals to the County Court as well as some additional types of hearings at the Court of Appeal. Clause 15 will replace the current inherent power of the High Court to deal with preliminary hearings by live links, mostly bail hearings, to put that on to a statutory footing with the regime that comes with the law.

We are mapping two additional areas in clause 14, which has a more positive and important change as it allows live links for preliminary or sentencing hearings for patients detained under Part III of the Mental Health (Northern Ireland) Order 1986. Part III patients are basically on remand in hospital or in detention in a hospital by way of that Order. Clause 19 will replace the existing law around the vulnerable accused to include physical disabilities and disorders. At the moment, it simply covers what one might describe as mental disorder. It puts vulnerable accused on the same footing as vulnerable witnesses.

That was slightly out of sequence, but those are the powers under the live links section.

The Chairperson:

Well done. Thank you very much. Members, we will now ask any questions for clarification.

Mr McDevitt:

Clause 12 refers to the appointment of intermediaries. How will the concept of assistance be defined and who will define it? Who will define whether someone is deemed to need assistance, and what makes someone eligible for assistance?

Mr Matthews:

It depends whether the person is over the age of 18.

Mr McDevitt:

Take an adult, first.

Mr Matthews:

If someone is 18 years of age, they can apply to use an intermediary if they suffer from a mental disorder, as defined in the Mental Health (Northern Ireland) Order 1986, or if they have a significant impairment of intelligence and social functioning and, for that reason, cannot participate in the trial.

Mr McDevitt:

OK. How would it work for a child?

Mr Matthews:

The conditions are that the accused's ability to participate effectively is compromised by their level of intellectual ability of social functioning.

Mr McDevitt:

Would that need to be independently certified? How would the courts be satisfied of that?

Mr Matthews:

The defence would apply and the court would make a decision on the basis of evidence given to them. The final decision is for the court.

Sir Reg Empey:

I apologise; I had to go and get some notes. I have a brief question on the concern around the potential increase in the number of people in prison for fine default. Has the Department any figures in mind for what way that will go?

Mr Johnston:

A lot of effort is certainly being put into reducing those numbers. In particular, a fine collection scheme has been jointly launched by the police and the Court Service. That has led to a 30% reduction in the number of arrest warrants issued for people who have not paid fines by reminding people about fines and emphasising the different ways to pay. We are considering what more can be done in the longer term to address fine default. However, we are hopeful that the fine collection scheme will start to feed through into prisoner numbers. It has not as yet, because it has been in operation for only a short time.

Sir Reg Empey:

Could you remind us how many of the 4,000-odd prisoners in jail at the moment you reckon are in for fine default?

Mr Johnston:

At any one time, only 20 to 25 of the prisoner population are fine defaulters. However, the more relevant figure is the number of receptions for fine default. Perhaps my colleague can point you to those numbers.

Mr Haire:

It is around 1,500.

Sir Reg Empey:

I cannot hear what you are saying.

Mr Haire:

Sorry, it is around 1,500 or 1,600 a year.

Mr Johnston:

I will try to come back to the Committee later this afternoon with a more precise number.

The Chairperson:

I think that the member is a wee bit stunned by that figure.

As no one else has intimated that they want to speak, we will stop there. Thank you very much. Perhaps you will remain in the Public Gallery, because issues may arise on which we will want to hear your views.

The next session is with representatives of Victim Support Northern Ireland. A briefing paper has been provided to members. I welcome to the meeting Susan Reid, chief executive of Victim Support NI, and Geraldine Hanna, operations manager. Ladies, I invite you to outline the issues that you wish to raise on the clauses on victims. You have 10 minutes in which to do so, and there will then be 20 minutes for a question-and-answer session.

Mr O'Dowd:

Sorry, I would like some clarification. Perhaps I picked this up wrong, but I thought that we would have an opportunity to question the officials for 20 minutes at the end of the session.

The Chairperson:

They are coming back to the table at the end of the meeting after we have heard all the presentations. You will get your chance.

Mr O'Dowd:

I knew that you were a fair man.

Mr McNarry:

Do you think that Hansard will leave that bit out? *[Laughter.]*

Ms Susan Reid (Victim Support Northern Ireland):

Thank you very much for the opportunity to address some of the issues and points that Victim Support NI wants to make on the Bill.

We welcome the first Justice Bill in Northern Ireland as a historic occasion and look forward to future legislation. However, on that point, we want to raise the fact that, in our 30-odd years as a local charity, we have observed good practice without legislation, but, equally, we have observed legislation that is not being put into practice. Although some of my comments may stray into issues of practice, I very much join the two issues when it comes to the interests of victims and witnesses.

The most common complaint raised by victims of crime is about how they are treated by the system and the difficulty that they have in getting information about their circumstances as cases proceed.

I want to say a few words to give some context. If we accept the findings of the annual crime survey, we can take it that 48% of crime is reported. Therefore, the number of crimes a year could more properly be reflected as some 227,000 rather than the 109,000 that are reported. A further point in that theme is that, if we take the sum of all the organisations in the system, we can see that no one agency counts the number of victims and witnesses. Therefore, it is an absolute impossibility to properly and scientifically track the end-to-end experience of people in the system. One organisation counts crimes, while another counts cases. Not only is it not possible to ascertain the number of citizens who are directly affected by crime, but it is impossible to analyse the figures and ascertain how many have learning disabilities, physical disabilities or other difficulties that should be taken into account in the justice process.

As I said, we are the only independent local charity that deals with all crime categories across the board, from burglary and theft to manslaughter, domestic violence, sexual assault and rape. I

will give you an indication of the scale of our operation; in 2009, we dealt with and supported some 10,000 victims and witnesses, and a further 25,000 people were supported through telephone and written contact. We spend £2 million. Given the scale of spending in the criminal justice system, that is, as I am sure you will agree, the crumbs off the table. I hope that you appreciate that, with 200 volunteers and 60 staff, we represent good value for money in the system.

This afternoon, we want to touch on three key themes that we picked up on in the Bill; the offender levy, special measures and alternatives to prosecution. On the offender levy, we are hopeful that the proposal will create significant funds that are not consumed by the cost of acquiring the same. As has already been mentioned, we urge that the funds be ring-fenced for services that directly benefit victims and witnesses. We would clarify that slightly and urge that initiatives be considered that protect the victim from further harm caused by the criminal justice system and that meet the needs that the system cannot provide for. We also urge that consideration be given to investment in gathering evidence on the actual experience of victims and witnesses in a way that cannot be dismissed by the different professional groupings that work in the system. In particular, we urge that there be support for all witnesses — all child witnesses, all prosecution witnesses, all defence witnesses and all those who have to take part in the process in the Coroner's Court.

We absolutely welcome the expansion of special measures and the introduction of the intermediary scheme. However, we note that it is an issue of automatic eligibility for, not of automatic right to, special measures. We would simply but pointedly underline the fact that the interests of justice are surely best served by the provision of best evidence. Therefore, consideration should lie on the side of ensuring that people are enabled to give their best evidence and are not paralysed with nerves and anxiety due to other issues.

We want to highlight another of our concerns about special measures. As I said earlier, provision in legislation is one thing, but access to that provision is another. We are concerned about the identification and offering of those benefits. I will quote briefly from a case study. A 33-year-old victim of domestic abuse was dissuaded from using special measures — by a legal professional, I should add — with the comment, "Sure it is not that bad for you: imagine if it had

been a stranger who did that to you." By the way, the victim had been called to court several times previously. Two years later, her estranged husband pleaded guilty. She then received a legal bill for some £5,000.

I must also say that we were somewhat disappointed to note the withdrawal of the clause on special measures provision for those who have suffered through the threat of knife crime or the use of firearms and offensive weapons. We are somewhat puzzled by that because of the correlation between people having had a direct threat made to their life or, at least, to their well-being and what we would have thought was an obvious link to their anxiety at potentially facing their offender in the courtroom.

We also have concerns and issues with the stage in the process at which special measures are considered. I link that point to the point about lack of information on victims and witnesses and the difficulty that the system, therefore, seems to have in identifying which people would benefit from special measures. Our observation is that, even at the court stage, there are issues with access to special measures. We would take you a step back in the process to decision-making at the Public Prosecution Service (PPS) and question whether due consideration is given at that stage and, indeed, whether that might, unfortunately, influence whether or not some cases proceed.

As regards alternatives to prosecution, our overall banner heading is: please do not over-promise to victims. Do not tell a person harmed by crime that they have a choice about whether or not the case proceeds to the PPS when that is patently not a real choice for them. Instead, it must be ensured that there is follow-through on what is being promised to ensure that it happens. The feedback that we have received from some victims is that, having taken part in the process in the small village that is Northern Ireland, they are all too aware that promises were not fulfilled and that action was not seen through. However, on a positive note, we hope that a successful delivery of alternatives to prosecution might do something to address delay in the system by reducing the number of cases going through it.

My final point, which has been raised by the Victims' Commissioner in England and Wales, is that, under common law, the victim stands to one side to allow the state to act on their behalf. I

do not think that any of us of want a system where it is up to the victim to take, literally or metaphorically, the law into their own hands. The victim's standing to one side has implications and causes confusion about the victim's role, which I am sure members hear about in their consistency offices day in and day out. It is somewhat disingenuous, therefore, to keep repeating the phrase that victims are at the heart of the system. I am not sure that they can ever be at the heart of the system of common law. The state has a duty of care to the victim to ensure that there is due process of law, to address issues around the treatment of the offender and the prevention of further harm, to ameliorate the harm done to a person — that is possibly outwith the criminal justice system — and to ensure that the criminal justice system itself does not do further harm.

Mr McDevitt:

Do you believe that there is such a thing as a victimless crime?

Ms Reid:

I am not sure that I do. I was thinking about that earlier when you raised the point. The shortest answer that I can give is that, even if it only raises the fear of crime, it has an impact on people's lives. So, no, I do not think that there is such a thing. However, I see why it is used as an easy definition.

The Chairperson:

Your paper states that:

"We consider that procedures to ensure that the needs of the victims and witness concerned are paramount need to be introduced."

Will you elaborate on that?

Ms Reid:

Will you point out exactly where that is in the paper?

The Chairperson:

It is the last sentence of the paragraph about special measures in the paper that you submitted.

Ms Reid:

Chair, I beg your pardon for not picking up on that question the first time.

We are trying to communicate that the witness must be given an opportunity to give their best evidence. We are also trying to allude to the need for a broader principle to be applied in the implementation of special measures, as they are defined. Some people will be genuinely paralysed with terror, because the court process is very formal and intimidating, which, indeed, it should be, as it is such a serious process. We are, therefore, arguing for the establishment of a principle that should be adhered to in the decision-making process about access to special measures in order to give a person the opportunity to give the best account of their experience and of what has happened to them. In particular, as Mr McDevitt alluded to earlier, there are issues about detecting and picking up on cognitive difficulties, speech difficulties and so on and about ensuring that the individuals concerned are truly informed, that they understand the process they are entering into and engaging with and that they are able to give a proper account of their experience.

The Chairperson:

I wish to take you through one of your remarks. You said that it is a terrifying experience — those may not have been your exact words, but that is how it came across — and you said that it should be. Why should it be?

Ms Reid:

I probably need to qualify that. I do not mean to suggest that the process should be terrifying. Rather, I am suggesting that it should be a solemn and very serious process. Ultimately, it has the potential to take somebody's liberty away, and that cannot be dismissed or taken lightly. Therefore, a balance must be struck between the need to ensure the rights of the accused and to ensure that there is due process and the need to ensure that the person who has been harmed by crime has an opportunity to give their best account and evidence and is not further traumatised by the process of being cross-examined in a hostile way.

The Chairperson:

Are you satisfied that those rights have been addressed in the legislation?

Ms Reid:

The point that I was trying to make was that the legislation creates a facility. The key is how that facility will be delivered: it is about whether people will be identified at the appropriate stage, whether appropriate information will be given to victims to enable them to do that and, indeed, whether they will be dissuaded from taking up the opportunity to use special measures. Those are all key factors that we observe in our day-to-day support of witnesses through the system.

Mr O'Dowd:

Thank you for your evidence. I want to touch on the issue of whether we need new legislation. Research given to the Committee refers to a British Home Office report of 2006 that looked at legislation in England and Wales. It identified a number of problems, not in the legislation but in how it is delivered. It mentions vulnerable and intimidated witnesses (VIWs) and states that:

"Early identification by the police and the CPS is vital but the police continued to have difficulty in identifying VIWs…The police are usually the first agency to provide VIWs with information about the measures available to them and ascertaining their views. They often did not flag up the vulnerability of witnesses to other agencies".

The paper lists a number of areas in which agencies are not working together. Indeed, the CPS sometimes waits until the day of the court appearance to apply for vulnerable witness status, which includes the use of video links and so on. So, is it a case of using the current legislation properly, or do we need additional legislation?

Ms Reid:

Thank you for summarising the point that I was trying to make. Do we need more legislation? My honest and frank answer is that I am not sure. From my experience of working in direct support of victims and witnesses, I suspect that it is an issue of culture, practice and awareness. I would underline awareness as being the key point. I do not believe that there is any malice in many instances. It is more about ignorance in the sense of unawareness, not picking things up or confusion about what the process should be.

Mr O'Dowd:

To pick up on a point that you talked to the Chairperson about, it is about getting the balance right. We are about delivering justice. Some vulnerable victims of crime have suffered as a result of horrific offences. However, as you say, the state takes on the responsibility to prosecute,

and the state can abuse the law for one reason or another, sometimes not out of malice but through pure bad practice. As a member of the Justice Committee, I want to be sure in my own mind that the balance in the legislation is right and that the rights of the victim are protected and also the rights of the accused, who is not a perpetrator until found guilty and who may be innocent. Have you any concerns about the balance in the legislation?

Ms Reid:

I do not have concerns about the balance in the legislation. I see very few rights per se for victims of crime. I would again underline the point that the proposals, as they stand, with the intention of giving somebody the opportunity to give better evidence, should surely improve the process of justice as well. I cannot see how that should in any way make it a more risky process for the accused or produce any risk for the alleged offender.

Mr McCartney:

In your presentation, you made the point that the levy should not be used to cover current provision but rather should be seen as an additional source of funding. How do we protect ourselves from it being used as revenue rather than an additional source of funding?

Ms Reid:

It is a very difficult point. I have a responsibility to try to maintain the service that we have been providing to people who have been harmed by crime. We do not know what our funding position will be, so, in the future, I could well be making the argument for putting some of that offender levy towards maintaining services. For example, we currently assist in 50% of all the criminal injury scheme applications in Northern Ireland, and there is no legal bill to the victim for the service that we provide. So, in future, I could be making a case for that.

As regards how we can make it happen, it is about further definition of the criteria and of the objective of those funds, and that was why I stressed two themes in my presentation. The first is the issue of supporting victims and, if possible, ameliorating any potential secondary victimisation, as we would see it, that has occurred because somebody has engaged with the criminal justice system. The second is that the needs of people who have suffered physical or psychological injuries through crime will not be met by the criminal justice system but by other

services, of which we are one. We see the need for counselling and other services that we could direct people to through our contact with them.

Mr Buchanan:

Thank you for your presentation. As someone who works with victims every day, what do you see as being the biggest obstacles that you face? Do you think that the proposals in the Bill are robust enough to ensure that the rights of victims and witnesses are fully protected?

Ms Reid:

There is a model of psychology called the "just world theory", and the theory is that we all like to believe that good things happen to good people and bad things happen to bad people. The spin-out is that, when a random, bad thing happens to you, not only do other people move very quickly to try to blame you in the belief that you must have done something silly or stupid to bring this on yourself, but you blame yourself. That leads to a number of major issues for us. Our main problem is with getting the information to allow us to reach out to people and offer help to them. We respect and recognise the need for data protection, but that is a fundamental problem for us in offering the service. If we were to let the service become totally based on self-referrals, we would be letting self-blame and shame get between us and the person whom we might want to help.

As regards other barriers, that leads to a pattern where, to be blunt, the system does not really pay a lot of attention to the needs of victims and witnesses, and that is probably a function of common law, which I have alluded to. Because, in essence, victims stand to one side, they become evidence in the process, to put it rather bluntly and frankly. We find that a lot of the needs that we identify for victims and witnesses, such as those involving health and social care and other support, are potentially outside the criminal justice system. Within the criminal justice system, it is, as Mr O'Dowd mentioned, about getting the balance right in a system that is ostensibly focused on the rights of the accused or alleged offender. The system tends to focus on avoiding reoffending, which is right and good, and making sure that the rights of the offender are dealt with, which is right and good, but, in all of that, the tendency is to take attention away from what the person who has been harmed by crime needs.

We hear, day in and day out, about how victims were treated. It is a theme of culture and attitude. We hear about how they were not spoken to, how they were spoken to rudely and abruptly and how they were patently ignored. We hear about how nobody engaged with them, how nobody told them what was happening and how, when they tried to find out what was happening, nobody wanted to know. Those are the commons themes that come up day in and day out.

The Bill is a step in the right direction — that is the fair and honest answer that I can give. I do not think that it will solve all the issues. In fact, it probably takes a small step towards amending some of them. There has been a lot of progress over the past five or so years, and that must be acknowledged. However, I was trying to make a point about gathering evidence. If I were to present to you today a collated scientific presentation of the daily experience of victims, I think that you would be quite shocked.

The Chairperson:

Right, we will stop there. Thank you very much for the presentation and for taking questions. You are welcome to stay in the Public Gallery, as the officials will be coming back to the table to deal with some of the issues raised.

We are moving on to the next witness session with MindWise. The witnesses will outline key issues regarding the clauses on victims, witnesses and live links. I welcome Bill Halliday, the chief executive, Anne Doherty, the deputy chief executive, Stanley Booth, the appropriate adult scheme manager, and Laura McKay, the appropriate adult scheme deputy manager. You are all very welcome. You have 10 minutes to give a briefing, after which there will be a 20-minute question-and-answer session.

Mr Bill Halliday (MindWise):

I thank the Committee for the opportunity to appear before it this afternoon to give some oral evidence to back up the written evidence that we have submitted. We have nine key points that we want to make to the Committee. Mr Stanley Booth will make those points in a moment. I will set them in a wider context.

As one of the leading mental health charities in Northern Ireland, we deal, in particular, with severe mental illness on a daily basis and with very vulnerable individuals. That is one of the frameworks within which we are presenting our evidence today. In addition, we manage the first and only appropriate adult scheme in Northern Ireland, and many of the points in our submission relate directly to the experience that we have gained while managing the scheme.

Mr Stanley Booth (MindWise):

Thank you. The team that I lead — Laura is the deputy manager — has completed somewhere in the region of 2,000 sit-in police interviews. We have sat in custody suites with detectives and police officers of all ranks while they interview people for between one and 96 hours. What I say to you is built on the experience that we have gained over the past 18 months.

When we submitted our paper, we made a number of points that were simply neutral observations. I do not propose to labour those points, because there is a shortage of time, but I will focus on the matters that are of particular interest to those of us in the mental health field.

The evidence of the accused through an intermediary is of particular interest to our organisation, because, when a young person aged 18 is in court and has a particular intellectual ability or social functioning difficulty, his or her ability to give evidence is compromised. We are particularly concerned about those people who have a mental disorder, as defined in the Mental Health (Northern Ireland) Order 1986.

The Department of Justice has, so far, correctly identified a difficulty with the PSNI interviewing people of that vulnerability, and hence the Police and Criminal Evidence (Northern Ireland) Order 1989 contains a requirement for an appropriate adult to be present during interviews. That is a scheme that we manage and, as I have outlined, we have done so quite successfully for the past 18 months.

We respectfully suggest that, if a young person with a mental health difficulty is required at court, a trained mental health advocate — not to be confused with an advocate in a court context — should attend and support him or her to give evidence or assist in giving evidence as the intermediary.

I respectfully suggest that the person who is required to support that young person should be similar to the appropriate adult in the provision that we have at present, because, if he or she is considered to require an appropriate adult in the custody suite, the natural progression is that we would also be best placed to provide that support in court. In the first year, we sat with 640 young people. The vast number of them said, as we were leaving the police station, "I will see you in court. Thank you very much". We had to respectfully reply that there was no provision for us to assist them in court.

That theme carries through to Part 2 of the Bill, which includes a clause on live link direction for vulnerable accused.

The natural progression of what I just said is that, if someone who suffers from a mental disorder is required to give evidence in person and they require support while doing so, that same support would naturally be required if they have to give their evidence by live video link. We respectfully suggest that the advocacy role should be someone from the trained mental health field. I respectfully suggest that none comes higher than the MindWise organisation.

The live link may occur in a secure location or pre-release establishment, such as a hospital venue, for example, the Shannon Clinic, as a stepping stone for release from prison. MindWise staff are currently working in advocacy in the Shannon Clinic. Naturally, we suggest that it would be a natural progression for the trained advocate at that location to provide the live link support. We recommend that a trained mental health advocate — we do not confuse the term "advocate" with "counsel" — should be the intermediary available for courts and live TV links. The Shannon clinic should feature.

The fact that the appropriate adult is provided during the investigative stage and is a mandatory requirement in accordance with the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (PACE) is good evidence that the services of an advocate are also required at a later stage. It seems bizarre that someone in a police custody suite who has a mental deficiency to such point that they need a party to assist them is then abandoned by that party when they find themselves facing a courtroom. Those are key points for us.

Part 3 concerns policing and community safety partnerships and district policing and community safety partnerships. We respectfully suggest that, as we provide the service in the custody suites and are familiar with what happens in interview rooms across the country, we should be a default organisation to be on those committees.

The Chairperson:

You have two minutes in which to wind up, Mr Booth.

Mr Booth:

We should also attend those meetings so that we can feed back our findings to the police.

I have an important point about the alternatives to prosecution part of the Bill. We are not sure whether the term "over 18" means 19 years of age. If it means over 18, including 19, it may create three systems for people who are under 17, those who are 18 and those who are 19. Those are difficult enough to comprehend, especially for young people who are mentally vulnerable and have a difficulty in knowing what justice faces them. We welcome the initiative. We point out, as we said in our paper, that a significant number of mentally disordered offenders end up in prison. A number of leading research papers show that 30% of people in prison have a mental difficulty. As a mental health charity, we are competent in the self-management process and managing people with their mental health difficulties. We want to see the MindWise recovery plan being incorporated into working with people who have a particular difficulty. Whether that be in conjunction with the Probation Board or the Youth Justice Agency matters not to us. We simply know that people need support when they face the judicial system.

The conditional cautions will follow the theme that I mentioned. If people are mentally vulnerable and need support in a police station or in court and are subject to a caution, an advocate, naturally, would need to be present. After all, a breach of that caution will lead to a power of arrest. If there is a power of arrest, the person who is mentally vulnerable needs to understand the conditions that are imposed on them and they need support to do so.

The Chairperson:

I will have to stop you there, Mr Booth. Thank you very much for your presentation.

Mr McDevitt:

You talked about the concept of an advocate. Do you mean that an advocate would be the intermediary for the purposes of the Bill?

Mr Booth:

I do.

Mr McDevitt:

Do you believe that the Bill, as drafted, provides an adequate level of detail about the characteristics an intermediary needs to successfully meet the needs that you identified?

Mr Booth:

I respectfully suggest that it does not. If the legislation were to say that the role of intermediary should, by default, fall to a trained mental health worker or care worker if the defendant has a mental illness or difficulty, it would provide some support. At the moment, the Bill seems to be mute on that issue.

Mr McDevitt:

MindWise is involved in delivering the appropriate adult scheme. Is it the sole deliverer of that scheme?

Mr Booth:

Yes.

Mr McDevitt:

What existed before it was put in place?

Mr Booth:

It fell by default to social services. Social workers attended, which placed a further burden on their workloads.

Mr McDevitt:

Did you say that you have had experience of the area for the past three years?

Mr Booth:

No; 18 months.

Mr McDevitt:

My apologies. Are large numbers of people coming through the criminal justice system who are in need of support as the result of a vulnerable mental health status?

Mr Booth:

In the first 12 months, just under 1,500 people required our service, 60% of them were vulnerable by virtue of their age and the other 40% were vulnerable by virtue of a recognised and accepted mental illness.

The Chairperson:

In your written submission, you referred to Part 8 of the Bill, part of which relates to criminal conviction certificates to be given to an employer. In your submission you state that:

"The employment of ex offenders and the safety of vulnerable groups is a balance that must be achieved to ensure employers have safeguards and ex offenders have a chance to de-criminalise their lifestyle with gainful employment."

You did not specifically say this, but it seems that you not in agreement with the process, because it comes as close to it as it makes no difference. Is that the case, or have I picked it up wrong?

Mr Booth:

There should not be an automatic exclusionary device. We accept that there will always be a requirement for protective measures when people have substantial unsupervised access to children. However, it may be possible for the employer to make suitable adjustments and informed choices if they knew more about an individual's particular circumstances. That is a very difficult matter. It is beyond our capabilities and it is something that needs to be considered at length.

The Chairperson:

So, what side of the fence are you on?

Mr Booth:

At the moment, there needs to be a broadening of the ability of the employer to make decisions. The provision seems to be too restrictive.

The Chairperson:

Right. In your submission you went on to say that:

"Employers need a process which is less complicated and less costly".

Mr Booth:

An AccessNI certificate is quite bland and it simply states whether or not a person has a conviction, and an employer must make a decision on the basis of one sentence. If, for example, the résumé that is given to the court on the cover of a public prosecution file, or the report that the probation officer drafts, had one paragraph of details about the person, it would allow the employer to see that the person had been convicted, but that the circumstances were A, B, C or D. Based on those circumstances, they could make appropriate adjustments so that the problem would not occur in their organisation. The information that is currently provided is limited.

The Chairperson:

Aye, but in your submission you go on to say that:

"We understand and agree that 'substantial and unsupervised' access to children and/or vulnerable adults will always require protective measures from those with specific convictions."

Mr Booth:

Yes.

The Chairperson:

I say this with respect: you seem to be jumping from one position to another, but, at the end of the day, not taking either position.

Mr Booth:

I respectfully suggest that there are certain convictions that will always preclude someone working with children. However, when we did the annual report and looked at our appropriate adult scheme, we discovered that there are over 200 types of offences and, indeed, many types of offences that we had not heard of until we commenced that scheme. Therefore, because such a vast array of offences exists, to say that an employer must do A, B or C for certain types of offences would limit an employer's ability. I am simply saying that, if employers had more information, they may be able to make adjustments depending on the type of offence. However, that does not preclude certain people and certain offences being dealt with in a mandatory matter. Hopefully, that is a little clearer.

The Chairperson:

But, you say finally:

> "We recommend that employers be permitted to consider if suitable adjustment can be made".

What do you mean by suitable adjustment?

Mr Booth:

Suitable adjustment would be possible if an employer knew the type of offence —

The Chairperson:

Are you talking about employers' discretion?

Mr Booth:

I suggest so.

The Chairperson:

So, in some instances, employers should be allowed to act outside the provisions that are already there. Is that what you are saying?

Mr Booth:

If an employer had a greater scope of information, they may, within their particular place of employment, be able to make some suitable adjustment to allow that person to gain employment. Respectfully, that is the only point that we are making.

The Chairperson:

That, potentially, leaves somebody else vulnerable.

Mr Booth:

Not if appropriate measures are taken by employers.

Mr McNarry:

You are very welcome. I am conscious of the work that you do and that of Victim Support. I am very supportive of what goes on there.

Paint the picture of at what stage a vulnerable person in custody is formally identified as having a mental health problem.

Mr Booth:

At this moment, a subjective test is carried out by the custody sergeant. That test is based on objective questions that are placed on the Niche police computer system, which helps steer him or her towards a certain decision. I am aware that some work may be going on around a new screening process to enhance that test and enhance the training for the police and custody sergeants. We have seen in our annual report a practical improvement in police standards of identifying vulnerable people within one year following a police care plan package.

Ms Laura McKay (MindWise):

As an appropriate adult, I am very experienced in this. When someone comes in to a custody suite initially, the police go through a care plan with that individual to identify the different levels of difficulty. The custody sergeant then makes the decision, if necessary, to call an appropriate adult, and tasks the forensic medical officer who will then make an assessment on the person's vulnerability.

Mr McNarry:

In your view, is the current training that custody sergeants receive adequate?

Ms L McKay:

They are very aware —

Mr McNarry:

It is either adequate or it is not. They may be aware, but is the training adequate.

Ms L McKay:

They certainly ask the most adequate of questions through a quite detailed set of specific questions. My experience is that the person is usually very willing to give that information.

Mr McNarry:

I understand that. We need to be clear that, at the point of contact when someone arrives in custody, their rights are covered in every way, and that the training that custody sergeants receive is adequate and meets what the law demands of them. We are hearing more about how very good lawyers, shall we say, can allude to something that happened at that point of contact to their client that would seem to turn a trial or a potential offender around. I want to make sure that, from your organisation's point of view, what goes on at that point of contact is at least adequate. I hope that that is what you are telling me. If there is a different assessment, we would like to hear it.

You talked about the process moving on a step when that person, having been assessed as vulnerable, particularly because of a mental health circumstance, could be assisted by a trained advocate. We have do not have time to go into that, so perhaps you could expand on that in writing to us. I believe that there may be a long list of people who fit the description of a trained advocate, and we may end up having all sorts of queries and problems about that.

I want to be sure that the proposal to have trained advocates is not being made on the basis that there might be something wrong at the point of entry into custody and that what happens with the custody sergeant is adequate. I think you said that custody sergeants were receiving improved

training, so that is being recognised. That would be useful in the case of trained advocates. If something seems to me to be working, I would not be enamoured with the idea of a trained advocate not necessarily coming in to be of benefit to the person in custody who is suffering from a mental illness, but to be there solely, in some instances, to make life awkward for the custody sergeant. That is why I want you to give me an idea of what you are talking about when you propose having trained advocates.

Mr Booth:

It may help to know that our team is held in the highest regard by the police. We commend the police for being particularly professional in the custody field. We find that they are meticulous in their dealings with us. The police find our services so rewarding because, from their perspective, the evidence that they gather from the moment of arrival at the custody suite until charging, when the case goes to court, is almost certainly fully admissible. Throughout the process, an independent person will have been following the detainee from the moment of arrival at the custody suite until the moment when the detainee is charged. That secures the admissibility of police evidence. From that point of view, there is no doubt that we do not make the custody sergeant's life difficult.

Mr Halliday:

In answer to the points that Mr McNarry made, it might be useful if we were to provide supplementary information about written evidence. That might help to clear up some of the issues that have been raised.

The Chairperson:

We will leave that matter there. We have less than two minutes left, but three members have intimated that they want to say something.

Sir Reg Empey:

I will be very brief, Chairperson. Who triggers your involvement when someone is taken into custody? Is it the sergeant?

Mr Booth:

Yes.

Sir Reg Empey:

OK. Does that person make a judgement as to whether the individual has a mental health incapacity?

Mr Booth:

He does.

Sir Reg Empey:

I can see the point of the consistency of having somebody in the court. Is there not a risk of conflict of interest/confusion being caused to the individual vis-à-vis the role of a lawyer versus the role of an advocate? Could the person be confused as to whom his or her actual advisor is in circumstances in which two individuals are giving advice, which, presumably, at some point, could be conflicting?

Mr Booth:

We are trained to the National Open College Network standard. There is a national appropriate adult network throughout the entire United Kingdom. We are affiliated to that network and have membership of the association. One of the first parts of our training portfolio is to make it absolutely clear, on arrival, between us, the solicitor and the detained person what each person's role is in the process. We spend some time ensuring that a detained person knows that we do not have a legal agenda and that our role is not to advise legally. We stress that our role is purely one of communication. In fact, at times, we communicate between the solicitor and the client if there is any particular difficulty, or between the police and a detained person.

Sir Reg Empey:

Do you recognise that there may be a degree of confusion for someone who is vulnerable? That person may not appreciate the fact that the legal adviser might advocate a course of action to the client, the purpose of which may not necessarily be obvious to the person who has difficulties. There is potential for conflict with the client. How is that working out in practice?

Mr Booth:

It is working very well. One of our key functions is to clarify such confusions for the person. We go to great lengths to do that. We have the greatest regard for the legal profession. However, there have been times when our staff have spoken to someone in one-to-one consultation and discovered that that person did not understand the legal advice that the individual had been given. Staff have almost had to encourage the solicitor to give the advice again.

Sir Reg Empey:

Thank you very much, Mr Booth. There is not much time left.

The Chairperson:

Our time has gone. However, two members have intimated that they wish to ask questions. I will allow them to come in.

Mr O'Dowd:

My question is on a broader point. On reading the legislation, we could be drawn to the view that it further stigmatises people with mental health difficulties. How do we ensure that the legislation does not further stigmatise those people and that we open up the discussion on that issue? I am concerned about some of the language that is used in the documentation.

Mr Halliday:

One real difficulty is the difference between what might be a healthcare route or a criminal justice route. That is why we await with great interest developments in mental health legislation, particularly capacity legislation and how that will affect the individual. I hope that the introduction of sound capacity legislation will avoid any further discrimination or stigmatisation of an individual. However, at present, there are issues about which route an individual, who may have committed a crime, but who, clearly, is vulnerable through mental health issues, is directed down. On the ground, we are hearing that, at times, individuals are advised to make a guilty plea in order that they go through the criminal justice system, where, at present, resources might be better targeted to them than if they had gone down the health route. That raises the issue of where resources are more appropriately applied. That is a worry given the further restriction of

resources that is anticipated during the next few years.

Mr McCartney:

I have a couple of brief questions. Is that station-specific or will it apply throughout the police estate?

Mr Booth:

It will apply throughout the entire police estate.

Mr McCartney:

Is the protocol to call parents then you?

Mr Booth:

Yes. We have been referred to as stand-in parents.

Mr McCartney:

Your figure of 640 parents refers to parents who refused, which meant that you were sent in as back-up.

Mr Booth:

Well, the parent could be the victim and, therefore, by default, cannot be present.

The Chairperson:

Thank you for your presentation.

I welcome the officials, Gareth Johnston, Tom Haire, Janice Smiley and Chris Matthews, back to the table. You have heard all the presentations, and we will hear the Department's response. Mr Johnston, we will direct the questions to you, and you can distribute them to whoever you feel should answer them. Why was the clause on special measures on knife crime withdrawn?

Mr Johnston:

A split of opinion on that resulted from the consultation. The issue is not about whether people

who are involved in knife-crime trials can get special measures directions. They can do so, and we are not changing that. It is about whether eligibility for those special measures directions should be automatic. Seven respondents were supportive of the proposal, which was because of the serious nature of the proceedings. Seven respondents were not supportive, and, in general, they were concerned about the balance between the defendant's right to a fair trial and the victim's rights. They made the point that, although it might very often be the case in proceedings around knife crime that there should be a special measures direction, that is not necessarily invariably the case. They said that, therefore, it should be left to the court's discretion. That is why we came to the conclusion that special measures should be available in the usual way and that it should be for the court to prescribe them but that they should not be granted automatically.

Mr Matthews:

The decision on that was based purely on the evidence that came back from the consultation, and we felt that the arguments against held sway over the arguments for. The principle that each case should be decided on its merits stood here.

The Chairperson:

Is there any evidence that knife crime is increasing?

Mr Johnston:

No, it has been relatively balanced over the past five years. The levels are lower than in England and Wales.

The Chairperson:

Do you think that the evidence is not strong enough to include special measures on knife crime? You got a mixed message from the consultation.

Mr Johnston:

We got a mixed message, and the important thing is to have special measures available, but not to make them automatic.

Mr McDevitt:

I come back to the earlier question about intermediaries. As you clarified earlier, clauses 12(5) and 12(6) spell out clearly the conditions in which an intermediary will be necessary. That begs the obvious question: why would you not specify the qualifications or the characteristics of an intermediary?

Mr Johnston:

Intermediaries will operate in different sorts of situations. Very often, it might be because there are issues with someone's mental health, but it might also be because there are issues about someone's social functioning more generally. An intermediary might be used in the case of a young person.

There is a range of circumstances. There will be training and accreditation schemes for intermediaries before they are appointed by the court. However, we felt that trying to specify their exact qualifications would limit discretion in an interview situation that covers a range of circumstances.

Mr McDevitt:

That is fine, Mr Johnston, except that, in clause 12, which deals with under-18s, paragraph (5) of proposed new article 21BA specifies that an intermediary will be called in only if the witness giving oral evidence in court is compromised by the accused's level of intellectual ability or social functioning. You specify clearly that intermediaries will be available to under-18s only if there is mental or social incapacity. It is not a very wide definition.

Mr Johnston:

No, although, at the same time, those are two different things.

Mr McDevitt:

Why do you not specify that it should be someone with mental health or social work qualifications? As I understand it, those are the only two types of professional who would be able to support an individual in that circumstance.

Mr Johnston:

The intention is that there will be training and accreditation for those people.

Mr Matthews:

The reason that we tried to keep it as flexible as possible is that one of the aims of the Bridging the Gap strategy is to tailor services specifically to victims as far as we can. We have attempted to provide the courts with enough latitude to provide an intermediary where necessary. We do not tie their hands by saying specifically who that intermediary should be. The idea is that, outside the courtroom, we will have training and accreditation programmes that will give the courts a list of people who have been trained and qualified through the Department from which it can pick those who have the skills or expertise required in any specific case.

I am sure that you are aware that the problem is that once legislation has been written, it can cause unforeseen consequences. In this instance, we have tried to be as flexible as possible while being specific about the function of the intermediary and the conditions in which an intermediary can be brought in.

The Chairperson:

Have you costed the training, etc? Who will do this and pay for it?

Mr Matthews:

We will pay for it. I think that we have costed it at around £97,000, but I can write to the Committee with a more specific figure.

Mr McDevitt:

To reverse-engineer this, I am interested in how it would connect with someone who has been through an appropriate adult scheme. For argument's sake, is everyone who had an appropriate adult with them in a police station automatically eligible to have an intermediary when their case comes to court? The legislation says nothing about that; it does not tell us how those would connect.

Mr Matthews:

I do not think that those necessarily connect. The legislation sets out that an intermediary can be appointed only on the application of the accused. Therefore, it is possible that someone could have both. However, it is also possible that a person who did not have an appropriate adult with them would qualify to have an intermediary.

Mr McDevitt:

Can you envisage a situation in which someone had an appropriate adult with them but is not eligible to have an intermediary?

Mr Matthews:

That is legislatively possible, but, in individual cases, it will be for the judge to make a decision based on the interests of justice.

Mr McDevitt:

I suppose that we will return to this in our consideration of the clause. However, it strikes me that there is a bit of disconnect, as noble as the intention may be. Officials may want to reflect on that and join up the dots. It seems that you are meeting a similar need but staying silent and, therefore, opening up the possibility that judges, in their great wisdom, will not be as fully informed as they may need to be to come to a decision on the intermediary.

Mr Johnston:

We will certainly give that further thought. I can speak to colleagues in the Department who have been responsible for the appropriate adult legislation under PACE to see whether there is a difference in how we join up.

The Chairperson:

Why can you not use existing trained social workers and those who are trained in mental health issues? That is not what you said.

Mr Matthews:

It is because we envisage that the needs may go wider than mental health or social care. We are

aware of similar schemes that have operated in England and Wales, and we are following the model there. I can write in more specific detail about the sort of training that is available. However, there is specific training for intermediaries in court, because it is a specialised skill. As well as understanding the basic principles of mental health, they have to understand the court, because they are interpreting the legal framework, allowing someone to understand it and interpreting what they provide to the court. The issue may be bridging the gap between the specialism and an understanding of the wider legal world.

The Chairperson:

I find it difficult to understand, and more difficult to accept, that you are telling us that skilled social and mental health workers may not be skilled in, for instance, going to court. I can think of many who are.

Mr Matthews:

I am not suggesting that they are not skilled; it is just that the scheme that we are proposing will accredit them. It may be that some people already have those skills, so we would simply accredit them so that the court is aware that they are accredited. So, it is not that we are saying that people do not have the skills; it is just that we would accredit them to show that they do.

Mr Johnston:

Not every social worker or mental health worker has had a great deal of engagement with courts. We think that it is important that anyone coming into the role knows the basic principles. For example, they must know that they are not to try to impact on the evidence that someone is giving, and they must know the limits of their role as an intermediary so that they do not do anything that would interfere with the interests of justice.

The Chairperson:

Some of them may not have had that engagement, but I suspect that many of them would.

Mr Johnston:

Many would, but we just want to make sure. When we are talking about the interests of justice, we just want to make sure that those safeguards are in place.

Sir Reg Empey:

I know that you are going to return to this issue, Chairman, but I am trying to understand where the Department is coming from. I can see that, if someone has social difficulties or there is social dysfunction, an intermediary with a basic qualification in mental health issues or assessment would need to be present. However, am I right in thinking that you perhaps have at the back of your mind other individuals who may know the client and have a sense of the client's background rather than a paid professional who may have skills but does not know the individual? For instance, if somebody gets into bother, perhaps a family cleric or someone who knows the circumstances and is familiar with these things could fulfil that role. Is that what you are thinking, or are you thinking of other categories of professional?

Mr Johnston:

As we go through the Bill, we are talking about different functions and different groups of people. For example, some intermediaries would be with someone in court or when they appear via a live link to help them with communication difficulties. So, that is one thing that is covered.

Sir Reg Empey:

The people who I am talking about might not necessarily be what we class as professionals. They could be suitable or competent persons who perhaps know and can communicate with the individual and who may have some knowledge of their background and the context in which they function. Is that what you are getting at?

Mr Johnston:

The point that I am trying to make is that there are different groups of people. There are intermediaries who work with people who have communication difficulties. There are intermediaries who would be with people in psychiatric hospitals, say Shannon Clinic, when they give evidence to court via a live link. Then, in the live link room, there would be the supporters of someone who is giving evidence under special measures, maybe a young victim or someone who has been a witness to a serious crime. In relation to the third category, I can absolutely see how the sorts of people who you mention, or even a family member who did not have a direct link to the offence or incident, could provide that function.

Sir Reg Empey:

The issue is that we do not want to restrict people unnecessarily, but, at the same time, we are having a wee bit of difficulty in getting our heads around the categories. It might be useful to have an example of the sort of thought processes that you worked your way through as to why being overly restrictive would not serve justice as opposed to accepting on face value what you are proposing.

Mr Johnston:

It might be helpful if we set that out in a table, because we are talking about different clauses of the Bill and different sorts of supporters.

Sir Reg Empey:

You must have gone through this process.

Mr Johnston:

That would give some examples of the sort of people we are talking about.

The Chairperson:

Mr McNarry, did you want to ask a supplementary question on that issue?

Mr McNarry:

I do not want to talk at cross purposes, so maybe you will keep me right. I just want to pick up on evidence that we heard earlier about the alleged offenders —

The Chairperson:

You are not going to digress into other territory, are you?

Mr McNarry:

No, I am not. Well, I do not know; that is up to you to judge. I do not think that I am going to, but I am not a crystal ball gazer, despite what you think of me.

We heard evidence about an alleged offender at the custody stage. Does the type of

recognised specialist that you are trying to identify — I think you have a bit more work to do on that — stay with an individual right through the process? At what stage would they then be displaced by what you are doing? It can be said that some people, specifically people who have certain mental illnesses, are unfit to stand trial. I am conscious that what you are trying to do is of benefit to the victim as much as it is to someone who may find themselves in a certain position because of their illness. Are you happy enough that you are covering that, or are you maybe going to do some more work on it for us?

Mr Johnston:

We will certainly give it some more thought. The appropriate adult scheme is really about the early stages of someone's engagement with the justice system, particularly in the custody suite and in interviews, and through contact with the police. By the time we get to the court stage, under our proposals, it would not necessarily be the same person coming in to give support.

Mr McNarry:

My worry is about that transfer. You have already admitted one type of expert into the process, and the issue is the handover from one expert to the other. We have seen and heard how difficulties can occur when a medical expert is handing over to another medical expert. I just want to be sure that you think that that transfer will be adequate.

Mr Johnston:

We will give that some more thought. There can be other situations where, for example, an interpreter is involved in the process at the police station but is not the appropriate person to be involved later on. We need to give that some more thought.

Mr O'Dowd:

I want to talk about special provisions for vulnerable witnesses. A number of people who gave evidence to the Committee said that we need to get the balance right, particularly in emotive cases, such as those that involve sexual offences, especially against young people. The person in the dock is the accused, and public opinion may be that they are in the dock for a reason, but we are in charge of ensuring that justice is done. What assurances can you give me that, in those provisions, the balance has not been pushed too much in the direction of the prosecution and

away from the defence?

Mr Johnston:

Those considerations have been very real for us as we have developed the proposals. We can point to some examples. The proposals on knife crime, which we discussed earlier, are a good example; the feedback has been that the balance was perhaps not quite right, and, as a consequence, we have adjusted the proposals. So, we certainly listened to the points that were made about them in the consultation process.

Mr O'Dowd:

OK, you have listened in those cases, and a category was removed, but I am still concerned that, in emotive cases, the balance has shifted towards the prosecution to such a degree that defendants almost have to prove themselves innocent rather than the prosecution having to prove them guilty.

Mr Johnston:

I would go back to the purpose of the special measures provisions. They have been in place for 10 years now, and the purpose is to get at the best and most accurate evidence. It is not about favouring the prosecution over the defence but about allowing a witness, who may have been through very difficult circumstances, to give the best and most accurate account of what happened to them. That is what underlies the special measures provisions. In fact, the new guidance that is issuing on special measures is called 'Achieving Best Evidence'.

Mr O'Dowd:

You said that procedures to assist vulnerable witnesses have been in place for 10 years. I referred earlier to a 2006 report commissioned by the British Home Office that looked at the way in which the provisions were implemented there. In many cases, it was found that the measures were not being implemented properly. That brings me to my question: do we need extra legislation, or do we need the legislation that is already in place to be properly enforced?

Mr Johnston:

We can do more to ensure that the sorts of issues that were identified in that report do not arise in

Northern Ireland. The Criminal Justice Inspection looked at that issue recently when it reported on sexual offence cases, and it found that, in 16 of the 18 sample cases, special measures had been implemented properly and at the right time and that the right questions had been asked. I take some comfort from that. However, we still could have done better in two of the 18 cases. As a result of that, we have set up a subgroup of the victim and witness task force to look specifically at those sorts of administrative arrangements around special measures to see how we can do better and, to address the specific criticism, to ensure that special measures are explored at an early stage in appropriate cases and are not left to the last minute.

Mr O'Dowd:

I am not questioning your statistics. However, I think that some of the other statistics in that report might not be as favourable as that one.

Mr Johnston:

I am quoting Northern Ireland statistics. The experience in England and Wales might be different.

Mr O'Dowd:

Even in the CJI report, which we received evidence on recently, there were statistics. That is OK; I will go through the report again myself.

Mr Johnston:

The key thing is that we have now set up a group to look at those practical issues, which I do not think require changes to legislation. However, it is about how the legislation is being used day to day.

Mr McCartney:

I wish to make a couple of points. Is the offender levy scheme already in operation in England and Wales?

Mr Johnston:

Yes, it is.

Mr McCartney:

How long has that been in place?

Ms Smiley:

A victim surcharge was legislated for in 2004 but was not implemented until 2007.

Mr Johnston:

Having said that, they have focused on fines, so they have not yet fully rolled out the scheme to some of the other areas in which we propose to implement our scheme.

Mr McCartney:

How is the collection and administration of the levy operating in general? The prediction for here is that there will be a one-off capital cost and that all the other costs will be absorbed. Is that the practice at present in England and Wales?

Ms Smiley:

The problem in England and Wales is that a much bigger area and number of court jurisdictions need to be covered but there is no joined-up IT system. However, the Causeway system in Northern Ireland will enable all the relevant parties to see the information and to share it at the appropriate time.

Mr McCartney:

The prediction is that the cost will be largely absorbed within existing administrative processes. What is your definition of "largely"? Will you be back here in a couple of year's time saying that the administration costs were higher than you first believed?

Ms Smiley:

That is why we are saying that we will phase the implementation of a couple of the disposals. We will have other planned reforms in place that we can piggy-back on rather than spending extra money now bringing them in especially for the offender levy, because they have a much wider application. Those costs are built into the projects.

Mr McCartney:

As regards the use of the money, your submission states that the fund will be separated from other running costs. How will that be monitored, and who will monitor it?

Mr Johnston:

We propose to set up an arrangement with DFP whereby we will account for the fund separately from the ordinary budget.

Lord Browne:

I will be quick. In your opinion, at which point would an extension of special provisions create the outcome of protecting the witness or plaintiff from scrutiny rather than of simply assisting them to give their evidence? Where exactly is the line drawn?

Mr Johnston:

Special measures kick in once a case gets to the court stage, because they deal with someone giving evidence for a court trial. There are, though, wider measures to protect and address the needs of vulnerable witnesses, and the actions of police can range from general advice and assistance all the way up to, in a small number of exceptional cases, very special witness protection. Therefore, the special measures that we are legislating for in the Bill will kick in at the court stage, but other support will be available to vulnerable witnesses before that.

Lord Browne:

Have you given any consideration to whether the changes to the special arrangements will assist people in making false accusations against a defendant?

Mr Johnston:

If someone is set on making false accusations, what we do with special measures will not prevent that — I hope that it will not help either. We are trying to put people in a situation where, as I have said, they present the most accurate evidence. There is a category of people who will lie in court, and the court process must sort that out and get the truth. However, there is also a category of people who are under tremendous stress. That stress can affect their recall of events and how

effectively they put forward their story in court. We are trying to help that category of people. If we help them, we will, at the end of the day, get better evidence.

The Chairperson:

I want to run two points past you before you leave the table. Victim Support says that the difficulties faced by victims are related to culture and attitude rather than the need for further legislation. Will you comment on that?

A 'Law Society Gazette' article that is headlined "Victim surcharge IT chaos" says:

"Despite collecting an estimated £305,000 since it began, HMCS does not know how many £15 surcharges are levied or what percentage of those have been paid".

No IT system can pick that up. Will you comment on that?

Mr Johnston:

As Janice said, the difficulty in England and Wales was that they did not have an integrated IT system. We do; we have the Causeway system, and the changes that we make will all feed into that system. Therefore, we are starting from a higher base than England and Wales, and we have the potential to address those issues so that we have an accurate handle on the collection of the levy.

From the point of view of victims generally and their engagement with the justice system, we acknowledge that the Bill's content is part of a wider programme of work. A code of practice for victims is out for consultation at the moment. That is about the standards that victims can expect from the justice system. Our new focus on speeding up justice is very much based on victim-focused targets, and we are in the process of looking ahead and starting to develop our next strategy for victims and witnesses, because the five-year strategy that we have been working to is coming to an end.

The overarching concern of the criminal justice system has to be justice. For example, a victim might want someone to be convicted, and that may not always happen. However, we can address the issues of how victims are treated. We can consider the information that we receive and make sure that victims get services according to their needs. Chris might want to comment on what is happening more generally, but I just want point out that a bigger programme of work

on victims is ongoing, and, if the Committee wants to hear more about that, I am sure that we could give a separate briefing.

The Chairperson:

We will stop there; our time is up. Thank you very much for your tolerance and endurance today. I suspect that we will talk to you later.