Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT
(Hansard)

Justice Bill: Evidence from the Northern Ireland Human Rights Commission

13 January 2011

NORTHERN IRELAND ASSEMBLY

COMMITTEE FOR JUSTICE

Justice Bill: Evidence from the Northern Ireland Human Rights Commission

---

13 January 2011

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 Alban Maginness
Mr Conall McDevitt
Mr David McNarry
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Ms Ann Jemphrey	)	Northern Ireland Human Rights Commission
Professor Monica McWilliams	)	
Mr Ciarán Ó Maoláin	)	
Mr Tom Haire	)	Department of Justice
Mr Gareth Johnston	)	
Mr Chris Matthews	)	
Ms Janice Smiley	)	

The Chairperson (Lord Morrow):

I welcome Professor Monica McWilliams, who is the chief commissioner. You are very welcome. I welcome Ciarán Ó Maoláin, who is head of legal services, policy and research, and Ann Jemphrey, who is a policy worker. Professor McWilliams, you have 10 minutes, but if you want 11, I do not think that we will fall out. After that, perhaps you will be good enough to take questions from members.

Professor Monica McWilliams (Northern Ireland Human Rights Commission):

I hope that I do not take up your 10 minutes. We welcome the opportunity to contribute our views on the Justice Bill. As you know from our submissions, we did not feel the need to address all aspects and all clauses. We concentrated on the areas on which we have recently submitted evidence to the Department and, indeed, before devolution, to the Northern Ireland Office.

The discussion during the previous evidence session was very interesting in that one of the submissions dealt with a strategy for the management of offenders and, in particular, we have been focused on a strategy for the management of woman offenders. On the discussion on corporate manslaughter, we gave evidence on one occasion to the Coroner's Court following a pattern of suicides by women. In the case of Roseanne Irvine, which, if I recall properly, was the fourth death, the coroner wrote to the Secretary of State — this occurred prior to devolution — outlining the pattern of those deaths and asking the Prison Service to respond.

Following April 2011, we responded to the corporate manslaughter legislative proposals. We would be very interested to know what the response would be if such a letter were sent to the current Minister. At that time, we also wrote to the Secretary of State about that pattern of deaths, and my recollection is that there was no response. Therefore, that was one submission. Obviously, the issue continues to be looked at through the Justice Bill with regard to the management of offenders.

Other issues with which we have had long-standing involvement include the consultation and proposals on fine defaults. The case that Mr McNarry raised was very interesting. We have come across a number of cases like it. We would be interested to hear more about that case, Mr McNarry. The most recent case that has concerned us involved a woman with serious, life-

limiting kidney disease who went to prison for fine default. The magistrate had not seen the woman and did not know the condition that she was in. We had to attend to that case. She was in custody for fine default. On my frequent visits to prisons, I often find, particularly in the case of women in prison, that too many of them — the majority on one occasion when I visited — are there simply for fine default. We very much welcome the proposals on diversion from prison in the Justice Bill. To keep people in custody is an expensive way to deal with fine default.

We also submitted responses to the consultations on alternatives to prosecution and on the offender levy and the victims of crime fund. Our final and most recent submission was on an issue that is not in the current Bill, namely the notification requirements for sex offenders. The Minister has written to me to say that he proposes to add that to the Bill. We have taken a fairly active and long-standing interest in all of those issues. We very much welcome those proposals. As you know, we are also engaged, as you are, with the ongoing reviews of prisons and youth justice, which relate to work that you have just heard discussed and to provisions in the Bill. Therefore, all those issues interact.

We welcome positive proposals on the criminal justice review, some of which came out of the Agreement at Hillsborough Castle, have been taken forward and are now in front of us. There was a requirement to address victims' needs. We are pleased to see that that is happening. Initiatives have been long-standing. We will come back to them in response to your questions.

More clarification is needed on supervisory orders as alternatives to fine defaults. We do not understand fully what the pilot scheme will mean. We are concerned that there might be a difference in practice in one area compared with another; in other words, discrimination by postal code with regard to what is available to some and not to others. We also welcome fixed penalty notices for low-level offences and, indeed, diversionary disposal under the conditional caution. I will not take up any more of your time with those concerns as, undoubtedly, they will come up in questions.

I am accompanied by Ann Jemphrey, our policy officer, who has dealt with most of the clauses in our submissions. We have submitted two papers, the first of which deals with the clauses on sports. Ciarán Ó Maoláin, who is the head of our legal and policy team, will address

those particular clauses, if you have questions on them. Ann will address all other clauses. I will also come in, if necessary. Thank you very much.

The Chairperson:

Thank you very much for your presentation. I know that you will say that this is a perception. I accept that there is a perception that you focus less on the victims of crime than on those who commit it. What do you say to that?

Professor McWilliams:

Recently, I wrote to you on that issue because I was concerned. Of course, there is a public perception that when a commission is asked to deal with the human rights of people for whom, as you have just heard, the state has responsibility, that often means people who are in detention or in institutions. Indeed, a focus of our work has been, as yours is now, on prisons. That probably has to do with the legacy of the Troubles. It also has to do with the fact that less of a spotlight had been shone on the Prison Service in Northern Ireland.

Staff mentioned to me that you had raised that particular concern in the public consultation that you held here. As a result, we carried out a review of all of the submissions that we have made. In fact, it broke down that we were making as many submissions in relation to victims as we were in relation to those who had been offenders or, indeed, who had perpetrated the crimes. You will probably know that the press report what they find interesting, and work with victims is often not as interesting as what the press would want to report on offenders. Indeed, I engage with the press practically every day to try to turn that around. I hope that the press will take as much interest in our current investigation, which is on the rights of older people with dementia in nursing care, as they have done on any issues that we have raised about people in custody. I will live to be surprised if they do.

Mr McNarry:

That is you put in your box.

The Chairperson:

I am always being put in my box.

Mr McDevitt:

Clause 3 is about the deduction of the offender levy imposed by courts from prisoners' earnings. You referred to European prison rule 105.5, which states:

"In the case of sentenced prisoners part of their remuneration or savings from this may be used for reparative purposes if ordered by a court or if the prisoner concerned consents."

I take it that you consider that part of the Bill to be consistent with the European prison rules.

Professor McWilliams:

We do, and I will let Ann answer that further because she has gone through those.

Mr McDevitt:

Can I ask you to elaborate on a specific point in your answer? You made a comment about the need to take into account the huge disparity in the amount of money that a prisoner can earn in custody. Can you elaborate on that and identify the specific concern that you have, if any?

Ms Ann Jemphrey (Northern Ireland Human Rights Commission):

Obviously, a prisoner has limited means to earn any money at all. The figures that have been produced look at average weekly earnings of between £10 and £12, but earnings can range from £6 to £20. Our concern is that there is proper evaluation so that particularly vulnerable prisoners have enough money to cover basic needs such as telephone calls to families, which can prove very expensive with mobile phones, and that there is no adverse impact on their ability to access such basic essentials in prison. It is also an additional financial punishment on top of the punishment that has been given out already to the prisoner. We want the effectiveness of the scheme to be evaluated so that the adverse impact is not greater than what we get from it.

Mr McDevitt:

Do you believe that the Bill, as drafted, allows enough space, through regulation and subsequent guidance, for the Department to do that?

Ms Jemphrey:

Yes. We know that discussions are taking place with the Prison Service, particularly to ensure that this aspect will not impact negatively, and we would like to see the outcome of that. We are

not saying that it conflicts with any of the European prison rules, but it is open to different interpretations, so we should be mindful of that.

Mr McDevitt:

The other area, on which Mr Ó Maoláin may be able to help, is the question of defining sectarianism. I have been interested in that since the beginning of our consideration of the Bill. It applies mainly to clause 38, which deals with chanting. It appears that you are taking a position of saying that we are about at the point at which we should start calling a spade a spade around here. Although we have a body of law that defines sectarianism indirectly, we should take the opportunity to call it as it is.

Professor McWilliams:

Ciarán can answer that, and it would be the commission's position that there was an opportunity. The Minister has written to me on that and said that, as the Bill progresses, he will consider that further and that he will write to me when he has done so, so we are in correspondence on that issue. Ciarán was responsible for what we put into our submission.

Mr Ciarán Ó Maoláin (Northern Ireland Human Rights Commission):

We think that the international human rights standards provide a clear framework for defining racism in the Northern Ireland context. There is a very clear and well understood correlation between religion and community background or ethnic identity and nationality within Northern Ireland. That is not universal or immutable and may change over time. However, in the society that we live in now, by and large, when we talk about the Protestant/Catholic divide, we are also talking about the divide between Britishness and Irishness or those two ethnic elements of identity in our community.

The international standards on racism provide a very clear framework for setting out the duties of the state in combating racism and limiting freedom of expression in relation to racist expression. We believe that that internationally accepted framework can apply very clearly to sectarian expression in Northern Ireland.

When it comes to chanting at spectator sports, any limitation on freedom of speech or

expression has to be within the international standards and, particularly, article 10 of the European Convention on Human Rights. In our interpretation, the state can limit freedom of speech or expression only when that is consistent with the purposes that article 10 defines as being permissible within a democratic society. Permission can be refused for racist expression, which is also consistent with the United Nations standards.

The advice that we have given the Minister is that the opportunity could be taken through this Bill to introduce a statutory definition of sectarian expression in Northern Ireland that relies entirely on the international standards on racism.

Mr McDevitt:

To be absolutely clear about what you are saying, Mr Ó Maoláin; do you believe that it is possible to statutorily define sectarianism in a way that is consistent with article 10?

Mr Ó Maoláin:

We believe that that would be a very simple task. Already, there is an accepted definition from the Council of Europe that racism is the belief that:

> "race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons".

The definition goes on, but that is the essence of how racism is perceived through the lens of European human rights standards. We believe that a very similar construction could be devised to define sectarianism in Northern Ireland statute.

Mr McNarry:

I take the point that we should call a spade a spade, and I am quite sure that people can readily understand if sectarianism is being directed at them; certainly, I would, and have.

On Mr McDevitt's point, would you be able to provide the Committee with the legal definition of sectarianism? That is where we have struggled, not just with this Bill but with previous legislation that did not make it onto the Floor of the House in which there was reference to sectarian harassment. The best brains that work for us were unable to give a definition in legal terms and, therefore, turn that into law. I hear what you are saying about people providing the best developed body of international standards from which a definition can be drawn. However,

can you lay down in writing a definition of sectarianism? Have you been asked to give such a definition to the legal profession?

Mr Ó Maoláin:

We are not parliamentary draftspeople, and the precise translation of international standards into the content of the Bill would be a matter for their expertise. However, we believe that the international standards are clear in allowing racism in the Northern Ireland context to fit within the universally accepted definition of racism. Sectarianism is, in essence, a subset of racism, and by relying on —

Mr McNarry:

I share all that, but I am struggling to find someone who can put in front of me a definition that will stand up in law. The draftsmen whom we employ have been unable to do that so far. I was interested to know whether or not you felt confident, having said what you did to us, that you could provide that from what you know. Have you provided a definition, or been asked to provide one, to the legal profession? That is all that I want to know.

Mr Ó Maoláin:

We would be very happy to work with Assembly draftsmen to try to come up with a statutory definition that could be used in a Bill. We are more accustomed to commenting on drafts that come to us for Assembly Bills or proposals for Bills. However, in this instance, we would be very happy to take a more proactive approach and work with draftsmen.

Professor McWilliams:

The answer, Mr McNarry, would be that we have never been asked.

Mr McNarry:

I appreciate that you have never been asked, but you are never far behind the post in having something to say. Therefore, on subjects such as this one, I thought that you might have been knocking on someone's door to say, "Hang on, we can provide this. Now that the offer is there, I think that we will take it up."

Professor McWilliams:

We will certainly be more than happy to work in that advisory capacity, but I emphasise that we act in an advisory capacity; it is not about offering legal advice to an individual on what constitutes sectarianism. We do assist individuals in litigation all the time, as you know. We are quite clear in our submission that defining sectarianism is not complex and that, if you base the definition on international standards, which is what the Human Rights Act 1998 did when it incorporated the European Convention on Human Rights, it could then be possible to propose what a legal standard would look like.

Mr McNarry:

Let us hope that, with your brains, the brains of the draftsmen and the brains in the legal profession, we can turn it into a legal definition, which we ain't got.

Professor McWilliams:

I am pleased to say that the Minister has left the door open on that. I can speak only for the Minister of Justice, who has entered into correspondence with us on this matter. On previous occasions, we have not been asked for that. We have made submissions on the other issues that you have referred to, and, again, as you can imagine, those are not easy issues — for example, the issue of harassment.

Mr McNarry:

I appreciate that.

The Chairperson:

I am looking at your comments on disability, which I read earlier. What do you believe could be reflected in the Bill to deal with disability in a more positive way? What do you think is missing from the Bill that should be there?

Mr Ó Maoláin:

In all of the existing body of legislation around disability, the reliance is on the traditional medical model of disability, in which people's physical or sensory impairments are defined purely in terms of their individual situation rather than in terms of how society adapts or fails to

adapt to the needs of people with disabilities. We are seeking to move the whole approach of law, policy and practice towards the definition in the UN Convention on the Rights of Persons with Disabilities, which follows the social model of disability, whereby disability is defined in terms of barriers to full participation in society. The reference to disability in our submission is in relation to an item that is not covered in the Justice Bill. It perhaps could be addressed in future justice Bills.

The Chairperson:

We are told that there is another one in the making.

Sir Reg Empey:

The Bill of Bills.

Mr Ó Maoláin:

The issue that we picked up on in particular was the Criminal Evidence (Northern Ireland) Order 1999, which refers to witnesses who are eligible for special measures of assistance on grounds of age and incapacity. The definition of incapacity in that Order relies clearly on the medical model of disability; it talks about mental disorder, significant impairment of intelligence or social functioning and physical disability. We believe that that reflects almost a presumption that people with disabilities are unlikely or less likely to have the capacity to participate fully in court proceedings, whereas the approach in the convention is that you presume capacity always. Indeed, some interpretations of the convention would say that people in the criminal justice system must always be treated as if they had capacity and that whatever measures are necessary must be taken to ensure that such capacity as people have is fully reflected in their participation in proceedings. That issue will not be remedied through the Bill, but we wanted to draw the Committee's attention to it as it needs further treatment within the future reform of the criminal justice system in Northern Ireland.

Mr McCartney:

There was mention of European rules on reparation. Do other jurisdictions use that sort of levy to fund support services for victims?

Ms Jemphrey:

A victims' fund is operational in England and Wales, but, as far as I am aware, there is no fund in Scotland or the Republic of Ireland.

Mr McCartney:

What about across Europe?

Ms Jemphrey:

There are some in Europe as well as in New Zealand and, possibly, Canada.

Mr McCartney:

I am just wondering if the reference to using remuneration or savings was designed more for cases in which courts awarded costs to victims from an offender — for example, costs of £50 — than for cases involving a levy. The levy is designed in such a way that a prisoner may not even be aware of the particular victim being able to benefit from it; it is just a wider fund. I am just wondering whether the contexts are the same.

Mr Ó Maoláin:

The European prison rules talk about reparative awards being made either through a court order or with the consent of the prisoner. Obviously, it is much more satisfactory if the prisoner volunteers to make what will only ever be a token payment. When prisoners have earnings of £10 or £12 a week and the amount that we are talking about is £1 a week or thereabouts, the payment will only ever be a token gesture, but it is much more meaningful if it comes with an acknowledgement from the prisoner that they have done wrong.

Mr McCartney:

Yes, but at present the prisoner does not consent. In some situations, a judge may say to an offender that he or she can do three months in prison or, if costs of £250 are awarded to a victim, two months in prison. Therefore, you can see the direct link with the restorative aspect, rather than just the principle of getting fined £50 and another £10 on top of that.

Mr Ó Maoláin:

Making deductions from prison earnings is a separate concept to the awarding of compensation or an award that is made by a court against an offender. This is a new mechanism to allow or oblige prisoners to make reparative payment.

Mr McCartney:

So, there is no aspect of double sanction in it.

Mr Ó Maoláin:

No.

Mr McCartney:

On the fixed penalty payments, you have some concerns around the subjectivity of the decision-making process. You feel that there should be a mechanism that allows people to challenge that. For example, if someone is in court for petty theft after having seen someone else being given a fixed penalty for the same offence only the day before, is there a mechanism for him or her to ask why they did not receive a fixed penalty?

Ms Jemphrey:

We are concerned that there is a potentially problematic degree of discretion available to the police in their response to a very wide range of offences outlined in our submission. We felt that it was important for the Committee to seek assurances from the Department of Justice that clear guidance will be provided to the Police Service on the implementation of the provisions and that the commission might be consulted on human rights compliance. The concern is just about potential net widening and the use of discretion.

Professor McWilliams:

We are also concerned about any breaches. All of our concerns are very much about making sure that the guidance is clear, that the training is in place and that the practice is consistent so that we do not end up with patches where fixed penalty notices are being handed out and other areas that do not have those hot spots. We are already familiar with that.

Mr McCartney:

How can that be monitored? Sometimes a police station might be very progressive and give out more cautions than another police station. That might be down to the people in the station feeling that an adult caution is the best thing to do in the circumstances. However, 10 miles away, an offender might not get an adult caution for the same offence. In such cases, nobody is doing anything that is out of kilter.

Professor McWilliams:

That is why we have asked the Committee and the Assembly to seek that assurance when the guidance is being produced. Responsibility will also fall to the Policing Board. Occasionally, following innovations, the Policing Board undertakes a thematic inquiry, which reassures the Human Rights Commission on systemic issues that we bring to the Policing Board because people have brought them to us. It is very useful to have those pieces of accountability in place, and we hope that the police take on board those matters and look at whether practice is consistent.

Mr McCartney:

With regard to the Irish language, does the Minister have the power to repeal the Administration of Justice (Language) Act (Ireland) 1737? That issue is omitted from the Bill.

Professor McWilliams:

This was mentioned in our additional submission. We had suggested that, if people wanted to address that, it could have been added. We believe that, in meeting international standards, it would have been useful if that opportunity had been taken in this Bill.

Mr McCartney:

Would the Minister have the power to repeal it? Would it lie with him?

Professor McWilliams:

It would.

Mr O'Dowd:

I want to talk about a couple of areas of the Bill, starting with vulnerable and intimidated

witnesses and the special measures that are being put in place. The very title, no one could argue against. However, accepting that the person charged before the court is innocent until proven guilty, is there a danger that, during adversarial court proceedings, the balance of rights within the courtroom will be in favour of the prosecution rather than the defence?

Mr Ó Maoláin:

The interests of justice require that, when witnesses are particularly vulnerable, through youth or circumstances of the crime and so on, the court needs to design its processes in a way that does not further victimise them. Special attention needs to be given to protecting victims and witnesses to allow them to participate fully in the work of the court. It does not necessarily disadvantage the accused to have measures such as screening; the defence counsel should be able to see the witness.

As far as possible, there ought to be open justice, with all parties present in the courtroom. However, in the interests of fairness to victims and vulnerable witnesses, provision for measures such as live links is acceptable in human rights terms. The aim is to go as far as possible towards the ordinary process of open justice. However, there is a very strong case to say that, when vulnerable people are exposed to the stressful experience of appearing in court, their evidence could be impaired, and that could result in guilty offenders getting away with crimes, which we do not want to see.

Professor McWilliams:

In work that I did previously on domestic violence, I looked at access to criminal justice and the procedures involved. It was quite shocking to see the withdrawal rates from the justice system. Therefore, it is really positive to see that the special measures are constantly being revised and reviewed to see what is working and what is not.

Recently, we visited the Court Service to see procedures for ourselves and whether the special measures are working. One issue that we would like to be reassured about is whether those measures are accessible across Northern Ireland. Quite often, we find that those measures are in place in Belfast, but, in Dungannon or somewhere else, you may find that they are not in place.

It is about making sure that the measures are comprehensive and universal and that victims know about them. We speak constantly to the Public Prosecution Service (PPS) about this. It is not enough to have something in place if nobody knows about it; people need to be informed. The PPS said that if it told everybody who would perhaps want such measures about them, it would be overwhelmed. A judgement and risk assessment does have to be made as to who should have access to such measures. However, what the Bill is suggesting is really positive.

Mr O'Dowd:

I will move on to some of the clauses about sports and the banning orders for people convicted of violent offences associated with or near sporting grounds. The orders go to great lengths to describe what the banning order is but also to restrict people's right to freedom of movement on a specific day or on the day of a regulated match. Those people have to report to the police regularly after their conviction and when their sentence has been served. Do you have any concerns about banning orders?

Mr Ó Maoláin:

We did not address that matter specifically in our response, because we believe that the court is likely to apply those orders in a proportionate and careful manner. Banning orders are only applied after conviction and are a preventative measure. We would, of course, look at any evidence that may emerge of disproportionate interference with people's liberty of movement. However, in principle, there is nothing wrong with a measure that seeks to protect the public by keeping violent individuals away from matches or other situations in which they could commit crimes.

Mr O'Dowd:

This may not be a question for you, but is there not an argument for introducing such legislation for a wide range of scenarios?

Mr Ó Maoláin:

There are, of course, many scenarios in which a conviction can lead to restrictions on a person's freedom of movement, but, in the specific context of violence at sporting events, experience has shown that banning orders can be effective in making sporting occasions safer for families to

attend. It was not done lightly when the measures were introduced in England and elsewhere, but they have been effective. They are subject to judicial oversight. It is possible to appeal against an order, and the courts have to be trusted to take a balanced view and to apply that measure only when it is proportionate and necessary.

Professor McWilliams:

With your permission, I will return to Mr O'Dowd's previous question on live links. I should have said that we are positive on clauses 11, 14 and 19, but we would have preferred an amendment to clause 16 to insert a requirement for the appellant's consent. That fits in with some of your concerns.

Mr O'Dowd:

Yes, I noticed that in your papers.

Mr Ó Maoláin:

That is in relation to appeals.

The Chairperson:

We are stopping there. Thank you for your attendance and your presentation. We will now invite departmental officials to deal with some of the issues. You may wish to stay to hear what they have to say, but it is entirely up to you.

I welcome again Gareth Johnston, head of justice strategy division; Janice Smiley, head of the criminal policy unit; Tom Haire, the Justice Bill manager; and Chris Matthews, head of sentencing delivery and European unit. You have heard what has been said, the questions that have been asked, the answers that have been given and other comments. Mr Johnston, you may want to respond or comment.

Mr Gareth Johnston (Department of Justice):

I shall respond to the main points that we picked up, and, if there are any others, we are happy to take questions on them. I welcome the commission's comments, particularly on the diversionary matters in the Bill, and on other aspects of the Bill. I recognise that the commission was not

saying that the recovery of the offender levy from prisoners' earnings conflicted with the European prison rules but that it was making the point that it was important to be mindful of those rules in putting together the procedures for recovery. I confirm that we have been mindful of those in the arrangements that have been put in place.

Obviously, imposition of the levy is a statutory requirement. The level of deduction to be applied will be at a proportionate rate of £1 a week, regardless of the regime level. That rate will remain consistent, irrespective of whether the prisoner is promoted to standard or to enhanced status. Pitching it at that level will help to ensure that the prisoner remains motivated and incentivised to progress to the higher regime levels. That helps to maintain good prisoner and staff relations in the prison, but, at the same time, it will still provide an equitable remuneration for the work that is to be undertaken and allow prisoners to spend a proportion of their earnings to buy goods, to provide money for their family or to save for resettlement. The European prison rules have been an important part of our consideration.

The Committee moved on to think about the sports provisions in the Bill and, in particular, a definition of sectarianism that might be recorded in the legislation. We have committed, both to the Committee and, as Professor McWilliams noted, to the commission, to come back with proposals on sectarianism to make the issue more obvious in the Bill, and we will do that. We are having discussions with the draftsmen. At this stage, those have not been finalised, so I cannot offer the definition that Mr McNarry is looking for. I am conscious that the parades Bill talked about sectarian harassment based on religious belief or political opinion, but we have shared with our lawyers the advice that the Human Rights Commission provided in its written submission so that account can be taken of those points and of what we could take back to the Committee to address sectarianism in the Bill.

There was a specific query from the commission about supervised activity orders, and there was concern that, if we were to run a pilot scheme on supervised activity orders for fine defaulters, there would be inequity of access across Northern Ireland. Resource issues would still need to be addressed, but we feel that it is important to have the opportunity to run a short pilot on supervised activity orders for a number of months to see how they work in practice and how linkages between the court and the Probation Service work. We could perhaps try different sorts

of approaches to see how they could best be rolled out if the scheme were rolled out across Northern Ireland. However, we are talking about a short pilot over a number of months, and we feel that that balances the interests of getting a workable scheme against equity of access. However, as I said, before we would run any such scheme, we would need to take account of a number of issues, including resourcing, and we are looking at those at the moment in the wider context of our fine default strategy.

The Committee moved on to some questions on disability and special measures, which Chris will say something about.

Mr Chris Matthews (Department of Justice):

I appreciate that the point on disability is wider than the Bill and probably much wider than the criminal justice system. However, in the context of the Criminal Evidence (Northern Ireland) Order 1999, we thought it worth pointing out that article 31(1) of the Order states quite clearly that the presumption is that:

"At every stage in criminal proceedings all persons are (whatever their age) competent to give evidence."

So, in the context of special measures, there is a positive presumption that you can give evidence, unless there is a good reason that you cannot. I think that the suggestion was that there is a presumption that people with disabilities cannot give evidence.

Mr Johnston:

I am pleased to give what I hope are the assurances that the commission was looking for on fixed penalties. It was stressed that it would be important to have guidance for police on the exercise of the fixed penalty notices that will be available, and we are very happy to consult the commission on the content of that guidance. Likewise, there will be an emphasis on training in the new arrangements for fixed penalty notices.

As for ensuring consistent practice, we see there being two levels of assurance: one would be that the use of fixed penalty notices in the different districts would be reviewed internally within the PSNI, but the other would be that we would then expect the Criminal Justice Inspection to pick up the experience of implementation of fixed penalty notices. That is a very important area for the justice system. Indeed, we could consider whether the Minister might make a request to

the Criminal Justice Inspection that it do a specific piece of work on that. Those are the two levels of review that we envisage. Beyond that, as was acknowledged, the Policing Board may well want to have regard to the implementation of fixed penalty notices in what it would be reviewing with police.

Finally, the Irish language Act was mentioned. I want to refer to something that the Minister said in answer to an Assembly question on 14 May. He recognised that language is a cross-cutting issue on which policy needs to be agreed by the Executive. He said that he would consider his Department's language policy, including the use of the Irish language in courts, as part of his contribution to the Executive strategy. He noted that, in the meantime, the Courts and Tribunals Service has adopted a code of courtesy on the use of Irish in official business, in line with obligations under the European Charter for Regional or Minority Languages.

So, although the Minister recognises that there are questions, concerns and suggestions about the use of the Irish language in court, he feels that the proper context in which those issues should be dealt with is the wider context of an Executive strategy on minority languages.

Mr McDevitt:

On a point of clarity, can I take it from your reply, Mr Johnston, and from indications that Mr Haire and the Minister were able to give us privately, that you are positively looking at including a definition of sectarianism in the clause on chanting at sports grounds?

Mr Johnston:

We are positively looking at the inclusion of sectarianism in the Bill. Whether and how that could be defined is not an easy point to address. It is a discussion that we will need to finalise with the draftsman before we bring something back to the Committee.

Sir Reg Empey:

Before he left the room, Mr McNarry mentioned autism and other disabilities that are not within the definition of physical disabilities that we are familiar with. Mr Johnston, do you and the Department have a view on the practicality of all of this, given the very significant breadth that such a definition might have? I ask that because we are talking about a spectrum, and

considerable knowledge is required. Different points along that spectrum require different responses. What are the practical probabilities of any involvement there?

Mr Johnston:

Chris might want to say something about definitions in the particular context of special measures for people with disability issues, and we have also talked about sports law.

However, more widely, thought is being given to the challenges of conditions like autism for the criminal justice system. A group that is particularly focused on the Prison Service and how it deals with such challenges has been meeting. That recognises that there is a spectrum and that what is needed and is appropriate at one end of the spectrum may be very different to what is appropriate at the other end.

There will be people for whom aspects of disability and autism have some effect, albeit limited, on functioning. It may be that those people progress through the justice system in a way that has regard for their circumstances but that is not very different to the way in which anyone else would progress through the justice system. However, for those whose functioning is very severely affected, we would need to presume that the appropriate pathway will probably be through specialist services rather than prosecution in the justice system. I do not know whether Chris wants to add anything in particular to that.

Mr Matthews:

It might be helpful to be specific about when special measures kick in. Essentially, they kick in when the court thinks that the evidence given by a witness will be diminished by any disability that they have. That is determined case by case on the basis of any professional judgement given to the judge.

In more extreme cases, the person may not be competent to give evidence at all, but that will depend on where they are on the spectrum, how well they can understand questions put to them and how capable they are of answering them in a way that can be understood by the rest of the court.

The Chairperson:

I have no other names in front of me for questions. We will stop there. Again, I thank officials for coming to the table. No doubt, you will come back later for the clause-by-clause scrutiny of the Bill. I suspect that you will not be going home just yet.